

TOMMY ROBERTS
ATTORNEY-AT-LAW
(505) 326-3359

COPY

P. O. BOX 129
FARMINGTON, NEW MEXICO 87499

OFFICE
3005 NORTHRIDGE DR. • SUITE G

Case 9063

CERTIFIED MAIL P 294 980 456
RETURN RECEIPT REQUESTED

December 17, 1986

El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

Re: Application of Merrion Oil & Gas Corporation
For Enforcement of the Common Purchaser Requirements
of Section 70-2-19 N.M.S.A., 1978 (1984 Supplement)

Gentlemen:

The purpose of this letter is to provide notice to you, in accordance with the rules and regulations of the New Mexico Oil Conservation Division, that Merrion Oil & Gas Corporation has filed an application with the New Mexico Oil Conservation Commission seeking an Order requiring El Paso Natural Gas Company to purchase Merrion Oil & Gas Corporation's casinghead gas production from its Oso Canyon Gas Com "C" No. 1 Well and its Krystina Gas Com No. 1 Well, Gavilan Mancos Oil Pool, Rio Arriba County, New Mexico, in accordance with the common purchaser requirements of Section 70-2-19 N.M.S.A., 1978 (1984 Supplement). Applicant further seeks an Order requiring El Paso Natural Gas Company to take ratably the casinghead gas produced from the identified wells and any such other relief as may be appropriate.

This application has been placed on the January 8, 1987 docket of the New Mexico Oil Conservation Commission and is scheduled to be heard on that date in Santa Fe, New Mexico. In accordance with the rules and regulations of the New Mexico Oil Conservation

El Paso Natural Gas Company
December 17, 1986
Page Two

Division, you are entitled to be present at the hearing to present testimony and to submit evidence in support of your position regarding the merits of the application.

Sincerely,



TOMMY ROBERTS, Attorney
for Merrion Oil & Gas Corporation

TR:nk

xc: Merrion Oil & Gas Corporation
P. O. Box 840
Farmington, New Mexico 87499

New Mexico Oil Conservation Division ✓
Attn: R. L. Stamets
P. O. Box 2088
Santa Fe, New Mexico 87501

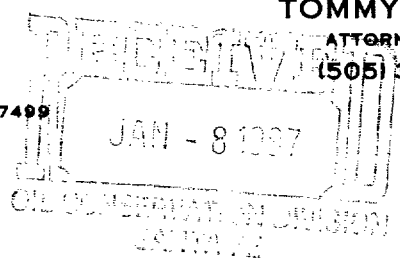
For CR

TOMMY ROBERTS

ATTORNEY-AT-LAW
(505) 326-3359

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FARMINGTON, NEW MEXICO 87499

OFFICE
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January 6, 1987

New Mexico Oil Conservation Commission
Post Office Box 2088
Santa Fe, New Mexico 87501

Attn: Jeff Taylor, General Counsel

Re: Commission Case No. 9063
Application of Merrion Oil & Gas Corporation
for Enforcement of the Common Purchaser
Requirements of Section 70-2-19 NMSA 1978 (1984 Supp.)
Rio Arriba County, New Mexico

Dear Mr. Taylor:

Enclosed is Request For Order Requiring Production Of Documents
And For Issuance Of Subpoena in the above referenced matter.
I would appreciate having the subpoena and order issued by the
Commission and served upon El Paso Natural Gas Company as quickly
as possible.

Thank you for your attention to this matter.

Sincerely,



TOMMY ROBERTS

TR:nk

Enclosure

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MERRION OIL AND GAS CORPORATION
FOR ENFORCEMENT OF THE COMMON
PURCHASER REQUIREMENTS OF SECTION
70-2-19 NMSA 1978 (1984 SUPP.)
AND OTHER PERTINENT PROVISIONS
OF THE OIL AND GAS ACT, RIO ARRIBA
COUNTY, NEW MEXICO.

Case No. 9063

REQUEST FOR ORDER REQUIRING PRODUCTION OF DOCUMENTS
AND FOR ISSUANCE OF SUBPOENA

Applicant in the above-styled action, Merrion Oil & Gas Corporation (hereinafter sometimes referred to as "MOG"), by and through its undersigned attorney, requests the New Mexico Oil Conservation Commission (hereinafter sometimes referred to as "NMOCC") to take the following action:

1. Enter an Order directed to El Paso Natural Gas Company (hereinafter sometimes referred to as "EPNG") requiring EPNG to provide to MOG, no later than three (3) days prior to the NMOCC hearing scheduled for the above-styled action, the following documents, information and/or materials:

a) Any and all documents, information and/or other materials showing the gas contracting activities of EPNG within the area of that common source of supply known as the Gavilan Mancos Oil Pool during that period of time commencing on March 1, 1984 and ending on the date of this request;

b) Any and all documents, information and/or other materials showing the gas purchasing activities of EPNG from all wells located within the area of that common source of supply known as the Gavilan Mancos Oil Pool for the period of time commencing on March 1, 1984 and ending on the date of this request;

c) Any and all documents, information and/or other materials showing the well connection activities of EPNG for wells located within the area of that common source of supply known as the Gavilan Mancos Oil Pool during the period of time commencing on March 1, 1984 and ending on the date of this request, including, but not limited to, the terms and conditions of such connection activities; and

d) Any and all documents, information and/or other materials showing or identifying the names of all individuals or entities from whom EPNG has purchased gas production from wells located within the area of that common source of supply known as the Gavilan Mancos Oil Pool during the period commencing on March 1, 1984 and ending on the date of this request.

2. Issue a subpoena or subpoenas to the custodian or custodians of the documents, information and/or other materials which are the subject of the request for production set forth herein, requiring said custodian or custodians to appear at

the hearing on the application filed in the above-styled action for the purpose of providing testimony with respect to the contents of such documents, information and/or other materials.

As grounds for the requests set forth herein, MOG states that the NMOCC has both statutory and regulatory authority to require the production of books, papers and records applicable to matters properly brought before it and to subpoena witnesses for purposes of providing testimony relevant to such matters.

Dated this 6th day of January, 1987.

Respectfully submitted,



TOMMY ROBERTS
Attorney for Applicant
Merrion Oil & Gas Corporation
P.O. Box 129
Farmington, New Mexico 87499
(505) 326-3359

JOHN F. NANCE ATTORNEY AT LAW

March 3, 1987

FEDERAL EXPRESS

Tommy Roberts, Esq.
3005 Northridge - Suite G
(P. O. Box 129)
Farmington, New Mexico 87499

Re: Application of Merrion Oil & Gas
Corporation to NMOCC--Case No. 9063

Dear Mr. Roberts:

As we have discussed, I am forwarding for your information certain additional data and copies of gas purchase agreements related to El Paso's takes of gas from the Gavilan Mancos Oil Pool in Rio Arriba County, New Mexico. The information which I had provided in my February 19, 1987 letter to you had inadvertently been incomplete in certain respects regarding El Paso's purchasing practices. I have since learned that El Paso is purchasing production from the following wells, in addition to the Hawk Federal No. 3 well, under the contracts identified with each well:

	<u>Seller</u>	<u>Contract No.</u>	<u>Date</u>	<u>Percentage Interest</u>
1.	<u>Hill Federal No. 1</u> Dugan Production	604M	6/1/85	50.000%
2.	<u>Lindrith B Unit No. 34</u> Tenneco	875L	5/9/84	25.000%
3.	<u>Lindrith B Unit No. 37</u> Tenneco	875L	5/9/84	25.000%
4.	<u>Lindrith B. Unit No. 38</u> Tenneco	875L	5/9/84	25.000%
5.	<u>Divide No. 1 Man</u> Dugan Production	604M	6/1/85	100.000%

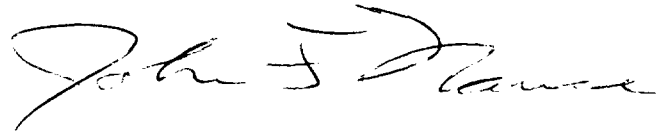
Tommy Roberts, Esq.
March 3, 1987
Page 2

6.	<u>Tapacitos No. 2</u> Dugan Production	604M	6/1/85	100.000%
7.	<u>Tapacitos No. 4</u> Dugan Production	604M	6/1/85	100.000%

Data pertaining to production from these wells is included in the enclosed material.

