

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

CASE NO. 13,153

AWAITING FINAL COMMISSION ACTION

NO EVIDENCE OR TESTIMONY TAKEN

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Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
FRANK T. CHAVEZ: COMMISSIONER

ORIGINAL

September 9th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, September 9th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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I N D E X

September 9th, 2004
 Commission Hearing
 CASE NO. 13,153 (Awaiting final Commission Action -
 No evidence or testimony taken)

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A P P E A R A N C E S

FOR THE COMMISSION:

DAVID K. BROOKS, JR.
 Assistant General Counsel
 Energy, Minerals and Natural Resources Department
 1220 South St. Francis Drive
 Santa Fe, New Mexico 87505

* * *

1 if he will review the status of the case and explain the
2 draft order, please.

3 MR. BROOKS: Thank you, Mr. Chairman, honorable
4 Commissioners. The case was heard at the August 12th
5 meeting of the Commission. Both parties appeared through
6 able counsel and presented extensive presentations, both
7 argument and evidence.

8 Following the hearing, the Commission met in
9 executive session and made a determination on various
10 issues in the case, made determinations on various issues
11 in the case, and I was instructed to prepare a draft order
12 to incorporate those determinations.

13 The Commissioners will recall that the issue in
14 this case arose from a situation where two applications for
15 permit to drill had been approved by the Division. The
16 first one was the Application of Pride Energy, which did
17 not own any interest in the drill site tract, but did own
18 interest in an adjacent track which could be included in a
19 unit for that -- that would include the drill site tract
20 under applicable spacing rules.

21 The other Application was by Yates Petroleum
22 Corporation, which owned both the drill site tract and
23 another tract that could be unitized therewith to form a
24 laydown unit for the drill site tract, whereas Pride's unit
25 was a standup unit.

1 Pride's APD was filed first, and the District
2 Supervisor decided that because Pride did not own an
3 interest in the drill site tract, that the APD had been
4 improvidently approved, and consequently he canceled that
5 approval by an *ex parte* notice without a hearing, and then
6 subsequently approved an APD for the same location by
7 Yates.

8 Pride filed an Application to reinstate their APD
9 approval, to cancel Yates' APD approval and to force pool a
10 standup unit, including the drill site tract.

11 The Commission heard land and geological
12 testimony from both parties and also engineering testimony
13 from Yates.

14 The Commission determined, as I understand it --
15 and this is what the draft order states -- that, number
16 one, the approval of an APD, while it does not, probably,
17 grant a property right -- and I use the word "probably", I
18 believe, in the draft order, or some similar word of
19 uncertainty, because I think that ultimately it's an issue
20 for the courts and not something the Commission would
21 really be in a position to make an authoritative
22 determination on, but while we do not -- the Commission
23 does not view the APD approval as really constituting
24 property rights, still, it does create a right that ought
25 not to be revoked without some kind of process, due

1 process, and accordingly, that the revocation of Pride's
2 APD was not proper. And of course if Pride's APD was not
3 properly revoked, then Yates's subsequent one was not
4 properly issued. The Commission, I believe, felt that the
5 appropriate procedure for Yates would have been if they
6 felt like the acreage was being tied up improperly, would
7 have been to file an application for a hearing before the
8 Division.

9 However, the Commission concluded that the APD
10 issue is not necessarily determinative, that in accordance
11 with the Commission's prior decision in the TMBR/Sharp
12 case, that the issues really should be determined in the
13 compulsory pooling aspect.

14 The Commission further, upon its review of the
15 geologic testimony, concluded that geologic testimony
16 favored the position of Pride, and consequently that a
17 compulsory pooling unit should be created and Pride should
18 be appointed as the operator, and that is what the draft
19 order so provides.

20 There is one thing on which I was not entirely
21 clear and therefore did not -- the draft order does not
22 comment. I was not entirely clear how the -- and neglected
23 to ask this during the executive session as to whether the
24 Commission has a definite view on the issue of burden of
25 proof. Ordinarily, of course, the burden of proof would be

1 on the applicant, which is Pride. I was not sure if the
2 Commission viewed Pride having the proper APD, that
3 situation shifting the burden of proof to Yates. The
4 Commission, however, needs only address that issue if it
5 would make a difference. I thought perhaps the
6 Commission's conclusion was that they agreed with Pride's
7 technical position, regardless of who was viewed as having
8 the burden of proof, in which case it was not necessary to
9 the result for the Commission to address the burden-of-
10 proof issue. The draft order does not address the burden-
11 of-proof issue. And so I just raise that issue because it
12 did not occur to me at the time of the executive session.

13 Otherwise, I believe the draft order is in
14 accordance with at least my understanding of what the
15 Commission directed at the executive session after the last
16 meeting.

17 CHAIRMAN FESMIRE: Okay. Commissioner Bailey,
18 have you had a chance to review the draft order?

19 COMMISSIONER BAILEY: Yes, I have, and I expect
20 that we should sign it.

21 CHAIRMAN FESMIRE: Okay. Commissioner Chavez,
22 have you had a chance to review it?

23 COMMISSIONER CHAVEZ: Yes, I have, and I agree
24 with it.

25 CHAIRMAN FESMIRE: And do you agree with the

1 position that Pride's technical position makes the burden-
2 of-proof issue irrelevant to our decision today?

3 COMMISSIONER BAILEY: Yes.

4 COMMISSIONER CHAVEZ: Yes, I do too.

5 CHAIRMAN FESMIRE: At this time, we will adopt
6 the proposed order and go ahead and sign it.

7 (Thereupon, these proceedings were concluded at
8 9:09 a.m.)

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