

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

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

CASE NO. 13153, Rehearing

**APPLICATION OF PRIDE ENERGY COMPANY
FOR CANCELLATION OF A DRILLING PERMIT
AND REINSTATEMENT OF A DRILLING
PERMIT, AN EMERGENCY ORDER HALTING
OPERATIONS, AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

ORDER NO. R-12108-D

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) on this 10th day of February, 2005, at Santa Fe, New Mexico, on Pride Energy Company's Motion for Stay of Commission Order (the motion), and the Commission, having heard arguments of counsel and carefully considered the same, now

FINDS:

1. Notice has been given of the motion and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter.

2. In the original application in this case, Pride Energy Company (Pride) sought an order canceling a permit issued to Yates Petroleum Corporation (Yates) to re-enter the abandoned State X Well No. 1 (API No. 30-025-01838) (the subject well), located 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 12, Township 12 South, Range 34 East. NMPM, Lea County, New Mexico. Pride also sought reinstatement of

a drilling permit previously issued to it to re-enter the same well, and an emergency order preventing Yates from conducting any operations on the well.

3. Pride additionally sought an order pooling all uncommitted mineral interests underlying the W/2 of Section 12, Township 12 South, Range 34 East, NMPM, Lea County, New Mexico, from the surface to the base of the Mississippian formation, forming a standard 320-acre gas spacing and proration unit (the Unit) for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to, the undesignated Four Lakes-Mississippian Gas Pool and the undesignated Four Lakes-Morrow Gas Pool, such unit to be dedicated to the well.

4. On December 9, 2004, the Commission entered Order No. R-12108-C, *inter alia*, granting Pride's application for compulsory pooling, providing that the pooled unit formed by the order be dedicated to the subject well, appointing Pride as operator of the unit and the subject well and directing Pride to commence re-entry operations on the subject well within ninety (90) days after issuance of the order.

5. On December 27, 2004, respondent, Yates Petroleum Corporation (Yates) filed an application for rehearing. The Commission took no action on the application for rehearing, and the same was deemed overruled on January 10, 2005. Yates filed notice of appeal of the Commission's Order in the District Court of Santa Fe County.

6. On February 4, 2005, Pride filed the motion with the Commission seeking a stay of the requirement of Order No. R-12108-C that it commence re-entry operations on the subject well no later than March 9, 2005.

7. Yates filed a written response to the motion and appeared at the hearing through counsel. Yates argued that, in view of its filing of a notice of appeal in District Court, the Commission has no jurisdiction to consider a motion to stay its order so long as the appeal of that order is pending in the courts.

8. The jurisdiction of an administrative agency to consider a request to stay its order during the pendency of an appeal therefrom was recognized by the New Mexico Court of Appeals in *Tenneco Oil Company v. New Mexico Water Quality Control Commission*, 105 N.M. 708, 736 P.2d 986 (1986). Although the New Mexico Supreme Court has subsequently enacted Rule 1-074 expressly conferring jurisdiction upon the District Courts to entertain motions to stay administrative orders, Rule 1-074 does not provide that the jurisdiction of the district court over such motions is exclusive. In view of the fact that the Court of Appeals, in *Tenneco, supra*, opined that it had inherent authority to grant such stays, but that its power was not exclusive, the Commission concludes that the jurisdiction of the District Court over such matters is not exclusive, and the Commission has jurisdiction to consider the motion.

9. Pride did not offer any evidence in support of the motion. In the motion and at the hearing Pride argued that the order would require it to incur substantial expense in

operation of a well in which it would own no interest if the District Court were to reverse the Commission's order.

10. Pride did not offer any evidence that Yates or any of the other respondents would be unable to respond in damages should Pride incur monetary injury as it claimed.

11. The Commission accordingly concludes that:

a. Pride has made no showing of good cause under the terms of Order No. R-12108-C why the time provided in said order for the commencement of re-entry operations should be extended;

b. Pride has not shown that it will incur any irreparable harm if a stay is not granted.

12. Counsel for Yates stated that Yates' lease will expire on June 30, 2005. Pride did not dispute this assertion.

13. The Commission accordingly concludes that:

a. Substantial harm would probably result to Yates if a stay were granted, and

b. A balancing of the parties respective interests requires denial of a stay, since Pride would have a remedy for harm it may incur if a stay is not granted; whereas Yates would not have a remedy for harm it may incur if a stay is granted.

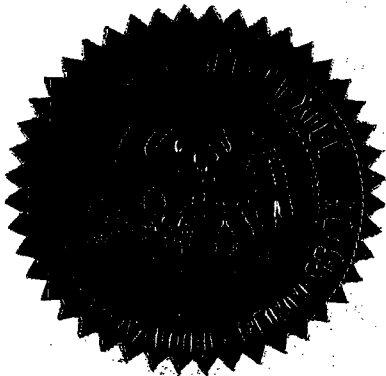
14. There is not evidence that granting of the motion is necessary for the prevention of waste or protection of correlative rights.

IT IS THEREFORE ORDERED THAT:

1. Pride's Motion for Stay of Commission Order No. R-12108-C is hereby denied.

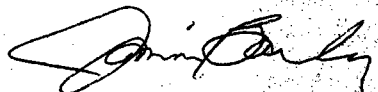
2. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


MARK E. FESMIRE, P.E., CHAIR


JAMI BAILEY, CPG, MEMBER


FRANK T. CHAVEZ, MEMBER

SEAL