STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION COMMISSION

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OIL CONSERVATION DIVISION

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

CASE: 9018
ORDER: R-8170-A

THE APPLICATION OF THE OIL CONSERVATION COMMISSION ON ITS OWN MOTION TO CONSIDER THE AMENDMENT OF ORDER R-8170.

APPLICATION OF TENNECO OIL COMPANY FOR REHEARING

COMES NOW TENNECO OIL COMPANY pursuant to the provisions of Section 70-2-25 NMSA (1978) and applies to the Oil Conservation Commission of New Mexico for a Rehearing of the above captioned case and order, and in support thereof states:

STATEMENT OF FACTS:

On March 28, 1986, the Commission entered Order R-8170 in Case 8749 which rescinded Order R-1670 and recodified and amended the General Rules for Prorated Gas Pools in New Mexico including the continuation of the existing one year balancing period and an overproduction limitation of six times a well's monthly allowable.

On October 23, and November 20, 1986, the Commission held hearings on the Division's application in Case 9018 to amend Order R-8170 by changing Rule 10(a), 11(a) and 11(b) of the General Rules for the Prorated Gas Pools of New Mexico to increase the balancing period from one-year to two years and to increase the overproduction limit from six times to twelve times for the prorated gas pools of northwest New Mexico.

Tenneco Oil Company is an interested party and an operator of gas wells in the Basin-Dakota, and Blanco Mesaverde Prorated Gas Pools of San Juan, Sandoval, and Rio Arriba Counties, New Mexico, and is adversely affected by Order R-8170-A entered on December 4, 1986.

Within twenty days of the date of that order, Tenneco has filed this Application for Rehearing.

GROUNDS FOR REHEARING

POINT I: ORDER R-8170-A SHOULD BE REVERSED BECAUSE THE COMMISSION FAILED TO MAKE A "BASIC CONCLUSION OF FACT."

Order R-8170-A fails to comply with the applicable statutory and judicial mandates set forth in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) by failing to find that existing rules 10(a), 11(a) and 11(b) of Order R-8170, (effective March 28, 1986) did not protect correlative rights.

Continental Oil, supra, dealt with the Commission's attempt to change the existing proration formula for the Jalmat Gas Pool. The Supreme Court held that a supposedly valid proration order in current use cannot be replaced in absence of findings that the existing formula does not protect correlative rights.

Here the Commission's finding #15 states: "No party presented compelling evidence that the doubling of the overproduction limit and the over/under-production make-up period to 12 months and 24 months would result in waste or violation of correlative rights". Such a finding is not the equivalent of, or a substitute for, a required finding that the present formula set forth in Order R-8170 did not protect correlative rights. The Commission has failed to make such a finding and therefore violates the judicial standard established for the Commission in the Continental Oil Case, supra.

POINT II: ORDER R-8170-A SHOULD BE REVERSED BECAUSE THE ORDER FAILS TO CONTAIN SUFFICIENT FINDINGS.

The stated purpose of the order is to modify certain existing proration rules in Order R-8170 to allow producers to participate in the spot market. Under the existing rules, certain producers were withholding gas from the market and accruing underproduction for a period up to twelve months before they were required to balance

with the pool or have that underproduction cancelled. This build up of underproduction was found by the Commission to be a significant factor in limiting the "volume of new allowable assigned" to the wells that wanted to continue to produce and sell gas into the spot market. See Finding (8).

Rather than provide temporary relief as intended in Finding (16), the Order allows the build up of underproduction to continue for a period of up to twenty-four months before the underproduction is required to balance with the pool. The result is to further exacerbate participation in the spot market rather than to provide temporary relief.

The Commission has failed to provide the necessary findings which disclose its reasoning and the path it took to go from Finding 8 to Finding 16.

That disclosure was required by the New Mexico Supreme Court in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

The Court, in Fasken, held that not only must the Commission order contain ultimate findings such as "prevention of waste and protection of correlative rights", the order must also contain sufficient findings to disclose the reasoning of the Commission.

The findings in Order R-8170-A fail to set forth the reasoning of the Commission which caused it to double the balancing period when at the same time it finds that the

existing twelve month balancing period already frustrated the intended purpose of encouraging participation on the spot market.

In order to correct this deficiency in Order R-8170-A and correct its arbitrary and capricious affect, the Commission should grant a Rehearing and, after notice and rehearing, should amend Rule 10(a)(1) of R-8170-A so that it reads as follows:

Rule 10(a)(1) of Order R-8170-A should be deleted in its entirety and the following substituted therefore:

RULE 10(a)(1) UNDERPRODUCTION, NORTHWEST: (New Material)

> For the prorated gas pools of Northwest New Mexico, the proration period (as defined in Rule 1) shall be divided into four classification periods of three months each, commencing on April 1, July 1, October 1, and January 1. After the production data is available for the last month of each classification period, any non-marginal GPU which has an underproduced status as of the end of that classification period shall be allowed to carry such underproduction forward into the next classification period and may produce such underproduction in addition to the allowable assigned during the next succeeding classification period. Any underproduction carried forward to the next classification period and remaining unproduced at the end of the second classification period shall be reallocated to wells classified as non-marginal at the date of such reallocation."

The adoption of Tenneco's rule as proposed above will be consistent with Finding (18) and is more likely to accomplish the intended purpose of Order R-8170-A.

POINT III: ORDER R-8170-A IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IS ARBITRARY AND CAPRICIOUS AND IS CONTRARY TO LAW.

The following findings made by the Commission in Order R-8170-A are not supported by substantial evidence contained in the record as a whole.

1. Finding (9):

> One producer participating in the spot market testified that while the change from a six times to a twelve times overproduction limit would provide temporary relief from shut-in, longer term solutions are needed.

