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VIRGINIA GAS AND OIL CONSERVATION BOARD

HEARING OF JULY 20, 1993

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

INDEX

<u>ITEM</u>	<u>PAGE</u>
I	2, 29
II	3
III	16
IV	23

1 July 20, 1993

2 This matter came on to be heard on this the 20th day of
3 July, 1993 before the Virginia Gas and Oil board in the
4 Dickenson Conference Center at Southwest Virginia 4-H Center,
5 Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-
6 361.22.B of the Code of Virginia.

7
8 MR. WAMPLER: Good morning. My name is Benny Wampler and I'm
9 Deputy Director for the Department of Mines, Minerals and
10 Energy. I'll ask the Board members to introduce them-
11 selves.

12 (MEMBERS INTRODUCED.)
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ITEM 1

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3 MR. CHAIRMAN: The first item on today's agenda is a petition
4 for appeal of the Director's decision from Terry Ball and
5 Jeffery Brent Counts. This is on Equitable Resource's
6 proposed well P-289C, docket number VGOB-93/07/20-0391.
7 We'd ask the parties that wish to address the Board in
8 this matter to come forward at this time and introduce
9 yourselves.

10 MR. KAISER: Jim Kaiser with Hunter, Smith & Davis, appearing
11 on behalf of Equitable Resources. Our witnesses in this
12 matter will be Dennis Baker, Dahlin and Ran Sterling and
13 possibly Don Hall also.

14 MR. CHAIRMAN: Are the attorneys or anyone representing Terry
15 Ball or Jeffery Counts present? The record will show
16 they are not present. If there are no objections we'll
17 continue this matter -- go ahead and continue it until
18 the end of today's session and go ahead with the next
19 item on the agenda. Any objection to that?
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3 ITEM II

4 MR. CHAIRMAN: If not, the next item on the agenda is a
5 petition for force pooling under Section 45.1-361.21 by
6 Equitable Resources Exploration for the V-2665 well to be
7 located in the Gladeville District. This is docket
8 number VGOB-93/07/20-0388. We would ask the parties that
9 wish to address the Board in this matter to come forward
10 at this time and introduce themselves.

11 MR. KAISER: Jim Kaiser once again on behalf of EREX. Our
12 witnesses in this matter will be Dennis Baker and Bob
13 Dahlin.

14 MR. CHAIRMAN: Are there any others that wish to address the
15 Board. The record will show there are none. You may
16 proceed.

17 COURT REPORTER: (Swears witnesses.)

18 MR. KAISER: Our first witness in this matter will be Dennis
19 Baker.

20
21 DENNIS BAKER

22 a witness who, after having been duly sworn, was examined and
23 testified as follows:
24
25

1 DIRECT EXAMINATION

2
3 BY MR. KAISER:

4 Q. Mr. Baker, in what capacity are you employed in with
5 EREX?

6 A. Leasing supervisor.

7 Q. And do your responsibilities include the lands involved
8 here and the surrounding area?

9 A. Yes, they do.

10 Q. Are you familiar with Equitable's application for
11 establishment of drilling unit ad pooling order for EREX
12 well 2665 dated June 17th, 1993?

13 A. Yes, I am.

14 Q. Has EREX applied for a permit and is a permit now pending
15 before the DMME?

16 A. Yes, it is. I believe it's dated July 1st, 1993.

17 Q. Is Equitable seeking to force pool the drilling rights
18 underlying the drilling and spacing unit as depicted at
19 Exhibit A of the application?

20 A. That is correct.

21 Q. Does Equitable own drilling rights in units involved
22 here?

23 A. Yes, we do.

24 Q. And does the proposed unit depicted at Exhibit A include
25 all acreage within 2,640 feet/ 1,320 foot radius of

1 proposed well V-26657

2 A. Yes, it does.

3 Q. What is the interest of Equitable in the unit?

4 A. Currently leased at this time is 95.59 percent.

5 Q. Are you familiar with the ownership of drilling rights of

6 parties other than Equitable underlying the unit?

7 A. Yes, I am.

8 Q. What would that percentage be?

9 A. Percentage unleased at this time is 4.41 percent.

10 Q. And are all unleased parties set out at Exhibit B?

11 A. Yes, they are.

12 Q. Is there an amended Exhibit B?

13 A. No, there is not.

14 Q. Prior to filing the application were efforts made to

15 contact each of the respondents and an attempt made to

16 work out an agreement regarding the development of the

17 units involved?

18 A. Yes, there were.

19 Q. Subsequent to the filing of the application have you

20 continued to attempt to reach an agreement with the

21 respondents listed in Exhibit B?

22 A. Yes, we have.

23 Q. You've testified that as a result of these efforts there

24 has not been any additional leases acquired since the

25 original filing of the application?

1 A. No, sir.

2 Q. Were any efforts made to determine if the individual
3 respondents were living or deceased or their whereabouts
4 and if deceased were efforts made to determine the names
5 and addresses and whereabouts of the successors to any
6 deceased individual respondents?

7 A. Yes, sir.

8 Q. Were reasonable and diligent efforts made and sources
9 checked to identify and locate these unknown heirs to
10 include primary sources such as deed records, probate
11 records, assessor records, treasurer records, and
12 secondary sources such as telephone directories, city
13 directories, family and friends?

14 A. Yes.

15 Q. In your professional opinion was due diligence exercised
16 to locate each of the respondents named herein?

17 A. Yes, it was.

18 Q. Are the addresses set out in Exhibit B to the application
19 the last known addresses for the respondents?

20 A. Yes.

21 Q. Are you requesting this Board to force pool all unleased
22 interests listed at Exhibit B?

23 A. Yes.

24 Q. Does Equitable seek to force pool the drilling rights of
25 each individual respondent if living and if deceased, the

1 unknown successor or successors of any deceased individ-
2 ual respondents?
3 A. Yes.
4 Q. Is Equitable seeking to force pool drilling rights of the
5 person designated as trustee if acting in the capacity of
6 trustee and if not acting in such capacity, is Equitable
7 seeking to force pool the drilling rights of the success-
8 or of such trustee?
9 A. Yes.
10 Q. Are you familiar with the fair market value of drilling
11 rights in the units here and in the surrounding area?
12 A. Yes, I am.
13 Q. Advise the Board as to what those are.
14 A. A \$5 bonus consideration, five year term, one-eighth
15 royalty.
16 Q. Did you gain your familiarity by acquiring oil and gas
17 leases and other agreements involving the transfer of
18 drilling rights in the units involved here and in the
19 surrounding area?
20 A. Yes.
21 Q. In your opinion do the terms you've testified to repre-
22 sent the fair market value and a fair and reasonable
23 compensation to be paid for drilling rights within this
24 unit?
25 A. Yes, sir. Correct.

