

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

| | | |
|----------------|--|------------------|
| APPLICANTS: | Torch Energy Advisors Incorporated) | |
| | (herein "Torch") and Pocahontas Gas) | |
| | Partnership (herein "PGP") (Torch and PGP) | VGOB DOCKET NO |
| | sometimes collectively referred to) | 92/02/18-0184-01 |
| | As "Applicants")) | |
| |) | |
| RELIEF SOUGHT: | Issuance of an Amended Supplemental) | |
| | Order Amending Prior Orders Affecting) | |
| | SLW6 Drilling Unit to Provide: (1) for the) | |
| | Calculation of Those Funds the) | |
| | Unit Operator Deposited into the Escrow) | |
| | Account for Tracts 20, 22, 24, 25, 27C and) | |
| | 27D of the SLW6 Drilling Unit;) | |
| | (2) to Provide to Applicants a Royalty) | |
| | Accounting; and) | |
| | (3) Disbursement to Applicants in) | |
| | Accordance with Their Agreement) | |
| | Those Funds Deposited by the Unit) | |
| | Operator into the SLW6 Escrow Account) | |
| | for Tracts 20, 22, 24, 25, 27C and 27D of) | |
| | the SLW6 Drilling Unit) | |

1. **Hearing Date and Place:** This matter came on for further and final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on March 23, 1999 at the Southwest Virginia Higher Education Center, Classroom 226, One Partnership Drive, Abingdon, VA.
2. **Appearances:** Jill Harrison of the firm Penn Stuart appeared in behalf of the Applicants; Mark A. Swartz of the firm Swartz & Stump appeared on behalf of PGP as Unit Operator; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account for each of the coalbed methane gas drilling units established by the Board through its pooling orders, and that the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow account. Further, the Board finds: (1) that it does not have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, (2) that it does not have jurisdiction to interpret voluntary agreements by and between the Gas owners/claimants and/or the Unit Operator or to abridge or contravene the provisions of such agreements, and (3) that pursuant to Va. Code § 45.1-361.22.A.5, it does have jurisdiction and authority to disburse funds from the Escrow Account provided there has first been either a legal determination of claimants' entitlement thereto or there is an agreement by all the claimants.
4. **Prior Proceedings:**
 - 4.1. Drilling Unit Number SLW6 was created by Board Order effective as of February 18, 1992, Docket No. VGOB 92/01/21-0180 as amended by Board Orders in VGOB Docket Nos. 93/06/22-0385 and 95/04/18-0498 (herein "Subject Drilling Unit") in the Hurricane Magisterial District, Buchanan County, Virginia (herein "Subject Lands"). At the Board's hearing on February 18, 1992, for Docket No. VGOB 92-02/18-0184, in accordance with the

provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board granted the relief sought by PGP and executed an Order dated April 29, 1992 and filed May 1, 1992 with the Clerk of the Circuit Court of Buchanan County, VA in Deed Book 390 at Page 677 pooling all interests in the Subject Drilling Unit for the production of gas produced from coalbeds and rock strata associated therewith below the Tiller seam (herein "Coalbed Methane Gas" or "Gas") from active gob areas from a longwall panel and its surrounding area in Consolidation Coal Company's Buchanan No. 1 Mine (herein "Subject Formations") all pursuant to: (1) the permit provisions contained in Section 45.1-361.27 *et seq.*, Code of Virginia, 1950 as amended; (b) the Oakwood Coalbed Gas Field Order No. OGCB 3-90 dated May 18, 1990; (c) the Board's Order No. VGOB No. 92/01/21-0180 dated as of February 18, 1992; (d) §§480-05-22.1 *et seq.*, Gas and Oil Board Regulations; and (e) §§ 480-05-22.2 *et seq.*, Virginia Gas and Oil Board Regulations, all as amended from time to time (herein "Pooling Order"). The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections entered in VGOB Docket No. 92-02/18-0184 executed on April 4, 1996 and filed on April 17, 1996 in Deed Book 447 at Page 810 (herein "Supplemental Order"); and by the Board's Amended Supplemental Order Regarding Docket Number VGOB 92-02/18-0184 executed June 26, 1998 and filed July 14, 1998 in Deed Book 478 at Page 712 (herein "Amended Supplemental Order"). The Board named PGP as the Unit Operator of Subject Drilling Unit.

