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VIRGINIA GAS AND OIL CONSERVATION BOARD

HEARING OF OCTOBER 19, 1993

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

October 19, 1993

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2 This matter came on to be heard before the Virginia Gas
3 an Oil Board on this the 19th day of October, 1993 in the
4 Conference Center at Southwest Virginia 4-H Center, Abingdon,
5 Virginia pursuant to Section 45.1-361,19.B and 45.1-361.22.B
6 of the Code of Virginia.

7
8 MR. CHAIRMAN: Good morning. My name is Benny Wampler. I'm
9 Deputy Director for the Virginia Department of Mines,
10 Minerals and Energy and Chairman of the Gas and Oil
11 Board. I'd ask the Board members to introduce themselves
12 starting with Kevin.

13 (MEMBERS INTRODUCED.)
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ITEM 1

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3 MR. CHAIRMAN: The first item on our agenda today is really a
4 continuation from last meeting, the Tazewell National
5 Bank representative and escrow agent for the Gas and Oil
6 Board is going to present a report on the status of
7 escrow. Come forward.

8 MR. KING: Good morning. I'm Bill King with Tazewell National
9 Bank and the agent for the Virginia Gas and Oil Board
10 escrow account. The last time we discussed the status of
11 the account and more particularly needing a little better
12 breakdown or summary of the fund. What we had talked
13 about was not for July 30th but also for September 30th
14 receipts, income fees and balance and we went ahead and
15 added -- we wanted to show some prior balances. So I
16 went ahead and treated each quarter in the same fashion.
17 What you see on this report -- does everybody have a
18 copy?

19 MR. CHAIRMAN: Yes.

20 MR. KING: The first quarter in there, 12/31/92, of course, is
21 four months. In the first three columns, the receipts,
22 the income and fees, each of those figures are for that
23 time period only. Then at the end we have the year to
24 date totals. The one thing that -- I think I mentioned
25 at the last meeting. I had the feeling that we have

1 reached the point where the total income exceeded the
2 total fees to date. And that's not the case. We're
3 about \$800 below that figure. But that's attributable to
4 really the fees for 12/31/92. The first four months
5 there was minimal interest earned and the first fees --
6 see there -- that were taken during the March 31st
7 quarter was actually for the first four months of the
8 account that ended December 31st, 1992. So we were
9 really way behind there but catching up. The income on a
10 monthly basis now exceeds the monthly fee. This report,
11 if this is everything you need -- I mean, this gives you
12 maybe a better picture at least as a summary -- we could
13 continue this if the Board would like. It would be much
14 easier with -- the funds that were improperly deposited
15 and returned made it a little difficult at this point.
16 But that's all cleared out now at this point. As it
17 shows here, all these numbers are net of those figures.
18 So this is strictly the VGOB fund.

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

20 MR. HARRIS: Mr. King, I think this is more what we were
21 looking for. I think it's much clearer on what's
22 happening. I do have a question about the fees and
23 again, I know that you explained that earlier on there
24 wasn't really enough money in the account to -- when you
25 start taking out the fees it would appear that we're in

1 the red so to speak. Do you anticipate in the future
2 taking fees monthly or just figuring it quarterly or how
3 do you plan that?

4 MR. KING: The fees are actually taken monthly now. It's
5 easier to compute them. It really doesn't matter to us
6 only in that it's easier to keep track of things. We
7 take the month end market value and compute the market
8 value fee in there and then also the prior months
9 deposits to the various segregated accounts with each
10 well -- each unit. And it's just easier to do it that
11 way. So they're taken monthly. And at this point the
12 income -- even at the money market rates the income is
13 running almost \$200 ahead of the fees on a monthly basis.
14 So we're headed in the right direction on that. Really
15 making up for what happened in the first four to six
16 months of the account.

17 MR. HARRIS: Thank you.

18 MR. CHAIRMAN: Other questions or comments?

19 MR. KING: I have just one other thing if I can take another
20 minute and continue from the last time.

21 MR. CHAIRMAN: Sure.

22 MR. KING: We do want to improve the return to the fund.
23 Basically the approach -- we're really about thirteen
24 months right now into this. The approach has been -- or
25 as close to a no risk situation as we can get. Under the

1 Virginia Code this fund is subject to the standard
2 prudent man rule. From my research we're not really
3 subject to the same regulation as other -- they aren't
4 Government funds in effect so they're not subject to
5 those regulation. That doesn't matter in a practical way
6 because we wouldn't go into investments like stocks or
7 other non-fixed income type returns. It wouldn't be
8 appropriate at all. However, at this point we really
9 don't have to be limited to -- again, what I'll call no
10 risk fund -- a money market fund basically of Government
11 obligations. There's no credit risk. There's no market
12 risk. It doesn't fluctuate. Without asking the Board
13 for direction you hired the Bank to be the investment
14 manager and that's what we want to do, but as far as any
15 direction or input that's what we need from time to time.
16 And I feel like we don't have to limit this to non-
17 fluctuating money market funds. If the money were coming
18 out within a year or any money that we knew would be
19 coming out in a year, that should be in a money market
20 fund. There's always be a certain amount of equity. But
21 what the plan is is that we'll either use some Government
22 bond funds or individual Government bonds. Probably
23 nothing any riskier than that. I think we're at the size
24 of 400,000 and we're at the size where we can begin to do
25 some other things and have reasonable diversification and

1 still leave -- we'll always have, like I said before, a
2 good amount in the money market fund just in the event
3 there should be some required payouts. But my under-
4 standing is that that won't be for a long, long time
5 yet. I realize you can't tell me when that will be but
6 you have indicated it's probably going to be some time.

7 MR. CHAIRMAN: Have you identified any area where the Board is
8 restricting the funds in such a way that you would have a
9 recommendation on how to improve or reduce that restric-
10 tion?

11 MR. KING: I don't know that there's been any restriction.

12 Like I said, there's probably an agreement or document
13 that I think provides for investment in accordance with
14 State statutes. And that should be plenty broad enough
15 for us to operate. We had posed the question early on
16 about using Government National Mortgage Association
17 bonds or a fund comprised of those types of funds and
18 from our research it would seem that those are appropri-
19 ate. They're maybe the next level down from, say,
20 treasury note as far as the risk level. Any bond you can
21 buy and sell and lose money. If you buy an individual
22 bond that's a Government bond therefore the credit risk
23 is low and you hold it to maturity. It may fluctuate in
24 value. So the value of the fund can go up and down, but
25 ultimately you get your money back on the maturity date

1 of that bond. So as long as we don't go out and buy 20
2 year bonds we've got a structure of maturities that are
3 practical for the fund then I think we're okay. Again,
4 using a mutual fund of bonds may be a better approach --
5 or both. That's what I have in mind at this point. If
6 anybody has any comments now or in the future we'd be
7 happy to hear them.

8 MR. CHAIRMAN: Any other questions or comments, members of the
9 Board?

10 MR. EVANS: My only question is what constraints are placed
11 upon us by the State and what are our limits as far as
12 this issue goes? I understand the fiduciary responsibil-
13 ity for their care of these funds.

14 MR. CHAIRMAN: Right. So far as the management of this
15 account it's the responsibility of the escrow agent to
16 manage the account in accordance with prudence and
17 banking practices in compliance with all laws and
18 regulations. As far as the Board's obligation it is to
19 insure that these funds that we're ordering into escrow
20 are protected, that they're earning as much interest is
21 feasible under those guidelines, and that they're
22 available for pay out on demand. Those are basically the
23 guidelines that we operate under.

24 MR. EVANS: In that context let me ask what are we talking
25 about, \$250,000 at present? What percentages would you

1 keep or do you recommend as far as the diversification of
2 this fund?

3 MR. KING: I would again -- one of the main controlling
4 aspects of this is that the funds be available on demand.
5 In the money market fund the funds are available on
6 demand with no fluctuation and that's pretty much why
7 we've kept them there up to this point. Going into,
8 let's say, a conservative mutual fund that's invested in
9 bonds, basically those funds can be sold and I can have
10 the proceeds the next day. So that's fairly liquid.
11 Treasury notes we can sell for a one day settlement.
12 Other types of bonds it might be a five day settlement.
13 But I think all those are a close enough time frame as
14 far as funds are going to be needed that we have the
15 funds. The big question though is -- again, prudent
16 investing doesn't mean that you don't have any risk of
17 loss. So that's really what I'm struggling with, if you
18 will, for this account. Again, I don't think that -- we
19 could go into a fund today that's paying seven percent,
20 6.9 something, and it is a mutual fund made up with
21 Government funds, primarily Jenny Mae. That fund is
22 valued daily and if interest rates -- if we go into that
23 fund and interest rates rise, say, a year from now one
24 percentage point, the value of that fund will be down.
25 But if we have time that will be worked through. The

1 funds --

2 MR. EVANS: I understand.

3 MR. KING: Okay.

4 MR. EVANS: I do understand. I was just asking.

5 MR. KING: Where we are on that line -- how far we can go, in
6 other words, at this point I don't think -- with the
7 conversations I have had with Sandra I don't think the
8 Board wants to get to the point where they say here's
9 what you can invest in. On the other hand, I think the
10 best information or help is really time frame. If you
11 have information that would lead you to believe say a
12 year from now "Well, it's going to be so long a time."
13 That will help us a great deal because -- again we're
14 looking at total return and even if we go into a fund and
15 there should be a small principal loss if we've earned
16 three or four percent interest above that it more than
17 offsets.

18 MR. EVANS: At this level it appears that the principal will
19 be protected based on what you're saying minus the
20 deduction. Even at the most basic risk free type of
21 investment right now this account does outstrip the
22 administrative costs?

23 MR. KING: Yes. It does right now on an ongoing basis and
24 we'll catch up. It may be -- let's say three or four or
25 five months that it will catch up. That's a fairly short

1 time.

2 MR. EVANS: Sure.

3 MR. KING: I think to go back and answer your original
4 question as far as the allocation I would say at least 25
5 percent would in money market funds probably on an
6 ongoing basis and probably nothing longer than four or
7 five years anyway.

8 MR. EVANS: Would you try and grade that you or would it be
9 just kind of a --

10 MR. KING: Oh, no. It would be a laddered type situation.

11 MR. EVANS: Sure.

12 MR. KING: Right, with maturities coming due every year or
13 every six months. If we go with individual bonds --
14 which I think that's the best way to go because that way
15 you always have something maturing. No matter what
16 happens to interest rates out there we're going to get
17 our principal back whereas with a fund it has no maturity
18 date and you're letting the fund manager which is some
19 huge company. And they do an excellent job most of the
20 time. We may commit part of the funds to something like
21 that. I think I have a good feel for what we need. I'm
22 just letting you all know my thoughts. But if you feel
23 that it's too conservative or one way or the other I'd
24 like to hear from you.

25 MR. CHAIRMAN: Let me ask you final question from my stand-

1 point. What's the minimal time -- you've talked about
2 the availability on one days notice or next day notice.
3 What is the minimum time that would accrue the most
4 benefit to the parties' monies for pay out? In other
5 words, if you had a month's notice would that yield a
6 greater return? What's the minimum time that would have
7 a benefit?

8 MR. KING: That's hard to say for sure, but 30 days notice
9 would generally be enough under any circumstances.
10 Obviously if -- probably if some situation occurred where
11 there were some decisions in the works, whether it was in
12 the courts or where ever, if we know that and we are kept
13 informed of the progress I might start moving money more
14 to liquid. So we may be talking a six month time frame.
15 But I just have the feeling that probably we would know
16 or have an idea something's coming sooner than 30 days.
17 And it may be 30 days or less once it gets down to okay,
18 we're paying the money out.

19 MR. CHAIRMAN: Right.

20 MR. KING: It's just as simple as probably the longer the
21 notice the better.

22 MR. CHAIRMAN: Anything further, members of the Board?

23 MR. MCGLOTHLIN: Mr. King, on the mutual fund that you're
24 investing in, we're paying you a fee to handle the
25 account and then -- are they also taking a fee off that

1 money?

2 MR. KING: That's right. What we do, if I use any it would be
3 a no load fund. In other words, no commission up front
4 or coming out of it. But yes, the fund would have an
5 ongoing management fee and those range from generally
6 one-half a percent to one percent. Generally when we
7 look at funds like that we look at the past performance
8 of that fund and that fund manager and their management
9 fees are netted out of the returns. But you're right,
10 though. You are paying us a management fee and using a
11 mutual fund -- you're paying a double fee. That can be
12 stated that way. But again if we look at the total
13 return of the fund it still can be beneficial to the
14 account -- to the ultimate beneficiaries of this fund.
15 But, as I said, I'm really leaning more toward individual
16 bonds just because we have a little more safety, a little
17 less risk of market fluctuation.

18 MR. CHAIRMAN: Anything further? Thank you very much. We
19 appreciate that.

20 MR. CRATES: Could we maybe ask a question or to?

21 MR. CHAIRMAN: Sure. Come forward and state your name.

22 MR. CRATES: I'm Rick Crates with Equitable Resources.

23 MS. BARRETT: I'm Rita Barrett with Equitable Resources.

24 There's a question we have. When you charge the trans-
25 action fee is that per account or per deposit that's

1 coming into the account?

2 MR. KING: That's per account per month.

3 MS. BARRETT: One of the things we would like to address the
4 Board on is the fact that on some of the accounts that we
5 have set up we will send in maybe \$5 or \$6 a month and
6 what we would like to so is ask you folks if we could
7 escrow the monies until they reach \$25 before we send
8 them to the bank?

