

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

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

CASE NO. 12033

**APPLICATION OF PUBLIC SERVICE COMPANY
OF NEW MEXICO FOR REVIEW OF OIL CONSERVATION
DIVISION DIRECTIVE DATED MARCH 13, 1998,
DIRECTING APPLICANT TO PERFORM ADDITIONAL
REMEDATION FOR HYDROCARBON CONTAMINATION,
SAN JUAN COUNTY, NEW MEXICO.**

**BURLINGTON RESOURCES OIL & GAS COMPANY'S
MOTION TO STRIKE HEARSAY IN TESTIMONY
OF PNM'S WITNESS RODNEY HEATH**

Burlington Resources Oil and Gas Company ("Burlington"), moves the New Mexico Oil Conservation Commission to strike hearsay evidence contained in the direct and rebuttal testimony of Rodney Heath. In support of this Motion, Burlington states:

1. Hearsay is not admissible in hearings before this Commission. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." NMRA 11-801(C). "Hearsay statements are generally considered to be unreliable because they are not given under oath and cannot be tested by cross-examination to determine the truthfulness of the declarant." *Camino Real Mobile Home Park Partnership v. Wolfe*, 119 N.M. 436, 448, 891 P.2d 1190,

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1202 (1995). In this case, the testimony of Mr. Rodney Heath, offered by Public Service Company of New Mexico ("PNM"), is rife with such unreliable hearsay statements—statements which other unidentified individuals made to Mr. Heath, and which he relays as fact to the Commission. Those statements must be stricken, and not considered by the Commission.

2. Multiple portions of the direct and rebuttal testimony offered by PNM witness Rodney Heath are hearsay. Those portions are predicated on such statements as:

"One of the field men that had operated the equipment prior to 1995 told me . . ."; "The field man said . . ."; "None of the three field men I talked two [sic] . . ."; and, "The other field men said . . .";

(Direct Testimony of Rodney Heath, July 9, 1999, at 17, 18, 19); and,

"I personally spoke with some of the former PNM and current Williams Field Services operators From their statements . . ."; and, "I have been informed that. . . ."

(Rebuttal Testimony of Rodney Heath, July 30, 1999, at 2, 3, 8).

3. Through the hearsay statements of these "field men" and "operators," Mr. Heath proffers evidence about how Burlington and PNM operated their respective equipment on the Hampton 4M well site. PNM uses these bald hearsay statements to establish as fact the method of operation of that equipment prior to the time that Mr. Heath ever laid eyes on the equipment. Without the hearsay, Mr. Heath has no basis for his conclusions of how that

equipment was operated.

4. The hearsay portions of Mr. Heath's testimony, and the conclusions which necessarily depend upon the hearsay, are as follows:

a. Direct Testimony of Rodney Heath, July 6, 1999:

- i. Page 17, lines 11-20;
- ii. Page 18, lines 3-19;
- iii. Page 19, lines 1-18;
- iv. Page 24, lines 7-9.

b. Rebuttal Testimony of Rodney Heath, July 30, 1999:

- i. Page 2, lines 20-21;
- ii. Page 3, lines 1-6;
- iii. Page 8, lines 8-16;
- iv. Page 10, lines 5-7 and 20-21;
- v. Page 11, lines 1-2.

5. Evidence which is not admissible under the New Mexico Rules of Evidence cannot be used by this Commission—"New Mexico courts require that an administrative action be supported by some evidence that would be admissible in a jury trial." *Tallman v. Arkansas Best Freight*, 108 N.M. 124, 128, 167 P.2d 363, 367 (Ct. App. 1988). Hearings before this Commission are subject to the New Mexico Rules of Evidence, which may be relaxed where, by doing so, the ends of justice will be better served. 19 NMAC 15.N 1212.

Orders issuing from such hearings must be supported by "competent legal evidence." *Id.*

6. The statements contained in the pages referenced in paragraph 5 above are clearly inadmissible hearsay under Rule 11-801(C), NMRA 1999. The hearsay statements themselves, and the conclusions which they support, are pure speculation, and in support of Mr. Heath's allegations, PNM offers no authenticated documents, first-hand testimony, or any evidence which would be considered admissible. Those portions of Mr. Heath's testimony are not admissible and must be stricken by the Commission. *See Seal v. Carlsbad Indep. School District*, 116 N.M. 101, 105, 860 P.2d 743, 747 (1993).

Therefore, because multiple portions of the direct and rebuttal testimony of Mr. Rodney Heath consist of inadmissible hearsay, Burlington respectfully requests that the Commission strike those portions of the testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was served by hand delivery, this 26th day of August, 1999, upon the following counsel of record:

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