

BEFORE THE
 NEW MEXICO OIL CONSERVATION COMMISSION
 MORGAN HALL, STATE LAND OFFICE BUILDING
 SANTA FE, NEW MEXICO
 Thursday, June 29, 1972

IN THE MATTER OF:

Motions on the Application of
 El Paso Natural Gas Company for
 amendment of the Rules and
 Regulations governing the
 Blanco-Mesaverde Gas Pool, San
 Juan and Rio Arriba Counties,
 New Mexico.

Case No. 4682

BEFORE: Governor Bruce King,
 Chairman

A. L. Porter, Jr.,
 Secretary-Director

TRANSCRIPT OF HEARING

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1 MR. PORTER: The meeting will come to order, please.
2 This meeting this morning is called in connection with Case
3 4682, which was first advertised to be heard on March 22nd and
4 was later continued by the Commission to July 19th. I believe
5 in the memorandum which accompanied our announcement of the
6 continuance of the case, we indicated that motions, some
7 motions, had been received at that time for intervention, and
8 that we expected others, and that these motions would be
9 allowed to be filed by June 1st of this year, and that a date
10 would be set for a hearing. These motions were set down for
11 June 27th and it was later necessary to change the June 27th
12 date to June 29th.

13 So the purpose of this meeting here this morning is
14 to hear these motions and arguments on the motions which we
15 have received.

16 We have a motion from the Southern Union Gas Company
17 in which we had a written response from El Paso Natural Gas
18 Company. We have had motions to intervene filed by the
19 Environmental Agency, the Public Service Commission, and the
20 Municipal League.

21 We are going to take the motions in this order: first,
22 Southern Union Gas Company; second, the Municipal League; and
23 third, the Environmental Agency; and fourth, the Public Service
24 Commission.

25 Of course, after the motions have been made and

1 argued, there will be an opportunity for response by any
2 party who desires to do so.

3 So at this time, the Commission will recognize
4 Governor Jack Campbell, who is representing Southern Union
5 Gas Company. Mr. Campbell.

6 MR. CAMPBELL: Thank you, Mr. Commissioner. I would
7 like to introduce Mr. Claude Bell of Southern Union Gas Company,
8 Dallas, Texas, who will appear in this case with me as
9 co-counsel. Let the record show that we are representing
10 Southern Union Production Company, Southern Union Gathering
11 Company, and Southern Union Gas Company.

12 It is the motion of Southern Union Gas Company to the
13 Commission to limit and define the evidence they will receive
14 at the hearing in this case. This motion was filed as the
15 result of El Paso Natural Gas Company's initial response to
16 a motion for continuance. That response made it clear that the
17 applicant intended to offer evidence relating to a whole range
18 of questions from production through the end use of the
19 production wherever that end use might take place, and whatever
20 it might be.

21 Southern Union Gas Company and Southern Union
22 Production Company and Southern Union Gathering Company feel
23 that to do this would go beyond the statutory jurisdiction of
24 the Oil Conservation Commission, which confines its authority
25 to matters relating to the prevention of waste and the protection

1 of correlative rights and the limited number of cases which
2 have been decided by the New Mexico Supreme Court thus far
3 rather clearly define those in terms of the production and the
4 gathering of oil or gas and not the purchasing, transportation,
5 or ultimate distribution or end use of that gas.

6 As I understand the response of El Paso Natural Gas
7 Company to our motion, they pretty largely concede that this
8 is the case, and that in the traditional and historical pattern,
9 any order this Commission issues in this case must be
10 predicated upon the prevention of waste or the protection of
11 correlative rights. The Courts have held that correlative
12 rights must in some reasonable manner be linked with the
13 prevention of waste in order to avoid the Commission assuming
14 a judicial role rather than an administrative one.

15 Thus, it appears that El Paso Natural Gas Company,
16 as I read their response, really stretches the proposition in
17 the Continental Oil Company case or cases that, barring some
18 intervention or something new, that that would be the situation
19 and whatever order is issued is to be based upon the statutory
20 authority of this Commission.

21 We would say if that is the case then that that would
22 only serve to raise a serious question to the validity of the
23 order whatever the findings might be, because it would be very
24 difficult for this Commission to separate the elements over
25 which it has clear statutory authority and those which it might

1 be well to hear just for the purpose of hearing them.

2 El Paso Natural Gas Company's most recent response
3 to our motion has injected a new ingredient into the matter,
4 and that is that the statute which was recently passed
5 establishing an environmental quality council and giving it
6 certain responsibilities for the administration of what I
7 suppose we might well recognize as the Environmental Policy
8 Act, and this has in fact made it necessary for the Commission
9 in this hearing to open the matter up for a complete review
10 of all environmental considerations as this Commission and
11 El Paso Natural Gas Company must know covers a range that is
12 awesome and endless.

13 The position of Southern Union Gas Company is that
14 it sticks by its original position that the statutory authority
15 of this Commission is in fact limited by the statute which
16 created and established its authority. If in fact the statute
17 referred to in the response of El Paso Natural Gas Company is
18 a valid statute, and if it is an operational dispute, the fact
19 there have been no rules or regulations issued, or guidelines
20 for direction under which this Commission can determine whether
21 this act is applicable. If it is applicable, even though the
22 language failed to appropriate money for its administration
23 commencing the day after tomorrow or the next day, that is a
24 separate matter. There is nothing in the statute that requires
25 any hearing whatsoever, and it certainly does not say anything

1 concerning a hearing having to be held, and it doesn't say
2 it is necessary to inject this confusing element into a hearing
3 before the Commission.

4 Therefore, we see no reason why in this proceeding
5 we should not be granted our motion insofar as a hearing on
6 this application is concerned.

7 If the Commission concludes they want to go through
8 the process of an environmental study, I suppose even if they
9 wanted to call a hearing on that matter, I expect they could
10 do so if they wish to accept the jurisdiction that this
11 statute sort of indirectly is alleged to have given them.

12 Thus, Mr. Chairman, it appears that, and Mr. Morris
13 may correct me, it appears to all intents and purposes that we
14 are in agreement up to a point on this matter, and that point
15 is the impact of the statute, that he refers to in his response,
16 the impact of the Environmental Policy Act upon a hearing of
17 this nature before an administrative agency of the State of
18 New Mexico.

19 We have a written brief prepared which we will be
20 happy to give to the Commission or to circulate, if Mr. Morris
21 is generally in concurrence with our basic proposition, that
22 may not be necessary.

23 MR. PORTER: Suppose we hear Mr. Morris' response to
24 your arguments, and we will make a determination at that time
25 as to whether the brief will be needed.

1 MR. MORRIS: Mr. Porter, members of the Commission:
2 first I would like to introduce the other members of my firm
3 and the attorneys for El Paso Natural Gas Company who are here
4 today. I suppose first I should formally enter my appearance.
5 Montgomery, Federici, Andrews, Hannahs and Morris of Santa Fe,
6 New Mexico, appearing on behalf of El Paso Natural Gas Company,
7 and I am Richard S. Morris. John Pound of our firm is also
8 here with me today, John, would you stand up? From the offices
9 of the General Council of El Paso Natural Gas, we have present
10 David T. Burleson; Mr. William Wise; and Mr. J. C. Considine.

11 Frankly, we would like to be in a position to agree
12 completely with Southern Union Gas Company on this motion, and
13 I would imagine the Commission would like to be in a position
14 of agreeing with it also.

15 The departures that are thrust upon this Commission
16 by virtue of the Environmental Policy Act represent quite a
17 change in the issues that have been presented to this Commission
18 and represent matters that those of us who practice before
19 this Commission are frankly not used to dealing with. But as
20 is so often the case, we have to adopt ourselves to new laws,
21 new policies, new requirements that are found to be necessary
22 in the public interest.

23 We are not arguing with the policy statements that
24 have been made by our New Mexico Legislature when they adopted
25 this act where they placed great importance on environmental

1 considerations in the State of New Mexico and required all
2 state agencies to make a detailed environmental impact
3 statement whenever major State action of significance affecting
4 the quality of the human environment was involved.

5 I think that this Commission, as well as all other
6 State agencies, are going to be required to consider their
7 actions to determine what constitutes a major State action
8 and if they find a major State action, they will need to
9 comply with this law. I would like to come back and say a
10 little bit more about that later.

11 The first thing I would like to address myself to,
12 however, is the issue, the more traditional proration issue
13 that is involved in this matter. Governor Campbell has very
14 accurately pointed out, both in his motion and in his argument
15 here to the Commission today, that the Continental Oil Company
16 case specifically comments upon the type of evidence that
17 this Commission could consider. The type of evidence that it
18 can consider, the type of findings that it has to make, and
19 also the permissible limits of evidence that should be
20 considered involving proration, spacing, and allowables.

21 In that case, the Oil Conservation Commission made
22 an order that included the finding that inclusion of the
23 deliverability factor in a proration formula for the Jalmat
24 Gas Pool will result in the production of a greater percentage
25 of the pool allowable, and that it will more nearly enable

1 the gas purchasers in the Jalmat Gas Pool to meet the market
2 demand for gas from said pool.