Please let me know if there are any questions.

Sincerely,



JFN/jbla/144

Enclosures

cc (w/o encl): Messrs. R. O. Baish
D. R. Balmer
D. J. Dwyer
J. F. Eichelmann, Jr.
G. A. Hammons
E. W. Hampton
W. H. Healy, Jr.
T. S. Jensen
R. P. Jordan
D. M. Kelsey
D. J. MacIver, Jr.
E. R. Manning
D. B. Minton
E. J. Mitrisin
J. H. Peace
D. A. Ward
M. W. Wiseman

Jeff Taylor, General Counsel
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

W. Perry Pearce, Esq.
Montgomery & Andrews, P.A.
325 Paseo de Peralta
Santa Fe, New Mexico 87504

TOMMY ROBERTS

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P. O. BOX 129
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OFFICE
3005 NORTHRIDGE DR. • SUITE G

March 17, 1987


William J. Lemay, Chairman
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Commission Case No. 9063
Application of Merrion Oil & Gas Corporation
for Enforcement of the Common Purchaser Requirements
of Section 70-2-19 NMSA 1978 (1984 Supp.)
Rio Arriba County, New Mexico

Dear Mr. Lemay:

Pursuant to your request of March 5, 1987, enclosed please find Memorandum Brief prepared and submitted on behalf of Merrion Oil & Gas Corporation in the above referenced matter.

Sincerely,

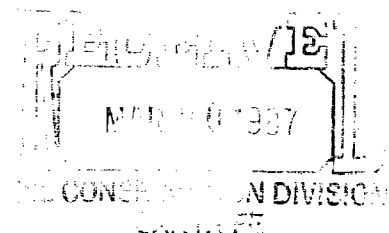


TOMMY ROBERTS

TR:nk
Enclosure

xc w/Encl.: El Paso Natural Gas Company
Attn: John Nance
P. O. Box 1492
El Paso, Texas 79978

Merrion Oil & Gas Corporation
P. O. Box 840
Farmington, New Mexico 87499



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MERRION OIL & GAS CORPORATION
FOR ENFORCEMENT OF THE COMMON
PURCHASER REQUIREMENTS OF SECTION
70-2-19 NMSA 1978 (1984 Supp.)
AND OTHER PERTINENT PROVISIONS
OF THE OIL AND GAS ACT, RIO ARRIBA
COUNTY, NEW MEXICO.

Case No. 9063

MEMORANDUM BRIEF OF MERRION OIL & GAS CORPORATION

The above-styled matter came before the New Mexico Oil Conservation Commission (hereinafter sometimes referred to as "NMOCC") on March 5, 1987. At that time, the applicant, Merrion Oil & Gas Corporation (hereinafter sometimes referred to as "MOG"), and El Paso Natural Gas Company (hereinafter sometimes referred to as "EPNG") appeared and presented testimony and evidence in support of their respective positions on the application filed by MOG. At the beginning of the hearing on this matter, counsel for EPNG raised the issue as to whether the NMOCC had jurisdiction to hear the application in this case and to enforce the common purchaser requirements of Section 70-2-19 NMSA 1978 (1984 Supp.) (hereinafter sometimes referred to as "the Common Purchaser Statute"). In response to the question of jurisdiction raised by EPNG, the NMOCC requested that the parties submit written briefs on the issue of jurisdiction on or before March 19, 1987.

A brief review of applicable New Mexico statute is instructive on the question of the jurisdiction of the NMOCC to hear the application in the above referenced matter and to enforce the provisions of the Common Purchaser Statute.

Section 70-2-6 NMSA 1978 Compilation (1986 Supp.) provides in part as follows:

"A. The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas...It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas...

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law..."

Section 70-2-11 NMSA 1978 Compilation provides in part as follows:

"A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights,...To that end, the division is empowered to make and enforce rules,

regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act,...

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law."

It is clear that the principal purposes of the Common Purchaser Statute are the prevention of waste, the conservation of oil and gas, and the protection of correlative rights. Therefore, it is equally clear that the NMOCC has been given the statutory charge to do that which is reasonably necessary to require and assure compliance with the provisions of the Common Purchaser Statute.

MOG is not aware of any legislative action which has repealed, or in any way limited, the authority conferred upon the NMOCC pursuant to the statutes cited above. MOG is not aware of any judicial decision which has held that the Common Purchaser Statute is invalid or unenforceable. Finally, MOG is not aware of any judicial decision which has considered the validity or enforceability of the Common Purchaser Statute.

Consequently, under these circumstances, it is the duty of the NMOCC to (1) consider the evidence and testimony submitted in this case, (2) determine whether the testimony and evidence submitted supports a finding that a violation of the provisions of the Common Purchaser Statute has occurred, and (3) take

whatever action is reasonably necessary, based on the evidence and testimony submitted, to require and assure compliance with the provisions of the Common Purchaser Statute.

Although MOG has no direct knowledge with respect to the position of EPNG on the question of jurisdiction, it is assumed that EPNG will rely heavily on the decision rendered in Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 106 S.Ct. 709 (1986), to support an argument that the provisions of the Common Purchaser Statute are unenforceable.

In discussing the impact of the Transcontinental decision on the Common Purchaser Statute, it should first be recognized that the ruling in that case does not automatically condemn all state ratable take statutes. In analyzing the impact of the Transcontinental decision on any state ratable take statute a careful review must be undertaken to determine whether the enforcement of the particular state statute, given the specific factual circumstances in the particular case, lead to a result inconsistent with the holding in Transcontinental.

It is the contention of MOG that the specific factual circumstances presented in the above-styled matter can be differentiated on several grounds from the specific factual circumstances considered by the Court in the Transcontinental case. It is the further contention of MOG that different factual circumstances can, and often do, lead to different judicial holdings.

By way of illustration, the facts presented in the Transcontinental case and the facts presented in the above-styled matter can be substantially distinguished in at least two areas.

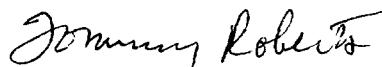
First, the ruling in the Transcontinental case was based, in large part, on the belief that enforcement of the Mississippi regulation, under the particular factual circumstances presented in that case, would have the effect of increasing the ultimate price to consumers. The Court believed such a result would directly undermine Congress' determination in enacting the Natural Gas Policy Act of 1978 that the supply, demand, and price of gas be determined by market forces. However, the factual circumstances presented in the above-styled matter indicate that enforcement of the Common Purchaser Statute in a manner consistent with the testimony and evidence submitted at hearing would have little or no effect on the ultimate price to consumers, nor would it have any significant impact on the operation of market forces. Specifically, MOG proposed to deliver casinghead gas to EPNG in accordance with the following terms: (1) MOG would lay lines to EPNG's existing transportation facilities; (2) MOG would sell the casinghead gas to EPNG at a market-clearing price; and (3) MOG would cancel EPNG's contractual take or pay obligations to MOG in an amount of gas equal in heating value to the casinghead case taken by EPNG from the wells which are the subject of the above-styled matter. The testimony and evidence submitted at the hearing would permit a finding by the NMOCC that requiring EPNG to purchase casinghead gas from

MOG on the terms proposed by MOG would not adversely impact the economics of EPNG's pipeline and purchasing operations and would not adversely impact consumer interests.