9 MR. CRATES: If we understand it correctly, the checks that
10 we're writing that are \$5 or \$6 to the account, if
11 they're getting a \$10 transaction fee for each deposit
12 each month that check comes in then the Board's so to
13 speak in the hole on each one of those. We have an
14 internal policy of paying royalty when they reach \$25.
15 We're currently paying the Tazewell National Bank the
16 checks as they're incurred regardless of the amount.
17 That's just something that we thought could maybe save
18 the Board some money as well as keep things going with
19 our own internal policies.

20 MR. KING: That's true especially in the initial deposits, but
21 ongoing there's been a lot of checks that have been under
22 \$10 and many times we try to keep track of what's charged
23 and what's not charged when a particular account doesn't
24 have \$10. We're not charging the fee but eventually it
25 would be made up. Maybe there is something that we could

1 work out there. Of course, that part of it we'd probably
2 like to see also because it just doesn't seem efficient
3 to us to process a lot of small checks.

4 MR. CHAIRMAN: I don't think certainly that the Board would
5 want to see any inefficiency created over undue expenses
6 to the account. That wouldn't be prudent management of
7 the account either. Does anybody have any problem with
8 that? Whatever that cut off is, if it's \$25.

9 MR. KELLY: That would be the thing to do. That's certainly
10 standard procedure for royalty payment.

11 MR. CHAIRMAN: Right.

12 MR. EVANS: If it's your standard procedures you'll still have
13 to have some type of accounting for us or for whomever
14 for your books for accruing those fees. If you under-
15 stand what I'm saying.

16 MR. CRATES: Right. No do not have the capabilities internal
17 to accrue interest on seven or eight dollars or whatever
18 point that the check is cut. An example would be on the
19 first of this month a check for \$10.18 would be cut, that
20 would be held, then next month \$10 and whatever. And
21 then the following month when that amount goes over then
22 a check for the whole \$30 or whatever would be sent to
23 the bank. We don't have an internal mechanism for
24 accruing interest or anything like that. It would just
25 be whenever it reaches \$25.

1 MR. EVANS: In other words, you would just flag your payables?

2 MR. CRATES: That's correct. Our system is already set up to
3 do that and that's our whole system for all royalties
4 company wide is based on that. We have ways of getting
5 around that which we are currently doing so that every
6 check that's written to the Tazewell Bank regardless of
7 amount is paid.

8 MR. CHAIRMAN: Do you a monthly report irregardless to track
9 this accruals?

10 MR. CRATES: It's called a suspense report and it lists things
11 -- it's called minimal suspense.

12 MR. CHAIRMAN: Could you file those with all escrow accounts
13 with Tazewell just so there's documentation of the
14 account as it's being created?

15 MR. CRATES: Sure.

16 MR. EVANS; I was just going to say, for whatever reason
17 somebody needed to know and okay, counted X, Y, Z, it has
18 \$17.12 in it. If the check has not been cut to Tazewell
19 that account sits there but if somebody asks we couldn't
20 tell them --

21 MR. CHAIRMAN: That will help them in compiling the respons-
22 ibility back to the Board of what the total amounts and
23 then what they actually have on deposit.

24 MR. KINGS: So, in other words, the funds until they reach us
25 wouldn't be earning interest but we're talking about

1 under \$25 the amount of lost interest is probably
2 pennies.

3 MR. EVANS: And it's a whole lot less than the transaction fee
4 that's being paid.

5 MR. KING: That's right, absolutely.

6 MR. EVANS: So by doing it this way you're actually -- as far
7 as our prospective we're making money on it on the
8 proposition would be the same as -- you're talking about
9 prudent management of money. As far as upping the return
10 it's the same principles as by cutting that inefficiency
11 out.

12 MR. KING: Right. Then we can probably work with you on the
13 staff. As far as how we account -- let's say \$30 comes
14 in and it's for three or four months, that's something
15 that we'll have to work out because that will make things
16 -- well, as long as a report comes with it to show what
17 months it is for we should be okay.

18 MR. CRATES: The detail will be with it. Instead of getting
19 one check each month with the production month you'll get
20 one check with maybe three or four months of production
21 on it.

22 MR. MCGLOTHLIN: Are there going to be some instances where
23 you're going to be holding money for a year to get that
24 \$25?

25 MR. CRATES: Another policy that we have is that every

1 December regardless of the amount held a check will be
2 written. If the money being escrowed into an account
3 would only be \$2.10 a month or whatever then when it gets
4 to be December our whole system clears out all the
5 minimums for 1099 purchases at the end of the year and so
6 forth. So there would be a check written at least once a
7 year regardless of what's been held.

8 MR. KING: I saw one check for four cents and really it
9 doesn't seem like it makes sense. But it depends on the
10 bookkeeping system, I guess.

11 MR. CHAIRMAN: That's costing more money.

12 MR. KING: Actually I just discovered this recently. We
13 mistook it for interest and we had to transfer and had
14 to -- so I like this idea.

15 MS. BARRETT: Some of the bonus checks that we mail to the
16 bank -- and we can't separate those out -- have actually
17 been for a penny. That's rounded up to a penny. It's
18 very expensive for us, too.

19 MR. EVANS: Sure. You've got your cost to process a penny
20 check and the bank has their cost to process a penny
21 check. When you talk about going past a quarter and
22 going for a whole year, at your rate of return what are
23 we talking about? On \$25 a buck and a quarter? What's
24 your transaction cost?

25 MR. KING: Even if it's five or seven percent it's still

1 negligible, yeah.

2 MR. EVANS: A buck fifty, let's say. Your fee for processing
3 that account is still more than that on a yearly basis.
4 So it still makes no difference in allowing them to clear
5 their book at the end of the year. That should not be a
6 problem as long as there's some accounting to you to say
7 we have this account over here and it's making about
8 three cents a month or whatever else just so that you
9 know because we do have to account for those funds in
10 some way, shape or form and know where they're at.

11 MR. KING: I know we have the proposal and those things are
12 set but we want to be flexible, too. Down the road I
13 don't think we have any objection to -- I know it comes
14 up at a certain point but we may be able to do something
15 here, too.

16 MR. MCGLOTHLIN: One other question for Equitable's people.
17 How many of those \$2 a month accounts do you all have?

18 MR. CRATES: I would say right now approximately ten. But it
19 will only be increasing. I can't see that as being any
20 smaller.

21 MR. MCGLOTHLIN: My concern is on a \$2 a month to get it up to
22 \$25 and it takes a year is one thing on one account, but
23 when you're looking at 100 accounts out there then you're
24 having use of the money without paying any interest on
25 it. And I don't like that idea.

1 MR. CRATES: I guess the thing that is against you guys on
2 that is is the fact that we would not be paying would
3 still be beneficial compared to the transaction fees.

4 MR. MCGLOTHLIN: But if we look at the industry as a whole and
5 there's 1,000 accounts out there --

6 MR. CRATES; That's true. Some of the good accounts are going
7 to pay for some of the bad.

8 MR. MCGLOTHLIN: But we've got \$2,000 a month that the
9 companies aren't sending in because they're minimal or
10 less than \$25 and it takes a year to get it. Then we're
11 looking at \$24,000 that the industry has use of the
12 individual's money without paying any interest. Even
13 though it might be minimal per account, when you look at
14 the whole picture it starts adding up.

15 MR. EVANS: Kevin, if you think about it what's the trans-
16 action cost on that same number of transactions? If you
17 sent that money in. Okay. You say that industry has
18 \$24,000 they have free use of basically. What does it
19 cost use to collect that money? If it costs us \$10 a pop
20 for each one of those, figure that number up and see what
21 the difference is.

22 MR. MCGLOTHLIN: No. I'm agreeing that we need to turn it in
23 at a -- to give them the right to let it escrow internal-
24 ly or let it grow internally before they do it. But I
25 just --

1 MR. CRATES: If \$25 seems high we have mechanisms to change
2 that to a lower number.

3 MR. MCGLOTHLIN: I'm thinking of some -- these accounts as
4 payable at \$25 or every six months, something like that.

5 MR. KELLY: I can't see it, Mr. Chairman. I just can't see
6 the difference there. Kevin, I go along with Ken. It
7 seems that regardless of the amount or period of time and
8 the fact that Equitable gets to use the money, we're
9 still making money on it because we're saving that
10 transaction fee. Let them use the money. We're still
11 saving money. I don't see that as being really an
12 adverse consideration.

13 MR. CRATES: We also have the option that upon demand we can
14 release that money and pay it to the bank at any time.
15 One day notice would be all we needed.

16 MR. HARRIS: Mr. Chairman, how many other companies are in the
17 same situation? We're talking ten accounts, maybe twenty
18 accounts by the end of the year or something. Are there
19 other companies in the same situation?

20 MR. CHAIRMAN: I'm certain there are.

21 MR. KING: I think that all of them probably have that
22 situation.

23 MR. HARRIS: Do you know what percent of your total number
24 each month is a check less than \$25 or less than --

25 MR. KING: I couldn't even guess really. I would say it's not

1 a majority. I really don't know.

2 MR. HARRIS: Yeah. You're not the person there watching the
3 checks come in.

4 MR. KING: No. I see the reports. We could find out, though.
5 I could give you some kind of figure on that.

6 MR. HARRIS: I don't have a problem with the waiting until
7 there's \$25. In fact, that makes sense to me, to save
8 money. I don't know how many accounts we're talking
9 about. But I understand Kevin's concern also.

10 MR. KING: It's not one out of a hundred, but it's not -- if I
11 had to really guess I'd say it's somewhere from ten to
12 twenty percent.

13 MR. CHAIRMAN: We probably need to take action on this. Do we
14 have a motion from anyone?

15 MR. KELLY: I would move that the Board allow companies to
16 -- Equitable in this case -- to internally escrow these
17 funds until such time they would reach an amount of \$25
18 and then forward it on to the escrow agent conditioned on
19 a monthly basis forward the report of these accounts to
20 the escrow account.

21 MR. EVANS: I'll second that.

22 MR. CHAIRMAN: Motion and second. Further discussion?
23 All in favor signify by saying yes. (SOME AFFIRM.)
24 Opposed say no. (ONE DENIES.) The motion carries.
25 Anything further? Does anyone else want to address the

Board in this matter? Thank you very much.

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ITEM I

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3 MR. CHAIRMAN: The next item is a petition from Ashland
4 Exploration for force pooling of a drilling unit. This
5 is docket number VGOB-93/09/21/0406. That item has been
6 withdrawn. As you may recall, that was continued from
7 the September meeting and the parties did work out the
8 agreement. Mr. Fulmer, do you have some information for
9 the Board?

10 MR. FULMER: Mr. Chairman, members of the Board, I've got some
11 information that's in regards to old business. If you
12 recall last month's docket, it concerned a couple of
13 Ashland agenda items. This is in regards to 4407 and a
14 farm-out agreement that Ashland was attempting to get at
15 that time but they had not signed the final farm-out
16 agreement with CNR. This letter states that they have
17 reached a farm-out agreement with CNR and they request
18 that CNR be dropped from the force pooling order. Other
19 items that Ashland had before the Board, there was some
20 discussion in regards to the AFEs that submitted. These
21 are the two items that the Board requested in regards to
22 two unit proposals that Ashland put forth and these are
23 the updated AFEs for the Board's consideration. That
24 concludes the old business.

25 MR. CHAIRMAN: Those were approved subject to the submission

of these. Any questions?

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ITEM II

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MR. CHAIRMAN: The next item on the agenda is a petition from Virginia Gas Company for granting of a temporary order modifying the Early Grove order to allow for testing of the Price and Little Valley formations in that Early Grove field. This is docket number VGOB-93/10/19-0410. I'd ask the parties that wish to address the Board to come forward at this time.

MR. EDWARDS: Mr. Chairman, my name is Michael L. Edwards. I'm president of Virginia Gas Company and have previously testified before the Gas and Oil Board. I would request to be sworn in and accepted as an expert witness.

COURT REPORTER: (Swears witness.)

MR. EDWARDS: Mr. Chairman, we would like to extend the testing for conversion to gas storage to the entire currently developed portion of the Early Grove gas field.

MR. CHAIRMAN: Can I interrupt you for just a second? We've got a vacuum or something going over our heads. Speak up just a little. And other persons, if you can't hear you may move forward. Feel free to do that.

MR. EDWARDS: We would like to extend the testing for conversion to natural gas storage of the Early Grove gas field to all 21 units that are currently developed in the field. We would also like to extend the testing period

1 for a 24 month period. The reasons for the extension of
2 the testing period are as follows: First, by working all
3 21 units -- it's a substantially larger area than was
4 originally envisioned and the process of testing 21 units
5 in an entire field is going to take longer than testing
6 the original four units that we had contemplated. We've
7 also added a -- as you're aware we have added a second
8 reservoir in the test, the Little Valley formation. This
9 is a more complexed reservoir than the Price Sandstone.
10 It will definitely take more time to evaluate this
11 reservoir. We feel after studying the preformation of
12 the field this summer that probably two injection and
13 withdrawal cycles will be required to adequately ascer-
14 tain whether or not the field can be commercially
15 converted into a storage facility. The reasoning for
16 this is as follows; The main determining factor in the
17 decision on whether to convert the field will be the rate
18 at which gas can be cycled in and out of the field.
19 Generally with storage reservoirs the higher the rate
20 that the gas can be cycled in and out of the field the
21 higher the economic value. If the field's gas can only
22 be cycled in and out at a low rate it may not be econom-
23 ic. And the only way to do that is to test the entire
24 field probably twice. The reason for -- by twice I mean
25 by injecting for one full cycle and then withdrawing for

1 a full cycle and injecting another full cycle and
2 withdrawing for another full cycle. The storage wells --
3 an interesting feature of storage operations is that the
4 deliverability from storage wells declines over time.
5 For example, wells in Appalachian storage fields, their
6 deliverability will decline anywhere from three percent a
7 year to as much as 25 percent a year. The mean value is
8 about seven percent per annum. The only way that this
9 can be accurately determined is by cycling gas in and
10 cycling it out and then cycling it in and out a second
11 time. That gives you your second data point that you
12 need to determine what the deliverability decline is.
13 The deliverability of all fields declines over time and
14 that's generally remediated by work-overs and by drilling
15 of additional deliverability wells. There will be some
16 variation within the field, I'm sure. I'm sure that some
17 of the wells will decline. Their deliverability will
18 decline at a faster rate than in other parts of it. For
19 those reasons we'd respectfully request that the testing
20 area be enlarged to cover the entire field and that the
21 testing period be extended an additional 24 months.

