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VIRGINIA OIL AND GAS BOARD

HEARING OF AUGUST 20, 1996

9:00 A.M.

AT THE SOUTHWEST VA. 4-H CENTER
HILLMAN HIGHWAY
ABINGDON, VIRGINIA

Appalachian Court Reporting Services, Inc.

P. O. Box 833

Abingdon, Virginia

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1 August 20, 1996

2 This matter came on to be heard on this the 20th day of
3 August, 1996 before the Virginia Gas and Oil Board at the
4 Southwest Virginia 4-H Center, Hillman Highway, Abingdon,
5 Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B
6 of the Code of Virginia.

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

12 MR. ~~Grant~~ Grant: My name is Mason Grant. I'm from Richmond,
13 Virginia and I represent the gas and oil industry.

14 MR. GARBIS: My name is Dennis Garbis. I'm from Fairfax
15 County, Northern Virginia. I'm a public member.

16 MS. RIGGS: I'm Sandra Riggs with the Office of the Attorney
17 General, here to advise the Board.

18 MR. GILLUM: I'm Richard Gillum, a coal representative from
19 Abingdon, Virginia.

20 MR. KING: I'm Clyde King from Abingdon, Virginia. Welcome
21 to Abingdon. I am a public representative.

22 MR. FULMER: My name is Tom Fulmer. I'm with the Department
23 of Mines, Minerals and Energy.

24 MR. CHAIRMAN: Thank you. I want to say as we call on Cabot
25 Gas and Oil for their petition this morning that we do

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apologize, that we had a couple of misbeats there last month and I know that that was inconvenient. We try hard as a Board and as a Department not to have those things happen. They did and they're unfortunate. As a result of that I'm going to go ahead and take the Cabot items first today.

ITEM I

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2
3 MR. CHAIRMAN: The first item on today's agenda is docket
4 number VGOB-96/07/16-0546. This is a petition from
5 Cabot Oil and Gas Corporation for pooling of conven-
6 tional gas well. We'd ask the parties that wish to
7 address the Board in this matter to come forward and
8 identify themselves at this time.

9 MR. McCLANNAHAN: Elizabeth McClannahan. I represent Cabot
10 Oil and Gas Corporation.

11 MR. CHAIRMAN: Are there any others? The record will show
12 there are no others. You may proceed.

13 MS. McCLANNAHAN: Mr. Chairman, I have given each of you a
14 copy of our exhibits. They're in a booklet that looks
15 like this. This is for the COCG #2 Unit. A copy of
16 that plat is at Exhibit #6 if you want to look at that
17 while I explain what this application process is before
18 we get started with the witnesses. Is that okay?

19 MR. CHAIRMAN: Sure. That's fine.

20 MS. McCLANNAHAN: This is a provisional unit that in a
21 circular pattern in order to comply with statewide
22 spacing requirements under the Virginia Code and it
23 consists of 112.69 acres. It's located in Tazewell
24 County, Virginia. Cabot has previously filed with the
25 Gas and Oil Board the due diligence affidavit for the

1 proposed COGC #2 Unit, copies of the certified mail,
2 return receipts and the hearing notice and proof of
3 publication. Cabot Oil and Gas is the owner of
4 approximately 94 to 95 percent of the right to develop
5 the oil and gas within this unit as it's shown on our
6 revised Exhibit #C. Consolidation Coal Company is the
7 coal owner underlying this unit and Consol has executed
8 a letter of consent and approval to this particular
9 location. Cabot is requesting authority to drill one
10 well and produce it on this COGC #2 Unit on statewide
11 spacing. The permit application for this well was
12 filed on June 24th of this year. And in this appli-
13 cation Cabot requests that the Board authorize it to
14 recover 100 percent of the actual costs of drilling,
15 completing, equipping and operating this well. That's
16 shown on the AFE that was submitted as Exhibit #G to
17 the application. There are a number of unknown and
18 unlocatable oil and gas owners whose funds are to be
19 escrowed pursuant also the Virginia Code Statute which
20 requires escrowing of proceeds. Jeff Kime is Cabot's
21 senior landman seated to my right. He's responsible
22 for Southwest Virginia, West Virginia and Eastern
23 Kentucky and has supervised all the land aspects of
24 this project for Cabot. There are numerous heirship
25 issues involved in this particular unit despite the

1 fact that Cabot owns 94 to 95 percent of the oil and
2 gas underlying the unit. As a result of that Jeff
3 hired and supervised two independent land men, Mike
4 Pryor and Tony Miller, to perform due diligence and
5 offer leases to the parties that have ownership
6 interests within this unit. Tony Miller obtained
7 leases from all the parties in his assignment and he
8 won't be here today. His resume is included in your
9 exhibit. But he was able to obtain leases from all the
10 parties. So he won't be testifying here today. But
11 Jeff and Mike Pryor's testimony will demonstrate that
12 Cabot has used due diligence in accordance with the
13 statutory requirements to locate and contact all these
14 parties that are listed as unlocatable on the exhibit.
15 Cabot will also testify through Dave McClesky, their
16 engineer, that the unit must of necessity be estab-
17 lished as a provisional unit under the Virginia Code
18 also in order that Cabot can obtain the vital data
19 regarding the geology of the area, the drainage
20 patterns and evaluate that proposed development and
21 drilling plans for Tazewell County. Also, I'm sure as
22 you know, you probably received from Mr. Fulmer, the
23 Executive Secretary to the Board, a copy of a letter
24 from Leniel Gregory that was mailed to you about his
25 mother's interest. His mother has a .009 decimal

1 interest in three acres which is a 32 4,000 32nd's
2 interest and a .015 decimal interest in a 40 acre
3 tract. That fractional interest is 8 500 and 4th's.
4 Leniel's mother, Beverly Gregory, actually owned an
5 interest in the oil and gas underlying this tract at
6 the time that Cabot was attempting to lease her and she
7 signed a lease for her interest in this particular
8 unit. Therefore, Mr. or Mrs. Gregory would have no
9 elections made under the force pooling and would not be
10 a party to be force pooled in this particular hearing
11 today. Cabot is requesting by its application that the
12 Gas and Oil Board establish this provisional unit as
13 it's depicted on the exhibit that I've shown you,
14 Exhibit #6, and pool the interests of those parties
15 that are listed on the revised Exhibit #C which we've
16 given you and approve the escrow plan for the unknown
17 and unlocatables. In order for Cabot to meet its
18 drilling schedule we also would request that if the
19 Board deems fit to grant this application that the
20 effective date be today in order that it could drill
21 and produce the well immediately. Having said that I
22 would like to call my first witness, Jeff Kime, if I
23 may.

24 MR. CHAIRMAN: You may.

25 COURT REPORTER: (Swears witness.)

1 JEFFERY KIME

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

5 DIRECT EXAMINATION

6
7 BY MS. McCLANNAHAN:

8 Q. Mr. Kime, I'd like to show you Exhibit #1 that Cabot
9 has produced today. Can you please identify that?

10 A. Yes. Exhibit #1 is my resume and work history.

11 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
12 duction of Exhibit #1.

13 MR. CHAIRMAN: All right.

14 Q. (Ms. McClannahan continues.) Does this resume that
15 we've submitted as Exhibit #1 reflect your educational
16 background and work experience?

17 A. Yes, it does.

18 MS. McCLANNAHAN: Mr. Chairman, I would submit Mr. Kime as
19 an expert witness.

20 MR. CHAIRMAN: Okay. You may proceed.

21 Q. (Ms. McClannahan continues.) Mr. Kime, would you
22 please explain your responsibilities at Cabot and how
23 you carry out those duties for Cabot?

24 A. I'm a landman for Cabot Oil and Gas Corporation and
25 what means more or less is that I'm sort of the

1 humanities or legal laesione individual for the gas
2 company. Prior to any drilling, entering on the
3 properties to drill wells, build pipelines, etcetera,
4 we need to come to arrangements with the landowners and
5 the mineral owners of the property. That's where the
6 landsmen come in. We direct brokers to acquire leases
7 from the owners of oil and gas. We hire attorneys such
8 as Elizabeth to prepare title opinions for us so that
9 we can verify that our assumptions of the ownership are
10 correct. We negotiate rights of way for roads,
11 pipelines, form units such as this hearing. We
12 negotiate trades with other companies that might have
13 the development rights in a property that our company
14 is interested in. It's all sorts of trades and deal
15 making aspects necessary to having a well drilled and
16 produced.

17 Q. Has Cabot given notice as required by the statute,
18 45.1-361.19, to each person or entity that's identified
19 on the revised Exhibit #c of the unit and pooling
20 application?

21 A. Yes, we have.

22 Q. Would you identify Exhibit #2?

23 A. That is a notice of hearing that we mailed to all of
24 the potential interest owners by certified mail -- US
25 Mail, return receipt requested.

1 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
2 duction of Exhibit #2.

3 MR. CHAIRMAN: Without objection it's admitted.

4 Q. (Ms. McClannahan continues.) Have copies of those
5 return receipts been previously submitted to the Board?

6 A. Yes, they have.

7 Q. Were there any persons whose names and/or addresses
8 were unknown

9 A. Yes, there were.

10 Q. Did Cabot publish a notice of hearing in the Bluefield
11 Daily Telegraph paper on June 24th of 1996?

12 A. Yes, we did.

13 Q. Was a copy of the proof of publication previously
14 submitted to the Board?

15 A. Yes, it was. That's true also.

16 Q. The information that was listed on Exhibit #C, #D and
17 #F that were previously submitted with the application,
18 is that information still correct?

19 A. No. As originally submitted the information is not
20 correct. Because of our due diligence in locating some
21 of these potential owners we were able to determine
22 there were additional owners. We've revised these
23 exhibits to reflect the new correct ownership as a
24 result of our due diligence.

25 Q. Were these parties also notified by certified mail,

1 return receipt requested, copies of the notice of
2 hearing, the application exhibits and the revised
3 exhibits after they were identified and located?
4 A. Yes.
5 Q. Have you submitted those return receipts for the
6 additional mailings to the Board as well?
7 A. Yes. Those have been submitted to the Board.
8 Q. Would you please identify Exhibit #3?
9 A. This is a revised Exhibit #C showing all the gas, oil,
10 coal and mineral owners under this provisional unit for
11 the COGC #2.
12 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
13 Exhibit #3.
14 MR. CHAIRMAN: Exhibit #3 is admitted.
15 Q. (Ms. McClannahan continues.) Would you identify
16 Exhibit #4?
17 A. This is the revised Exhibit #D to the application which
18 shows all of the unleased gas owners.
19 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
20 duction of Exhibit #4.
21 MR. CHAIRMAN: It's admitted.
22 Q. (Ms. McClannahan continues.) Please identify Exhibit
23 #5.
24 A. This is revised Exhibit #F to our application and this
25 lists the unlocatable gas and oil, coal and mineral

1 owners.

2 Q. Underlying the COGC #2 unit?

3 A. The provisional COGC #2 unit. Yes, that's correct.

4 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of

5 Exhibit #5.

6 MR. CHAIRMAN: It's admitted.

7 Q. (Ms. McClannahan continues.) Do these revised exhibits

8 accurately reflect the current ownership and lease hold

9 status of the COGC #2 unit?

10 A. Yes.

11 Q. Is Consolidation Coal Company the coal owner under the

12 proposed COGC #2 unit?

13 A. Yes, they are.

14 Q. And did you receive consent for this well location for

15 Consolidation Coal Company?

16 A. Yes, we did.

17 Q. Has a drilling permit been previously refused to Cabot

18 on any of the tracts that comprise the COGC #2 unit?

19 A. No.

20 Q. Has a well work permit been filed for this particular

21 well?

22 A. Yes. We filed for a work permit on June 24th, 1996 for

23 this well.

24 Q. Does the plat that's attached to the unit and pooling

25 application filed by Cabot indicate the acreage and the

1 shape of the acreage to be embraced within this COGC #2
2 unit?
3 A. Yes, it does.
4 Q. Could you identify Exhibit #6?
5 A. This is the revised well location plat with the
6 provisional unit outlined.
7 Q. And this revised unit plat represents what change
8 between the first one that was filed and the second
9 one?
10 A. Yes. Whenever we initially laid out the unit we
11 weren't attentive to a state road. State Route 627
12 cuts through our unit. So we had to calculate the
13 acreage under the road and readjust the acreages in our
14 unit plat to reflect the potential state ownership
15 beneath the highway.
16 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
17 Exhibit #6.
18 MR. CHAIRMAN: It's admitted.
19 Q. (Ms. McClannahan continues.) Did you provide the
20 Commonwealth with a copy of the application revised
21 exhibits and the revised plat?
22 A. Yes, we did.
23 Q. And did you do that by certified mail, return receipt
24 requested?
25 A. Yes, we did.

- 1 Q. Have you received a waiver of notice from the Common-
2 wealth as well?
- 3 A. Yes, we have.
- 4 Q. Does the revised plat submitted herein as Exhibit #6
5 indicate the area within which the well will be drilled
6 on the proposed COGC #2 unit?
- 7 A. Yes, it does.
- 8 Q. Does this proposed drilling unit embrace two or more
9 separately owned tracts or are there separately owned
10 interests in all or part of any such drilling unit and
11 those having interest have not agreed to pool their
12 interests?
- 13 A. Yes.
- 14 Q. What percentage of the oil and gas within this unit is
15 owned and/or leased by Cabot?
- 16 A. We have leased and own approximately 94 percent of the
17 oil and gas interest within this unit.
- 18 Q. And what percentage of the oil and gas underlying the
19 COGC #2 unit is not owned or leased by Cabot?
- 20 A. A difference of approximately six percent.
- 21 Q. Are you requesting that the monies attributable to the
22 unlocated owners be placed and held in the escrow
23 account previously established by this Board pursuant
24 to Section 45.1-361.21 and the regulation?
- 25 A. Yes, we are.

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Q. Are you requesting that the Board establish the proposed COGC #2 unit as a provisional unit and pool the interests of the parties that are listed on the revised Exhibit #C submitted as Exhibit #3 before this Board?

A. Yes.

MS. McCLANNAHAN: Those are all the questions I have for Mr. Kine.

MR. CHAIRMAN: Any questions, members of the Board?
(Witness stands aside.)

MR. CHAIRMAN: You may call your next witness.

MS. McCLANNAHAN: Tony Miller you see in your booklet is at Exhibit #7 and that's the individual that I told you has actually leased all the parties that he was responsible. So he won't be testifying. I would like to call Michael Pryor, please.

COURT REPORTER: (Swears witness.)

MICHAEL PRYOR

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

DIRECT EXAMINATION

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3 BY MS. McCLANNAHAN:

4 Q. Mr. Pryor, will you please state your full name for the
5 record?

6 A. Michael S. Pryor, Sr.

7 Q. Can you please identify the exhibit that's marked as
8 Exhibit #10?

9 A. That's my resume.

10 Q. Does this resume reflect your educational background
11 and work experience?

12 A. Yes, it does.

13 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
14 duction of Exhibit #10 and submit Mr. Pryor as an
15 expert witness.

16 MR. CHAIRMAN: It's admitted.

17 Q. (Ms. McClannahan continues.) Mr. Pryor, in your
18 experience obtaining leases in Southwestern Virginia
19 are you familiar with the fair market value for oil and
20 gas leases in the unit area that's been proposed as the
21 COGC #2 unit?

22 A. Yes, I am.

23 Q. Approximately how many acres have you leased in
24 Southwestern Virginia?

25 A. Over 1,000.

1 Q. What, in your opinion, are the fair market value terms
2 for an oil and gas lease in this area for bonuses,
3 delay rentals, royalties and shut-in royalties?
4 A. A dollar per acre for bonus, a dollar for rentals, two
5 dollars for shut-in.
6 Q. What about the oil and gas production royalty?
7 A. One-eighth.
8 Q. What would be the primary term?
9 A. One to five years.
10 Q. Were you responsible for identifying the Thomas Dunford
11 and Mattie Beavers heirs that are shown on the revised
12 Exhibit #C?
13 A. Yes, I was.
14 Q. How did you identify those heirs?
15 A. Through extensive courthouse work, telephone convers-
16 ations with heirs and face to face conversations with
17 the heirs.
18 Q. How did you contact some of those owners other than
19 talking with them in person?
20 A. By telephone.
21 LADY: Excuse me, please. We aren't able to hear.
22 MR. CHAIRMAN: We don't have any ability to project. We'll
23 just as that we all try to speak up a little louder. I
24 know that we're also competing with this air condition-
25 ing unit behind us.

1 Q. (Ms. McClannahan continues.) With regard to the
2 unleased owners David Allen, Douglas Keith Allen,
3 Gregory Allen, Rhonda Lynn Dunford identified as the
4 Thomas Dunford heirs and the unleased owners William
5 Roberts, Thomas Stevenson and James Beavers identified
6 as the Mattie Beavers heirs that are listed on the
7 revised Exhibit #D submitted as Exhibit #4 herein have
8 you contacted those landowners to obtain a lease?
9 A. Yes, ma'am.
10 Q. With regard to the unlocated persons, Billy Beavers
11 heirs, Beatrice Andercan, Dixie Kiser heirs, Georgia
12 Lee Barrimere, Arnold Beaver's heirs, Jimmy Beavers
13 heirs, Gertrude Beavers heirs and Deborah Jane and Arab
14 William Beavers, Michael Beavers and William Beavers
15 identified as the Mattie Beavers heirs that are listed
16 on the revised Exhibits #D and #F submitted as Exhibits
17 #4 and #5 herein have you tried to locate them in order
18 to provide notice of the application and obtain a
19 lease?
20 A. Yes, ma'am, I have.
21 Q. These unlocated and unleased owners that I've just
22 listed, are they also listed on the revised Exhibits #D
23 and #F that were submitted?
24 A. Yes, they are.
25 Q. Have you exercised due diligence in attempting to

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locate the parties that you've been unable to locate in order to serve notice of the hearing?

A. Yes, ma'am, I have.

Q. What have you done? Could you please explain to the Board what you've done to accomplish that?

A. Well, by talking to every heir that I could possibly to talk to involved trying to see if they knew where these people lived. Most of the time they have just lost contact and they could not find them. We did extensive work at the courthouse and several face to face interviews and made phone conversations to try to locate them.

MS. McCLANNAHAN: Those are all the questions I have for Mr. Pryor.

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

(Witness stands aside.)

MR. CHAIRMAN: You may call your next witness.

MS. McCLANNAHAN: Dave McClesky.

COURT REPORTER: (Swears witness.)

DAVID McCLESKY

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

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DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. McClesky, will you please state your full name for the record?

A. David Glen McClesky.

Q. Would you identify Exhibit #11 that's been submitted to the Board today?

A. Yes. Exhibit #11 is my resume.

Q. Does this resume reflect your educational background and work experience?

A. Yes, it does.

MS. McCLANNAHAN: Mr. Chairman, I would move the introduction of Exhibit #11 and submit Mr. McClesky as an expert witness.

MR. CHAIRMAN: It's admitted.

Q. (Ms. McClannahan continues.) Will this particular drilling unit that's been submitted as the COGC #2 unit be for the production of gas?

A. Yes, it will.

Q. And what are the target formations from which you intend to produce?

A. We've permitted the well for three possible targets. First of all, the shallowest formation is the Raven Cliff. It's an upper Mississippian aged rock. It's

1 about 65 feet thick and fairly blanket throughout the
2 area. However, it only develops primary porosity in
3 very specific areas and we estimate there's less than
4 10 percent that we'll find commercial production in
5 this well in the Raven Cliff. The second formation
6 permitted in the Big Lime. It's a middle Mississippian
7 carbonate. It can get up to 1,000 feet thick in this
8 area. But like the Raven Cliff, it only develops
9 primary porosity in very selective areas and again we
10 think there's less than a ten percent chance that we'll
11 find commercial production in the Big Lime. The
12 primary target of the well is the Burea Formation.
13 It's the lowest most Mississippian sandstone and it can
14 be -- in this area it's roughly 45 feet thick and can
15 develop porosities of -- primary porosities over 20
16 feet.

17 Q. What are the estimated amount of reserves within the
18 COGC #2 unit?

19 A. We estimate approximately 700 million cubic feet.

20 Q. And what is the estimated average production over the
21 life of the COGC #2?

22 A. 33.9 MCF per day.

23 Q. Could you identify Exhibit #12 that's been submitted to
24 the Board?

25 A. Yes. We've got a little bigger blow up on the wall

1 here. Exhibit #12 is a pictorial presentation on how
2 our geologists think the porosity trend for the Burea
3 Formation might look underground. We don't have a lot
4 of well control down in this area, but this is what
5 we're hoping for. We know the porosity trend comes out
6 of McDowell County, West Virginia into this portion of
7 Virginia. The wells we have set up to develop this
8 year -- a six well program in Tazewell County will help
9 us delineate from this direction and in this direction
10 for future drilling possibilities.

11 Q. Did you supervise the preparation of this exhibit?

12 A. Yes, I did.

13 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
14 Exhibit #12.

15 MR. CHAIRMAN: It's admitted.

16 Q. (Ms. McClannahan continues.) Has Cabot previously
17 drilled any wells in Tazewell County?

18 A. Yes. We've drilled two -- on that plan I showed you
19 we've already completed the #4 and #9. We are current-
20 ly drilling the #11 location.

21 Q. At this time does Cabot possess the geological and well
22 data to determine the exact drainage patterns and
23 appropriate unit sizes for this area?

24 A. No. We don't believe so based on the drilling of the
25 #4 and #9 locations. The #9 fits the map pretty well.

1 The #4 was somewhat of a disappointment to us in terms
2 of thickness. We've only got the #4 fracked. The #9
3 was fracked yesterday and there is no -- we don't have
4 our pipeline built to get the gas out here. So we
5 don't have enough engineering information to decide how
6 these wells are going to produce over time. At this
7 point in time we do not feel like field rules were
8 appropriate. So we applied for a unit based on minimum
9 statewide spacing for this well as a default.

10 Q. Do you plan to drill and propose additional wells and
11 provisional units in this area?

12 A. Yes. Based on the drilling of these wells we hope, as
13 you can see from the map, that over time we'll drill
14 several more wells down here.