1 Q. Based on your testimony here and as to respondents who
2 have not voluntarily agreed to the pool do you recommend
3 that the respondents listed in Exhibit B who remain
4 unleased be allowed the following options with respect to
5 their ownership interests within the unit: 1; Participa-
6 tion. 2; A cash bonus of \$5 per net mineral acre plus a
7 one-eighth of eight-eighths royalty. 3; In lieu of cash
8 bonus and one-eighth of eight-eighths royalty share in
9 the operation of the well on a carried basis as a carried
10 operator under the following conditions: Such carried
11 operator shall be entitled to the share of production
12 from the tracts pooled accruing to its interest exclusive
13 of any royalty or over riding royalty reserved in any
14 leases, assignments thereof, or agreements relating there
15 to of such tracts but only after the proceeds allocable
16 to his share equal A; 300 percent of the share of such
17 costs allocable to the interest of the carried operator
18 of the leased tract or portion thereof or B; 200 percent
19 of the share of such costs allocable to the interest of
20 the carried operator of an unleased tract or portion
21 thereof?

22 A. Yes. That's correct.

23 Q. Do you recommend that the order provide that elections by
24 respondent be in writing and sent to applicant and to
25 Equitable Resources Exploration, P.O. Box 1983, King-

1 sport, Tennessee, 37662-1983, attention Dennis R. Baker,
2 Regulatory?
3 A. That's correct.
4 Q. Should this be the address for all communications with
5 applicant concerning the force pooling order?
6 A. Yes.
7 Q. Do you recommend that the force pooling order provide
8 that if no written election is properly made by a
9 respondent then such respondent shall be deemed to have
10 elected to cash royalty option in lieu of participation?
11 A. That's correct.
12 Q. Should the unleased respondents be given 30 days from the
13 date of the order to file written elections?
14 A. That's correct.
15 Q. If an unleased respondent elects to participate should
16 that respondent be given 45 days to pay applicant for
17 respondent's proportionate share of the well costs?
18 A. Yes.
19 Q. Does the applicant expect the party electing to particip-
20 ate to pay in advance that party's share of completed
21 well costs?
22 A. Yes.
23 Q. Should the applicant be allowed 60 days following the
24 recordation date of the order and thereafter annually on
25 that date until production is achieved to pay or tender

1 any cash bonus becoming due under the force pooling
2 order?
3 A. Yes.
4 Q. Do you recommend that the force pooling order provide
5 that if a respondent elects to participate but fails to
6 pay respondent's proportionate share of well costs
7 satisfactory to applicant for payment of well cost the
8 respondent's election to participate should be treated as
9 having been withdrawn and void and such respondent should
10 be treated just as if no initial election had been filed
11 under the force pooling order?
12 A. Yes. That's correct.
13 Q. Do you recommend the force pooling order provide that
14 where a respondent elects to participate but defaults in
15 regard to the payment of well costs any cash sum becoming
16 payable to such respondent be paid within 60 days after
17 the last day on which such respondent could have paid or
18 made satisfactory arrangements for the payment of well
19 costs?
20 A. Correct.
21 Q. Do you recommend the force pooling order provide that if
22 respondent refuses to accept any payment due including
23 any payment due under said order or any payment of
24 royalty or cash bonus or said payment cannot be paid to a
25 party for any reason or there is a title defect in

1 BOB DAHLIN

2 a witness who, after having been previously sworn, was
3 examined and testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. KAISER:

8 Q. Mr. Dahlin, in what capacity are you employed in by
9 Equitable?

10 A. I'm employed as an operation specialist for Equitable.

11 Q. And you've testified before this Board on numerous
12 occasions before?

13 A. Yes, sir, I have.

14 MR. KAISER: We ask that Mr. Dahlin be accepted as an expert
15 witness.

16 Q. (Mr. Kaiser continues.) Do your responsibilities include
17 lands involved here and in the surrounding area?

18 A. They do.

19 Q. Are you familiar with the proposed exploration and
20 development of units involved here under applicant's
21 proposed plan of development?

22 A. Yes, sir, I am.

23 Q. What is the total depth of the proposed initial well
24 under applicant's plan of development?

25 A. Approximately 5,500 feet.

- 1 Q. And what formations will this depth include?
- 2 A. Devonian Shells, Berea, Weir, Big Lime, Ravencliff and
3 Maxon formations.
- 4 Q. Will this be sufficient to penetrate and test the common
5 sources of supply in the subject formations?
- 6 A. Yes, sir, it will.
- 7 Q. Is applicant requesting for force pooling the convention-
8 al gas reserves not only to include the designated
9 formations but any other formations excluding coal
10 formations which may be between those formations design-
11 ated from the surface to the total depth drilled?
- 12 A. Yes, we are.
- 13 Q. Will the initial well be at a legal location?
- 14 A. Yes, it will.
- 15 Q. What are the estimated reserves of the unit?
- 16 A. We estimate approximately 500 million cubic foot of gas
17 in the drilling unit.
- 18 Q. Are you familiar with the well costs for the proposed
19 initial unit well under applicant's plan of development?
- 20 A. Yes, sir.
- 21 Q. Has an AFE been reviewed, signed and submitted to the
22 Board?
- 23 A. Yes, it has.
- 24 Q. Was this AFE prepared an engineering department knowledg-
25 eable in the preparation of AFEs and knowledgeable in

1 regard to well costs in this area?