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

23 MR. HARRIS: Mike, you could probably tell from my questions
24 last month that this is new to me. I do have a couple of
25 questions. You talk about full cycles. What's a full

1 cycle? You said that you inject for a full cycle and
2 then you -- I've forgotten the term -- extracted or
3 whatever.

4 MR. EDWARDS: Withdraw. Typically injection cycles are
5 usually 200 days and withdrawal cycles are from 100 to
6 150 days. The additional 30 or 60 days is typically used
7 for pipeline work, compressor repair, maintenance, things
8 like that.

9 MR. HARRIS: The other question is these wells were under a
10 certain pressure when they were first drilled and I know
11 sometimes you have to encourage them to extract the gas.
12 But when you store the gas in the wells are you storing
13 at a higher pressure than what was normally there when
14 they were first drilled?

15 MR. EDWARDS: No, sir, we are not in this particular case.
16 However, that is done in other areas. We are not doing
17 that. That practice is called delta pressuring and it's
18 a -- but we're not currently doing that. The original
19 reservoir pressures in this area were about 1,400 pounds.

20 MR. HARRIS: So you're testing essentially is just seeing if
21 this -- well, I guess like you say is storage -- if this
22 will work. There could leakage to other areas. Are
23 these the kind of things that happen? Again, I'm
24 concerned about who pays for the gas and I may be off
25 base on that, but this is gas that's already been pumped

1 and now stored? Pumped during the year or pumped during
2 -- well, stored during the year for use in high use
3 times. But again, if the amount of gas there decreases
4 and you lose 2 percent who loses the money in that?

5 MR. EDWARDS: We do. We bear all the economic loss.

6 MR. HARRIS: Okay.

7 MR. EDWARDS: The other factor that enters into play here,
8 with depleted reservoirs when the reservoir fluids are
9 withdrawn there's typically some destruction of the
10 reservoir volume as the lithostatic pressure -- the
11 pressure of overburden, in this case 3,500 to 4,000 feet,
12 will essentially cause shrinkage in the reservoir space
13 when the original fluids are taken out.

14 MR. HARRIS: So that's also a part of the testing is to see
15 how much of that remains?

16 MR. EDWARDS: Exactly, yeah, because you can make some pretty
17 good estimates of the deliverability of a field by going
18 back and studying how it originally performed when it
19 was first produced. However, there's a couple of factors
20 that will almost guarantee that the actual performance of
21 a field under storage conditions will be less than what
22 it originally did. One is the destruction of the
23 original pore space. The other factor is formation
24 damage as the reservoir fluids are withdrawn. And then
25 as you reinject the fluids -- in this case gas -- into

1 the reservoir there's -- one of the factors is the
2 migration of fine particles inside the reservoir which
3 can clog up the permeability pathways. You're dealing
4 with a hole this big three-quarters of a mile down and
5 you really don't know what's going on directly. All of
6 your evidence is indirect.

7 MR. HARRIS: Thank you.

8 MR. EVANS: Mike, you are real confident that this is one of
9 the better defined fields and you're not going to be
10 anywhere outside. Obviously this field has been there
11 for a while. It's been developed at least twice. So --

12 MR. EDWARDS: Three times.

13 MR. EVANS: But there's no indication that there's anything
14 beyond these 21 units?

15 MR. EDWARDS: We know of at least one additional unit that we
16 will probably be requesting to be added to the area in
17 the south. We don't have all the complete notification
18 list made up for that unit yet, but it's between the
19 Miller and the Gilbert wells in the southwestern portion
20 of it. I can't answer with 100 percent certainty.

21 MR. EVANS: Oh, I understand.

22 MR. EDWARDS: Certainly the structural configuration of the
23 field is well known from drilling and from extensive
24 seismic that was ran in the area. This does appear to be
25 largely -- not entirely but largely a structurally

1 controlled feature. The quality -- for example, the
2 Price Sandstone wells are part stratigraphic, part
3 structural. But the quality of the Price wells decreases
4 significantly as you go down depth. Now, it hasn't been
5 extensively drilled outside of the immediate structural
6 high, but there certainly is a very strong positive
7 correlation between the high structural position and the
8 high productivity.

9 MR. EVANS: I guess what I was getting at is how much are you
10 anticipating minimal losses outside -- to the outside of
11 these 21 units as far as the unproductive, uneconomic
12 continuation -- say the Price or Little Valley or
13 whatever else. You don't anticipate large losses outside
14 your reservoir obviously?

15 MR. EDWARDS: No. I think the biggest problem with our
16 reservoir will be over the rate which it will perform.
17 There's almost certainly some modest rate at which gas
18 can be cycled in and out of there. The whole question is
19 whether or not it's high enough to be viable.

20 MR. CHAIRMAN: What's the remaining life of the 21 wells?

21 MR. EDWARDS: We estimate that there's approximately 750,000
22 MCF of remaining reserves in the field and that the field
23 as a whole probably has a remaining life of about five
24 years on average. Some of them are uneconomic right now
25 as production wells. So I'd say the better wells could

1 be produced for a longer period of time, but at some
2 point the economic limit on the remaining -- let's say,
3 for example, that you got five years out and you still
4 had two or three wells that were still producing at a
5 fairly decent rate. The problem is is that the gas from
6 those wells has to be compressed to get into the East
7 Tennessee line and the compressor uses 50 MCF a day and
8 the lower the rate the less efficient the compression
9 becomes. So our current estimate is about five years of
10 remaining life on the field.

11 MR. CHAIRMAN: How are you triggering when to pay storage fees
12 and how is that all working?

13 MR. EDWARDS: Under the terms of the Gas and Oil Board order
14 we will be paying royalties to the landowners based on
15 decline curve estimates of what the wells would produce
16 for as long as the testing period goes on. We would
17 anticipate that as soon as the testing period is over
18 then we would begin paying storage rentals rather than
19 estimated royalty payments or shut-in royalties.

20 MR. CHAIRMAN: Are you selling the gas during the testing
21 period -- or are you proposing to sell the gas, I should
22 say?

23 MR. EDWARDS: Yes, sir. I'd have to quit my day job and get
24 another job if we weren't.

25 MR. CHAIRMAN: What are you using as a method to compare --

1 during the testing period. I'm trying to get focused on
2 how you're measuring and monitoring the native gas versus
3 the gas you're injecting to insure royalty pays on the
4 native gas and storage on the injected gas.

5 MR. EDWARDS: The methodology that we will use there is as
6 follows; We plotted the historical production for each
7 of the wells in the field, both production rate versus
8 time, and a P versus Z plot, accumulative production
9 versus pressure. These are generally the most accurate
10 reserve type estimation methods used in the industry.
11 Using those curves you can extrapolate with a high degree
12 of accuracy and precision. Obviously the method's not
13 perfect. It's generally quite accurate. You can
14 extrapolate what the remaining production in the wells in
15 the field is likely to be. And then, for example, if you
16 assume that the field overall is declining at seven
17 percent a year, for example, and it produced -- using a
18 simple minded example because I can only multiply and
19 divide by simple numbers, let's say that the field as a
20 whole produced 100,000 MCF in it's last year as a
21 production field. If the engineering data shows that the
22 field is declining at a rate of seven percent a year
23 which is fairly typical for a field of this type then the
24 estimated production for the following year would be
25 93,000 MCF and then for the following year after that it

1 would be 93,000 x .93 and so on until you reach the
2 economic limit of the field. And then we would use the
3 current market price on the East Tennessee system to
4 determine the amount of royalty to be paid. Then we
5 would multiply the current market price times the
6 estimated production amount times the royalty rate.

7 MR. CHAIRMAN: Do you envision or have you had any documenta-
8 tion of damage to any of the existing wells by the
9 testing?

10 MR. EDWARDS: We don't know at this time. You really won't
11 know until you've withdrawn once and then reinjected. We
12 don't really have any information aside from a three day
13 test that we performed back in July. We don't have any
14 real hard information as to the rates at which the wells
15 will produce. We'll start obtaining those in November
16 and at that point you need to see two things. You need
17 to see the rate at which it produces. To determine if
18 there's been any damage you need to see the rate at which
19 it produces and then you need to see the rate at which
20 you can reinject.

21 MR. CHAIRMAN: In your professional opinion what percentage of
22 these wells do you think will be viable for storage?

23 MR. EDWARDS: I think we'll probably use all of them to some
24 extent or another. It's certainly less expensive to use
25 an existing well than to drill a new one. We'll also

1 need to use some of the wells as monitor wells to make
2 sure that -- to check on how the pressures are behaving,
3 particularly around the outer edges of the field.

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

5 MR. KELLY: Mike, do you consider the current testing part of
6 the first injection/withdrawal cycle or is this a
7 separate distinct test period compared to the other two
8 year period you requested? How do you do that?

9 MR. EDWARDS: It's sort of half dog and half cat. We've
10 injected into -- I guess I would really prefer to see 24
11 months from November 1st. That way we can do the
12 injection cycles on the entire field rather than just on
13 a portion of it. We've sort of phased things in through
14 the first summer.

15 MR. KELLY: Done just an injection up to this point?

16 MR. EDWARDS: Uh-huh.

17 MR. KELLY: No withdrawal?

18 MR. EDWARDS: Except we did about three days worth of with-
19 drawal there in July.

20 MR. KELLY: The pressures are up to what level now?

21 MR. EDWARDS: Line pressures are about 1,200 pounds. I would
22 anticipate that the -- we're about as high as we'll go.
23 I would anticipate -- we'll need to do more pipeline
24 work. I think we tested the pipelines to an MAOP of
25 about 1,500 pounds last year. I would anticipate the

1 reservoir pressures are below that.

2 MR. CHAIRMAN: Other questions? Let me go back to royalty for
3 just a second. If I'm a royalty owner is there a minimal
4 level of royalty I could expect during this test period?
5 You're not paying royalty during tests for the storage,
6 per say. What minimal level of royalty could I expect if
7 I was a royalty owner of a gas from a well?

8 MR. EDWARDS: What's contractually called for in the existing
9 leases, I would say. Penn-Virginia began operating this
10 field on about a half year production cycle -- I want to
11 say beginning in 1987 or 1988. Since that time the
12 field's basically been operated six months on, six months
13 off. Their practice which we have followed has been to
14 pay royalties during the production period and then to
15 pay shut-in royalties or rentals as are called for in the
16 oil and gas leases during the periods when production is
17 not taking place. We've been following that practice
18 since we purchased the field. So yeah, there is a
19 minimum payment and it varies from lease to lease. In
20 some cases it's \$1 per acre and in some cases I think the
21 highest is \$3. There may be some as high as \$5.

22 MR. CHAIRMAN: Are any of these units subject to any prior
23 force pooling orders?

24 MR. EDWARDS: There is one, I believe. I'm trying to -- I
25 don't recall which one it is off the top of my head. I

1 believe it's the --

2 MR. FULMER: If I can interject here, Mr. Chairman, there is
3 one. It's the Miller #1.

4 MR. CHAIRMAN: Anything further? Anyone else wishing to
5 address the Board in this matter? Other questions,
6 members of the Board?

7 MR. MCGLOTHLIN: Will you reporting to the Inspector the
8 amount of gas that you're injecting into the wells and
9 the amount -- during the cycles how much you inject and
10 how much you take out?

11 MR. EDWARDS: Yes, sir.

12 MR. CHAIRMAN: Anything further? Do you have anything
13 further, Mr. Edwards?

14 MR. EDWARDS: No, sir.

15 MR. CHAIRMAN: What's your pleasure?

16 MR. MCGLOTHLIN: I move we accept the petition as filed.

17 MR. EVANS: Second.

18 MR. CHAIRMAN: A motion and a second. Further discussion?
19 If not, all in favor signify by saying yes. (ALL
20 AFFIRM.) Opposed say no. (NONE.) Unanimous decision.
21 We'll take a five minute break. The next time will be
22 Equitable Resources Exploration force pooling request.
23 (AFTER A BREAK RECESS, THE HEARING CONTINUED AS FOLLOWS:
24
25

ITEM III, IV, V, VI, VII, VIII

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3 MR. CHAIRMAN: The next item on the agenda is a petition by
4 Equitable Resources Exploration for force pooling of a
5 drilling unit known as VCP-3097 well. This is docket
6 number VGOB-93/10/19-0411. We'd ask the parties that
7 wish to address the Board in this matter to come forward
8 at this time.