3 Now, in connection with that finding, the Supreme
4 Court of the State did not say that this Commission could not
5 consider evidence relating to the purchaser market demand,
6 what it did say was that-- well, let me read what it said:
7 "In considering finding number six--". That is the finding
8 I just read-- "the record of the Commission furnishes us
9 nothing upon which to base an assumption that the finding
10 relates to the prevention of waste or to the protection of
11 correlative rights....". Let me digress right there, there
12 is nothing in the record of the Commission that linked the
13 purchasers' market demand to the prevention of waste or the
14 protection of correlative rights. I continue: "We find no
15 statutory authority vested in the Commission to require the
16 production of a greater percentage of the allowable to see to
17 it that the gas purchasers can more nearly meet the market
18 demand unless such results stem from or are made necessary by
19 the prevention of waste or the protection of correlative rights."

20 As we stated in our response to Southern Union Gas
21 Company's motion, that does not dictate to the Commission what
22 issues it is limited to considering.

23 The defect of Southern Union Gas Company's motion
24 is that it asks this Commission to prejudge the case, and it
25 asks this Commission to say that the evidence that would be

1 presented by El Paso Natural Gas relating to the market
2 requirements, the demands and needs of the consumers, are not
3 related to the prevention of waste and the protection of
4 correlative rights. We submit this is not so. We would
5 intend to present to this Commission evidence relating to the
6 energy crisis; we would present to this Commission evidence
7 that would show what the market conditions have been in the
8 San Juan Basin and the Blanco-Mesaverde Pool in particular
9 over the past several years. What they are now and what the
10 present projection is for them.

11 I think it would be foolhardy for the Commission
12 to consider granting the application in this case unless it
13 knew that the market demand existed for the additional gas,
14 and if the availability that will be generated by the granting
15 of the application will result in physical waste or will result
16 in economic waste. In leaving the Continental case, I simply
17 suggest to the Commission that nothing in the Continental case
18 precludes this Commission from considering market demand
19 requirements and the needs of the consumers. Purchasers'
20 market demands were the only requirements of the Continental
21 case, and those matters must be related to the prevention of
22 waste and the protection of correlative rights.

23 I think it is also significant to look at the
24 definition of the term "waste" as is contained in the Conservation
25 Statute that this Commission operates under. The statutory

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1 definition of waste begins with the phrase, "In addition to
2 its ordinary meaning, shall include:", and there are various
3 factors listed here. When we get over to paragraph E, it
4 says: "The production in this state of natural gas from any
5 gas well or wells, or from any gas pool, in excess of the
6 reasonable market demand from such source for natural gas of
7 the type produced, or in excess of the capacity of gas
8 transportation facilities for such type of natural gas."
9 The statute continues: "The words 'reasonable market demand',
10 as used herein with respect to natural gas, shall be construed
11 to mean the demand for natural gas for reasonable current
12 requirements, for current consumption and for use within or
13 outside the state....". Then the definition goes on from
14 there.

15 It may be significant to this Commission that the
16 preface to that definition of waste specifically says, "In
17 addition to its ordinary meaning, the determination of waste
18 will be defined by statute as follows:.....". Now, the term
19 "waste", I would suggest may have different meanings depending
20 upon-- may have different meanings in the petroleum industry
21 and the natural gas industry in relation to the market conditions.
22 The energy crisis that we find ourselves in, I think this was
23 recognized very recently by the Interstate Oil Commission
24 where it adopted a regulation which specifically recognized
25 that waste may occur not only from the actions of the producers

1 themselves, but it may result from action or inaction of
2 state regulatory bodies or action or inaction of federal
3 regulatory bodies which would include the Federal Power
4 Commission.

5 These current definitions of waste that have been
6 adopted, in view of our national energy crisis, should be
7 kept in mind by this Commission when you consider the statutory
8 definition which says, in addition to waste in its ordinary
9 sense, waste will also include the various other factors of
10 market demand and proration.

11 As part of our evidence that El Paso Natural Gas
12 Company would present to this Commission, we had intended to
13 present a detailed offering relating to the various curtailment
14 plans that have been presented to the Federal Power Commission
15 and that have been considered and that are so problematical
16 in this State. There has never been a formal public hearing
17 where this matter could be laid out in the State of New
18 Mexico for full consideration by everyone concerned. We feel
19 this is absolutely necessary for a full and adequate understanding
20 of this plan by everyone concerned. Since developing our plans
21 for presenting this evidence to this Commission, we have been
22 notified by the Governor's Energy Task Force that it desires
23 to hold such a hearing and such a hearing has been scheduled
24 for next week, Thursday afternoon, as I understand it, at
25 two p.m. This may alleviate the necessity for bringing these

1 matters before this Commission as part of this case, however,
2 I am sure that even if we have a full-blown hearing in another
3 forum, we still need to present to this Commission some
4 evidence relating to the curtailment of natural gas in the
5 State of New Mexico and in the Western States in order to give
6 this Commission the full picture of what the market demand
7 situation is and is projected to be throughout the Western
8 United States including New Mexico. We cannot look at the
9 market situation in New Mexico without considering it in
10 relationship to the other portions of this nation that are
11 supplied, at least in part, by gas from New Mexico.

12 There are many matters relating to physical and
13 economic waste that we will present to the Commission, all of
14 which relate to the broad question of market demand and our
15 national energy picture. We believe that this Commission
16 should receive this evidence and should consider it to whatever
17 extent it relates to the prevention and waste and the protection
18 of correlative rights and to whatever it relates to concerning
19 the environmental considerations that this Commission is
20 required to make in this type of hearing.

21 I find myself, therefore, in disagreement with
22 Governor Campbell and his motion where he suggests that this
23 Commission should at this point limit the types of evidence
24 and the issues to be considered in this case. I don't see how
25 the Commission can enter an order saying it will not receive

1 or consider evidence when, as we suggested, that evidence,
2 even though it is far reaching, can be related to the prevention
3 of waste and the protection of correlative rights, and even
4 to the environmental issues that are involved here.

5 Coming back for a moment to the New Mexico laws
6 relating to environmental policy, it is true that there is
7 nothing that requires that a hearing be held. However, the
8 Council on Environmental Quality has suggested, even though
9 it has not formally recommended guidelines, it has proposed
10 guidelines which it has offered for discussion that would
11 suggest that a hearing procedure should be followed. Certainly
12 under federal practices, a hearing procedure has been required.
13 I believe the leading case is the Calvert Cliffs Case in the
14 Second Circuit and the affect of that case is to require a
15 public forum and require a hearing type procedure for the
16 presentation of this type of evidence. Whether that is true
17 or not is somewhat beside the point, and the Commission is
18 required to make this type of determination in a case that
19 requires a hearing-- that otherwise requires a hearing.

20 I think it is only fair to the parties involved that
21 these issues be brought out, in fact be testified to on the
22 record and be subject to cross examination and be subject to
23 full discussion and debate. After that occurs, it is possible
24 that the Commission could determine this is not a major action
25 requiring an environmental statement, or it could make the

1 finding that an environmental statement is required and this
2 Commission could make one based upon the evidence presented
3 in the case.

4 We would respectfully request that the Commission
5 deny Southern Union Gas Company's motion. This, of course,
6 does not reflect on the Commission's determination one way
7 or the other upon the merits of this case, but simply allows
8 all interested parties to present the evidence that relates
9 to the issues in this case and thus make this a full and fair
10 and complete hearing.

11 With that, I conclude. Thank you.

12 MR. PORTER: Mr. Morris, are you taking the
13 position that the environmental issue should be considered
14 in determining whether one well or two wells should be allowed
15 on a 320-acre unit in the Blanco-Mesaverde Gas Pool or whether
16 you should have to add deliverability over any of the other
17 issues here raised in your application?

18 MR. MORRIS: Mr. Porter, we believe that the
19 environmental issue can be grouped severally as follows: there
20 is the issue of the physical impact of the application. If the
21 application is granted, it would permit the drilling of
22 approximately two thousand additional wells in the Blanco-
23 Mesaverde Gas Pool. Obviously, this is a physical impact.
24 Of course, it is also obvious that drilling would occur and
25 pipe line and other related equipment would be installed in

1 an area that is already heavily impacted with gas wells and
2 production equipment. We believe that the physical
3 environmental impact of this may well be determined to be
4 negligible, however, this is a consideration that must be
5 made by the Commission. So the physical impact of the
6 application is one consideration. We believe there is an
7 environmental consideration beyond that, however, going
8 beyond that to the matters of gas supply, gas availability,
9 and the availability of gas as a clean fuel for this State
10 and for our consumers also in other states.

11 MR. PORTER: Are you suggesting we should consider
12 the environment in California or some other final destination
13 point?

14 MR. MORRIS: Only insofar, Mr. Porter, as it relates
15 to the total market that is being supplied by this gas. I
16 think it is obvious, and everyone has read in the newspaper,
17 that a great deal of this gas is going to California. However,
18 it is also obvious that this gas from this field will be
19 supplied to El Paso Natural Gas Company's entire system and
20 may make gas that is coming into New Mexico from Texas more
21 available in the State of New Mexico. These are interrelations
22 that I don't want you to accept my word for, but we want to
23 show by evidence because we think that this will have an
24 environmental impact upon the State of New Mexico and should
25 be considered by this Commission.

1 MR. PORTER: Do you think any of this could be
2 related to waste or correlative rights?

3 MR. MORRIS: Yes, sir. I think the concept of
4 waste must be considered very broadly these days by State
5 Conservation Agencies throughout the country and the concept
6 of waste has to be viewed in view of current conditions and
7 not conditions that existed at the time when there was an
8 overabundant supply, because this is simply not true today.

9 MR. PORTER: Do you think this application could
10 be denied or granted on the basis of the impact it might have
11 on the environment? Does the Commission have that authority?