Second, the specific factual circumstances presented in the above-styled matter lay the foundation for a well-founded charge that EPNG conducted its purchasing activities in the applicable common source of supply in a manner which was discriminatory against MOG and in favor of an affiliate company of EPNG. The specific factual circumstances presented in the Transcontinental case did not require the Court to consider discriminatory practices by a purchaser in favor of an affiliate company.

In conclusion, MOG contends that the NMOCC possesses the authority and jurisdiction to enforce the provisions of the Common Purchaser Statute under the specific factual circumstances presented in the above-styled matter.

Respectfully submitted,



TOMMY ROBERTS
Attorney for
Merrion Oil & Gas Corporation
P. O. Box 129
Farmington, New Mexico 87499
(505) 326-3359

DATED: MARCH 17, 1987

TOMMY ROBERTS

ATTORNEY-AT-LAW
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March 17, 1987

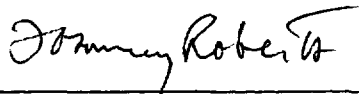
William J. Lemay, Chairman
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Commission Case No. 9063
Application of Merrion Oil & Gas Corporation
for Enforcement of the Common Purchaser Requirements
of Section 70-2-19 NMSA 1978 (1984 Supp.)
Rio Arriba County, New Mexico

Dear Mr. Lemay:

Pursuant to your request of March 5, 1987, enclosed please find written Closing Argument prepared and submitted on behalf of Merrion Oil & Gas Corporation in the above referenced matter.

Sincerely,

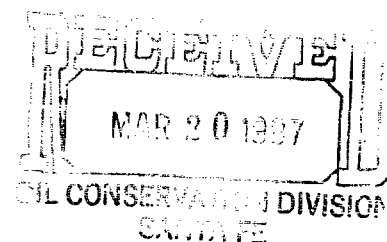


TOMMY ROBERTS

TR:nk
Enclosure

xc w/Encl.: El Paso Natural Gas Company
Attn: John Nance
P. O. Box 1492
El Paso, Texas 79978

Merrion Oil & Gas Corporation
P. O. Box 840
Farmington, New Mexico 87499



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MERRION OIL & GAS CORPORATION
FOR ENFORCEMENT OF THE COMMON
PURCHASER REQUIREMENTS OF SECTION
70-2-19 NMSA 1978 (1984 Supp.)
AND OTHER PERTINENT PROVISIONS
OF THE OIL AND GAS ACT, RIO ARRIBA
COUNTY, NEW MEXICO.

Case No. 9063

CLOSING ARGUMENT OF MERRION OIL & GAS CORPORATION

The above-styled matter came before the New Mexico Oil Conservation Commission (hereinafter sometimes referred to as "NMOCC") on March 5, 1987. At that time, the applicant, Merrion Oil & Gas Corporation (hereinafter sometimes referred to as "MOG"), and El Paso Natural Gas Company (hereinafter sometimes referred to as "EPNG") appeared and presented testimony and evidence in support of their respective positions on the application filed by MOG. At the conclusion of the hearing on this matter, the NMOCC requested that the parties submit written closing arguments on or before March 19, 1987.

The issue presented in this matter is whether EPNG has violated the common purchaser requirements of Section 70-2-19 NMSA 1978 (1984 Supp.) (hereinafter sometimes referred to as "the Common Purchaser Statute") and other pertinent provisions of the Oil and Gas Act of the State of New Mexico.

A determination as to whether EPNG has violated the provisions of the Common Purchaser Statute with respect to its

dealings with MOG can be made by the process of analyzing the various separate and distinct requirements set forth in the statute in conjunction with the testimony and evidence presented by MOG and EPNG at the hearing on this matter.

An essential element of the Common Purchaser Statute is that a common source of supply exist. Testimony and evidence presented at the hearing establishes the fact that MOG is the record operator of, and the owner of certain undivided working interests in, the Oso Canyon Gas Com "C" No. 1 Well, located 1650 feet from the north line and 1650 feet from the west line of Section 13, Township 24 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico, and the Krystina Gas Com No. 1 Well, located 1820 feet from the south line and 1650 feet from the west line of Section 14, Township 24 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico. The testimony and evidence submitted at the hearing also establishes the fact that these wells are oil wells capable of casinghead gas production. At the hearing, MOG and EPNG entered a stipulation on the record that the Gavilan Mancos Oil Pool constitutes a common source of supply and that the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well are located and completed in that common source of supply. Consequently, the record in this matter permits a finding by the NMOCC that the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well are located and completed in a common source of supply known as the Gavilan Mancos Oil Pool and that the casinghead

gas capable of being produced from these wells is of a like quality and pressure as the casinghead gas capable of being produced, and which is being produced, from other wells located and completed in the Gavilan Mancos Oil Pool.

Also essential to the proof of a violation of the Common Purchaser Statute is a determination that a person or entity is a "common purchaser" within a common source of supply. A "common purchaser" is defined in the statute as "Any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells or casinghead gas produced from oil wells...within each common source of supply...". The testimony and evidence presented at the hearing is uncontroverted with respect to the status of EPNG as a common purchaser within the common source of supply known as the Gavilan Mancos Oil Pool. Michael Wiseman, testifying on behalf of EPNG, acknowledged that EPNG purchased casinghead gas from the Gavilan Mancos Oil Pool from several producers through October 31, 1986 pursuant to the provisions of various gas purchase contracts with those producers (see MOG Exhibit Nos. 5-11). Mr. Wiseman also acknowledged that, effective November 1, 1986 and continuing through the present time, El Paso Gas Marketing Company, an affiliate company to EPNG, commenced purchases of casinghead gas produced from the Gavilan Mancos Oil Pool by these producers pursuant to the provisions of a spot-market release program, which program operates to temporarily relieve EPNG of its purchase obligations pursuant to the provisions of the gas purchase

contracts under which EPNG purchased casinghead gas produced from the Gavilan Mancos Oil Pool prior to November 1, 1986. Consequently, the record in this matter permits a finding by the NMOCC that EPNG, by itself and through its affiliate, El Paso Gas Marketing Company, is a common purchaser of casinghead gas production from the common source of supply known as the Gavilan Mancos Oil Pool.

The Common Purchaser Statute further provides that a common purchaser within a common source of supply shall purchase casinghead gas lawfully produced within the common source of supply and tendered to a point on its gas transportation facilities. The testimony and evidence submitted at the hearing establishes the fact that MOG tendered casinghead gas production from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well to EPNG at a point on its existing gas transportation facilities. MOG originally tendered this casinghead gas production to EPNG by letter dated April 8, 1986 (see MOG Exhibit No. 4). By letter dated July 28, 1986 MOG again tendered this casinghead gas production to EPNG and specifically proposed to pay all costs associated with laying a gathering line to EPNG's existing transportation facilities and to sell this casinghead gas production on terms consistent with spot-market conditions (see MOG Exhibit No. 4). By letter dated September 29, 1986 MOG made another tender to EPNG of the casinghead gas production from these wells and specifically proposed to lay lines to EPNG's existing transportation

facilities, to sell this casinghead gas production at a market-clearing price and to cancel EPNG's contractual take-or-pay obligations to MOG in an amount of gas equal in heating value to the casinghead gas taken by EPNG from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well (see MOG Exhibit No. 4). The testimony and evidence submitted at the hearing also establishes the fact that EPNG has failed and refused, at all times material hereto, to purchase the casinghead gas production lawfully tendered to it by MOG. Consequently, the record in this matter permits a finding by the NMOCC that EPNG has failed and refused to purchase casinghead gas production which can be lawfully produced from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well and which has been tendered to it at a point on its existing gas transportation facilities.