9 MS. McCLANNAHAN: Elizabeth McClannahan for Equitable
10 Resources.

11 MR. SWARTZ: Mark Swartz for Columbia Natural Resources.

12 MR. SCOTT: Mr. Scott and John McKenus for Penn-Virginia
13 Resources Corporation.

14 MR. CHAIRMAN: You may proceed, Elizabeth.

15 MS. McCLANNAHAN: Just as a matter of explanation, if I can
16 sort of give you an overview of what we're doing here
17 before we call witnesses. I think it may be helpful.

18 MR. CHAIRMAN: All right.

19 MS. McCLANNAHAN: First of all, the 3097 unit which is docket
20 number 0411, the first one of these that have been
21 listed, is proposed to be drilled on statewide spacing.
22 We have previously filed with the Gas and Oil Board the
23 due diligence affidavit, copies of the certified mail
24 return receipts and also the hearing notice and proof of
25 publication for those. Equitable is the operator under

1 the oil and gas leases that are shown on Exhibit B of the
2 application. It is also the operator under the coalbed
3 methane gas lease that is shown on those exhibits with
4 the application. Our testimony will indicate that
5 there's no mining within this particular area where the
6 unit lies. We're requesting the authority to produce one
7 well on this proposed 3097 unit. The permit for this
8 particular well has previously been issued by the
9 Inspector on October 13th, 1993. The AFE, of course, has
10 been submitted as Exhibit F for this one particular well
11 in the unit. Columbia Natural Resources is a participant
12 in the working interest under the 72 and 88 oil and gas
13 leases. If you look at Section 4 of Exhibit B that we
14 have attached to the application you'll see their working
15 interests outlined as well as all the other parties.
16 EREX is the operator under the 72 and 88 oil and gas
17 leases. Under this unit there's also a coalbed methane
18 lease and EREX is the operator under this coalbed methane
19 lease as well. Columbia, however, is not a participant
20 in the working interests under that lease. If you look
21 at Section 5 of the application, Exhibit B, you will see
22 those working interests outlined as I've described them.
23 When EREX filed permit applications with the Gas and Oil
24 Inspector's office Columbia indicated in a letter to the
25 Gas and Oil Inspector that it would agree to the issuance

1 of those permit applications provided that we filed a
2 force pooling application in this matter. We have filed
3 that compulsory pooling application and that's what's
4 before you here today. If you look at the conflicting
5 claimants exhibit, those are listed on Exhibit C of the
6 application. The interests that are on Exhibit C are the
7 difference between a 72/88 oil and gas lease percentages
8 and the 93 coalbed methane lease percentages. To
9 determine the escrow percentage numbers we subtracted the
10 72/88 oil and gas lease working interests and net revenue
11 percentages from the 93 CBM working interest and net
12 revenue percentages. Under the 72 and 88 oil and gas
13 leases the royalty was 12 and a half percent and under
14 the 93 coalbed methane lease the royalty is 15 percent.
15 The royalty differential is two and a half percent which
16 you can see on that particular exhibit. Pursuant to the
17 statute Equitable is requesting that CNR be given methods
18 of election, electing to be a participating operator or
19 electing to be a carried operator. And if CNR chooses
20 not to make an election, of course, under the statute
21 then CNR would be deemed to be carried. If CNR elects to
22 participate it would contribute 11.65049 percent of the
23 costs of this well and it's net revenue interest would be
24 escrowed. That's 10.19418 on the exhibit that you have
25 there in front of you. These are, of course, the

1 differences between the 72/88 oil and gas leases and the
2 93 CBM lease, working interests and net revenue inter-
3 ests. In addition, the two and a half percent royalty
4 differential and the net revenue interest differential of
5 all the conflicting claimants that are shown on there
6 would be escrowed. If the Board adopts this escrow
7 procedure that's proposed by Equitable in its application
8 then Columbia is deemed to be a coalbed methane lease
9 hold owner under the 72 and 88 -- well, if Columbia is
10 deemed to be the owner of the coalbed methane under the
11 72 and 88 leases this escrow procedure protects their
12 interest during the time that we operate these wells as
13 if they were drilled under those leases. So in this
14 application Equitable requests that this 3097 unit be
15 established pursuant to statewide spacing, that all the
16 interests of those parties on Exhibit B be pooled and
17 that the Board approve the escrow plan for the conflict-
18 ing claimants as is shown on Exhibit C of the applica-
19 tion. With that our first witness is Don.

20 MR. SWARTZ: Maybe I can expedite this. There are six of
21 these pooling applications and they are all essentially
22 the same. I think Elizabeth will agree with that. The
23 reasons that I am here on behalf of CNR are very limited
24 and I would suggest, if the Board concurs and if it's
25 agreeable with Elizabeth, that we do this once with

1 regard to the issues that CNR is interested in. Since
2 CNR is the only respondent -- I think they are the only
3 respondent to the application. Essentially what I'm
4 suggesting is we can narrow the focus to the concerns
5 that my client has which will allow Elizabeth to address
6 those. I can let her jump through the hoops on this
7 other stuff since we don't have a problem with it. Does
8 that make sense to you, Elizabeth, or to you, Benny?

9 MS. McCLANNAHAN: That's fine with us if that's okay with the
10 Board.

11 MR. CHAIRMAN: Provided that we folks here -- Mr. Scott, you
12 indicated --

13 MR. SCOTT: That's fine.

14 MR. CHAIRMAN: Any others? Does anyone have a problem with us
15 doing that? Does everyone understand what's being
16 proposed? Would you read the docket numbers that would
17 be effected?

18 MR. SWARTZ: It's essentially -- this is not the VGOB numbers
19 but the docket numbers. It's Items III, IV, V, VI, VII
20 and VIII which are all petitions of Equitable Resources
21 to force pool six units. They are all coalbed methane
22 wells. I think the only respondent to the applications
23 is my client Columbia. I would suggest that we combine
24 those and press the issues which my client is concerned
25 about. Is that acceptable, Elizabeth?

1 MS. McCLANNAHAN: Yes. That's fine.

2 MR. SWARTZ: I probably need to identify the concerns so that
3 we can address them that my client has. They are
4 basically two in nature although there are some sub-
5 parts. The first concern is a substantive issue. Each
6 of these coalbed methane units as proposed in the six
7 applications contains only eighteen acres, a 500 foot
8 radius, and that results in an 18 point something acre
9 unit. There is no such thing as statewide drilling
10 units. I assume that the 500 foot radius of the circle,
11 although EREX could tell us, is the result of applying a
12 statewide spacing radius. My client is concerned that
13 before the Board create an eighteen acre unit there be
14 testimony in the record with regard to the reservoir
15 characteristics that would support a recent finding that
16 the unit ought to be eighteen acres. That's the first
17 concern that my client has. I am interested in how it
18 was decided that eighteen acres is an appropriate unit.
19 And if it's simply predicated upon a statewide spacing
20 radius that isn't going to cut it. I mean, we need some
21 engineering testimony with regard to the reservoir
22 characteristics of the pool that's being produced and
23 economic considerations that generate it an appropriately
24 sized drilling unit. That's the concern of my client.
25 The second concern that my client has has a couple of

1 parts, what is essentially the flesh out status as a
2 conflicting claimant. The application basically suggests
3 in it's recitations that this is simply a dispute as to
4 which of two leases grants the right to develop coalbed
5 methane. In other words, Elizabeth has told you that
6 there is a 72 oil and gas lease and a 1988 oil and gas
7 lease under which CNR claims the right to the coalbed
8 methane. There is also a 1993 coalbed methane lease
9 which EREX contends that they have a right to (In-
10 audible.) coalbed methane. Both EREX and CNR, of
11 course, dispute that the lease covers coalbed methane.
12 Essentially CNR is saying there's no need to take the 93
13 coalbed methane lease from Penn-Virginia because it's
14 already granted under the 72/88 leases. That's kind of
15 flashed out in the application. In addition, however,
16 there's a joint operating agreement between the parties
17 and I think I ought to put on record the fact that CNR
18 also contends that it has a claimant status under the
19 terms of the joint operating agreement. Penn-Virginia is
20 a partner in that joint operating agreement. Columbia is
21 a partner. EREX is a partner in addition to being
22 operator. It is Columbia Natural Resources contention
23 that the JOA, even if we ignore the lease situation for a
24 moment, granted the right to develop the coalbed methane.
25 That JOA is dated in 1984. The application is silent

1 with regard to that. I wanted to flash up the record
2 with regard to that issue as it pertains to claimant
3 status. Those are really the only things that CNR wishes
4 to deal with today. I need to conclude, I suppose,
5 before we turn this back to Elizabeth to tell us about
6 the eighteen acre units. I will conclude by telling you
7 that CNR is not here to block pooling of these units.
8 They are prepared to allow development to proceed.
9 They're prepared to (Inaudible.) escrow provisions and
10 so forth. I think EREX has in general devised an escrow
11 methodology which is satisfactory given the interests of
12 the respective parties under the various agreements. So
13 really the only thing, I think, substantive other than
14 giving us an opportunity to address the claimant status
15 issues would be substantively the Board needs to take a
16 look at what would be an appropriate size of a drilling
17 unit for these six wells. Having done so, Columbia would
18 welcome the creation of appropriate drilling units and
19 the pooling of those wells pending resolution of the
20 title issues. Those are the kinds of things that I
21 think we ought to deal with today. Hopefully that will
22 move us along.

23 MR. CHAIRMAN: Thank you, Mr. Swartz. Mr. Scott, did you have
24 anything to add?

25 MR. SCOTT: No, sir.

1 MR. CHAIRMAN: To clear the record, the docket numbers that
2 we're considering testimony for this one well, 3097, in
3 that the testimony and all other relevant information
4 would be the same would be docket numbers VGOB-93/10/19-
5 0412, 0413, 0414, 0415 and 0416. You may proceed,
6 Elizabeth.

7 MS. McCLANNAHAN: Just to make sure that we do have the record
8 clear here, I assume then that we will accept the
9 application as it's written with regard to ownership
10 percentages under those leases. Is that correct, Mark?
11 You don't need any testimony as to that?

12 MR. SWARTZ: Right.

13 MS. McCLANNAHAN: The same thing is true with publication
14 requirement?

15 MR. SWARTZ: Right. I'm trying to avoid all that.

16 MS. McCLANNAHAN: If that's acceptable to the Board then we
17 can certainly stipulate to that. I suppose the Board
18 needs to make a decision about whether it wants to hear
19 testimony as to that or whether it will accept the
20 applications as they've been filed.

21 MR. CHAIRMAN: I certainly think that you would need to
22 stipulate your due diligence. I know that you have
23 certified that, but you would need to have some testimony
24 as to what you've done on this one well and therefore the
25 other wells that have been called so that we have for the

1 record what constituted due diligence to notify all
2 parties?

3 MS. McCLANNAHAN: In this particular case all the parties are
4 known entities, but we can certainly have Mr. Hall
5 testify as to that. We'll just run through those
6 questions so we have a clear record. Don, would you be
7 sworn, please?

8 COURT REPORTER: (Swears witness.)

9

10 DON C. HALL

11 a witness who, after having been duly sworn, was examined and
12 testified as follows:

13

14 DIRECT EXAMINATION

15

16 BY MS. McCLANNAHAN:

17 Q. Would you state your full name for the record, please?

18 A. Don C. Hall.

19 Q. And your address?

20 A. I live in Wise, Virginia.

21 MS. McCLANNAHAN: I assume the Board and Mr. Swartz will
22 stipulate as to his qualifications as a land professional
23 for purposes of this hearing?

24 MR. SWARTZ: Right.

25 MR. SWARTZ: You may proceed.

- 1 Q. (Ms. McClannahan continues.) Mr. Hall, did you give
2 notice as required by Section 45.1-361.19 to each person
3 who's identified on Exhibit B of the application?
- 4 A. Yes, we did.
- 5 Q. Were there any persons whose names were unknown?
- 6 A. No.
- 7 Q. Did you publish notice in the Bristol paper on September
8 26th, 1993?
- 9 A. Yes.
- 10 Q. Do you have a consent to stimulate the Norton coal seam
11 and the seams below the Norton in this proposed 3097
12 unit?
- 13 A. Yes, we do.
- 14 Q. And from whom are those consents to stimulate?
- 15 A. Penn-Virginia Resources Corporation and Westmoreland Coal
16 Company.
- 17 Q. Was the permit application for the well contained within
18 the 3097 unit issued by the Division?
- 19 A. Yes, it was.
- 20 Q. Did you offer Columbia to assign its interest to Equit-
21 able regarding its participation in this proposed unit?
- 22 A. Yes.
- 23 Q. Were you able to come to an agreement as to that?
- 24 A. No.
- 25 Q. Are the conflicting claims whose funds are to be escrowed

1 and their percentage of interest to be escrowed listed on
2 Exhibit c of that application?

3 A. Would you repeat that question?

4 Q. Are the conflicting claimants listed on Exhibit C and
5 their percentages to be escrowed?

6 A. Yes.

7 MS. McCLANNAHAN: As I understand it the percentages that are
8 listed on the exhibits have been agreed to by Mr. Swartz
9 and I assume we don't need to go through those again for
10 the Board, is that correct? They're accepted as they're
11 listed in the application.

12 MR. CHAIRMAN: Any objections from any parties to that?

13 MR. SWARTZ: I didn't hear that.

14 MR. CHAIRMAN: Would you repeat that, Elizabeth?

15 MS. McCLANNAHAN: Mark, you would agree that the percentages
16 as they're listed in the application are correct as
17 submitted?

18 MR. SWARTZ: Well, I have looked at them and they look like
19 what I was expecting to see. I'm not objecting to them,
20 but I'm not prepared to stipulate to them. Essentially
21 you're laying a number on the table that you're represen-
22 ting is accurate and I'm not arguing with it.