12 MR. MORRIS: Technically, no. I think the
13 requirements, both of the National Environmental Policy Act
14 and the State Act, which is closely patterned on the National
15 Act, simply requires this Commission to consider these matters
16 in making its determination. Both the National Act, and I'm
17 assuming the State Act, of course, we have no decision on the
18 State Act, but the National Act is a procedural act which
19 requires the agencies to look at environmental issues and be
20 cognizant of them, but does not require or set standards for
21 agencies to then act on the substance of the matter before
22 them and grant or deny on environmental grounds. I feel this
23 is, however, an area that is still developing in the law, and
24 frankly, it would not surprise me if we have a decision sooner
25 or later that says that the law requires you to consider

1 these matters rather than merely mentioning you should be
2 thinking of them at the time you make your decisions.

3 MR. PORTER: Is it your feeling that whatever order
4 is issued should discuss the environmental factors?

5 MR. MORRIS: I think that the order could be phrased
6 in several ways. The order could contain a section relating
7 to environmental matters or the order could simply refer to
8 the environmental report that the Commission would make as
9 a part of its determination in the case. I think one way or
10 the other, once the Commission determines if this is a major
11 State action significantly affecting the environment, then it
12 has to make a detailed report considering all the factors
13 set forth in the statute. Whether it does in the order or in
14 a separate document is simply a matter of form.

15 MR. PORTER: But in the event that we did have a
16 discussion of the findings in the order, you still do not
17 feel that we could either deny or grant the request of the
18 applicant here based on environmental factors?

19 MR. MORRIS: I think that is correct. I would have
20 to say that it would be my opinion based upon current case
21 development in this area.

22 MR. PORTER: Would you have taken this same position,
23 Mr. Morris, as to the issues of curtailment and gas supply?

24 MR. MORRIS: We believe the issues relating to
25 curtailment and gas supply relate to the environmental issue.

1 MR. PORTER: And you think also you could relate
2 those issues to correlative rights and the prevention of
3 waste?

4 MR. MORRIS: Yes, sir, particularly the presence
5 of waste.

6 MR. PORTER: Thank you.
7 Governor Campbell?

8 MR. CAMPBELL: Mr. Chairman, a couple of general
9 observations. First, I don't think anyone is more painfully
10 aware of the energy crisis than the members of this Commission
11 or Southern Union Gas Company. Certainly insofar as those
12 involved in the energy field are concerned, there has been
13 an awareness of this to some degree for some time. If this
14 Commission is to become a forum in some fashion for a
15 discussion of the national requirements for natural gas and
16 other energy fuels, which I assume could be brought into the
17 picture at such a hearing, I would personally rather enjoy
18 the experience provided I could get my client to support me
19 for the length of time I suspect it would take. That is
20 really the question here. Is this the proper forum? Is this
21 hearing the place for this to be done based upon this
22 application that is in question?

23 As to the question of whether an environmental
24 impact statement is required under this new act or how the
25 Commission wishes to go about developing an environmental

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1 impact statement seems to me to be a separate issue. We are
2 not asking the Commission to rejudge in this matter, we want
3 to know what the rules are and whether we are going to be
4 confronted with massive evidence that involves the requirements
5 of El Paso Natural Gas' entire system, which I assume is
6 interrelated with other distribution centers. If this is
7 going to be the case, we need to know about it if we are to
8 be well prepared to present what we can insofar as Southern
9 Union Gas Company's energy requirements for the future for
10 its market. If this in fact is the proper place, in keeping
11 with the excellent record of this Commission in terms of
12 appeals overruling their orders, this may be subject to
13 serious question and the Commission may be quite vulnerable
14 if they embark on this without careful consideration of the
15 proposition that somewhere down the road the Courts may hold
16 that these matters are appropriate and that the authority
17 of this Commission has been enlarged somehow by this act.

18 I am very aware of the Calvert Cliffs Case, and I
19 regret very much it wasn't appealed, frankly, but there have
20 been other cases since that time. I don't want to style my
21 client as one opposed to considering environmental questions,
22 because we are not. We want to have the case decided on the
23 grounds that the Commission has authority to decide it, and
24 we don't believe it ought to be confused by a lot of evidence
25 on which it could not base a finding in the final analysis.

1 It is true that if El Paso Natural Gas Company is able
2 somehow to tie some of this evidence to the prevention of
3 waste and protection of correlative rights, it will be
4 admissible. We are not asking the Commission to say they
5 cannot introduce such evidence in those circumstances when
6 it becomes a question of the prevention of physical waste
7 and the protection of correlative rights, but there is a lot
8 of this, and at this point in time which we can not see having
9 the remotest possibility of being tied in.

10 If you are trying to link the definition of physical
11 waste to the authority of this Commission to prorate gas based
12 upon production, you are striking at the very roots of the
13 authority of this Commission to prorate gas in the first place.
14 It seems to me that that is another road that this Commission
15 should be very careful to avoid unless it is absolutely
16 imperative.

17 And so it seems, Mr. Chairman and members of the
18 Commission, that we are generally in accord here. I think
19 they want to present all this at this hearing, and if that
20 is what the Commission wants and feels it must do, we want
21 to be prepared, we want to know about it before we get here.
22 El Paso Natural Gas Company has presented this same evidence
23 to the Federal Power Commission for years and years, and I
24 guess they are ready. We need to get ready if that is the
25 ruling. We are prepared to do it and I am sure there are

1 other people in New Mexico also prepared to do it. Therefore,
2 Mr. Chairman, while we think the Commission would be in the
3 safest legal position to confine itself to what is clearly
4 authorized in the statute, if they wish to go beyond that,
5 we respectfully request that they give us the signal and we
6 will be prepared.

7 MR. PORTER: Anyone else? Would anyone else present
8 like to respond to either the motion or to counsel for El Paso
9 Natural Gas Company's response to any of the questions?

10 MR. FRASER: The Environmental Improvement Agency
11 wishes to respond.

12 MR. PORTER: At this time, are you responding to
13 Southern Union Gas Company's motion?

14 MR. FRASER: Yes.

15 MR. PORTER: Would you state your name for the record?

16 MR. FRASER: Douglas Fraser, and I am attorney for
17 the Environmental Improvement Agency. I hand you, Mr. Chairman,
18 three copies of a motion limiting the evidence to waste and
19 correlative rights. I just have a few brief comments, and I
20 would also like to introduce Mr. David McArthur, who is also
21 appearing on behalf of the Environmental Improvement Agency.

22 Mr. Chairman, we, of course, concur with both Southern
23 Union Gas Company's position and El Paso Natural Gas Company's
24 position that the primary responsibility of this Commission,
25 by statute, is to consider waste and correlative rights. This

1 is not to say however, that new factors have not entered
2 into the picture at this time. We have now passed in 1971
3 the Environmental Policy Act for the State of New Mexico
4 contained in Section 12:20-6. In particular, I am talking
5 in terms of considering alternatives to the proposed action.
6 We are involved in a State action that may have a major or
7 substantial affect on the environment of New Mexico. Now,
8 the subject of whether this Commission has jurisdiction in
9 considering environmental issues is not really germane. You
10 certainly do not have jurisdiction to issue regulations on
11 the environment and I concede that that is what the act says.

12 However, in the spirit that it has been interpreted by
13 the Courts and other agencies dealing with the federal act,
14 I believe what you might come out with in this State is that
15 you are not limiting yourselves to the issues that you
16 normally consider, the legal term is jurisdiction.

17 You are to consider not only subjects that you normally
18 considered under waste and correlative rights, but also a
19 new consideration that would deal with the environmental
20 impact of these proposed changes. Your consideration of
21 these in light of what your final decision will be is not a
22 problem of jurisdiction, it is one of expanding one's
23 development and one's study of problems.

24 Clearly, if there is a conflict between the statute
25 you are under and the new statute which applies to all State

1 agencies, then you would not be bound to follow it, but there
2 is no conflict here at all. All the New Mexico Environmental
3 Policy Act says is that you will consider these things, it
4 says nothing about expanding your jurisdiction.

5 So, it is our position, as stated in our response,
6 that you must make a determination within 12:20-6 as to
7 whether an environmental impact statement is required that
8 includes a determination as to whether this is a major State
9 action which may significantly affect the quality of the
10 human environment.

11 So far as Southern Union Gas Company's motion which
12 would limit the evidence presented here so you could not make
13 such a determination, that motion should be denied.

14 Finally, one observation. I think I am a bit
15 disturbed by Southern Union Gas Company's general plea here
16 that evidence dealing with the environment will burden this
17 Commission. So indeed it will, but it must. This is 1972,
18 this is not 1965, the whole tenure has changed. If there
19 is to be any significant affect on the environment, any
20 State organization or agency has a duty now to consider
21 environmental factors. This is the whole thrust of the
22 national Environmental Policy Act, and there are innumerable
23 cases from the Federal Courts concerning the Environmental
24 Policy Act. I think it is incumbent upon this Commission
25 at this time in the development of law and the administrative

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1 procedures to consider environmental issues. Thank you.

2 MR. HATCH: Mr. Fraser, I might suggest that we are
3 going backwards here. We have allowed you to proceed before
4 hearing your arguments for intervention. So I suggest that
5 perhaps you ought to go ahead and establish your right to
6 intervene before stating the position of the Environmental
7 Improvement Agency.

8 MR. FRASER: I was proceeding because the question
9 was asked if any other person wanted to speak.

10 MR. MORRIS: If it will expedite the procedure, I
11 might say that El Paso has no objection and intends to offer
12 no objection to the motion of the Environmental Improvement
13 Agency, the Public Service Commission, or the Municipal League.