15 Q. Are the costs and expenses for the COGC #2 well set
16 forth on the AFE which is attached to the pooling
17 application as Exhibit #G?

18 A. Yes.

19 Q. Does this exhibit reflect the costs of drilling the
20 well to total depth and completed for production costs?

21 A. That's correct.

22 Q. Are you requesting that Cabot be designated as the well
23 operator authorized to operate the COGC #2 unit?

24 A. Yes, we are.

25 MS. McCLANNAHAN: Those are all the questions I have for Mr.

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McClesky.

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

(Witness stands aside.)

MS. McCLANNAHAN: Those are all the witnesses I have and I would request that the Board grant our application as filed with revised exhibits as submitted here today making the effective date of the order today.

MR. CHAIRMAN: Before the Board makes any motions, is there anyone else here that wishes to address the Board? The record will show there was no one identifying themselves. Do I have a motion?

MR. GARBIS: I make a motion to approve.

MR. KING: Second.

MR. CHAIRMAN: A motion to approve the application and a second. Any further discussion? If not, all in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) It's a unanimous approval.

ITEM IV

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3 MR. CHAIRMAN: The next item on the agenda -- I'm skipping
4 to what's actually listed as Item IV -- is a petition
5 from Cabot Oil and Gas Corporation for establishment of
6 a drilling unit and pooling of conventional gas well
7 identified as COGC #1. This is docket number VGOB-
8 96/07/16-0547 continued from July. We'd ask the
9 parties that wish to address the Board in this matter
10 to come forward at this time.

11 MS. McCLANNAHAN: Elizabeth McClannahan representing Cabot
12 Oil and Gas Corporation.

13 MR. CHAIRMAN: Are there any others? The record will show
14 there are no others. You may proceed.

15 MS. McCLANNAHAN: The exhibits that Mr. Kime has just given
16 you are for the COGC #1 unit application. The reason
17 this package is so much thicker than the package before
18 is simply because of the number of heirs that are
19 involved in the ownership of the oil and gas underlying
20 this unit. If you look at the plat in this particular
21 unit -- the plat in this unit is actually attached to
22 the application and is also Exhibit #8 in the COGC #1
23 unit exhibit book. You'll see that this is also a
24 provisional unit drilled on statewide spacing, consist-
25 ing of 112.69 acres just like the COGC #2 unit. Cabot

1 in this unit is the owner and operator of approximately
2 93 percent of the right to develop the oil and gas
3 underlying this particular unit. And that's shown on
4 the revised Exhibit #C which we've submitted with this
5 application. Cabot has previously filed the due
6 diligence affidavits, copies of the certified mail
7 return receipts, the hearing notices and the continu-
8 ation of hearing notices and proofs of publication for
9 same with Mr. Fulmer's office. Consolidation Coal
10 Company is also the coal owner underlying this particu-
11 lar unit and has consented to this proposed well
12 location. Again Cabot seeks the authority to drill one
13 gas well in this proposed COGC #1 unit pursuant to
14 statewide spacing. We've submitted an authorization
15 for expenditures submitted at Exhibit #G to this
16 application and we would request that the Board
17 authorize it to recover 100 percent of those costs as
18 submitted. Again, in this particular unit there are a
19 number of unknown and unlocatable oil and gas owners
20 whose funds should be escrowed pursuant to their
21 percentages of interests as shown on Exhibit #F of the
22 application. The escrow provisions are, of course,
23 those provisions that are in accordance with statute
24 regulations and previous orders of this Gas and Oil
25 Board. Again, Mr. Kime, Cabot's senior landman has

1 supervised all land aspects of this project. And
2 because there were so many heirship issues involved he
3 has supervised Mike Pryor, an independent landman that
4 you met earlier, and Mason Dixon Energy, Inc, an
5 independent land agency to perform due diligence and
6 offer leases to the parties within this unit. Greg
7 Zurkel is the president of Mason Dixon and will testify
8 before you about those parties for whom he was respons-
9 ible and who own some oil and gas interest underlying
10 the unit. Cabot will demonstrate that is has expended
11 a large sum of money in developing this unit and
12 preparing for this hearing in order to locate all of
13 the heirs and offer them leases in accordance with the
14 statutory requirements. The largest portion of the
15 heirs and unlocated parties that are within this unit
16 are probably in excess of 200 but own less than four
17 percent of the total unit. Cabot will also testify
18 that this unit must be established as a provisional
19 unit in order that it may obtain vital data regarding
20 the geology of the area, drainage patterns and evaluate
21 the proposed development plans for this particular
22 area. We would request that the Board establish the
23 provisional unit as shown on this revised Exhibit #B at
24 Exhibit #8, pool the interests of those parties listed
25 on revised Exhibit #C and approve the escrow plan for

1 the unknown and unlocatables as detailed on revised
2 Exhibit #F. Also in order to meet drilling schedule
3 requirements we would request that if the Board sees
4 fit to grant this application that the effective date
5 would be today. The first witness I would like to call
6 is Mr. Jeff Kime who has been previously sworn.

7
8 JEFFERY KIME

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

11
12 DIRECT EXAMINATION

13
14 BY MS. McCLANNAHAN:

15 Q. Mr. Kime, will you please identify Exhibit #1?

16 A. Exhibit #1 is my resume.

17 Q. Does this resume reflect your educational background
18 and work history?

19 A. Yes, it does.

20 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
21 duction of Exhibit #1 and submit Mr. Kime as an expert
22 witness.

23 MR. CHAIRMAN: It's admitted.

24 MS. McCLANNAHAN: Mr. Kime has already explained his
25 responsibilities at Cabot and how he carries out those

1 duties in his testimony for the COGC #2 unit applic-
2 ation. If the Board would be willing we would like to
3 stipulate that evidence for this particular hearing as
4 well.

5 MR. CHAIRMAN: That's fine. We will receive that stipul-
6 ation.

7 Q. (Ms. McClannahan continues.) Mr. Kime, has Cabot given
8 notice as required by the statute 45.1-361.19 to each
9 person or entity that's identified on Exhibit #C
10 underlying the unit?

11 A. Yes, we have by US certified mail, return receipt
12 requested.

13 Q. Could you identify Exhibit #2, please?

14 A. Yes. This is the notice of hearing that was mailed to
15 all of those individuals and sent by US certified mail,
16 return receipt requested.

17 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
18 Exhibit #2.

19 MR. CHAIRMAN: It's admitted.

20 Q. (Ms. McClannahan continues.) Mr. Kime, have you
21 previously submitted the returned receipts to Mr.
22 Fulmer?

23 A. Yes, we have.

24 Q. Were there any persons whose names and/or addresses
25 were unknown that have an interest underlying COGC #1

1 unit?

2 A. Yes, there were.

3 Q. Did Cabot publish a notice of hearing in the Bluefield
4 Daily Telegraph on June 24th of 1996?

5 A. Yes, we did.

6 Q. Was a copy of the proof of publication previously
7 submitted to the Board?

8 A. Yes, it was.

9 Q. Would you identify Exhibit #3 please?

10 A. It's a notice of continuation of hearing from the
11 previous hearing date of July 16 to today's date.

12 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
13 duction of Exhibit #3.

14 MR. CHAIRMAN: It's admitted.

15 Q. (Ms. McClannahan continues.) Was this notice that's
16 shown at Exhibit #3 mailed to all the parties that are
17 listed on Exhibit #C by certified mail, return receipt
18 requested?

19 A. Yes, it was.

20 Q. And have those return receipts also been previously
21 submitted to the Board?

22 A. Yes, they have.

23 Q. Was the notice of continuation of hearing also publish-
24 ed in the Bluefield Daily Telegraph paper on July 3rd,
25 1996?

1 A. Yes.

2 Q. Was a copy of the proof of publication previously
3 submitted to this Board?

4 A. Yes, it was.

5 Q. This notice of continuation of hearing was published in
6 order to take care of those persons whose names and/or
7 addresses were unknown, is that right?

8 A. That's correct.

9 Q. Could you identify Exhibit #4?

10 A. Exhibit #4 should be the copy of the publication in the
11 newspaper.

12 Q. And that date was July 31 of 1996, is that right?

13 A. Yes.

14 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
15 Exhibit #4.

16 MR. CHAIRMAN: It's admitted.

17 Q. (Ms. McClannahan continues.) This notice was published
18 for what reason?

19 A. To provide notice to the unlocatable gas owners.

20 Q. And these were additional unknown parties that you
21 located since the filing of the first, is that correct?

22 A. Yes. Because of our due diligence we were fortunate
23 finding -- determining there were many people, some of
24 which we could not find. I'm sorry.

25 Q. Was a copy of this proof of publication also previously

1 submitted to the Board?

2 A. Yes.

3 Q. Is the information that was listed on Exhibits #C, #D
4 and #F as submitted with the application still correct?

5 A. No. As originally submitted that was incorrect
6 information. Because of our due diligence since that
7 original filing we were able to determine names and
8 addresses of more people.

9 Q. Has Cabot notified those parties of the application?

10 A. Yes, we have, US certified mail, return receipt
11 requested.

12 Q. Did you submit those return receipts for the additional
13 mailings to the Board previously?

14 A. Yes.

15 Q. Could you give the Board some sense of the estimate of
16 costs that you've expended for locating the COGC #1
17 owners, the newspaper publications and the certified
18 mailings that Cabot has completed for this unit?

19 A. This was an incredible undertaking. The publication
20 costs for the COGC #1 are around \$480. We prepared and
21 mailed over 332 certified mailings and probably a
22 couple of times. The copies of those mailings were
23 over \$4,700. The postage was more than \$1,400. The
24 total cost of publications and certified mailing
25 amounts to over \$6,500 not including personnel costs.

1 And we've incurred approximately \$20,000 in costs in
2 managing Mr. Zerkle and Mr. Pryor acquiring leases from
3 some of those people and just identifying those that we
4 could. It's been quite an undertaking.

5 Q. Could you identify Exhibit #5, please?

6 A. Yes. This is revised Exhibit #C which identifies the
7 gas, oil, coal and mineral owners in the COGC #1
8 provisional unit.

9 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
10 Exhibit #5.

11 MR. CHAIRMAN: It's admitted.

12 Q. (Ms. McClannahan continues.) Could you identify
13 Exhibit #6?

14 A. Yes. This is the revised Exhibit #D which would
15 identify the unleased gas owners beneath our COGC #1
16 provisional unit.

17 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
18 duction of Exhibit #6.

19 MR. CHAIRMAN: It's admitted.

20 Q. (Ms. McClannahan continues.) Please identify the
21 exhibit marked as #7.

22 A. Yes. This is revised Exhibit #F which lists all the
23 unlocated gas, oil, coal and mineral owners beneath our
24 provisional COGC #1 unit.

25 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of

1 Exhibit #7.

2 MR. CHAIRMAN: Exhibit #7 is admitted.

3 Q. (Ms. McClannahan continues.) Do these revised exhibits
4 accurately reflect the current ownership and lease hold
5 status of the COGC #1 unit?

6 A. Yes, they do.

7 Q. Is Consolidation Coal Company the coal owner under the
8 proposed COGC #1 unit?

9 A. Yes, they are.

10 Q. Did you receive consent for this well location from
11 Consolidation Coal Company?

12 A. Yes.

13 Q. Has a drilling permit been previously refused to Cabot
14 on any of the tracts that comprise the COGC #1 unit?

15 A. No, it has not.

16 Q. Has a well work permit been filed for this particular
17 unit?

18 A. Yes, we did. We filed for a work permit on June 24th,
19 1996.

20 Q. Does the plat that's attached to the unit and pooling
21 application indicate the acreage and the shape of the
22 acreage to be embraced within the COGC #1 unit?

23 A. Yes, it does.

24 Q. Was that plat amended by Exhibit #8 as it's submitted
25 to include the Commonwealth of Virginia's acreage?

- 1 A. Yes. That's correct, to include the potential claims
2 that the Commonwealth has beneath State Highway Route
3 267.
- 4 Q. Is that shown on revised unit plat 87?
- 5 A. Yes, it is.
- 6 MS. McCLANNAHAN: Mr. Chairman, I would move the intro-
7 duction of Exhibit #8.
- 8 MR. CHAIRMAN: It's admitted.
- 9 Q. (Ms. McClannahan continues.) Did you provide the
10 Commonwealth with a copy of the application, revised
11 exhibits and the revised plat?
- 12 A. Yes, we did and they waived notice.
- 13 Q. Did you provide that by certified mail, return receipt
14 requested?
- 15 A. Yes, we did.
- 16 Q. Does the revised plat that's submitted as Exhibit #8
17 indicate the area within which the well will be drilled
18 on the proposed COGC #1 unit?
- 19 A. Yes, it does.
- 20 Q. Approximately how many acres has Cabot leased in
21 Southwestern Virginia?
- 22 A. We've leased over 50,000 acres in Southwest Virginia in
23 the last five or eight years.
- 24 Q. What would be the average fair market value terms for
25 an oil and gas lease in Southwest Virginia for bonuses,

1 delay rentals, royalties and shut-in royalties?
2 A. The fair market value would be a dollar per acre for
3 bonuses, a dollar per acre delay rentals, one-eighth
4 royalty and approximately two dollars an acre for shut-
5 in royalty.
6 Q. The primary term?
7 A. The primary term would be from one to five years as a
8 fair market assessment.
9 Q. Does the proposed drilling unit shown at Exhibit #8
10 embrace two or more separately owned tracts or are
11 there separately owned interests in all or any part of
12 the drilling unit and those having interests have not
13 agreed to pool their interests?
14 A. Yes.
15 Q. Have you obtained oil and gas leases on any part of the
16 acreage that's not owned by Cabot within the COGC #1
17 unit?
18 A. Yes, we have.
19 Q. What percentage of the oil and gas within the unit is
20 owned and leased by Cabot?
21 A. We own or have leased approximately 93 percent of this
22 unit. That would leave approximately seven percent
23 unleased.
24 Q. Are you requesting that the monies attributable to the
25 unlocated owners be placed and held in an escrow

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account that's been previously established by this Board pursuant to Code Section 45.1-361.217

A. Yes, we are.

Q. Are you requesting that the Board establish the COGC #1 unit as a provisional unit and pool the interests of the parties that are listed on revised Exhibit #C?

A. Yes.

MS. McCLANNAHAN: Those are all the questions I have for Mr. Rime.

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

(Witness stands aside.)

MR. CHAIRMAN: Call your next witness.

MS. McCLANNAHAN: Michael Pryor. Mr. Pryor has previously testified in the COGC #2 unit and has previously been sworn.

MICHAEL PRYOR

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

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Pryor, would you identify Exhibit #9, please?

A. That's my resume.

- 1 Q. And does this resume reflect your educational back-
2 ground and work experience?
- 3 A. Yes, it does.
- 4 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
5 Exhibit #9 and submit Mr. Pryor as an expert witness.
- 6 MR. CHAIRMAN: It's admitted. Proceed.
- 7 Q. (Ms. McClannahan continues.) In your experience in
8 obtaining leases in Southwest Virginia Mr. Pryor, are
9 you familiar with the fair market value for oil and gas
10 leases in the unit area proposed for the COGC #1 unit?
- 11 A. Yes, I am.
- 12 Q. Approximately how many acres have you leased in
13 Southwest Virginia?
- 14 A. Thousands of acres.
- 15 Q. What do you believe are the fair market value terms for
16 an oil and gas lease in this area for bonuses, delay
17 rentals, royalties and shut-in royalties?
- 18 A. The bonus is a dollar per acre, delay rental is a
19 dollar per acre, shut-in royalty two dollars per acre
20 and royalty at one-eighth.
- 21 Q. What would be the primary term?
- 22 A. One to five years.
- 23 Q. Did you work on a portion of the heirs that have
24 ownership interests under the COGC #1 unit?
- 25 A. Yes, I did.

- 1 Q. Which heirs would that be?
- 2 A. The Mattie Beavers heirs, the Nanny Bandy Beavers
- 3 heirs, the Dunford heirs and Asbury heirs.
- 4 Q. How did you identify these heirs?
- 5 A. Extensive courthouse work and from the names we could
- 6 find in the courthouse we went out and talk to the
- 7 people we could find and got additional names from them
- 8 and them telephone conversations. Extensive working
- 9 and talking with these people.
- 10 Q. With regard to the unleased owners that are identified
- 11 on Exhibit #6 as we submit it have you contacted those
- 12 landowners to obtain a lease from the Mattie Beavers
- 13 heirs, the Nanny Bandy Beavers heirs, the J. Q. Asbury
- 14 heirs and the Thomas Dunford heirs?
- 15 A. Yes, ma'am.
- 16 Q. With regard to the unlocated persons identified as the
- 17 same heirs that I just listed shown on revised Exhibits
- 18 #D and #F submitted herein as Exhibits #6 and #7 have
- 19 you tried to locate them in order to provide notice of
- 20 the application and obtain a lease?
- 21 A. Yes, ma'am.
- 22 Q. Are these unlocated and unleased owners listed on
- 23 Exhibits #6 and #7?
- 24 A. Yes, they are.
- 25 Q. Do you believe you will be able to locate any of the

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parties that are listed as unlocatable or unknown?

A. No, ma'am.

Q. Have you exercised due diligence in attempting to locate the parties in order to serve notice of this hearing?

A. Yes, we have.

Q. Could you explain what you have done to accomplish that due diligence?

A. We have exhausted every means we could that I know of for finding additional heirs and talked to all the heirs and they couldn't help us to find any of these missing heirs.

MS. McCLANNAHAN: Those are all the questions I have for Mr. Pryor.

MR. CHAIRMAN: Questions, members of the Board?

(Witness stands aside.)

MR. CHAIRMAN: You may call your next witness.

MS. McCLANNAHAN: Greg Zerkle.

COURT REPORTER: (Swears witness.)

GREGORY ZERKLE

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

DIRECT EXAMINATION

1
2
3 BY MS. McCLANNAHAN:

4 Q. Mr. Zerkle, will you please state your full name?

5 A. Gregory A. Zerkle.

6 Q. Would you identify Exhibit #10, please?

7 A. That's a resume outlining my educational and profess-
8 ional experience.

9 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
10 Exhibit #10 and submit Mr. Zerkle as an expert witness.

11 MR. CHAIRMAN: It's admitted.

12 Q. (Ms. McClannahan continues.) Did your company provide
13 assistance to Cabot in locating and leasing the Lilly
14 Bandy heirs in the COGC #1 unit?

15 A. Yes, we did.

16 Q. Did you supervise and direct the landsmen who worked on
17 this project?

18 A. Yes, I did.

19 Q. How many landsmen did you utilize to work on the
20 project?

21 A. I employed three parties to work on this over the last
22 few months.

23 Q. And approximately how many hours were spent on the
24 project?

25 A. We have an excess of 500 hours dedicated to this

1 project.

2 Q. What interests do the Lilly Bandy heirs have in this

3 particular unit?

4 A. Their interest is 3.4 net acres in the 112 acre unit.

5 That represents about 3.8 percent of the total unit.

6 It's a very small percentage.

7 Q. Are you familiar with the terms in Southwest Virginia

8 of the fair market value for oil and gas leases in the

9 unit area proposed for the COGC #1 unit?

10 A. Yes, I am.

11 Q. What in your opinion would be the average fair market

12 terms for an oil and gas lease in Southwest Virginia?

13 A. Typical rental payments would be a dollar per acre.

14 Typical bonus payments would be a dollar an acre.

15 Royalty provision is typically one-eighth. Shut-in

16 provision is one to two dollars an acre.

17 Q. And the primary term?

18 A. One to five years.

19 Q. Did your company identify all the Lilly Bandy heirs?

20 A. We could not identify all of them.

21 Q. The ones who were identified, did you contact those to

22 obtain a lease from them?

23 A. Yes, we did.

24 Q. The Mattie Beavers heirs and the Lilly Bandy Beavers

25 heirs are also part of the Lilly Bandy heirs, is that

1 correct?

2 A. Correct.

3 Q. And those were actually done by Mr. Pryor?

4 A. Correct.

5 Q. So you actually were responsible for all the Lilly

6 Bandy heirs except those that Mr. Pryor did, right?

7 A. Correct. Lilly Bandy had ten children. I had responsi-

8 bility for tracking eight of those ten children and

9 Mike had two.

10 Q. With regard to the unlocated persons that are listed on

11 Exhibits #6 and #7 which are revised Exhibits #D and #F

12 have you tried to locate them in order to provide

13 notice of the application and obtain a lease?

14 A. Yes, we have.

15 Q. Are these unlocated and unleased owners all listed on

16 Exhibits #D and #F submitted as #6 and #7?

17 A. Yes, they are.

18 Q. Has your company exercised due diligence in attempting

19 to locate these parties in order to serve notice of the

20 hearing?

21 A. Yes, we have.

22 MS. McCLANAHAN: Those are all the questions I have for Mr.

23 Zerkle.

24 MR. CHAIRMAN: Any questions of this witness, members of the

25 Board?

1 (Witness stands aside.)

2 MS. McCLANNAHAN: Dave McClesky. Mr. McClesky has been
3 previously sworn in his testimony for the COGC #2 unit.
4

5 DAVID McCLESKY

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

9 DIRECT EXAMINATION
10

11 BY MS. McCLANNAHAN:

12 Q. Mr. McClesky, would you please identify Exhibit #211?

13 A. Yes. Exhibit #11 is my resume, work history.

14 Q. Would that accurately reflect your educational back-
15 ground as well?

16 A. Yes, it does.

17 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
18 Exhibit #11 and submit Mr. McClesky as an expert
19 witness.

20 MR. CHAIRMAN: It's admitted.

21 Q. (Ms. McClannahan continues.) Will the COGC #1 unit be
22 for the production of gas?

23 A. Yes, it will.

24 Q. Can you explain the target formations from which you
25 intend to produce?

1 A. Yes. The COGC #1 was permitted for three possible
2 targets. The shallowest in the Raven Cliff Formation.
3 It's an upper Mississippian sandstone, roughly 65 feet
4 thick. It develops primary porosity in very select
5 areas and in this well we estimate less than 10 percent
6 chance of finding commercial production. The second
7 formation permitted was the Big Lime. It's a middle
8 Mississippian carbonate, can get up to 1,000 feet
9 thick. But like the Raven Cliff commercially it only
10 produces in select areas. So again we have less than
11 10 percent chance of finding commercial production in
12 this well. The primary target is the Burea Formation.
13 It's the lowest Mississippian sandstone, 40 to 45 feet
14 thick. It can develop primary porosity over 20 feet.

