

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF PRIDE ENERGY COMPANY)
FOR COMPULSORY POOLING, LEA COUNTY,)
NEW MEXICO)

CASE NO. 13,690

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Jr., Hearing Examiner

April 13th, 2006

Santa Fe, New Mexico

2006 APR 27 AM 9 28

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID K. BROOKS, Jr., Hearing Examiner, on Thursday, April 13th, 2006, 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.

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I N D E X

April 13th, 2006
Examiner Hearing
CASE NO. 13,690

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A P P E A R A N C E S

FOR THE APPLICANT:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

FOR YATES PETROLEUM CORPORATION:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

ALSO PRESENT:

WILLIAM V. JONES, JR.
Hearing Examiner
New Mexico Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, NM 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 8:20 a.m.:

3 EXAMINER BROOKS: Okay. Well, it looks like it's
4 going to be a pretty short docket this morning, then, with
5 one exception, and that one now becomes the first case on
6 the docket.

7 Case Number 13,690, the Application of Pride
8 Energy Company for compulsory pooling, Lea County, New
9 Mexico.

10 Call for appearances.

11 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
12 representing the Applicant. And I believe today Mr. Carr
13 and I have agreed just to argue a motion to dismiss.

14 EXAMINER BROOKS: Okay.

15 MR. CARR: And I'm William F. Carr with Holland
16 and Hart, Santa Fe. I represent Yates Petroleum
17 Corporation in this matter, and we have filed a motion
18 seeking dismissal of the Application.

19 EXAMINER BROOKS: Very good.

20 MR. CARR: Since it's my motion, I believe I
21 should start.

22 EXAMINER BROOKS: I believe so.

23 MR. CARR: As the Examiner, I'm sure, is aware,
24 there has been a dispute between Yates Petroleum
25 Corporation and its partners and Pride Energy Company for

1 several years concerning a re-entry in the State "X" Well
2 Number 1.

3 EXAMINER BROOKS: Yes, the Examiner is very --

4 MR. CARR: And as you also --

5 EXAMINER BROOKS: -- well acquainted with the
6 history of that --

7 MR. CARR: -- as you also know, the OCD removed
8 Yates as operator to the well and ordered Pride to
9 reimburse certain costs that had been incurred by Yates.

10 Yates paid its AFE share of the original
11 re-entry. Pride attempted the re-entry and then failed and
12 let the order expire.

13 We had to go to hearing in January on objections
14 concerning certain of the costs. And as we sit here today,
15 Pride is still holding \$116,000 of moneys that we are being
16 wrongfully withheld and should be repaid to Yates.

17 And today we're faced with another compulsory
18 pooling application where we either have to agree to
19 participate in another re-entry attempt and pay half of the
20 well costs, which are \$986,000-plus, to avoid a risk
21 penalty -- that's the choice that's being given us, while
22 Pride still is holding \$116,000 of our money and for two
23 years has not refunded those sums.

24 And so we basically object to another pooling
25 case being called and heard by this Commission or Division

1 until the first matter is resolved. We think to ask us to
2 once again have to give a million dollars to Pride, just so
3 we don't get hit with a risk penalty, when they're still
4 holding funds from the first case, if it isn't arbitrary
5 and capricious it is certainly unreasonable. And until
6 that issue is resolved, we think it's improper to go
7 forward.

8 The second issue concerns whether or not Pride is
9 properly invoking the pooling statute in this case. As we
10 all know, before you are able to invoke the police power of
11 the State to take our interest in this case and give it to
12 Mr. Pride to operate, the Division has required that there
13 be a good faith effort to reach a voluntary agreement.

14 And so the question is here, What has Pride done?

15 Yesterday we received a response to our motion,
16 and Mr. Bruce pointed out that in December of 2005 we had a
17 conversation concerning the development of the west half of
18 Section 5. We agreed that the parties -- Section 12. We
19 agreed that the parties needed to meet, but we also at that
20 time agreed that the cost issues involved would have to go
21 to hearing. And the result of the December, 2005, meeting
22 was not a discussion of an additional well, it was
23 resolving the prior issues and then hoping the parties
24 could resolve the issues so we wouldn't have to come back
25 here.

1 The next thing that is cited as an effort by
2 Pride to reach voluntary agreement is that in February they
3 obtained a new APD from the Division. Coming to the
4 Division and getting an APD without ever discussing
5 anything with us hardly falls in the category of good faith
6 negotiation between the parties.