The Common Purchaser Statute further provides that purchases required to be made by a common purchaser from a common source of supply shall be made without unreasonable discrimination in favor of one producer against another in the price paid, the quantity purchased, the basis of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from the wells in the common source of supply from which it purchases. In addition, the Common Purchaser Statute prohibits a common purchaser from discriminating in favor of itself on production of casinghead gas from oil wells in which it has an interest, direct or

indirect, as against other production of casinghead gas produced from oil wells in the same common source of supply. Testimony and evidence presented at the hearing clearly establishes the fact that the contracting and purchasing activities of EPNG within the common source of supply known as the Gavilan Mancos Oil Pool constitute unreasonable discrimination against MOG and in favor of numerous other producers of casinghead gas in the common source of supply, including an affiliate company of EPNG. The primary proof of EPNG's discriminatory conduct towards MOG is simply evidenced by its failure to purchase volumes of casinghead gas tendered to it by MOG in accordance with the provisions of the Common Purchaser Statute at times when it was purchasing casinghead gas from other producers within the common source of supply pursuant to gas purchase contracts between EPNG and those producers. The testimony and evidence presented at the hearing clearly establishes the facts that (1) the quality and pressure of the casinghead gas available from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well is of like quality and pressure as the casinghead gas purchased by EPNG, and its affiliate, El Paso Gas Marketing Company, from other producers in the Gavilan Mancos Oil Pool, (2) EPNG has consummated gas purchase contracts with various producers applicable to casinghead gas within the common source of supply known as the Gavilan Mancos Oil Pool, (3) one such gas purchase contract is with Southland Royalty Company, a company which later became, and is now, an affiliate company of EPNG, (4)

one such gas purchase contract, dated May 15, 1986 in favor of Amoco Production Company and covering Amoco Production Company's interest in the Oso Canyon Gas Com "C" No. 1 Well, was consummated after MOG had originally tendered the casinghead gas from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well to EPNG, and (5) EPNG and its affiliate company, El Paso Gas Marketing Company, have purchased, and continue to purchase, casinghead gas production from the common source of supply known as the Gavilan Mancos Oil Pool from those producers who have the benefit of gas purchase contracts with EPNG, including Southland Royalty Company and Amoco Production Company. It is particularly instructive on the issue of discrimination to review and compare the terms and provisions of the gas purchase contracts which were tendered into evidence at the hearing as MOG Exhibit Nos. 7-11. Especially significant are the comparatively more favorable price, quantity and term provisions in the Southland Royalty Company contract (see MOG Exhibit No. 7), notwithstanding the fact that all of these gas purchase contracts were consummated in a relatively short span of time. Consequently, the record in this matter permits a finding by the NMOCC that EPNG has unreasonably discriminated against MOG and in favor of other producers, including EPNG's affiliate company, Southland Royalty Company, in its contracting and purchasing activities in that common source of supply known as the Gavilan Mancos Oil Pool.

Although the Common Purchaser Statute does not require a party seeking enforcement of the statute to establish proof of harm or injury as a result of violations of the requirements of the statute, it is important and relevant to illustrate the manner in which MOG has been harmed, and continues to be harmed, by the unlawful, discriminatory conduct of EPNG. Those producers in the common source of supply who have the benefit of gas purchase contracts or other purchasing arrangements are given a significant competitive advantage over MOG in conducting operations in the common source of supply. Absent the ability to sell its casinghead gas production from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well, MOG must shut-in these wells and, therefore, is unable to produce and sell the oil which is capable of being produced from the wells. While the MOG wells are shut-in, other producers of casinghead gas in the common source of supply who have the benefit of gas purchase contracts or other purchasing arrangements with EPNG or other purchasers are able to produce and sell casinghead gas production and oil production. The result is that the MOG properties are being drained (see MOG Exhibit Nos. 2 & 3) and MOG is powerless to protect its correlative rights in the common source of supply unless the Common Purchaser Statute is enforced.

MOG contends that it has clearly and irrefutably shown that EPNG has been, and continues to be, in violation of its obligations under the Common Purchaser Statute as a result of its failure to purchase casinghead gas from the Oso Canyon Gas

Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well. However, EPNG has submitted several arguments which it claims justify its failure to comply with the provisions of the Common Purchaser Statute.

In his opening statement, counsel for EPNG cited Subsection F of Section 70-2-19 NMSA 1978 (1984 Supp.) as authority for EPNG's non-compliance with the provisions of the Common Purchaser Statute. Subsection F provides that "Nothing...shall be construed or applied to require, directly or indirectly, any person to purchase gas of a quality or under a pressure or under any other condition by reason of which such gas cannot be economically and satisfactorily used by such purchaser by means of his gas transportation facilities then in service.". However, during the hearing, EPNG failed to illustrate the manner in which the provisions of Subsection F operated to relieve it of its responsibilities as a common purchaser. On the other hand, MOG presented uncontroverted testimony and evidence which would allow the NMOCC to conclude that EPNG could satisfy its responsibilities as a common purchaser by means of its gas transportation facilities then in service. EPNG submitted absolutely no evidence which would permit a finding that the casinghead gas offered by MOG was of a quality or a pressure which would require the installation of additional transportation facilities. Of equal significance is the fact that MOG offered the casinghead gas to EPNG on terms which would enable EPNG to avoid the costs of gathering and delivering the gas to its existing transportation facilities.

EPNG contends it is not subject to the requirements of the Common Purchaser Statute in this case because it is not the predominant purchaser of casinghead gas in the common source of supply known as the Gavilan Mancos Oil Pool. This argument is without merit. The Common Purchaser Statute applies to "Any person now or hereafter engaged in purchasing from one or more producers...". (emphasis added). The Common Purchaser Statute applies to each and every purchaser within a common source of supply. It does not require a party to seek relief from the predominant purchaser in the common source of supply, nor does it require a party to seek relief from the purchaser in the common source of supply whose facilities are nearest to the wells of the party seeking relief. Finally, the Common Purchaser Statute permits a party seeking relief to be selective in choosing the purchaser from whom it seeks relief. The burden of compliance with the provisions of the Common Purchaser Statute automatically attaches to any person or entity who assumes purchaser status in a common source of supply.

EPNG contends that it was in a negotiating posture in 1984, that MOG had an opportunity at that time to bring the lands upon which the subject wells are located under gas contract coverage and, therefore, that it has satisfied any obligation it has to MOG under the Common Purchaser Statute. Again, this argument is without merit. EPNG can legitimately make this argument only if it has offered to purchase the casinghead gas tendered by MOG on terms and conditions consistent with the

requirements of the Common Purchaser Statute. The willingness of EPNG to extend new gas purchase contracts to MOG in 1984 came with strings attached -- MOG had to agree to amend all of its gas purchase contracts with EPNG to include a price-sensitive provision. This offer did not satisfy the obligation of EPNG under the Common Purchaser Statute inasmuch as the statute does not require a producer to negotiate with the purchaser on matters extraneous to the requirements of the statute in order for the producer to assert the benefits, and invoke the protection, of the statute. The Common Purchaser Statute requires only that the producer be willing to sell gas on terms and conditions not unreasonably favorable to it as opposed to other producers in the common source of supply. Testimony and evidence presented at the hearing clearly reflect that at all times MOG sought nothing more than equitable treatment from a common purchaser in the Gavilan Mancos Oil Pool. The Common Purchaser Statute should not now be interpreted by the NMOCC to require a producer to relinquish unrelated consideration to a common purchaser before such common purchaser can be compelled to comply with its obligations under the statute. As a final response to the argument that EPNG's generic 1984 proposal operates to relieve it of any further responsibility under the Common Purchaser Statute, MOG contends that the obligations of a common purchaser under the Common Purchaser Statute are continuing in nature. The obligations set forth in the statute burden a common purchaser at all times that it

maintains its status as a common purchaser. To hold otherwise would open the door to insincere proposals and bad faith negotiations, ultimately undermining the legitimate purpose for which the Common Purchaser Statute was enacted -- the protection of the correlative rights of all interest owners in a common source of supply.