14 MR. CAMPBELL: Mr. Chairman, I would like to ask
15 your leave to correct the impression that Mr. Fraser must have
16 obtained either because I didn't make myself clear or because
17 he didn't understand me. I don't want Southern Union Gas
18 Company to be cast in the role of the "black hat", which seems
19 to be the process we are engaged in now in our society today,
20 "black hats" and "white hats". I tried to make it clear that
21 if this statute that is being referred to as the Environmental
22 Quality Act is applicable, it can be applicable and can be
23 complied with by the Commission responding in a variety of
24 ways that do not necessarily require all of this to be
25 introduced in this particular case. As I said, I am prepared

1 to assume for my client our share of the burden, and I am
2 sure the Commission has its questions, since this is the
3 first major situation of this kind in the State. I just
4 suspect that we ought to all be cautious and careful of how
5 we proceed in order to avoid more than confusion, but utter
6 chaos in my judgment.

7 MR. FRASER: I apologize if you can infer that I
8 was casting Southern Union Gas Company in the role of "black
9 hat". We all like our mythology, but I was not attempting
10 to do that. All I was attempting to do is to say at this time
11 in 1972, environmental issues really must be considered by
12 any State agency taking an action that might have a severe
13 affect on the environment of this State.

14 MR. HATCH: If the Commission please, I would like
15 to ask Mr. Fraser a few questions that I think should appear
16 in the record.

17 Is the Environmental Improvement Agency prepared to
18 intervene?

19 MR. FRASER: Yes.

20 MR. HATCH: Does the Environmental Improvement
21 Agency own any property in the Blanco-Mesaverded Gas Pool?

22 MR. FRASER: No.

23 MR. HATCH: Are you seeking-- is the Environmental
24 Improvement Agency seeking more gas from the pool?

25 MR. FRASER: No.

1 MR. HATCH: Is the Environmental Improvement Agency
2 seeking less gas from the pool?

3 MR. FRASER: We are not seeking any particular
4 quantity of gas from any pools in the State.

5 MR. HATCH: Is it your contention that the Environmental
6 Improvement Agency could come before this Commission in a
7 separate case and ask the Commission to adopt any particular
8 spacing pattern in the pool?

9 MR. FRASER: No. Maybe I should explain our role
10 here. If the Commission decides, as I think it is duty-bound
11 to, to consider environmental issues, we will present the
12 type of evidence which we feel that is germane to that issue,
13 the environmental impact in the State. That's why we are
14 here, to help the Commission and to expose this type of
15 information to the public view. We have no interest but the
16 environment of the State of New Mexico.

17 MR. HATCH: I do have some other questions that I
18 wish to ask, and you can take all the time you wish in
19 explaining your answers. I think there are some things that
20 should appear in the record in case some further action is
21 taken.

22 Is it your contention that although the Environmental
23 Improvement Agency does not have property rights in the pool,
24 that the public has a vital interest in the proper spacing
25 of the wells in the pool and should be represented in this case?

1 MR. FRASER: We are representing the public
2 insofar as this will affect the human environment, and in
3 that regard we will present evidence.

4 MR. HATCH: Do you think the affect upon the human
5 environment will go to the spacing of wells?

6 MR. FRASER: It might, yes.

7 MR. HATCH: Is it your contention that because you
8 represent a State agency, or that you are a State agency, that
9 you have a right to intervene?

10 MR. FRASER: It has a right to present the type of
11 evidence which is needed for full public disclosure of the
12 effects this might have on the human environment in the State
13 of New Mexico.

14 MR. HATCH: Is that because it is a State agency or
15 could any individual have the same right?

16 MR. FRASER: Any individual could have the same right.
17 I might suggest that we might have the type of expertise that
18 would be useful in developing the issues on the human
19 environment.

20 MR. HATCH: What would the Environmental Improvement
21 Agency, or the public, gain or lose by the action of the
22 Commission?

23 MR. FRASER: Well, if we are talking about whether
24 the Commission will consider environmental issues and if they
25 decide to do that, then we will lose nothing. If they decide

1 not to hear the environmental issues, we would lose-- they
2 would lose the type of evidence we will be able to present.
3 The issue here is whether the Commission-- whether it is
4 incumbent upon the Commission to consider environmental issues.
5 If they do that, we are here to present the type of evidence
6 germane to that type of evidence.

7 MR. HATCH: We are discussing your motion to
8 intervene, so I asked the question and I don't think you have
9 answered it, or perhaps you have. What will the Environmental
10 Improvement Agency, or the public, gain or lose by this
11 decision? I think that an individual coming before the
12 Commission wishing to take part in a hearing must show how
13 he is going to be affected by the possible decision.

14 MR. FRASER: Which decision?

15 MR. HATCH: The decision to deny or approve the
16 application. I am trying to find out the interest that is
17 going to be affected.

18 MR. FRASER: I'm sorry, Mr. Hatch, I apologize. I'm
19 still not clear as to whether you are talking about the motion
20 or our intervention.

21 MR. PORTER: I believe Mr. Hatch is concerned about
22 the affect it would have if the Commission granted permission
23 to drill additional wells or denied the application to drill
24 these additional wells.

25 MR. HATCH: What gain or loss would the Environmental

1 Improvement Agency sustain, or what gain or loss would the
2 public sustain by the denial or granting of this application?

3 MR. FRASER: What the public will gain or lose is
4 the evidence that we would present, the exposure. The
5 spirit of our Environmental Policy Act is for public
6 disclosure of this type of thing so the decision makers can
7 make analyses as to economic benefits and judgments along
8 with environmental benefits and detriments. What is lost
9 is the type of evidence that we would present and the
10 consideration of these issues.

11 MR. HATCH: Would the Environmental Improvement
12 Agency be bound in any way by the decision made by the
13 Commission in allowing the application or denying the
14 application?

15 MR. FRASER: We have no jurisdiction over the matter,
16 if that is what you are talking about. We will not be bound
17 necessarily by the decision, but I don't really know what you
18 have reference to when you speak in terms of "bound". Of
19 course, we will say that El Paso's producers will be bound
20 as to the number of wells they could have or not have,
21 according to the Commission's decision on the proration of
22 units. We will certainly abide by the decision of the
23 Commission.

24 MR. HATCH: There is no way for you to be bound by
25 any decision.

1 MR. FRASER: That is correct.

2 MR. HATCH: Do you foresee that the Commission's
3 decision in this case will in any way encroach upon the
4 authority of the agency you are representing?

5 MR. FRASER: No, as long as the regulations-- our
6 regulations are met in dealing with the environmental issues,
7 I see no problem.

8 MR. HATCH: Do you foresee that any rule or
9 regulation of your agency will be subject to interpretation
10 at this hearing?

11 MR. FRASER: I don't really have any comment on
12 that, I don't know.

13 MR. HATCH: Is it your contention that if the
14 Commission should find waste occurring in the approval and
15 correlative rights being affected with approval that it could
16 deny the application because the approval might result in
17 less gas being available to the people to the State of New
18 Mexico?

19 MR. FRASER: Mr. Hatch, these questions are
20 legitimate, but I feel I am being put in an unfair position.
21 Could I respond in writing to these questions? I really
22 don't know the legal ramifications of questions like these,
23 and I hesitate to answer at this time. I think I have made
24 my position fairly clear, we are here to present the type of
25 evidence-- if the Commission feels it is germane, we will

1 present that evidence, and that's the only reason we are
2 here.

3 MR. HATCH: I will pass the series of questions.
4 I have one other question I would like to ask, and I am not
5 going to force any answer here.

6 Does the Environmental Improvement Agency have the
7 authority to prohibit the use of certain interior fuels if
8 the use of such has an adverse affect upon the environment?

9 MR. FRASER: They have the authority right now to
10 regulate the amount of emissions that come from the use of
11 any fuel.

12 MR. HATCH: Would you have the authority, do you
13 think, to pass such regulations prohibiting the use of
14 interior fuel if it has an adverse affect on the environment?

15 MR. FRASER: I don't believe so at this time,
16 although I am not sure. Again, I didn't expect to be put
17 under cross examination this morning.

18 MR. HATCH: I thought that I did indicate there
19 would be questions going to establish the right to intervene?

20 MR. FRASER: No.

21 MR. HATCH: I'm sorry.

22 MR. PORTER: I have another question or two, if you
23 don't mind. If you don't know the answer, say you don't know.

24 MR. FRASER: It is not that I do not know, I would
25 need time to consider the very tricky legal questions.

1 MR. PORTER: I realize that, and I will just ask
2 a simple question. Do you think the Commission can either
3 grant or deny the application to drill more wells here on
4 environmental issues? Our statute says that we must consider
5 certain things.

6 MR. FRASER: I think I would agree with El Paso
7 Natural Gas Company's position that as of now, the Courts
8 have interpreted the national Environmental Policy-- the
9 Federal Courts have interpreted it as dealing with procedural
10 requirements.

11 MR. PORTER: You do claim that you should be
12 allowed to intervene and if you are allowed, you will put on
13 testimony by expert witnesses?

14 MR. FRASER: Yes.

15 MR. PORTER: Is your major concern with the
16 environment in the physical area involved here, the horizontal
17 limits of this pool, or are you concerned with the affect
18 it might have on the whole State of New Mexico, or the State
19 of California?