23 MR. CHAIRMAN: Any other parties that object to that? EREX is
24 the applicant you're proposing to be designated the
25 operator?

1 MS. McCLANNAHAN: That's correct.

2 MR. CHAIRMAN: Is there any objection to that designation?

3 MR. SWARTZ: No.

4 MR. CHAIRMAN: By anyone? The record will show there are
5 none. You may proceed.

6 MR. SWARTZ: If I could ask Mr. Hall a couple of questions.
7 Elizabeth, are you done with Don?

8 MS. McCLANNAHAN: Yes.

9

10 CROSS-EXAMINATION

11

12 BY MR. SWARTZ:

13 Q. Mr. Hall, you made general response to some questions
14 that Elizabeth asked you concerning your contact with
15 Columbia Natural Resources with regard to the development
16 of this well and the other five wells. Do you remember
17 that?

18 A. Uh-huh.

19 Q. Would you agree that there is a joint venture agreement
20 between Penn-Virginia, Columbia Natural Resources and
21 EREX in existence with regard to this acreage?

22 MS. McCLANNAHAN: Let me just say to take care of this, Mark,
23 I believe EREX is prepared to stipulate that there is an
24 operating agreement as between the parties which is dated
25 January 1, 1984.

1 MR. SWARTZ: Okay.

2 Q. (Mr. Swartz continues.) Mr. Hall, did you consistent
3 with the terms of that operating agreement -- you meaning
4 EREX -- offer CNR an opportunity to participate in these
5 wells?

6 A. Yes.

7 Q. I think you testified previously that you requested that
8 they assign their interest in these wells. Wasn't what
9 really happened that you made CNR an offer to participate
10 in this well and the other five CBM wells and that that
11 offer was made because it was consistent with what the
12 JOA required EREX to do --

13 MS. McCLANNAHAN: That was my question, Mark. I said partici-
14 pate, didn't I?

15 MR. SWARTZ: Assigned was the word that was used.

16 Q. (Mr. Swartz continues.) I guess I need an answer to
17 that. You offered CNR an opportunity to participate
18 consistent with your view of the requirements of the
19 joint operating agreement?

20 A. To participate, yes.

21 Q. Was CNR's response not that they didn't want to partici-
22 pate but that they felt that the coalbed methane interest
23 was already covered by the prior leases in essence?

24 A. Yes.

25 Q. So there was really not a resolution of the participation

1 issue. It was frankly a disagreement of the parties as
2 to what lease covered the development rights for CBM?

3 A. That's why we're here.

4 Q. Would it be fair to say that you did not request that CNR
5 assign any interest to you, you offered them an opportu-
6 nity to participate?

7 MS. McCLANNAHAN: That's correct.

8 Q. (Mr. Swartz continues.) And your offer of participation,
9 would it be fair to say, was to participate under the
10 terms of the 93 lease?

11 A. Yes.

12 Q. And it was not an offer to participate under the terms of
13 the 72/88 leases, is that correct?

14 A. Yes.

15 Q. Was it your view that CNR's participation in this well
16 and the five other CBM wells would have required that
17 they participate not only in the development costs for
18 these wells but in the lease acquisition costs associated
19 with the 1993 leases?

20 MS. McCLANNAHAN: I believe all of these questions are
21 questions about contractual relationships with the
22 parties which are issues in the litigation. I think the
23 only point to be made before the Board is that an offer
24 was made and the parties didn't come to an agreement. We
25 already have that testimony here before the Board. The

1 contractual beliefs of the parties is really not relevant
2 to this particular Board. What's relevant is that the
3 offer was made, that Columbia and Equitable did not come
4 to an agreement, which we certainly agree with Mr. Swartz
5 who is representing Columbia, on that particular point.
6 And that's really all that relevant to the Board. The
7 statutory requirement is that an offer is made.

8 MR. SWARTZ: My question wasn't really as to what anyone's
9 belief was. It was in offering CNR an opportunity to
10 participate would the offer have required CNR not only to
11 share in the development costs of the well but also in
12 the lease acquisition costs. Was that the offer they
13 made, not what did they believe or what did my client
14 believe but was that the nature of the offer?

15 MS. McCLANNAHAN; Mr. Hall is actually not in the lease
16 acquisition department. I'm not sure he even knows what
17 the terms of that offer were.

18 THE WITNESS: No, not really.

19 Q. (Mr. Swartz continues.) Well, do you know whether or not
20 there was a component, Mr. Hall, or lease acquisition
21 cost in the offer to permit CNR to participate?

22 A. I don't know that personally.

23 MR. SWARTZ: That's all I have for this witness.

24 MR. CHAIRMAN: Mr. Scott, do you have anything for this
25 witness?

1 MR. SCOTT: No, sir.

2 MR. CHAIRMAN: Members of the Board, any questions of this
3 witness?

4 (Witness stands aside.)

5 MR. CHAIRMAN: You may call your next witness.

6 MS. McCLANNAHAN: Bob Dahlin.

7 COURT REPORTER: (Swears witness.)

8

9 ROBERT A. DAHLIN, II

10 a witness who, after having been duly sworn, was examined and
11 testified as follows:

12

13 DIRECT EXAMINATION

14

15 BY MS. McCLANNAHAN:

16 Q. Would you please state your full name for the record?

17 A. My name is Robert A. Dahlin, II.

18 Q. And your position with Equitable?

19 A. I'm employed by EREX as an operations specialist.

20 Q. And your responsibilities and duties there are?

21 A. I coordinate the drilling efforts in Virginia.

22 Q. And your educational background?

23 A. I graduated from West Virginia University in 1975 with a
24 BS degree in geology.

25 Q. Do you hold any licenses in geology?

1 A. I'm registered in Tennessee and Kentucky as a geologist.
2 Q. And your work background?
3 A. I've been employed as a geologist or related for the past
4 eighteen years. My first position was with the Equitable
5 group in Kentucky as Kentucky/West Virginia Gas and for
6 them in Virginia as Philadelphia Oil. I've been employed
7 in the industry or related industries ever since,
8 employed by a consulting engineering firm for about five
9 years and beyond that in the oil and gas industry.
10 Q. Your five years with the West Augusta Company, is
11 that --
12 A. That's the name of the engineering firm, yes. That's
13 right.
14 Q. When you were with that engineering company what were
15 your responsibilities?
16 A. I primarily did coal reserve estimations through core
17 drilling and logging and offered engineering reports.
18 Q. Have you previously been qualified as an expert witness
19 before the Gas and Oil Board?
20 A. Yes, I have.
21 MS. McCLANNAHAN: Mr. Chairman, I submit Mr. Dahlin as an
22 expert witness.
23 MR. CHAIRMAN: Any objection?
24 MR. SWARTZ: Possibly. If he's going to testify as to
25 reservoir engineering I may have an objection. If he's

1 going to testify to coal thicknesses and seams I probably
2 don't.

3 MR. CHAIRMAN: Do you want to clarify?

4 MS. McCLANNAHAN: We'll just go ahead with the testimony.

5 Q. (Ms. McClannahan continues.) Is the acreage covered by
6 the 3097 unit underlain by at least one coalbed capable
7 of producing coalbed methane gas?

8 A. Yes, it is.

9 Q. How did you make this conclusion?

10 A. Through drilling of our conventional wells as well as
11 core drilling information provided by Penn-Virginia.

12 Q. What are the formations from which you intend to produce?

13 A. We intend to produce any coalbed methane from the Red and
14 Green shells upwards to the Norton formation.

15 Q. What do you estimate the amount of reserves to be within
16 the 3097 unit?

17 A. We anticipate at this point because of the exploratory
18 nature of the wells that we would have an economic well
19 at something like 350 million cubic foot of gas.

20 Q. And the proposal for the unit size, on that is that
21 based?

22 A. As Mr. Swartz speculated, it is on state spacing. We
23 have no information in this area regarding the reservoir.
24 That is the reason for the force pooling of these wells,
25 to accomplish the drilling to acquire the depth.

1 Therefore, we would rely on state spacing, a 500 foot
2 radius.

3 Q. What are the coal thicknesses of each of the seams that
4 are listed on the application?

5 A. They're various. We again don't know the extent, the
6 lateral extent. We do have some information. We expect
7 them to vary from either not present up to four foot in
8 thickness. Occasionally we've seen a thicker seam
9 varying in quality up to eight feet.

10 Q. Are the costs and expenses for the well set forth on an
11 AFE attached to the unit and force pooling application as
12 Exhibit F?

13 A. Yes, ma'am.

14 Q. Does this exhibit reflect the cost of drilling the well
15 to total depth and completed for production costs?

16 A. Yes, it does.

17 MS. McCLANNAHAN: Those are all the questions I have for Mr.
18 Dahlin.

19

20

CROSS-EXAMINATION

21

22 BY MR. SWARTZ:

23 Q. Mr. Dahlin, on the application it indicates that the
24 reserves in place are 350 MMCF, correct?

25 A. Yes, sir. That's correct.

1 Q. Do I understand your testimony is indicating that you're
2 not prepared to state that this eighteen acre unit
3 contains in your judgement 350 MMCF?
4 A. My testimony is that we don't know at this point.
5 Q. Would you agree that if this eighteen acre unit were to
6 contain 350 MMCF that it would require that the coal gas
7 content be on the order of 900 standard cubic feet per
8 ton?
9 A. I don't have that answer. I would say though that the
10 gas concentrations would have to high.
11 Q. Very high?
12 A. Very high.
13 Q. In the Oakwood Field where we have 80 acre units is it
14 your understanding that the gas concentrations range
15 between 400 and 600 standard cubic feet per ton?
16 A. Could you ask the first part of that question again?
17 Q. You're familiar with the Oakwood Field in the sense that
18 it exists?
19 A. Somewhat, yes. Yeah, I know it exists.
20 Q. And I assume you know that the Oakwood Field contains 80
21 acre drilling units?
22 A. Yes, sir.
23 Q. Is it your understanding that in Southwest Virginia if
24 you were to start at the Oakwood Field and kind of work
25 your way west that it generally know that the gas content

- 1 in the coal -- coalbed methane gas content in the coal
2 diminishes as you go west as a general proposition?
- 3 A. No. I couldn't say that I have personal knowledge that
4 that is the situation in every case.
- 5 Q. I'm talking about a general rule. As a general proposi-
6 tion would most people agree that if you started at the
7 Oakwood Field and went west that it would reasonable to
8 expect that gas concentrations diminished as you work
9 further west?
- 10 A. I believe I could agree with that statement, yes.
- 11 Q. As a general proposition would it be fair to say that in
12 the Nora Field as a general proposition the gas concent-
13 rations per ton coal are less than they are --
- 14 A. I don't have a line by line analysis on that. I know we
15 have some coalbed methane seams that are in similar
16 range.
- 17 Q. Would you agree that in general, though, in the Nora
18 Field the gas concentration per ton of coal is generally
19 less?
- 20 A. In my experience in what core work we've done in the
21 variation between seams I couldn't make that general
22 statement.
- 23 Q. As you go west of the Nora Field and get to the location
24 of this well and the other five wells is your expectation
25 based on the available data that you've reviewed that the

1 gas concentrations per ton of coal are less than you've
2 been experiencing in the Nora Field?

3 A. We don't have information specific to any hard evidence
4 as to what we might encounter there.

5 Q. You indicated that you have reviewed information provided
6 to you by Penn-Virginia, correct?

7 A. Insofar as the coal presence, yes, sir.

8 Q. Did Penn-Virginia share with you any information they had
9 obtained with regard to the gas content of the coal study
10 that they had commissioned and paid for?

11 A. With me, no, they did not. My familiarity was in
12 preparation for this and confirmation of the coal
13 thicknesses, existence, etcetera. I did not receive any
14 information on the coalbed content.

15 Q. Let me ask you this general question. Would it be fair
16 to say as a general proposition that drilling units tend
17 to be smaller when the gas in place is greater and tend
18 to be larger when the gas in place is smaller?

19 MS. McCLANNAHAN: I think if we just ask -- if I ask him two
20 questions I think it will take care of everything for
21 you, Mr. Swartz, if you don't mind me interrupting here
22 for two questions.

23 MR. SWARTZ: Go for it.
24
25

REDIRECT EXAMINATION

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BY MS. McCLANNAHAN:

Q. The first question is you do expect the coal thicknesses to be greater in this particular area based on the logs that have been presented to you by Penn-Virginia than those in the Nora Field, is that correct?

A. That is correct.

Q. In addition, if you used units of 60 acres which are in the Nora Field or units which would be just north of this particular area that we're talking about in Wise County, if you drew those kinds of units around each of these wells would the ownership change at all?

A. They would not.

Q. So there are no correlative rights issues here whether you use an eighteen acre unit or a 60 acre unit, is that correct?

