

**STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION
OF MERIDIAN OIL, INC. FOR
EXEMPTION FROM THE NEW MEXICO
NATURAL GAS PRICE PROTECTION ACT,
SAN JUAN COUNTY, NEW MEXICO.**

CASE NO. 9703

**REPLY TO APPLICANT'S RESPONSE TO
GAS COMPANY'S MOTION TO DISMISS.**

Respondent Gas Company of New Mexico ("Gas Company") hereby submits this Reply to the Response filed by Meridian Oil, Inc. ("Meridian"). In its Response, Meridian asserts four entirely fallacious reasons for denying Gas Company's Motion to Dismiss.

I.

**MERIDIAN RELIES UPON
INAPPROPRIATE RULES OF STATUTORY CONSTRUCTION.**

Gas Company hereby incorporates by reference that portion of its Brief in Support of its Motion to Dismiss which sets forth the appropriate rules of statutory construction regarding the savings clause at issue herein. Attempting to obfuscate that issue by citing rules which possess superficial appeal, Meridian argues that a specific statute controls over a general one and that repeals by implication are disfavored. While these constitute generally accepted rules of statutory construction, both are utterly inappropriate to this action. This is not a case calling for a comparison of one statute with another. At issue is the interpretation of two provisions of the same statute. An implied repeal is certainly unwarranted here because an express termination of the savings clause exists in the legislation which enacted that clause.

II.

THE OCD EXCEEDED ITS JURISDICTION WHEN IT PREVIOUSLY GRANTED EXEMPTIONS SUBSEQUENT TO THE EXPIRATION OF THE NATURAL GAS PRICE PROTECTION ACT.

As precedential authority in support of its application, Meridian cites a series of twelve orders in which the OCD granted exemptions subsequent to the expiration of the Price Protection Act. Eleven of those exemptions were granted pursuant to applications filed before the termination of the Natural Gas Pricing Act. See, OCD files on Order Nos. NGPA-36 through NGPA-46 (applications all filed on February 29, 1984). Since those applications were filed before the termination of the Pricing Act on July 1, 1984, and well before the termination of the savings clause on June 30, 1985, the OCD possessed jurisdiction to grant those applications at any time prior to June 30, 1985. Correspondence between the OCD Director and the Attorney General and Public Service Commission, however, reveals that the OCD granted those eleven exemptions in July of 1986 because they had been "overlooked" following the change of OCD directors in November of 1984 and because neither the Public Service Commission nor the Attorney General apparently objected. See, letters from Stamets to Epler and Martin dated June 20, 1986, attached hereto as Exhibits "A" and "B" respectively. The other order cited by Meridian was filed on September 4, 1986, and summarily granted on October 28, 1986. See, letter from Stamets to Carr referencing OCD Administrative Order No. NGPA-47, attached hereto as Exhibit "C".

Meridian points to these orders, all apparently granted without hearing and with no one contesting the Division's jurisdiction to issue them, as evidence that the Division conclusively determined that it possesses continuing jurisdiction to grant exemptions under the Pricing Act. Meridian then asserts substantial deference should be accorded to that "interpretation" of the statute. Meridian's first argument fails because no evidence exists to indicate that the OCD examined the savings clause in granting those exemptions or concluded that its jurisdiction endured despite the termination of the Price Protection Act. Meridian's second argument fails because the rule of deference does not require that one blindly accept an erroneous administrative interpretation of a statute. See, Board of Governors v. Dimension Financial Corp., 474 U.S. 361, 368 (1986) (traditional deference usually accorded to an agency interpretation should not be applied to alter clearly expressed legislative intent); Plateau, Inc. v. Department of Interior, 603 F.2d 161, 164 (10th 1979) (to extent agency interpretation is inconsistent with legislation, it is unavailing). Since the OCD could not alter the clearly expressed legislative intent that the savings clause terminated as of June 30, 1985, the orders cited by Meridian contain no precedential value. The fact that the OCD previously exceeded its jurisdiction is an insufficient reason to request that it do so now.

III.

ARTICLE IV, SECTION 34 OF THE NEW MEXICO CONSTITUTION DOES NOT APPLY TO A CASE THAT IS NO LONGER PENDING.

Article IV, Section 34 of the New Mexico Constitution prohibits the legislature from effecting the right of any party to a "pending case". That constitutional provision constitutes no impediment to granting Gas Company's Motion to Dismiss.