15 Q. What are the estimated amount of reserves within the
16 COGC #1 unit?

17 A. We estimate about 700 million stand cubic feet.

18 Q. And the estimated average of production over the life
19 of the COGC #1 well?

20 A. 33.9 MCF per day.

21 Q. Can you please identify Exhibit #12?

22 A. Yes. Exhibit #12 is a pictorial grid of the porosity
23 trend coming in from West Virginia, McDowell County,
24 into Tazewell County. On it we have our drilling
25 program for the year. The #1 well is right there. We

1 plan on drilling five wells in this general area. The
2 #5 well itself we're going to drill down this way to
3 see if the Burea trend goes in this direction so that
4 we can properly plan our drilling program for next
5 year.

6 Q. Did you supervise the preparation of Exhibit #12?

7 A. Yes, I did.

8 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
9 Exhibit #12.

10 MR. CHAIRMAN: It's admitted.

11 Q. (Ms. McClannahan continues.) Has Cabot previously
12 drilled any wells in Tazewell County?

13 A. Yes. We've drilled two, the #4 and the #9 on that
14 plat. We are currently drilling the #11.

15 Q. Does Cabot possess the geological and well data to
16 determine the exact drainage patterns and appropriate
17 unit sizes for this area?

18 A. No. We feel like the two wells we've drilled to date,
19 #5 and #9, have not given us enough information. The
20 #9 was pretty well the way we planned. The #4 was much
21 thinner in the Burea than we had hoped. We have the #9
22 fracked, the #4 fracked. Neither well turned in line
23 because we don't have our pipeline laid down -- the
24 trunk line to lay down 50 wells. So without that
25 engineering information we don't feel like we can

1 determine the exact drainage patterns of these wells.

2 Q. Why did you use a 112.69 acres statewide spacing unit?

3 A. Since we felt the geologic engineering information was

4 no sufficient we defaulted to the current statewide

5 spacing of 1,250 feet.

6 Q. Are the costs and expenses for the COGC #1 set forth on

7 an AFE attached to the unit and pooling application as

8 Exhibit #G?

9 A. Yes.

10 Q. Does this exhibit reflect the costs of drilling the

11 well to total depth and completed for production costs?

12 A. That's correct.

13 Q. Are you requesting that Cabot be designated as the well

14 operator for this particular unit?

15 A. Yes.

16 MS. McCLANNAHAN: Mr. Chairman, those are all the questions

17 I have for this witness and I don't have any other

18 witnesses to submit to the Board.

19 MR. CHAIRMAN: Any questions of this witness, members of the

20 Board?

21 MR. KING: What do you say the life of these wells are?

22 THE WITNESS: Probably in this area it will be 30 to 40 year

23 life. Most of the Appalachian wells that we drill,

24 they will last close to 40 years.

25 MR. CHAIRMAN: Other questions?

1 (Witness stands aside.)

2 MR. CHAIRMAN: Do I have a motion?

3 MR. KING: Mr. Chairman, I move that we allow this
4 application.

5 MR. LEWIS: Second.

6 MR. CHAIRMAN: A motion to approve and a second. Any
7 further discussion?

8 MS. McCLANNAHAN: Mr. Chairman, we would just like the
9 effective date to be today.

10 MR. KING: I move revise my motion for the effective date
11 to be today.

12 MR. LEWIS: I second the motion.

13 MR. CHAIRMAN: A motion and a second. Any further
14 discussion?

15 MR. GARBIS: Did we ask if there was anybody here to speak
16 against this?

17 MR. CHAIRMAN: I did at the beginning, but are there any
18 parties here that wish to say anything further? The
19 record will show there are none. All in favor signify
20 by saying yes? (ALL AFFIRM.) Opposed say no. (NONE.)
21 It's a unanimous approval. Thank you.

22 MS. McCLANNAHAN: Thank's very much. We appreciate your
23 courtesy.

24 MR. CHAIRMAN: I know I'm skipping around a little bit but
25 I'll to go back now and pick up from last month. The

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next item on the agenda is a petition from Equitable Resources Energy Company. We'll take about a five minute break while Equitable gets their parties here.

(AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

ITEM V

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3 MR. CHAIRMAN: We're back on record. I'm going to go ahead
4 and dispense with another item on the agenda, that is
5 Item V for today; this is docket number VGOB-96/08/20-
6 0550 and that is withdrawn.
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ITEM II

MR. CHAIRMAN: The next item on today's agenda is docket number VGOB-96/07/16-0548. This is a petition from Equitable Resources Energy Company for a well location exception for well VAD-3554. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. WILHOIT: Mr. Chairman and members of the Board, my name is Tom Wilhoit. I'm an attorney here on the behalf of Equitable Resources Energy Company. They've filed an application for a location exception in connection with well VAD-3554. If I might approach the diagram, I think I can explain a little for the Board why we are here today.

MR. CHAIRMAN: All right. Just let me stop you just a second. Are there any others here today that wish to address the Board in this matter? The record will show there are none. You may proceed.

MR. WILHOIT: Thank you. Members of the Board, this company filed a permit for well VAD-3554 as a coalbed methane well and that well unit is outlined here in this blue square. This was done in March of 1996 for the production of coalbed methane. Subsequent to that they filed an application to modify that permit to produce

1 from this same well bore conventional gas and that unit
2 is outlined in green. Now, this diagram was also
3 attached to the application which should be in your
4 package. What we've done is this was a legal location
5 for CBM well. However, when we modified it to produce
6 conventional gas the spacing became a problem in that
7 the new 2,500 foot law came into effective and this
8 well is actually 2,432 feet from our P-102 well. So
9 that leaves us 68 feet necessary for an exception for
10 this particular well. So we filed an application for a
11 location exception for this 68 feet difference in
12 spacing between the 2,500 and this well. I see a
13 question on your face. 2,500 feet from any adjoining
14 well is the spacing requirement. This location is
15 2,432 feet from an existing well. We are 68 feet short
16 of the 2,500. So we are asking for an exception. May
17 I call our first witness?

18 MR. CHAIRMAN: Sure. You may.

19 MR. WILHOIT: Mr. Don Hall, please, would you be sworn.

20 COURT REPORTER: (Swears witness.)

21
22 DON C. HALL

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

BY MR. WILHOIT:

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

A. My name is Don C. Hall.

Q. Mr. Hall, where are you employed?

A. I'm employed with Equitable Resources Energy Company as district landman in Virginia.

Q. Have you testified before this Board on occasions prior today as a witness for Equitable Resources Energy Company?

A. Yes, I have.

MR. WILHOIT: Mr. Chairman, I would move that since he has been qualified previously as an expert that he be admitted today as an expert.

MR. CHAIRMAN: He's admitted.

Q. (Mr. Wilhoit continues.) Mr. Hall, would you explain what your responsibilities are in connection with the lands involved in this area here?

A. I supervise the land department in Virginia in regards to locations, leasing, right-of-way acquisition.

Q. In connection with your work with Equitable are you familiar with the application for this location exception for well VAD-3554 and the particular relief that's been requested?

- 1 A. Yes, sir.
- 2 Q. In connection with that application to your knowledge
3 have all the interested parties been notified as
4 required by Section 4.B of the regulations?
- 5 A. Yes, sir.
- 6 Q. Would you indicate to the Board the ownership of the
7 oil and gas underlying well VAD-3554?
- 8 A. Virginia Iron, Coal and Coke Company owns 83.72 percent
9 and Pine Mountain Oil and Gas 16.28 percent. VIC and
10 Clinchfield together own the coal.
- 11 Q. Does Equitable own rights to operate any reciprocal
12 wells?
- 13 A. Yes, we do.
- 14 Q. Do you have all the leases and wells surrounding this
15 particular tract?
- 16 A. Yes. We have all the acreage around this area either
17 leased from Clinchfield -- Pine Mountain or VIC.
- 18 Q. Are there any correlative rights issues involved in
19 this application?
- 20 A. No, sir.
- 21 Q. Would you explain for the Board the reasons why this
22 location exception is being requested?
- 23 A. As you've already told the Board, we applied for 3554
24 earlier in the year as a coalbed methane well and we
25 have since decided that we want to produce this as a

DIRECT EXAMINATION

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3 BY MR. WILHOIT:

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

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

6 Q. Mr. Dahlin, where are you employed?

7 A. I'm employed in Kingsport by EREC as a production
8 specialist.

9 Q. Sir, in that capacity could you explain for the Board
10 just exactly what some of your responsibilities are?

11 A. I'm responsible for the production of oil and gas from
12 all our wells in Virginia.

13 Q. Have you previously testified before this Board as an
14 expert witness?

15 A. Yes, I have.

16 MR. WILHOIT: Mr. Chairman, I move that he be submitted as
17 an expert witness.

18 MR. CHAIRMAN: He's admitted.

19 Q. (Mr. Wilhoit continues.) Now, in connection with your
20 work at EREC are you familiar with the application for
21 this location exception filed by EREC for well VAD-
22 3554?

23 A. Yes, I am.

24 Q. In the event that this location exception were not
25 granted could you project for us the estimated loss of

- 1 reserves that would result in waste?
- 2 A. The total reserves in this combination unit are 850
3 million cubic feet of which we would expect approximat-
4 ely 400 million cubic feet to be coalbed methane and
5 450 million cubic feet to be conventional.
- 6 Q. If this exception were not granted then we would lose
7 to waste how much of the reserves?
- 8 A. Since we do have a current CBM well we would lose the
9 conventional reserves.
- 10 Q. And that would be in the amount of 450 million cubic
11 feet?
- 12 A. That's correct.
- 13 Q. What is the total depth of the proposed well under your
14 plan of development?
- 15 A. 5,720 feet.
- 16 Q. Is that consistent with the well work permit you got
17 from the DMME?
- 18 A. Yes, it is.
- 19 Q. Will this depth be sufficient to penetrate and test the
20 common sources of supply?
- 21 A. Yes, it will.
- 22 Q. Are you requesting that this location exception cover
23 conventional gas reserves in the designated formations
24 from the surface to the total depth?
- 25 A. As well as the CBM reserves, yes.

1 Q. In your opinion will the granting of this location
2 exception be in the best interest of preventing waste,
3 protecting correlative rights and maximizing recovery
4 from this well?

5 A. Yes, sir.

6 MR. WILHOIT: That's all I have, Mr. Chairman.

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

8 MR. GILLUM: What is the depth of the methane well?

9 THE WITNESS: The deepest coal seam we expect to produce is
10 2,760 feet.

11 MR. CHAIRMAN: Do you plan to frack the seams of coal?

12 THE WITNESS: Yes, we will. It will be a multiple stage
13 completion in the coal as well as the conventional.

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

15 (Witness stands aside.)

16 MR. WILHOIT: Mr. Chairman, that's all we would present in
17 evidence and testimony and we respectfully ask that the
18 Board enter an order granting the permit application
19 for a location exception.

20 MR. GARBIS: I make a motion that we approve the request.

21 MR. CHAIRMAN: A motion to approve.

22 MR. KING: Second.

23 MR. CHAIRMAN: Any further discussion? All in favor signify
24 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
25 Unanimous approval.

ITEM VI

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3 MR. CHAIRMAN: While you're here, if you are prepared to go
4 forward, we will go ahead and get Equitable's --

5 MR. WILHOIT: Mr. Kaiser is going to handle that one.

6 MR. CHAIRMAN: That's fine. Are you ready?

7 MR. KAISER: Yes, Mr. Chairman.

8 MS. RIGGS: For appearances could I get your name for the
9 order?

10 MR. WILHOIT: Tony Wilhoit. W-I-L-H-O-I-T.

11 MS. RIGGS: Thank you.

12 MR. CHAIRMAN: The next item on the agenda is a petition
13 from Equitable Resources Exploration for the modifi-
14 cation of a prior Board order. This is docket number
15 VGOB-89/01/26-0009-01. It's found under Item VI in
16 your notebook. We'd ask the parties that wish to
17 address the Board in this matter to come forward at
18 this time.

19 MR. KAISER: Mr. Chairman, Jim Kaiser on behalf of Equitable
20 Resources Energy Company. At this time with the
21 Board's permission we'd ask that we switch the order of
22 Item VI and Item VII as they appear on the August
23 docket sheet in that the hearing that was just conduct-
24 ed and the Board approved was a location exception
25 within the Nora Field and Item VII is another location

1 exception within the Nora Field and then the subsequent
2 hearing that we would like to do is a modification of
3 the Board order for the Nora Coalbed Gas Field in which
4 we will seek a modification of the order to allow Mr.
5 Fulmer to grant these location exceptions within the
6 permitting process which is consistent with the other
7 field rule orders and would eliminate the need on a
8 case by case basis at least in accordance with his
9 determination for us to come before you for these in
10 the Nora. So that's the reason we would like to switch
11 and do the location exception for P-46C and then come
12 back and seek a modification.

13 MR. CHAIRMAN: I'll go ahead and call Item VII.
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ITEM VII

MR. CHAIRMAN: This is a petition from Equitable Resources Energy Company for a well location exception for proposed well P-46C. This is docket number VGOB-96/08/20-0551. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. KAISER: Mr. Chairman, our witnesses in this matter will be Don Hall and Mr. Bob Dahlin who have both previously been sworn. Our first witness will be Mr. Hall.

DON C. HALL

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

DIRECT EXAMINATION

BY MR. KAISER:

Q. Mr. Hall, would you state your name for the record, who you are employed by and what capacity?

A. My name is Don Hall. I'm an Equitable Resources Energy Company and my title is district landman.

MR. CHAIRMAN: Let me stop you there. Are there any others that wish to address the Board in this matter? The

1 ord will show there are none. You may proceed.

2 Q. (Mr. Kaiser continues.) Have your qualifications as an

3 expert witness previously been accepted by this Board?

4 A. Yes, they have.

5 Q. Do your responsibilities include the lands here and in

6 the surrounding unit of the unit for unit P-46C?

7 A. They do.

8 Q. Are you familiar with the application for the location

9 exception of well P-46C and the relief that we've

10 requested?

11 A. Yes, I am.

12 Q. Have all interested parties been notified as required

13 by Section 4.B of the Virginia Gas and Oil Board

14 Regulations?

15 A. They have.

16 Q. Would you indicate to the Board at this the ownership

17 of the oil and gas underlying the unit for P-46C

18 A. Freddy Mullins owns 71.57 percent and Pine Mountain Oil

19 and Gas 28.43 percent.

20 Q. Are there any correlative rights issues with the

21 surrounding units?

22 A. No. We have all the surrounding units in the area

23 under lease.

24 Q. Mr. Hall, could you explain for the Board why a

25 location exception is being sought for P-46C and sort

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of the background and history of the well?

A. P-46 was drilled as a conventional well in the 1970s. It's been producing for almost 20 years, I guess, as a conventional well and it has become pretty much depleted and we would -- we're proposing that we convert this to a coalbed methane well by plugging up the conventional hole and stimulating the coal formations and using an existing well bore hole to accomplish this.

Q. And we need this because we are outside the interior square and within the 300 foot tolerance area as set out in the Nora Coalbed Gas Field Rules?

A. That is correct. This is an existing well. So, therefore, the unit that this well is in -- this well is outside the interior window.

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

MR. CHAIRMAN: Questions, members of the Board?

(Witness stands aside.)

MR. CHAIRMAN: Call your next witness.

ROBERT A. DAHLIN, II

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

DIRECT EXAMINATION

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3 BY MR. KAISER:

4 Q. Mr. Dahlin, would you please state for the record your
5 name, who you're employed by and in what capacity?

6 A. My name is Robert A. Dahlin, II. I'm employed by EREC
7 as a production specialist.

8 Q. Have you previously testified before the Virginia Gas
9 and Oil Board as an expert witness?

10 A. Yes, I have.

11 Q. Are you familiar with the application for a location
12 exception filed by EREC for well P-46C?

13 A. Yes.

14 Q. In the event this location exception is not granted
15 would you project the estimated loss of reserves
16 resulting in waste?

17 A. 350 million cubic feet of gas.

18 Q. What is the total depth of proposed well under appli-
19 cant's plan of development?

20 A. 2,400 feet.

21 Q. Will this be sufficient to penetrate and test the
22 common sources of supply and be consistent with the
23 well work permit from the DMME?

24 A. Yes.

25 Q. In your opinion, Mr. Dahlin, will the granting of this

1 location exception be in the best interest of prevent-
2 ing waste, protecting correlative rights and maximizing
3 the recovery of the gas reserves underlying the unit
4 for P-46C?

5 A. Yes, sir.

6 MR. KAISER: I have nothing further for this witness at this
7 time, Mr. Chairman.

8 MR. CHAIRMAN: Any active coal mining in the area?

9 THE WITNESS: None that I'm aware of. That would be
10 Don's --

11 MR. HALL: No.

12 THE WITNESS: The only other point along those lines are
13 there are no adjoining coalbed methane production
14 wells in the adjoining units. We do have one in the
15 unit to the east that is proposed that's currently coal
16 denied. So we are not draining the coal reserves from
17 this area.

18 MR. CHAIRMAN: Other questions from this witness?

19 (Witness stands aside.)

20 MR. CHAIRMAN: Do you have anything further?

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

22 MR. CHAIRMAN: What's your pleasure, Board?

23 MR. KING: Mr. Chairman, I move we grant this exception
24 effective today.

25 MR. GARBIS: I second it.

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MR. CHAIRMAN: A motion and second. Any further discussion?

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

Opposed say no. (Unanimous approval.) Thank you.

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ITEM VI

MR. CHAIRMAN: I previously called docket number VGOB-89/01/26-009-01. We'd ask if there are any other parties that wish to address the Board in this matter and to come forward at this time.

MR. KAISER: Mr. Chairman, if I may, before we get into that particular matter if we could go back to the first location exception we did on VAD-3554 and ask that that be effective as of today. That is a well that we had on the docket originally -- the location is built and we had it on the docket originally for the July 16th docket and then again for the following for the August 8th docket. If we could get that effective today we could go ahead and begin drilling that well.

MR. CHAIRMAN: Who made that original motion?

MR. KING: I move to alter that motion to say effective today.

MR. GARBIS: Second.

MR. CHAIRMAN: Further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) That's all effective today.

MR. KAISER: Thank you.

MR. TALKINGTON: Mr. Chairman, my name is Jim Talkington. I present Virginia Gas Exploration Company. I'd just

1 like to go on record as being in support of Equitable's
2 petition.
3 MR. CHAIRMAN: You're in support of the petition?
4 MR. TALKINGTON: Yes, sir.
5 MR. CHAIRMAN: Thank you.
6 MR. KAISER: Mr. Chairman, Jim Kaiser on behalf of Equitable
7 Resources Energy Company. We don't really have any
8 witnesses in this matter. I'm going to leave Mr. Hall
9 and Mr. Dahlin up here in case the Board has any
10 questions. What we are seeking through this applica-
11 tion to modify the prior order dated March 20th, 1989
12 which established the field rules for the Nora Coalbed
13 Gas Field is a modification to allow Mr. Fulmer or the
14 Director to grant location exceptions on a case by case
15 basis based on a determination of facts within the
16 permitting process. I believe that most, if not all,
17 of the existing orders for field rules give him that
18 ability on a discretionary basis and for purposes of
19 judicial administrative economy and the save the
20 operator's money. And to more effectively produce the
21 reserves we would request that that order be modified
22 in the case of the Nora Field to allow him to do that
23 also.
24 MR. CHAIRMAN: Do you have any information, Mr. Fulmer, you
25 want to share on this for the Board at this time?

1 MR. FULMER: Mr. Chairman and members of the Board, as Mr.
2 Kaiser alluded to the fact that in several of the Board
3 orders in regards to the establishment of field rules,
4 especially the Oakwood Coalbed Gas Field, one stipula-
5 tion that was entered into the Board was that the Board
6 granted the Inspector the right to examine any loca-
7 tions which might be within the 300 foot limitation
8 window. The 300 limitation window -- for example, what
9 is on this card up here in regard to 300 foot to the
10 boundary that they cannot drill in, that was stipulated
11 both in the Nora Field order and the Oakwood Field
12 order. The only difference that it was in the Oakwood
13 Field order due to mining circumstances, topographic
14 problems. The Board allowed the Inspector on a case by
15 case basis to examine permit applications for wells to
16 see if they meet the criteria of mining problems and
17 topographic problems and that the Director then could
18 -- or the Inspector then could approve the permit
19 without having the operators come back to the Board to
20 ask for a location exception within the 300 foot
21 window. I think Mr. Kaiser is asking the Board to
22 amend the Nora Coalbed Gas Field order to reflect what
23 was done by the Board in the Oakwood order and to allow
24 the Inspector to examine each petition -- each permit
25 application for a well location to see if it meets the

1 criteria that the Board has set down for location
2 exceptions.

3 MR. CHAIRMAN: Do you have that map of the Nora Field here
4 today?

5 MR. FULMER: I have both the Nora Field and the current
6 Oakwood Field map.

7 MR. KAISER: Mr. Chairman, if I might add -- and I'm sure
8 Mr. Fulmer will concur -- he was also given the right
9 to do this in Roaring Folk Field.

10 MS. RIGGS: With respect to the Oakwood Field Rules was the
11 delegation to the Inspector in all three, Oakwood I,
12 Oakwood II and on sealed gob or was it only after the
13 coal seams have been isolated and the window no longer
14 had applicability? The way that progressed in my
15 recollection was under Oakwood that was in advance of
16 mining and you had this protective window for cor-
17 relative rights issues. When we got into Oakwood II
18 once the longwall entries had been driven and the coal
19 seam was isolated and supposedly was not in communi-
20 cation that the basis for the original establishment of
21 the window no longer existed that there was less
22 concern then about the protection of correlative rights
23 in the adjacent units then there had been under Oakwood
24 I scenario. And then when you got into sealed gob that
25 progressed. I don't know if I'm remembering exactly

1 correct. Mark is here and he did the Oakwood.