2 A. It was.

3 Q. Does this AFE represent a reasonable estimate of the well
4 costs for the proposed unit well under applicant's plan
5 of development?

6 A. Yes, it does.

7 Q. What would the dry hole costs on this well be?

8 A. Dry hole costs are \$155,600.

9 Q. And the completed well costs?

10 A. \$289,500.

11 Q. Do these costs anticipate a multiple completion?

12 A. They do.

13 Q. Does the AFE include a reasonable charge for supervision?

14 A. Yes, sir.

15 Q. In your professional opinion will the granting of this
16 application be in the best interest of conservation,
17 prevention of waste, and the protection of correlative
18 rights?

19 A. Yes, it will.

20 MR. KAISER: I have no further questions of this witness.

21 MR. CHAIRMAN: Questions, members of the Board?

22 MR. MASON: I'm just curious. This well includes 2,500 foot
23 of intermediate casing.

24 MR. DAHLIN: Yes, sir.

25 MR. MASON: Why? I'm just curious as to why.

1 MR. DAHLIN: Coal is rather deep in this area and we ran a
2 first string and then another string to penetrate all the
3 holes.

4 MR. CHAIRMAN: Other questions?

5 (Witness stands aside.)

6 MR. CHAIRMAN: Do you have anything further?

7 MR. KAISER: Nothing further, Mr. Chairman.

8 MR. EVANS: I make a motion that we approve the request to
9 force pool this unit.

10 MR. CHAIRMAN: A motion to approve.

11 MR. KELLY: Second.

12 MR. CHAIRMAN: A motion and a second. Further discussion?

13 All in favor signify by saying yes. (ALL AFFIRM.)

14 Opposed say no. (NONE.) Unanimous decision.

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3 ITEM III

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 a well location exception by Equitable Resources Explora-
6 tion for V-2850 on the Appalachia Quadrangle. This is
7 docket number VGOB-93/07/20-0389. We'd ask the parties
8 that wish to address the Board in this matter to come
9 forward time and introduce themselves.

10 MR. KAISER: Jim Kaiser appearing on behalf of Equitable
11 Resources. Our witnesses in this matter will be Mr. Don
12 Hall and Mr. Bob Dahlin.

13 COURT REPORTER: (Swears witness.)

14 MR. CHAIRMAN: Are there any others that wish to address the
15 Board in this matter? The record will show there is
16 none. You may proceed.

17 MR. KAISER: By way of introduction to this matter, Mr.
18 Chairman, this is a location exception on a Penn-Virginia
19 Resources tract that Penn-Virginia Resources owns in fee
20 the reciprocal wells which are all operated by Equitable
21 Resources also on Penn-Virginia fee tracts, the primary
22 considerations involved. I've got an Exhibit A and
23 Exhibit B, Exhibit A being a letter from Mr. Keith
24 Horton, vice-president of coal at Penn-Virginia Resourc-
25 es, and Exhibit B which is a map showing the location of
2050 and the location of the wells to which we are

1 requesting the location exception prepared by Mr. Horton
2 and his engineering department. The primary considera-
3 tions under this matter are the fact that the existing
4 wells -- the wells to which we are seeking exceptions
5 were drilled pursuant to prior spacing regulations and/or
6 locations were made pursuant to existing coal operations
7 at that time. Due to that we are requesting a location
8 exception here to prevent any waste and due to topo-
9 graphical considerations. Let me hand out these exhibits
10 to everyone now before we get started with our questions.
11 I'm sorry. We also have an Exhibit C prepared by
12 Equitable Resources which is duplicative somewhat of Mr.
13 Horton's exhibit. Also, though, it includes additional
14 wells that are outside the 2,640 spacing requirement and
15 serves to show why if we --if we moved it in any other
16 direction it would require a location exception also.
17 (Pause.) Our first witness in this matter will be Mr.
18 Don Hall. He has been sworn.
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21 DON HALL

22 a witness who, after having been duly sworn, was examined and
23 testified as follows:
24
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DIRECT EXAMINATION

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3 BY MR. KAISER:

4 Q. Mr. Hall, you are employed Equitable Resources in what
5 capacity?

6 A. Land man Virginia.

7 Q. And your qualifications as an expert witness have
8 previously been accepted by this Board?

9 A. Yes, sir.

10 MR. KAISER: We submit Mr. Hall as an expert witness in this
11 matter.

12 Q. (Mr. Kaiser continues.) Do your responsibilities include
13 the lands involved here and in the surrounding area?

14 A. Yes.

15 Q. Are you familiar with the application for location
16 exception to well V-2850 and the relief requested?

17 A. Yes, sir.

18 Q. Have all interested parties been noticed as required by
19 Section 4.B of the Virginia Gas and Oil Board Regula-
20 tions?

21 A. Yes. Certified mailings have been sent to the DGO
22 office on June 17th.

23 Q. Would you indicate for the Board the ownership of the oil
24 and gas underlying well V-2850?

25 A. Penn-Virginia Resources owns it 100 percent.

1 Q. Are all these tracts covered by an oil and gas lease or
2 lease and does EREX have a working interest in the oil
3 and gas lease covering all of these tracts?
4 A. Yes, sir.
5 Q. Does this lease cover all the oil and gas owners with a
6 1,320 foot radius of well V-2850?
7 A. Yes, it does.
8 Q. And does EREX operate and have the right to operate the
9 reciprocal wells IED-133594, V-133565, V-2851 and V-
10 133627?
11 A. Yes, sir.
12 MR. KAISER: I have no further questions of this witness.
13 MR. CHAIRMAN: Don, are you the witness that would answer any
14 questions about any active mining? Is there any active
15 mining in the vicinity of this proposed well?
16 MR. KAISER: 2850 is actually being drilled through a -- mined
17 out through the Taggart seam which is mined out and
18 abandoned.
19 MR. CHAIRMAN: Any other active mines in the seams above or
20 below?
21 MR. HALL: Not to my knowledge.
22 MR. KAISER: Not to my knowledge.
23 MR. MASON: In the survey plat which is attached to the
24 petition it indicates the well V-2851 as proposed well.
25 MR. KAISER: That well, I believe, has now been permitted.