A. That's correct also.

Q. The ownership would still be the same as it is on the applications?

A. Yes. That's correct.

RECROSS-EXAMINATION

1

2

3 BY MR. SWARTZ:

4 Q. Are you proposing to the Board that they create pro-
5 visional units today because you don't know what an
6 appropriate unit size would be and that you would come
7 back to them after you have drilled these wells to create
8 appropriate drilling units? What are you telling --

9 MS. McCLANNAHAN: The proposal here is that the only thing the
10 Board and Equitable have to deal with is a statewide
11 spacing rule which was imposed by the Legislature. Based
12 on that -- obviously no wells have been drilled in this
13 field. We intend to drill these six as exploratory
14 wells. They're spaced out in that particular way. And
15 the only thing that we have to use is the statute that's
16 given to us by the Legislature. We don't think as a
17 prudent operator it would be the time to propose field
18 rules to a Board, for example, nor to guess and say the
19 Nora Field is 60 acres and the Oakwood is 80 and this is
20 just south and west of that so we'll pick 70 or we'll
21 pick 60 or we'll pick 80. It's our position here today
22 that we're drilling these as exploratory wells and that
23 the purpose of those statewide spacing rules is just
24 that, to give us a unit size which has been imposed by
25 the Legislature during this exploratory procedure. We

1 certainly don't have a problem if the Board wants to make
2 these provisional units. I don't think that's a prudent
3 thing to do because then -- if you set a precedent for
4 something like that then you may have a problem determin-
5 ing what payments would be at any given point. In this
6 case it doesn't make any difference because the ownership
7 is all the same. The Board has previously on numerous
8 occasions used the statewide spacing rules as the unit
9 designation, as I'm sure you are all aware.

10 MR. SWARTZ: I guess what has me confused here -- this is a
11 question and a statement. If you think it's more of a
12 statement than a question you'll have to respond, but I
13 was under the impression in reviewing your application
14 that these were development wells because they're called
15 development wells on your AFE. Now, if that's a mistake
16 and these are exploratory wells and you have no idea --
17 it sounds like that's what you're telling us, that you
18 really don't have a basis to advise the Board as to what
19 size these units really ought to be. If that's the fact
20 and you're willing to stipulate or agree that the Board
21 can create provisional units for exploratory wells and
22 that after the wells have been drilled and completed and
23 are producing you're willing to come back and create
24 units that match what you're getting out of the well
25 bore I'm sure my client would find that an acceptable

1 procedure. We're dealing with a lease that says one well
2 holds 80 acres. I mean, the 1993 coalbed methane lease
3 that these people are here under says if you drill one
4 well visa vi your lessor holds 80 acres. We've got
5 eighteen acre units. We're hearing that there's no basis
6 apparently available for them to make a conclusion. I
7 don't think they're dodging the issue. They're just
8 saying we don't know what an appropriate unit size is.
9 My position visa vi the Board is they've asked you to do
10 two things today. The application actually says so.
11 They're asking you to create drilling units. If they
12 want you to do that I think they have to give you some
13 basis to do it. And they're asking you to pool. My only
14 issue here really is all right, if there is no ration
15 basis on which to size a drilling unit at this point
16 let's create a provisional unit, let's let the develop-
17 ment or exploration proceed and let's revisit the issue
18 when there's data. That's acceptable to us. But I
19 don't want to create eighteen acre drilling units when
20 there's no basis, in fact, to do that.

21 MS. McCLANNAHAN: There has to be a basis on which you can pay
22 royalties within this escrow scheme. So I don't know --

23 MR. SWARTZ: But you're telling the Board it makes no differ-
24 ence what size these units are?

25 MS. McCLANNAHAN: No. The point is that if your argument is

1 that the eighteen acre unit is not the appropriate size
2 -- I mean, you haven't suggested an appropriate size. My
3 point is that the Board is concerned with conserving the
4 correlative rights of those individuals who would
5 potentially be in a unit. And in these particular cases
6 it doesn't make any difference. My point is that's even
7 more authority for the fact that the Board can establish
8 a statewide spacing unit under that particular statute.
9 I mean, we certainly can't come here and say -- the Board
10 doesn't have to give Equitable the right to drill the
11 wells. The Gas and Oil Inspector has already done that.
12 What the Board has to do is pool the interest. In fact,
13 the statute says it shall pool the interest of the
14 conflicting claimants. So my suggestion is simply that
15 the Board is better protected by using a statewide
16 spacing unit than it is by picking a number.

17 MR. SWARTZ: The problem is there is no such thing as a
18 statewide spacing unit. Statewide spacing creates
19 distances from wells. It does not create units. There
20 was just an Attorney General's opinion that we got a
21 couple of weeks ago that I read as saying spacing doesn't
22 create a unit. You have asked in your application as
23 part of the relief you want -- A2.1: Applicant seeks by
24 this application the establishment of the unit in the
25 shape of a circle -- you're asking the Board to establish

1 an 18.03 acre unit for each of these wells. Section
2 361.20 which allows the Board to create drilling units
3 does not say whenever it doesn't make a difference in the
4 payment of royalty the Board doesn't have to make a
5 scientific or engineering assessment of what an appropri-
6 ate size unit is. I think if you're going to create a
7 drilling unit you need to put a basis in the record that
8 allows it to be appropriately sized so that the Board can
9 make a judgement or if there's no data available then you
10 need to just throw in the towel and say this is an
11 exploratory well and we'd like a provisional unit and
12 we'll revisit it. To say that is has no correlative
13 right significance -- I mean, all leases come to an end
14 and have boundaries. If we have six eighteen acre units
15 in the middle of these leases what are we going to do
16 when we get within 500 feet of a lease boundary? Are
17 they going to be in here saying an eighteen acre unit is
18 appropriate? You've approved tons of them on other
19 places on the lease where a hundred acre unit or an 80
20 unit would cross a lease line. So I don't think it's
21 relevant to suggest that it doesn't make a difference in
22 terms of payment of royalty or escrow to suggest that you
23 don't have to appropriately size a unit. What I'm
24 suggesting -- I don't see why it should be so difficult.
25 Let's go with provisional units. I think what we're

1 hearing from Mr. Dahlin is that these are exploratory
2 wells, he cannot give the Board an opinion as to what the
3 actual size and configuration of the unit ought to be.
4 Let's treat them as exploratory wells, create some
5 provisional units and revisit unit sizing when there's
6 enough data to do it.

7 MR. CHAIRMAN: Any questions, members of the Board, at this
8 time?

9 MR. EVANS: Since we've kind of consolidated these six wells,
10 do you have a map with all six wells located on it?

11 MS. McCLANNAHAN: Not one map with all six wells. I don't
12 believe we have that here. We have a map in each permit
13 and pooling application.

14 MR. EVANS: I guess --

15 MR. DAHLIN: Let me anticipate your question and give you an
16 answer and see if that's it. These wells are generally
17 spaced on structure in the western section of our
18 property. For the sake of argument, in a unit spacing
19 sense we felt we didn't have to propose that since the
20 information isn't available. Let me say that if you
21 assumed a square unit of 80 acres the people affected
22 will be the same people. That is to say that all these
23 wells are proposed on the interior of the property to
24 where if you assume an 80 acre unit no other lease hold
25 interest will be involved other than the people represen-

1 ted here today.

2 MR. EVANS: Am I to understand that the interstitial spacing,
3 if you will, between whatever pattern these six wells
4 make there's -- that these 80 acre units that you alluded
5 to would abut or are they just 80 acre units maybe 2,500
6 feet distance from each other? My question is what is
7 the physical orientation on a topographic map of where
8 these six points are located. Are they located within
9 1,00 feet of each other? Are they located within 3,500
10 feet of each other? Are they located one here, one
11 there, one up here?

12 MR. DAHLIN: I've got a real rough map here. These aren't
13 accurate, but just to give you an explanation they're
14 basically located on two topos, an Appalachian quadrangle
15 and Flat Gap quadrangle.

16 MR. SWARTZ: They're miles apart.

17 MR. EVANS: That was my question. Whether we're in this area
18 rather confined or whether we have six wells that are
19 in --

20 MS. McCLANNAHAN: No. As a result of the exploratory nature
21 of the six wells they're very --

22 MR. DAHLIN: They're at least a mile apart.

23 MR. EVANS: So they're pretty far removed from -- one from the
24 other?

25 MR. DAHLIN: Yes, they are.

1 MR. SWARTZ: And they're in a string that's several miles.
2 MR. DAHLIN: That's accurate also.
3 MR. EVANS: That's all I needed to know. When you were
4 talking about southwest trend and this, that and the
5 other thing, without some reference I have no idea
6 whether that trend goes 3,000 feet or 30 miles.
7 MR. DAHLIN: The full extent between the furthest northeast
8 and southwest I would speculate would probably be twelve
9 to fifteen miles, something like that.
10 MR. EVANS: We're talking about six widely spaced individual
11 wells?
12 MR. DAHLIN: That's correct. Yes. Again, what I'd like to
13 say is that we don't have the information to propose
14 field rules for the appropriate spacing. So our assump-
15 tion is that we are drilling on state spacing.
16 MS. McCLANNAHAN: It's actually not an assumption. It's a
17 presumption of drainage imposed by the statute.
18 MR. DAHLIN: I'm sorry.
19 MR. EVANS: I have my own opinion of what that says.
20 MR. McGLOTHLIN: Mr. Dahlin, are you tandoming these wells on
21 existing sites?
22 MR. DAHLIN: Yes, we are. That was done in cooperation with
23 the coal company actually in order to sterilize or to
24 conflict with as little coal reserves as possible.
25 MR. CHAIRMAN: Other questions, members of the Board? Do you

1 have anything further, Mr. Swartz?

2 MR. SWARTZ: Just kind of a wrap up. 361.20 authorizes the
3 Board to create drilling units. I am not suggesting that
4 we're talking about field rules. I've just started to
5 hear that and I'm not trying to say you ought to have
6 field rules and take the off of that can. But 20 says
7 that in order to prevent waste of gas or oil the drilling
8 of unnecessary wells -- which would apply on lease
9 drilling. I mean, operators presumably make money
10 operating wells -- or to protect correlative rights.
11 There is kind of a laundry list of reasons for which the
12 Board on its motion or an application by the gas and oil
13 owner can establish or modify drilling units. That's in
14 A. If you go to E -- and this is really what I'm talking
15 about -- the second sentence, "If at the time of a
16 hearing there is not sufficient evidence for the Board to
17 determine field boundaries, drilling unit size or shape
18 or allowable production the Board may enter a temporary
19 order establishing provisional drilling units, field
20 boundaries and allowable production for the orderly
21 development of the pool pending the seat of information
22 necessary to determine the ultimate pool boundaries,
23 spacing of the wells for the pool and allow production.
24 Upon additional findings of fact the boundaries of a
25 pool, drilling units and allowable production may be

1 modified by the Board." Essentially what I'm suggesting
2 to you is Section 20 contemplates the drilling of
3 exploratory wells. It contemplates the difficulties of
4 proof to establish an appropriate drilling unit and
5 offers the Board and the parties a mechanism to allow
6 exploration to proceed on a provisional basis which then
7 gets modified to tract reality. I think what I'm asking
8 that proposing that Equitable either agree to or that the
9 Board do is to simply recognize that these are explora-
10 tory wells which is what we've heard today, that there is
11 not sufficient data to permanently configure drilling
12 units and that we allow the -- create a provisional unit.
13 I mean, as far as I'm concerned the provisional unit
14 could be eighteen acres as long as there's an understand-
15 ing that when we have production data we come back and
16 get these units sized to match what they've actually
17 found -- what they've actually encountered. The drilling
18 of unnecessary wells certainly is -- units ought to be
19 the right size regardless of where they are to make sure
20 that you're not over drilling. There are obviously
21 boundaries to these leases and if we're looking at the
22 issue as drilling units for this pool then we are
23 contesting this pool. I think the size of these units
24 will ultimately become relevant to other units that may
25 effect correlative rights that may not have just the same

1 parties that you see before you. My recommendation is to
2 approve the application, treat these proposed units as
3 provisional with the understanding that when there's
4 production data somewhere in the record that creates some
5 units that's nearer reality.

6 MR. CHAIRMAN: Do you have any problem with that, Elizabeth?

7 MS. McCLANNAHAN: I'm not sure what we mean by at some point
8 after production we're to come back to the Board. Do you
9 know what your proposal is about that, Mark? Are you
10 suggesting a proposal to the Board or does the Board have
11 an idea of -- at what particular point are we suppose to
12 come back and submit evidence?

13 MR. SWARTZ: Well, I assume that Bob or other people within
14 the operations management at EREX will feel at some point
15 unless these wells are producing that they have a pretty
16 good idea of what they're draining. I mean, I kind of
17 assume that you --

18 MR. DAHLIN: That's accurate.

19 MS. McCLANNAHAN: Right. I mean, we don't mind saying that
20 we certainly considered this in the big scheme of things
21 and in the long term planning. We've already talked
22 about this and we certainly will come to a point where we
23 know more and can present that evidence to the Board and
24 we don't have a problem doing that. I just wanted to
25 make that we're the ones who have control over producing

1 that evidence to you in the timing that we think is
2 appropriate.

3 MR. EVANS: Hold one just one second. As far as that goes,
4 anybody can petition this Board for field rules anywhere.

5 MS. McCLANNAHAN: Right.

6 MR. EVANS: So when you say you have control over -- you have
7 control over the data that you develop but not necessar-
8 ily to the exclusion of anyone else.

9 MS. McCLANNAHAN: Exactly. My concern is just the opposite of
10 that concern and that is in 30 days is this going to
11 require another hearing for us to come back one well at a
12 time. That's my point.

13 MR. KELLY: I just wanted to try to establish a line of
14 thinking on this. Is the concern that if the units are
15 not established on a provisional basis that there will be
16 no mandate to come back later and establish appropriate
17 field rules?

18 MR. SWARTZ: The other problem I have, Mr. Kelly, is I think
19 the Board in creating any drilling unit needs to have a
20 factual basis to do it. From what you've heard today I
21 can't imagine them having a factual basis. So I think
22 from your standpoint you need to say we're prepared to
23 create a provisional unit because we don't have the
24 factual data. You're being asked to create a unit by
25 this application and you have to pool. So I think we

1 need to acknowledge what we're doing, that we are
2 creating a unit without a basis in fact to allow explora-
3 tion to proceed. My concern is if you just created a
4 unit and it didn't specifically -- you call it provision-
5 al -- it wouldn't have a basis to deal with the record
6 and secondly you wouldn't have a return trip.

