BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 2504
REHEARING

APPLICATION OF CONSOLIDATED OIL & GAS,
INC., FOR AN AMENDMENT OF ORDER NO.
R-1670-C, CHANGING THE ALLOCATION FORMULA
FOR THE BASIN-DAKOTA GAS POOL, SAN JUAN
RIO ARRIBA, AND SANDOVAL COUNTIES, NEW MEXICO

STATEMENT OF SOUTHWEST
PRODUCTION COMPANY

This statement is submitted pursuant to the Commission's ruling at the hearing in the above styled and numbered cause held at Santa Fe, New Mexico on February 14, 1963.

Although there are many facets of this case that warrant comment, we have limited this statement to a rebuttal of the attack made by counsel for Applicant in closing argument against the legality of the Commission's existing proration order in the Basin Dakota Gas Pool.

First, we wish to point out that throughout the voluminous record of the many hearing and rehearings in this case, the Applicant has made no allegation whatsoever that the Commission's existing proration order in the Basin Dakota Gas Pool might be illegal or invalid. Not until the waning moments of final argument in the last hearing was this point raised.

Section 65-3-22, N.M.S.A., (1953 Comp.) requires that a person who makes application for rehearing on a Commission order set forth the respect in which such order is believed to be erroneous. The same statute goes on to provide that "the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing."

The application of Consolidated Oil and Gas Company for rehearing in this case makes no attack whatsoever on the sufficiency or legality of the Commission's findings in its existing proration order in the Basin Dakota Gas Pool and hence it must necessarily follow from the above referenced statutory language that it cannot, at this late date, be heard to complain of the validity of the order on this ground.

Counsel for Applicant would have the Commission believe that all its proration orders which do not strictly comply with the standards set out by the New Mexico Supreme Court in Continental Oil Company vs. Oil Conservation Commission, 70 NM 310, 378 P2d 809, are void ab initio. This is not the case. In paragraph 4 of that very decision the Court announced the rule that a Commission order will be assumed to be valid until it is successfully attacked, citing Hester v Sinclair Oil and Gas Company (Okl. 1960), 351 P2d 751. Certainly the Commission's existing proration order has not yet been <u>successfully</u> attacked thus far. The mere assertion of the order's invalidity by by counsel in closing argument cannot by any stretch of the

imagination be considered as a legally proper procedure by which to raise this issue.

This issue is not properly before the Commission and it should therefore be completely disregarded in the present proceeding.

Although it goes beyond the immediate question before the Commission, we wish to point out that there is a wealth of authority for the proposition that the Commission's presently existing proration order in the Basin Dakota Gas Pool, having long since become final, is not now subject to attack in any proceeding that applicant might hereafter see fit to institute in the Courts.

In nearly every jurisdiction where the question has arisen in recent years, the Courts have held that where an administrative agency acts constitutionally and has jurisdiction over the parties and the subject matter (which cannot be denied in this case) its final decisions cannot be subjected to collateral attack.[1] A collateral proceeding is defined as any proceeding outside the purview of the statute which provides for judicial review.[2]

The fact that the administrative agency's power to promulgate the order in question emanates from the legislative or executive branch of government has made the judiciary even more reluctant to permit a collateral attack than in the case where the order is wholly judicial in character.[3] In this context the term

"collateral attack" is analogous to the doctrine of res judicata and it is accorded the same degree of finality.

This point has not been ruled upon in New Mexico; however, we find nothing inconsistent with the foregoing contained in Continental Oil Company v Oil Conservation Commission, supra, since the Oil Commission's order was before the Court in that case on a direct appeal timely taken under Section 65-3-22, N.M.S.A., (1953 Comp.). In fact it might well be argued that the New Mexico Supreme Court tacitly approved the "no collateral attack doctrine" outlined above in the Continental case when it held that the former proration formula in the Jalmat Gas Pool would be assumed to be valid until it is "successfully attacked", despite the fact that it was clear from the record before the Court that the former order was subject to the same objections as was Order No. R-1092-A.

In summary we take the position that the Commission's existing proration order in the Basin Dakota Gas Pool is valid since it has not been successfully attacked and further that it cannot, at this late date, be collaterally attacked in the Courts.

Respectfully submitted,

SOUTHWEST PRODUCTION COMPANY

By _____

Geo. L. Verity
Its Attorney

For footnotes see page 5.

FOOTNOTES

1. Flemming v Nester, 363 US 603, 4 L ed 2d 1435, 80 S Ct. 1367; Andrew G. Nelson, Inc. v United States, 355 US 554, 2 L ed 2d 484, 78 S Ct 496, reh den 356 US 934, 2 L ed 2d 763, 78 S Ct. 770; Securities & Exch. Com. v Central-Illinois Secur. Corp. 338 US 96, 93 L ed 1836, 69 S Ct 1377; Adams v Nagle, 303 US 532, 82 L ed 1000, 58 S Ct 687; Davis Trust Co. v Hardee, 66 App DC 168, 85 F2d 571, 107 ALR 1425; De Groot v Sheffield (Fla) 95 So 2d 912; Martin v Wolfson, 218 Minn 557, 16 NW2d 884; Leeman v Vocelka, 149 Neb 702, 32 NW2d 274; Hardin v Jordan, 140 US 371, 35 L ed 428, 11 S Ct 808, 838; Sanford v Sanford, 139 US 642, 35 L ed 290, 11 S Ct 666; Davis v Wiebbold, 139 US 507, 35 L ed 238, 11 S Ct 628; Valier Coal Co. v Department of Revenue, 11 Ill 2d 402, 143 NE2d 35, 64 ALR2d 763; Foy v Schechter, 1 NY2d 604, 154 NYS2d 927, 136 NE2d 883; Ottinger v Arenal Realty Co. 257 NY 371, 178 NE 665; State Tax Commission v Katsis, 90 Utah 406, 62 P2d 120, 107 ALR 1477; Borax Consolidated v Los Angeles, 296 US 10, 80 L ed 9, 56 S Ct 23, reh den 296 US 664, 80 L ed 473, 56 S Ct 304.
Annotations: 14 ALR2d 89, §9; 41 ALR 922.

2. Albuquerque Nat. Bank v Perea, 147 US 87, 37 L ed 91, 13 S Ct 194; Palmer v McMahon, 133 US 660, 33 L ed 772, 10 S Ct 324; Miller v Railroad Commission, 9 Cal 2d 190, 70 P2d 164, 112 ALR 221; Harrington v Glidden, 179 Mass 486, 61 NE 54 affd 189 US 255, 47 L ed 798, 23 S Ct 574; Application of Hvidsten (ND) 72 NW2d 524; Alexander v Com. 137 Va 477, 120 SE 296; Craig v Leitensdorfer (Downs v Hubbard) 123 US 189, 31 L ed 114, 8 S Ct 85; Seaboard Air Line R. Co. v Daniel, 333 US 118, 92 L ed 580, 68 S Ct 426.

3. Thomas v Ramberg, 240 Minn 1, 60 NW2d 18; Pearson v Walling (CA8 Ark) 138 F 2d 655, cert den 321 US 775, 88 L ed 1069, 64 S Ct 616; White Way Pure Milk Co. v Alabama State Milk Control Board, 265 Ala 660, 93 So 2d 509; Foy v Schechter, 1 NY2d 604, 154 NYS2d 927, 136 NE2d 883.

A STATEMENT OF POSITION OF SUNRAY DX OIL COMPANY

SUNRAY DX OIL COMPANY, after reviewing the evidence and exhibits submitted at this hearing and at the April, 1962 hearing, feels that the basic issue that splits the companies represented in the hearing is whether acreage or deliverability most accurately reflects reserves. Both groups admit that with the proper data reasonably accurate estimates of reserves on a tract by tract basis can be made.

It is Sunray's position therefore, that the best estimate of reserves is not some other factor that is attempted to be equated with a given estimate, but the best estimate of reserves is simply the reserve estimate itself. Reserves should therefore be used to allocate gas production.

Sunray also feels that deliverability has been shown to be a completely unreliable guide to reserves on an individual tract basis, the only basis the Commission can use under the Jalmat Decision.

It is therefore, Sunray's position that since acreage and the thickness of the production zone more nearly reflects reserves than deliverability and since Consolidated Oil and Gas Company's formula relies more heavily on acreage than the present formula we would urge the Commission to adopt Consolidated's formula.

On behalf of Sunray DX Oil Company

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STATEMENT OF TEXACO INC.

CASE NO. 2504

SANTA FE, NEW MEXICO

March 7, 1963

Texaco Inc. does not operate any producing wells in the Basin-Dakota Pool. However, Texaco owns six wells completed in the Basin-Dakota Pool, currently shut in. Texaco owns an interest in several producing wells in the Basin-Dakota Pool, and also owns considerable undeveloped acreage in the immediate area.