1 MR. HALL: It was permitted July 2nd, I think was when the
2 permit was issued. When that well was permitted it did
3 not require a location exception.
4 MR. MASON: But it's not been drilled?
5 MR. HALL: No.
6 MR. HARRIS: Actually there's another one that says proposed
7 also on the far right. V-2852 says proposed --
8 MR. HALL: The next subject is that one.
9 MR. KAISER: We're requesting a location exception on the next
10 matter.

11 MR. CHAIRMAN: Anything further, members of the Board?
12 (Witness stands aside.)

13 MR. KAISER: Our next witness is Mr. Bob Dahlin. At our prior
14 hearing this morning Mr. Dahlin was accepted by the Board
15 as an expert witness.

16
17 BOB DAHLIN

18 a witness who, after having been previously sworn, was
19 examined and testified as follows:

20
21 DIRECT EXAMINATION

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23 BY MR. KAISER:

24 Q. Can you once again go over your area of responsibilities
25 at Equitable?

- 1 A. I'm employed as an operations specialist and primarily
2 coordinate the land engineering and geology efforts in
3 coordinating the drilling programs.
- 4 Q. Could you summarize briefly for the Board from Equit-
5 able's prospective the purpose of this application?
- 6 A. Yes, sir. There are reserves we are attempting to
7 produce here that aren't available in any other location.
8 We have a substantial amount reserves ranging between 450
9 million and 1.1 BCF reserves available in the area.
10 We're attempting to produce those basically and we're
11 locked in from the development of wells under prior
12 spacing.
- 13 Q. In the event this location exception well is not drilled
14 can you project the estimate loss of reserves?
- 15 A. Yes, sir. We have again, as I mentioned, a good range of
16 reserve. We're estimating 600 million foot of gas from
17 this drilling unit.
- 18 Q. Should all formations, Devonian shells, Berea, Big Lime,
19 Ravenclyff, Maxon from the surface of the ground to the
20 total depth drilled be covered by any order issued by the
21 Board?
- 22 A. Yes, sir.
- 23 Q. In your professional opinion are there any other feasible
24 locations on tract TK-89 of this Penn-Virginia tract
25 which allow well V-2850 to be drilled without requiring a

1 location exception?

2 A. All other locations would require an exception.

3 Q. In your opinion will the granting of this location

4 exception be in the best interest of preventing waste and

5 maximizing recovery of gas reserves underlying V-2850?

6 A. Yes, sir.

7 MR. KAISER: I have no further questions of this witness, Mr.

8 Chairman.

9 MR. CHAIRMAN: What's your total depth?

10 MR. DAHLIN: It's 5,700 feet.

11 MR. CHAIRMAN: Other questions, members of the Board?

12 (Witness stands aside.)

13 MR. CHAIRMAN: Do you have anything further?

14 MR. KAISER: Nothing further.

15 MR. CHAIRMAN: Do we have a motion?

16 MR. KELLY: I move the application be approved as submitted.

17 MR. CHAIRMAN: A motion to approve.

18 MR. MASON: Second.

19 MR. CHAIRMAN: A motion and a second. Further discussion? If

20 not, all in favor signify by saying yes. (ALL AFFIRM.)

21 Opposed say no. (NONE.) Unanimous approval.

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ITEM IV

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3 MR. CHAIRMAN: The next item on the agenda is a petition for a
4 well location exception by Equitable Resources Explora-
5 tion for V-2852. This is docket number VGOB-93/07/20-
6 0390. We'd ask the parties that wish to address the
7 Board in this matter to come forward at this time and
8 identify yourselves.

9 MR. KAISER: Jim Kaiser on behalf of Equitable Resources.
10 Once again, in this matter our witnesses will be Mr. Don
11 Hall and Mr. Bob Dahlin. By way of introduction, again
12 this is a location exception on a tract that is 100
13 percent fee Penn-Virginia Resources except for wells all
14 operated by Equitable Resources on fee property of Penn-
15 Virginia. The primary considerations here are surface
16 topography, previous deep mining, proposed future deep
17 mining and once again previous spacing requirements of
18 surrounding gas wells dictated by deep mining. These
19 considerations eliminate any other suitable location
20 which would provide adequate drainage of the natural gas,
21 prevent waste. Once again we have Exhibits A, B and C.
22 Exhibit A consists of a letter from Mr. Ken Horton of
23 Penn-Virginia Resources. Exhibit B is the exhibit map
24 prepared by Mr. Horton and his engineering department.
25 And Exhibit C is the exhibit prepared by Equitable

1 Resources' engineering department. (Pause.) Our first
2 witness in this matter will be Mr. Don Hall who has
3 previously been accepted as an expert witness before the
4 Board.

5
6 DON HALL

7 a witness who, after having been previously sworn, was
8 examined and testified as follows:

9
10 DIRECT EXAMINATION

11
12 BY MR. KAISER:

13 Q. Mr. Hall, do your responsibilities include the lands
14 involved here and in the surrounding area?

15 A. Yes.

16 Q. Are you familiar with the application for location
17 exception to well V-2852 and the relief requested?

18 A. Yes, sir.

19 Q. Have all interested parties been noticed as required by
20 Section 4.B of the Virginia Gas and Oil Board regula-
21 tions?

22 A. Yes, sir. The Department received certified mailings on
23 June 17th.

24 Q. Would you indicate for the Board the ownership of the oil
25 and gas underlying well V-2852?

1 A. Penn-Virginia Resources is 100 percent owner.
2 Q. Are all these tracts covered by an oil and gas lease and
3 does Equitable have a working interest in an oil and gas
4 lease covering all of these tracts?
5 A. Yes, sir.
6 Q. Does this lease cover all the oil and gas owners within a
7 1,320 foot radius of well V-2852?
8 A. Yes, it does.
9 Q. Does Equitable operator or have the right to operate
10 reciprocal wells being V-133594, V-133652, V-133636 and
11 V-133565?
12 A. Yes, sir.
13 MR. KAISER: I have no further questions of this witness, Mr.
14 Chairman.
15 MR. CHAIRMAN: Questions, members of the Board?
16 (Witness stands aside.)
17 MR. CHAIRMAN: Call your next witness.
18 MR. KAISER: Mr. Bob Dahlin.