- 4.2. As instructed by the Board through the Pooling Order, the Supplemental Order, and the Amended Supplemental Order, the Escrow Agent established the Escrow Account for Subject Drilling Unit (herein "Escrow Account"), and thereafter the Escrow Agent periodically received from the Unit Operator for deposit into the Escrow Account proceeds which were designated by the Operator through its royalty statements as being attributable to various tracts identified in the attached Exhibit E and the attached Further Accounting. By order entered November 16, 1998 the Board Directed PGP to file with the Board a tract-by-tract accounting of funds on deposit in the Escrow Account (herein "Accounting Order").
- 4.3. Applicants' seek a royalty accountings, determination of the funds on deposit in the Escrow Account for Tracts 20, 22, 24, 25, 27C and 27D of Subject Drilling Unit, and disbursement to them of all such Escrowed Funds attributable to said Tracts pursuant to their written agreement with each other (herein referred to as "Split Agreement"). The Applicants warranted and represented to the Board that:
 - (1) PGP is the sole owner of oil and gas interests in Tracts 20, 22, 24, 25, 27C and 27D of the SLW6 Drilling Unit;
 - (2) Hugh Macrae Land Trust (herein "Trust") is the sole owner of coal interests in Tracts 20, 22, 24, 25, 27C and 27D; however, by Assignment and Bill of Sale dated December 29, 1997 (herein "Assignment") Trust assigned to Torch its conflicting coalbed methane gas royalty interest in said tracts including all its interest in the funds on deposit in the Escrow Account which the Unit Operator attributes to said tracts;
 - (3) together PGP and Trust claim to have and own, in the aggregate, the following Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tracts 20, 22, 24, 25, 27C and 27D and the terms of their voluntary leases with PGP pertaining to same, and that Trust has assigned to Torch its interest in funds deposited by the Unit Operator into the Escrow Account established by the Board for the SLW6 Drilling Unit with respect to said tracts:

| Tract # | Acres | Interest in Unit | Funds to be Disbursed from Escrow Acct |
|---------|--------|------------------|---|
| 20 | 25.062 | 13.48035 | \$45,090.20 |
| 22 | 4.85 | 2.61087 | 9,190.19 |
| 24 | 0.185 | 0.09951 | 532.35 |
| 25 | 3.551 | 1.96918 | 6,590.38 |
| 27C | 1.76 | 0.94667 | 3,256.53 |
| 27D | 1.16 | 0.62394 | 2,125.86 |
| Totals | 36.678 | 19.73052 | \$66,785.51 |

(4) that while at the time of the entry of the Pooling Order, as amended, Trust and PGP had conflicting claims of ownership in Tracts 20, 22, 24, 25, 27C and 27D, subsequent to the entry of the Pooling Order and Trust's assignment to Torch of its interest in the escrowed funds attributable to said tracts, Torch and PGP entered into a Split Agreement whereby each of them is entitled to receive a sum equal to fifty percent (50%) of the funds due from PGP to them pursuant to the terms of their voluntary leases, including, but not necessarily limited, to such funds on deposit in the Escrow Account.

(5) Applicants have represented to the Board that notice of their Application was given in accordance with Va. Code 45.1-361.19, and the Board received no objections to it.

4.4. By letters dated August 12, 1998, December 9, 1998, and December 31, 1998, PGP filed accountings and at the board's hearing on February 2, 1999 and again on March 23, 1999, in compliance with the Accounting Order, PGP presented to the Board further refinements to said accountings to reflect interest accruing on funds deposited into the Escrow Account and fees charged to the Escrow Account on a tract-by-tract basis, including funds attributable to Tracts 20, 22, 24, 25, 27C and 27D and a reconciliation of PGP's records of Escrowed Funds to the records of the Escrow Agent, a copy of which further and final accounting is attached hereto as Exhibit A (herein "Further Accounting").

4.5. The Applicants represented to the Board on February 2, 1999 that they had been provided with an advance copy of the Further Accounting, have reviewed same, and that Applicants are in agreement that the Further Accounting accurately reflects their Entitlement to the Escrowed Funds for Tracts 20, 22, 24, 25, 27C and 27D of Subject Drilling Unit, and Applicants seek disbursement to them, in the aggregate, the sum of \$66,763.91 from the Escrow Account for the SLW6 Drilling Unit.