It is Texaco's opinion that deliverability does not have a direct correlation to revocable gas reserves in place under any particular tract, and therefore should not be used as a factor in the prorating of gas production. It is believed that to include deliverability as a factor increases the tendency to perforate longer intervals and stimulate with larger fracture treatments, which results not in an increase in reserves for a particular well but merely in an increase in the wells' deliverability. We believe such practices, in an effort to increase deliverability, cause both physical and economic waste. Texaco believes that to protect the correlative rights of all parties concerned, the most ideal proration formula would be one based on reserves in place. We also believe this type would be the most difficult to administer. With the great strides made within industry in the past, and those which will be made in the future, we believe that one day such proration will be possible. Until that time arrives, we recommend a proration formula where acreage is heavily weighted. Texaco recognizes the application of Consolidated Oil and Gas as a step in this direction and concurs with their application.

On behalf of Texaco, Inc.

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED OIL & GAS, INC., FOR AN ORDER ESTABLISHING A SPECIAL FORMULA FOR THE DETERMINATION OF ALLOWABLES IN THE BASIN DAKOTA GAS POOL.

Case No. 2506

APPLICATION

TO THE HONORABLE COMMISSION:

Comes now Consolidated Oil & Gas, Inc., 2112 Tower Building, 1700 Broadway, Denver 2, Colorado, hereinafter referred to as "Applicant", by its undersigned Attorneys, and alleges and states as follows:

I.

Applicant is a Colorado corporation with a permit to do business in the State of New Mexico.

II.

Applicant has developed and will continue to develop various lands and leases for the drilling of oil and gas wells in the Basin Dakota gas pool in Northwest New Mexico.

III.

By virtue of Order No. R-1670-C, the Commission provided among other things that the General Rules applicable to prorated gas pools in Northwest New Mexico, as set forth in Order No. 1670, shall apply to the Basin Dakota gas pool. Rule 9-C of said General Rules provides in substance that the gas allocation formula for the gas pools of Northwest New Mexico shall be based on seventy-five percent (75%) acreage times deliverability plus twenty-five (25%) acreage.

IV.

Applicant submits that because the wells in the Basin Dakota

gas pool have an abnormally high deliverability and because the present Rule 9-C creates waste, does not properly recognize correlative rights, and permits and will increasingly permit non-ratable taking ofgas from the pool and drainage between producing tracts in the pool which is not equalized by counter drainage, a special formula should be adopted pertaining to the Basin Dakota gas pool, reading as follows:

> "The pool allowable remaining each month after deducting the total allowable assigned to marginal wells shall be allocated among the non-marginal wells entitled to an allowable in the following manner:
>
> > "1. Forty percent (40%) of the pool allowable remaining to be allocated to non-marginal wells shall be allocated among such wells in the proportion that each well's 'AD Factor' bears to the total 'AD Factor' for all non-marginal wells in the pool.
> >
> > "2. Sixty percent (60%) of the pool allowable remaining to be allocated to non-marginal wells shall be allocated among such wells in the proportion that each well's acreage factor bears to the total acreage factor for all non-marginal wells in the pool."

V.

The granting of the relief sought in this Application will prevent waste and will distribute the allowable production among the producers in the pool on a reasonable basis and will not violate or prejudice correlative rights and will prevent premature abandonment of wells which are uneconomic under the present formula established by Rule 9-C.

VI.

The Commission has jurisdiction to hear and determine this cause.

WHEREFORE, Applicant respectfully requests:

That this matter be set for hearing before the Commission as soon as possible, since Applicant, as well as other operators in the Basin Dakota gas pool, is suffering and will increasingly suffer economic hardships as a result of the present formula; and

That, upon due notice and hearing, the Commission issue its Order establishing a gas allocation formula for the Basin Dakota gas pool based on forty percent (40%) acreage times deliverability plus sixty percent (60%) acreage.

Respectfully submitted this 23rd day of February, 1962.

HOLME, ROBERTS, MORE & OWEN
and TED P. STOCKMAR
1700 Broadway
Denver 2, Colorado

KELLAHIN & FOX

By /s/ Jason W. Kellahin
54½ East San Francisco Street
Santa Fe, New Mexico

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED OIL & GAS, INC., FOR AN ORDER ESTABLISHING A SPECIAL FORMULA FOR THE DETERMINATION OF ALLOWABLES IN THE BASIN DAKOTA GAS POOL.

Case No. 2504

RESPONSE TO APPLICATION

Comes now PUBCO PETROLEUM CORPORATION by W. A. Keleher, its Attorney, and in response to the Application herein, alleges and says:

Pubco objects to the granting of the order prayed for by the Applicant, Consolidated Oil & Gas, Inc., and respectfully submits to the Commission:

1.

That the granting of the order in whole or in part will seriously affect Pubco in and about its operation, present and future, in the Basin Dakota Gas Pool, and will result in Pubco's abandonment in whole or in part of the drilling of scheduled wells for 1962. That Pubco respectfully objects and excepts to consideration by the Commission of any contemplated establishment of minimum and maximum allowables for such Pool.

2.

That the proration formula presently in effect is a just and workable formula and gives each well its fair share of the existing market commensurate with the recoverable gas reserves of the individual wells.

3.

That any refinement or change in the existing formula should be in favor of deliverability and a reduction in the acreage factor in that it is Pubco's position that well deliverability more truly reflects recoverable reserves.

4.

That it is Pubco's position that an increase in the acreage factor at the expense of deliverability would in effect violate correlative rights and permit the weaker wells with less reserves to ultimately produce gas from the common source of supply in amounts in excess of their actual reserves.

5.

That the existing formula provides a 25 percent acreage factor, which in effect allocates a basic allowable to all wells regardless of their deliverabilities merely because of their existence.

6.

That it has been demonstrated that major changes occur within the Basin Dakota pool in porosity, permeability, connate water saturation, and sand thickness, all of which are the major and important factors in determining the actual recoverable reserves within a given Dakota drillsite. Pubco proposes to undertake to demonstrate the direct relationship between deliverability and recoverable reserves.

7.

Pubco contends that if the Commission should consider any change in the proration formula, that such a change should be in favor of 100 percent deliverability.

8.

Pubco objects to the introduction of minimum or maximum allowables in the field because such introduction would result in substantially changing the proration formula in favor of a straight acreage allocation of market and would be a violation of correlative rights.

9.

That the Applicant acquired the acreage complained of, and has drilled its wells with full knowledge of then and now existing Commission orders governing the field.

Respectfully submitted,

PUBCO PETROLEUM CORPORATION

By _____
EXECUTIVE VICE-PRESIDENT

_____
ATTORNEY for PUBCO PETROLEUM CORP.
First National Bank Building
Albuquerque, New Mexico

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF PAN AMERICAN PETROLEUM CORPORATION, MARATHON OIL COMPANY, AND SUNSET INTERNATIONAL PETROLEUM CORPORATION FOR A REHEARING BEFORE THE OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO TO RECONSIDER CASE NO. 2504, ORDER NO. R-2259-B OF SAID COMMISSION, BEING THE APPLICATION OF CONSOLIDATED OIL AND GAS, INC. FOR AN AMENDMENT OF ORDER NO. R-1670-C, CHANGING THE ALLOCATION FORMULA FOR THE BASIN-DAKOTA GAS POOL, SAN JUAN, RIO ARRIBA AND SANDOVAL COUNTIES, NEW MEXICO.	Case No. 2504

APPLICATION FOR REHEARING

Come now PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation, MARATHON OIL COMPANY (formerly THE OHIO OIL COMPANY), an Ohio corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a Delaware corporation, all licensed to do business in the State of New Mexico, hereinafter collectively referred to as "Applicants," and apply to the New Mexico Oil Conservation Commission for rehearing in the above styled cause, and for grounds therefor state:

I.

Hearing was held on this case before the Commission on April 18 through April 21, 1962. By Order No. R-2259, dated June 7, 1962, the Commission denied the Application. Consolidated Oil and Gas, Inc. filed an application for rehearing which was heard by the Commission on February 14, 1963, and by Order No. R-2259-B dated July 3, 1963, and entered on July 9, 1963, the Commission granted the application changing the proration formula for the Basin-Dakota Gas Pool from 25 percent acreage plus 75 percent acreage times deliverability to 60 percent acreage plus 40 percent acreage times deliverability by amending the Special Rules and Regulations for the Basin-Dakota Gas Pool, as promulgated by Order No. R-1670-C.

Commission Order R-2259, dated June 7, 1962, did not affect applicants in that no part of that Order was believed by applicants to be erroneous; Applicants are affected by Order No. R-2259-B issued by the Commission as a result of the rehearing in that said Order is believed by applicants to be erroneous as hereinafter set forth.

II.