EPNG contends that its failure to satisfy its obligations under the Common Purchaser Statute in this case is justified because the issuance of a gas purchase contract to MOG for the casinghead gas capable of being produced from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well would worsen an existing oversupply situation. Mr. Steven Dunn testified at the hearing that the subject wells, collectively, are capable of producing approximately 180 MCF per day. Mr. Wiseman testified that EPNG's oversupply situation began to develop in 1982 and has continued, and worsened, through the present time. Mr. Wiseman further testified that EPNG implemented a moratorium on the issuance of new gas purchase contracts in 1982 in response to that oversupply situation. However, on further questioning, Mr. Wiseman acknowledged that EPNG had made several exceptions to that moratorium, including the issuance of new gas purchase contracts covering casinghead gas production from the common source of supply known as the Gavilan Mancos Oil Pool (see MOG Exhibit Nos. 7-11 and note Mr. Wiseman's testimony regarding a gas purchase contract dated May 15, 1986 in favor of Amoco Production Company). A review of the gas

purchase contracts submitted as exhibits in this case reveals that EPNG contracted for volumes of gas reserves far more significant than the volumes capable of delivery from the two wells operated by MOG. And yet, EPNG attempts to justify its failure to comply with the provisions of the Common Purchaser Statute with the argument that it cannot extend a gas purchase contract to MOG applicable to casinghead gas production from the subject wells because of a "continuing oversupply situation". MOG contends EPNG has failed to deal with it in good faith. After MOG requested gas contract coverage for the subject wells, EPNG consummated a contract with Amoco Production Company covering substantial gas reserves. MOG contends that this conduct, in and of itself, is sufficient evidence of discrimination on the part of EPNG to warrant a finding by the NMOCC that EPNG has violated its obligations under the Common Purchaser Statute. As argued earlier, the Common Purchaser Statute does not require a producer to extend unrelated consideration to a purchaser as a condition precedent to his entitlement to seek the benefits and protection of the Common Purchaser Statute.

EPNG argues that the exclusion of MOG from its contracting and purchasing activities in the common source of supply known as the Gavilan Mancos Oil Pool is justifiable for legitimate business reasons. EPNG argues that it is, and continues to be, reasonable for EPNG to issue gas purchase contracts to, and purchase gas from, producers in the Gavilan Mancos Oil Pool who will relinquish unrelated valuable consideration and to

deny gas purchase contracts and purchases thereunder to producers in the common source of supply who will not agree to the relinquishment of such valuable consideration. Again, MOG contends that the Common Purchaser Statute does not afford to any common purchaser the luxury of being able to determine which producers in the common source of supply are to receive the benefits and protection of its provisions. To hold otherwise would render the Common Purchaser Statute ineffectual and useless with respect to the principal purpose for which it was enacted -- the protection of the correlative rights of all property owners within a common source of supply.

EPNG argues that it has not discriminated against MOG in favor of its affiliate company, Southland Royalty Company, and in support of that argument cites the fact that the casinghead gas purchase agreement extended to Southland Royalty Company under date of March 5, 1985 (see MOG Exhibit No. 7) was negotiated and consummated prior to the time at which Southland Royalty Company became affiliated with EPNG. The EPNG argument overlooks two or three very important facts which have a direct bearing on the discrimination issue. First, a review of the gas purchase contracts which have been submitted into evidence as MOG Exhibit Nos. 7-11 lead to the reasonable conclusion that the contract extended to Southland Royalty Company is the most favorable. For example, the Southland Royalty contract requires EPNG to purchase and receive all volumes of gas Southland Royalty Company shall have available for delivery, while in contrast, the other

contracts submitted into evidence contain less favorable percentage purchase obligations or "best effort" purchase obligations. Second, although the Southland Royalty Company contract may have been negotiated and consummated prior to the date at which Southland Royalty Company became affiliated with EPNG, Southland Royalty Company has received the benefit of purchases of casinghead gas made under, or as a result of, that contract from the date of its consummation through the present time. The period of the benefit to Southland Royalty Company has overlapped, to a large extent, the period of time during which MOG has unsuccessfully attempted to obtain from EPNG a commitment to purchase casinghead gas production from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well. Third, at all times during which EPNG has excluded MOG from its purchasing activities in the Gavilan Mancos Oil Pool and during which EPNG has continued to purchase casinghead gas production from Southland Royalty Company and other producers in the pool, EPNG has afforded Southland Royalty Company and such other producers a tremendous advantage over MOG in (1) competing for the oil and gas reserves within the common source of supply, (2) conducting their respective operations in the common source of supply, and (3) protecting their respective correlative rights.

In conclusion, MOG believes that the testimony and evidence submitted in this case overwhelmingly supports its contention that EPNG has violated its obligations under the Common Purchaser

Statute. The tenders by MOG to EPNG of the casinghead gas capable of being produced from the Oso Canyon Gas Com "C" No. 1 Well and the Krystina Gas Com No. 1 Well have been made on terms and conditions as would not adversely impact the economics of EPNG's pipeline and purchasing operations and as would not adversely impact consumer interests. The failure and refusal of EPNG to satisfy its obligations under the Common Purchaser Statute with respect to its dealings with MOG in the common source of supply known as the Gavilan Mancos Oil Pool has been arbitrary and without justification.

Based on the testimony and evidence submitted in this case, MOG requests that the NMOCC enter its order requiring EPNG to purchase casinghead gas from the Merrion Oil & Gas Corporation Oso Canyon Gas Com "C" No. 1 Well and the Merrion Oil & Gas Corporation Krystina Gas Com No. 1 Well on a non-discriminatory basis and on such terms and conditions as are consistent with the testimony and evidence submitted in this case. MOG requests that such order require EPNG to take ratably the casinghead gas produced from these wells in order to prevent waste, to protect MOG's correlative rights and to carry out the overall purposes of the Oil and Gas Act of the State of New Mexico. Finally, MOG requests that such order incorporate such other and further relief as the NMOCC deems appropriate under the circumstances.

Respectfully submitted,

Tommy Roberts

TOMMY ROBERTS
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(505) 326-3359

DATED: MARCH 17, 1987

JOHN F. NANCE ATTORNEY AT LAW

March 18, 1987

New Mexico Oil Conservation Commission
Post Office Box 2088
Santa Fe, New Mexico 87501

Attention: Mr. Jeff Taylor, General Counsel

Re: Commission Case No. 9063 --
Application of Merrion Oil and
Gas Corporation For Enforcement
of Common Purchaser Requirements

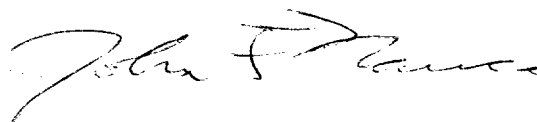
Gentlemen:

Enclosed for filing with the Commission in the above-referenced proceeding are one original and four copies of each of the following documents:

1. Brief of Respondent El Paso Natural Gas Company on the Issue of Commission Jurisdiction.
2. Closing Statement of Respondent El Paso Natural Gas Company.