2 MR. SWARTZ: There is no drilling window in Oakwood II to my
3 recollection essentially for the reasons expressed.

4 MS. RIGGS: So the delegation of authority to the Inspector
5 was in Oakwood I?

6 MR. SWARTZ: Right, because there's no window.

7 MR. CHAIRMAN: Mr. Kaiser, do you mind just telling the
8 Board -- just do an overview of why we have these
9 field rules?

10 MR. KAISER: In the case of the development of the coalbed
11 methane the Board has established various sets of field
12 rules in order to provide for the development of the
13 resource and to protect correlative rights. They took
14 on -- there's been the Oakwood I and the Oakwood II,
15 Roaring Folk and Nora. They were established after
16 extensive testimony from engineers and reservoir
17 engineers as far as to porosity of certain seams and
18 drainage patterns and reservoir analysis. And in order
19 to promote the orderly development these field rules
20 were established for various unit sizes depending on
21 this testimony and evidence that was presented and it
22 was set up on squares in order to prevent any essent-
23 ially uncompensated acreage and then set up in the case
24 of Oakwood I and Nora with an interior square and then
25 a tolerance level outside for which -- well, in the

1 case of Roaring Fork and Oakwood I on a discretionary
2 basis the Inspector could grant an exception. That's
3 what we're seeking here, to sort of bring Nora in --
4 the make Nora congruent with both Roaring Fork and
5 Oakwood I and prevent us from having every time we're
6 outside the interior window and 300 foot tolerance area
7 having to come before the Board and seek an exception
8 provided that the Inspector feels it's feasible to
9 grant it based on the facts of each well.

10 MR. CHAIRMAN: And your application is specifically for
11 anywhere in that drilling window -- within that 300
12 foot window?

13 MR. KAISER: Yes.

14 MR. FULMER: Mr. Chairman, members of the Board, what I have
15 on the wall -- apparently not straight -- basically
16 this covers the original Nora Gas Field. This is one
17 to four thousand during in the original petition.

18 MR. CHAIRMAN: Recognizing we can't see the detail, tell us
19 where we're looking.

20 MR. FULMER: What you're looking at here, this line right
21 here is Wise County and goes around to Russell County,
22 parts of Russell County, goes back up and this is
23 Dickenson County -- all this area -- and this is part
24 of Buchanan County over in this section. These are all
25 60 acre units as in the original Nora Coalbed Field.

1 This area right here is the Oakwood Coalbed Gas Field
2 that the Board approved at a later date after the Nora
3 Field. These are all done on 80 acre units that was by
4 order of the Board. In each case of the Nora Field
5 plus the Oakwood Field there is a 300 foot window
6 around the -- a 300 foot set back from the boundary
7 line of each one of the units.

8 MR. CHAIRMAN: That's the same as identified in this plat
9 over here.

10 MR. FULMER: The same as the previous one you looked at.
11 This is not only in the Nora Field but also in the
12 Oakwood Field. The only difference is that in the
13 original Oakwood Field the Board testimony as to the
14 problem with mining, the extensive mining situations,
15 and they granted as a part of that Oakwood order that
16 the Inspector could look at each individual permit and
17 determine upon certain criteria as topography, mining
18 plans and so forth could grant an exception to the 300
19 foot set back from the boundary. As I understand it
20 now Mr. Kaiser is coming back on the Nora Field and
21 wanting that same stipulation that the Board put in the
22 Oakwood.

23 MR. CHAIRMAN: Do you have anything further, Mr. Kaiser?

24 MR. KAISER: Yes. I'd like to ask one question of Mr. Hall.
25

1 DON C. HALL

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

5 DIRECT EXAMINATION

6
7 BY MR. KAISER:

8 Q. Mr. Hall, would you agree that the same topographic and
9 mining concerns that affect Oakwood I affect the Nora
10 Field?

11 A. Yes, they do. We have gotten exceptions here before
12 from the Board for those reasons.

13 Q. And how many exceptions would you say we've come before
14 the Board to get in the Nora Field on an annual basis -
15 - just an estimate?

16 A. Twelve or fifteen probably.

17 MR. GILLUM: What were the mining concerns?

18 THE WITNESS: A lot of times we have a location that would
19 fall within the window area that we would want to drill
20 and there may be some coal mining activity in that area
21 that we have to avoid and to stay within that unit we'd
22 have to get outside of this interior window.

23 MR. GILLUM: So that gives you the flexibility to move?

24 THE WITNESS: Right.

25 MR. GILLUM: Without having to come to the Board?

1 THE WITNESS: Right.

2 MR. CHAIRMAN: It would also, though, leave it up to the
3 Inspector to make that call. He could still refer them
4 to the Board if he felt like there was an issue that
5 the Board needed to here, as I understand the proposal
6 here.

7 MR. DAHLIN: In the area just immediately preceding this was
8 exactly the same situation where we have an uneconomic
9 conventional well that we would like to plug back and
10 produce coalbed methane. We are outside the allowable
11 area and the coal interest owners are not so far able
12 to grant us locations adjoining here where we could
13 drill a legal location. So you just granted us the
14 right to go ahead with that exception and this would
15 preclude us from having to go through the same proced-
16 ure.

17 MR. KAISER: Provided the Inspector at his discretion would
18 allow it. Otherwise, we would still be back here
19 before the Board if there were an issue he thought the
20 Board would need to hear.

21 MR. GILLUM: If the Board granted this and later an issue
22 arose that no one could foresee today what would the
23 Board's ability be to resend that or change that?

24 MR. CHAIRMAN: The Board is empowered to set the field rules
25 after testimony. We'd be empowered based on the weight

1 of the evidence to make changes at any subsequent date
2 that it saw fit to do.

3 MR. KING: Mr. Chairman, I have a question of Sandy. My
4 only question is -- and I certainly want to accommodate
5 and I think the Board would -- are we violating
6 anything that's been given us by the General Assembly?

7 MS. RIGGS: Your authority to create field rules in under
8 45.1-36.20 and that spells out certain findings that
9 you have to make in order to establish the grid system
10 in the first place. And you do that based upon the
11 testimony that's put before you. So what's transpired
12 by the Board in the past is they have made findings
13 that the size of the units should be 60 acres and that
14 there should be this window to protect interests in
15 adjoining units. You have the ability to amend field
16 rules. If you find that that window is not appropriate
17 you could go back in and modify your field rules.
18 Rather than modifying the field rules what they are
19 asking you to do is to delegate the authority to make
20 the call to the Gas and Oil Inspector so that he can do
21 it as part of the permitting process and avoid another
22 trip back to this Board. The Board has done that in
23 the past with other field rules. I guess with respect
24 to delegation my feeling and I think what the legal
25 position is is that when you delegate authority you

1 have to establish guidelines for criteria under which
2 that authority will be exercised. So if the Board
3 were going to make a delegation -- I think the appro-
4 priate position would be to outline those circumstances
5 under which the Inspector may grant the exception. I
6 think the ones mentioned were for topographic reasons
7 and to accommodate mining considerations, for example.
8 There could be other reasons that haven't been mention-
9 ed today but those are the ones that have specifically
10 been mentioned.

11 MR. GILLUM: As I understand it you've asked for the same
12 guidelines that the Board's already accepted on the
13 Oakwood phase, is that right?

14 MR. KAISER: And the Roaring Fork Field.

15 MR. GILLUM: You're asking for something that's already
16 been --

17 MR. KAISER: Previously granted in separate orders.

18 MS. RIGGS: The language that I just looked at is a blanket
19 delegation. It does not establish any limitation on
20 the Inspector's ability to grant those exceptions. And
21 that was the language used in the Oakwood order, I
22 believe.

23 MR. KAISER: I've got the language from the Roaring Fork
24 order if you would like to take a look at that.

25 MS. RIGGS: Those predate my tenure here.

1 MR. CHAIRMAN: You can go ahead and put that in the record,
2 if you want.

3 MR. KAISER: Okay. If I could read into the record the way
4 it's addressed in the Roaring Fork Field Rules. It
5 states, "Virginia Gas and Oil Inspector may grant
6 location exceptions upon satisfactory proof of need on
7 a case by case basis."

8 MR. KING: Mr. Chairman, to further my question, I would
9 like to eliminate as much red tape as possible.
10 However, I think we're sworn to do certain things. Is
11 it possible that we could do this and then have the
12 Director at each of our monthly meetings advise us as
13 to what he's done in those areas?

14 MR. CHAIRMAN: Sure. He would report back on any exception
15 that he granted in the Nora Field?

16 MR. KING: And still within those topographic and the
17 reasons those are done.

18 MR. CHAIRMAN: Right.

19 MR. KING: Would that be --

20 MR. CHAIRMAN: That's a perfectly acceptable motion to me.

21 MR. GARBIS: Is it true to understand that in Oakwood we
22 have really what you're requesting? In other words,
23 the Inspector has the flexibility to grant the waiver
24 as you request? Is that not true? Well, if we have it
25 in Oakwood why wouldn't we want to do the same thing.

1 Precedence has already been set. I don't think we want
2 to set up any more bureaucratic processes than we need.
3 I mean, if we've already established the precedence to
4 trust his recommendation, his background to do the
5 right thing in Oakwood why would we not do the same
6 thing in the Nora. I mean, the precedence has already
7 been set.

8 MR. GILLUM: So if there is a dispute we would be having a
9 hearing about that, right?

10 MR. CHAIRMAN: Yes.

11 MR. GILLUM: You're saying that would be the limitation on
12 the Inspector's authority if we started having problems
13 and at that point we could also change this or resend
14 it. Is that correct?

15 MR. CHAIRMAN: It's granting the Inspector -- the way it is
16 now is more an open grant to the Inspector at his
17 discretion to approve if he's convinced that there is
18 reason such as this one to grant. If he's not convinc-
19 ed then he would bring that to the Board -- any
20 exceptions. In other words, it's not saying you must
21 grant an exception every time someone asks you for one
22 in the 300 foot window. It's saying you have the
23 discretion to grant that. However, you also have the
24 discretion to bring that back to the Board if you're
25 not sure that that's a convincing argument to make.

1 Does that make sense? Any other questions? Do I have
2 a motion?

3 MR. GARBIS: Mr. Chairman, I move a motion that would
4 approve application as requested.

5 MR. GILLUM: I second it.

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

7 MR. KING: If I may, Mr. Chairman, Tom is very -- he does a
8 great job and I respect his opinion. I would just like
9 to know if we could amend the motion to say that we
10 just have a memorandum at each of our meetings that
11 would let us know what has happened in that respect.
12 Is that within -- a fair request?

13 MR. FULMER: The one thing you've got to remember here, even
14 though you have the blanket in there they've still got
15 to request a variance for the order. It's still got to
16 come through me. I have no problem with what you're
17 saying, Mr. King. I just want to mention that to the
18 Board, that they would still have to request that
19 variance from the field order through me. And all it
20 did in the Oakwood situation and the Roaring Fork
21 situation is to allow the Inspector to rule upon that
22 variance of the field order that was issued by the
23 Board on behalf of the Board. That's what it did
24 instead of having them come back before the Board each
25 time they needed one.

1 MR. KAISER: Right. We'd still have to present the same sort
2 of evidence to Mr. Fulmer that would present any
3 permitting process that we present to the Board.

4 MR. FULMER: I just wanted to make that clear, Mr. Chairman,
5 to the Board. That's the process.

6 MR. CHAIRMAN: Mr. King, what you're envisioning is a
7 monthly report from the Inspector only where he had
8 approved an exception and just to say I approved the
9 exception in the Nora Field based on topographic
10 concerns or based on mining conditions or are you
11 looking for more detail than that?

12 MR. KING: No, no. I think that's plenty. I would just
13 like to know what exceptions have been granted that if
14 there is a question that we need to talk about that if
15 we need to talk to our legal person we can do so.

16 MR. CHAIRMAN: Is that acceptable?

17 MR. GARBIS: That is acceptable.

18 MR. CHAIRMAN: We have a motion and a second as amended.

19 Any further discussion? All in favor signify by

20 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)

21 Unanimous approval. Thank you.

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ITEM VIII

MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Energy Company for pooling of a coalbed methane well VC-3594. This is docket number VGOB-96/08/20-0552. We'd ask the parties wishing to address the Board in this matter to come forward at this time. That's Item VIII in your notebook for the Board members.

MR. KAISER: Mr. Chairman, members of the Board, Jim Kaiser on behalf of Equitable Resources Energy Company. We do have one different witness in this matter, Mr. Dennis Baker, who will be testifying on the land issues and due diligence. At this time we would ask that he be sworn.

COURT REPORTER: (Swears witness.)

MR. CHAIRMAN: Any others that wish to address the Board in this matter? The record will show there are none. You may proceed.

DENNIS BAKER

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

DIRECT EXAMINATION

1
2
3 BY MR. KAISER:

4 Q. Mr. Baker, could you please state your name, who you're
5 employed by and in what capacity for the Board?

6 A. My name is Dennis R. Baker. I'm employed by Equitable
7 Resources Energy Company as senior landman.

8 Q. Have you previously been accepted as an expert witness
9 before this Board on many occasions?

10 A. Yes, I have.

11 Q. Do your responsibilities include the land involved here
12 and in the surrounding area?

13 A. Yes.

14 Q. Are you familiar with Equitable's application for the
15 establishment of a drilling unit and request for a
16 pooling order for EREC well VC-3594 dated July 18th,
17 1996?

18 A. Yes, I am.

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

22 A. Yes.

23 Q. Does Equitable own drilling rights in the unit involved
24 here?

25 A. Yes, we do.

- 1 Q. Does the location proposed for well VC-3594 fall within
2 the Board's order for the Nora Coalbed Gas Fields dated
3 March 20th, 1989?
- 4 A. Yes, it does.
- 5 Q. What is the interest of Equitable in the gas estate
6 within the unit?
- 7 A. The interest in the gas estate is 62.09 percent.
- 8 Q. Are you familiar with the ownership of drilling rights
9 of parties other than Equitable underlying this unit?
- 10 A. Yes, I am.
- 11 Q. What is the percentage of the unleased acreage within
12 the gas estate at this time?
- 13 A. The unleased gas estate interest is 37.91 percent.
- 14 Q. Could you set out the percentage of the coal estate
15 that's under lease within this unit?
- 16 A. 100 percent of the coal estate is leased to Equitable.
- 17 Q. Are all the unleased parties within the gas estate set
18 out at Exhibit #B?
- 19 A. Yes, they are.
- 20 Q. Prior to filing this application did you make efforts
21 to contact each of these respondents and make an
22 attempt to work out an agreement regarding the develop-
23 ment of the unit?
- 24 A. Yes, we have.
- 25 Q. Subsequent to the filing of the application have you

1 continued to attempt to reach an agreement with the
2 respondents?
3 A. Yes, we have.
4 Q. As a result of these efforts have you been able to
5 acquire any other leases from the respondents listed on
6 Exhibit #B as unleased?
7 A. No, we have not.
8 Q. Were efforts made to determine if the individual
9 respondents were living or deceased or their where-
10 abouts and if deceased were efforts made to determine
11 the names and addresses and whereabouts of the success-
12 ors to any deceased individual respondents?
13 A. Yes.
14 Q. Were reasonable and diligent efforts made and sources
15 checked to identify and locate any unknown heirs -- in
16 this case I believe it's the Nancy Hale heirs -- to
17 include primary sources such as deed records, probate
18 records, assessors records, treasurers records, and
19 secondary sources such as telephone directories, city
20 directories, family and friends?
21 A. That's correct.
22 Q. In your professional opinion was due diligence exer-
23 cised to locate each of the respondents named herein?
24 A. Yes.
25 Q. Are the addresses set out in Exhibit #B to the applic-

- 1 ation the last known addresses for the respondents?
- 2 A. Yes, they are.
- 3 Q. Are you requesting this Board to force pool all
- 4 unleased interests listed at Exhibit #B?
- 5 A. Yes, we are.
- 6 Q. Does Equitable seek to force pool the drilling rights
- 7 of each individual respondent if living and if deceased
- 8 the unknown successor or successors to any deceased
- 9 individual respondent?
- 10 A. That's correct.
- 11 Q. Is Equitable seeking to force pool the drilling rights
- 12 of the person designated as trustee if acting in
- 13 capacity of trustee and if not acting in such capacity
- 14 is Equitable seeking to force pool the drilling rights
- 15 of the successor of such trustee?
- 16 A. Yes, we are.
- 17 Q. Are you familiar with the fair market value of drilling
- 18 rights in the unit here and in the surrounding area?
- 19 A. Yes, I am.
- 20 Q. Would you advise the Board at this time as to what
- 21 those are?
- 22 A. A five dollar per acre consideration, five year term
- 23 with a one-eighth royalty.
- 24 Q. Did you gain this familiarity by acquiring oil and gas
- 25 leases, coalbed methane leases and other agreements

1 involving the transfer of drilling rights in the unit
2 involved here and in the surrounding area?

3 A. That's correct.

4 Q. Mr. Baker, in your opinion do the terms you have
5 testified to represent the fair market value of and the
6 fair and reasonable compensation to be paid for the
7 drilling rights within this unit?

8 A. Yes.

9 Q. As to respondents who have not voluntarily agreed to
10 pool do you recommend that respondents listed at
11 Exhibit #B how remain unleased be allowed the following
12 options with respect to their ownership interests
13 within the unit: 1) Participation. 2) A cash bonus of
14 five dollars per net mineral acre plus a one-eighth of
15 eight-eighths royalty. 3) In lieu of a cash bonus and
16 one-eighth of eight-eighths royalty share in the
17 operation of the well on a carried basis as a carried
18 operator on the following conditions; Such carried
19 operator shall be entitled to the share of the produc-
20 tion from the tract pooled accruing to his interest
21 exclusive of any royalty or overriding royalty reserved
22 in any leases, assignments thereof or agreements
23 relating thereto of such tracts but only after the
24 proceeds allocable to his share equal A) 300 percent of
25 the share of such costs allocable to the interest of

1 the carried operator of a leased tract or portion
2 thereof or B) 200 percent of the share of such costs
3 allocable to the interest of the carried operator of an
4 unleased tract or portion thereof?

5 A. That is correct.

6 Q. Do you recommend that the order provide that the
7 elections by respondents be in writing and sent to the
8 applicant at Equitable Resources Energy Company, P.O.
9 Box 1983, Kingsport, Tennessee, 37662-1983, attention
10 Dennis R. Baker, Regulatory?

11 A. Yes.

12 Q. Should this be the address for all communications with
13 the applicants concerning the forced pooling order?

14 A. Yes, it is.

15 Q. Do you recommend that the forced pooling order provide
16 that if no written election is properly made by a
17 respondent such respondent shall be deemed to have
18 elected to cash royalty and option in lieu of partici-
19 pation?

20 A. That's correct.

21 Q. Should the unleased respondents be given 30 days from
22 the date of the order to file their written elections?

23 A. Yes.

24 Q. If an unleased respondent elects to participate should
25 the respondent be given 45 days from the latter of the

1 date of the mailing or the recordation date to pay
2 applicant for respondent's proportionate share of well
3 costs?
4 A. That's correct.
5 Q. Does the applicant expect the parties electing to
6 participate to pay in advance that party's share of
7 completed well costs?
8 A. Correct.
9 Q. Should the applicant be allowed 60 days following the
10 recordation date of the order and thereafter annually
11 on that date until production is achieved to pay or
12 tender any cash bonus becoming due under the forced
13 pooling order?
14 A. Yes.
15 Q. Do you recommend the forced pooling order provide that
16 if a respondent elects to participate but fails to pay
17 the respondent's proportionate share of well costs
18 satisfactory to the applicant for the payment of well
19 costs the respondent's election to participate should
20 be treated as having been withdrawn and void and such
21 respondent should be treated just as if no initial
22 election had been filed under the forced pooling order?
23 A. Yes.
24 Q. Do you recommend the forced pooling order provide that
25 where a respondent elects to participate but defaults

1 in regard to the payment of well costs any cash sum
2 becoming payable to such respondent be paid within 60
3 days after the last day on which such respondent could
4 have paid or made satisfactory arrangements for the
5 payment of well costs?

6 A. Yes.

7 Q. Do you recommend the force pooling order provide that
8 if a respondent refuses to accept any payment due
9 including any payment due under said order or any
10 payment of royalty or cash bonus or said payment cannot
11 be paid to a party for any reason or there is a title
12 defect in a respondent's interest or in the event of
13 conflicting claims to coalbed methane that operator pay
14 into an escrow account created by this Board under
15 which all costs or proceeds attributable to the
16 conflicting interest shall be held for the respondent's
17 benefit until such funds can be paid to the party by
18 order of this Board or until the title defect or
19 conflicting claim is resolved to the operator's
20 satisfaction?

21 A. Yes. That's true.

22 Q. Who should be named the operator under this order?

23 A. Equitable Resources Energy Company.

24 MR. KAISER: That's all I have of this witness at this time,
25 Mr. Chairman.

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

2 (Witness stands aside.)

3 MR. CHAIRMAN: Call your next witness.

4
5 ROBERT A. DAHLIN, II

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

8
9 DIRECT EXAMINATION

10
11 BY MR. KAISER:

12 Q. Mr. Dahlin, could you again state your name for the
13 record, who you are employed by and in what capacity?

14 A. My name is Robert A. Dahlin. I'm employed by EREC as a
15 production specialist.

16 Q. And your qualifications as an expert witness on
17 numerous times have been accepted by the Virginia Gas
18 and Oil Board?

19 A. They have.

20 Q. Do your responsibilities include the land involved here
21 and in the surrounding area?

22 A. Yes.

23 Q. Are you familiar with the proposed exploration and
24 development of the unit involved here under the
25 applicant's plan of development?

1 A. Yes, I am.

2 Q. What is the total depth of the proposed initial well?

3 A. 2,650 feet.

4 Q. Will that be sufficient to penetrate and test the

5 common sources of supply in the subject formations?