7 But it does raise a question in our minds, and
8 that is, Why is the OCD approving an APD now again for
9 Pride when they appear to have too many wells on the
10 inactive well list? They may not have registered under
11 recent rules and may not be properly able to even come
12 before you and seek that APD.

13 And then they state, well, they verbally
14 contacted us again in February. There was a conversation
15 in February between Mr. Pride and Mr. Moran, and again they
16 discussed all the issues outstanding on this particular
17 property.

18 And then a couple of days later, Pride sent an
19 AFE and a well proposal to Yates. The response to that is
20 in our letter that is attached to the motion from Mr.
21 Moran. And the importance of that letter is that once we
22 received the AFE and well proposal, we wrote to them -- we
23 requested a well prognosis.

24 EXAMINER BROOKS: And when did this occur?

25 MR. CARR: It's attached to the motion, it's our

1 letter which is marked Exhibit B, and it was on March the
2 3rd.

3 EXAMINER BROOKS: March the 3rd, okay.

4 MR. CARR: Yes, sir. And we asked for a well
5 prognosis because, frankly, we've been down this road
6 before. The last two wells that have been re-entered by
7 Pride in which we own an interest have failed, and we
8 needed a prognosis so we could make a determination as to
9 whether or not to participate.

10 There has been no other call from Mr. Pride,
11 there has been no response to that letter, none whatsoever.
12 And we submit to you that on these facts there hasn't been
13 a good-faith effort. There have been conversations about
14 what we should do with the last failed effort, but we got
15 an AFE and a proposal, and we asked for information on what
16 they intend to do, and there's been no response.

17 And we simply contend that that does not rise to
18 a level of good faith negotiations that would now let them
19 come back, invoke the pooling statute and require us on the
20 information that we have to now have to make a
21 determination on whether or not we need to put another
22 million dollars into what has been a classically failed
23 effort.

24 And for that reason, we ask that the Application
25 be dismissed.

1 EXAMINER BROOKS: Mr. Bruce?

2 MR. BRUCE: Mr. Examiner, Mr. Carr in his motion
3 actually mentioned three reasons for not -- for dismissing
4 the case.

5 First of all is the outstanding issues regarding
6 the original re-entry. That is pending before the
7 Division, Examiner Catanach. That's not in Pride's
8 control. But both Mr. Carr and I have spoken with Mr.
9 Catanach, and I understand that he is on the verge of
10 getting an order, draft order, to the Division Director on
11 that.

12 Second point is that Pride doesn't have the right
13 to enter onto Yates' lease to re-enter the State "X" Well
14 Number 1. That's correct, absent a pooling, force pooling,
15 or a voluntary agreement. Yates has so much as said it's
16 not going to enter into a voluntary agreement, so pooling
17 is required. And as I stated in the motion, Pride is not
18 going to re-enter that well without a pooling order or a
19 voluntary agreement, it's not going to trespass on Yates'
20 lease.

21 So now you get to the final thing, which is the
22 good faith effort. And although Mr. Carr says my December
23 letter really was just about the prior issue, if you look
24 at Exhibit B to my motion it just says, Is Yates willing to
25 enter into a JOA, as opposed to traveling down the force

1 pooling process again? I also said I believe Yates'
2 preference is to P-and-A the well, however Pride may be
3 interested in re-entering. We never received a response.

4 And again in February, I inquired of Mr. Carr if
5 Yates was willing to enter into a JOA. And since they
6 weren't, since Yates wouldn't do that, Pride sent proposal
7 letters to the Yates entities on February -- I forget the
8 exact date -- February 24th.

9 Now, Pride did not wait the normal 30 to 45 days
10 to file a pooling Application. The reason is, Pride has a
11 lease expiring on May 31st, so it needs to move forward.
12 It's not trying to short-circuit anything in the pooling
13 process, it just needs to get this acreage pooled. And
14 regardless whether it's a re-entry of the State "X" Well
15 Number 1 or a new well, whether on Yates' lease or on
16 Pride's lease, this acreage needs to be pooled because
17 Yates won't enter into a voluntary agreement.

18 In the past, the Division --

19 EXAMINER BROOKS: I'm sorry, go ahead --

20 MR. BRUCE: -- has held --

21 EXAMINER BROOKS: -- I didn't mean to interrupt.

22 MR. BRUCE: In the past the Division has held
23 that sending out a well proposal with an AFE and giving
24 people a chance to enter into or join in the well is
25 sufficient.

