

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

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Case No. 13153 (de novo)
Order No. R-12108-A

RESPONSE OF PRIDE ENERGY COMPANY
IN OPPOSITION TO APPLICATION FOR REHEARING,
AND REQUEST FOR CLARIFICATION

Pride Energy Company ("Pride") submits this response in opposition to the Application for Rehearing (the "application") filed by Yates Petroleum Corporation, et al. ("Yates"). In addition, Pride requests a clarification of Order No. R-12108-A (the "Order"), as discussed in Part III below.

I. INTRODUCTION.

The issues in Yates' application can be boiled down to the following:

1. The Commission did not believe Yates' testimony;
2. There are not sufficient findings in the Order;
3. Yates' correlative rights are violated by the Order; and
4. Pride did not conduct sufficient negotiations with Yates.

These matters are discussed below.

II. ARGUMENT.

1. The Commission made a number of findings concerning technical evidence in the Order, and after making those findings, it ruled in favor of Pride. Yates' essential contention is that the Commission should have believed Yates' witnesses, rather than Pride's. The Commission, as the trier of fact, is entitled to make

decisions regarding credibility of the witnesses and the weight to be given to their testimony. Moreover, this case involves expert testimony. With respect thereto, Uniform Jury Instruction 13-213 (for the District Courts) states:

You should consider each expert opinion and the reasons stated for the opinion, giving such weight as you think they deserve. **You may reject an opinion entirely if you conclude it is unsound.**

(Emphasis added.) The Commission recited and considered all evidence regarding location and orientation of faults, orientation of the reservoir, extent of the reservoir, thickness of the reservoir, and drainage. **Order, Finding Paragraphs 6-17 and 33-40.** After weighing the evidence, the Commission determined that "Pride's geologic interpretation is, on the whole, more convincing than Yates' interpretation." **Order, Finding Paragraph 40.** Simply put, the Commission considered the evidence and ruled as it saw fit.¹ As trier of fact, it was entitled to do so.

2. Regarding the sufficiency of the findings, the Commission summarized each party's land, geologic, and engineering evidence. **Order, Finding Paragraphs 5-17 and 33-40.** These findings are as detailed as in any Division or Commission order, and support the

¹ Yates complains that Pride should be required to submit all of its data on this pool. Pride submitted the data it thought supported its case (though not all of its data), and likewise Yates submitted the data it thought supported its case (though not all of its data). That is common practice before the Division and Commission, due to the competitive nature of the oil and gas business and the value of technical data. Each company assumes the risk accordingly, but that is not a reason for granting a rehearing. Each company had the option of exhibiting all of its data.

ruling in Pride's favor. Yates' assertions are nothing more than an attempt to sidestep the "weight and credibility" issues discussed above, and are without merit.

3. Yates' first argument in the application, and obviously the one that it thinks is most important, is that if the Order is not reversed Yates's correlative rights will be violated. In fact, the exact opposite is true, and this is supported by the Commission's findings.

Yates correctly quotes the definition of correlative rights, which is "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." While it may not be practicable to calculate reserves in Section 12, the Commission found that:

- A. the fault is north-south in orientation;
- B. porosity will fall off rapidly as you move to the east;
- C. the SW¼ of Section 12 will be productive; and
- D. the E½ of Section 12 is not productive.

Order, Paragraphs 33-40. Based thereon, if laydown units were established Yates would receive 75% of production from Section 12 even though only the W½ (owned 50-50 by Pride and Yates) is productive. However, with a standup unit Pride and Yates will each receive one-half of production, which is roughly proportional (based on the data available) to the reserves underlying their acreage. In addition, if the E½ does prove productive, Yates will own 100% of that acreage and the production therefrom, and its

correlative rights will not be adversely affected. The Commission's findings satisfy the standard in the **Continental Oil Co.** case, that each party recover the gas under its tract (to the extent it can be practicable determined).²

4. Finally, Yates claims that Pride failed to meet the preconditions for pooling by not conducting sufficient negotiations before filing for pooling. The record shows that Pride had been in contact with Yates as early as May 2001 regarding this acreage, but did not disturb Yates while it had its N $\frac{1}{4}$ APD (which Yates had for two years without acting). Once that APD expired, Pride properly obtained an APD and wrote a proposal letter to Yates. Rather than responding, Yates improperly obtained a new APD, had Pride's APD revoked, and commenced operations without responding to Pride's proposal. What more was Pride to do? If a party does not respond to a well proposal, Division and Commission precedent allows a party to proceed with pooling.

III. REQUEST FOR CLARIFICATION.

Finding Paragraph 37 of the Order, on line 3, states that "the establishment of **stand up** units in this section would violate Pride's correlative rights." Due to the overall findings of the Commission, this is a typographical error: The proper words should have been "**lay down**" rather than "stand up." Pride requests that

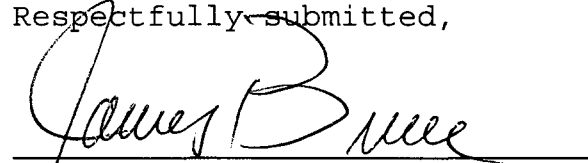
² The pooling statute, NMSA 1978 Section 70-2-17.C, provides that production allocation under a pooling order is based on acreage. While reserves do not always follow governmental subdivisions, it is what the statute requires, and the findings in this case support the conclusion that Yates' acreage (the NW $\frac{1}{4}$) and Pride's acreage (the SW $\frac{1}{4}$) both will contribute to production.

this error be corrected by a nunc pro tunc order.

IV. CONCLUSION

For the reasons stated above, Pride requests that the Commission (1) deny Yates' application for rehearing, and (2) enter a nunc pro tunc order correcting Finding Paragraph 37.

Respectfully submitted,



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Company

CERTIFICATE OF SERVICE

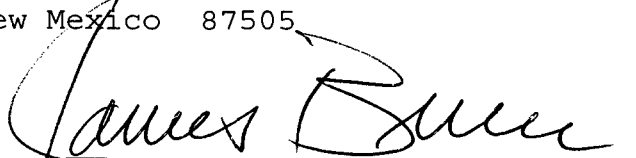
I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 13th day of October, 2004:

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