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21 BOB DAHLIN
22 a witness who, after having been previously sworn, was
23 examined and testified as follows:
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DIRECT EXAMINATION

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BY MR. KAISER:

Q. Mr. Dahlin, could you summarize briefly for the Board from Equitable's prospective the purpose of this application?

A. Okay. This is the exact same situation as the last matter. It's ultimately developing these reserves in this area. Again, there are existing spacings set up under prior regulations and mining constraints and these are two locations that are left available in the reserves associated. Again, a great range of reserves between 450 and 1.1 BCF of gas we're assigning in here. Conservatively 600 million foot of gas should be loss at this drilling unit.

Q. Should all formations including the Devonian shells, Berea, Weir, Big Lime, Ravencliff and Maxon from the surface of the ground to total depth drilled which I believe is 5,650 feet be covered by any order issued by the Board?

A. Yes, sir. And that footage is correct also.

Q. In your professional opinion is there any other feasible locations on this tract which allow V-2852 to be drilled without requiring a location exception?

A. None that would not require an exception.

1 Q. In your opinion will the granting of this location
2 exception be in the best interest of preventing waste and
3 maximizing recovery of gas reserves underlying V-2852?

4 A. Yes, sir.

5 MR. KAISER: I have no further questions of this witness, Mr.
6 Chairman.

7 (Witness stands aside.)

8 MR. CHAIRMAN: I may have missed it in your questioning.
9 Have you filed written a affidavit of due diligence with
10 the gas and oil office?

11 MR. KAISER: Yes. I think we -- all interested parties have
12 been noticed as required in our certificate of mailing.
13 The affidavit mailing is dated June 17th. Would you like
14 a copy of that?

15 MR. CHAIRMAN: If you've filed it that's sufficient. Any
16 other questions, members of the Board?

17 MR. MASON: For my own identification, does the Taggart coal
18 seam have another name?

19 MR. KAISER: Taggart's also called the Derby #1, I believe.

20 MR. DAHLIN: I'm not aware of it. Taggart is all we've been
21 discussing with Keith Horton.

22 MR. MASON: I was just curious --

23 MR. DAHLIN: I'm not aware of it.

24 MR. KAISER: I believe Mr. Horton told me that the Taggart is
25 also known as the Derby #1.

1 MR. HALL: That's the name of the mine.
2 MR. KAISER: Yeah.
3 MR. CHAIRMAN: Other questions? Do you have anything further?
4 MR. KAISER: Nothing further, Mr. Chairman.
5 MR. CHAIRMAN: Do we have a motion?
6 MR. MASON: I move the approval of the well location
7 exception.
8 MR. CHAIRMAN: A motion to approve.
9 MR. HARRIS: Second.
10 MR. CHAIRMAN: A motion and a second. Further discussion?
11 If not, all in favor signify by saying yes. (ALL
12 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.
13 We'll take a ten minute recess and then we'll come back
14 and call the first item on today's agenda before we
15 conclude today's hearing. Tom, do you know whether these
16 parties -- have they contacted the office or anything
17 about attending today's hearing?
18 MR. FULMER: No. They have received notice.
19 MR. CHAIRMAN: Would you, while we're on break, call the
20 office to assure that there's not been anything there --
21 any contact about this appeal?
22 MR. FULMER: Yes, sir.
23 MR. CHAIRMAN: Thank you.
24 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
25

ITEM I

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MR. CHAIRMAN: I'll recall the meeting to order. We'll go back to the first item on the agenda which we continued to allow the parties Terry Ball and Jeffery Counts time to appear in case they were delayed for any reason this morning. Mr. Fulmer, have you contacted your office as requested?

MR. FULMER: Yes, Mr. Chairman. Neither Mr. Ball nor Mr. Counts have contacted the office to request a continuance.

MR. CHAIRMAN: The first item is a petition for appeal of the Director's decision from Terry Ball and Jeffery Brent Counts, docket number VGOB-93/07/20-0391 being recalled. We'd ask the parties that wish to address the Board in this matter to come forward and identify yourself at this time.

MR. KAISER: Jim Kaiser on behalf of EREX, Mr. Chairman.

MR. CHAIRMAN: The record will show there are no others. You may go ahead and make your statement.

MR. KAISER: Even absent an appearance by Mr. Counts or Mr. Ball we would like for the record to have a couple of items of evidence be entered into and made a part of the record. The first being a pre-appealed letter addressed to Mr. Wampler and members of the Board and Mr. Fulmer

1 dated July 14th, 1993 which we feel clearly articulates
2 the issues presented in this appeal. Should the Board
3 have any questions pursuant to this letter or wish to
4 discuss any of these issues we'd be more than happy to at
5 this time. We also have one other item of evidence that
6 we'd like to get entered into the record in addition to
7 the letter.

8 MR. CHAIRMAN: Okay. You may enter that.

9 MR. KAISER: That item is a. so to speak, litany of the
10 ownership of Motivation Coal Company who holds the lease
11 and is the coal operator on the subject tract. Pittston
12 Coal Company owns Pyxis Resources who owns 100 percent of
13 the stock in Motivation Coal Company. We would like at
14 this time with the Board's permission to enter both of
15 these items. I think everyone has a copy of the letter
16 in their file hopefully, but we'd like to enter a copy of
17 these items into the record. In addition, Mr. Chairman,
18 we would like to incorporate the record and the evidence
19 in the record in the force pooling of May 18th for well
20 P-289C and I believe that was docket number VGOB-93/05/-
21 18-0371. The purpose being that the Motivation Coal
22 lease was entered into the record during that force
23 pooling hearing.