Finding No. 6 of Order No. R-2259-B, which adopts by reference certain figures as being the initial recoverable gas reserves underlying each non-marginal tract in the Basin-Dakota Gas Pool, is erroneous in that (a) these figures do not represent the best evidence or the most recent evidence available to the Commission and to the proponents of the change in the proration formula at the time of the rehearing; and (b) these figures were derived from evidence submitted by El Paso Natural Gas Company at the original hearing of this case, which evidence was suitable to show total pool reserves and for establishing the general relationship between well reserves and well deliverabilities in the pool but which was not designed for or accurate to determine the reserves underlying any particular tract.

III.

Inasmuch as the Commission has based Finding No. 6 upon erroneous data, all findings and conclusions, including Findings Nos. 7 and 10, which follow upon Finding No. 6, are necessarily erroneous also. No independent evidence exists in the record upon which Findings Nos. 7 and 10 can be based.

IV.

Inasmuch as the figures adopted by the Commission as the initial recoverable gas reserves for each individual tract are in error, the percentages of pool reserves attributable to each non-marginal tract and the tract acreage factors listed in Exhibit A are also in error; accordingly, said Order No. R-2259-B is unsupported by substantial evidence showing that the 60-40 formula, which it promulgates, will protect the correlative rights of operators in the Basin-Dakota Gas Pool.

V.

Findings Nos. 10, 12, 13 and 14 of said Order are not supported by substantial evidence in that the Commission has based said Findings upon a comparison of initial reserves with current, rather than initial, deliverabilities, such comparison being clearly discriminatory.

VI.

The Commission's order, which the statute requires be predicated upon the prevention of waste, is not based upon any evidence in the record that waste is occurring under the present 25-75 formula or that waste will be prevented by the 60-40 formula proposed by Consolidated and adopted by the Commission. The Commission's effort to predicate its Order upon waste in Finding No. 13 proceeds upon the erroneous theory, unsupported by evidence, that waste is being caused wherever a violation of correlative rights is found to exist. Finding No. 14 that waste will be prevented by the 60-40 formula is unsupported by any evidence in the record.

VII.

The Commission in its Order has failed to make a finding which under the law must be made in order to change an existing proration order, to wit: the portion of each tract's proportion of the total pool reserves which can be recovered without waste. The record contains no evidence upon which such a finding can be made.

VIII.

The rights acquired by the owners and operators of tracts in the Basin-Dakota Gas Pool who have developed their properties under the existing 25-75 formula are prejudiced and violated by the Commission's Order No. R-2259-B changing the basis of allocation without any evidence that waste is occurring under the existing formula or that waste will be prevented by the new formula.

IX.

Findings Nos. 15, 16 and 17 of said Order No. R-2259-B are erroneous in that they are not supported by substantial evidence and are based upon other findings which are without support in evidence as hereinbefore stated.

WHEREFORE, Applicants request that the Commission grant a rehearing in Case No. 2504 and that following such rehearing the Commission set aside its Order No. R-2259-B and in all respects deny the application of Consolidated Oil and Gas, Inc. to amend Order No. R-1670-C. Applicants further request that the Commission grant an opportunity for all interested parties to present oral argument upon this application for rehearing prior to taking action thereon.

ATWOOD & MALONE

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BEFORE THE OIL CONSERVATION COMMISSION

OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION OF NEW MEXICO FOR THE PURPOSE OF CONSIDERING:

CASE NO. 2504

APPLICATION OF CONSOLIDATED OIL & GAS, INC. FOR AN AMENDMENT OF ORDER NO. R-1670-C, CHANGING THE ALLOCATION FORMULA FOR THE BASIN-DAKOTA GAS POOL, SAN JUAN, RIO ARRIBA AND SANDOVAL COUNTIES, NEW MEXICO.

APPLICATION FOR REHEARING

Comes now Southwest Production Company, one of the protestants to the application of Consolidated Oil & Gas, Inc. for an amendment to Order R-1670-C of this Commission, and requests that a rehearing be granted in such cause and in support thereof would show to the Commission the following:

1. That this Commission has entered its Order No. R-2259-B wherein it granted the prayer of the application of Consolidated Oil & Gas, Inc. for an amendment to Order R-1670-C and thereby changed the proration formula for the Basin-Dakota Gas Pool.

2. That Order No. R-2259-B was improperly entered by the Commission contrary to the rules of the Commission and the law of the State of New Mexico.

3. That Order No. R-2259-B determines in Finding #10 that there is no direct correlation between acreage and reserves and yet such order, irrespective of such finding, bases the proration formula 60% upon acreage. That this manifestly demonstrates the invalidity of such order. That Finding #11 specifically determines that the formula in the order is merely a makeshift so that the average tract in the pool will receive an allowable relatively close to that to which it is entitled and thereby manifestly demonstrates that the order is invalid as to all tracts which do not happen to fit the average norm of the pool. That it is improper for the Commission to promulgate an order based on a determined improper factor and that a statement that the application of such improper factor will do justice in the average instance, does not lend validity to the order based on such admitted improper factors.

4. That Order No. R-2259-B was entered by the Commission without proper findings as required by law and that such order is not supported by evidence required to give the Commission power and authority to enter and promulgate such order.

5. That Order No. R-2259-B was entered by the Commission changing a previous proration order for the Basin-Dakota Pool without any showing that there was any change of condition between

the entry of Order No. R-1670-C and the entry of said Order No. R-2259-B, or any showing that would justify the Commission in changing a proration order previously entered by the Commission after application and hearing. That it is improper for the Commission to promulgate a proration order after due and proper notice to all parties and hearing upon the merits and then later set such order aside without any showing of change of condition or any other grounds to justify the Commission in changing an order previously entered.

6. That this Commission improperly conducted the rehearing upon which Order No. R-2259-B was founded, in that it admitted improper evidence and testimony over the objection of Protestant, all of which renders said order invalid and entitles this Protestant to a rehearing.

7. That Order No. R-2259-B promulgates a proration order which will result in waste being committed and which does not protect the correlative rights of all producers in the Pool but to the contrary, destroys correlative rights and interferes with and destroys the correlative rights of this Protestant.

8. That after considering the allegations herein contained, this Commission should withdraw and set aside Order No. R-2259-B, thereby once again giving effect to Order No. R-1670-C.

Respectfully submitted,

VERITY, BURR, COOLEY & JONES

By _____
Geo. L. Verity

Attorneys for Protestant,
Southwest Production Company

ATTACHMENT "A"

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BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF EL PASO NATURAL GAS COMPANY FOR A REHEARING BEFORE THE OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO TO RECONSIDER CASE NO. 2504, ORDER NO. R-2259-B OF SAID COMMISSION, BEING THE APPLICATION OF CONSOLIDATED OIL AND GAS, INC. FOR AN AMENDMENT OF ORDER NO. R-1670-C, CHANGING THE ALLOCATION FORMULA FOR THE BASIN-DAKOTA GAS POOL, SAN JUAN, RIO ARRIBA AND SANDOVAL COUNTIES, NEW MEXICO.	Case No. 2504

APPLICATION FOR REHEARING

Comes now EL PASO NATURAL GAS COMPANY, a Delaware Corporation, with license to do business in the State of New Mexico, hereinafter called "Applicant," and files this, its application for rehearing before the New Mexico Oil Conservation Commission, hereinafter called "Commission," in the above styled and numbered cause, and, for grounds therefor, would respectfully show:

I.

Hearing was held on this case before the Commission on April 18 through April 21, 1962. By Order No. R-2259, dated June 7, 1962, the Commission denied the Application. Consolidated Oil and Gas, Inc. filed an application for rehearing which was heard by the Commission on February 14, 1963, and by Order No. R-2259-B dated July 3, 1963, and entered on July 9, 1963, the Commission granted the application changing the proration formula for the Basin-Dakota Gas Pool from 25 percent acreage plus 75 percent acreage times deliverability to 60 percent acreage plus 40 percent acreage times deliverability by amending the Special Rules and Regulations for the Basin-Dakota Gas Pool, as promulgated by Order No. R-1670-C.

The Commission's Order No. R-2259 did not affect applicant in the sense of Rule 1222 of the Statewide Rules of the Commission (Rehearings) in that there was no part of that Order believed by applicant to be erroneous. Applicant is affected in the sense of Rule 1222 for the first time by Order No. R-2259-B issued by the Commission as a result of the rehearing in that said order is believed by applicant to be erroneous in many particulars hereinafter set forth.

II.