Meridian correctly points out that it was a party to the so-called "Infill Well Litigation" and that the presiding judge stayed that case pending the filing of other applications for exemptions. The judge's order was entered on April 29, 1985. At that time, approximately two months remained under the proper interpretation of the savings clause for parties to timely file exemption applications. Meridian, without any excuse whatever, obviously failed to do so. Just as obviously, the judge did not, and could not, stay the case indefinitely so as to validate applications otherwise untimely filed. Meridian's resort to Article IV, Section 34 of the New Mexico Constitution is unavailing because the OCD's jurisdiction to grant exemptions terminated on June 30, 1985, and the infill well litigation ceased to be a pending case, for the purposes of obtaining infill well exemptions, on that date.

IV.

MERIDIAN'S DELAY IN SEEKING PROPER RELIEF PRECLUDES IT FROM INVOKING EQUITY.

Not entirely oblivious to the inherent weakness of its legal arguments, Meridian belatedly requests the OCD grant it equitable relief. However, Meridian cannot invoke equity because the record clearly demonstrates that Meridian failed to assert its

rights with the diligence equity requires. By its own admission, Meridian was aware of the opportunity and necessity of filing for an infill well exemption at least as early as April 1985. Because of its own failure to act for over four years, Meridian cannot now be heard to complain.

Respectfully Submitted,

GALLEGOS LAW FIRM

By 
J.E. GALLEGOS

HARRY T. NUTTER

141 East Palace Avenue
Santa Fe, New Mexico 87501
(505) 983-6686

Attorneys for Respondent
Gas Company of New Mexico



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
 OIL CONSERVATION DIVISION

TONY ANAYA
 GOVERNOR

June 20, 1986

POST OFFICE BOX 2088
 STATE LAND OFFICE BUILDING
 SANTA FE, NEW MEXICO 87501-2088
 (505) 827-5800

Mr. Gary Epler
 Assistant Attorney General
 Office of the Attorney General
 Bataan Memorial Building
 Santa Fe, New Mexico 87503

Dear Mr. Epler:

On February 29, 1984, the Division received requests for retroactive exceptions to the State Natural Gas Pricing Act for eleven Amoco Production Company Wells. These wells are identified as follows:

<u>Lease Name</u>	<u>Well No.</u>	<u>Unit Letter</u>	<u>Sec.-Twp.-Rge.</u>
Morris Gas Com "B"	1E	M	10-27N-10W
Roberts Gas Com "B"	1E	P	14-29N-13W
White Gas Com	1E	G	22-29N-13W
Gallejos Canyon Unit	96E	B	18-29N-12W
" " "	108E	N	13-29N-13W
" " "	110E	I	19-29N-12W
" " "	111E	I	20-29N-12W
" " "	133E	C	17-29N-12W
" " "	134E	I	17-29N-12W
" " "	263E	H	20-29N-12W
" " "	94E	A	23-29N-13W

Each of these wells was completed as an infill well in the Basin-Dakota Gas Pool in San Juan County in 1981. Complete applications for administrative approval for exception to the Pricing Act have been filed for the above-listed wells under the provisions of our Order No. R-5436, and each well qualifies for such exception.

No action has been taken to date on these applications, because at the time of filing, retroactivity was the subject of court action and the Division had received directions from the Attorney General to issue prospective approvals only. Further, these applications were simply overlooked following the change in Division directors in November, 1984.

Based upon the results of the District Court case, it is my intention to administratively approve these requested exemptions to the Pricing Act retroactive to the date of connection unless I receive objections and a request for hearing from your office by July 21, 1986. The applications are on file and available for your inspection. If you wish to review the

Page 2

applications or have questions, please contact me or the Division Attorney,
Jeff Taylor.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Scamets". The signature is written in dark ink and is positioned above the typed name.

R. L. SCAMETS
Director:

RLS:dp

cc: Paul Biderman
Jeff Taylor



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
 OIL CONSERVATION DIVISION

TONY ANAYA
 GOVERNOR

POST OFFICE BOX 2088
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 SANTA FE, NEW MEXICO 87501-2088
 (505) 827-5800

June 20, 1986

Mr. Jim Martin
 Chief Staff Counsel
 Public Service Commission
 224 E. Palace Avenue
 Santa Fe, New Mexico 87503

Dear Mr. Martin:

On February 29, 1984, the Division received requests for retroactive exceptions to the State Natural Gas Pricing Act for eleven Amoco Production Company Wells. These wells are identified as follows:

<u>Lease Name</u>	<u>Well No.</u>	<u>Unit Letter</u>	<u>Sec.-Twp.-Rge.</u>
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White Gas Com	1E	G ✓	22-29N-13W
Gallegos Canyon Unit	96E	B ✓	18-29N-12W
" " "	108E	N ✓	13-29N-13W
" " "	110E	I ✓	19-29N-12W
" " "	111E	I ✓	20-29N-12W
" " "	133E	C ✓	17-29N-12W
" " "	134E	I ✓	17-29N-12W
" " "	263E	H	20-29N-12W
" " "	94E	A	23-29N-13W

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Based upon the results of the District Court case, it is my intention to administratively approve these requested exemptions to the Pricing Act retroactive to the date of connection unless I receive objections and a request for hearing from your office by July 21, 1986. The applications are on file and available for your inspection. If you wish to review the

Page 2

applications or have questions, please contact me or the Division Attorney,
Jeff Taylor.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Stamets", with a horizontal line drawn through the middle of the signature.

R. L. STAMETS
Director

RLS:dp

cc: Paul Biderman
Marilyn O'Leary, PSC
Steven Asher, PSC
Jeff Taylor



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONEY ANAYA
GOVERNOR

October 28, 1986

POST OFFICE BOX 2088
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SANTA FE, NEW MEXICO 87501
(505) 827-5800

Campbell & Black, P.A.
P.O. Box 2208
Santa Fe, New Mexico 87504-2208

Attn: William F. Carr
Attorney for ACRO Oil
& Gas Company

Re: Administrative Order No. NGPA-47

Dear Mr. Carr:

Reference is made to your application dated September 4, 1986 on the behalf of ARCO Oil & Gas Company for retroactive exception to the date of first sale from the New Mexico Natural Gas Pricing Act under Section 62-7-5, NMSA, 1978, and Division Order No. R-5436 for the seventy-five (75) wells, described on the attachment, which produce from the Basin Dakota Gas Pool in the Gallegos Canyon Unit in San Juan County, New Mexico.

THE DIRECTOR OF THE DIVISION FINDS THAT:

(1). Amoco Production Company is the operator of each of the subject wells in which ARCO Oil & Gas Company owns a small interest (approximately 3%). Production from each of these wells is sold through a split stream connection, with Amoco's share being sold in interstate commerce and ARCO's share being sold in the intrastate market.

(2). Section 5 of the Natural Gas Pricing Act (being Secs. 62-7-1 to 62-7-10, NMSA 1978) provides that the Natural Gas Pricing Act shall not apply to the production and sale of natural gas in intrastate commerce from a well the drilling of or first intrastate sale of which commenced on or after January 1, 1975, provided however, that the Act shall apply to such a well if it is drilled within an established proration unit which was producing or capable of producing natural gas prior to January 1, 1975, from the same reservoir unless the Oil Conservation Division exempts such well upon a finding that such new well was justified for reasons other than avoiding the application of the Natural Gas Pricing Act.

EXHIBIT "C"

(3). By Division Order No. R-5436, dated June 8, 1977, the Division established an administrative procedure whereby the Director of the Division is empowered to act for the Division and exempt gas wells from the provisions of Section 5 of the Natural Gas Pricing Act provided said wells were drilled on or after January 1, 1975, within established proration units which were producing or capable of producing natural gas from the same reservoir prior to January 1, 1975.

(4) To qualify for such exemption, under said Order No. 5436, a gas well must be classified either as a replacement or as an infill well.

(5). Pursuant to Order No. R-5436, the Director of the Division may find that a replacement well is justified for reasons other than avoiding the pricing provisions of the Natural Gas Pricing Act upon a showing by the operator that:

- a. the well was necessary to replace a well lost due to economically irreparable down-hole mechanical failure or formation damage; or that,
- b. the well was necessary to replace a well producing at non-commercial rates; or that,
- c. the drilling of the well commenced prior to January 18, 1977.

(6). Pursuant to Order No. R-5436, the Director of the Division may find that an infill well is justified for reasons other than avoiding the pricing provisions of the Natural Gas Pricing Act upon a showing by the operator that:

- a. the well was drilled in a pool where the Division, after notice and hearing, has issued an order finding that infill drilling in such pool will increase recoverable reserves under various proration units in such pool, will result in more efficient use of reservoir energy, and will tend to ensure greater ultimate recovery of gas from the pool; or that,
- b. the well is necessary to protect the proration unit from uncompensated drainage or to protect correlative rights; or that,
- c. the drilling of the well commenced prior to January 18, 1977.

(7). The applicant, on behalf of ARCO Oil and Gas Company, has requested exemption from the provisions of the New Mexico Natural Gas Pricing Act pursuant to Section 62-7-5, NMSA 1978, and Division Order No. R-5436 for the 75 subject wells as described on the attached page.