24 MR. CHAIRMAN: Okay.

25 MR. KAISER: In addition, as delineated in the letter to the

1 Board dated July 14th the issue of Motivation Coal being
2 the coal operator on that tract was decided by the Board
3 at that particular hearing to further support that.

4 MR. CHAIRMAN: Those two items that you wish to enter into the
5 record will be marked as Exhibits 1 and 2.

6 MR. KAISER: Okay. I'll do so. I don't have any stickers,
7 but I'm just going to write that on there. Do you have
8 any?

9 MR. CHAIRMAN: She's have some.

10 MR. KAISER: Okay. If you will, mark the letter as Exhibit 1
11 and the information concerning ownership of Motivation
12 Coal as Exhibit 2.

13 MR. CHAIRMAN: The Board has all of the information in your
14 packet of material that's in the record including the
15 Inspector's transcript of the Informal Hearing including
16 the Inspector's decision for the Informal Fact Finding
17 Hearing, docket IPFH-7/7/93, dated June 9th, 1993.
18 (Pause.) I'm just making sure that the Board has an
19 opportunity to review the material or have any questions.

20 MR. KAISER: Mr. Chairman, if I could while you're doing
21 that, to further complete the record in this appeal we
22 would also like to offer some testimony from Mr. Don
23 Hall, if everybody has their letter, as to Item 4 in the
24 letter, the issue of whether or not proposed well P-289C
25 would interfere with coal seams owned by the appellants.

1 As the letter states and as the Board well knows and Mr.
2 Fulmer well knows, the well is not being drilled on the
3 appellant's property. It is being drilled on adjacent
4 property. And we would like to offer some testimony of
5 Mr. Hall as to the lack of any additional effect that any
6 stimulation of the seams may have -- potentially have on
7 Mr. Ball and Mr. Counts' coal.

8 MR. CHAIRMAN: This is on Item 4 in the July 14th, 1993 letter
9 that you introduced for the record?

10 MR. KAISER: Correct.

11 MR. CHAIRMAN: You may proceed with your questioning.

12
13 DON HALL

14 a witness who, after having been previously sworn, was
15 examined and testified as follows:

16
17 DIRECT EXAMINATION

18
19 BY MR. KAISER:

20 Q. Mr. Hall, given your expertise if you could explain for
21 the Board in your own words what the current plans are in
22 this area in regards to stimulation of the coalbed
23 methane well?

24 A. In our agreement with Clinchfield, the Pittston Company,
25 we do not stimulate the Jawbone seam or anything above

1 the Jawbone seam. Basically the reason for that is
2 because the Jawbone seam is, to my knowledge, the lowest
3 seam that's being mined in the county at the present
4 time. So the seams that we're stimulating are seams that
5 are not being mined.

6 Q. So, in other words, assuming that some of the apprehen-
7 sion on the part of Mr. Ball and Mr. Counts which I think
8 was addressed by Mr. Fulmer at the Informal Hearing which
9 is also -- some additional pages of the transcript are
10 included as an attachment to this letter
11 -- assuming that part of their apprehension or fear was
12 that the stimulation of this well would effect the coal
13 seams on their property, this is additional evidence
14 obviously to refute that apprehension on their part.

15 MR. CHAIRMAN: Any questions, members of the Board?

16 (Witness stands aside.)

17 MR. CHAIRMAN: The Board has the June 15th letter from Terry
18 Ball appealing the Inspector's decision. I'll read that
19 into the record. "Dear Mr. Wampler, I am writing to
20 appeal the Inspector's decision dated June 9th, 1993 in
21 the above referenced matter. My objections are set forth
22 in my two objections and letter to Mr. Fulmer and in the
23 transcript of the hearing on May 27th, 1993. A copy of
24 my objections and letter to Mr. Fulmer is enclosed for
25 your information. Among my objections are the following:

1 1; No consent to stimulate the applicable coal seams have
2 been obtained by the operator. I have not seen any
3 document purporting to consent to stimulation of the coal
4 seams of the seams specified in the application. The
5 total lease covering my interest in the tracts that's to
6 expire in 1994 has been mined out and was stripped for
7 surface mine seams. The coal lease was not for the seams
8 to be stimulated or drained by the proposed coalbed
9 methane well. The well is located within 200 feet of my
10 property boundary. 2; Mr. Fulmer scheduled the hearing
11 before my fifteen days to answer had expired. I objected
12 to this obvious infringement on my rights and I attempted
13 to file written objections after the hearing within the
14 fifteen day period. Please advise me of the date and
15 time of the hearing. Very Truly Yours, Terry D. Ball."

16 MR. MCGLOTHLIN: There was an addendum to that?

17 MR. CHAIRMAN: Yes.

18 MR. MCGLOTHLIN: On the next page.

19 MR. CHAIRMAN: There is an addendum. "The coal lease covering
20 my interest in the tract is set to expire in 1994 with no
21 extension or renewals. Considering this time frame no
22 coal operator in their right mind would attempt to obtain
23 the appropriate underground mining permits and start up
24 mining operations for a profit. To my knowledge the
25 Department of Mines, Minerals and Energy has not issued

1 nor has pending any deep or underground mining permits
2 related to the various seams that applicant EREX proposes
3 to stimulate. In reality there is no legitimate operator
4 of the various deep coal seams specified in the appli-
5 cant's permit application or coal seams that applicant
6 proposes to stimulate. Again, the coal lease covering my
7 interest is for strip or surface mining operations.
8 These operations have been mined out and reclaimed.
9 Very truly yours, Terry D. Ball." Mr. Fulmer, would you
10 address the allegation of the fifteen days that applicant
11 Terry D. Ball says had not expired when he tried to
12 object?

13 MR. FULMER: Mr. Chairman, in regards to the hearing there are
14 several letters you will find in here that was addressed
15 before and after the Board hearing which some of the
16 agenda items are not within the Board's purview. Those
17 items were sent to the Division. They were sent as an
18 objection basically to the well. I called a hearing. He
19 received notice. He appeared at the hearing, gave
20 testimony. At that time at the hearing he did not object
21 to the fact that the hearing was going on. Presumably
22 thereafter he submitted objections after I rendered a
23 decision -- submitted objections to me holding the
24 hearing, that he didn't have the fifteen days. That's --
25 I guess what he is objection to is more or less a --

1 maybe a technicality that he did not submit objections to
2 the well permit. Clearly in some of the correspondence
3 we had prior to me calling the hearing there was an
4 objection to the permit and I called a hearing. He did
5 appear and he did give testimony.