Please advise me if there are any questions concerning this matter.

Sincerely,



TLW/004:JFN1

Enclosures

cc (w/encl):

Tommy Roberts, Esq.
P. O. Box 129
Farmington, New Mexico 87499

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MERRION OIL AND GAS CORPORATION
FOR ENFORCEMENT OF THE COMMON
PURCHASER REQUIREMENTS OF SECTION
70-2-19 NMSA 1978 (1984 SUPP.)
AND OTHER PERTINENT PROVISIONS
OF THE OIL AND GAS ACT, RIO ARRIBA
COUNTY, NEW MEXICO

CASE NO. 9063

BRIEF OF RESPONDENT EL PASO NATURAL GAS
COMPANY ON THE ISSUE OF COMMISSION JURISDICTION

INTRODUCTION

EL PASO NATURAL GAS COMPANY ("El Paso"), the respondent in the referenced proceeding, is an interstate natural gas pipeline company engaged in the business of producing, purchasing, transporting, and selling natural gas to distribution companies and other pipeline companies for resale and to industries and others for direct consumption. El Paso's pipeline system extends from the Permian Basin of West Texas and Southeast New Mexico, the Anadarko Basin of Southwest Oklahoma, and the San Juan Basin of Northwest New Mexico, through portions of the States of Texas, New Mexico, Utah, Colorado, and Arizona to points of termination at the California and Nevada boundaries with Arizona. As an interstate gas pipeline, El Paso is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission ("FERC") under

the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717, et seq., and the Natural Gas Policy Act ("NGPA"), 15 U.S.C. §§ 3301 et seq.

Applicant in the above-described proceeding, Merrion Oil and Gas Corporation ("MOG"), has requested that the New Mexico Oil Conservation Commission ("the Commission") enter an order requiring El Paso to purchase casinghead gas and to continue to take ratably the casinghead gas produced from the Oso Canyon Gas Com "C" No. 1 and the Krystina Gas Com No. 1 wells, operated by MOG in Rio Arriba County, New Mexico. MOG has alleged that El Paso's failure to take such casinghead gas has constituted a violation of the "common purchaser" requirements of N.M. Stat. Ann. § 70-2-19 (Supp. 1986) and other pertinent provisions of the Oil and Gas Act, N.M. Stat. Ann. §§ 70-2-1 to 70-2-36 (1978). At the hearing before the Commission on March 5, 1987, testimony and evidence were taken on the issues of ability of the above-described wells to produce, MOG's tender of casinghead gas from the wells, El Paso's purchasing practices in the Gavilan Mancos Oil Pool from which such wells would produce oil and casinghead gas, and El Paso's course of conduct with respect to MOG. During the hearing it was agreed that the parties would submit briefs on the issue of the Commission's jurisdiction and authority to require El Paso, as an interstate pipeline company, to purchase and take casinghead gas from wells to which it is not presently connected and for which it does not have a gas purchase contract in

effect. El Paso herewith respectfully submits this Brief in compliance with the Commission's request.

SUMMARY OF ARGUMENTS

Authority to regulate the purchase of natural gas for resale in interstate commerce has been granted to the FERC by Congress under the NGA. The power to prevent waste and protect correlative rights has been reserved by the states through the "production or gathering" exclusion from coverage of the NGA, but this does not include the power to regulate purchasers. Partial deregulation of wellhead sales prices for gas under the NGPA has not resulted in a grant of authority to the states to occupy the field. Any attempt by a state to regulate purchasing practices by an interstate pipeline will be preempted by federal law.

The apparent authority of the Commission to require nondiscriminatory purchasing of gas or casinghead gas by common purchasers within a common source of supply is derived from N.M. Stat. Ann. § 70-2-19 (Supp. 1986) ("the Common Purchaser Statute"). The question of jurisdiction here is whether the Commission can require an interstate natural gas pipeline, subject to regulation by the FERC, to comply with such provisions for nondiscriminatory purchasing as a common purchaser. Similar statutes and rules in other states, when applied to interstate pipelines, have been held to be preempted.

The Commission must recognize that the order being sought by the applicant in this proceeding would be in complete contradiction of the

United States Supreme Court's recent holdings. El Paso respectfully requests, therefore, that the Commission decline to assume jurisdiction over the subject matter of this proceeding or, alternatively, that the Commission reject the application on the basis of federal regulatory preemption.

ARGUMENT

I.

STATE REGULATION OF PURCHASES OF GAS BY AN INTERSTATE PIPELINE HAS BEEN PREEMPTED UNDER THE NGA AND THE NGPA

In Northern Natural Gas Co. v. State Corp. Commission, 372 U.S. 84 (1963), the United States Supreme Court addressed squarely the issue of attempted state regulation over purchases of gas for resale in interstate commerce. The Kansas Corporation Commission had issued proration orders requiring ratable taking of gas by Northern Natural from all wells in the Hugoton Field to which it was connected. Northern Natural was faced with a choice of taking less gas than its contractual minimum from one producer or more gas than it needed from other producers in the field, if it were to comply with the orders. The Supreme Court struck down the State Commission's orders as an invasion of the exclusive jurisdiction which the NGA had conferred upon the Federal Power Commission (predecessor to the FERC) over the sale and transportation of gas in interstate commerce for resale. The exception for "production and gathering" which exists under Section 1(b) of the NGA was held not to

extend to the regulation contemplated by the Kansas Commission. Quoting from Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 682 (1954), the Court set forth the relationship between the NGA and the state orders:

. . . The Congress enacted a comprehensive scheme of federal regulation of "all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."
. . . The federal regulatory scheme leaves no room either for direct state regulation of the prices of interstate wholesales of natural gas . . . or for state regulations which would indirectly achieve the same result. These state orders necessarily deal with matters which directly affect the ability of the Federal Power Commission to regulate comprehensively and effectively the transportation and sale of natural gas, and to achieve the uniformity of regulations which was an objective under the Natural Gas Act. They therefore invalidly invaded the federal agency's exclusive domain. (Northern Natural, supra, 372 U.S. at 91-92 - citations and footnotes omitted.)

The Court in Northern Natural acknowledged that certain conservation measures taken by a state may be appropriate, but only when aimed at producers and production and not when aimed at interstate purchasers and wholesales for resale.

After adoption of the NGPA in 1978, which included a phased-in deregulation of prices on certain wellhead sales of gas, the question arose whether Congress had retreated somewhat from its sphere of regulatory authority over purchases of gas and whether, by the same token, authority of the states might be expanded into this area. The Supreme Court answered both questions with an emphatic "No." In Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 474 U.S.

_____, 88 L.Ed. 2nd 732, 106 S. Ct. _____ (1986) ("Transco"), the Court faced a fact situation similar to that which had been addressed in Northern Natural and nearly identical to the question now before this Commission. The Mississippi Gas Board had been asked to enforce the "ratable-take" requirement of its Statewide Rule 48 to require Transco to purchase noncontract gas. Rule 48 provided the following:

Each person now or hereafter engaged in the business of purchasing oil or gas from owners, operators, or producers shall purchase without discrimination in favor of one owner, operator, or producer against another in the same source of supply.

The Gas Board issued an order requiring Transco to start taking gas "ratably" and to purchase the gas under nondiscriminatory price and take-or-pay conditions. The state appellate court and the Mississippi Supreme Court both affirmed the Gas Board's order, saying that, at least with respect to deregulated high-cost gas (which was the type produced in the subject pool), the NGPA had effectively overruled the Northern Natural decision. The state, said the Mississippi court, was no longer preempted from regulating sales of gas which had been deregulated under the NGPA.