1 In this case, Pride has written a couple of
2 letters, has contacted Yates' attorney, there's been a
3 discussion between Mr. Pride and Mr. Moran who's here
4 today. They haven't come to terms.

5 With respect to the drilling prognosis, etc., I
6 thought one had been sent. Yates says it hasn't. I
7 believe what they say. If this hearing is not dismissed,
8 this Application, it would be set for hearing in a couple
9 of weeks, and I will assure the Examiner that a drilling
10 prognosis will be sent to Yates.

11 But Pride has taken all the steps normally
12 required by the Division prior to seeking pooling, and we
13 do not believe, especially with an expiring lease, that a
14 dismissal is proper.

15 The only other thing I'd mention is, Yates says
16 that Pride is holding about \$120,000. On the other hand,
17 that's offset by the fact that Pride has not been paid
18 about \$120,000 from Yates on joint interest billings on
19 other wells. So to say that Yates is out that money,
20 they're holding part of Pride's too. So I think that's a
21 side issue that will be resolved when Examiner Catanach
22 issues his order.

23 EXAMINER BROOKS: Of course, they have some other
24 wells that would be -- that it's not a compulsory pooling
25 case, it wouldn't be within the Division's jurisdiction, I

1 wouldn't think.

2 MR. BRUCE: No. No, but the reason they're
3 withholding it is because of their dispute with --

4 EXAMINER BROOKS: Yeah.

5 MR. BRUCE: -- with Pride in this matter.

6 EXAMINER BROOKS: Mr. Carr?

7 MR. CARR: Well, we've never said we would not
8 join. We have said we weren't interested in signing the
9 JOA or doing anything until we wrap up the last matter, and
10 we have never been given a JOA, only an abstract offer to
11 tender one.

12 Our position has never been known. There have
13 been additional developments since the last attempt. We
14 have asked for a well prognosis, and that has not been
15 given. And to say that they have done everything that is
16 required, that they gave us notice and there's been time
17 and a chance to join -- that isn't true. We don't have a
18 chance to join if they won't even tell you what they're
19 going to do when you ask for a prognosis.

20 Yes, they have an expiring lease. But you look
21 back in the record, you'll see we had an expiring lease a
22 year ago and we had to drill a well to hold that lease.
23 That isn't the issue here.

24 The issue is whether or not they have made a
25 good-faith effort to give us the data so we can make a

1 decision on whether or not to participate in this well.
2 And whether or not we have a dispute on another well
3 concerning joint interest billings that involve accounting
4 questions that may go to court before that is resolved
5 doesn't have anything to do with the issues that are before
6 the Oil Conservation Commission.

7 It is simply this: Can you send an AFE and a
8 well proposal and never talk to them again, and then pool
9 them? And they need information so they can make an
10 informed judgment on whether or not they should participate
11 in your well. And that's the reason we think they are
12 properly invoking the pooling statute.

13 EXAMINER BROOKS: Of course, a good faith effort
14 is a question of fact. And since you have presented it
15 with the argument of counsel only, I assume that no one
16 disputes any of the facts recited in the other's motion, in
17 the other's moving papers.

18 Very good, I'm going to take the motion to
19 dismiss under advisement. In view of that, do you want to
20 re-set the case on the merits?

21 MR. BRUCE: I think we would -- I think Mr.
22 Bruce, assuming we have a ruling, has indicated that if the
23 case is not dismissed he would like to go forward two weeks
24 from now.

25 EXAMINER BROOKS: Very good. We will -- I will

1 take the motion to dismiss under advisement in this case,
2 and the case will be -- the case itself will be continued
3 until the April the 27th docket. I've got to find -- Here
4 we are.

5 So Case Number 13,690, the Respondent's motion to
6 dismiss, will be taken under advisement. The case will be
7 continued for hearing on the merits on April 27th.

8 (Thereupon, these proceedings were concluded at
9 8:34 a.m.)

10 * * *

11
12
13 I do hereby certify that the foregoing is
14 a complete record of the proceedings in
15 the Examiner hearing of Case No. 13690,
16 heard by me on April 13, 2006
17 David K. Burt, Examiner
18 Oil Conservation Division
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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL April 13th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006