20 MR. FRASER: I think primarily our concern is the
21 State of New Mexico. We are concerned about the affect that
22 this might have in the long run, but our immediate concern
23 is the affect it might have on the environment of the State
24 of New Mexico and the fact that this reservoir might be used
25 up quicker.

1 GOVERNOR KING: In other words, you are not
2 primarily concerned with the California aspect of the
3 environment?

4 MR. FRASER: That's right, sir.

5 MR. PORTER: Thank you.

6 MR. HATCH: I think Mr. Fraser indicated that he
7 would like to have these questions and respond to them in
8 writing, and I certainly have no objection to that, and I
9 think he should be allowed to do that.

10 MR. FRASER: We would appreciate that if you feel
11 it would be in order.

12 MR. PORTER: Well, I am kind of mentally calculating
13 the time here as to whether you think, Mr. Hatch, that those
14 questions should be responded to in order for us to determine
15 an answer as to whether we will rule on these motions today.

16 MR. MATCH: You don't have much time. I think all
17 the people interested would like to know as soon as possible
18 the various rulings. I think you do have a little bit more
19 leeway than just today. Mr. Fraser more than probably could
20 answer these by tomorrow; don't you think so?

21 MR. FRASER: In written form? No, I think I would
22 need a little more time.

23 MR. HATCH: I think you have answered most of them,
24 unless you want to change your answers.

25 MR. FRASER: Well, I think I could have them in some

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1 time next week.

2 MR. MORRIS: I don't want to muddy the waters right
3 now, but it might be some time, and I had assumed that this
4 hearing today would also be considering the motion that is
5 still pending by Aztec Oil and Gas Company to continue this
6 case because of the environmental considerations in this case,
7 and our decision to prepare environmental testimony to
8 present to this Commission. We are prepared to agree to Aztec
9 Oil and Gas Company's motion that this matter be continued
10 beyond the July 19th hearing date. We are going to suggest
11 another date somewhat different than the Aztec motion suggested.
12 We are going to suggest, subject to the availability of the
13 Commission, some time during the week of August 28th, at which
14 time our principal environmental witness would be available
15 to us. I make this statement insofar as it might have some
16 affect upon the determination you are making here now with
17 respect to how much time you are going to allow Mr. Fraser to
18 respond to some of these questions.

19 MR. PORTER: I haven't had a formal request for
20 continuance beyond July 19th.

21 MR. MORRIS: Aztec's motion was for the matter to
22 be continued into September.

23 MR. PORTER: They did have a motion that it be
24 continued to some fixed date or some period of time after the
25 Federal Power Commission saw fit to act on the application

1 now pending before them. We have set a date of July 19th,
2 and it would be my opinion that it would require a new motion
3 for a continuance beyond that time. Other members of the
4 Commission might have a different idea.

5 MR. MORRIS: If I am not out of line, let me say
6 we would like to present such a motion either now or later
7 that this case be continued to the week of August 28th. We
8 feel we are justified and are required to make this motion
9 in view of the additional matters upon which we feel we
10 should and need to present evidence in this case.

11 MR. CAMPBELL: If you want some sort of response
12 from us on this, I don't know about the exact date of the
13 week of August 28th. We haven't had an opportunity to talk
14 to our people about that and what it may mean in terms of
15 the availability of witnesses. In short, we have no objection,
16 as a matter of fact, we think that if the Environmental
17 Improvement Agency requires any substantial amount of time
18 to respond to these legal questions, and I suspect they will,
19 that time is so short, that whatever the Commission decides,
20 it is going to be rather cumbersome upon the parties to
21 present the case on July 19th. We have no objection to a
22 continuance beyond that date, and we would hope that we will
23 have an opportunity before that date is fixed to review to
24 some limited degree with our witnesses and participants in
25 the case. We would also hope that if the date of August 28th

1 is set that the motions be ruled upon as soon as possible.

2 MR. PORTER: You are talking about the motions made
3 here today and the arguments?

4 MR. CAMPBELL: Yes.

5 MR. PORTER: You feel that all of the decisions of
6 the Commission should be expedited in order to give everyone
7 as much time as possible?

8 MR. CAMPBELL: Yes. We have already stated our
9 position, and we don't care if the Commission ever hears
10 the case, but that obviously isn't the feeling of everybody
11 involved here. I suppose the Commission has some responsibility
12 to dispose of these matters, so we have no objection to
13 a continuance.

14 MR. PORTER: Do you have any indication, Mr. Morris,
15 that the Federal Power Commission will be any more ready
16 the last week in August than they are at this time? I think
17 the answer to that would be no.

18 MR. MORRIS: I think it would be speculative for
19 any of us to indicate either way. We hope-- we more than
20 hope-- let's say, anyone who is connected with the natural
21 gas situation knows there are a lot of things that are pending,
22 and that are waiting to go forward based upon the Federal
23 Power Commission's actions, and there are a lot of pressures
24 on the Federal Power Commission to act, to do something. We
25 were told that we could reasonably expect some action by the

1 Federal Power Commission in the summer. Now whether it will
2 be August 28th or not, I don't know. I am not here saying
3 that we have any information that the Federal Power Commission
4 will act by that time, however, we are for a continuance, and
5 that is not based entirely upon the Federal Power Commission.

6 MR. PORTER: I understand that.

7 MR. MORRIS: We have an environmental report by
8 expert witnesses outside of our company over which we do not
9 have direct control as to time, and we need to accommodate
10 those consultants, and we have to ask the Commission to
11 accommodate them as to their availability to testify in this
12 matter.

13 MR. PORTER: Does anyone else have any comments
14 on the motion for continuance to some late date in August?

15 MR. FRASER: I hesitate to make a comment because
16 one might ask why I am here. I think we would be in favor
17 of a continuance.

18 MR. CAMPBELL: Mr. Commissioner, do I gather from
19 Mr. Morris' last statement that he takes the position that
20 the applicant, producer, purchaser, transporter, in this case
21 has a right to produce environmental evidence?

22 MR. PORTER: It appeared to me that as part of his
23 original statement, he indicated that they would have
24 environmental experts.

25 MR. CAMPBELL: I didn't know, I was just interested

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1 in that.

2 MR. MORRIS: The answer is yes.

3 MR. FRASER: I inferred that you were going to
4 have some type of written report?

5 MR. MORRIS: What we have under way at this time,
6 if the Commission please, is the Stern-Rogers Corporation,
7 consultants for El Paso Natural Gas, are preparing an
8 environmental report that has just been begun. We would
9 intend to present the witness at the hearing of this case,
10 of course, subject to the Commission's ruling on the
11 materiality of that, and present the evidence at that time
12 as part of the evidence to be considered by the Commission.

13 MR. PORTER: As you say, this would depend on the
14 Commission's action on the motion that has been made here
15 by the Environmental Agency to allow the issue to be discussed
16 at this hearing?

17 MR. MORRIS: Whether the Commission determines
18 to grant or deny the agency's motion to intervene does not
19 preclude or does not really answer the question, you still
20 have the question as to whether the Commission has the
21 statutory duty to make-- to consider environmental matters
22 and make an environmental impact statement.

23 MR. PORTER: I understand that.

24 MR. MORRIS: So let's just assume without deciding
25 what the Commission might say that we still feel that we

1 have an obligation to put environmental evidence into the
2 record of this case as part of our case so that the
3 Commission will have something in the record from which
4 it can make these environmental determinations.

5 MR. PORTER: I think at this time we will proceed
6 to the motion of the Municipal League to intervene. We
7 will rule later on the motion for a continuance.

8 MR. HATCH: Let me interrupt. Since we are allowing
9 Mr. Fraser to submit answers to these questions, that Mr.
10 Coppler and Mr. Parmelee be allowed to submit written answers
11 to these questions rather than bringing them up here. If
12 Mr. Coppler wishes to go ahead today and make some statement,
13 he can.

14 MR. COPPLER: I would like to make a statement.

15 MR. PORTER: At this time?

16 MR. COPPLER: Yes.

17 MR. PORTER: And would you also like permission to
18 supply us with written answers to the other questions that
19 have been raised or may be raised?

20 MR. COPPLER: To expedite things, I suggest you ask
21 me the questions and I will supply written answers.

22 MR. PORTER: Go ahead.

23 MR. COPPLER: I am Frank Coppler and my mailing
24 address is P. O. Box 846, Santa Fe, New Mexico. I am the
25 attorney for the New Mexico Municipal League as well as

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1 being administrator of our organization. The New Mexico
2 Municipal League encompasses cities, towns, and villages
3 throughout the State. Our membership is in excess of seventy
4 members out of ninety-three incorporated communities. The
5 purpose of the Municipal League is an association for the
6 citizens of the villages of New Mexico, and one of the
7 purposes of the Municipal League is to make requests of
8 governing bodies in matters directly affecting municipal
9 governments in the State of New Mexico.

10 I also have a copy of the minutes of our board
11 meeting where the Board of Directors took a position in this
12 particular proceeding and the board authorized me to make
13 that position known. We have a couple of member cities that
14 we have an inkling that this proceeding will affect, the
15 City of Deming and the City of Las Cruces. Since they are
16 supplied, as we understand, by El Paso Natural Gas Company,
17 our concern, Mr. Chairman, is based on the assumption, I
18 suppose, I'm not an expert, and do not pretend to know all
19 about the oil and gas crisis, but based upon the assumption
20 that should the application be granted and based upon a
21 second assumption that there is a limited amount of natural
22 gas available, that there is a possibility over an extended
23 period of time that some of our cities in New Mexico could
24 be facing a gas shortage if you assume that the granting of
25 this application will in effect remove the gas from that pool

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1 twice as fast as it is being removed now. That is our
2 concern, Mr. Chairman.