Finding 6 of said Order No. R-2259-B, which Finding is to the effect that the initial recoverable gas reserves underlying each non-marginal tract are the reserves shown in Column C of Exhibit A attached to said Order, is erroneous for the following reasons:

A. The evidence in the record does not support such Finding and the Commission's determinations of individual tract figures is apparently obtained from calculations made on rehearing by Consolidated Oil & Gas, Inc. which were based upon data as to average reserves obtained at the time of the original Hearing by Consolidated Oil and Gas, Inc. from estimates in the files of El Paso Natural Gas Company, which data is shown by the undisputed evidence to have been revised and replaced by different data as more information became available from drilling of additional wells, resulting in changing the estimates of average reserves. The parameters used in making estimates for entire townships were often based upon core data obtained from one well which data was shown by core data obtained from subsequent wells not to be representative of the entire area.

B. The conclusions offered by Consolidated Oil and Gas, Inc., which have been adopted as Findings by the Commission, were based upon estimates made by El Paso Natural Gas Company as a portion of a continuing reserve study of reserves underlying the entire Basin, which studies, as testified by the witness David H. Rainey, are the best

available for determining total pool reserves and for establishing the general relationship between well reserves and well deliverabilities for the pool but are not designed for or accurate to determine the reserves underlying any particular tract.

C. The determinations of fact are based solely upon the conclusions of Consolidated Oil & Gas, Inc.; are not supported by evidence in the record and such determinations are erroneously used by the Commission by reaching the further conclusions contained in Findings No. 7 and No. 10, thus basing one set of conclusions upon another set of conclusions without direct support in the record.

III.

Since the initial recoverable gas reserves for each individual tract are in error, the percentages of pool reserves attributable to each nonmarginal tract and the tract acreage factors listed in said Exhibit A are also in error; accordingly, said Order No. R-2259-B fails to afford to the owner of each property in the pool the opportunity to produce his just and equitable share of the gas in the pool, insofar as this can be done without waste, and for such purpose to use his just and equitable share of the reservoir energy, and is therefore violative of correlative rights.

IV.

Findings Nos. 10, 12 and 13 of the Commission's Order are not supported by the evidence for the reason that the deliverabilities shown in Column B of Exhibit A of the Commission's Order are the most recent deliverabilities while the reserves shown in Column C of said Exhibit A are estimates of initial reserves and a comparison of the relationship between reserves and deliverability is discriminatory when the ratio of initial reserves to current deliverability of one tract which has produced over a period of several years is compared with the ratio of initial reserves to initial deliverability of

another tract. Since the Commission has obviously used initial reserves in comparison with current deliverabilities in making its Findings Nos. 10, 12 and 13, such Findings are clearly erroneous and are in conflict with undisputed evidence that such comparison is discriminatory.

V.

The Commission's Order, which the statute requires be predicated upon the prevention of waste, is not based upon any evidence in the record that waste is occurring under the present 25-75 formula or that waste will be prevented by the 60-40 formula proposed by Consolidated and adopted by the Commission. The Commission's effort to predicate its order upon waste in Finding No. 13 proceeds upon the erroneous theory, unsupported by evidence, that waste is being caused wherever a violation of correlative rights is found to exist. Finding No. 14 that waste will be prevented by the 60-40 formula is unsupported by any evidence in the record.

VI.

The Commission in its Order has failed to make a finding which under the law must be made in order to change an existing proration order, to wit: the portion of each tract's proportion of the total pool reserves which can be recovered without waste. The record contains no evidence upon which such finding can be made.

VII.

The record does not contain evidence upon which the findings required by the statute to be made before changing the existing proration order can be based, and the rights acquired by the owners of tracts who have developed their properties under an existing order have been prejudiced by changing the basis of allocation without evidence to support such changes. Specifically, there is no evidence to support the Commission's finding as to the reserves underlying each individual tract; there is no evidence to support a finding, and none was made,

of the portion of each tract's proportion of the total pool reserves which can be recovered without waste; there is no evidence to support the Commission's finding that the protection of correlative rights is a necessary adjunct to the prevention of waste and that waste will result unless the Commission acts to protect correlative rights; and there is no evidence in the record that waste is occurring or will occur under the existing allocation formula.

WHEREFORE, Applicant requests that, pursuant to Rule 1222 of the Rules and Regulations of the New Mexico Oil Conservation Commission and Section 65-3-22(a), New Mexico Statutes Annotated, 1953 Compilation, that the Commission grant a rehearing in Case No. 2504 and that, following such rehearing the Commission set aside its Order No. R-2259-B and in all respects deny the application of Consolidated Oil and Gas, Inc. to amend Order No. R-1670-C. Your Applicant further requests that the Commission grant an opportunity for interested parties to present oral argument upon this application for rehearing prior to taking action thereon.

/S/ Ben R. Howell
Ben R. Howell

/S/ Garrett C. Whitworth
Garrett C. Whitworth

SETH, MONTGOMERY, FEDERICI & ANDREWS

By /S/ Wm. Federici
Attorneys for El Paso Natural Gas Company

BEFORE THE OIL CONSERVATION COMMISSION

OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 2504
REHEARING

APPLICATION OF CONSOLIDATED OIL & GAS,
INC., FOR AN AMENDMENT OF ORDER NO.
R-1670-C, CHANGING THE ALLOCATION FORMULA
FOR THE BASIN-DAKOTA GAS POOL, SAN JUAN,
RIO ARRIBA, AND SANDOVAL COUNTIES, NEW MEXICO.

STATEMENT

At the conclusion of the rehearing in the above entitled case at Santa Fe on February 15, 1963, the Commission announced that permission would be granted to any interested parties to file, within twenty days thereafter, a statement for consideration by the Commission. Hence, this statement is now being filed on behalf of PUBCO PETROLEUM CORP.

On February 23, 1962, Consolidated Oil & Gas, Inc. filed its Application for an order establishing a special formula for the determination of allowables in the Basin-Dakota Gas Pool. The case was docketed as No. 2504. Briefly, the Applicant asked the Commission to abandon the formula for the gas pools of Northwestern New Mexico based on 75 X 25, and adopt a 40 X 60 formula. PUBCO PETROLEUM CORP. filed a response to the Application, objecting to the granting of the order prayed for, alleging that the granting of the order, in whole or in part, would seriously affect PUBCO in and about its operation, present and future, in the

Basin-Dakota gas field, alleging further that the proration formula presently in use was a just and workable formula and gave each well its fair share of the existing market commensurate with the ratio of recoverable gas reserves of the individual wells, as compared to the total recoverable reserves of the pool. PUBCO further alleged that if the Commission should consider any change in the proration formula, that such a change should be in favor of 100% deliverability. PUBCO further alleged, in its response, that changing the proration formula would be a violation of correlative rights; and directed the attention of the Commission to the fact that the Applicant had acquired the acreage complained of, and had drilled its wells with full knowledge of the then and now existing Commission orders governing the field.

Many pleadings were filed by oil companies, and others interested, and the case was tried before the Commission on April 18, 19, 20 and 21, 1962.

On June 7, 1962 the Commission entered its order denying the Application by Consolidated to amend Order No. R-1670-C to establish an allocation formula for the Basin-Dakota Gas Pool based on 40% acreage X deliverability plus 60% acreage. In paragraph 4 of the order of the Commission, it was stated on behalf of the Commission as follows:

> "(4) That the evidence presented at the hearing in this case concerning recoverable gas reserves in the subject pool is insufficient to justify any change in the present allocation formula."

Thereafter, and on June 27, 1962, Consolidated filed its petition for a rehearing upon the grounds therein stated, all of which will appear therein, reference thereto being had.

On July 7, 1962, the Commission acted upon the petition for rehearing, but provided as follows:

> "(2) That the scope of such hearing shall be limited to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool."

The action of the Commission in limiting the scope of the rehearing probably stemmed from a desire on the part of the Commission to take into consideration the decision of the Supreme Court in the so-called Jalmat case. In the third paragraph on page 6 of the Jalmat case, the court declared that the Commission had failed to make a finding as to the amounts of recoverable gas in the pool or under the various tracts, and as to the amount of gas that could be practicably obtained without waste. In addition, it was the opinion of the Supreme Court that the Commission should have made findings as to drainage, that correlative rights were not being protected under the old formula or at least being protected under the new formula to the extent, "insofar as practicable". It may be speculated upon that the Supreme Court would not have reversed the case had the Commission and proponents of deliverability specifically estimated the reserves in the wells in the Jalmat pool and compared its recoverable reserves to deliverability insofar as practicable.

At the outset it may be said that the burden of proof rested squarely on Consolidated to prove its case on rehearing, as well as the original hearing. Pubco contends that Consolidated failed to sustain the burden of proof. No new evidence was introduced to cause the Commission to reverse its decision of June 7, 1962. Consolidated failed to submit to the Commission any independent engineering or testimony of any

Petroleum engineer or geologist whose testimony was based on an independent investigation and study in the field. Instead, Consolidated submitted before the Commission several exhibits built up on graphs and the statistics introduced in evidence at the hearing on April 18, 1962 by El Paso Natural Gas Co., based on the number of wells in the field as of April, 1962.

