BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF PRIDE ENERGY COMPANY FOR CANCELLATION OF A DRILLING PERMIT AND RE-INSTATEMENT OF A DRILLING PERMIT, AN EMERGENCY ORDER HALTING OPERATIONS, AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

Case No. 13153

RESPONSE OF PRIDE ENERGY COMPANY TO MOTION TO DISMISS

Pride Energy Company ("Pride") submits this response to the memorandum filed by Yates Petroleum Corporation *et al.* ("Yates") on September 26, 2003 in support of its motion to dismiss the pooling application filed herein by Pride.

FACTS

The pertinent facts are set forth briefly below:

1. Pride owns the working interest in State Lease V-6256, covering the SW¼ of Section 12, Township 12 South, Range 34 East, N.M.P.M., Lea County, New Mexico.

2. Yates owns the working interest in State Lease V-5855, covering the N½ and SE¼ of Section 12.

3. Both parties propose to re-enter and deepen the existing State "X" Well No. 1, located 1980 feet from the north line and 660 feet from the west line of Section 12, to test the Morrow and Mississippian formations. Both formations are spaced on 320 acres.

4. On July 16, 2003, Pride obtained an approved Application for Permit to Drill ("APD") covering the W½ of Section 12. The APD states on its face that "Permit Expires 1 Year From Approval Date Unless Re-Entry Operations Underway."

5. In furtherance of its plans, Pride contacted Yates in writing and by phone in an effort to obtain the voluntary joinder of Yates in its W½ well proposal. Yates stated that they'd respond to the proposal, but never did.

6. On or about September 9, 2003, Pride was informed that its APD had been canceled. A letter from the Division, dated August 26, 2003, was faxed to Pride on September 9th.

ARGUMENT

Yates's arguments misconstrue the pertinent legal authority in an attempt to justify its actions. In summary, (a) Pride had a valid APD which the Hobbs District Office illegally canceled, (b) as a result, Yates' APD was improperly granted, and (c) the W½ of Section 12 may be force pooled. These issues, and certain subsidiary issues, are addressed below.

I. Ownership of Wellbore.

Yates first asserts, in its statement of facts, that it owns the wellbore of the State "X" Well No. 1. It does not. That well was drilled and abandoned in 1957. The lease under which that well was drilled has long since expired. The leases of Yates and Pride are dated in 2000 and 2001, respectively. Applicable case law provides that, at the expiration of a lease the wellbore reverts to the **surface owner** (in this case, the Commissioner of Public Lands). Thus, the wellbore is owned by the Commissioner. Although the mineral lessees have the right to use the wellbore for their mineral development operations, Yates does not "own" the wellbore. Thus, it is available for force pooling.

II. Cancellation of Pride's APD.

Division Rule 1101.A states in part:

> Before commencing drilling or deepening operations ... the operator of the well must obtain a permit to do so. ... If the operator has an approved bond in accordance with Rule 101, one copy of the Drilling Permit will be returned to him on which will be noted the Division's approval, with any modifications deemed advisable. **If the proposal cannot be approved for any reason, the Forms C-101 will be returned with the cause for rejection stated thereon.**

(Emphasis added.) Pursuant to this regulation, Pride's APD was approved, because Pride met the requirements of the rule.

The cancellation of Pride's APD, and the approval of Yates' APD, were improper for the following reasons:

1. The Division's rule allows the District Office to initially refuse to approve an APD filed with it. However, they do not allow the District Office to revoke the APD **once it is properly issued**. Pride's APD was valid for one year, and only terminates if, by the end of one year, no work has been done on the well. Therefore, the Hobbs District Office's statement that the APD was revoked because no C-103s were filed within one month after issuance is foolish, and contrary to regulations. If Pride's APD was to be canceled within the one year period, an application needed to be filed with the Division in Santa Fe. That has never been done by Yates, and thus Pride's APD must be re-instated.[1]

[1]Pride has a property interest in its APD, not in the NW¼ of Section 12. It is that interest which is subject to due process considerations, since state action is involved. **Uhden v. Oil Conservation Comm'n**, 112 N.M. 528, 817 P.2d 721 (1991) ("the essence of justice is largely procedural"). Since Division procedures were not followed herein, Pride's APD must be re-instated.