6 A. That's correct.

7 Q. What are the estimated reserves of the unit?

8 A. 375 million cubic feet.

9 Q. Are you familiar with the well costs for the proposed

10 initial well under the applicant's plan of development?

11 A. I am.

12 Q. Has an AFE been reviewed and submitted to the Board?

13 A. Yes.

14 Q. Could you please state both the dry hole and completed

15 well costs for the Board?

16 A. Dry hole costs are \$80,845 with completed cost of

17 \$188,000.

18 Q. In your expert opinion will the granting of this

19 application be in the best interest of protecting

20 correlative rights and efficient production of the

21 reserves underlying this unit?

22 A. Yes.

23 MR. KAISER: I have nothing further of this witness at this

24 time, Mr. Chairman.

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

1 (Witness stands aside.)

2 MR. CHAIRMAN: Anything further, Mr. Kaiser?

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

4 MR. GARBIS: I have a question. You have 37.9 percent not
5 leased?

6 MR. KAISER: Right.

7 MR. GARBIS: Is that primarily due to a certain Quinton
8 McCoy?

9 MR. KAISER: Correct.

10 MR. GARBIS: He didn't want to enter into a leasing arrange-
11 ment?

12 MR. BAKER: We have been unable to get in touch with Mr.
13 McCoy. We have sent a letter to the address shown. It
14 has been returned unclaimed. We've spoke with his son
15 and daughter and they have no idea where he may be
16 located. He doesn't have a phone. The address where
17 the tax bills were sent we've been unable to get in
18 touch with him and discuss it.

19 MR. KAISER: We have a copy of the certified mail that we
20 sent which was refused. That was mailed on the 18th of
21 July, refused, and returned to us on the 22nd.

22 MR. CHAIRMAN: Other questions?

23 MR. KAISER: The other unleased parties in this unit are the
24 Nancy Hale heirs who we have force pooled on prior
25 occasion.

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MR. CHAIRMAN: Anything further? Do we have a motion?

MR. GARBIS: I make a motion that we approve the applica-
tion.

MR. CHAIRMAN: A motion to approve.

MR. GRANT: Second.

MR. CHAIRMAN: Any further discussion? If not, all in favor
signify by saying yes. (ALL AFFIRM.) Opposed say no.
(NONE.) Unanimous approval.

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ITEM I

MR. CHAIRMAN: The next item on the agenda -- we're going back to Item I -- today is the Virginia Gas and Oil Board on it's own motion will consider the adoption of field rules for the Beatrice mine sealed gob area based upon the existing 80 acre grid. This is docket number VGOB-96/06/18-0545 which was continued from June. We'd ask the parties that wish to address this matter to come forward at this time. Mr. Fulmer, I believe you have some information to provide to the Board. Ms. Riggs will discuss it. I will ask again, are there any parties here wishing to address the Board in this matter today? If you do you may want to come forward at the table and we'll provide you with this information we are looking at. (Pause.) I'll ask Ms. Riggs to give us a brief to take us back into May, I believe, when we had our hearing. We asked that the order be drafted, that the Board would review and Ms. Riggs will bring us up to date from there.

MS. RIGGS: I have the transcript from the last hearing and the Board did take testimony at that time with regard to the establishment of the Beatrice sealed gob unit, the establishment of field rules under 45.1-361.20 to accommodate the mined out area of the Beatrice Mine

1 which is shown on your plat that's attached to the back
2 of these proposed rules. I think the concerns at the
3 time were that this is such a large unit and it
4 involved such massive title search that it didn't lend
5 itself to the ability of one operator to come in and
6 create a single sealed gob unit for purposes of
7 producing this mined out sealed area of the Beatrice
8 Mine. The Board was entertaining the idea of creating
9 allowable productions within the existing 80 acre
10 Oakwood grid that overlaps this unit in order to allow
11 production to proceed on a unit by unit basis rather
12 than having a single sealed gob unit that encompassed
13 the entire sealed mine. After taking testimony the
14 Board asked that I take that transcript and come up
15 with a draft of a set of field rules for the Board's
16 consideration so that the testimony was sort of
17 consolidated into a document that you could look at and
18 review and consider. The draft that you have before
19 you is the result of my effort to take that testimony
20 and put it into some form of a field rule. There were
21 a couple of issues that were addressed in the trans-
22 cript that have not been addressed in the proposed
23 field rules. And one of those has to do with the
24 request that operators be allowed to us allowable from
25 either contiguous or noncontiguous units and allocate

1 them to a particular drilling unit. In other words,
2 unitize drilling units within the sealed gob area.
3 That has not been addressed in here because I don't --
4 I didn't know what direction to go with that really. I
5 guess that raises the other issue of whether or not if
6 you allow that -- the units that are consolidated
7 whether they have to be contiguous or whether allow-
8 ables can be take from noncontiguous units. Mark asked
9 that I forward to him a copy of the draft of the
10 proposed field rules since he and his clients were the
11 ones that put on the testimony to the Board and I am
12 sure that he's had an opportunity to review it and
13 would have comments with respect to what the field
14 rules doesn't contain as opposed to what it does.

15 MR. CHAIRMAN: Mr. Swartz.

16 MR. SWARTZ: Actually, Sandy, I've looked at the order. I
17 think it's pretty straight forward. I really have very
18 limited comments and they, I think, pertain to some
19 discretion in some choices that you all have as a Board
20 and a couple of observations. Basically I think the
21 problem that Sandy identified which was a reason why we
22 came forward and tried to present evidence in support
23 of the field rules here. The basic reason is that
24 title can be incredibly expensive. This is a hugh
25 mine. As you heard earlier from either one of the

1 - Now or EREC witnesses that just tracing one set of
2 families -- you know, if they happen to have ten
3 children one of those firms spent 500 hours on three
4 percent of an 80 acre or 112 acre unit, I guess. So
5 title here is a huge problem. It's a problem for large
6 companies. It's a problem for individuals that are
7 trying to develop the acreage. So the theory here was
8 lets, if we can, devise a plan that allows 80 acre more
9 manageable units to be developed and I think that this
10 addresses that. The question then came because this is
11 a sealed unit. The mine shaft -- we've just some
12 people here. But this is a shaft mine. The shafts to
13 the mine have been sealed. So essentially this is a
14 container. In theory one hole could drain this
15 container if you pulled on that hole hard enough and
16 long enough. And to prevent unfair drainage, meaning a
17 unit or a well in one corner essentially draining
18 everybody's gas, the solution was to go with allow-
19 ables. I think this is the first time this Board has
20 ever used allowable. I think in the past perhaps some
21 of the problems we've addressed might have been handled
22 with allowables but this is the first time you've
23 chosen to do that. And what that means is that for any
24 given unit that is either voluntarily pooled or forced
25 pooled by Board order the most you can produce out of

1 that unit is 350 million cubic feet. It's at Paragraph
2 at the bottom of Page 2. I think that's consistent
3 with the testimony that you heard last time. The
4 question, moving from protecting correlative rights so
5 that no one unit can take more than 350 million cubic
6 feet, we further got to what I would describe as an
7 economic issue and you may or may not know. Dennis was
8 here then. When we have pooled sealed gob units in the
9 past there have been limitations that the Board has
10 placed on my client in terms of the number of wells
11 that they can utilize to drain that unit. The idea
12 being, again, it's a sealed a container. What's a
13 reasonable number of wells to produce a sufficient
14 amount of gas over some reasonable period of time so
15 that you're not loading costs into the unit and passing
16 those potentially to people unfair so that the unit
17 would make economic sense. We've kind of got the
18 reverse situation here and what we suggested to you all
19 that you needed to consider was that it would be
20 unreasonable from an economic standpoint if there had
21 to be a well in every one of these 80 acre units
22 because from a physics standpoint or a geology stand-
23 point wells have a capability of draining a much larger
24 area than an 80 acre unit. So our proposal, as I
25 recall it, was if you have allowables you should

1 develop some means of permitting an operator with a
2 well in one unit to take the 350 million allowable
3 assigned to that unit, to voluntarily pool another unit
4 in the mine or in this area. It doesn't have to be
5 contiguous. It could be anywhere. And provide notice
6 to some one, whether it's Mr. Fulmer's office or you
7 office, here's a voluntary unit and I'm claiming the
8 350 million assigned to that and to do that so that you
9 could have eight or ten units or perhaps even more
10 drained by a well bore -- one well bore and the
11 allowables. And that's our proposal. I think -- you
12 may not agree with me but I think that the allowables
13 -- the imposition of an allowable per unit and the fact
14 that that would be a condition here solves the problem
15 of how many units could an operator assign to a given
16 well bore. Because until all -- the physics again.
17 Until all of the units allowables have been claimed
18 there is in theory the gas is still in place. You're
19 not taking more than any given unit's share. So I
20 think what the order does not do -- what you need to
21 address is how does an operator with a well bore in one
22 unit notify the Board or the Inspector and say, "I have
23 another unit that I have voluntarily pooled and I would
24 like to claim the 350 -- start producing the 350
25 million allocated to that unit through this well bore."

1 Is it something that people need to come back to the
2 Board for? Is it something you would feel comfortable
3 simply on the notice basis? And then the next issue is
4 there will be situations where it won't be a voluntary
5 unit. You may have 50 percent of the unit leased and
6 you need to pool the other 50 percent. In situations
7 like that people are going to have to come back to the
8 Board in a forced pooling situation. So I'm not sure
9 you need to address that. You can address -- those
10 will be here. There's no way around it. But certainly
11 in terms of a voluntary unit what do you feel comfort-
12 able with as a mechanism for people to go on record "we
13 are producing or we want to produce the allowable
14 assigned to this given unit and we have pooled it on a
15 voluntary basis." The last thing that addresses in
16 the draft order that Sandy has prepared -- that really
17 addresses Paragraphs -- some revisions of Paragraphs F
18 and H on the last page. I would also comment that
19 Sandy's order of Paragraph H at Lines 4 and 5 -- seem
20 to me and I'm not sure she intended this -- looks like
21 it would expect the pooling of multiple units at the
22 same time. I don't really see why we would have to do
23 -- it says, "That where however such owners have not
24 agreed to so pool their interests and to develop
25 either single or multiple drilling units" I don't

1 think it's relevant that an owner in a drilling unit
2 that needs to be force pooled doesn't want you to pool
3 some other unit.

4 MS. RIGGS: Uh-huh.

5 MR. SWARTZ: I'm not sure that's what you intended, but it's
6 capable of being read that way and you need to --

7 MR. CHAIRMAN: Clarify that.

8 MS. RIGGS: Okay.

9 MR. SWARTZ: I have Claude Morgan here today and Les
10 Arrington who would be available to answer questions
11 with regard to basically the two issues I've raised.
12 I'm here, too, I suppose, but those are the two
13 concerns I have.

14 MR. CHAIRMAN: Mr. Ratliff, do you have anything that you
15 want to address the Board? Let me first just get you
16 to state your full name for the record.

17 MR. RATLIFF: I'm Wyatt Ratliff, president of Ratliff Gas
18 Company. I have the only permitted well within this
19 Beatrice Mine area. I want to object to placing a
20 limit on the amount of production and I have a state-
21 ment here. I'd just like to read it to the Board.
22 "Please be advised that it is our position at Ratliff
23 Gas Company, Incorporated that any such cap or limit-
24 ation upon the production of Ratliff #1 well would
25 violate the vested rights both of Ratliff Gas Company,

1 Incorporated as in the well and in the production
2 therefrom along with a violation of the vested rights
3 of the royalty owners. As the Board is well aware, no
4 law or regulation can be enacted to adversely affect
5 vested rights. Both Ratliff Gas Company, Incorporated
6 and its royalty owners have a vested right in the full
7 production at whatever the maximum allowable rate could
8 be in Ratliff Gas Company's #1 well. Any regulation by
9 the establishment of uniform field rules or otherwise
10 which interfere with this vested right held by Ratliff
11 Gas Company and its royalty owners violates both
12 statutory protections and constitutional protection
13 both United States and Virginia Constitution by
14 operating to take away the right to produce as much
15 gas as that well is capable of producing." That's my
16 only statement. That's what I have.

17 MR. CHAIRMAN: Thank you, Mr. Ratliff. If the Board has
18 questions are you willing to answer any questions?

19 MR. RATLIFF: Yes, I will.

20 MR. CHAIRMAN: Does the Board have any questions for Mr.
21 Ratliff at this time?

22 MR. KING: I have a question. Mr. Ratliff, I've not been a
23 member too long but you have appeared. You are the
24 only producing well in this Beatrice Mine?

25 MR. RATLIFF: As far as I know I am the only permitted well

1 that is producing in this Beatrice Mine.

2 MR. KING: Are you maybe saying that there is being produced

3 other than permitted?

4 MR. RATLIFF: Yes.

5 MR. KING: I wanted that to be in the record. Am I not

6 correct, Mr. Chairman, that this is the old Island

7 Creek mine that now belongs to Consol? Is that

8 correct?

9 MR. CHAIRMAN: Do you --

10 MR. FULMER: On the Beatrice Mine I've got the maps and

11 records here, if that would help you.

12 MR. CHAIRMAN: You might want to do that. This is the old

13 Beatrice Mine. Consol will have to speak to ownership

14 of it.

15 MR. SWARTZ: I'm not sure it's that simple. But Island

16 Creek has purchased it by a entity that is in the

17 Consol family.

18 MR. KING: So actually the coal rights belong to Consol?

19 MR. SWARTZ: I doubt that. I'm sure that the leases are in

20 an Island Creek entity to the extent that they're still

21 in effect and I assume they are. The problem you have

22 when you buy -- when you acquire mineral companies

23 there are typically restrictions in the leases on

24 transfer. So you normally are pretty much in a

25 position where you have to keep corporate form and wind

1 up buying stock. So it is unlikely that these property
2 assets found their way into a -- directly into a Consol
3 company. They're probably still help -- it's been a
4 while since this transaction, but they're probably
5 still held by Island Creek or subsidiary companies of
6 the Island Creek family.

7 MR. KING: Could I follow that a little further to ask then
8 -- we're addressing now methane gas production?

9 MR. SWARTZ: Right.

10 MR. KING: And that could belong to a whole bunch of people
11 that we --

12 MR. CHAIRMAN: We don't know who owns it. We haven't made
13 any determinations as far as the Board as to who might
14 own the gas.

15 MR. KING: But I think what -- if I'm correct, Sandy's
16 trying to address that here with this maybe.

17 MR. CHAIRMAN: Not as to ownership. This is trying to
18 address the unit so that it might enable that entire
19 unit to be -- that entire pool of gas to be developed.

20 MR. KING: To be pooled?

21 MR. CHAIRMAN: To be developed.

22 MS. RIGGS: If there were conflicting claims within any
23 particular unit they would still have to come back to
24 the Board for a pooling application similar to what you
25 heard earlier today where they identify all the owners

1 and either get voluntary leases which would be a
2 voluntary unit or come before the Board and pool the
3 interests within that unit to force pool and give the
4 notice and all the due diligence that we heard about
5 today. So the parties receive the notice at the time
6 of the pooling of the individual squares -- the
7 individual units.

8 MR. SWARTZ: See, basically to have a voluntary unit you
9 have to lease the acreage twice. You've got to lease
10 the coal side of it and you've got to lease the oil and
11 gas side of it. So, I mean, for 100,000 acres of real
12 land you're going to wind up with well over 100,000
13 acres of leases. And the situation here is when
14 Consol purchased the stock of an entity that owned
15 Island Creek they also purchased the stock of entities
16 that were the corporate partners indirectly in Buchanan
17 Production Company which is the oil and gas lessee. So
18 to some extent they were acquiring both sides of that
19 transaction. But there are many, many units where a
20 piece of the oil and gas is not leased or a piece of
21 the coal is not leased. So really for every 80 acre
22 unit potentially you have to lease 160 acres to have a
23 voluntary unit.

24 MR. GARBIS: Did you say this was approximately 100,000
25 acres?

1 MR. SWARTZ: No. This mine is 6,100 roughly. It's in the
2 order. The Oakwood Field is a little over 100,000.
3 MR. GARBIS: I'm talking specifically this Beatrice Mine
4 area.
5 MR. SWARTZ: This unit that encompasses the mine -- what
6 paragraph was that in, Sandy? Les, help us out here.
7 MR. CHAIRMAN: It's in Paragraph F on Page 2. It says 6,180
8 acres.
9 MR. GILLUM: What is the value of that gas? It says 123,600
10 million cubic feet. That's what, 250 million dollars
11 worth of gas, is that right? At two dollars?
12 MR. SWARTZ: Potentially.
13 MR. GILLUM: So this is a big issue.
14 MR. SWARTZ: Wait a minute. Let me see.
15 MR. CHAIRMAN: It should be more than that. About double
16 that.
17 MR. SWARTZ: Yeah.
18 MR. GARBIS: So essentially there's 123,000 million cubic
19 feet from Page 2?
20 MR. SWARTZ: Well --
21 MR. CHAIRMAN: That was the testimony that we received.
22 MR. SWARTZ: Right. Just to give you an idea, if the gas in
23 the unit that Mr. Ratliff has in his well were to trade
24 at two dollars at 1,000 -- the allowable is 350 --
25 there's \$700,000 worth of gas in that thing. At times

1 earlier this year gas was trading up around four
2 dollars. Today it's trading around a buck and forty.
3 It's a lot of money per unit even at this stage of the
4 game.

5 MR. GILLUM: I have a question. You have a permitted well
6 over the 6,180 acres?

7 MS. RIGGS: In one 80 acre unit.

8 MR. GILLUM: But it's over. It lies within the 600,180
9 acres?

10 MR. CHAIRMAN: Right.

11 MR. GILLUM: And you're paying royalty to these people or
12 someone's receiving royalty on the 80 acres, is that
13 correct?

14 MR. RATLIFF: On the 80 acres.

15 MR. GILLUM: What does your well produce?

16 MR. RATLIFF: It's just now going into production. We are
17 supplying a small community that I live in, 50 homes or
18 less. The gas production in last month was 21,000
19 cubic foot.

20 MS. RIGGS: I think the pooling order on that unit you
21 estimated your reserves to be 350 --

22 MR. RATLIFF: Up to 500 million.

23 MR. GARBIS: You say your average monthly withdrawal is
24 about 21,000 cubic --

25 MR. RATLIFF: No, sir. I didn't say that. That is what

1 last month's was. In the winter time that's when all
2 the production goes up. Right now there's no furnaces
3 on.

4 MR. GARBIS: What would you estimate as an annual figure.

5 MR. RATLIFF: I can't calculate it. I'm not sure because we
6 just went on the line December 9th of this last year.

7 MR. GARBIS: Mr. Ratliff, I recall when you and I had
8 discussion last two months ago. I think somehow that
9 you had -- that your present use is something like 80
10 or 90 years.

11 MR. RATLIFF: We plan one of these days hopefully to put
12 this gas in a pipeline. We just right now are putting
13 it in the community. The community has been served by
14 this well since 1972. We did not have a valid permit
15 until a couple of years back to do what we were doing.
16 We got the well permitted and went under forced
17 pooling and then I was not a public utility and
18 therefore could not put the gas back in the homes. Now
19 we do have a public utility that handles it for us and
20 it's back in our homes in our community homes. The
21 well is capable -- probably one of the best wells in
22 the State of Virginia. It probably is sitting in the
23 best position of any well in Buchanan County, but we
24 don't want to limit production to 350 million cubic
25 feet. We are against that one. Ratliff has one well

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in it.

MR. GARBIS: Mr. Ratliff, with all due respect, if I recall our conversation last time -- if I recall correctly and correct me if I am wrong but I think your problem was not really one of production, however one of transportation.

MR. RATLIFF: Transportation.

MR. GARBIS: And, of course, if it transportation that is something that you as an independent business man have to work out with other parties.

MR. RATLIFF: That's right.

MR. GARBIS: So I don't think that needs to be -- correct me if I am wrong, members of the Board -- that's not a part of our purview. I'm sure you understand that you may have a look at from your position that you want to have this thing capped, but even if it were capped I think you're looking at a very large number of years. I think depending on what estimates you're going to use that 70 or 90 years -- potentially even more than that -- of production which I think is very reasonable. But you have to understand that from a larger sense we are charged with looking at a reasonable means for other individuals. Just speaking for myself, I don't think we can grant exceptions to somebody as yourself in a case where we have other people with their rights that

1 would have to be looked into.

2 MR. RATLIFF: I understand.

3 MR. GARBIS: And I think really the issue in your case is
4 more one of transportation and really not of produc-
5 tion.

6 MR. RATLIFF: This well -- I disagree with you on how many
7 years -- is capable of producing in excess of one
8 million cubic feet per day. Now, you figure that up in
9 days and see how long it would be.

10 MR. GARBIS: Well, I'm sure that other companies can come in
11 there and equal that. I mean, they have the right to
12 do that, don't they? Couldn't somebody else come in
13 there? As a matter of fact, I'm sure if I got a topo
14 map I could sit there and come up with a number of
15 places where you could equal or double or triple that.

16 MR. RATLIFF: I can't answer that.

17 MR. GARBIS: The fact that it's capable is a moot point in
18 my personal opinion. I mean, what it's capable of --
19 but there has to be some regulatory bounds in how we're
20 going to bound this problem.

21 MR. RATLIFF: I understand. But this well has been in
22 production now since 1972. Part of the years it was
23 not permitted and now it is permitted. And when you
24 take away vested rights the person that's going to be
25 faced with the liability is the State of Virginia. I

1 want to point that out to you.

2 MR. CHAIRMAN: Mr. Chairman, any other questions of Mr.
3 Ratliff.

4 MR. GILLUM: I have one question. Have you -- you're paying
5 the royalty to these people and your estimated reserve
6 on this 80 acre being 500 million -- is that right --
7 cubic feet? That's just an estimate?

8 MR. RATLIFF: Yes, sir.

9 MR. GILLUM: Well, is there any provision -- let's just say
10 that is nothing is ever done here and you've pumped
11 your 500 million cubic feet. Is there any provision
12 for these other people for royalties or -- I mean, does
13 your situation address only those people on that 80
14 acre tract?

