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

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

CASE NO. 11613 (DeNovo)

APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

CASE NO. 11622 (DeNovo)

APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by BURLINGTON RESOURCES OIL & GAS COMPANY, as required by the Oil Conservation Division.

APPEARANCE OF PARTIES

APPLICANT IN CASE 11613

Burlington Resources
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Midland, Texas 79710-1810
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ATTORNEY

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APPLICANT IN CASE 11622

Penwell Energy, Inc.
800 N. Marienfeld
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Attn: Mark Wheeler

ATTORNEY

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STATEMENT OF THE CASE

On November 26, 1996, the Division entered Order R-10709 in which the Division found that:

> "(8) For more than 17 months, Burlington has sought to drill a well on and operate the subject acreage only to be frustrated by tactics that can be interpreted as actions taken by both Trainer and Prince to avoid being pooled and to delay this matter.
>
> (9) It would only serve to circumvent the purposes of the New Mexico Oil and Gas Act to allow a record owner of a working interest (Trainer and Prince) in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing that interest.
>
> (10) Burlington having: (i) first proposed a well within the subject 40 acres (ii) an approved APD for its proposed well (iii) afforded an opportunity to Trainer for more than 15 months for Trainer to drill its well and Trainer failing to do so and, (iv) a proposal that is fair and reasonable and provides for an equitable solution for the exploration of this 40-acre oil spacing and proration unit with the parties owning the majority having already been provided the opportunity to drill but having failed to drill should be named the operator of the proposed standard 40-acre oil spacing and proration unit comprising the NW/4SE/4 (Unit J) of said Section 24 in which its Checkmate "24" Federal Well No 1 is to be dedicated and, in order to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completed resulting from this order, the application of Burlington in Division case 11613 **should be approved** (emphasis added) by pooling all mineral interest, what ever they may be, within said unit. Correspondingly, the application of Penwell in Case 11622 should therefore be denied."

SUMMARY OF ESSENTIAL FACTS

(1) From April 21, 1995 to September 27, 1996, the working interest owners in the NW/4SE/4 of Section 24, T22S, R32E, NMPM, Lea County, New Mexico were as follows:

Frederick Prince	50.251%
C. W. Trainer	31.324%
Burlington	13.401%
Ann Losee	2.512%
Elizabeth Losee	2.521%

(2) On August 26, 1996, the applicant in Case 11613, Burlington Resources Oil & Gas Company, formerly Meridian Oil Inc. ("Burlington"), filed its application seeking a compulsory pooling order against Trainer, Prince , Ann and Elizabeth Losee.

(3) On August 30, 1996 Trainer signed a certified mail- return receipt card showing acceptance of Burlington's pooling application.

(4) Trainer, after being served with Burlington's compulsory pooling application, sought to avoid the consequences of compulsory pooling by attempting to transfer his interest to Penwell.

(5) After August 30, 1996, C. W. Trainer and Frederick Prince had contacted Penwell, told Penwell that they were about to be pooled by Burlington and entered into a verbal agreement with Penwell to sell their interests to Penwell for $100.00 per acre plus an overriding royalty, provided Penwell could obtain the right to operate the well originally proposed by Burlington and commence drilling the well by November 15, 1996.

(6) Under this verbal agreement with Trainer and Prince, Penwell had the option to withdraw from purchasing Trainer and Prince's interest if they were not successful in obtaining operations for the drilling of the subject well.

(7) On September 10, 1996, the applicant in companion Case No. 11622, Penwell Energy, Inc. ("Penwell"), filed a competing pooling application against Burlington in which Penwell sought to be designated operator of this well.

(8) Also on September 10, 1996, the same date as filing its pooling application, Penwell sent its written proposal to Burlington.