7 MR. KELLY: But you're more concerned about the return trip?

8 MR. SWARTZ: Right. I'm more concerned about creating units
9 which track the realities of what they're producing.

10 MR. KELLY: Whereas under your proposal if you did establish a
11 unit based on statewide spacing you've said you intended
12 to come back later and apply for field rules once you
13 have the appropriate information -- or have you said
14 that?

15 MS. McCLANNAHAN: At this particular time we certainly --

16 MR. KELLY: Or do you even know?

17 MS. McCLANNAHAN: Yes. We have discussed that as a long term
18 strategy in terms -- obviously if all these wells turn
19 out to be not very productive we won't ever be back
20 again. So we can't sit here and say we promise we'll be
21 back on some certain date. But, as you well know, that
22 certainly is the bigger strategic plan. Now, I do want
23 to say that because we're certainly in agreement with
24 making these provisional drilling units, whatever that
25 means, that we're not suggesting that we haven't provided

1 you with the proper information or testimony to establish
2 a unit based on the statutory presumption as well as the
3 geological evidence that we've presented to you about
4 those coal seams from which we intend to produce.

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

6 MR. EVANS: Let me ask Mr. Swartz and Ms. McClannahan. You
7 both agree that a provisional unit can be established in
8 this instance in which case that answers your concern --

9 MR. SWARTZ: As long as there's some understanding of a good
10 faith return visit when Bob feels like he has the data
11 that he can come in and say I think this is an appropri-
12 ate unit from a drainage and economic standpoint given
13 what I'm seeing coming out of this well bore. That's
14 fine.

15 MS. McCLANNAHAN: The concern here, too, I want to make -- I
16 mean, we need to lay this all on the table. We certainly
17 will probably need more than six wells before we can have
18 enough data in addition that and we --

19 MR. EVANS: I agree. Particularly if you string them out over
20 fifteen miles.

21 MS. McCLANNAHAN: Right, exactly. We're not suggesting that
22 we won't be back here for another provisional unit on
23 this same basis and we certainly don't want an order of
24 the Board to cut us off from doing that because I think
25 Mr. Dahlin would agree that -- he can't as a geologist --

1 our reservoir officials have indicated that we're not
2 going to make a decision about this entire field on six
3 wells.

4 MR. SWARTZ: I think I'm being misinterpreted. I contemplate
5 that Mr. Dahlin may come back with six different sized
6 units. I mean, he probably won't. But the production is
7 not going to be identical, I assume, from each of these
8 well bores and I can contemplate that what he's going to
9 do is try and make a unit size work given the six units
10 that he's looking at if he can so that we're not beating
11 ourselves with every well. But I assume there are going
12 to be differences well to well. I'm not trying to
13 establish some precedent for the remaining wells in the
14 field or anything like that. I'm just asking for a
15 return visit once we've got the data to convert these
16 from provisional wells to a drilling unit that makes
17 sense given what they find. That's all. I'm not trying
18 to like tack on field rules to that or somehow hamstring
19 them with regard to other wells.

20 MS. McCLANNAHAN: I can understand why the Board would want to
21 make this a provisional drilling unit if it's not certain
22 what the overall field is going to be. But in terms of
23 setting a precedent that we establish an eighteen acre
24 unit today only to come back and change the same eighteen
25 unit to a 60 acre unit or to an 80 acre unit or 150 acre

1 unit -- is that what you're suggesting, Mark, that
2 perhaps we need to at some point come back and change
3 this unit size?

4 MR. SWARTZ: Right. A provisional unit simply means we don't
5 what this unit ought to look like but we need to form a
6 unit to pool this and proceed and when we have the data
7 we'll come back and create a unit that has a basis in
8 fact for this development.

9 MS. McCLANNAHAN: I think the Board has done that on a number
10 of occasions with other units that were in the middle of
11 statewide units. You've imposed field rules on top of
12 units that were previously established according to the
13 statewide presumptions of drainage.

14 MR. SCOTT: I know we've danced around this for the last
15 little bit, but I assume that there is motion pending for
16 field wide spacing by anybody at this point -- nothing
17 filed in your office, is that correct?

18 MR. CHAIRMAN: There's nothing before the Board.

19 MR. SCOTT: Okay.

20 MR. CHAIRMAN: Do you have any other witnesses?

21 MS. McCLANNAHAN: No, sir.

22 MR. KELLY: Let me just go back one minute as far as future
23 exploratory wells that you may come forward with after
24 these first six. Can I anticipate that you would also
25 propose those based on statewide spacing until such time

1 as a formal field rule proposal came forward?

2 MR. DAHLIN: That's exactly right. That's our intention.

3 MR. KELLY: So you don't intend to start playing around with
4 unit sizes until --

5 MR. DAHLIN: We prefer not to --

6 MR. KELLY: -- such time that you're ready to make a formal
7 field rule opinion?

8 MR. DAHLIN: Until we acquire the data to propose it. That's
9 exactly right. We have a permit issued on the eighteen
10 acre spacing. If we are incumbered by a provisional unit
11 I would request in order to accomplish our contractual
12 obligations that that provisional unit be this eighteen
13 acre unit.

14 MR. SWARTZ: Well, I've said that the provision unit can be
15 eighteen acres. Pick a number. That's fine. It's okay
16 as long as it's a provisional unit. I would point out
17 that these permits, as I understand it, were issued with
18 the understanding that we would have this hearing today
19 and that we would address unit size and pool. But they
20 are issues. There's no doubt about it. My client wants
21 development to proceed but we want this issue -- do you
22 have a problem complying at some point in the future
23 when you've got six months of production under your belt
24 with coming back and addressing what these six units
25 ought to look like?

1 MR. DAHLIN: The only problem I have is we don't know what
2 we're going to find or at what point we'll feel confident
3 or have the preponderance of the evidence to come back to
4 propose whatever we may find. I don't have a time. I
5 just have an unknown.

6 MS. McCLANNAHAN: I think everybody understands that.

7 MR. SWARTZ: If you have six months of production, Bob, is
8 that probably going to allow you to make some assessment
9 unless it's --

10 MR. DAHLIN: Based on our experience in the Nora Field, just
11 to give you some general background, we're still wrestl-
12 ing with the appropriate unit size there. I would say
13 based on that that six months is not enough. We would
14 not want to be locked into a particular time period to
15 define an inappropriate unit size. Therefore, we're
16 asking for this to be based on the state spacing until
17 such time that we can determine if we need to come back.

18 MS. McCLANNAHAN: Under the statute under 361.20.A the Board
19 has the authority at any time to modify a drilling unit
20 whether it's a provisional drilling unit or an estab-
21 lished drilling unit. That's exactly right. The Board
22 has that power regardless of what kind of unit we call
23 it. It specifically says the power to establish or
24 modify drilling units in the very first sentence of that
25 statute.

1 MR. CHAIRMAN: I think though, Elizabeth, the point's been
2 made and certainly it's my belief that that would be
3 based upon evidence presented to the Board at any point
4 in time to substantiate that.

5 MS. McCLANNAHAN: Right. And as Mr. Evans has pointed out, on
6 anybody's motion within the field.

7 MR. SWARTZ: Well, the problem here is somebody's got the
8 burden of proof today and it isn't me. Somebody has to
9 flesh out a factual engineering basis to create a
10 drilling unit. I think Bob has been very forthright with
11 you in saying I don't know, this is our economic limit,
12 this is what we'd like to see, this are exploratory
13 wells. And under circumstances where people come in and
14 honestly say I don't know what this unit ought to look
15 like the Board has an ability to allow development and
16 proceed on a provisional unit basis.

17 MR. McKENUS: My name is John McKenus. I haven't heard anyone
18 say today the statewide spacing law is unconstitutional.
19 Unless someone is making that proposition it seems to me
20 that in the absence of any special field rules that's all
21 you have (Inaudible.) and it was my understanding that
22 under the statewide spacing statute the force pooling
23 applications today were made. I think there's a provis-
24 ion in the Code whereby any interested party may make
25 application for either permit or provisional spacing

1 units. I don't think that that has been done. We
2 haven't been notified that that has been done. The Board
3 on its own motion may consider special field rules. As
4 far as I know that hasn't been done. I don't know why
5 any operator, whether it's for a coalbed methane well or
6 conventional oil and gas well, who drills in an area
7 where special field rules haven't been set out may not
8 proceed under statewide spacing. It does create a unit
9 because it refers -- statewide spacing refers not only to
10 distance between wells but also for offsetting boundary
11 lines. So I'm somewhat perplexed by some of the proposi-
12 tions that Mr. Swartz has made on this. I think that
13 should be cleaned up for the record.

14 MS. McCLANNAHAN: In addition, not only is Mr. McKenus right
15 about the theory on this but the Board has done this
16 countless times in the past. Never has a provisional
17 unit been established just because you're in a statewide
18 spacing area.

19 MR. CHAIRMAN: One thing that the Board has had to deal with
20 and the Board will have to deal with here and certainly I
21 hope we learn as we go. I think we have in a lot of
22 cases. The real key here is what happens if it's
23 determined that this should, in fact, an 80 acre unit
24 when it was initially established as an eighteen acre
25 unit. What is the effect of the order if it were issued

1 today and accepted as eighteen? Is it retroactively then
2 changed to 80 acre because of the unique circumstance of
3 no other parties involved either way it goes or --

4 MS. McCLANNAHAN: I think you under the statute have the
5 authority to modify the unit as Mr. McKenus and I have
6 been indicating. We certainly can't sit here --

7 MR. CHAIRMAN: I think we have the authority to modify the
8 unit. The question is do we have the authority to modify
9 the unit retroactively to today at three years down the
10 road or do we have authority to modify it at that point
11 in time. I think this gets right at the heart of the
12 some of the concern that we're going to have in the
13 future about any unit that we approve as to what happens
14 -- especially where we don't have evidence substantiating
15 the size of the unit.

16 MS. McCLANNAHAN: But what you have is something better than
17 evidence and that is a statutory presumption

18 MR. CHAIRMAN: Well, that's arguable.

19 MR. FULMER: Whether it's relevant or not, in regards to the
20 permit application -- I see that being thrown around
21 here. As far as the permit application being approved,
22 it's not approved on statewide spacing under 17. It's
23 approved on notice as required in the notice provisions.
24 It has noting to do with statewide spacing. That
25 question has been brought up here in regards to that, but

1 the permit itself was not issued on statewide spacing
2 requirements under 17. It was issued in the notice
3 provisions. That is a requirement of the law. The only
4 reason why it is here before you is because we have a
5 claimant within this boundary that they have shown and
6 the notice requirements. I just wanted to make that very
7 clear because I've heard that being batted around here
8 about statewide spacing.

9 MR. CHAIRMAN: Any other questions, members of the Board? Do
10 you have anything further?

11 MS. McCLANNAHAN: No.

12 MR. SWARTZ: No.

13 MR. CHAIRMAN: Any further comments? (Pause.) Do I have a
14 motion?

15 MR. EVANS: Since both parties are in agreement that a
16 provisional unit is possible and acceptable and in this
17 case -- in this instance there's no reason not to do
18 that, I don't see any reason why we cannot grant the
19 petition based upon the establishment of a provision
20 drilling unit and force pool the interest within that
21 unit.

22 MR. CHAIRMAN: I have a motion.

23 MR. KELLY: Second.

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

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

1 Opposed say no. (NONE.) The motion carries.

2 MS. McCLANNAHAN: We need to make sure for the record this is
3 for all --

4 MR. EVANS: For all six if that's acceptable if that's
5 acceptable to all parties.

6 MS. McCLANNAHAN: We also need the testimony to apply to all
7 six of those units.

8 MR. EVANS: That's fine. And it's as the petition requests,
9 provisional unit for a 500 foot radius.

10 MR. CHAIRMAN: We're going to adjourn for lunch.

11 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
12 FOLLOWS:)

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ITEM IX

MR. CHAIRMAN: The next item on the agenda is a petition from Consol, Incorporated for force pooling of a drilling unit known as U-16. This is docket number VGOB-93/10/19-0417. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. SWARTZ: Mark Swartz appearing for Consol, Inc.

MR. MCGLOTHLIN: Due to a person conflict I ask to be excused from this hearing.

MR. CHAIRMAN: Do we have a quorum?

MR. SWARTZ: I think the rule is if you start with a quorum you've still got a quorum.

MS. RIGGS: It's the majority of those voting.

MR. CHAIRMAN: What I'm trying to sort out is are you going to sit in and ask questions but not vote or not ask questions or just --

MR. MCGLOTHLIN: I had not anticipated to ask any questions whatsoever.

MR. CHAIRMAN: All right. The record will show that the Board does have a quorum. Mr. McGlothlin has recused himself because of potential conflict. We shall proceed.