6 MR. KAISER: Mr. Chairman, if I may address the Board on that
7 matter. The fifteen day period -- as we state in the
8 pre-appeal letter submitted in the Board, the fifteen day
9 period allotted for in Section 45.1-361.35 of the
10 Virginia Gas and Oil Act is an outside limitation period
11 during which a person can file an objection. It's
12 certainly our position and I think Mr. Fulmer will
13 support this that if a hearing should be called and a
14 person is ready, has filed objections, appears and is
15 ready to present their case prior to that fifteen days
16 then the fifteen days at least in our opinion is a moot
17 point, so to speak. I feel like his due process rights
18 were fully protected. The objections that he filed
19 subsequent to the hearing in his letter of June 2nd were
20 objections that he raised that are in the transcript of
21 the Informal Hearing. There is nothing newly introduced
22 by that letter and I think therefore his objections were
23 fully aired and his due process rights certainly were
24 fully protected. I may note that he failed to appear --
25 he had notice of the force pooling hearing and failed to

1 appear then and, of course, had notice of this appeal
2 today before the Board today and once again has failed to
3 appear.

4 MR. CHAIRMAN: Mr. Fulmer, when did you first receive notice
5 of the objection?

6 MR. FULMER: The first objection and whether Mr. Ball is a
7 party to that objection -- the first objection came in on
8 May 24th from Mr. Jeffery Counts. Mr. Ball being a party
9 to a lease subjected from Mr. Counts -- who obtained from
10 Mr. Counts became party to the objection.

11 MR. CHAIRMAN: Let me stop you just one second. The appeal
12 before the Board today, even though he's listed on here,
13 do we have anything from Mr. Counts specifically? We
14 have a letter from Terry D. Ball.

15 MR. FULMER: That's Mr. Ball's letter. There was another
16 letter dated June 17th to the well permit. As far as the
17 objections go there are two letters, one from Mr. Counts
18 dated May 14th and received on May 24th, a letter of
19 objection in reference to permit of proposed well P289C.
20 On May 28th a letter from Mr. Ball, "I hereby object to
21 the granting of the permit to proposed well P289C for the
22 following reasons." Both of these were objections that
23 were submitted and therefore upon that basis I called the
24 hearing.

25 MR. CHAIRMAN: All right. So your first request for hearing

1 was May 24, is that correct?

2 MR. FULMER: From Mr. Counts.

3 MR. CHAIRMAN: Right.

4 MR. FULMER: The second was dated May 28th and received June
5 1st which was after the hearing for Mr. Ball. Mr. Ball
6 was notified of the hearing of Jeffery Counts when I
7 called the hearing on Jeffery Counts.

8 MR. CHAIRMAN: What date did you set for the hearing on --
9 what was the first date you set for the hearing?

10 MR. FULMER: The date of the hearing was May 27th.

11 MR. CHAIRMAN: So you had a request on May 24th and you set
12 the hearing on May 27th?

13 MR. FULMER: Yes, sir. There is some time differentials
14 basically based upon the letter submitted to the Board
15 objecting to the permit application to the Board. I'll
16 refer again to a Board letter before the Board. A letter
17 of objection in reference to proposed well P289C and that
18 was received on April 28th.

19 MR. CHAIRMAN: I'm still trying to reconcile the dates.

20 MR. FULMER: Mr. Chairman, if I could explain that. There is
21 possibly a technicality here, but based upon the letters
22 that they have submitted they objected to the well back
23 in April. They went to the force pooling hearing. Then
24 after the force pooling hearing I called a hearing on
25 their letter of objection that they had sent to the

1 Board.

2 MR. CHAIRMAN: Mr. Kaiser.

3 MR. KAISER: Mr. Chairman, if I may, the original letter of
4 objection from Mr. Counts and Mr. Ball -- the one from
5 Mr. Counts being received, as Mr. Fulmer stated, April
6 24th and then from Mr. Ball April 28th -- were objections
7 to the force pooling within which contained elements that
8 were truly objections to the well work permit. On his
9 own motion Mr. Fulmer took those objections and scheduled
10 an Informal Hearing on those. I believe the actual
11 notice of that went out by certified mailing to interest-
12 ed parties on May 14th and the hearing was actually
13 scheduled for the 27th. Then subsequent to that Ball and
14 Counts come with these additional letters of objections
15 to the well permit which contained the exact same
16 objections which were in the objections to the force
17 pooling and filed them as of that date. Is that -- I
18 think that's right.

19 MR. CHAIRMAN: Mr. Fulmer, can you verify the date that the
20 notice to interested parties went out?

21 MR. FULMER: For the Informal Hearing, Mr. Chairman?

22 MR. CHAIRMAN: Yes, sir. For the Informal Hearing.

23 MR. KAISER: I've got a copy of that, Mr. Chairman. Date
24 mailed by certified/return receipt mailed on May 14th --

25 MR. FULMER: May 14th, 1993.

1 MR. CHAIRMAN: All right. Thank you. That resolves my
2 concern there. Any other questions? Do you have
3 anything further?

4 MR. KAISER: No. We would just ask based on the evidence
5 presented prior and evidence presented today that the
6 decision of the Inspector be upheld.

7 MR. CHAIRMAN: Questions, members of the Board? Do I have a
8 recommendation?

9 MR. MASON: Based on the evidence presented both oral and
10 written by the various parties of this matter it appears
11 that there's not sufficient grounds to overturn the
12 decision of the Inspector and therefore I move that we
13 uphold it.

14 MR. KELLY: Second.

15 MR. CHAIRMAN: A motion and a second. Any further discussion?
16 If not, all in favor signify by saying yes. (ALL
17 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.
18 That concludes the agenda items. Do we have anything
19 further?