(8). All the requirements of said Order No. R-5436 have been complied with, and that said well is justified for the exception from the provisions of the Natural Gas Pricing Act inasmuch as said wells were not drilled for the purpose of avoiding the application of said act, but were in fact Infill Wells drilled in a pool where the Division, after notice and hearing, has issued an order finding that infill drilling in such pool will increase the recoverable reserves under the various proration units in the pool, will result in more efficient use of reservoir energy, and will tend to ensure greater ultimate recovery of gas from the pool, said pool being the Basin-Dakota Pool and in order being Division Order No. R-1670-V.

IT IS THEREFORE ORDERED THAT:

(1). The seventy-five (75) wells, described on the attachment are hereby exempted from Section 5 of the Natural Gas Pricing Act (Secs. 62-7-1 to 62-7-10, NMSA 1978) retroactive to the date of first sale.

(2). Jurisdiction of this cause is hereby retained, and that this exemption is subject to rescission upon failure to comply with the provision of Rule 7(c) of Division Order No. R-5436.

DONE at Santa Fe, New Mexico on _____ day of October, 1986.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



R. L. STAMETS
Director

xc: New Mexico Oil Conservation Division - Aztec
Paul , EMD
Marilyn O'Leary, PSC
Steven Asher, PSC
Jeff Talor, OCD
Jim Martin, PSC
Gary Epler, AG

Administrative Order No. NGPA - 47

BASIN DAKOTA POOL - INFILL WELLS
Operated by Amoco Production Company
GALLEGOS CANYON UNIT,
SAN JUAN COUNTY, NEW MEXICO

<u>WELL NO.</u>	<u>LOCATION</u> (Unit, Sec., Twp, Rng)
85-E	I-19-28N-12W
86-E	P-35-29N-13W
93-E	L-36-29N-12W
95-E	P-31-28N-11W
96-E	B-18-29N-12W
106-E	D-24-29N-13W
108-E	N-13-29N-13W
110-E	I-19-29N-12W
111-E	I-20-29N-12W
133-E	C-17-29N-12W
134-E	I-17-29N-12W
145-E	D-26-29N-12W
150-E	P-22-29N-12W
151-E	D-21-29N-12W
152-E	O-21-29N-12W
153-E	C-28-29N-12W
154-E	E-27-29N-12W
158-E	G-36-28N-13W
163-E	M-26-29N-13W
164-E	C-35-29N-13W
166-E	E-34-28N-12W
167-E	H-18-28N-11W
168-E	C-19-28N-11W
169-E	H-35-29N-12W
170-E	E-35-29N-12W
172-E	N-25-29N-12W
173-E	E-29-29N-12W
174-E	E-28-28N-12W
176-E	B-25-28N-13W
182-E	K-19-28N-11W
184-E	J-28-28N-12W
185-E	A-33-28N-12W
186-E	N-33-28N-12W
187-E	N-30-29N-12W
188-E	B-30-29N-12W
189-E	K-36-29N-13W
190-E	K-32-28N-12W
192-E	A-30-28N-12W
193-E	M-30-28N-12W
195-E	P-33-29N-12W
196-E	D-19-28N-12W

197-E	G-36-29N-13W
199-E	K-34-29N-12W
200-E	O-29-29N-12W
202-E	C-33-29N-12W
203-E	P-13-28N-12W
204-E	I-34-28N-12W
207-E	D-14-28N-12W
208-E	I-15-28N-12W
209-E	E-15-28N-12W
210-E	C-31-29N-12W
211-E	C-32-29N-12W
212-E	P-32-29N-12W
216-E	I-14-28N-12W
217-E	D-13-28N-12W
218-E	D-22-28N-12W
219-E	D-23-28N-12W
221-E	P-31-29N-12W
226-E	C-18-28N-12W
227-E	C-20-28N-12W
228-E	F-21-28N-12W
229-E	I-21-28N-12W
239-E	P-24-28N-13W
242-E	K-24-28N-12W
243-E	I-24-28N-12W
246-E	H-35-28N-12W
263-E	H-20-29N-12W
Com 94-E	A-23-29N-13E
Com 162-E	B-36-29N-12W
Com "B" 143-E	M-25-29N-12W
Com "D" 160-E	N-27-29N-12W
Com "E" 161-E	N-23-29N-13W
Com "G" 179-E	J-26-29N-12W
Com "H" 180-E	N-28-29N-12W
Com "I" 181-E	H-34-29N-12W