15 MR. RATLIFF: That's it. Yes.

16 MR. GILLUM: So the other landowners or gas owners would
17 essentially get nothing if some of this gas came from
18 their property. I guess it would be presumed that some
19 of this gas comes from everybody's property. Is that
20 right?

21 MR. RATLIFF: Gas is migratory. So it can be here today,
22 somewhere else tomorrow and gone today and come back
23 next week.

24 MR. GARBIS: I have a question of Ms. Riggs, if I may. This
25 6,180 acres, basically if we divide that into 80 acre

1 tracts it would be roughly 77 units.

2 MS. RIGGS: Right.

3 MR. GARBIS: What I heard testimony from was that you're

4 suggesting that perhaps the number of wells could be

5 different from the number of units.

6 MS. RIGGS: But you would not need 77 wells. If you were

7 going on the premise of that area would could be

8 drained by one well it would be larger than 80 acres.

9 So what they are asking is the ability to consolidate

10 acreage to create larger drilling units and take the

11 allowables from the consolidated units so that they

12 don't have to drill uneconomic wells.

13 MR. GARBIS: Maybe we need to increase the size of the

14 acreage. Maybe 80 acres is not the right --

15 ME. SWARTZ: You could. I think the reason to keep the 80s

16 was two-fold. It's an existing unit structure. So you

17 don't have to do any mapping. Secondly, it's very

18 doable in terms of title costs.

19 MR. GARBIS: Well, you have to do the title cost regardless.

20 MR. SWARTZ: But you can do it on an incremental basis.

21 Essentially what I'm saying is I see Ratliff -- he's

22 done his title. He's finally escrowing with regard to

23 royalty on that. When he's getting up to a point where

24 he's going to go past his 350 million if that ever

25 happens, he can do title on their 80 acre unit or lease

1 it up and get a voluntary unit, petition the Board to
2 apply those allowables to that well bore and go on with
3 his life. I mean, in a very simple way for him --
4 that's what I'm asking that everybody would have the
5 right to do. But the whole point of these field rules,
6 and I think you guys are focusing on that, is to make
7 sure that the twelve and a half percent royalty which
8 is a significant amount of money get spread to all the
9 potential people who ought to benefit from it. That's
10 why you engage in this kind of an exercise. From an
11 operator's standpoint -- from my client's standpoint
12 they are going to pay twelve and a half percent royalty
13 99 percent of the time because they don't own this
14 stuff in fee. It's a cost of doing business and an
15 operator just needs to bear that in mind and pony up
16 the royalty. The reason for -- so it's the cost of
17 doing business. But the reason for this field rule in
18 particular here is to spread that royalty income stream
19 equally to all royalty owners in this 6,100 acres.
20 That's the point.

21 MR. CHAIRMAN: Now let me ask you a question. When you talk
22 about being able to bring into this one unit where
23 you're draining units that are not contiguous that are
24 voluntary units or potentially pooled, but specific-
25 ally on the voluntary units that can, in effect, create

1 a checker board and then you'd have the pooled units.
2 What would be the plan to develop those that would have
3 to be pooled then? How we would ensure that they ever
4 got developed or that those people got paid.

5 MR. SWARTZ: The engineering testimony is appropriate and I
6 think Claude was relatively conservative. If you've
7 got up to 77 roughly units and you've got 35 left
8 there's 35 times 350 million in the ground. This isn't
9 like the conventional wells that you heard about this
10 morning where you said there's a ten percent chance of
11 hitting gas in this formation. There's no such thing
12 as a dry hole coalbed methane unless something horrible
13 happens, unbelievable. So unless the gas content data
14 is just completely wrong -- and we've got enough
15 experience in this field to suggest that this is, in
16 fact, the content here, perhaps even conservatively.
17 If there are 35 units left there's a lot of gas left
18 and there's an economic incentive for somebody to put a
19 hole in one of those units and start doing what we're
20 talking about.

21 MR. GILLUM: But I think the question is well taken because
22 probably what you're going to do is you're going to go
23 to those areas that you can lease up quickly instead of
24 going to this other gentleman this morning who had 500
25 man hours you're probably going to go someplace where

1 it's relatively easier. I mean, I would.

2 MR. SWARTZ: Right.

3 MR. GARBIS: So therefore the correct question is once you
4 have all the easy ones that are leased up you can come
5 in there and how do we insure that tougher ones --
6 there might be a reason why we would do when a more
7 logical --

8 MR. SWARTZ: Well, let's think about economic opportunity.
9 If gas prices are around two dollars and you're talking
10 at \$700,000 in revenue a unit, you've got an existing
11 well. So you've got no capital in terms of well costs.
12 You've got an infrastructure to market the gas. Unless
13 your title -- if your title was \$200,000 potentially
14 you would do that to recover the additional 700,000.
15 The economics of this to me will drive development.
16 There's not an opportunity to cherry pick here which I
17 think is your concern -- to just put a bad word on it.
18 I don't see it. It doesn't happen.

19 MR. GARBIS: To take the cream off the top.

20 MR. SWARTZ: Because you can only take 350. Now, if there
21 are ten units left there's ten times 350.

22 MR. GARBIS: Tom, how do you feel about this?

23 MR. FULMER: As far as allowables -- and this again is going
24 to something that the Board has never approached and
25 never wants to say or never wants to approach is

1 production unitization. That's what you're talking
2 about here. That's spread upon all persons who are
3 involved within that production unit. We've been
4 hinting around in several different cases in the Board
5 but that's exactly what you're talking about. Once you
6 have something depleted -- once you have a unit that's
7 producing from a common source then everybody is
8 producing from that common source. So the question is
9 should one be able to produce more than another and the
10 answer has always been no. They produce equally. And
11 that's where you get to allowables, only in that case.

12 MR. GARBIS: I was specifically speaking of was in the case,
13 as we say, cherry picking or as I say take the cream
14 off the top, taking the easier ones, is that going to
15 be a problem? We're talking about the financial
16 incentive at 700,000 for an 80 acre tract. I think
17 there's some pretty strong dollars there. We just want
18 to make sure that everything that's to be had is taken
19 out and that we don't -- that's nothing left behind.

20 MR. SWARTZ: I understand.

21 MR. FULMER: In this manner I don't believe you're going to
22 be able to cherry pick that much. There's not that
23 much to cherry pick.

24 MS. RIGGS: Well, in none of the other field rules that
25 we've done where we've put down the grid like this

1 have we ever said it's got to be developed in a
2 particular sequence. That's generally left up to the
3 economics of the operator's operation to dictate. So
4 there's no precedent and being that you could only take
5 allowables and consolidate them in increments of 80.
6 In other words, you couldn't take part of the unit and
7 take part of that unit's allowables and consolidate.
8 It has to be total 80 acre units. You have to have the
9 whole unit in order to take that allowable and use it
10 to another well. You don't get the splintering of the
11 field. You keep it in very uniform units. Plus if
12 someone's unit was not being developed there's nothing
13 that stops them from coming before this Board and
14 getting named operator or finding an operator and
15 getting their acreage produced. I mean, it's the same
16 thing you run into in any field. The operator picks
17 and chooses where their well is going to be and as long
18 as it's within a legal location that the Board's laid
19 down generally that's the only requirement. We don't
20 tell them in what sequence their drilling program
21 should be or --

22 MR. SWARTZ: Another thing that would drive location here,
23 for example, is proximity to existing pipeline and
24 gathering lines. So there are all kinds of consider-
25 ations in a unit such as this that have nothing to do

1 with geology but infrastructure. So there are good
2 reasons to have flexibility with regard to well
3 locations.

4 MR. GARBIS: Another question getting back to the original
5 in front of us. How do I know that 350 is a good
6 number? Has that been established? Are we convinced
7 that 350 -- for the total number of cubic feet are we
8 convinced that that's the right number? Should it be
9 more or less? What's the implications if we want more?

10 MS. RIGGS: Well, the testimony that we have thus far is the
11 one well that is currently producing in the unit, when
12 they came before the Board and applied that was the
13 number they established as their estimate and that's
14 Mr. Ratliff's well. Then the production over the life
15 of the well, he set it at 350 and then the testimony we
16 had at the June 18th hearing from an operator who's
17 operating in the general vicinity that has some
18 experience, that's what you have before you so far,
19 that evidence from those two sources.

20 MR. GARBIS: Is that enough? Is that a creditable number?

21 MS. RIGGS: That's probably all that's out there in terms of
22 -- until you actually drill. This morning they came in
23 and asked for a provisional drilling unit because they
24 didn't have enough data to be able to establish those
25 kinds of things. Until you actually start drilling the

1 ** and see what the production is all you can do is
2 take adjacent areas that have been produced and use
3 them sort of like comparable sells in an evaluation
4 process and say very similar coal seam, very similar
5 circumstances, this is what we have experienced in the
6 past which is, I think, what Consol did. And then Mr.
7 Ratliff's been producing over a period of some years
8 now and that's his opinion of where the number is. So
9 between those two that's all you have, I think.

10 MR. CHAIRMAN: Plus you have the notice that the Board's
11 done to all parties that were considering this and
12 there were other operators here and in the call for
13 anyone wishing to address the Board -- I mean, we've
14 attempted at least to exhaust the body of knowledge
15 that would be out there right now on this.

16 MR. FULMER: Mr. Chairman, the only thing I'd like to
17 mention when you're talking about figures on produc-
18 tion from a well, in regards to testing of an individ-
19 ual well as what it's capable of producing you're
20 assuming that that well is in a virgin reservoir and
21 you're producing at virgin reservoir pressure. In this
22 case you're putting a hole into a void and you could
23 pump it at any rate you wanted to. You could lower it.
24 You could increase it. You could get all kinds of
25 figures of what the potential may or may not be on a 30

1 day test. You could produce at a high end or it could
2 produce at a low end. You can manipulate figures in
3 this instance. So that's the problem you're dealing
4 with here. What is the correct number? I don't think
5 any two or three people could agree what the correct
6 number would be.

7 MR. KING: Mr. Chairman, is it possible that one well could
8 draw all of the methane out of that area?

9 MR. SWARTZ: If you let it go for 150 years.

10 MR. CHAIRMAN: For a long enough time and big enough funds
11 you could pretty much calculate how long it would take.

12 MR. KING: It is not the mandate of this Board, though, to
13 make sure that the people that have some rights are
14 protected?

15 MR. CHAIRMAN: It is.

16 MR. KING: I think maybe this is what Sandy's tried to do
17 here, isn't it?

18 MR. CHAIRMAN: I think the two areas that we've been talking
19 around but not dealing directly that Mr. Swartz raised
20 is 1) Given the fact that we go with the rest of the
21 things that are in this order whether or not we're
22 going to allow -- how does an operator that has an
23 approved well in a unit bring voluntary units to that
24 well in order to produce out of that one instead of
25 having to stick a straw down in four more places -- in

1 the bladder. if you will -- and then also how do they
2 get permission to go to the involuntary. Those would
3 all have to come to the Board. We know that. The
4 question of the first one is do we want those before
5 the Board as well.

6 MR. SWARTZ: I think there needs to be some mechanism. The
7 other part -- if you don't want to see us on a volun-
8 tary unit we feel like we need to provide some notice
9 to you all or to the DGO that we have another voluntary
10 unit, name it, that we're claiming allowable because we
11 give the production reports to Mr. Fulmer's office and
12 we need some mechanism so that he can track what the
13 allowables on a given well are, if there are multiple
14 units combined. That's another problem.

15 MR. CHAIRMAN: I don't want to sway the Board, but just as
16 an individual member of the Board my opinion is we are
17 better off to have them all come before the Board at
18 least initially in -- since this is a new venture for
19 the Board and the Board's looking at and you're not
20 going to have 77 and we'll have an opportunity to
21 continue to raise concerns, if we have concerns, or see
22 issues or hear from people that have issues about it
23 and deal with it on an ongoing basis.

24 MS. RIGGS: The other issue would be should these field
25 rules be adopted as provisional rules pending gathering

1 of additional information that would allow the refine-
2 ment of some of these figures.

3 MR. SWARTZ: I don't have a position on either of those
4 issues as stated. If the Board wants the operators to
5 come back to increase -- to allocate additional
6 allowables I have no problem with that. There just
7 needs to be a mechanism.

8 MR. CHAIRMAN: Okay.

9 MR. SWARTZ: And obviously that takes care of the notice
10 There would be a petition to utilize allowables or
11 something which is fine. With regard to whether or not
12 these field rules are provisional, they need to happen.
13 If you are more comfortable making them provisional you
14 can do that. As it was brought up earlier on the other
15 hand, if you make them non-provisional you can always
16 revisit them anyway. That's your call.

17 MR. GARBIS: The next question I had was how do we ascertain
18 with some degree of confidence that an operator when
19 they get to the 350 number that that's actually what
20 the number is?

21 MR. SWARTZ: There's a production reporting requirement.
22 Assuming that the operators report their metered
23 production Mr. Fulmer's office has an opportunity to
24 track that.

25 MR. GILLUM: What happens when they reach 350?

1 MR. SWARTZ: They need to stop Unless they --
2 MR. GILLUM: Seal the well?
3 MR. SWARTZ: You can just turn it off. You can shut a well
4 in.
5 MR. GILLUM: This is my first meeting so maybe I don't
6 understand. But it appears to be that you've got the
7 one unit that's exception to everything else at this
8 time. There may be other units. Why can't you pool
9 the unit or any well that goes on a particular 80 tract
10 that takes it's 350, those guys get their royalty and
11 the balance spills over into a pool? Is that too
12 complicated or --
13 MR. CHAIRMAN: You mean if you produce more than the 350?
14 MR. GILLUM: Yeah. That way if Ratliff produces 350
15 million, his people get their twelve and a half
16 royalty --
17 MR. SWARTZ: My clients would go nuts if they could do that
18 and I will tell you why. We could drill one well.
19 Once we got past the 350 we would just take the twelve
20 and a half percent, send it to an escrow agent, we'd
21 never have to do any title. All of it would just
22 achieve to the State because nobody would ever do the
23 title. I mean, in theory it would preserve the funds
24 but no one would ever have a financial incentive to
25 identify the people who are entitled to the funds and

1 all the money would achieve to the State.

2 MR. GILLUM: but it appears to me we're talking about so
3 much money if these numbers are accurate that it would
4 be adequate resources to.

5 MR. SWARTZ: My clients wouldn't spend the money under those
6 circumstances because they're not entitled to the
7 funds. So the claimants and/or some collection of
8 lawyers who foresee that as a new booming business -- I
9 suppose if you created a 100 million dollar fund you'd
10 have a lot of people claiming it. But at least from an
11 operator's standpoint that would be a dream come true
12 because you'd do title on an 80 acre unit and you could
13 just forget about it. You might be right that ultimately
14 the fund would be larger enough that people would
15 be -- how long does it take to SG to the State here?

16 MS. RIGGS: It depends on whether or not it commences
17 running from the time ownership is determined under a
18 conflicting claimant situation. It could be forever.

19 MR. SWARTZ: So people would have a lot of time to sort it
20 out then potentially.

21 MR. FULMER: The uniform disposition act requires five
22 years.

23 MS. RIGGS: The problem you have with coalbed methane but
24 not the problem is there's never been a court determination
25 of who owns it. Therefore, the statute provides

1 this escrowing pending that ultimate determination of
2 ownership. So in addition to unknowns and unlocatables
3 you have the coal and gas and oil. Everything goes
4 into escrow on the royalty side and until that deter-
5 mination is made that X owns then I don't think the
6 five year starts to run.

7 MR. SWARTZ: Also I'm thinking maybe you're going to have
8 some due process problems and notice problems because
9 there are people that are locatable and have determin-
10 able interests. And I think from a constitutional
11 standpoint that we might all have some problems doing
12 that. I mean, from an operator's standpoint it would
13 be a very attractive alternative but I'm not sure we
14 can do it.

15 MR. CHAIRMAN: If I could kind of illustrate something just
16 for the Board's information. I'm not saying this is an
17 accurate position, but if you look at the sealed area
18 and say this is it, what I believe is being requested
19 here for us to make a determination on is that if you
20 have a well in this unit and you have a voluntary unit
21 here, here and here you could pool those three times
22 that 350 and bring out here. So you would just kind of
23 start Xing these off. As you had those 77 you'd have
24 four coming out of there, for example, or you could
25 have pooled unit that you'd bring in. You drill here

1 and then you bring in two other pooled and one volun-
2 tary unit into the next one. So you may end up with
3 fifteen to twenty wells. Is that, in essence, the
4 understanding that everybody has of it?

5 MS. RIGGS: And once you use a unit's allowable that unit no
6 longer can ever have a well in it.

7 MR. CHAIRMAN: That's right. So we have that decision to
8 make. Is that acceptable? The mechanism would be
9 whether or not they would come before the Board for
10 that or would the Board want them to go to the Inspect-
11 or for that rather than come to the Board on a volun-
12 tary unit. That's an issue. And then the next one
13 would be do you want these field rules to be provision-
14 al subject to change as we develop additional inform-
15 ation or do you want them to be final field rules which
16 are also subject to change based on the Board's
17 discovery of additional information at any point in
18 time of notice. And also whether or not the rest of
19 the draft order is acceptable to the Board. The motion
20 would need to -- if we're at the point of making one
21 would need to encompass those things. Is there
22 anything else that I've overlooked?

23 MR. GARBIS: Why don't we take them one at a time and vote
24 on them?

25 MR. CHAIRMAN: Okay. Let's deal with just the draft order

1 as it's drafted now which would include the 350
2 allowable. Let's don't deal with whether it's pro-
3 visional or final. Let's just consider is this
4 language acceptable to the Board, yes or no, and I'll
5 ask for a motion on that if it is.

6 MR. GARBIS: I would advance a motion the 350 be used as the
7 marker or as presented here in this proposal.

8 MR. CHAIRMAN: As a cap on production.

9 MR. GARBIS: A cap on production at 350.

10 MR. KING: I second the motion.

11 MR. CHAIRMAN: A motion and a second and the rest of the
12 language in the order acceptable. A motion and a
13 second. All in favor say yes. (ALL AFFIRM.) Opposed
14 say no. (NONE.) The next item would be the mechanism
15 that the operator would come to the Board for a
16 voluntary unit in order to bring those voluntary units
17 -- I was trying to think of a good term to use -- pool
18 those units as we previously discussed into that one
19 producing unit.

20 MS. RIGGS: To allocate the allowables of a voluntary unit
21 to a unit with a well.

22 MR. CHAIRMAN: That's what I was looking for. Right. To
23 allocate. Do you want that to come to the Board or do
24 you want the Inspector to handle those?

25 MR. GARBIS: I think that should come to the Board until

1 we get a feel for how those things can be sorted out.

2 MR. KING: I second the motion.

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

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

5 Opposed say no. (NONE.) And then finally should this

6 be a provisional or final order of field rules.

7 MR. GRANT: Mr. Chairman, I move that this be a provisional

8 rule.

9 MR. CHAIRMAN: We have a motion for a provisional order.

10 MR. GARBIS: I'll second that motion.

11 MR. CHAIRMAN: A motion and second. Further discussion?

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

13 Opposed say no. (NONE.) Have we missed anything? All

14 right. Thank you.

15 MR. FULMER: Mr. Chairman, something that bothered me in

16 talking about the amount of allocation per unit --

17 MR. CHAIRMAN: Could you speak up just a little bit.

18 MR. FULMER: Something that bothers me when you're talking

19 about the allocation per unit and somebody's been

20 saying 350 million cubic feet, that ain't right.

21 MR. CHAIRMAN: MMCF.

22 MR. FULMER: That's what I'm saying. That's not million

23 cubic feet, is it?

24 MR. CHAIRMAN: Well, it's in accordance with the order.

25 MR. FULMER: 350 million thousand cubic feet.

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MR. SWARTZ: It's 350 million cubic feet, right?

MR. FULMER: Okay. Go ahead. It's just the way it was coming to me. I'm sorry.

MR. CHAIRMAN: Anything further on this? Further discussion? Okay. That concludes that discussion. It's 12:00. Do you want to finish the last two or go to lunch? Finish? Okay.

ITEM II, III

1
2
3 MR. CHAIRMAN: The next item on the agenda --

4 MR. SWARTZ: I would ask that you combine those, Benny. I
5 think it would be more productive.

6 MR. CHAIRMAN: That's fine. I will call them both. The
7 Board will review a recommendation from the Director of
8 the Division of Gas and Oil for civil charges to be
9 imposed against Island Creek Coal Company. This is
10 docket number VGOB-96/07/16-0549 as continued from
11 July, and then also a recommendation for civil charges
12 imposed against Consol. That is docket number VGOB-
13 96/08/20-0553. We'd ask the parties that wish to
14 address the Board in this matter to come forward at
15 this time and identify yourself to the Board, please.
16 I'd like to just hand out the civil charge rule. It's
17 background for the Board's information. We're handing
18 that out for the record. I'll ask the parties to
19 identify themselves, please.

20 MR. FULMER: Tom Fulmer, Director of the Division of Gas and
21 Oil.

22 MR. HENDERSON: Jay Henderson, Assistant Inspector of Oil
23 and Gas.

24 MR. SWARTZ: Mark Swartz appearing for Island Creek Coal
25 Company on the first one and Consol, Inc. on the

1 second.