Testimony was introduced before the Commission on February 14, 1963 to prove that since April 1, 1962 some 200 additional wells have been built in the pool. Consequently, any testimony offered by Consolidated, even based on El Paso Natural Gas Company's exhibits, introduced at the April, 1962 hearing, would be obsolete and of no probative value whatever to the Commission and its staff.

It is contended here that Consolidated failed to comply with the order of the commission granting a new hearing; that the exhibits introduced were not based on independent engineering or geology, but on hearsay entirely. Consolidated rested its entire case on exhibits numbered 3 and 4. Exhibit 4 was an I.B.M. calculation of 70 pages, containing 2,870 items, with thousands of figures, all based on an assumed state of facts and sets of figures prepared by El Paso Natural Gas Company for the April, 1962 hearing.

On February 14th and 15th, Pubco submitted extensive testimony by two expert witnesses: Dan Cleveland, a Petroleum Engineer, and Frank Gorham, a geologist, accompanied by carefully prepared maps and graphs, demonstrating that the present existing formula should be continued, but that if there should be any change in the formula now being used in the pool, it should be in the direction of deliverability, for the primary

reason that most of the 729 wells now in the pool have been drilled on 320-acre tracts.

It was pointed out by several witnesses before the Commission that a number of small operators in the pool have been financed by bankers and others on the assumption that there would be no change in the formula and that wells were being drilled and acres were being leased on that basis.

At the conclusion of the statement and testimony of February 15, the following statement was made on behalf of Pubco:

> "It is respectfully submitted to the Commission that we have produced here competent testimony to show and to determine the recoverable reserves on a tract basis for each well and tract in the field; we have also offered evidence before the Commission to show the recoverable reserves under the developed portion of the entire pool. Pubco's conclusion from the work done, exhibits and data submitted, have demonstrated, in our opinion, beyond a question of doubt, that if each well is to receive its fair share of the market in proportion to the reserves under the tract as related to the whole, that the existing formula should be left where it is, but if there is to be any change made, it should be 100% deliverability times acreage."

The testimony of Messrs. Cleveland and Gorham for Pubco and Mr. Rainey for El Paso Natural Gas Co. furnished the Commission with all necessary data to make a determination in this case, such data being of invaluable assistance to the Commission and its staff. It is contended by Pubco that Consolidated failed utterly to carry out the promises implied in its petition for rehearing, and that in all justice, the Commission should enter its order confirming and reiterating its order of June 7, 1962. Any other course by the Commission

would inevitably lead to chaos in the Basin-Dakota Pool.

Respectfully submitted,

PUBCO PETROLEUM CORPORATION

By _____
ITS ATTORNEY
First National Bank Bldg.
Albuquerque, New Mexico

LAW OFFICES
OF
W. A. KELEHER
A. H. McLEOD
ATTORNEYS AND COUNSELLORS AT LAW
FIRST NATIONAL BANK BUILDING
ALBUQUERQUE, NEW MEXICO

W. A. KELEHER
A. H. McLEOD
T. B. KELEHER
JOHN B. TITTMANN
RUSSELL MOORE
WILLIAM B. KELEHER
MICHAEL L. KELEHER

February 27, 1963

Oil Conservation Commission
Santa Fe, New Mexico

Gentlemen:

Enclosed please find original and three copies of Statement being filed on behalf of Pubco Petroleum Corp. in case No. 2504, the original and two copies being for members of the Commission and one copy for the staff.

Yours very truly,

WAK:cp
Enclosure

BEFORE THE OIL CONSERVATION COMMISSION

OF NEW MEXICO

APPLICATION OF CONSOLIDATED OIL AND GAS, INC. For an Admendment of Order No. R-1670-C Changing the Allocation Formula in the Basin-Dakota Gas Pool

CASE 2504

WRITTEN STATEMENT OF EL PASO NATURAL GAS COMPANY

It is always proper to keep in mind the nature of the proceedings under consideration. This hearing grew out of an application by Consolidated Oil and Gas, Inc. (Consolidated) for a revision of Order No. R-1670-C, an order which went into effect without appeal. The burden of presenting evidence lies upon Consolidated. It goes without saying that the evidence must be clear and convincing to justify any change in property rights and relationships which have been entered in reliance upon the existing proration order.

Consolidated's attorney argues that the existing order is completely void. The great majority of operators in the Basin-Dakota Pools, do not agree with this position and here urge continuation of the present order. Consolidated relies upon the Jalmat Case as authority for this startling statement. The Commission is well aware that the original order in the Jalmat Case contained substantially the same findings as Order No. R-1670-C. The Supreme Court left intact

the original order, holding that the Commission must make certain specific findings to change that order. The original order in the Jalmat Case is in effect today just as Order No. R-1670-C will remain in effect until changed by the Commission. The Commission's acceptance of Consolidated's position on this issue would, in effect, condemn every proration order entered prior to Jalmat, none of which contained the specific findings. Other companies supporting the Commission's order are briefing this legal point and we do not wish to duplicate their work.

It is El Paso's position that the critics of Order No. R-1670-C have failed to produce evidence justifying or supporting any change in the existing order. In addition, we believe that the group supporting the existing order have produced evidence that compels the Commission to find that only acreage and deliverability are practicable factors to consider in making an allocation formula. The statute authorizes the Commission to give "equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability and quality of the gas and to such other pertinent factors as may from time to time exist, and so far as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-draniage." A reading of the record in this case can lead only to the conclusion that there is not sufficient evidence of pressure, of open flow, of porosity, of permeability or quality of gas to make a practicable determination of recoverable gas reserves underlying each individual

tract or proration unit. No evidence supports the use of any factors other than "deliverability" and "acreage." No operator has introduced testimony to support use of any other factors.

The issue then boils down to the relative weight given to acreage and deliverability in making an equitable and practicable allocation formula. Many companies advocate use of straight acreage as a desirable formula because of the small-tract problem which exists in some areas. The San Juan Basin, and particularly the Basin-Dakota Gas Pool has substantially the same acreage dedicated to every well, with only five wells varying substantially from the 320 acre pattern. In many pools the acreage attributable to one well will vary from 320 acres to a fraction of one acre. Under conditions here existing acreage is merely a "per well" factor. To apply acreage here is in effect to use the "per well" factor which is so bitterly criticized in formulas combining an acreage allowance and a "per well" allowance. The use of 100% acreage in the Basin-Dakota Pool would in effect give every well the same allowable, disregarding undisputed evidence in the record as to great differences in thicknesses of net effective pay, porosity, water content, pressure, and (communication into the well bore). The use of a 25% acreage factor does provide a minimum to prevent premature abandonment of the poorer wells.

Continuing studies, as testified by D. H. Rainey, reveal that correction of the parameters used in estimating recoverable

reserves by additional data as new wells are drilled is bringing the estimate of recoverable gas reserves closer to the measured deliverability for the average well. While admittedly there are a few wells where the deliverability does not closely correlate with the current estimate of the new recoverable reserves, nevertheless for the great majority of wells, the use of deliverability is the best yardstick available to the Commission to estimate the recoverable reserves underlying each tract. The record is clear that "determinations of recoverable reserves" are but estimates, using the best data available, of the volumes of gas that will be produced from a tract prior to the operator abandoning the well located on the tract. The economic factors which compel abandonment are brought out in Pubco's studies. Corrections of reserve estimates, as additional data were obtained, demonstrates that deliverability may be a better indication of recoverable reserves than volumetric estimates obtained by averaging the available data upon a township-wide basis.

The proponents of an amended order have obtained core analysis and well log data from many of their opponents. The proponents did not see fit to introduce at the rehearing any testimony based upon such data. Proponents made no attempt to allocate reserves to each tract as a result of their own work. Proponents merely adopted El Paso's work presented at the April, 1962 hearing and urged the Commission to use this work as a basis

for finding the recoverable reserves under each tract. The testimony shows that El Paso regards its work as appropriate for determining the over-all reserves in the pool but as inadequate to furnish valid recoverable reserves underlying each tract except in averaging the data as was done in El Paso's exhibits. Futhermore, the uncontradicted testimony shows that as a result of new information and of El Paso's continuing study, the reserve estimates made in April, 1962 have been revised and were changed before Consolidated introduced its exhibits based on such estimates. It is crystal clear that a finding by the Commission of individual tract recoverable reserves based upon estimates, which the estimator says are out of date; would not withstand attack. But as to a number of wells El Paso did not have sufficient information even to estimate. Proponents attempted to cover this unexplored area by extrapolation of reserve contours. D. H. Rainey's testimony shows that this method of extrapolation can be used to determine pool-wide reserves but is inadequate as the method of determining gas reserves underlying any particular tract. A finding based upon out of date estimates and insufficient information could not survive a court's scrutiny.