In deciding Transco's appeal, the United States Supreme Court first stated that, if the Northern Natural standard were still effective, the Gas Board's order would clearly be preempted. The basis for such preemption was that the ratable-take orders fell within the federal regulatory scheme and they would potentially conflict with the federal interest in protecting consumers by ensuring low prices. The Court then

went on to find that the federal deregulation of certain wellhead prices for gas did not thereby give states the authority to step in with regulations of their own:

That FERC can no longer step in to regulate directly the prices at which pipelines purchase high-cost gas, however, has little to do with whether state regulations that affect a pipeline's costs and purchasing patterns impermissibly intrude upon federal concerns. Mississippi's action directly undermines Congress' determination that the supply, the demand, and the price of high-cost gas be determined by market forces. To the extent that Congress denied FERC the power to regulate affirmatively particular aspects of the first sale of gas, it did so because it wanted to leave determination of supply and first-sale price to the market. . . . (Transco, supra, 474 U.S. at _____, 88 L.Ed. 2nd at 744.)

The Court also addressed the specific dilemma which Transco would face if it complied with the Gas Board's order:

[Under standard take-or-pay provisions, p]ipelines are already committed to purchase gas in excess of market demand. Mississippi's rule will require Transco to take delivery of non-contract gas; this will lead Transco not to take delivery of contract gas elsewhere, thus triggering take-or-pay provisions. . . . (88 L.Ed. 2nd at 745.)

The disruption of the federal scheme was held to be invalid and the Mississippi ratable-take order was preempted. It should be immediately apparent that the order which this Commission is being asked to issue in the current proceeding would have a similar effect and would ultimately be struck down for the same reasons.

II.

THE NEW MEXICO COMMON PURCHASER STATUTE PURPORTS TO
REGULATE PURCHASING PRACTICES AND, AS APPLIED TO AN
INTERSTATE NATURAL GAS PIPELINE, CANNOT BE
DISTINGUISHED FROM SIMILAR STATE REGULATORY
SCHEMES WHICH HAVE BEEN HELD INVALID

Paragraph D. of Section 19 of the Oil and Gas Act provides the definition of a "common purchaser" of gas in New Mexico and sets forth the requirements that such a common purchaser shall not unreasonably discriminate in its purchases, providing in part:

- D. Any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells or casing-head gas produced from oil wells shall be a common purchaser thereof within each common source of supply from which it purchases, and as such it shall purchase gas lawfully produced from gas wells or casing-head gas produced from oil wells with which its gas transportation facilities are connected in the pool and other gas lawfully produced with the pool and tendered to a point on its gas transportation facilities. Such purchases shall be made without unreasonable discrimination in favor of one producer against another in the price paid, the quantities purchased, the bases of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from such wells.
. . . (N.M. Stat. Ann. § 70-2-19 (Supp. 1986).)

Paragraph D., which also prohibits discrimination in favor of a purchaser's own production, is followed by the ratable-take requirements of Paragraph E.:

- E. Any common purchaser taking gas produced from gas wells or casing-head gas produced from oil wells from a common source of supply shall take ratably under such rules, regulations and orders,

concerning quantity, as may be promulgated by the [Oil Conservation D]ivision consistent with the Oil and Gas Act. The division, in promulgating such rules, regulations and orders, may consider the quality and the deliverability of the gas, the pressure of the gas at the point of delivery, acreage attributable to the well, market requirements in the case of unprorated pools, and other pertinent factors. (Id.)

The Kansas statute under which the Kansas Corporation Commission had issued its basic proration order for the Hugoton Field and its order requiring Northern Natural to take ratably contained the following provisions:

. . . regulate the taking of natural gas from any and all . . . common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply . . . and to prevent unreasonable discrimination . . . in favor of or against any producer in any such common source of supply. (Kan. Gen. Stat. 1949 (Supp. 1959), § 55-703, as quoted in Northern Natural, supra, 372 U.S. at 88.)

In Mississippi, Statewide Rule 48, previously quoted in this Brief, requires purchasing "without discrimination in favor of one owner, operator, or producer against another in the same source of supply."

The comparable statute in Oklahoma provides for both nondiscriminatory purchasing by a common purchaser and ratable taking of gas offered for sale, similarly to the New Mexico provisions first identified above:

Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the

natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. . . . (Okla. Stat. Ann. Tit. 52, § 240 (1981).)

The provisions from Kansas, Mississippi, and Oklahoma each share the common element of an express prohibition of discriminatory purchasing practices within a source of supply. They also share similar treatment within the federal courts following attempts by the respective states to use such provisions to regulate purchases by interstate pipelines: the provisions were each held invalid as preempted by federal law. The Kansas and Mississippi ratable-take requirements had been struck down in Northern Natural and Transco, respectively. In a more recent decision, the United States District Court for the Western District of Oklahoma has rejected that state's attempt to apply ratable-take requirements to interstate pipelines purchasing gas within the state. In ANR Pipeline Co. v. Corporation Com'n of Oklahoma, 643 F.Supp. 419 (W.D. Okl. 1986), the court applied the tests of Northern Natural and Transco and found Oklahoma's Section 240 and related Rule 1-305 (Priority Schedule for Supply and Demand Imbalance) unconstitutional as applied to the interstate pipeline company plaintiffs.

There is no significant difference between the New Mexico Common Purchaser Statute and those states' rules and statutes which have been struck down. If applied to an interstate pipeline purchaser, the provisions of the New Mexico statute would also tend to disturb the uniformity of the federal scheme of purchases of gas for resale in interstate commerce under the NGA and the NGPA. Such an attempt would surely be rejected by the courts.

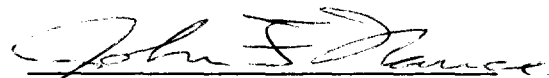
A further example of the impact of Transco on the limits of state regulatory authority comes again from Kansas and a decision of the United States Supreme Court. In a memorandum decision the Court vacated the judgment of the Supreme Court of Kansas regarding amendment of the basic proration order for the Kansas Hugoton Field and remanded the case for further consideration in light of Transco. (See Northwest Central Pipeline Corp. v. Corporation Comm. of Kansas, ____ U.S. ____, 89 L.Ed. 2d 289 (1986) (mem.).)

CONCLUSION

The Commission must recognize that its authority to regulate the purchasing practices of an interstate pipeline, in light of the Northern Natural and Transco decisions, is significantly constrained. Previous attempts by state agencies to require interstate pipelines to take gas ratably in a common source of supply have been struck down on federal preemption grounds.

In this proceeding the Commission is being asked to enforce against an interstate pipeline the common purchaser and ratable-take provisions of New Mexico law. There is no distinction which can be drawn between such an action and the regulatory activities of other states which were held invalid. El Paso respectfully requests that the Commission now decline to accept jurisdiction over this proceeding or, alternatively, that the Commission dismiss the application on the grounds of federal preemption of the subject matter.

Respectfully submitted,



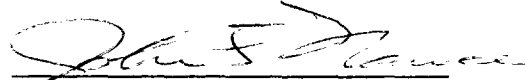
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Attorneys for Respondent
EL PASO NATURAL GAS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Brief of Respondent El Paso Natural Gas Company on the Issue of Commission Jurisdiction to be mailed to Tommy Roberts, Esquire, attorney for Merrion Oil and Gas Corporation, at P.O. Box 129, Farmington, New Mexico 87499, this 18th day of March, 1987.


