

**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:**

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

2005 FEB 9 PM 4

CASE NO. 13153 (DE NOVO/REHEARING)

**RESPONSE OF YATES PETROLEUM CORPORATION TO
MOTION FOR STAY OF COMMISSION ORDER**

Pride Energy Company knows that Yates Petroleum Corporation's oil and gas lease covering the subject acreage will expire on **June 30, 2005**. With this motion, Pride seeks a stay that could extend beyond this lease term and cause Yates to forfeit its interest in this spacing unit. Pride sought an order designating it operator of this spacing unit and well and the Commission agreed with Pride. Pursuant to the Commission order, Yates has paid its share of this re-entry and Pride is now holding approximately \$400,000 of Yates money. Yates expects Pride to perform its duties of the operator of this well.

In its motion, Pride fails to cite any authority to support its arguments. When the applicable rule is considered, it is clear that Pride has failed to show that it is entitled to a stay.

The Rules of Civil Procedure for the District Courts of New Mexico announce the standards that must be met by a party seeking a stay of a final administrative order. Rule 74 provides in relevant part:

Stay. A party appealing a decision or order of an administrative agency may petition the district court for a stay of enforcement of the order or decision of the agency. Upon notice and hearing, the district court may grant a stay of enforcement of the order or decision of the agency upon a showing by the appellant that:

1. It is likely that the appellant will prevail on the merits of the appeal;
2. The appellant will suffer irreparable harm unless a stay is granted; and

3. no substantial harm will result to other interested persons or the public if a stay is granted. (N.M. Dist. Ct. R.C.P. 1-074)

To decide this motion, the Commission needs to look no farther than this rule¹.

THE COMMISSION CANNOT ISSUE A STAY IN THIS CASE:

Once this case was appealed, jurisdiction over this dispute and any related motions rests with the District Court not the Oil Conservation Commission. Rule 74 clearly provides that the party appealing the decision of the agency "may petition the District Court for a stay...." Pride has filed a similar motion with the District Court seeking a stay and that is where its motion should be decided.

THE COMMISSION SHOULD NOT ISSUE A STAY:

Pride has failed to meet any of the three preconditions it is required to establish to show it is entitled to a stay.

Pride must first show that it is likely that it will prevail on the merits. However, the basic reason it advances for its motion seems to be that it believes it will not. It complains:

"if Yates is successful in its appeal, Pride will own no interest in the well. Thus, requiring Pride to re-enter the well by March 9th will require it to incur substantial expense, even though it could ultimately own no interest in the well."

Second, Pride must show that it will suffer irreparable harm unless a stay is granted. In this context, irreparable harm means an injury that cannot be compensated for with money damages. When Yates is successful with this appeal, Pride will be entitled to its costs and expenses. It will only lose the production from the Yates lease that it is trying to acquire in this case. It still will have its interest in the SW/4 of the section on which it can drill a well.

Finally Pride must show that there will be no substantial harm to other interested parties. In this case the other interested party is Yates which will suffer irreparable harm if the stay is granted. Yates stands to lose its interest in this lease and this well. This is damage that cannot later be compensated for with money damages.

CONCLUSION:

Pride filed its application seeking to become operator of the W/2 of Section 12, Township 12 South, Range 34 East, NMPM, and the State X well located thereon. Although Yates was already conducting operations on the well pursuant to a Division approved Application for Permit to Drill, the Division and Commission agreed with Pride and took operations from Yates. Pride is now operator of this well and Yates as a non-operating

¹ It is interesting to note that this Rule 74 anticipates that the Appellant will seek the stay not, as here, the prevailing party. However, we assume that the same standards apply to the motion regardless of who files it.

working interest owner in the well expects Pride to fulfill its obligations as operator protect Yates' lease.

Pride's Motion should be denied.

Respectfully submitted,
Holland & Hart, LLP

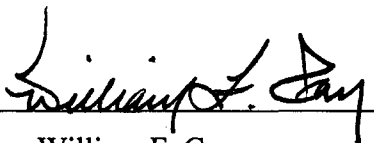
By: 

William F. Carr

ATTORNEYS FOR YATES
PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing pleading to be delivered to David K. Brooks, Esq. Attorney for the Oil Conservation Commission by Hand Delivery and to James Bruce, Esq., attorney for Pride Energy Company, by facsimile [FAX NO. (505) 982-2151] on this 9th day of February, 2005.


William F. Carr