(9) As of the date of the Examiner hearing on October 3, 1996, Penwell had obtained the voluntary agreement of Trainer, Prince and Losee and had assigned part of its interest to CoEnergy Central of Detroit Michigan such that the parties would pay for the costs of the well as follows:

Burlington	13.40100%
Penwell Energy, Inc.	12.23625%
CoEnergy Central	69.33875%
Losee	5.02400%

DISPUTE OVER OPERATIONS

Burlington contended at the Examiner hearing that it should be designated the operator because:

(a) Burlington first proposed the well;

(b) Burlington has an approved Application for Permit to Drill the subject well;

(c) Burlington afforded an opportunity to Trainer for more than 15 months for Trainer to drill the well and Trainer failed to do so;

(d) Trainer failed to timely commence this well, Trainer has forfeited the right to now select Penwell as the operator;

(f) Burlington in the last two years has drilled and now operates 27 wells in these two pools and has a working interest in 14 other wells operated by Pogo Producing Company;

(g) Penwell has no operations in either of these pools and its nearest well is some 6 miles away;

(h) Burlington has extensive operational experience in this area and has been instrumental in the last year in reducing well costs from $700,000 to $650,000 and has an established plan which is likely to reduce costs by another $74,000 per well;

(i) Burlington has developed substantial geologic experience in this area and has already assumed the exploratory risk of drilling and completing commercial wells in these two pools which will now be to the benefit of all parties;

(j) Penwell has no experience in this area;

(k) Penwell has devoted none of its geologic or engineering resources to exploring or developing either of these two pools;

Penwell contended at the Examiner hearing that it should be designated the operator because:

(a) a majority of the interest owners desire Penwell to operate even though Burlington will be paying more of the actual costs of this well than Penwell.

(b) Penwell is in agreement with all terms and conditions proposed by Burlington for this well, except that Penwell wants to be designated operator.

Penwell did not object at the Examiner hearing to Burlington's plan for the drilling, completing and operation of the subject well. In fact Penwell's proposal appears to be copied from Burlington's AFE and is virtually identical.

PENWELL LACKS STANDING IN THIS CASE AND ITS APPLICATION MUST BE DISMISSED

Burlington hereby moves the Oil Conservation Commission to dismiss the application of Penwell Energy, Inc. in Case 11622 and as grounds therefore states:

The Division **found that:**

"(8) For more than 17 months, Burlington has sought to drill and operate this well only to be frustrated by tactics that can be interpreted as actions taken by both Trainer and Prince to avoid being pooled and to delay this matter.

(9) It would only serve to circumvent the purposes of the New Mexico Oil and Gas Act to allow a record owner of a working interest (Trainer and Prince) in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing that interest."

The cutoff dates for notification of affected interest owners is necessary in this case and should be consistent with the precedent established by the Division by Order R-10672.

The cutoff dates for this case are the dates each adverse party was served with notice of Burlington's pooling application which was Trainer on August 30, 1996, Elizabeth Losee on August 30, 1996, Prince on September 3, 1996, Ann Losee on September 4, 1996.

The adoption of these cut off dates preclude these parties from transferring their property interest to Penwell/CoEnergy.

As of the cutoff dates established in this case, Trainer, Prince and the Losees **and not Penwell** were the owners pursuant to Section 70-2-17(C) NMSA (1978). Penwell's pooling application is nothing more than an attempt by Trainer/Prince to defeat Burlington's effort to be designated operate in this case. As of the cutoff dates established in this case, Penwell had no ownership interest and therefore no standing to file its compulsory pooling application on September 10, 1996. Accordingly, the Penwell application should be dismissed.

PROPOSED EVIDENCE

OPPOSITION PARTY:

WITNESSES	EST. TIME	EXHIBITS
Leslyn Swierc	30-45 Min	@ 8
Doug Seams petroleum engineer	30 Min	@ 5
Marcus Phomerson	30 Min.	@ 3

PROCEDURAL MATTERS

Motion to Dismiss Penwell's compulsory pooling application.

KELLAHIN AND KELLAHIN

By: _____

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