STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

IN THE MATTER OF THE APPLICATION OF RICHARDSON OPERATING COMPANY TO ESTABLISH A SPECIAL "INFILL WELL" AREA WITHIN THE BASIN-FRUITLAND COAL GAS POOL AS PROVIDED BY RULE 4 OF THE SPECIAL RULES FOR THIS POOL, SAN JUAN COUNTY, NEW MEXICO.

Requested De Novo
Review by Secretary of
OCC Case No. 12734 (De Novo)

REPLY OF SAN JUAN COAL COMPANY
TO RESPONSE OF RICHARDSON OPERATING COMPANY

The Richardson Operating Company ("Richardson") Response (filed January 27, 2003) mischaracterizes certain issues before the Secretary. To set the record straight on the more serious examples, San Juan Coal Company ("San Juan") submits this brief Reply, organized according to the order of points in Richardson's filing.[1]

1. RICHARDSON POINT II.C

Richardson states in the first sentence of Point II.C: "No new infill wells will be drilled pursuant to Commission Order R-11775-B in San Juan's Mine Districts." This statement contradicts multiple other inconsistent representations of Richardson to the Commission and Secretary (see, e.g., (1) Richardson's OCC Ex. A-1 (attached as Exhibit 1 to Richardson's Response) shows 8 proposed locations and recompletions in the mine districts; (2) the heading of Point II.C of Richardson's Response states no additional infill on "state lands in the infill area;" (3) the later text of this section states: "...only one infill well will be drilled in the San Juan's [sic] Mine Districts and it is located on federal land"; (4) Point III.E states "a handful of infill wells, none of which will be drilled in San Juan state lease mine districts;" and (5) Richardson's Conclusion states "No additional infill wells are going to be drilled on any of this land in San

[1] For brevity, San Juan does not here raise all points of disagreement.

Juan mine districts."). The Commission should hold Richardson to its representation that no new infill wells will be drilled pursuant to Order R-11775-B in San Juan's mine districts.[2]

It is important for the Secretary to recognize that numerous additional infill wells are proposed by Richardson within San Juan's coal leases (Richardson seeks a total of 25 infill wells, Order, Paragraph 6). San Juan's currently proposed mining districts comprise only a portion of its coal leases.

Richardson makes a gross misstatement of the law by representing in the heading of Point II.C that there is no state issue for the Secretary to decide because no additional infill wells will be drilled on state lands. Of course, the Commission has long exercised, with the agreement of the United States, defined regulatory jurisdiction over certain federal minerals, including jurisdiction to consider whether to allow infill wells. The Commission's jurisdiction extends to all lands, whether state, federal, or fee, and the Secretary shares this broad jurisdiction.

2. RICHARDSON POINT II.B

The fact that San Juan must comply with Mine Safety and Health Administration ("MSHA") regulations does not render the issues before the Secretary "federal." Rather, the relevant point is that adherence to MSHA regulations, together with the failure of negotiations between Richardson and San Juan, deprive San Juan of the ability to mine significant quantities of coal surrounding each wellbore. If the infill application is granted, more wells may need to be bypassed. The authority to avoid that result is squarely within the Secretary's jurisdiction.

3. RICHARDSON POINTS II.E AND II.F

In accusatory argument of a familiar tone, Richardson accuses San Juan of not "telling the Secretary" about various aspects of the Bureau of Land Management ("BLM") proceeding.

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[2] San Juan notes with regard to the term "new infill" wells, that all infill wells would be "new" because Richardson does not yet have the right to drill or complete them.

In truth, the BLM proceeding is described in detail in the Commission's Order (see Paragraphs 33 to 37), which San Juan attached as Attachment 1 to its Application for Review. This hardly constitutes concealment of the BLM proceeding. Moreover, Richardson's excessive focus on the BLM is misplaced because many of the issues before the BLM relate to priority of rights or valid existing rights, and are not at issue here.

Contrary to the representation of Richardson, San Juan does not ask the Secretary to review issues that are pending before the BLM. Issues before BLM differ from issues presented here. Indeed, those issues of priority of rights or valid existing rights are precisely the issues that the Commission appropriately recognized are not before the Commission (Order, Paragraph 69). In contrast, the Secretary and the Commission have exclusive jurisdiction to determine whether the infill application should be granted in the public interest, and this is the issue San Juan presents.

4. RICHARDSON POINT III.C

Richardson admits that the "single and straightforward issue" before the Secretary is whether she should hold a public hearing to determine whether the Commission's Order contravenes the public interest (Response, III.A). In Point III.C, Richardson suggests that San Juan has failed to establish that the Order contravenes the public interest. San Juan asserts that it has established contravention of public interest, but it also points out that, as Richardson admits, the purpose of this application is to determine **whether to hold a hearing** ,not to decide the ultimate issue. By any reasonable standard, San Juan has raised substantial issues sufficient to justify holding a hearing.

5. RICHARDSON POINT III.E

Contrary to Richardson's suggestions, the infill issues presented here are not addressed by a federal "comprehensive regulatory scheme," and the Secretary cannot simply defer to the BLM a decision squarely within her State's statutory authority – to determine whether the granting of the infill application violates the public interest. The BLM has never considered this infill issue, and the only regulatory scheme to which this particular issue is subject is under the jurisdiction of the Secretary.

Richardson's assertion that San Juan is attempting to breach contracts with the BLM is without basis. First, BLM does not characterize as breach of contract San Juan's effort to obtain review in BLM proceedings of the language in the protocol and leases. Second, Richardson's efforts to do so are misdirected. As the Commission recognized in its Order (Order, Paragraph 69), its function is not to determine the validity or priority of various leases.

San Juan respectfully requests that the Secretary hold a hearing pursuant to NMSA 1978 Section 70-2-26.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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