5. Findings:

Va. Code 45.1-361.22.5 provides that "The Board shall order payment of principal and accrued interest from the escrow account to all persons legally entitled thereto pursuant to the provisions of § 45.1-361.21 and the Order of the Board. Such order shall be issued within thirty days of receipt of notification of the final legal determination of entitlement thereto or upon agreement of all claimants". The term "entitlement" is not defined by law or regulation; therefore, the Board applies its common meaning as set forth in *Black's Law Dictionary* to be "Right or benefits, income or property which may not be abridged without due process". Thus, the Board defines the term "entitlement" as used in Va. Code § 45.1-361.22.A.5. to mean "the liquidated dollar amount of that portion of the Escrowed Funds which are attributable to Applicant's/Claimant's nonconflicting Gas interest in Subject Drilling Unit". The Escrowed Funds are comprised of the Principal deposited by PGP into the Escrow Account, plus interest accruing on the Principal while on deposit in the Escrow Account, less Escrow Agent fees charged to the Escrow Account. In determining that Applicants have established their Entitlement to the Escrowed Funds, the Board finds that:

- 5.1. The Board lacks the statutory authority to supercede, impair, abridge or affect any contractual rights or other obligations existing between the Operator and the Applicants. The Operator and the Applicants have acknowledged such limitation and have, therefore, agreed that no such party will argue or contend in other pending or future proceedings or actions inter se (including without limitation Levisa Coal Company, et al. v. Consolidation Coal Company, et al., Civil Action No. 97-0117-A pending in the United States District Court at Abingdon) that the findings and/or order of the Board herein bar their assertion of any claims or defenses, including payment, or otherwise constitute a waiver or an estoppel in such other proceedings or actions.
- 5.2. Notwithstanding the fact that Trust is challenging PGP's royalty calculations and/or payments under the terms of its voluntary lease with PGP, Trust has assigned its right to the escrowed funds to Torch and Torch has entered entered into a Split Agreement with PGP whereby they have agreed to split on a 50/50 basis royalties attributable to their respective conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of coalbed methane gas underlying Tracts 20, 22, 24, 25, 27C and 27D of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by PGP in the Escrow Account which are attributable to said tracts. Based upon the Split Agreement, the Applicants', through their application herein, seek among other things, disbursement to them in accordance with the terms of the Split Agreement those funds set forth in 4.3(3) above.
- 5.3. According to the Pooling Order, the Supplemental Order, the Amended Supplemental Order, the Further Accounting and the Application filed in this matter: (a) the funds deposited by PGP into the Escrow Account for Subject Drilling Unit consists of payments calculated by PGP to be due those persons identified in Exhibit E hereto and (b) PGP has represented to the Board through the Further Accounting that as of December 23, 1998 the funds set forth in Paragraphs 4.3(3) above are those funds on deposit in the Escrow Account which are attributable to Tracts 20, 22, 24, 25, 27C and 27D all as more particularly reflected in the Further Accounting, and (c) Applicants have made the warranties and representations to the Board set forth in Paragraph 4.3 above.

6. **Relief Granted:**

For the reasons set forth in Paragraph 5 above, and based upon the Further Accounting and the Applicants' agreements to same, the Escrow Agent is ordered to disburse via wire transfer in accordance with instructions provided to the Escrow Agent by Applicants' counsel's letter dated March 30, 1999, copy attached hereto: (1) the sum of \$33,392.75, together with any interest which accrues thereon from the date of the Further Accounting through the date of disbursement, to Torch and (2) the sum of \$33,392.75, together with any interest accruing thereon from the date of the Further Accounting through the date of disbursement, to PGP. Further, the Amended Supplement Order filed in this cause is hereby modified to delete the requirement that funds attributable to Applicants' conflicting coalbed methane gas ownership interests in Tracts 20, 22, 24, 25, 27C and 27D of the SLW6 Unit be deposited by PGP into the Escrow Account. To the extent not specifically granted herein, any other or further relief requested by the Applicants in their application filed herein or in their objections to the accountings heretofore provided is denied.

7. **Conclusion:**

Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 7th day of April, 1999, by a majority of the Virginia Gas and Oil Board.

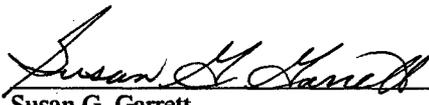

Chairman, Benny R. Wampler

DONE AND PERFORMED this 12th day of April, 1999, by an Order of this Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

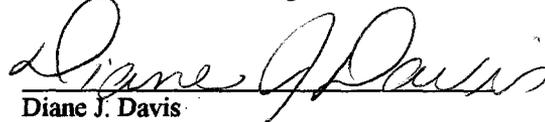
Acknowledged on this 7th day of April, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON

Acknowledged on this 12th day of April, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My commission expires: September 30, 2001