MR. SWARTZ: Just an overview of what this application involves to give you an idea of why we are here, we are not adding any respondents to it. So we are not seeking

1 to force pool anybody. This matter was heard on June
2 22nd by this Board on the original pooling application
3 and the unit was force pooled by the Board at that
4 hearing subsequently and an order was entered force
5 pooling the unit. This application seeks to amend that
6 order which was entered after the hearing on June 22nd,
7 1993. The docket number for the original force pooling
8 hearing was VGOB-93/06/22-0381. That number is referenc-
9 ed in the notice or at least certainly in the applica-
10 tion. This amendment became necessary because when title
11 opinions were reviewed and information was prepared for
12 the division order take off, meaning getting ready to
13 start paying people and escrowing funds, it was dis-
14 covered that math errors -- mathematical errors had been
15 made -- just simple calculation errors in Exhibit E and
16 then, of course, it carried over into Exhibit G and they
17 were just simply math errors. In addition to those math
18 errors which needed to be straightened out there was a
19 problem which developed -- I mean, we were aware of it
20 but it was not appropriately addressed in Exhibit B and
21 Exhibit G the first time we got here. Record title with
22 regard to some of the tracts that are involved in this
23 here would not generate anything approximating with
24 regard to some of the tracts the list of people that you
25 see here. Essentially many of these respondents were

1 joined as respondents and identified as potential
2 claimants through leg work of land people. With regard
3 to some of the estates and some of the interests there
4 simply has not been any effort by the families to bring
5 the record of title into a lineman with, I guess, oral
6 disposition of the property among the family members. So
7 the original force pooling was an effort to take record
8 title and deal with the respondents that needed to be
9 joined to conform with record title and also join as
10 respondents people who were claimants that had been
11 identified or spoken to claimed an interest from estates
12 and family members in this. In the process of looking at
13 record title and looking at the kind of oral history of
14 the families for purposes of coming up with a division
15 order take off and for purposes of giving numbers to the
16 Board that the escrow agent could use with regard to
17 escrow and also for purposes of allowing people who
18 wanted to participate in this unit -- there have been --
19 Les has received a fair number of calls from people who
20 actually want to participate. It became clear that some
21 of the numbers were a product of math errors, but there
22 were actually mistakes in terms of the title in terms of
23 allocating percentages in tracts. So what happened then
24 and the reason for this application is to correct the
25 math errors that were made and to straighten out the

1 title as best we can between the record title and the
2 claims of people who have expressed claims that are not
3 documented in the record as heirs. There are exhibits
4 next here -- just to give you some of idea of what's
5 changing and what's not changing, if you go to Exhibit A
6 obviously -- the well plat is Exhibit A as amended that
7 was submitted to you on 6/22/93 as part of docket number
8 0381. That has not changed but it's been included for
9 notice purposes and filing purposes. Exhibit A, Page 2,
10 has changed slightly. I believe the first time we were
11 here we were force pooling an outstanding oil and gas
12 interest of roughly 55 percent. It's increased to 57.857
13 percent. So A-2, Page 2, has changed in that there's
14 slightly more of a percentage. There are no additional
15 people, but slightly more of a percentage of the oil and
16 gas interest is recognized to have been outstanding.
17 Exhibit A-1, the little map that's published, that has
18 not changed. Obviously Exhibit B which is annexed to the
19 application and bears the number of VGOB-93/10/91-0417
20 has changed and that is a combined effort of Les Arring-
21 ton and Howard Salisbury and my office to bring the -- to
22 correct the math errors and bring the balance of the
23 percentages into agreement with title records and the
24 interests that have been expressed and discovered by
25 inquiries. We'll come back to some of this, but if you

1 go to the DWE or the well estimates which were Exhibit C,
2 these estimates were discussed at the hearing on June
3 22nd. As you may recall, there was testimony with regard
4 to a \$20,000 hook up fee which I think Sam summarized his
5 views on that as he wished that he had never put it in
6 the application and there was an agreement by OXY to
7 withdraw that hook up fee charge from the DWEs. They
8 were amended after the first hearing, but what you're
9 seeing -- it's called the second amendment -- is the
10 amendment that was accomplished before the order was
11 entered to remove the \$20,000 hook up fee. So each of
12 these went down \$20,000. We're not seeking to further
13 amend this. This was accomplished last time as a clean
14 up. The next exhibit which identifies the -- kind of
15 shows the panels and the short hole and highlights the
16 unit, that has not changed. Then G, Page 2, the percent-
17 age of panels in the various units, that remains the
18 same. Exhibit G, Page 3, had to be changed because when
19 we backed the \$20,000 out these numbers changed. These
20 were amended and submitted to Tom and Sandy and so forth
21 and were referenced in the order that was actually
22 entered. These are not new -- they're a matter of
23 record -- but they're included. Then obviously Exhibit
24 G, Pages 4 through 11, have, in fact been changed to
25 correct the math errors and to bring title into alignment

1 with what we understand title to be in terms of the
2 percentages and hopefully consistent with Exhibit B.
3 With that kind of summary of what's changed and what
4 hasn't changed and why we're here I'd like to take a
5 little bit of testimony from Les and to the extent you
6 have questions to understand what has happened I'll turn
7 him over to you all.

8 COURT REPORTER: (Swears witness.)
9

10 LESLIE K. ARRINGTON

11 a witness who, after having been duly sworn, was examined and
12 testified as follows:
13

14 DIRECT EXAMINATION
15

16 BY MR. SWARTZ:

17 Q. Would you state your name for the record, please?

18 A. Leslie K. Arrington.

19 Q. And who do you work for?

20 A. Consol, Inc.

21 Q. As part of your job responsibilities for Consol, Inc. is
22 it one of your responsibilities to prepare notices of
23 hearing and applications of hearing?

24 A. Yes, it is.

25 Q. Did you, in fact, prepare the notice that was given here

1 and the application that we're dealing with?

2 A. Yes, I did.

3 Q. Did you sign them both?

4 A. Yes, I did.

5 Q. Just some basic questions. Buchanan Production Company

6 is a Virginia general partnership?

7 A. Yes, it is.

8 Q. And the partners in that partnership remain Appalachian

9 Operators, Inc. and Appalachian Methane, Inc.?

10 A. Yes.

11 Q. And those two companies are at least indirectly owned now

12 by Consol, Inc.?

13 A. Yes, they are.

14 Q. Is Buchanan Production Company authorized to do business

15 in Virginia?

16 A. Yes.

17 Q. The designated operator at least based on a transfer of

18 operatorship at the last hearing of this unit would now

19 be Consol, Inc., is that correct?

20 A. Yes, it is.

21 Q. Consol, Inc. is a Delaware corporation?

22 A. Yes.

23 Q. Is Consol, Inc. authorized to do business in the Common-

24 wealth of Virginia and is it registered with the DMME and

25 does it have a blanket bond on file as required by law?

1 A. Yes, we do.

2 Q. Buchanan Production has a management company or a
3 management committee, correct?

4 A. Yes, it does.

5 Q. Has that management committee delegated any responsibil-
6 ity to Consol, Inc. with regard to the affairs of BPC?

7 A. Yes, it has.

8 Q. What in general is that delegation?

9 A. It's the authority for Consol to operate it.

10 Q. To be the professional manager?

11 A. Professional manager, yes.

12 Q. As part of the exhibits that you have brought with you
13 today have you brought written evidence of the actions of
14 the management committee of Buchanan Production to
15 appoint Consol, Inc. as its agent?

16 A. Yes, we have. That's Exhibit 5.

17 Q. Consol, Inc. at the last hearing consented to serve as
18 unit operator, do you recall that?

19 A. Yes.

20 Q. We still don't have an order entered but the board
21 transferred?

22 A. Correct.

23 Q. The respondents names who are listed in the second
24 paragraph of the notice of hearing and then are again
25 listed in Exhibit B of the application, are those names

1 -- in other words, the people identified in there -- the
2 same folks as were force pooled in June of this year?
3 A. Yes.
4 Q. We haven't added or subtracted anyone?
5 A. Right.
6 Q. All that is changed are the allocations of their inter-
7 ests to some extent?
8 A. Correct.
9 Q. Did you mail to all of the folks listed in Exhibit B the
10 notice of hearing and a copy of the application filed
11 with regard to this motion to amend to all persons for
12 who you had addresses?
13 A. Yes.
14 Q. Is there proof of that mailing and publication and return
15 cards in the exhibits that you've tendered to the Board
16 members today?
17 A. Yes, they are. And the order also previously submitted
18 to the Inspector.
19 Q. And all that mailing was undertaken certified mail in
20 compliance with your obligations under Section 45.1-
21 361.19, is that correct?
22 A. Yes, it was.
23 Q. Anyone for whom you did not have an address and to whom
24 you could not mail, would that information be disclosed
25 in Exhibit B?

1 A. Yes.

2 Q. They would be shown as not having an address?

3 A. Correct.

4 Q. From a notice standpoint in addition to mailing did you
5 publish a notice of hearing?

6 A. Yes, we did in the Bluefield Daily Telegraph on October
7 2nd.

8 Q. Was the material that was published in that newspaper the
9 actual notice of hearing?

10 A. Yes, it was.

11 Q. And Exhibit 3 that's been filed in the exhibits that
12 you've given to the Board today is a certificate of
13 publication, correct?

14 A. Yes.

15 Q. I assume that was previously sent to Mr. Fulmer?

16 A. Yes, it was.

17 Q. Now, in addition -- I think this is probably the most
18 helpful to anyone who has appeared today or to the Board
19 -- there is an Exhibit 4 which is a comparison of the
20 percentages that were assigned in Exhibit B and G on June
21 22nd and that was modified when those exhibits were
22 amended and the order was issued and the percentages
23 that you have now arrived at, correct?

24 A. Correct.

25 Q. So for each person's name there are two percentages

- 1 showing the change, if any, is that right?
- 2 A. Correct.
- 3 Q. Could you explain to the Board -- I've made a representa-
4 tion but you're testifying under oath. Could you explain
5 why it became necessary -- if there's more than one
6 reason we need to know that -- it became necessary to
7 amend Exhibit B in terms of the percentages and Exhibit G
8 insofar as it deals with the division of interests?
- 9 A. Yes. Upon mailing out the previous Board order 381 I
10 started receiving a few phone calls inquiring on what
11 percentage of interest they would base their participa-
12 tion in that unit on and I started noticing that the
13 numbers didn't match in Exhibit B and Exhibit G. So at
14 that point I knew that we needed to revise and correct
15 the percentages. Again, you can see those comparisons in
16 Exhibit 4.
- 17 Q. To some extent, Les, have you attempted to reconstruct
18 the interest or to instruct the interest of some of the
19 respondents based on information that you have received
20 verbally and that your land men have received verbally?
- 21 A. Yes, we have.
- 22 Q. Have you reviewed certified title opinions with regard to
23 the tracts here?
- 24 A. Yes.
- 25 Q. When you review those certified opinions could you

1 compare them in terms of how many people they identify as
2 claimants to what we see in Exhibit B? Are there more or
3 less people with regard to some of the tracts?
4 A. There's more if that's what you're --
5 Q. On Exhibit B.
6 A. On Exhibit B, yes.
7 Q. In some instances the title opinion simply identifies an
8 estate as a claimant?
9 A. Yes.
10 Q. And what you've had to do is reconstruct that estate by
11 leg work?
12 A. Yes.
13 Q. Exhibit B to this motion to amend the prior order and
14 Exhibit G, are those your best efforts to construct the
15 interest of the claimants in the tracts comprising this
16 unit?
17 A. Yes, it was.
18 MR. SWARTZ: That's all I have.
19 MR. CHAIRMAN: Questions, members of the Board?
20 MS. RIGGS: I have one question. Does the prior pool all of
21 the parties that are now listed on Exhibit B?
22 MR. ARRINGTON: Yes.
23 MS. RIGGS: So there are no new parties entitled to elections?
24 MR. ARRINGTON: Correct.
25 MR. SWARTZ: And were you concerned, Les, that people who had

1 been forced pool by the initial order were unable to
2 tender an appropriate amount to participate?

3 MR. ARRINGTON: Correct.

4 MR. SWARTZ: And is one of the reasons you're here is to at
5 least as best we can fix what type of check or amount of
6 check in terms of the percentage of interest people who
7 wanted to participate would have to tender and then allow
8 them a further election period now that they have firm
9 numbers?

10 MR. ARRINGTON: Correct. That's what we're attempting to do,
11 is give them one number to use.

12 MS. RIGGS: So you're asking that the election period be
13 extended to an additional 30 days from the entry of this
14 order to allow everybody a right of election?

15 MR. ARRINGTON: Right.

16 MR. SWARTZ: Yes, because that was part of the problem that
17 had arisen. People didn't know what amount to tender and
18 we were concerned that we were not apprising them of the
19 specific amount that needed to be tendered in the event
20 they wanted to participate.

21 MR. CHAIRMAN: Any other questions? Did you folks have any
22 questions or wish to address the Board in any way?

23 MR. LANDON: How many percent signed this and sent these in?

24 MR. CHAIRMAN: Sir, could we get your name for the record?

25 MR. LANDON: Theodore Landon and Mary Landon.

1 MR. ARRINGTON: Of all the people we mailed out to there was
2 only five of them that did not return notices -- a signed
3 notice.

4 MR. CHAIRMAN: And what you're proposing now is following the
5 Board's action today all parties would get a subsequent
6 notice -- or subsequent copy of the order by the Board?

7 MR. SWARTZ: Of this order.

8 MR. CHAIRMAN: Of this order. Anything further? Do I have a
9 motion?

10 MR. EVANS: I move that we accept the petition as filed.

11 MR. KELLY: Second.

12 MR. CHAIRMAN: A motion and a second. Any further
13 discussion? If not, signify your approval by saying yes.
14 (ALL AFFIRM.) Opposed say no. (NONE.) It's a unanimous
15 approval.

16
17 (End of Proceedings for
18 October 19, 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 October 19, 1993 in the Conference Room at the 4-H 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 2nd day of November, 1993.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.