The exhibits offered by Consolidated are subject to attack for many reasons. Their Exhibit 3 is based upon out of date estimates and uses extrapolation to fill in gaps. This unreliability is carried forward into Exhibit 4, which compounds inaccuracies by

comparing original reserve estimates against current deliverabilities. It is obvious that comparisions must be made at comparable times. The use of current deliverability against original reserves will give a distortion. The evidence shows that both reserves and deliverabilities decline as well produces. All of Consolidated's conclusions and their Exhibits 5, 6 and 7 depend upon the accuracy of Exhibit 4. When Exhibit 4 is shown to be inaccurate, then all the conclusions drawn and Consolidated's remaining exhibits also fall.

It is apparent when considering the averages that differences in recoverable reserves are best reflected by differences in deliverability. Any allocation formula must be based upon the practicable. If it is not practicable, for lack of core data and other information, to make a volumetric calculation of recoverable gas reserves under each tract then the only practical tool to use to reflect admitted differences is that of deliverability. In this pool the acreage under each well is practically identical. We contend that no specific findings are required to maintain validity of the original allocation order. If the Commission desires to make findings, then there is sufficient evidence from which the Commission can find that (1) the amount of recoverable gas under each producing tract can be estimated by using the deliverability of the well located on that tract; (2) the total amount of recoverable gas in the Basin-Dakota Pool is approximately 2.25 trillion cubic feet;

(3) the proportion that the recoverable gas under each tract bears to the total amount of recoverable gas in the pool is the proportion of the deliverability of the well located on that specific tract to the total deliverability of all wells in the pool; and (4) by using the formula prescribed by Order No. R-1670-C, the recoverable gas underlying each tract can be recovered without waste. There is also evidence to support a finding that under Order No. R-1670-C the drainage from one tract to another is equalized by counter drainage from the other tract.

Ben R. Howell

Ben R. Howell

SETH, MONTGOMERY, FEDERICI & ANDREWS

By William R. Federici

William R. Federici
Attorneys for El Paso Natural Gas Company

A. MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX 828
SANTA FE, NEW MEXICO

February 25, 1963

New Mexico Oil Conservation Commission
P. O. Box 871
State Land Office Building
Santa Fe, New Mexico

Subject: Statement of Sunset International Petroleum Corporation and Caulkins Oil Company Re Case 2504.

Gentlemen:

Sunset International Petroleum Corporation and Caulkins Oil Company again wish to state their opposition to any change of the allocation formula for the Basin-Dakota Gas Pool which would give more weight to acreage or less weight to deliverability.

The testimony and exhibits presented at the rehearing of Case 2504, and at previous hearings, prove conclusively that there is a direct relationship between deliverability and reserves in the Basin-Dakota Gas Pool, and that if deliverability is given at least 75 percent weight in the allocation formula, the protection of correlative rights will be achieved.

Even if the Commission should be of the belief that the formula should be changed to give less weight to deliverability, it is submitted that the record of Case 2504 does not contain sufficient evidence of a substantial nature upon which an order could be based. At the rehearing of this case, the proponents of the change in formula purported to supply information from which the Commission could make findings as required by the Jalmat decision (Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809). As pointed out in the record, however, this evidence, and particularly the exhibit from which recoverable reserves were estimated, cannot be considered substantial because it is based on conjecture and surmise. That a Court or administrative body cannot base its findings upon conjecture or surmise is clearly settled by the decisions of the New Mexico Supreme Court (See, e.g., Stambaugh v. Hayes, 44 N.M. 443, 103 P.2d 640). Nor can an expert base his

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SANTA FE, NEW MEXICO

testimony on facts which do not afford a basis for a reasonably accurate conclusion. The rule is stated in 20 Am. Jur., Evidence, Sec. 795, as follows:

> ". . .the facts upon which the expert bases his opinion or conclusion /must/ permit reasonably accurate conclusions as distinguished from mere guess or conjecture. Expert opinion testimony should not be allowed to extend to the field of baseless conjecture concerning matters not susceptible of reasonably accurate conclusions."

To the same effect, see 32 C.J.S., Evidence, Sec. 522.

We submit that Consolidated Oil & Gas, Inc. failed to use good engineering practices in arriving at its estimates of recoverable reserves in the pool and that this evidence, and any testimony or exhibit based thereon, is without substantial basis.

In this case Consolidated Oil & Gas, Inc. and the other proponents of the change in formula have the burden of proving that the change is justified; the burden of proof is not on the opponents of a change to prove that the present formula is correct. The proponents have failed to meet this burden of proof.

In view of the foregoing, it is submitted that the applicants have made no case for a change in the allocation formula for the Basin-Dakota Gas Pool. Accordingly, the Commission should enter its order reaffirming Order No. R-2259, denying the application.

Respectfully submitted,

SETH, MONTGOMERY, FEDERICI & ANDREWS

By: Wm Federici

Attorneys for Sunset International Petroleum Corporation and Caulkins Oil Company.

RSM:t

SKELLY OIL COMPANY
P. O. Box 1650
TULSA 2, OKLAHOMA

PRODUCTION DEPARTMENT
C. L. BLACKSHER, VICE PRESIDENT
W. P. WHITMORE, MGR. PRODUCTION
W. D. CARSON, MGR. TECHNICAL SERVICES
ROBERT G. HILTZ, MGR. JOINT OPERATIONS
GEORGE W. SELINGER, MGR. CONSERVATION

February 21, 1963

Re: Case No. 2504 - Re-Hearing
Order No. R-1670-C

Mr. A. L. Porter, Jr.
New Mexico Oil and Gas Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Dear Mr. Porter:

In line with the announcement made by the Commission that they would accept statements or briefs within twenty days after the close of the hearing on February 15, 1963, we wish to file this statement on behalf of Skelly Oil Company having an interest in thirty-five wells in the Basin Dakota Gas Pool.

We believe that the granting of the application is a step in the right direction which is away from total or partial use of deliverability in the allocation of gas for proration purposes on the part of the State. Those familiar with the gas business understand that deliverability is generally the ability of a gas well to produce into a line for marketing purposes, and such deliverability tests usually involve three consecutive and continuous periods, such as pre-flow and conditioning, test flow, and shut-in pressure. It is evident that the line pressure of various purchasers or takers enter into the amount of gas producible of respective wells connected thereto, and such variation makes it impossible to have satisfaction in such formula. Additionally the continuous requirement of deliverability periodically finds a great many wells unable to comply with the periodic testing, and hence supervisory control on the part of the State is greatly handicapped. We believe that a formula simple in nature is most easily supervised by the State, and despite the continuous efforts by opponents in this Case, that as Pubco states "there is a relationship between deliverable and recoverable reserves," and as stated by El Paso "there exists a direct and constant relationship between deliverable and recoverable reserves in the Basin Dakota Pool," nevertheless the State Supreme Court has stated in the Jalmat Case that there is no relationship between the two, and therefore we believe this Commission

should follow this edict until otherwise changed.

The difficulties of the Oil Conservation Commission have greatly increased in the past few years due mainly to the proration of gas in the State both in Southeast and Northwest New Mexico. It is the writer's feeling that these great many difficulties in administration encountered by the Oil Conservation Commission are due to an effort to attempt to please the purchasers and transporters of gas, whereas in truth and fact the main and sole purpose of the Commission is to regulate the production. Deliverability as a factor in allocation is exclusively for the benefit of the purchaser or transporter, and for their convenience only. It is felt by this writer that the Commission should return to their main objective of regulating the production of gas from the wells in a reservoir, and if this is done we believe that the many burdensome problems encountered by the Commission would gradually be eliminated in the near future. By keeping the formula simple and restraining the supervisory control of the Commission over production, in line with the dominant duty of this Commission under the Act, we believe that the many problems now encountered would evaporate.

Respectfully submitted,

(Signed) GEORGE W. SELINGER

GWS:br

cc-Consolidated Oil & Gas, Inc.
4150 East Mexico Ave.
Denver 22, Colorado

Mr. Jason Kellahin
Santa Fe, New Mexico

Statement made on behalf of Sunray Mid-Continent - Re: New Mexico Oil Conservation Commission, Case 2504, Application Formula Basin-Dakota Gas Pool

Sunray Mid-Continent Oil Company believes that gas should be allocated on the basis of reserves. We do not believe that deliverability reflects reserves. We believe that acreage and the thickness of the production formation more nearly reflect reserves. Since acreage more nearly reflects reserves than deliverability and Consolidated Gas and Oil, Inc. formula contains a heavier factor of acreage than the present formula we would urge the Commission to adopt the Consolidated formula.

P. O. Box 2542
Amarillo, Texas

New Mexico Oil Conservation Commission
Santa Fe
New Mexico

Attention: Mr. A. L. Porter, Director

Gentlemen:

Pioneer Production Corporation presently operates twenty-two wells in the basin Dakota pool and has varying interests in twelve other wells in the same pool that are operated by others.