20 MR. MCGLOTHLIN: Pursuant to 45.1-361.15.B8 of the Gas and Oil
21 Act or the Code of Virginia I move that the Board
22 instruct Mr. Fulmer to randomly select from each gas and
23 oil company a number of wells to determine the actual
24 costs of drilling those wells in the Commonwealth. I
25 further move that Mr. Fulmer report to the Board at the

1 September meeting, if that's possible, his findings and
2 any problem that may arise from the gas and oil company
3 to comply with his investigations to ascertain the
4 information needed to determine the actual costs of
5 drilling the wells.

6 MR. CHAIRMAN: We have a motion. Are you just making a
7 request that he do that?

8 MR. MCGLOTHLIN: In the form of a motion, yes, sir.

9 MR. CHAIRMAN: In the form of a motion.

10 MR. FULMER: Fifteen?

11 MR. MCGLOTHLIN: 15.B8, collect data, make investigations, and
12 inspect and examine property leases, papers, books and
13 records.

14 MR. MASON: It's just a Section granting authority of the
15 Board to conduct such an investigation.

16 MR. FULMER: Just a matter of clarification, what types of
17 wells?

18 MR. MCGLOTHLIN: Gas and oil wells, both.

19 MR. MASON: Methane and --

20 MR. MCGLOTHLIN: Methane and conventional wells.

21 MR. FULMER: You want costs on methane wells, cost on
22 conventional wells?

23 MR. MCGLOTHLIN: Yes, sir.

24 MR. FULMER: To certain depths?

25 MR. MCGLOTHLIN: Just randomly choose some that will give us

1 an idea to determine the AFEs, DWEs or the accuracy of
2 what's been submitted to the Board.

3 MR. MASON: I think Mr. McGlothlin's point is well taken.
4 We've been here for a number of years at which time we've
5 had a lot of AFEs presented to us for various types of
6 wells in which we have been given projected costs. I
7 think what Mr. McGlothlin is seeking is a verification
8 that after these wells are completed and the costs are
9 known that we make an examination and determine what, in
10 fact, they actually did cost. And that he would like Mr.
11 Fulmer to obtain the information from the oil and gas
12 companies as sort of a randomly selected representative
13 group of wells. Is that correct?

14 MR. MCGLOTHLIN: Yes.

15 MR. MASON: To give us an indication of what the actual costs
16 are. We'd like to basically verify what we've been told
17 as projected costs and how that related to reality once
18 the wells are completed.

19 MR. CHAIRMAN: Let me ask a clarifying question. On that
20 basis are we instructing the Inspector to limit his
21 survey to those wells that have been force pooled so
22 that, in fact, you are comparing actual costs with
23 projected costs?

24 MR. MCGLOTHLIN: Yes, sir.

25 MR. CHAIRMAN: Anything further? I have a motion. Do I have

1 a second?

2 MR. MASON: Second.

3 MR. CHAIRMAN: A motion and a second. Further discussion?

4 All in favor signify by saying yes. (ALL AFFIRM.)

5 Opposed say no. (NONE.) Unanimous approval.

6 MR. FULMER: Mr. Chairman, when would the Board --

7 MR. CHAIRMAN: The September meeting is the request. If you
8 encounter any problems or what have you, as he suggested,
9 report back to the Board.

10 MR. FULMER: I do have a few questions for the Board members
11 before they disburse. In August we will be meeting at
12 Breaks Interstate Park. We need a count of those people
13 who would be needing rooms for that night. Everything
14 will be direct billed -- the dinner, breakfast, lunch.

15 MR. KELLY: I told Diane to go ahead and get me one.

16 MR. FULMER: So Mr. Kelly, Mr. Evans, Mr. McGlothlin, Mr.
17 Mason, Mr. Wampler, Ms. Riggs. Okay. The other thing I
18 would like to mention to the Board, as of right now we
19 have seven agenda items. There's a couple of PGP
20 longwall panel items that we'll be hearing at that time.
21 There will also be a modification submitted by Virginia
22 Gas Company on the storage field. The other thing I
23 would like to mention for the Board's information is that
24 in September we have scheduled afterwards a meeting with
25 the escrow agent that will be reporting to the Board on

1 the escrow accounts. So if at all possible if the Board
2 can make that one it would be very interesting. We met
3 with them the other day -- Ms. Riggs and myself and some
4 of our staff at DMME -- and I think we had a very
5 productive meeting as to trying to bring the escrow agent
6 up to date and the accounts up to date. I think it will
7 be interesting to hear them.

8 MR. CHAIRMAN: Also a follow-up to the August meeting, do you
9 folks you feel you could get to the Breaks in time to do
10 a tour of the wells that been subject to -- I guess it's
11 Virginia Gas Company that they've drilled in the area.
12 Tom, could you arrange a tour the day before?

13 MR. FULMER: If possible.

14 MR. CHAIRMAN: In the early afternoon. Say if we got in there
15 around 12:00 or 12:30. Tom, could you arrange a tour and
16 get us the information on that? A small tour of the
17 area?

18 MR. FULMER: Yes, sir.

19 MR. CHAIRMAN: Because the Board's had a number of significant
20 substantial interests expressed and concern about the
21 drilling and I think it would be good for you to see what
22 has taken place so that if anything further comes up we'd
23 be able to make and form the decisions. If there is
24 nothing further, thank your time and the hearing is
25 closed.

(End of Proceedings for
July 20, 1993.)

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CERTIFICATE

COMMONWEALTH OF VIRGINIA

COUNTY OF WASHINGTON

~~I, Deborah J. Bise, Notary Public in and for the~~
Commonwealth of Virginia, at Large, do hereby certify that the foregoing proceedings of the Virginia Gas and Oil Board meeting held on July 20, 1993 at the 4-H Center, Conference Center, Abingdon, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid to the best of my ability.

I further certify that I am not a relative, counsel, or attorney for either party, or otherwise interested in the outcome of this action.

GIVEN under my hand this 3rd day of August, 1993.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.