John F. Nance

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MERRION OIL AND GAS CORPORATION
FOR ENFORCEMENT OF THE COMMON
PURCHASER REQUIREMENTS OF SECTION
70-2-19 NMSA 1978 (1984 SUPP.)
AND OTHER PERTINENT PROVISIONS
OF THE OIL AND GAS ACT, RIO ARRIBA
COUNTY, NEW MEXICO

CASE NO. 6093

CLOSING STATEMENT OF RESPONDENT
EL PASO NATURAL GAS COMPANY

EL PASO NATURAL GAS COMPANY ("El Paso"), the respondent in the referenced proceeding, is an interstate gas pipeline company engaged in the business of producing, purchasing, transporting, and selling natural gas to distribution companies and other pipeline companies for resale and to industries and others for direct consumption. El Paso's pipeline system extends from the Permian Basin of West Texas and Southeast New Mexico, the Anadarko Basin of Southwest Oklahoma, and the San Juan Basin of Northwest New Mexico, through portions of the States of Texas, New Mexico, Utah, Colorado, and Arizona to points of termination at the California and Nevada boundaries with Arizona. As an interstate gas pipeline, El Paso is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717, et seq., and the Natural Gas Policy Act ("NGPA"), 15 U.S.C. §§ 3301 et seq.

Applicant in the above-described proceeding, Merrion Oil and Gas Corporation ("MOG"), has requested that the New Mexico Oil Conservation

Commission ("the Commission") enter an order requiring El Paso to purchase casinghead gas and to continue to take ratably the casinghead gas produced from the Oso Canyon Gas Com "C" No. 1 and the Krystina Gas Com No. 1 wells, operated by MOG in Rio Arriba County, New Mexico. MOG has alleged that El Paso's failure to take such casinghead gas has constituted a violation of the "common purchaser" requirements of N.M. Stat. Ann. Section 70-2-19 (Supp. 1986) and other pertinent provisions of the Oil and Gas Act, N.M. Stat. Ann. §§ 70-2-1 to 70-2-36 (1978). At the conclusion of the hearing before the Commission on March 5, 1987, the parties were instructed to file closing statements for the full proceeding and briefs on the limited issue of the Commission's jurisdiction and authority to require El Paso, as an interstate pipeline company to purchase and take casinghead gas from wells to which its is not presently connected and for which it does not have a gas purchase contract in effect. El Paso's Brief is being filed with the Commission this date. El Paso also respectfully submits this Closing Statement in response to the Commission's request.

STATEMENT

El Paso believes that the testimony and evidence presented at the hearing clearly establish that El Paso's conduct has not been unreasonably discriminatory and that El Paso has not violated the common purchaser requirements of Section 70-2-19. El Paso would identify the following points as bases upon which such a conclusion rests:

1. El Paso had offered to take MOG's gas. El Paso's offer to take gas from the referenced wells was made on a basis consistent with other

offers made by El Paso in the field during a similar time frame. Each of the purchase contracts which El Paso has with a producer in the Gavilan Mancos Oil Pool was entered into as a result of concessions received from the producer in other contracts with El Paso as part of El Paso's "contract cure" program. A similar offer had been made to MOG. (See Hearing Transcript, pages 111-112.)

2. El Paso offered alternatives, when purchase of the gas was no longer feasible. El Paso indicated its willingness to take MOG's casinghead gas on a transportation basis, and suggested the alternatives of a sale of the gas to Northwest Pipeline Company or to El Paso Gas Marketing Company. (Tr. at 112-113.)

3. MOG refused to accept any of the proposals offered by El Paso. Throughout the period of discussions and negotiations between the parties, MOG declined the offers of purchase and the transportation alternatives suggested by El Paso, preferring instead to make counter-proposals on terms that could not be met by El Paso. (Tr. at 24-29.)

4. MOG has refused even to attempt to negotiate a contract with the major purchaser in the field, Northwest Pipeline. Although Northwest Pipeline is the most significant purchaser of gas in the Gavilan Mancos Oil Pool, MOG has simply refused to consider Northwest as a possible purchaser of its gas, based upon the personal feelings of the President of MOG, Mr. J. Gregory Merrion. (Tr. at 30, 36-37.)

5. El Paso's failure to take MOG's casinghead gas has not violated the unreasonable discrimination standard of Section 70-2-19. El Paso

submits that its offers to and negotiations with MOG were consistent with El Paso's discussions with other producers in the area and that El Paso in no way discriminated against MOG or in favor of any other producer. Specifically, El Paso did not discriminate in favor of itself or an affiliate as alleged by MOG. In any event, El Paso's good faith proposals and alternatives presented to MOG cannot be viewed as unreasonable discrimination against MOG, as would be required under the standard of Paragraph D. of Section 70-2-19. (Tr. at 77-79, 106-107, 111-114.

6. El Paso cannot be compelled to purchase gas which it cannot economically use. Paragraph F. of Section 70-2-19 provides the following:

Nothing in the Oil and Gas Act [citation omitted] shall be construed or applied to require, directly or indirectly, any person to purchase gas of a quality or under a pressure or under any other condition by reason of which such gas cannot be economically and satisfactorily used by such purchaser by means of his gas transportation facilities then in service.

MOG has requested that the Commission require El Paso to take MOG's casinghead gas under conditions which MOG represents would be at no cost to El Paso; that is, at a price which would not affect El Paso's weighted average cost of gas and with corresponding forgiveness of take-or-pay obligations. (Tr. at 33.) El Paso's witness has demonstrated that there is no practical way to take production from the subject wells and credit it solely against El Paso's take-or-pay obligations to MOG for other production. Therefore, a requirement to take such gas, at any price, would have the effect on El Paso of exposure to take-or-pay liability to

another producer or to other producers for gas not taken. Thus, El Paso cannot "economically and satisfactorily" use the gas which MOG proposes to produce. For this reason alone, El Paso cannot be compelled to take such gas as a purchaser. (Tr. at 117-124.)

7. Any effort by the Commission to regulate the purchasing practices of El Paso, as an interstate pipeline, is subject to preemption by federal law. Under the United States Supreme Court holdings in Northern Natural and Transco, a state cannot require a purchaser of gas for resale in interstate commerce to purchase such gas ratably or to purchase non-contract gas, since such regulation is preempted under the NGA and the NGPA. This issue is discussed in more detail in El Paso's accompanying Brief.

CONCLUSION

El Paso respectfully submits that it cannot be found in violation of New Mexico's common purchaser requirements, and that it cannot be compelled to purchase casinghead gas from wells to which its facilities are not connected and for which it does not have a purchase contract. El Paso's good faith efforts to purchase or transport gas tendered by MOG cannot be viewed as unreasonably discriminatory, and El Paso's present inability to take such gas on terms proposed by MOG is excused under the economic standard of Section 70-2-19, Paragraph F. Any attempt by the Commission to require El Paso, as an interstate pipeline, to purchase such gas will conflict with and be preempted by federal law. For the foregoing

reasons, El Paso requests that the application of MOG for an enforcement order be denied.

Respectfully submitted,



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EL PASO NATURAL GAS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Closing Statement of El Paso Natural Gas Company to be mailed to Tommy Roberts, Esquire, attorney for Merrion Oil and Gas Corporation, at P.O. Box 129, Farmington, New Mexico 87499, this 18th day of March, 1987.


John F. Nance

ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION



May 11, 1987

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Mr. Tommy Roberts
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Farmington, New Mexico 88400

Re: CASE NO. 9063
ORDER NO. R-8442

Applicant:

Merrion Oil & Gas Corporation

Dear Sir:

Enclosed herewith are two copies of the above-referenced
Division order recently entered in the subject case.

Sincerely,

Florene Davidson

FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD x

Other John Nance, W. Perry Pearce