3 We represent the people in the municipalities and
4 these people in these municipalities in the State of New
5 Mexico make up a substantial majority of all gas users, over
6 seventy percent of our people live in municipalities. Based
7 upon that type of interest and that type of concern, the
8 Municipal League ought to be made a party, and our concern
9 is that we are concerned with the long range possibility of
10 using up the natural gas faster than we are using it at the
11 present time.

12 I have a resumé of some case law that I have
13 diligently looked into to find an answer as to whether we
14 have the right to be intervenors or whether it is up to the
15 discretion of the Commission, and the case law would probably
16 say that it is within the discretion of this Commission.

17 Now, to anticipate some of your questions, you
18 probably want to know what we intend to show in this
19 particular proceeding and what I intend to do should you
20 allow our intervention. I intend to go to the City of Deming
21 and the City of Las Cruces and sit down with the governing
22 bodies and their engineers and the people who run their
23 utilities and ask them to develop some data and presentations
24 and testimony on the possibly affect the granting of this
25 application in this particular proceeding may have. After

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1 we have developed that data and those arguments, we will
2 come to this Commission and present that evidence to you
3 and ask you to consider it in your ruling on the application
4 of El Paso Natural Gas Company. That is the extent of our
5 intervention.

6 After the Commission has settled the scope of these
7 proceedings and settled the arguments between Southern Union
8 Gas Company and El Paso Natural Gas Company, then I will
9 try to figure out how to formulate our evidence. So until
10 you have ruled on the question, the environmental question
11 as it is linked to the prevention of waste and the protection
12 of correlative rights, I can't tell you what we are going
13 to present here.

14 MR. PORTER: You would limit your testimony to
15 the ruling of the Commission as to what the scope of the
16 evidence would be limited to?

17 MR. COPPLER: Yes, sir, I would look at the ruling
18 before I could tell you exactly.

19 GOVERNOR KING: Just one question. Do you favor
20 the position or the motion of Southern Union Gas Company?

21 MR. COPPLER: Well, I would have to say that should
22 Southern Union Gas Company prevail on its motion to in effect
23 exclude evidence as to the impact on the environment, then
24 the next logical step would be to exclude evidence on whether
25 or not there will be a gas shortage in Deming and Las Cruces,

1 and that would sort of put us out of town in our evidence
2 so that for that reason, we would have to oppose the motion.

3 MR. HATCH: These questions are aimed at helping
4 the Commission to determine whether or not to allow intervention,
5 and I certainly want to make these remarks now. I believe
6 the Commission does have a great deal of latitude in making
7 any decision on this. So Mr. Coppler, does the Municipal
8 League or any of the cities, Deming and Las Cruces, or any
9 citizens of those cities, own any property in the Blanco-
10 Mesaverde Gas Pool?

11 MR. COPPLER: No.

12 MR. HATCH: Does the Municipal League or do any
13 of these cities seek more production from the pool or less
14 production-- and I think you have probably answered that.

15 MR. COPPLER: I think I have, and that is what we
16 are worried about, the long term affect of the granting of
17 this application.

18 MR. HATCH: Is it your contention that the Municipal
19 League or the cities or any of the citizens could come before
20 this Commission in a spacing case?

21 MR. COPPLER: Citizens using gas supplied by a
22 company applying for spacing to this Commission would have
23 a perfectly legitimate position in coming here and making
24 their views known.

25 MR. HATCH: Perhaps you misunderstood my question.

1 Could the City of Las Cruces or the citizens of Las Cruces
2 who use gas come before this Commission and ask for 80-acre
3 spacing or 320-acre spacing and get approval?

4 MR. COPPLER: Without owning a gas well?

5 MR. HATCH: Yes.

6 MR. COPPLER: No, but they could come and make a
7 presentation to the effect that the granting of particular
8 spacing could have an affect on their use of the gas that
9 is supplied by the company applying for the spacing.

10 MR. HATCH: Is it your contention that a person
11 owning property, that the public having such an interest
12 should be represented?

13 MR. COPPLER: Yes.

14 MR. HATCH: Is it your contention that because you
15 represent a subdivision of the State, that you have a right
16 to intervene?

17 MR. COPPLER: No, sir.

18 MR. PORTER: Actually, you do not represent a
19 subdivision of the State.

20 MR. COPPLER: No, we represent the cities as a whole.

21 MR. HATCH: What will the Municipal League or the
22 City of Deming or the City of Las Cruces or those citizens
23 gain or lose by Commission approval or disapproval of this
24 application?

25 MR. COPPLER: Based on the two assumptions I made

1 prior to this time, Mr. Chairman, if you assume that the
2 gas will be extracted twice as fast by granting this
3 application, and you assume there is a limited amount of
4 gas under the pool, then we have come to the tentative
5 conclusion that the citizens of Las Cruces and the citizens
6 of Deming could be losing by the fact that the reserves of
7 natural gas will be exhausted twice as fast than they would
8 be under the present rules.

9 MR. HATCH: I think you have answered my next question.
10 Is the gain or loss a certainty or a speculation or is it
11 a contingency?

12 MR. COPPLER: That is a question that I don't think
13 anyone can answer at this time. That will be an issue in
14 the case though, I'm sure.

15 GOVERNOR KING: But it would be reasonable to
16 assume that if there are twice as many wells, the depletion
17 is going to take place faster.

18 MR. COPPLER: Again, Governor, that is the assumption
19 we are operating under.

20 MR. HATCH: Will any of those cities or citizens
21 be bound by the decision in any way?

22 MR. COPPLER: I know of no decision by an administrative
23 agency that you cannot appeal, and I could never commit myself
24 to not appealing if allowed to be a participant.

25 MR. HATCH: I don't think I meant it that way. I

1 mean, are you limited in any way by the decision of the
2 Commission on the granting or denying of this application?

3 MR. COPPLER: As municipalities, we have absolutely
4 no power over the question, none whatsoever. As a governing
5 body or as an administrative agency, we have no power over it.

6 MR. HATCH: Is it your contention that if the
7 Commission should find waste occurring in the pool and
8 correlative rights being violated in the pool that it could
9 deny the application because the approval may result in
10 less gas being available to the City of Deming and to the
11 City of Las Cruces?

12 MR. COPPLER: It is going to be our contention that
13 they should deny that, and it will be up to the Courts, of
14 course, to decide whether that is the proper decision.

15 MR. HATCH: Would your answer be the same concerning
16 the City of Los Angeles?

17 MR. COPPLER: We are not concerned with the City
18 of Los Angeles.

19 MR. PORTER: They don't belong to the League?

20 MR. COPPLER: They haven't paid their dues.

21 MR. HATCH: Is it your contention-- is it your
22 contention then that the Commission has the authority to
23 directly control the amount of gas to be used in the State?

24 MR. COPPLER: Our contention is that the Commission
25 ought to do what is proper for the people in the State of

1 New Mexico and most of those people live in municipalities.

2 MR. HATCH: Is it your contention that the
3 Commission has the authority to directly control the amount
4 of gas that has to be taken out of the State for use out of
5 the State?

6 MR. COPPLER: I don't think they can do that
7 directly from reading the papers, but I should think that
8 they should arrive at the right decision for the consumers
9 of the State of New Mexico, and I think that is the
10 responsibility of all of us representing the interests of
11 the State as a whole.

12 MR. PORTER: Would that be up to the Legislature
13 or this Commission taking into consideration the limits of
14 our jurisdiction?

15 MR. COPPLER: I think, Mr. Commissioner, that we
16 cannot continually speculate about who has the power, we have
17 to make the decision and do the best we can to insure that
18 this decision will be upheld in the Courts. Should it not
19 be upheld in the Courts, then we will go to the legislative
20 body and I think that would be the proper procedure to take.

21 GOVERNOR KING: I would say on both levels; wouldn't
22 you? The Commission level and the State level.

23 MR. COPPLER: Yes, sir.

24 MR. PORTER: But you would say the first duty of
25 this Commission is to carry out the mandate of the Legislature

1 in the statutes?

2 MR. COPPLER: Yes, sir, and I think included in
3 the mandates are the interests of the people and the various
4 interests that are represented here today.

5 GOVERNOR KING: But within the guidelines set down
6 by statute, but that can be determined in different manners?

7 MR. COPPLER: That's right.

8 MR. HATCH: Is it your contention that the
9 Commission has the authority to indirectly control the
10 amount of gas that is to be used in the State?

11 MR. COPPLER: I think that will be our contention,
12 but please don't-- I can't give you my reasoning, my legal
13 reasoning at the present time.

14 MR. HATCH: Would that be regardless of waste and
15 correlative rights?

16 MR. COPPLER: I think we have to link those questions.

17 MR. HATCH: Has the Municipal League filed any
18 cause before the Public Service Commission seeking improved
19 gas services to the City of Deming and the City of Las Cruces?

20 MR. COPPLER: No. We have participated in cases
21 before the Public Service Commission, but those cases were
22 brought in the sense that they affected more of your member
23 municipalities.

24 MR. HATCH: Thank you.

25 MR. PORTER: Mr. Parmelee, you are representing

1 the Public Service Commission?