2 MR. CHAIRMAN: Are there any others that wish to address the
3 Board in this matter?

4 MR. SWARTZ: I may have some witnesses.

5 MR. CHAIRMAN: Hearing none, Mr. Fulmer, you may proceed.

6 MR. FULMER: Mr. Chairman, I appear before you today in the
7 capacity of Director of the Division of Gas and Oil in
8 regards to a recommendation under the civil charge
9 procedural rule adopted by the Board on May 29th, 1992
10 and issued on May 19th, 1992. A recommendation to the
11 Board was sent to Island Creek -- or a notification to
12 Island Creek Coal Company that the Division of Gas and
13 Oil will file with the Virginia Gas and Oil Board a
14 recommendation of a civil charge against Island Creek
15 Coal Company pursuant to the Board order VGOB-92/05/29-
16 226. This letter is dated June 14th, 1996 and I
17 believe the Board members do have a copy of that letter
18 in regards to the recommendation. As some of the Board
19 members may know, there is a civil charge procedural
20 rule of which the Board adopted in which the basis of
21 civil charge recommendation by the Director to the
22 Board is to be used. These procedures are used in the
23 two styled cases you have before you today. The notice
24 was issued again in accordance with the requirements of
25 procedural rule in regards to the 30 day notification

1 to those persons being charged with, I guess. I have
2 with me today Mr. Jay Henderson who is an area inspect-
3 or in regards to the civil charge. The letter you have
4 before you is pretty much explanatory as to why these
5 civil charges are being recommended to the Board. On
6 the second page of the letter to you after the listing
7 of the violations that have been issued the procedures
8 for the seriousness of the violation and instruction
9 enforcement according to the adopted charts we assign
10 two points. The degree of negligence we declared it to
11 be negligent and two points again. Good faith credit,
12 prompt compliance we issued a minus one. They did
13 comply. The total was three points. Based upon the
14 charts available that makes an assessment base of a
15 civil charge of \$350 on the first violation. The first
16 violation was failure to erect a permanent marker as
17 required under the Gas and Oil Regulation BR480-
18 05.22.1. As you see, there is a series of that
19 violation that had been issued prior to the recommend-
20 ation being made. On the second violation the notices
21 of violation were issued for failure to obtain plugging
22 permits, submitting an affidavit of plugging or
23 notifying the Division to plug. There was a series of
24 violations also issued in that manner. For that
25 procedure the seriousness of the violation of obstruc-

1 tion of enforcement was two points. The degree of
2 negligence was again for two points and good faith
3 credit, prompt compliance was a minus one and the total
4 was a minus three points. That made the assessed based
5 civil charge at \$350. The total in regards to the
6 recommendation is \$750. If the Board members should
7 have any questions as to this particular recommendation
8 and any questions from the inspector he will be more
9 than welcome to answer any questions.

10 MR. CHAIRMAN: Thank you, Mr. Fulmer. Do you want to hear
11 from Mr. Swartz first or do you want --

12 MR. SWARTZ: I'd like to have the other one as well, if you
13 don't mind -- I'd just like to respond in general to
14 both of them.

15 MR. CHAIRMAN: That's fine. I called both. Just go ahead.

16 MR. FULMER: That particular civil charge recommendation is
17 involving Island Creek Coal Company. The next re-
18 commendation involves the failure to obtain a permit
19 prior to commencing operation. That letter was also
20 sent by certified mail on June 19th, 1996. That,
21 again, is pursuant to the Board order VGOB-2/5/92-226.
22 A notice of violation was issued on 7/3/96 in regards
23 to application 2341. In regards to assessment the
24 seriousness of violation the obstruction of enforcement
25 was four points. The degree of negligence was set at

1 six points and the good faith credit, prompt compliance
2 was zero points. The total was ten points for assessed
3 based civil charge of \$2,700. Any questions?

4 MR. CHAIRMAN: Not at this time. I think they wanted to go
5 ahead and hear from Mr. Swartz.

6 MR. SWARTZ: As sort of an introduction to what you'll be
7 hearing from me and my clients with regard to this --
8 not necessarily in this order. I think the reason we
9 are here is we feel it is important for the Board to
10 understand precisely what happened and to the extent
11 that penalties are assessed they're assessed but we
12 take seriously a charge which gives the impression that
13 we are somehow scoffers or are somehow violating on a
14 routine basis regulation statutes or Code provisions.
15 So we are going to discuss the facts pretty specific-
16 ally and we will have exhibits in that regard. In
17 addition -- and this is a general procedural comment
18 that I have that I suppose has the potential to
19 invalidate both of these civil charges on procedural
20 grounds I'm going to share this with you because I
21 think you need to understand my position in that
22 regard, but I am not asking you dismiss these until I
23 have an opportunity to factual -- go into the factual
24 basis of what actually happened here. But this civil
25 charge procedural rule -- I'm giving you a copy of the

1 first page of it -- was adopted and the discretion of
2 the Inspector was specifically set forth on the first
3 page. It uses the word "shall" basis for a civil
4 charge. It says the Inspector shall base his decision
5 whether to recommend a civil charge on the following.
6 And this is the exhaustive list. I would encourage you
7 to look at this Section 2 of the civil charge procedur-
8 al rules and ask yourself the question that I asked
9 when I see this, what was the intent when this rule was
10 adopted in limiting the Inspector's basis that he could
11 use. All of these appear to me to be fairly serious
12 and they're pretty specific. To give you an example, I
13 do not think that a notice of violation for failure to
14 put a permanent marker -- a plaque on a plugged well
15 comes within any of these categories. What I am
16 suggesting to you is that unless the Inspector demon-
17 strates that he has one of these grounds as a basis
18 for issuing a civil charge he can't. You need to look
19 at what we're talking about here as we get into this
20 factually. Does anything that we are going to be
21 talking about today -- could it have reasonably have
22 been expected to, for example, result in significant
23 adverse environmental impacts? Could it reasonably be
24 expected to harm the public? Could it reasonably be
25 expected to harm correlative rights? Was it permitted

1 or not permitted? So you need to look at this rule and
2 ask yourself if the Inspector's opportunity to seek a
3 civil charge is limited by this rule do these situa-
4 tions that we are dealing with today come within the
5 circumstances under which he can issue a civil charge.
6 In addition, and this is a notice issue, it's somewhat
7 difficult for us to prepare for today's hearing in
8 terms of the substance of what we'd be talking about
9 because neither of the letters which tell us that we're
10 going to be on the docket with regard to civil charges
11 identifies the basis. If you look at the July 19th
12 letter, the June 14th letter, there is no statement of
13 a basis identified in Section 2 of the civil charge
14 that says we think there's an environmental hazard
15 because if we were told that we would show up with an
16 engineer to address that. So from a due process notice
17 standpoint I think both of these letters fall far short
18 of informing of us of the basis, if any, to issue a
19 civil charge under the civil charge rule. Enough of
20 the procedurals, though. Going to the Island Creek
21 situation, we've got a packet of exhibits in chronology
22 with regard to all three of the wells that we're
23 talking about. (Pause.) These three wells that were
24 plugged without notice to the Department of Gas and Oil
25 were all permitted by permits issued on --applied for

1 on December 30th, 1992. What was happening at the end
2 of 1992 was the ability to obtain tax credits -- the
3 ten year alternative fuel tax credits for coalbed
4 methane was expiring on the last day of 1992 and Island
5 Creek and others were submitting applications for well
6 permits for existing vertical ventilation holes in
7 their mines to protect themselves in the event that
8 they were to produce coalbed methane gas from those
9 vertical ventilation holes in the future to qualify
10 them for the ten year tax credits that were expiring --
11 the ability to claim them expiring the end of 1992.
12 So all three of these wells that we're talking about
13 were initially drilled as vertical ventilation holes in
14 the course of mining. Attached in the exhibits here is
15 the vertical ventilation hole permit for each of these
16 wells that was originally issued by the Department of
17 Mines, Minerals and Energy Division of Mines, the sort
18 of sister entity. After the oil and gas permits were
19 issued. At the end of 1992 with regard to all three of
20 these wells none of these wells ever produced. Okay.
21 None of them were modified on the surface or under
22 ground by the addition of facilities or reworking.
23 These wells sat there from the time the gas and oil
24 permit was issued for tax credit purposes until they
25 were plugged. And frankly what happened -- I'm not

1 going to put any kind of whitewash on this. What
2 happened was because they were permitted as vertical
3 ventilation holes, because they had never been produced
4 as gas and oil wells, they had never been modified,
5 they had never been hooked up to any gathering system,
6 when Island Creek was embarking on a plugging program
7 with their VVHs and they had VHH permits for these
8 wells -- now, this is not a legal excuse but this is a
9 factual explanation of what happened -- they went out
10 and plugged these wells as if they were VVHs. And the
11 VVH plugging procedure requires notice after you plug
12 the well. The oil and gas procedures that I'll get to
13 in a minute requires notice before you plug the well.
14 In this packet of exhibits attached hereto there is the
15 notice to the Division of Mines after each one of these
16 wells was plugged as a VVH. So what I am suggesting is
17 that the reason this happened is these were dual
18 permitted wells. They had never been utilized as
19 coalbed methane wells and Island Creek dropped the ball
20 -- there's no question about it. They dropped the
21 ball, assumed they were just regular VVHs that they
22 could plug in compliance with the Division of Mines
23 regulations, the other side of the DMME, and they did
24 that. Somehow the Division of Gas and Oil discovered
25 that these wells had been plugged and that they hadn't

1 been notified. And that's true. I'm not claiming that
2 -- that's the ball that was dropped. Island Creek did
3 not notify the Division of Gas and Oil before plugging
4 them because they mistook them as VVHs. When a notice
5 of violation with regard to that problem -- with regard
6 to these three wells was issued Island Creek came in,
7 petitioned the Division of Gas and Oil for a modifi-
8 cation to allow them to plug, file the plugging
9 affidavit and comply with the rules, all be it tardedly
10 but they came in and did it. Since this has happened,
11 because hopefully people learn from their mistakes,
12 Island Creek and Consol who operates a lot of these
13 wells for Island Creek have compiled what they believe
14 is a complete list of VVHs that have also been permitt-
15 ed as gas and oil wells so that Island Creek has
16 available to them that information ready to hand so
17 that this identification problem will not happen again.
18 And in addition the way in which wells get plugged and
19 contractors get hired has been modified so that Consol
20 and the oil and gas operation side has a better handle
21 on this. The point of all of this is this is an actual
22 explanation as to why this happened and we wanted you
23 to know that and we wanted you to know what activities
24 we have undertaken to make sure that it doesn't happen
25 again. But it was not a situation where a company

1 ignored obligation. I mean, they thought they were
2 plugging a VVH. And what we have put in place presum-
3 ably will stop that from happening. There may be some
4 new math here, though, because I think 350 and 350 is
5 \$700. We're not objecting to that but we wanted you to
6 understand how this happened and what we have done.
7 The more serious of these two civil charges is the
8 second one and it really is very upsetting to us. The
9 chronology there is -- the assertion is that we drilled
10 a well without a permit. The chronology there was a
11 permit was applied for for the well in question. It
12 was a dueled site. So the site already existed. A
13 phone call was made, as happens all the time, to the
14 Division of Gas and Oil, the Inspector's office and
15 said when can we expect the permit? Consol was told
16 Tuesday, Wednesday at the latest. Before drilling
17 wells because of union constraints and other require-
18 ments notices have to go out. So Mr. Arrington sent
19 out a notice to the union. He also notified the
20 Division of Gas and Oil, Mr. Fulmer's office, that they
21 intended to start drilling this particular well on
22 Tuesday. To make sure that if the permit was issued on
23 Tuesday they had given timely advance notice to the
24 union, a two day notice. What happened was the rig got
25 moved on the site which already had been built for

1 another well on Tuesday and drilling commenced on
2 Wednesday on the assumption that when they were told
3 the permit would be issued on Tuesday, no later than
4 Wednesday that would happen. This has happened -- all
5 oil and gas operators have done this in the past. You
6 call, "When's the permit going to be issued?" And you
7 get an answer. This is the first time that it's been
8 a problem. I can assure you we are never going to rely
9 on this kind of an answer again. The thing that is
10 even more aggravating about this is we sent a notice to
11 the Division of Gas and Oil saying we are going to
12 commence drilling. The reason the gas and oil inspect-
13 or showed up on our site was because we told him we
14 were going to commence drilling because we were told we
15 were going to have a permit. The permit got issued on
16 Friday ultimately. The reason it wasn't issued was
17 because Tom Fulmer was out of the office. And I guess
18 what is so upsetting to me here is when you look at
19 this charge it says we were negligent. Well, is it
20 negligent to call the agency charged with regulating
21 your activity with whom you have filed a permit
22 application for the particular well in question and say
23 to them, as we have many times in the past, when is the
24 permit going to be issued? Get an answer of Tuesday,
25 no later than Wednesday and rely on that. Now, if this

1 happened to us again given what's happened here I'd say
2 we would be negligent because we certainly have notice
3 that we can't rely on what we're being told and if we
4 do we rely to our detriment. But there's no negligence
5 here. In addition, good faith credit, prompt compli-
6 ance, zero points. The oil and gas inspector comes to
7 the well site where we are drilling because we have
8 sent a notice to them as we're required to do and says
9 you don't have a permit which is news to us. But what
10 do we do? We stop drilling. What could be more prompt
11 compliance? What else were we suppose to do yet we get
12 zero credit. Seriousness of violation, obstruction of
13 enforcement, we applied for a permit. We gave written
14 notice that we were going to be drilling the well. We
15 relied upon an answer that we got from the office as to
16 when the permit was going to be issued. And I really
17 am troubled by this. Factually this is a screw up, no
18 question about it. But I think my client is entitled
19 to rely on -- especially historically when this is the
20 way things have been happening in the past -- that when
21 you're given an answer as to when a permit's going to
22 be issued it's issued. Their first notice that it
23 hadn't been issued was the inspector shows up and says,
24 "You don't have a permit." Well, they stopped drill-
25 ing. But this one is just not fair. Obviously in

1 terms -- with regard to the prior situation with the
2 VVHs -- what are we going to do in the future, if we
3 don't have a faxed copy of the permit we don't have a
4 definite statement from Mr. Fulmer or someone in his
5 office it has been signed we're not going to do this
6 anymore because if we can't rely on those kinds of
7 answers we're not going to. But this is just not
8 right. That's all I have.

9 MR. CHAIRMAN: Mr. Fulmer, do you or the inspector have
10 anything you wish to say for the Board's consideration?
11 Please identify separately the issues here -- Consol
12 and Island Creek violations.

13 MR. HENDERSON: My name is Jay Henderson. I'm with the
14 Division of Gas and Oil. I guess as far as the Island
15 Creek matter with the plugging -- plugging without a
16 permit and then failure to put up a permanent marker,
17 the marker situation had been brought to Island Creek's
18 attention in the past. So that was the reason for
19 that. There were three VVHs that had been plugged.
20 Two of them I found on -- the violations were issued on
21 April 5th and then one was found on May 22nd. I don't
22 know whether was -- none of that information was
23 volunteer. It was, you know, if you find it you find
24 it. Well, I found it. As I understand the way the
25 original regulations and that law was written the

1 intent was to -- the reason for the marker and the
2 reason to some extent for the plugging was a mine
3 safety concern. So they know where these holes are,
4 where the plugged wells are and that they have properly
5 plugged. That was why those were issued.

6 MR. GARBIS: Can I ask a question?

7 MR. CHAIRMAN: Sure.

8 MR. GARBIS: Is there any distinction as far as marking
9 wells as to whether -- do we mark ventilation mark?
10 Obviously we mark them.

11 MR. HENDERSON: No.

12 MR. GARBIS: So we do not mark ventilation holes?

13 MR. HENDERSON: No.

14 MR. GARBIS: How many ventilation holes would you say that
15 you have plugged in the past?

16 MR. MORGAN: Hundreds, hundreds.

17 MR. GARBIS: And you've never marked those. Mr. Henderson,
18 in these three wells was there any transmission lines?

19 MR. HENDERSON: No.

20 MR. GARBIS: Well, if there wasn't any transmission lines
21 wouldn't that indicate that they're ventilation mines
22 as opposed to regular gas wells?

23 MR. FULMER: They were permitted to us. So it doesn't
24 matter whether there's a transmission line. They're
25 permitted to us under our law.

1 MR. GARBIS: Explain further, please. In other words, in
2 your records it's permitted as a gas well?
3 MR. FULMER: Yes.
4 MR. HENDERSON: As Mr. Swartz passed out in the chronology,
5 they were permitted and drilled as VVHs permitted
6 through the Division of Mines.
7 MR. SWARTZ: Right.
8 MR. HENDERSON: And then December 30th, 1992 a permit was
9 applied for so that they could produce. They were
10 permitted as coalbed methane wells and as coalbed
11 methane wells I have to go inspect them.
12 MR. GARBIS: So Mr. Fulmer's office in your recognition
13 these are gas wells?
14 MR. SWARTZ: Now I'm not disputing that.
15 MR. GARBIS: Right. They're permitted. But basically your
16 defense is saying it was an oversight because your
17 people thought that they were ventilation wells?
18 MR. SWARTZ: I'm not sure that's a defense. It's an
19 explanation. I'm conceding that they screwed up here
20 with regard to those three vertical ventilation holes.
21 But I'm trying to show that it was a good faith mistake
22 that they thought -- in fact, they were doubly permiss-
23 ed and they complied with one set of regulations and
24 did not comply clearly with the other. They needed to
25 notify Mr. Fulmer's office of their intent to plug

1 these. We won't dispute that.

2 MR. KING: I have a question. There is a difference between

3 a methane gas permit and a ventilation permit?

4 MR. FULMER: Yes.

5 MR. KING: And these were methane gas permits?

6 MR. SWARTZ: They were permitted as both vertical ventila-

7 tion holes a number of years before they were then

8 subsequently also permitted as CBM wells. But they

9 were never produced as wells.

10 MR. KING: So in the past they were both?

11 MR. SWARTZ: At the time of the plugging they were in my

12 judgement both.

13 MR. MORGAN: If I could speak a little bit here. As Mark

14 has said, the very reason we are here -- it's not the

15 \$750. It's the stigma that this is not something that

16 you all ever see for some reason or another. We are

17 here on a civil penalty charge but don't think we're

18 the only one that ever has a violation. Better the

19 law, if you consider that a gas well that was plugged

20 then there was no marker. At the same time these were

21 being plugged by Island Creek there was a program under

22 way. These three holes were plugged in conjunction

23 with some other VVHs that were being plugged at the

24 same time. In December all the VVHs were being

25 plugged. They were all permitted by Island Creek as

1 VVHs (Inaudible.) We were not aware that they had ever
2 been re-permitted as anything other than VVH and they
3 been produced as a gas well. So there has never been
4 anything as to conversion on the surface to make them
5 appear as anything other than a ventilation hole. It's
6 the same hole that was always in the ground that was
7 being plugged on all the other holes.

8 MR. GRANT: One thing Mr. Swartz said troubled me a little
9 bit and maybe you can clarify it for me. You indicated
10 that Mr. Fulmer's office -- these weren't your very
11 words but somehow found out that these wells had been
12 plugged. How did he find out?

13 MR. SWARTZ: I don't know.

14 MR. GRANT: How did you find out that these wells had been
15 plugged?

16 MR. HENDERSON: I went and I inspected the well.

17 MR. GRANT: But you did not -- my understanding is on the
18 vertical ventilation wells you're required to report
19 that day post facto, right?

20 MR. SWARTZ: Right. And they were reported -- the hole 227
21 in September of 1995 to the Division of Mines, hole 226
22 September 29th, 1995 and the last one was October 25th.
23 I suppose he could have found out by inspecting the
24 Division of Mines records but that's not what happened.
25 I guess he periodically checks permitted wells.

1 MR. HENDERSON: I don't inspect vertical ventilation holes.
2 I only inspect stuff that we have permits on. And that
3 came up on the --
4 MR. GRANT: They did, in fact, file notice after plugging
5 those wells?
6 MR. SWARTZ: With the Division of Mines which would be
7 consistent with a VVH coal mine.
8 MR. GRANT: One other question that I have, if I may ask,
9 Mr. Chairman.
10 MR. CHAIRMAN: Sure.
11 MR. GRANT: Mr. Henderson, you indicated one of two things.
12 I'm not sure which I heard. One was that you either
13 had a problem with them marking wells before or you had
14 brought this violation to their attention and they
15 didn't proceed to --
16 MR. HENDERSON: In the past there have been several wells
17 that were plugged and no marker was erected and a
18 violation was written for them. They asked for and
19 received a variance to -- we got a letter from Island
20 Creek stating that the Division of Mine Reclamation
21 required them to cut off the pipe and not leave a
22 marker and that variance was approved. They indicated
23 that -- they were aware that there was a requirement
24 under the Division of Gas and Oil regs and we did not
25 receive a request for a variance on that. I have been

1 up to Q-7A and Q-6A in the last month. I don't have
2 the date. There was a sign up. It was a piece of pipe
3 with a sign on it that was stuck in the ground. That
4 was -- I called Mr. Arrington that that was not a
5 permanent marker and I just haven't had a chance to get
6 up to those again. I'm assuming that that's been
7 corrected. As far as the plugging, there was a hole
8 over on the VP-6 mine dump. It was different from this
9 one -- from these three in that it was not permitted as
10 a vertical ventilation hole. It was just strictly
11 permitted as a coalbed methane well. It was plugged --
12 the mine dump was growing and was getting ready to
13 cover the hole and that one was plugged without a
14 permit. A violation was written.

15 MR. SWARTZ: This is really a mystery to me. I mean, if you
16 look at the top third of the second page of this notice
17 of violation to Island Creek these notices of violation
18 are shown for history and is not used in consideration
19 of civil charge recommendations which comes back to
20 where I started. Why is there a civil charge recom-
21 mended here? What are we talking about? We should
22 have received a notice of violation. We got it. We
23 filed to cure our default and administratively we're
24 trying to abate the violation, but I just don't see
25 this -- the letter certainly gives us no assistance as

1 to -- nothing.

2 MR. FULMER: Mr. Chairman, in the think tank position I
3 guess as to how we derived to where we got to, if you
4 notice where it says the inspector shall base his -- it
5 says whether to recommend the civil charge on the
6 following and it has several different items. One of
7 the scopes is third from the bottom, "If the operator
8 has a recent history of similar violations at the site
9 subject to the civil charge or at other sites" that was
10 the first part of that one notice for clarity or
11 telling how this was worked out. The second civil
12 charge recommendation comes from the fourth one down
13 which is, "If the operation is not properly permitted."
14 So those are the two basis if there's a basis on the
15 situation of how we got into the civil charge matter.
16 That's the two items that we used in regards to the
17 procedural rule that the Board passed.

18 MR. CHAIRMAN: Anything further, Mr. Fulmer?

19 MR. FULMER: Not at this time. I just apologize for my math
20 on that letter. It is \$700.

21 MR. SWARTZ: I kept thinking where did that 50 bucks come
22 from and I was kind of afraid to point it out because
23 you might have some answer. Ha, ha.