2. Yates spends considerable time arguing that it meets the requirements of Commission Order No. R-11700-B. The order does indeed state that, if there is common ownership in a well unit, once an APD is approved no further proceedings are necessary. **Order No. R-11700-B, Finding Paragraph 35.** *However, that assumes an APD was properly granted to Yates in the first instance.*[2] As noted above, Pride's APD was improperly canceled, Yates' APD was improperly granted, and thus Yates' APD must be revoked. In addition, as noted in Part III below, even a validly issued APD does not prevent compulsory pooling.

3. In the cases involved in Order No. R-11700-B, TMBR/Sharp Drilling, Inc. obtained an APD for a laydown 320 acre unit. Ocean Energy, Inc. subsequently attempted to obtain an APD for a conflicting standup unit, but was informed *by the Hobbs District Office* that it would not approve the standup APD **solely because** the District Office had already issued the laydown APD. See testimony of Derold Maney (landman for Ocean Energy, Inc.). Now, the Hobbs District Office, at the request of Yates, and without regulatory authority and contrary to the policy the Division established in 2002, approves an APD conflicting with Pride's previously approved APD. Such action is improper.

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[2]Again, Pride notes that Yates had an APD covering the N½ of Section 12 (obtained without notice to Pride) for two years, which it allowed to lapse because of a complete lack of activity. Thus, the W½ was available for Pride to obtain an APD and to force pool. In addition, the Hobbs District Office did not cancel Yates' APD because it failed to file C-103s during the first month or two of the permit. The Division must treat operators in an even-handed manner.

III. Compulsory Pooling is Proper.

Yates position on pooling is confusing. It says that Pride has no right to pool the W½ of Section 12. However, since Yates owns the lease on the N½ and SW¼, and Pride owns the lease on the SW¼, a compulsory pooling proceeding is inevitable for at least one 320 acre well unit in Section 12. Therefore, pooling is proper either for a standup or laydown unit.

The pooling statute states in part:

> When two or more **separately owned tracts of land** are embraced within a spacing or proration unit ... the owners thereof may validly pool their interests and develop their lands as a unit .... Where, however, such owner or owners have not agreed to pool their interests, ... the division, to avoid the drilling of unnecessary wells and to protect correlative rights ... **shall pool** all or any part of such lands ...
>
> All operations for the pooled oil or gas, or both, **which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract** within the unit by the owners or owners of such tract ...

NMSA 1978 §70-2-17.C (emphasis added). The case law holds that the Division is authorized to establish a well at any location on a spacing unit, regardless of whether the owner of the land on which the well is located has consented thereto. **Texas Oil & Gas Corporation v. Rein, 534 P.2d 1277 (Okla. 1974)**. Thus, Pride is entitled to proceed in this case even though the State "X" Well No. 1 is not on its lease. Yates' "interpretation" would gut the purpose of the statute.

Moreover, Yates' motion to dismiss ignores the terms of the very order of the Commission which it uses as the basis for its argument. The order states in part:

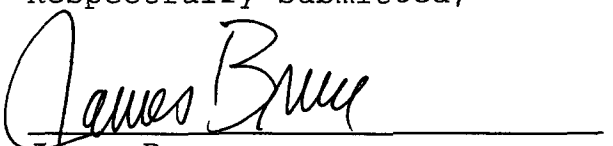
> Issuance of the [APD] does not prejudge the results of a compulsory pooling proceeding. ...

Order No. R-11700-B, Finding Paragraph 34. In the TMBR/Sharp Drilling, Inc. case it had an approved APD, but Ocean Energy, Inc. was allowed to proceed with its pooling application. By the same token, Pride must be allowed to proceed with this pooling application.

CONCLUSION

For the reasons stated above, Pride requests that the Division deny Yates' motion to dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 30 day of October, 2003

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