2 MR. PARMELEE: Yes. Mr. Chairman, members of the
3 Commission: for the record, my name is James Parmelee, and
4 I am staff counsel for the New Mexico Public Service
5 Commission. The New Mexico Public Service Commission was
6 created in 1941 by the New Mexico Public Utility Act to
7 regulate rates and services of water, gas, and electric
8 utilities and intrastate wholesale utilities. The New Mexico
9 Public Service Commission seeks to intervene in this case
10 mainly for the purpose of obtaining during the course of the
11 hearing information to see whether it should take a position
12 in the interest of the distributing utilities in New Mexico.
13 The applicant in this case sells to Southern Union Gas
14 Company, which is the largest distributing gas utility under
15 the Public Service Commission's jurisdiction. We are
16 concerned over short and long range conditions that either
17 the granting or the denying of the application in this case
18 would have on the ability of Southern Union Gas Company to
19 serve its customers. The applicant also serves the E. M. W.
20 Natural Gas Association, the Rio Grande Natural Gas
21 Association, and indirectly, the Ruidoso Natural Gas Company.
22 All four of these gas utilities are under the jurisdiction
23 of the Public Service Commission.

24 The applicant also serves the El Paso Electric
25 Company and it serves gas to the City of Lordsburg, which

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1 furnishes-- which distributes natural gas and is the largest
2 customer in the Community Public Service Company and the
3 Electrical Distributing Utility of New Mexico, who has a
4 gas-fired generator in Lordsburg with little or no oil standby.

5 It is for these reasons we would ask the
6 Commission to allow the Public Service Commission to
7 intervene and find out, as I said before, both the short
8 and the long range consequences of the granting or denial
9 of this application.

10 MR. PORTER: At this point, you do not know whether
11 you oppose the application or support it?

12 MR. PARMELEE: No, we don't have enough facts
13 before us.

14 MR. HATCH: Maybe I misunderstood you. I thought
15 you expressed the opinion you were not opposing or favoring
16 the application, that you were only intervening for
17 information purposes to be used by your agency in the future.

18 MR. PORTER: That's right, that's the way I
19 understood you.

20 MR. PARMELEE: We have an obligation to Southern
21 Union Gas Company and also these other utilities, and we
22 would like to see what the short and the long range consequences
23 would be to these utilities. We would not like to be in
24 solely for the purpose of gathering information, we would
25 like to have such time until we could figure out whether

1 the Commission should take a position.

2 MR. HATCH: I would like to suggest, Mr. Parmelee,
3 that you either submit answers to these questions in writing
4 or maybe you can answer them at the present time.

5 MR. PARMELEE: I think I can field most of the
6 questions now, but I would like a written response on a
7 couple.

8 MR. PORTER: Mr. Hatch, will you ask him the
9 questions?

10 MR. HATCH: Does the Public Service Commission own
11 any property in the Blanco-Mesaverde Gas Pool?

12 MR. PARMELEE: No.

13 MR. HATCH: You have already answered this question.
14 Are you seeking more gas production from the pool or less
15 gas production from the pool?

16 MR. PARMELEE: Neither.

17 MR. HATCH: Is it your contention that the Public
18 Service Commission could come before this Commission and
19 ask for certain spacing patterns in a separate case?

20 MR. PARMELEE: Not unless it was on behalf of
21 somebody who had an interest.

22 MR. HATCH: And it would be a property interest
23 which you are talking about?

24 MR. PARMELEE: Yes.

25 MR. HATCH: Is it your contention though that

1 although the Public Service Commission does not have a
2 property interest, that the public has such an interest
3 and that it would have the right to be represented in this
4 case?

5 MR. PARMELEE: I would like to respond in writing
6 to that question.

7 MR. HATCH: Is it your contention that because you
8 do represent a State agency that a State agency has the
9 right to intervene?

10 MR. PARMELEE: Not a right, I don't think we have
11 a right. I think that it would be up to the discretion of
12 the Commission, and I think we have enough interests that
13 we ought to be allowed to intervene. That is our argument.

14 MR. HATCH: What will the Public Service Commission
15 gain or lose by the decision of the Commission?

16 MR. PARMELEE: Well, it could gain quite a bit. If
17 it turned out that the application is granted, it could mean
18 that this would affect the long range ability of the utilities
19 mentioned to serve the public in New Mexico. It is for this
20 reason that we would like to find out just what the
21 consequences might be before we take a position, because the
22 Public Service Commission has not studied it that much.

23 MR. HATCH: Would the decision have an effect upon
24 the Public Service Commission or the utilities or the public?

25 MR. PARMELEE: Well, our Commission has the

1 responsibility to insure the ability of the utilities to
2 serve the public with adequate rates-- reasonable rates and
3 adequate services, and certainly the ability to obtain
4 production is paramount in their ability to serve.

5 MR. HATCH: Is that gain or loss a certainty, or
6 is it contingent?

7 MR. PARMELEE: Well, I would say it is probably
8 contingent, but that is one of the reasons we would like
9 to intervene so that we might find out.

10 MR. HATCH: Will the Public Service Commission be
11 bound in any way by the decision of the Commission in
12 approving or disapproving this application?

13 MR. PARMELEE: Well, the Public Service Commission
14 has no jurisdiction over the subject matter in this case,
15 so I guess like Mr. Fraser, I would have to say that I don't
16 know what "bound" means.

17 MR. HATCH: Will the Public Service Commission
18 have to obey-- will they have to do something or refrain
19 from doing something perhaps because of the Commission's
20 decision?

21 MR. PARMELEE: Well, yes, we would be bound by
22 the decision.

23 MR. HATCH: What would you be prohibited from doing
24 by the decision of the Commission?

25 MR. PARMELEE: The decision would not have any

1 direct effect on the Public Service Commission. We would
2 have to get together with our utilities and see what they
3 could do by reason of the decision.

4 MR. HATCH: Do you see the decision of the
5 Commission as encroaching upon the authority of the public--
6 do you see the approval or disapproval of this application
7 as an encroachment upon the authority of the Public Service
8 Commission in any way?

9 MR. PARMELEE: No, we are specifically excluded
10 by statute from regulating gas production.

11 MR. HATCH: Do you foresee the Commission in this
12 hearing encroaching upon any rules or regulations of the
13 Public Service Commission?

14 MR. PARMELEE: Let me say at this time that I
15 doubt it.

16 MR. HATCH: Is it your contention that if the
17 Commission should find waste occurring or correlative rights
18 being violated in the approval of this application that it
19 could deny this application because there will be less gas
20 in New Mexico in the future?

21 MR. PARMELEE: I would rather respond to that
22 in writing.

23 MR. HATCH: The next question is very similar--

24 MR. PORTER: I don't think I would want to respond
25 to that last question at all.

1 MR. HATCH: Is it your contention that the
2 Commission has the authority to directly control the amount
3 of gas to be used in the State of New Mexico?

4 MR. PARMELEE: Directly control?

5 MR. HATCH: What I am saying is, is it your
6 contention that this Commission has the authority to directly
7 control whether the gas stays in the State or goes out of
8 the State?

9 MR. PARMELEE: I doubt if this Commission has any
10 jurisdiction.

11 MR. HATCH: Does the Commission have authority
12 to indirectly control whether the gas stays in the State or
13 goes out of the State?

14 MR. PARMELEE: I would rather not answer that one
15 now.

16 MR. HATCH: Does the Public Service Commission have
17 any control over the amount of gas supplied to any state in
18 the United States?

19 MR. PARMELEE: Control, no. We hope that our
20 arguments will be listened to by the various agencies.

21 MR. HATCH: That's all the questions.

22 MR. PORTER: Does anyone have any response or any
23 questions of Mr. Parmelee?

24 (No response)

25 MR. PORTER: Thank you, Mr. Parmelee.

1 Now, I believe that's all the motions we have
2 received to intervene or to limit testimony.

3 MR. CAMPBELL: The motion of Aztec is still pending.

4 MR. PORTER: The motion of Aztec and the motion of
5 El Paso. Aztec made the motion for a continuance, and I
6 can't remember what they asked for in the way of a date for
7 the continuance, but we did set the hearing for July.

8 MR. CAMPBELL: Do you wish to know?

9 MR. PORTER: Yes.

10 MR. CAMPBELL: They respectfully moved for a
11 continuance until a date which would be at least fifteen
12 days after the date the Federal Power Commission entered its
13 order in Docket Number R-4205, or September 17th, 1972,
14 whichever occurred first.

15 MR. PORTER: They asked for September 17th or
16 fifteen days after the Federal Power Commission entered its
17 order in Docket Number R-4205, whichever happened first.

18 MR. MORRIS: I believe, of course I can't speak
19 for Aztec, but I believe September 17th is the date that
20 their particular filing would be effective subject to the
21 Federal Power Commission.

22 MR. CAMPBELL: And all of those have now been
23 suspended, so the September 17th date no longer means anything.

24 MR. PORTER: I wonder if any date in August would
25 mean anything as far as action by the Federal Power Commission.

1 I went to Midland and testified before the examiner on
2 this some two years ago on July 31st and at that time, the
3 feeling was that we would have a decision in September of
4 that year, which of course, we didn't.

5 MR. MORRIS: I would like to say further that while
6 I am not in a position to speak for any of the other companies
7 that may have an interest in the field, we have been
8 contacted by a number of companies that have expressed an
9 interest to us that they would be very reluctant to come
10 forward and see this case go forward until after the
11 Federal Power Commission had acted.

12 They were hoping the Commission would not set the
13 matter down for a hearing until after the Federal Power
14 Commission had acted. That prompted us to renew our motion--
15 our request for a continuance.

