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February 15, 1958

New Mexico Oil Conservation Commission
State Capitol Building
Santa Fe, New Mexico

Re: Case No. 1327,
Order No. R-1092-A

Gentlemen:

Enclosed herewith please find in triplicate a request by The Atlantic Refining Company for a rehearing in the above case.

Very truly yours,

HERVEY, DOW & HINKLE

By



HCB:db
Enclosure

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING

Comes now The Atlantic Refining Company and requests a rehearing in the above case with respect to the matters hereinafter referred to which were determined by Order No. R-1092-A of the New Mexico Oil Conservation Commission in connection with the above styled case, and in support thereof respectfully shows:

I.

Applicant owns and operates oil and gas leases and gas wells within the Jalmat Gas Pool in Lea County, New Mexico. Applicant is affected by Order No. R-1092-A, which was entered by the Commission under date of January 29, 1958.

II.

Order No. R-1092-A contains two findings, Nos. 5 and 6, which are the basis upon which Finding No. 7 as to deliverability is made, and upon which said Order amends previous orders of the Commission to include a deliverability factor in the proration formula. Paragraph 2 of Order No. R-1092-A amends all orders previously issued by the Commission to provide for an "acreage factor" for allowable purposes. Paragraph 3 of Order No. R-1092-A provides that Order No. R-520 as amended by Order No. R-967 be revised effective July 1, 1958, to include a deliverability factor in the gas proration formula of the Jalmat Gas Pool. Said paragraph provides for the deliverability factor and sets forth how it shall be carried into effect.

III.

Applicant alleges that the Commission is without jurisdiction or authority, and is estopped in equity and justice to entertain the application of Texas Pacific Coal & Oil Company in regard to the above matters in Order No. R-1092-A, and that Texas Pacific Coal & Oil Company was estopped to apply for an amendment to the proration formula for the Jalmat Gas Pool, and that if the Commission does have jurisdiction and there was no estoppel, the said order, in regard to the above matters, is discriminatory, erroneous, illegal and invalid, and a rehearing is requested in respect to said matters. In support thereof, Applicant states:

1. The application of Texas Pacific Coal & Oil Company in case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool constituted a collateral attack upon Order No. 520 in Case No. 673 of this Commission, entered on the 12th day of August, 1954, and the Commission was without jurisdiction to entertain said application, and said application cannot be made the basis of a valid order in Case No. 1327 insofar as the changing of the basis for allocation of production from the Jalmat Gas Pool from a 100% acreage basis to include a deliverability factor in the proration formula.

2. Order No. R-520 entered by this Commission in Case No. 673 constituted a final decision that the proration formula for the Jalmat Gas Pool should be on a 100% acreage basis. No appeal was taken from the final decision of the Commission so ordered, and the Commission cannot now on the basis of the application and record in this cause enter a valid order changing the basis for the allocation of production from the Jalmat Gas Pool.

3. Texas Pacific Coal & Oil Company, the applicant in Case No. 1327, was a participant in Case No. 673, and in said case supported the inclusion of deliverability in the proration formula, which request was considered by the Commission and denied therein. No appeal was

taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered and said company is now estopped to request a change in the proration formula for the Jalmat Gas Pool. On the basis of the record in this case, the Commission is without authority to revise, modify or change Order No. R-520 to now provide that the proration formula for the Jalmat Gas Pool shall include a deliverability factor.

4. Order No. R-1092-A is invalid and discriminatory and deprives this applicant of its property without due process of law in violation of the 14th Amendment to the Constitution of the United States and in violation of Article II, Section 18 of the Constitution of the State of New Mexico in that this applicant has acted in reliance on Order No. R-520, and has performed drilling operations, recompletion operations, and has expended substantial sums of money on its properties in the Jalmat Gas Pool after the issuance of said Order, and it has vested property rights therein, which property rights will be impaired by the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool.

5. As a result of the aforesaid expenditures and the other actions by this applicant in good faith in reliance upon the existing proration rules in Order No. R-520, the Commission is, as a matter of equity and justice, estopped from amending said proration order to include a deliverability factor, which amendment would discriminate against this applicant.

6. Finding No. 5 in Order No. R-1092-A is:

"That the Applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in more equitable allocation of the gas production in said pool than under the present gas proration formula."

Applicant alleges that this finding is contrary to, and wholly without support in the evidence and is therefore erroneous and invalid. In

further support of the grounds here alleged, there is attached hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the 58 tracts which were the subject of testimony and exhibits presented by this applicant and other operators before the Commission on December 9, 1957, and the deliverability of the 58 gas wells located on said tracts. Said exhibit is based upon the testimony and the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, applicant will present further evidence in this regard but asserts that on the evidence heard by the Commission it is clearly shown that no such correlation exists, and that therefore the entire Finding No. 5 is erroneous and invalid.

7. Even though it is assumed that it has been proved as stated in Finding No. 5 that "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", said Finding provides no basis authorized by the statutes of New Mexico for modification of the formula prescribed by Order No. R-520 for the proration of gas produced from the Jalmat Gas Pool.

8. The Commission has used as a basis for its decision to include deliverability in the proration formula certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of said Order No. R-1092-A is:

"That the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool will result in the production of a greater percentage of the pool allowable, and that it will more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool."

Neither of said considerations provides any legal basis for the allocation of production among the gas wells in a gas pool.

9. Order No. R-1092-A will result in underground waste since many wells in the Jalmat Gas Pool are old wells and the condition of many of such wells is such that the action required of a prudent operator under Order No. R-1092-A will necessarily result in the underground waste of natural gas.

10. Order No. R-1092-A will result in economic waste in that it will require the expenditure of a large sum of money by this applicant to increase the deliverability of its gas wells in an effort to protect its correlative rights, although the ultimate recovery from the tracts owned by this applicant will not be appreciably increased thereby, and although efforts of operators to increase the deliverability of wells in the Jalmat Gas Pool cannot prevent the violation of correlative rights which will result from the inclusion of a deliverability factor in the proration formula.

11. Order No. R-1092-A is invalid in that the burden of proof was upon the applicant in this case, by a preponderance of the evidence, to show a valid reason on a ground authorized by the statutes of New Mexico for the inclusion of deliverability in the proration formula for the Jalmat Gas Pool, and the applicant did not sustain this burden of proof.

12. Order No. R-1092-A results in irreparable injury to the property rights of applicant and to its correlative rights in that it permits drainage from under tracts in the Jalmat Gas Pool owned by this applicant, which drainage is not equalized by counter drainage. This deprives applicant of its property without due process of law in violation of Amendment 14 to the Constitution of the United States and Article II, Section 18 of the Constitution of the State of New Mexico.

WHEREFORE, Applicant respectfully requests the Commission that a rehearing be granted in the above case as to those portions of Order No. R-1092-A which amend the previous orders of the Commission to provide for the inclusion of a deliverability factor in the allocation formula of the Jalmat Gas Pool subsequent to July 1, 1958, and that after rehearing the Commission rescind its order in the above respects, and retain the proration formula established by Order No. R-520.

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