24 MR. CHAIRMAN: Mr. Henderson, did you have anything further?

25 MR. HENDERSON: No. I'd be happy to answer any questions.

1 MR. CHAIRMAN: Do you have any questions of the State
2 Inspector?
3 MR. GILLUM: I have a question on something that bothers me
4 a little bit. We're talking about both issues still?
5 MR. CHAIRMAN: Yes, sir. You can separate them.
6 MR. GILLUM: It's the second. The issue of negligence and
7 obstruction of enforcement, it kind of appears like
8 this was just a mist -- it did happen. But how much
9 would those points add to this \$2,700 fine? What is
10 the base fine had there been no negligence or no
11 obstruction of enforcement?
12 MR. FULMER: If you will look through the various tables --
13 in the procedure, look in the various tables, that
14 outlines in the evaluation process.
15 MR. SWARTZ: I'll give you my answer. The civil charge
16 amount shows that it could be zero. It goes from zero
17 to 7,000 depending on the points.
18 MR. GILLUM: It's based upon -- is it based strictly upon
19 points?
20 MR. CHAIRMAN: It's based on the points, yes, sir. Those
21 are on Page 6 of the civil charge rules.
22 MR. FULMER: The first table I looked at was the seriousness
23 of the violation and the only thing that we could do
24 here was obstruction of enforcement. That's a permitt-
25 ing issue. It's an enforcement issue. They must have

1 a permit to drill. So that's the only category that
2 you can look at.

3 MR. GILLUM: But you can still write a violation without
4 monetary damage, is that right?

5 MR. FULMER: Yeah. The violation is a violation against the
6 Code. Now, whether that violation creates a serious-
7 ness or whether it's negligible that they did it, that
8 they willfully did it --

9 MR. GILLUM: It looks like to me it was just a problem of
10 communication between the two --

11 MR. FULMER: Well, there's another situation which is not
12 brought up here that they were well aware of that they
13 had to have a permit before they even started. So
14 that's not in here.

15 MR. SWARTZ: But if you are told it's going to be issued on
16 a date is where I'm coming from. Unless that's contro-
17 verted -- I mean, that's what happened. That's what my
18 people tell me and admittedly we didn't have a permit.
19 We can come in here and say we had one on Wednesday
20 when we started drilling because it wasn't issued till
21 Friday. But we were told Wednesday at the latest and
22 that's why we went out there. And the problem I have
23 with obstruction of enforcement, if we sent them a
24 notice saying we were going to start drilling on
25 Tuesday how are we obstructing enforcement. I just

1 don't get it. In the negligence issue, we relied on
2 what they told us. Prompt compliance, they got out
3 there and we turned off the rig. Yes, we stubbed our
4 toe here but it's not -- it's just not right what
5 they're talking about doing.

6 MR. HENDERSON: As far as the notice the Division of Mines
7 -- well, our law and the Division of Mines require that
8 there be a two day notice -- a 48 hour notice before
9 drilling commences. And rather than -- we have
10 situations all the time where notice will be given
11 before a permits issued so that that 48 hours can -- 48
12 hours will happen before the drilling starts. And
13 sometimes it's 48. Sometimes it 72 or whatever so that
14 the company does give the 48 hour notice. Now, as far
15 as the -- let me say, I was on vacation that week and
16 Mark During went out there and inspected the well.
17 I've got his inspection report and he was out there
18 between 11:55 and 12:30 on July 2nd and at that time
19 they were down 636 feet. So drilling had to start no
20 later than Tuesday morning to get 636 feet. I'm not
21 sure exactly the precise instant that drilling started
22 but -- it may have started earlier. I don't know.

23 MR. GILLUM: Is that an obstruction of enforcement or is
24 that negligence? I guess I'm having trouble seeing how
25 you -- what was the negligence points for? You say

1 obstruction would provide you have to have some
2 seriousness of a violation measurement -- measurement
3 of seriousness of a violation.

4 MR. HENDERSON: The four points were assigned under the
5 obstruction of enforcement category is the violation of
6 administrative requirement that that is correctable
7 after some delay to hamper or obstruct enforcement.
8 That was -- a permit is required. And then negli-
9 gence, six points were assigned on that.

10 MR. GARBIS: Let me ask a question. Mr. Swartz, when did
11 your client apply for the permit? How many days --
12 what is typically the amount of time?

13 MR. SWARTZ: More than a month before.

14 MR. MORGAN: This permit had taken longer than usual.

15 MR. GARBIS: More than a month?

16 MR. MORGAN: Yes. That's the reason we had been calling.

17 MR. GARBIS: Do you know who your client talked to in Mr.
18 Fulner's office?

19 MR. SWARTZ: Who did you talk to? Diane. I mean, this is
20 not denied.

21 MR. GARBIS: Wait a minute. And she said it would be
22 ready --

23 MR. ARRINGTON: When I talked to her on Friday she said it
24 would be Tuesday, no later than Wednesday.

25 MR. GARBIS: Is it typical that you rely on people from Mr.

1 Fulmer's office, in other words, and they say the
2 permit will be ready this date and then you typically
3 would commence work even though you did not have the
4 permit physically in your hand?

5 MR. MORGAN: Let me tell you what happened here and a little
6 bit more of the facts on this. Probably on a typical
7 gas well we would probably have waited on the faxed
8 permit. This was a hole that was being drilled into
9 the longwall panel for degasification alone. We had
10 applied for this well somewhat a month or more earlier.
11 The mine was fast approaching this hole. It was, in
12 fact, during miner's vacation. Miner's vacation was
13 running out. The miners were going to come back to
14 work on Monday. That's the reason we were making the
15 calls and we were ready to go. We had people throwing
16 fits. The miners are going to come back. They're not
17 going to be able to get the gas out of the mine. We're
18 going to shut the mine down. We made the call. They
19 said yes, we had a permitted site. We went ahead and
20 set the drill rig up. Whether it was mis-communi-
21 cations we should have followed up on and confirmed
22 that the permit was in place at the time when
23 -- when Les told the operations people that the permit
24 should be in they took off drilling to try to get under
25 the gun and get the hole in place before the miners

1 came back and started to work on it.

2 MR. GABBIS: Mr. Fulmer, is it typical that operators will
3 call to your office and commence work even though they
4 might not physically have the permit or a faxed copy of
5 that? Has that been done in the past? Has that ever
6 been done?

7 MR. FULMER: They call my office and commenced work?

8 MR. GABBIS: I'm sorry.

9 MR. FULMER: They will call and they'll want to know when
10 their permit is going to be issued. And if I say it's
11 going to be issued that afternoon they say, "Well, can
12 we get equipment up there?" and the permit is clear I
13 say, "I have no problem with you moving it up there
14 because we issued a permit and fax them a copy and then
15 mail them a copy. That's a common occurrence day in,
16 day out.

17 MR. GABBIS: So would it not be reasonable if they made a
18 phone call and said, yes, it will be forthcoming within
19 the X number of hours or this date? Is it unreasonable
20 that they would -- it appears that there's a pattern
21 that this might be cutting around the edge a little
22 bit. Of course, my experience in dealing with the DC
23 Government is you would never even think of starting
24 unless you had something in hand.

25 MR. FULMER: Well, again, what I'm saying is if they call

1 and they ask -- if they are talking to me and they all
2 want to know when the permit's going to be issued --
3 because I'm the last man in the lag. Once I sign off
4 on it the permit is issued then they can go to work.
5 So certificately yes, they will call me and if they say
6 can we go ahead and move equipment up there and I say
7 yeah, go ahead. Now, I don't know what the circum-
8 stances are here giving 48 hours notice on a permit
9 that's never been issued yet because 48 hours notice is
10 only if you have a permit with you. I understand that
11 there was a notice that was sent out that they could
12 commence operations now under the assumption that that
13 permit was going to be issued on a certain day. And
14 apparently what happened was they commenced operations
15 without having a permit in hand -- a faxed permit or
16 any sort of permit based upon a phone call that was
17 made to the office that said yeah, your permit may be
18 ready or by the latest Wednesday morning. That's my
19 whole understanding of the whole deal. I came in on
20 Friday and issued the permit.

21 MR. GARBIS: Is it not reasonable -- I think it's reasonable
22 for an outside enterprise to call the Government and if
23 somebody there -- the staff asks a question -- I think
24 that an independent person has to reasonable expect
25 that when somebody from an office gives a date that

1 that has to be reasonably expected. I mean, I don't
2 think that's unreliable.

3 MR. FULMER: I'm not arguing that point. I'm just saying
4 that the reason it's sitting there or the reason is
5 because they commenced operations without a permit.

6 MR. SWARTZ: Of course. I mean --

7 MR. GARBIS: But didn't you also say that on other occasions
8 that people call in and say when am I going to have a
9 permit, it will be this time, and then others under
10 that expectation have --

11 MR. FULMER: No. I didn't say that. I said they call in
12 and they'll ask if their permit is going to be issued
13 and whether or not they can move equipment.

14 MR. SWARTZ: The advanced planning here -- this happened to
15 be a site that was already built. You cannot break
16 ground -- you cannot disturb ground without a permit.
17 So if this hadn't been a pre-existing site for other
18 wells we would have had to have a bull dozer out there.
19 It was luck, I guess, that they could put a drill rig
20 on a pre-existing site and didn't have to break -- a
21 permitted site and didn't have to break ground. But in
22 a typical well you're going to call and say -- because
23 they hire contractors to do all this stuff. You need
24 some advance warning. When can they move their
25 equipment on it? This is a typical sort of thing and

1 we need to know what the rules are. If we can't rely
2 on when are we going to have a permit so that we can
3 tell our contracts so be it. But in the past we have
4 been able to call that office. It's a pretty cooper-
5 ative relationship. I'm not suggesting that's changed.
6 If they know when a permit is going to be issued they
7 tell us. And it's happens regularly and it happens
8 with other operators in my understanding. It certainly
9 happens with this operator because I've sometime made
10 those calls myself. When am I going to have this
11 permit? When is my client going to have this permit?
12 And if they don't know they need to tell us. We're not
13 arguing that we commenced operations without a permit.
14 What we are saying is we were told we would have it --
15 it would be issued no later than Wednesday.

16 MR. GARBIS: And when did they commence --

17 MR. HENDERSON: The drilling was underway Tuesday morning.

18 MR. SWARTZ: How do you know that?

19 MR. HENDERSON: I have -- that was the inspector.

20 MR. SWARTZ: Were you there?

21 MR. HENDERSON: No, sir.

22 MR. SWARTZ: You were on vacation?

23 MR. HENDERSON: Yeah.

24 MR. SWARTZ: You're interpreting somebody else's notes to
25 tell us it started on Tuesday, right?

1 MR. GARBIS: How many feet an hour can you drill? His depth
2 was 600 feet. We can do that in math.

3 MR. SWARTZ: Les, what is your understanding as to what
4 happened on Tuesday and what happened on Wednesday?

5 MR. ARRINGTON: They started drilling on Tuesday morning.

6 MR. SWARTZ: They did. Okay.

7 MR. KING: Is it a procedure that companies call and ask for
8 a permit and Diane can say yes, it's going to be issued
9 on a certain day and that's --

10 MR. FULMER: No. What she'll look at is there's notice
11 provision dates in there and when it usually gets down
12 to me and Diane it's a notice issue. When is that
13 notice going to expire, when is the fifteen days going
14 to be up, when am I going to be able to get it out of
15 the system. See, the system will not let me issue that
16 permit unless that notice issue is out. So she will
17 look into the computer and say, well, it looks like it
18 will come out this day.

19 MR. KING: Is she authorized to make that decision?

20 MR. FULMER: She's authorized to say the fifteen days will
21 be up at this time. I'm the one that has to approve
22 the permits.

23 MR. KING: But I mean can she say -- if I'm a coal operator
24 and I want to know when my permit's going to be issued
25 can she say that to me? It will be issued on Monday

1 but it will definitely be issued on Wednesday. Can she
2 say that with authority?

3 MR. FULMER: No. She can't say that she can issue permits.
4 I don't know what the context was said here, you know,
5 when will my permit be issued or whether she'd say I'm
6 going to issue it later or I'm going to issue it later
7 it's not within her preview. It depends on the
8 questions that you get and how they're framed from the
9 operator of what he's seeking. Because we get them
10 every day. We've got EREC. We've got Consol. I talk
11 to Les on a daily basis about permits and applications,
12 about amendments and so forth of this nature. This is
13 a situation where the drilling started on a Tuesday and
14 the permit was not issued.

15 MR. KING: Until Friday?

16 MR. FULMER: Till Friday.

17 MR. MORGAN: I guess what we're getting to is what makes
18 this a violation that needs to come before you guys for
19 a civil penalty assessment. How many have you had? I
20 know I've sat in here and seen you consider wells that
21 not only have been drilled but in production with no
22 permits and I have not seen you have a penalty assess-
23 ment. So what was it about this circumstance that
24 drove this to you?

25 MR. CHAIRMAN: Can you answer that, Tom?

1 MR. FULMER: Well, one of the circumstances that we do have
2 a problem with is a while back this same situation came
3 up where work was going on on an application but the
4 same time Island Creek had provided for or applied for
5 a VVH hole.

6 MR. HENDERSON: Consol applied for U-16D permit with
7 pipeline and before that was issued they applied to
8 the Division of Mines for a permit to drill the VVH
9 because -- it's a similar situation in that, as Mr.
10 Swartz said or Mr. Morgan said, the panel was getting
11 close to that hole and they had to have it to get the
12 gas off. So a closure order was -- I wrote a closure
13 order in that instance and I got a call from either Les
14 or the Division of Mines with somebody saying that that
15 permit had been -- a vertical ventilation hole had been
16 issued for that hole. So I cancelled my closure order
17 because they did have a permit. Now, subsequent to
18 that after the well was drilled they were still waiting
19 for the notification period to expire. So the permit
20 with the pipeline would then be issued and they built
21 160 odd feet of pipeline without a permit.

22 MR. SWARTZ: I was actually involved in that problem and it
23 demonstrates that my client knows what they are doing.
24 That situation they were told you've got a notice
25 problem, you're not going to get your permit. And we

1 desperately needed that hole. The process is way
2 quicker on the mining side. So we applied for a VVH
3 hole for mine safety purposes so we could vent that
4 hole and continued on with the notice process and time
5 limits that are imposed in Mr. Fulmer's bailiwick
6 before we produced the well. And the difference is we
7 were told there you're not getting a permit. You've
8 got a problem. Here we're told you're getting a
9 permit. So we went forward. There are ways -- if
10 Diane had said forget it, it's going to be ten days we
11 would have pursued other options. But when you tell
12 somebody you're going to have a permit on a day or no
13 later than a day you figure that's viable, it will work
14 for us. If you're told I can't tell you or no you do
15 something different. And I think what this example
16 demonstrates is that we clearly had a problem. We had
17 a notice problem on a CBM well permit. Our alternative
18 is to run the risk of shutting in a coal mine or pursue
19 a VVH hole. So we drill it to the specks of the oil
20 and gas permit and ride out the time limits on that oil
21 and gas permit to get a permit so we can produce it
22 instead of venting it. But, I mean, there are alterna-
23 tives and depending on the kind of answer you get from
24 your government you pursue that course. There's no
25 question we drilled the well without a permit but I

1 think under the circumstances it's understandable why
2 this happened and I just -- I don't think it's approp-
3 riate. I think it's an over reaction. One last thing
4 -- I'm sorry -- that Claude was talking about. It is
5 also somewhat aggravating to be the first people here
6 when I look around and you have had in the last three
7 months people in front of you who have drilled non-
8 permitted wells and produced them, not paid royalty to
9 anybody, basically stealing gas. And here we are
10 reporting all this stuff. Why didn't they pick up the
11 morning and say I hope you're not drilling because you
12 don't have a permit on Wednesday when they got our
13 notice -- we don't need to be playing games here --
14 that we were going to drill. I guess, yeah, we drilled
15 it without a permit but it seems to be not fair.

16 MR. GRANT: I think the Chairman asked Mr. Henderson to
17 address why you are here and I'm not sure I understood
18 the answer to that question.

19 MR. HENDERSON: Drilling without a permit is pretty serious
20 and that's the reason. Like I say, in the recent past
21 they had built a pipeline without a permit. So
22 we're --

23 MR. GRANT: So the civil charges are being brought here by
24 your office because you feel there's been a lot of
25 history of violations with these people?

1 MR. HENDERSON: I wouldn't characterize it as a lot.
2 MR. GRANT: More than others?
3 MR. HENDERSON: I'm not aware of any other companies that
4 have had similar instances.
5 MR. CHAIRMAN: If I can refocus just a little bit. If we
6 could take these one at a time. I think what we have
7 to do by our own rules is deal with the civil charge.
8 That's what we're focused on, not the fact of the
9 violation but the charge amount. The very first one is
10 the one on Island Creek Coal Company for \$700. I'm not
11 trying to cut anyone off. I'm just trying to refocus
12 us on what we have to deal with here. Are there any
13 other issues that the Board -- any questions that the
14 Board has regarding that?
15 MR. GARBIS: Do we have flexibility to lessen the dollar
16 value? Can we --
17 MS. RIGGS: Look on Page 4 under Item 8. The fourth
18 paragraph tells you what your charge is.
19 MR. CHAIRMAN: You may affirm, reduce or increase the civil
20 charge based on the evidence submitted. You also may
21 waive the civil charge.
22 MR. KING: Mr. Chairman, if I may.
23 MR. CHAIRMAN: Sure.
24 MR. KING: On Page 4 of the rules by order of the Board it
25 says that the Board may assess, reduce or increase a

1 fine. I'd like to move that -- we realize there is a
2 violation. I have seen other violations that we
3 haven't had come before the Board. I'd like to move
4 that recognize there is a violation but we waive the
5 fine.

6 MR. CHAIRMAN: Waive the fine on the Island Creek?

7 MR. GARBIS: I second it.

8 MR. CHAIRMAN: A motion and a second. Further discussion?
9 All in favor signify by saying yes. (ALL AFFIRM.)
10 Opposed say no. (NONE.) The fine is waived on Island
11 Creek. On Consol, any further questions on that?
12 (PAUSE.)

13 MR. GRANT: I would move, Mr. Chairman, that since everybody
14 agrees there was a violation that we accept that there
15 was, indeed, a violation and I would assign four points
16 for seriousness of the violation. I would also assign,
17 though, two credit points for prompt compliance in that
18 I understand that this well was stopped immediately
19 which would give us a total of two points.

20 MR. CHAIRMAN: No negligence?

21 MR. GRANT: I'm sorry.

22 MR. CHAIRMAN: There were six negligent points.

23 MR. GRANT: Right. Zero negligent points.

24 MR. CHAIRMAN: I have a motion that we have four seriousness
25 of violation points, zero negligence, two points credit

1 for good faith with a total of two points, a \$200 fine.

2 MR. GARRIS: I second it.

3 MR. FULMER: Mr. Chairman, you might make an inquiry as
4 to --

5 MR. CHAIRMAN: I'm sorry. You're out of order. A motion
6 and a second. Any further discussion?

7 MR. KING: What was the motion, Mr. Chairman?

8 MR. CHAIRMAN: The motion was seriousness of violation was
9 four, degree of negligence zero, good faith credit was
10 two points for a total of two points, a \$200 fine. We
11 have a motion and a second open for further discussion.

12 MR. GRANT: Can we hear what Mr. Fulmer has to say?

13 MR. CHAIRMAN: Sure, if you want to.

14 MR. FULMER: I was just asking on the base of the negligence
15 how it's determined to be zero -- your thought process
16 on it? It's just a simple inquiry. I'm not asking
17 whether you're right or wrong.

18 MR. GRANT: It's my understanding based on what I've heard
19 here today that it's fairly customary for these people
20 to call your office and speak to Diane or whomever and
21 rely upon what they're told to set up their schedule
22 for drilling and, indeed, in this case file their 48
23 hour notice that indeed that's what they are going to
24 do. I'm having a difficult time -- I think they were
25 trying to comply with what I'll say up front, I think,

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20 to call your office and speak to Diane or whomever and
21 rely upon what they're told to set up their schedule
22 for drilling and, indeed, in this case file their 48
23 hour notice that indeed that's what they are going to
24 do. I'm having a difficult time -- I think they were
25 trying to comply with what I'll say up front, I think,

1 a rather loose way of doing things. But I think they
2 were making an effort to comply with industry custom.
3 So I'm having a difficult time finding a lot of
4 negligence there.

5 MR. FULMER: Okay.

6 MR. CHAIRMAN: Any further discussion? If not, all in favor
7 signify by saying yes. (ALL AFFIRM.) Opposed say no.
8 (NONE.) The motion carries. That concludes the
9 business for today. If the Board has anything further
10 we'll have our agenda sent to us for next month. Those
11 Board members that are new, we typically in October
12 plan to have a meeting over in the Breaks Park area,
13 stay there. What might be worth while -- and I yield
14 to you to advise me, but for us to take one day and
15 about a half a day just go through some background
16 information and then do a field tour and take a look
17 at some of the activity that's going on and then the
18 hearing the next day. I know that's taking out two
19 days but if you could plan that around -- and whether
20 you want to do that Monday or Wednesday around that
21 third week in October, our Board meeting, if you will
22 let me know which day -- it's the third Tuesday -- if
23 Monday and Tuesday is better or Tuesday and Wednesday
24 is better would help us on planning purposes.

25

1 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING
2 CONTINUED AS FOLLOWS:)

3 MR. CHAIRMAN: If we could work that out while we're here.

4 Is Tuesday and Wednesday okay?

5 MR. GARBIS: From my personal preference I'd rather have it
6 on Monday because you can travel on a Sunday.

7 MR. KING: That's fine.

8 MR. CHAIRMAN: The third week in October we're going to go
9 with Monday and Tuesday. On Monday we'll be doing with
10 the Board briefings and we'll try to arrange a tour and
11 then on Tuesday we'll have our Board hearing just as a
12 normal hearing at the Breaks.

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14 (End of Proceedings for
15 August 20, 1996.)
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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 August 20, 1996 at the Southwest Virginia 4-H Center, Hillman Highway, 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 9th day of September, 1996.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.