16 That, coupled with the new dimension this case has
17 taken involving the environmental field, would again make
18 us suggest this date in the latter part of August, but we
19 will try to accommodate to any date the Commission would set.

20 MR. FRASER: I have a motion that is probably
21 germane to the issue of continuance. I understand that this
22 may be premature because I don't know whether our agency
23 will be a part of this proceeding, but I hand you three
24 copies of a motion that the hearing be rescheduled for some
25 time later than July 19th at which time the Environmental

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1 Improvement Agency could be prepared. I believe El Paso
2 Natural Gas has indicated that some report might be
3 forthcoming, and if that is true, we would appreciate having
4 that report before any hearing date so that we might ask
5 questions-- interrogatories dealing with the environmental
6 impact.

7 MR. PORTER: Does anyone have any response to
8 the motion of Mr. Fraser?

9 MR. HATCH: I would like to respond in one way.
10 I would object to the statement at the end of that that the
11 hearing be rescheduled until such time as an environmental
12 impact statement be made by El Paso. El Paso is not required
13 to file an environmental impact statement in conjunction
14 with its application.

15 MR. MORRIS: The impact statement that we are
16 talking about is a statement that would ultimately be made
17 by the agency and not by El Paso Natural Gas Company.
18 What El Paso Natural Gas Company intends to present to the
19 Commission is evidence from which the Commission would make
20 its own environmental impact statement. So I think the
21 motion is somewhat ambiguous where it says that our proposal
22 or our application has to be accompanied by a statement.
23 We would intend to present as evidence in this case a witness
24 who would present this report and who would be subject to
25 cross examination and so forth, but I don't see anything

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1 in the statute that requires us to submit a portion of
2 our evidence in advance of the hearing. Of course, the
3 Commission is not even required to make a statement unless
4 it finds from the evidence that is presented that this
5 is the type of major State action that requires a statement.
6 So for those reasons, we oppose the motion.

7 MR. CAMPBELL: Mr. Chairman, I think this is
8 a good example of the confusion that is going to run rampant
9 at this hearing if we mix these two questions. If El Paso
10 Natural Gas Company wishes to submit a statement informally
11 without having a witness or having cross examination, there
12 is nothing in the laws of New Mexico that would prohibit that.
13 But we agree with El Paso Natural Gas Company that there
14 is nothing compelling the applicant before this Commission
15 under the present law which requires the applicant to file
16 such a document prior to the hearing of his application.

17 GOVERNOR KING: Mr. Chairman, before we get
18 totally confused, there are two motions, and I would like
19 to look a little bit at the first one. We will be having
20 to make the decisions, and there are two of us to attempt
21 to make those decisions. Mr. Morris or Mr. Campbell, do
22 either of you feel that if we adopted the motion presented
23 by Southern Union Gas Company that that would preclude the
24 environmental impact question at a later time, perhaps being
25 considered or asked for by the Commission?

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1 MR. CAMPBELL: I don't, Governor, not at all.
2 I think the Commission if it acts and accepts the jurisdiction
3 that it will permit them, or it will require the Commission
4 to find under some set of criteria that haven't yet been
5 identified, that this is a major State action substantially
6 affecting the environment. The Commission will then have
7 to start the process of making a study that we can use from
8 either El Paso Natural Gas Company's information, or if
9 the Commission sees fit to do it, from the Environmental
10 Improvement Agency, or any person out there that wants to
11 be involved. It doesn't say anywhere that an order shall
12 be based on the environmental picture or that a hearing
13 must be held, it merely says that the question must be
14 exposed to the public.

15 GOVERNOR KING: It would still fall back to
16 correlative rights and waste in the final analysis.

17 MR. CAMPBELL: As far as this Commission's
18 jurisdiction is concerned. There has been the argument of
19 the Calvert Cliffs Case, and the fact that these statutes
20 could enlarge the jurisdiction of every state agency and
21 federal agency. It is our judgment that it does not extend
22 that jurisdiction. I want to repeat this because it keeps
23 coming up here. We are not objecting to an environmental
24 examination of this.

25 MR. PORTER: We understand that.

1 MR. CAMPBELL: We are simply trying to say that
2 it could make this case vulnerable to all kinds of legal
3 attacks in the future.

4 MR. PORTER: You think it should be a separate
5 matter aside from how many wells will be drilled in the pool.

6 MR. CAMPBELL: Yes, and I am doubtful that you can
7 keep it separate at a single hearing.

8 MR. MORRIS: If the Commission please, Governor
9 Campbell has expressed his view that this Commission should
10 not render itself vulnerable and my suggestion is that this
11 Commission should not enter itself vulnerable to either
12 appeal or to collateral attack by outsiders for failing
13 to comply with the environmental statute to the fullest
14 extent possible. Our suggestion is that the fullest extent
15 possible is an informed hearing for the consideration of
16 these issues rather than to say we are not going to consider
17 them at this hearing. You should rather say submit whatever
18 information you want to, and we will look at it.

19 GOVERNOR KING: That answers my question on the
20 motion submitted by Southern Union Gas, and we have
21 sufficient evidence in my mind at least to view the evidence
22 as presented, and probably make a determination within a
23 limited amount of time. Now, if you would like to discuss
24 the motion submitted by the Environmental Improvement Agency,
25 that would be fine.

1 MR. PORTER: I think they have already responded
2 to that, and it would be, in my mind, Governor, that this
3 motion be denied. We will deny the motion that would
4 require an environmental impact statement to accompany the
5 application, and that the hearing be rescheduled on that
6 basis. Do you concur in that?

7 GOVERNOR KING: I don't know, I would have to
8 study it for just a minute.

9 MR. FRASER: I am a bit disturbed that you denied
10 my motion, since I am not a party yet. Perhaps I should be
11 a party before you deny my motion.

12 MR. HATCH: I think his motion, if I understood
13 it correctly, is a motion just for a continuance; isn't
14 it just for a continuance?

15 MR. FRASER: Well, it's more than that. It is
16 true that you don't have to have an environmental impact
17 statement prior to action--

18 MR. PORTER: You are talking about prior to a
19 hearing?

20 MR. FRASER: Yes.

21 MR. PORTER: As I understood it, you requested that
22 an environmental impact statement be made part of their
23 application.

24 MR. FRASER: They don't have to file one with
25 their application.

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1 MR. PORTER: I understand that, but you say the
2 proposal may be accompanied by an environmental impact
3 statement.

4 MR. FRASER: I have merely requested that they
5 prepare some draft or statement and that it be presented
6 at the time of the hearing so a full disclosure can be
7 made of the issues involved. That's the nature of my motion.

8 MR. PORTER: Since it has not been determined that
9 you will be a party to this hearing, we can't act on the
10 motion.

11 Mr. Fraser, Mr. Coppler, Mr. Parmelee, how long
12 would you think would be sufficient time to allow you to
13 respond to Mr. Hatch's questions, the ones that you were not
14 able to answer?

15 MR. FRASER: The middle of next week would be fine.

16 MR. PARMELEE: I can respond by then.

17 MR. COPPLER: I am under the impression that I
18 don't have to respond because I did.

19 MR. HATCH: Mr. Fraser, was your motion that an
20 impact statement be prepared prior to the hearing?

21 MR. FRASER: I'm not asking for an impact statement,
22 but for some sort of discussion on the environmental issues
23 by this Commission, and that a statement be prepared by El
24 Paso and be presented prior to the hearing so the issues can
25 be fully discussed. I might indicate this was the procedure

1 followed at the Tuscon Gas and Electric Company application.

2 MR. PORTER: I wonder if counsel for El Paso could
3 give us the docket number of the Federal Power Commission case?

4 MR. MORRIS: We are talking about Docket Number
5 R-425, before the Federal Power Commission.

6 MR. PORTER: I believe the Commission will allow
7 until July 7th for Mr. Fraser and Mr. Parmelee to respond
8 to the questions that Mr. Hatch asked. That will be next
9 Friday, a week from tomorrow. Does that give you sufficient
10 time?

11 MR. FRASER: Yes.

12 MR. PARMELEE: Yes.

13 MR. PORTER: Now, on the matter of the continuance.
14 I believe the Commission will continue the case, and at this
15 time, it appears that it would not be possible to specify
16 a date for a continuance of the case. Governor Campbell,
17 you in particular have indicated that you are not familiar
18 with the availability of witnesses for that particular week
19 that he mentioned in the latter part of August. The
20 Commission will continue this case to a date in August which
21 will be determined and the parties will be notified.

22 MR. HATCH: I believe you can take it under
23 consideration and when you reach a decision as to the date
24 of continuance, you can inform the parties of that date.

25 MR. PORTER: The principals involved will be

1 notified. We will take the motion under advisement, and
2 in all probability will continue the case until late in
3 August to a date that will be determined and all parties will
4 be notified.

5 If there is nothing else to come before the
6 Commission, the Commission will take these motions under
7 advisement and will render decisions as early as possible
8 in all motions that have been considered here today.

9 This matter is adjourned.

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1 STATE OF NEW MEXICO)
) ss.
 2 COUNTY OF BERNALILLO)
 3

4 I, RICHARD E. McCORMICK, a Certified Shorthand Reporter,
 5 in and for the County of Bernalillo, State of New Mexico, do
 6 hereby certify that the foregoing and attached Transcript
 7 of Hearing before the New Mexico Oil Conservation Commission
 8 was reported by me; and that the same is a true and correct
 9 record of the said proceedings to the best of my knowledge,
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