We do not believe that on the basis of the testimony presented at this hearing there is any justification for a change in the allocation formula from that provided by Rule 9(c) of Commission Order No. R-1670, dated May 20, 1960, as amended by order No. R-1670-c, dated November 4, 1960.

Accordingly, we recommend that the Commission deny the application of Consolidated Oil and Gas, Inc.

Yours very truly,

Pioneer Production Corporation

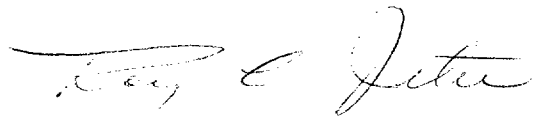
E. S. Morris,
Vice President

ESM:jt

For Commission Records: Basin-Dakota Hearing
Case #2504

Roy Jeter, Assistant Division Superintendent, on behalf of Western Natural Gas Company urges the Commission to retain the rules in the present form, believing that deliverability bears a reasonable relationship to recoverable gas reserves and that the present allocation formula furnishes a practical measuring device to permit each operator to produce his fair share of the reservoir.

WESTERN NATURAL GAS COMPANY



By: Roy C. Jeter

STATEMENT FOR CASE NO. 2504 - APPLICATION OF CONSOLIDATED OIL AND GAS INC. TO CHANGE THE BASIN DAKOTA ALLOCATION FORMULA

It is Texaco's opinion that deliverability does not have a direct correlation to the recoverable gas reserves in place under any particular tract and, therefore, should not be considered as a factor in the prorating of gas production. It is believed that to include deliverability as a factor increases the tendency to perforate longer intervals and fracture with larger treatments which results not in an increase in the reserves for any particular well but merely in an increase in the well's deliverability. We believe that such practices as this in an effort to increase deliverability can cause both physical and economic waste. Texaco believes that, to protect the correlative rights of all parties concerned, the most equitable proration formula for the Basin Dakota Gas Pool would be a formula based upon 100 per cent acreage.

Texaco will always strongly urge that both oil and gas proration formulas be based upon 100 per cent acreage; however, we are in favor of any change in the Basin Dakota allocation formula which tends to place more emphasis on acreage and would, therefore, recognize this as a step in the right direction.

At the present time Texaco does not operate any producing wells in the Basin Dakota Gas Pool, however, we are the operators of five wells completed in the Basin Dakota Reservoir but are currently shut-in. We do own an interest in several wells that are currently producing in the Basin Dakota Pool and we anticipate that our shut-in wells will be producing in the near future. Texaco also owns considerable undeveloped acreage in the immediate area of the Basin Dakota Pool. Therefore, Texaco Inc. as a very interested party recommends that the proration formula for the Basin Dakota Gas Pool be based upon 100 per cent acreage; however, we recognize the application of Consolidated Oil and Gas Inc. as a step in the right direction and, therefore, concur with their application.

Subpoenas Duces Tecum were served on the following:

- Aztec Oil & Gas Company, L. M. Stevens in lieu of Joe Salmon.
- British American Oil Producing Company, Frank Renard.
- Southwest Production Company, Leon Wiederkehr in lieu of Carl Smith.
- Pan American Petroleum Corporation, George Eaton
- El Paso Natural Gas Company, David H. Rainey.
- Pubco Petroleum Corporation, Frank D. Gorham

Joe Salmon was served on 9-11-62.
Frank Renard was served on 9-8-62.
Carl Smith was served on 9-8-62. Leon Wiederkehr was served 9-11-62.
George Eaton was served on 9-11-62.
David H. Rainey was served on 8-14-62.
Frank D. Gorham was served on 8-15-62.

Appearances in Case 2504 - April 18, 1962 hearing.

Mr. Ted Stockmar
Holme, Roberts, More, Owen and Stockmar
Attorneys at Law
1700 Broadway - 2112 Tower Bldg.
Denver 2, Colorado

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Kellahin & Fox
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Box 1713
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Mr. J. J. Lacey
Tenneco Oil Company
P. O. Box 1714
Durango, Colorado

Mr. Howard Bratton
Hervey, Dow & Hinkle
P. O. Box 10
Roswell, New Mexico

Mr. George Selinger
Skelly Oil Company
P. O. Box 1650
Tulsa 2, Oklahoma

Mr. P. J. Farrelly
Compass Exploration Company
101 University Boulevard
Denver 6, Colorado

Mr. Roy C. Jeter
Western Natural Gas Company
823 Midland Tower
Midland, Texas

Mr. Oliver Seth
Seth, Montgomery, Federici & Andrews
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Mr. Hume Everett
Legal Department
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P. O. Box 120
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Mr. Ben Howell
El Paso Natural Gas Co.
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Mr. Kenneth Swanson
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920 Mercantile Securities
Building - Dallas, Texas

Mr. Guy Buell
Pan American Petroleum Corp.
P. O. Box 1410
Fort Worth, Texas

Mr. W. A. Keleher, Attorney
Pubco Petroleum Corporation
First National Bank Bldg.
Albuquerque, N. Mex.

Mr. Bob Wynn
Delhi Oil Corporation
Fidelity Union Tower
Dallas 1, Texas

Mr. George Eaton
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Farmington , New Mexico

Mr. George E. Mills
The Atlantic Rfg. Co.
P. O. Box 379
Durango, Colorado

Mr. Booker Kelly
Gilbert, White & Gilbert
P. O. Box 787
Santa Fe, New Mexico

Mr. Phil McGrath
U. S. Geological Survey
Box 959
Farmington, New Mexico

Appearances in Case No. 2504 - April 18, 1962 Regular Hearing

Mr. A. F. Holland
Caulkins Oil Company
1130 First National Bank Bldg.
Denver, Colorado

Mr. John S. Cameron, Jr.
Tidewater Oil Company
P. O. Box 1404
Houston 1, Texas

Bruce Anderson Oil Operators
and Beard Oil Company
Suite 930
The Petroleum Club Building
Denver 2, Colorado

Mr. E. B. Granville
The Frontier Refining Company
4040 East Louisiana Avenue
Denver 22, Colorado

Mr. Sam Sims
Kay Kimbell Oil Operator
P. O. Box 1540
Fort Worth, Texas

Mr. E. S. Morris, Vice President
Pioneer Production Corporation
P. O. Box 2542
Amarillo, Texas

Mr. John J. Redfern
1203 Wilco Building
Midland, Texas

Mr. Carl W. Smith
Southwest Production Company
207 Petroleum Club Plaza
Farmington, New Mexico

Mr. Thomas M. Hogan
District Superintendent
The British-American
Oil Producing Company
P. O. Box 180
Denver 1, Colorado

Mr. Bob Black
Proration Department
Texaco Inc.
P. O. Box 3109
Midland, Texas

Mr. H. D. Bushnell, Attorney
Amerada Petroleum Corporation
P. O. Box 2040
Tulsa 2, Oklahoma

Mr. Paul Cooter
Atwood & Malone
Attorneys at Law
P. O. Drawer 700
Roswell, New Mexico

Extra copies of Exhibits
Received in Case #2504

1.	El Paso Natural Gas Co.	1	copy	of Exhibit	1
		1	"	" "	2
2.	Pubco	1	"	" "	2
		1	:	" "	7
		1	"	" "	6
		1	"	" "	1
3.	Southern Union	1	"	" "	1
		1	"	" "	2

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE - NEW MEXICO

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED OIL & GAS, INC. FOR AN AMENDMENT OF ORDER NO. R-1670-C, CHANGING THE ALLOCATION FORMULA FOR THE BASIN-DAKOTA GAS POOL, SAN JUAN, RIO ARRIBA AND SANDOVAL COUNTIES, NEW MEXICO.

CASE NO. 2504
(Rehearing)

To the following named attorneys and parties who have entered an appearance in the above entitled and numbered case and to the respective interests they represent:

Mr. Ted Stockmar
Mr. Jason Kellahin
Mr. J. J. Lacey
Mr. Howard Bratton
Mr. George Selinger
Mr. P. J. Farrelly
Mr. Roy C. Jeter
Mr. Oliver Seth
Mr. Hume Everett
Mr. Ben Howell
Mr. Kenneth Swanson
Mr. Guy Buell
Mr. W. A. Keleher
Mr. Bob Wynn
Mr. George Eaton
Mr. George E. Mills
Mr. Booker Kelly
Mr. Phil McGrath
Mr. A. P. Holland
Mr. John S. Cameron, Jr.
Bruce Anderson Oil and Gas Properties
Mr. E. B. Granville
Mr. Sam Sims
Mr. E. S. Morris
Mr. John J. Redfern
Mr. Carl W. Smith
Mr. Thomas M. Hogan
Mr. C. R. Black
Mr. H. D. Bushnell
Mr. Paul Cooter
Mr. George L. Verity

N O T I C E

PLEASE TAKE NOTICE THAT THE ABOVE CASE HAS BEEN CONTINUED BY THE COMMISSION TO THE SEPTEMBER 13, 1962 REGULAR HEARING, AT 9 O'CLOCK A.M., MORGAN HALL, STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO.