2. Finding (15):

> No party presented compelling evidence that the doubling of the overproduction limit and the over/underproduction make up period of 12 months and 24 months would result in waste or violation of correlative rights.

3. Finding (17):

> Said Rule 10(a) and 11(a) should be amended to provide for a 24 month period to make up overproduction and underproduction in said pools beginning March 1, 1987, unless, after notice and hearing, alternative proposals should be adopted.

The foregoing findings are not supported by substantial evidence in the record as a whole and the Order is therefore arbitrary and capricious and contrary to law.

The one producer participating in the spot market and who testified was Mr. Louis Jones, on behalf of Tenneco Oil Company. It was Mr. Jones' testimony that, while increasing the overproduction limitations from six

times to twelve times might provide some temporary relief, Tenneco would not actively attempt to take advantage of that increase unless that increase was also coupled with a continuation of the one year balancing period and the redistribution of the cancelled under-production. In addition, none of the operators testifying at the hearing or providing statements desired or wanted the underproduction balancing period to be increased to twenty-four months.

The findings of the Commission on that point are directly opposite to the substantial evidence before it.

In light of the foregoing conflict between the testimony before it and the order entered by it, we do not have the vaguest notion of how the Commission reasoned its way to its ultimate findings. The Commission's order fails to illustrate why the testimony of the producers was wrong and should be disregarded. See Fasken v. Oil Conservation Commission 87 N.M. 292, 532 P.2d 588 (1975) and Duke City Lumber Co. v. New Mexico Environmental Improvement Board and New Mexico Environmental Improvement Division, 101 N.M. 291, 681 P2d 717 (1984).

POINT IV: THE DIVISION, AS APPLICANT, FAILED TO SUSTAIN ITS BURDEN OF PROOF AND ORDER R-8170-A SHOULD BE REVERSED.

On this issue, the Commission apparently accepted only the testimony of the Division staff and gave no weight to the testimony presented by the producers. In Alto Village Services Corporation v. New Mexico Public Service Commission, 92 N.M. 323, 587 P2d 1334 (1978) the New Mexico Supreme Court directed that an administrative agency, in a contested matter, must weigh all of the evidence in the case and cannot arbitrarily disregard particularly important and qualified testimony.

POINT V: ORDER R-8170-A IS CONTRARY TO STATUTORY AUTHORITY, NEW MEXICO CASE LAW, AND THE PUBLIC INTERESTS.

Order R-8170-A is contrary to statutory authority, New Mexico Case Law, and the public interests of the State of New Mexico for the following reasons.

Rule 601 of the Oil Conservation Division's Rules and Regulations reads in pertinent part as follows: "When the Division determines that allocation of gas production in a designated pool is necessary to prevent waste, the Division, after notice and hearing, shall consider ..." (emphasis added)

N. M. Stat. Ann Section 70-2-3(E) (1978) defines waste as follows: "The production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess

of the capacity of gas transportation facilities for such type of natural gas. The words reasonable market demand as used herein with respect to natural gas shall be construed to mean the demand for natural gas for reasonable current requirements, for current comsumption and for use within or outside the State ..." (emphasis added)

N. M. Stat. Ann. Section 70-2-33(h) (1978) defines correlative rights as follows: correlative rights means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy."

With this statutory authority, the Division has the responsibility of allocating production to producers in a common pool such that each is afforded the opportunity to produce its fair share of gas from the pool as long as total gas production is not in excess of market demand. California is the primary market for San Juan Basin production. Market demand for California has remained

basically flat since 1984. The total market demand (gas actually purchased in California) for the years 1984 through 1986 is as follows:

1984 - 4.4 BCFD
1985 - 4.9 BCFD
1986 - 4.6 BCFD

The percent of California market demand filled by San Juan Basin gas has been declining since 1984 while market demand has been stable:

1984 - 20% of market demand
1985 - 17% of market demand
1986 - 13% of market demand

As an example, El Paso Natural Gas San Juan Basin takes expressed as a percent of connected capacity have declined since 1984:

1984 - 84% of capacity
1985 - 77% of capacity
1986 - 58% of capacity

During this same period Tenneco's San Juan Basin production, in absolute terms, has fallen:

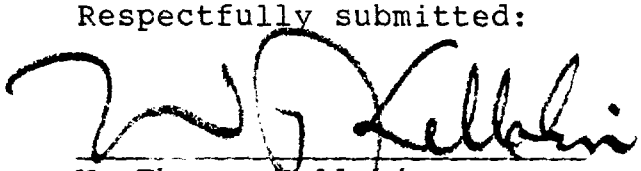
1984 - 79.1 BCF/year
1985 - 74.2 BCF/year
1986 - 63.2 BCF/year

Tenneco's reduction in production volumes is primarily attributable to the steadily eroding allowable allocated to it. Allowables in the State of New Mexico have been declining since 1985 because many producers have voluntarily withdrawn from the market. Consequently, current allowables are being set in the San Juan Basin after adjusting for over and underproduction

based upon production rather than market demand and, as such, have no basis in law. This Commission, by basing allowable on production rather than total market demand, and by extending the make-up period for underproduction to two years, is providing encouragement to producers to withhold gas from the market thereby resulting in a reduction in the percent of California market demand being satisfied by San Juan Basin production, to the detriment of the public interests to the State of New Mexico.

WHEREFORE, Tenneco Oil Company requests that the Commission grant this application for rehearing and after notice and hearing that it enter an order vacating and setting aside Order R-8170-A and that it enter a new order consistent with this application for rehearing.

Respectfully submitted:



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CERTIFICATE OF MAILING

The undersigned hereby certified that he caused a true and correct copy of this Application for Rehearing to be mailed by regular mail on December 23, 1986 to the following parties of record.

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