A. L. PORTER, Jr.
Secretary-Director

I hereby certify that I have mailed a copy of this Notice to the above-named attorneys and parties on this 24th day of July, 1962.

JAMES M. DURRETT, Jr.
General Counsel

Consolidated Cases

EXHIBITS RECEIVED IN CASE #2504

1.	Aztec	1	copy of Exhibit	1
		1	copy of Exhibit	2
2.	Caulkins	2	copies of Exhibit	1
3.	Consolidated Oil Co.	1	copy of Exhibit	1
		2	copies of Exhibit	2
		2	" " "	3
		3	" " "	4
		1	copy of Exhibit	5
		1	" " "	6
		1	" " "	7
		1	" " "	8
4.	El Paso Natural Co.	2	copies of Exhibit	1
		2	" " "	2
		1	" " "	3
5.	Pubco	3	" " "	5
		3	" " "	3
		3	" " "	4
		3	" " "	2
		3	" " "	7
		2	" " "	6
		2	" " "	1
6.	Southern Union Gas Co.	2	" " "	1
		2	" " "	2
7.	Sunset International	1	copy of Exhibit	1
		1	copy of Exhibit	2

KAY KIMBELL
OIL OPERATOR
BOX 1540
FORT WORTH, TEXAS

August 7, 1963

Land Department

State of New Mexico
Oil Conversation Commission
Sante Fe, New Mexico

Atten: Mr. A. L. Porter, Jr., Secretary

Gentlemen:

As one of the operators in the Basin-Dakota Gas Pool, we wish to commend the Commission for the action taken on Order No. R-2259-B dated July 3, 1963, by which order changed the proration formula to 60% acreage and 40% deliverability.

We feel that this action was necessary and will better serve the needs of the majority interested in the Basin.

Yours very truly,

Kay Kimbell

By:
Sam W. Sims, Jr.

SWS:me

AMERADA PETROLEUM CORPORATION

P. O. BOX 2040

TULSA 2, OKLAHOMA

LEGAL DEPARTMENT

August 1, 1963

New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Re: Basin-Dakota Proceedings
(Case No. 2504)

Gentlemen:

El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation have filed applications for rehearing in the captioned matter.

These applications for rehearing neither claim the existence of new evidence, nor offer any arguments which were not made or could not have been made at the February hearing. They do make much of the fact that the Commission did not base its order on the "prevention of waste" as a matter wholly independent of the "protection of correlative rights." But applicants ignore the plain language of Section 65-3-13(c), New Mexico Statutes Annotated (1953). That section specifically provides that the total gas production from a pool may be restricted to prevent waste, but the allocation of the total pool allowable among the wells may be based on the protection of correlative rights (i. e., prevent uncompensated drainage between tracts). This the Commission has done.

Order No. R-2259-B in the captioned case is clearly supported by proper findings and substantial evidence. A rehearing would be no more than a rehash of what has already been done. We therefore respectfully submit that the above-described applications for rehearing be denied.

Very truly yours,

AMERADA PETROLEUM CORPORATION

By Thomas W. Lynch
Thomas W. Lynch, Attorney

TWL:ac

Memo

A. L. Porter, Jr.
Secretary-Director

July 25, 1963

To GOVERNOR CAMPBELL

Here is El Paso's application for rehearing in Case 2504.

Please note that they only attack our findings. They do not offer to present new or additional evidence.

What do you think of their request for oral arguments prior to our taking action on their ~~request~~ application?

Will follow our lawyers advice
JAP

VERITY, BURR, COOLEY & JONES
ATTORNEYS AND COUNSELORS AT LAW
SUITE 152 PETROLEUM CENTER BUILDING
FARMINGTON, NEW MEXICO

GEO. L. VERITY
JOEL B. BURR, JR.
WM. J. COOLEY
RAY B. JONES

TELEPHONE 325-1702

July 26, 1963

Certified
Air Mail

New Mexico Oil Conservation Commission
State Capitol Building
Santa Fe, New Mexico

In re: Case No. 2504
Consolidated Oil & Gas, Inc.

Gentlemen:

Enclosed herewith are original and two copies of Application for Rehearing in captioned matter.

Will you please file such application for rehearing.

Yours truly,

VERITY, BURR, COOLEY & JONES

By: Geo. L. Verity

GLV/ph
encl/3

cc: Southwest Production, Dallas
Mr. Ben R. Howell, El Paso
Mr. W. A. Keleher, Albuquerque
Seth, Montgomery, Federici & Andrews, Santa Fe
Kellahin & Fox, Santa Fe

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELORS AT LAW
301 DON GASPAR AVENUE
SANTA FE, NEW MEXICO

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
GEORGE A. GRAHAM, JR.
RICHARD S. MORRIS

J. O. SETH
COUNSEL

POST OFFICE BOX 828
TELEPHONE YU 3-7315

July 31, 1963

New Mexico Oil Conservation Commission
Post Office Box 871
Santa Fe, New Mexico

Attention: Mr. Jim Durrett
General Counsel

Re: OCC Case #2504

Dear Jim:

Enclosed for filing are two Affidavits of Service in connection with the rehearings in Case 2504.

Very truly yours,

Dick

RSM:bd
Enclosures

VERITY, BURR, COOLEY & JONES
ATTORNEYS AND COUNSELORS AT LAW
SUITE 152 PETROLEUM CENTER BUILDING
FARMINGTON, NEW MEXICO

GEO. L. VERITY
JOEL B. BURR, JR.
WM. J. COOLEY
RAY B. JONES

TELEPHONE 325-1702

March 6, 1963

New Mexico
Oil Conservation Commission
Post Office Box 871
Santa Fe, New Mexico

Re: Application of Consolidated Oil & Gas, Inc., for an amendment of Order No. R-1670-C, changing the allocation formula for the Basin-Dakota Gas Pool, San Juan, Rio Arriba, and Sandoval Counties, New Mexico
Case No. 2504 - Rehearing
Our File No. 1320-L-19

Gentlemen:

Enclosed herewith is the original and two copies of Statement which we would appreciate your filing in behalf of Southwest Production Company in the captioned matter.

Very truly yours,

VERITY, BURR, COOLEY & JONES

By Geo. L. Verity
Geo. L. Verity

GLV/dh
Enclosures

AMERADA PETROLEUM CORPORATION
P. O. BOX 2040
TULSA 2, OKLA.

LEGAL DEPARTMENT

March 4, 1963

New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Re: Case No. 2504; application of
Consolidated Oil and Gas, Inc.

Gentlemen:

The basic issue in this case is how much weight should be given to deliverability in a gas allocation formula. The answer should now be obvious.

If the evidence presented shows anything, it shows that there is no consistent or reliable relationship between the deliverability of a well and the recoverable gas reserves in place under the acreage assigned to the well. Nevertheless, and despite the experience of the Jalmat Case, this nonexistent relationship is resurrected and used to support a formula with a large deliverability factor.

The Supreme Court of New Mexico has clearly stated that this Commission "... must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived-at portion can be recovered without waste." Continental Oil Co. et al. v. Oil Conservation Commission et al., 373 P. 2d 809, 815 (1962).

An effort was made in this proceeding to link deliverability to reserves by using averages for groups of wells. But such an approach cannot stand close examination. For example, El Paso's Exhibit No. 2 shows that for groups of wells with different average reserves, the group having the highest average deliverability had an average deliverability of less than six times as great as the group with the lowest average deliverability. Yet, within each group, variations in deliverabilities of individual wells ranged from 10 to 100 times greater than the average variations between groups. An order based on this kind of meaningless statistical manipulation could hardly satisfy the mandate of the Supreme Court.

In order to follow the decision of the Court and in order to protect correlative rights, the Commission will have to make a finding that the formula it chooses

is related to the ratio which the recoverable gas under the acreage assigned to each well bears to the total recoverable gas in the pool. It is also necessary that the evidence support such a finding. Since there is no evidence to support a proper finding with respect to the existing allocation formula (75% of which consists of deliverability times acreage), we urge the Commission to set it aside.

It is Amerada's position that the smaller the deliverability factor, the closer a formula will come to the standard established by the Court in the Jalmat Case. We have already advocated a formula based solely upon acreage. If the Commission declines to adopt such a formula, we ask that the Commission adopt the formula proposed by Consolidated.

Very truly yours,

H. D. Bushnell
Thomas W. Lynch

Attorneys for
AMERADA PETROLEUM CORPORATION

By _____

TWL:hac