VIRGINIA OIL AND GAS BOARD

HEARING OF SEPTEMBER 17, 1996

9:00 A.M.

AT THE SOUTHWEST VA. 4-H CENTER

HILLMAN HIGHWAY

ABINGDON, VIRGINIA

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September 17, 1996

This matter came on to be heard before the Virginia Gas and Oil Board on September 17th, 1996 at the Southwest Virginia 4-H Center, Hillman Highway, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. WAMPLER: My name is Benny Wampler. I'd Deputy Director for the Virginia Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. I'll ask the members to introduce themselves starting with Mr. Brent.

MR. BRENT: My name is Mason Brent. I'm from Richmond, Virginia. I represent the gas and oil industry.

MR. KING: My name is Clyde King. I live in Abingdon and welcome you who are not from Abingdon. I'm a public member.

MS. RIGGS: I'm Sandra Riggs with the Office of the Attorney General.

MR. HARRIS: I'll Bill Harris, a public member from Big Stone Gap.

MR. FULMER: Tom Fulmer with the Department of Mines, Minerals and Energy.

ITEM I

MR. CHAIRMAN: The first item on the Board's agenda today is the Virginia Gas and Oil Board will receive a semi-annual report on the escrow account established by Board order from Premier Trust Company, the escrow agent for the Board. If you will introduce yourself to the Board.

MR. KING: Good morning. I'm Bill King with Premier Trust Company. I have passed a little outline which I think we've typically done showing the -- now it's by year. I think we had started this out by quarter. It's come along several years here, I guess. We're in the fifth year. Basically the purpose of this is just to show the Board the receipts, the income fees and the different years as a comparison. I think the interesting thing is that the first six months of 1996 with receipts of very close to $400,000 -- almost as the total year of 1995 and more than any other year. So as a matter of fact just -- this report goes through June. I should say just for information purposes we looked at July and August and those receipts totaled another $327,000 plus which would tie in -- if you look at the second sheet, this is just a printout of the holdings in the account as of the end of August with a

total cost there. Look at the first column, a total of $1,873,000 which compares if you look at the total at the end of June, $1,537,000 plus. So that difference being the additional receipts just in the last couple of months. We've added another line at the bottom of the report showing -- at the very bottom -- the marked value. As you know, for the last year or so, maybe a year and a half, we have invested some of the cash to earn a little higher return in short intermediate treasuries or Government agencies and those will fluctuate in value. The idea with it, though, is that we didn't want to be in a position -- we want to be ultra conservative, not be in a position where anything would ever have to be sold in case the rates rise, the bond market's down. At this point we're at a little bit of a premium on the bonds we hold. Looking at the account holdings report we understand always that there's a possibility of money going out and we've been very conservative there. Due to a fairly recent conversation I understand there could be -- there are least some efforts to make some settlements or distributions. So there's quite a bit now -- with the recent receipts of cash there's really a larger percentage than what we had six months ago in money market funds. The money market rate, though, has been

very steady in the 5.1 range over the last six months and if anything they go up. Whether you agree or not with the prospect for interest rates -- that seems to be the consensus that the Fed is more likely to raise. If they raise rates that will affect these short term money market funds. It may not affect our bonds too much as far as their valuations, but it would not be a bad time to invest in a couple more treasuries. I think that's something that again we're probably talking about a potential of an additional one to one and a half percent actually over the money market. Well, one to one and a quarter let's say because we certainly wouldn't go beyond the 1999, maybe 2000. But I don't think we want to go beyond that. The report shows that as of August 30th the current estimated annual income is over $101,000 -- and that's at the bottom of the second to last line toward the bottom -- with the overall average yield for the fund at 5.4 percent. Questions that anyone has about the investment strategy? We would probably -- if we felt we could do it safely I think we would want to invest more in two, three or four year bonds. That's something, though, like I said we'd much rather be very safe on the principal market value side because I'm understanding that the funds we hold belong to others who

1 may not care as much about getting a little more
2 interest and with the chance of losing some of their
3 principal.
4 MR. BRENT: Excuse me. Where has this dramatic increase in
5 receipts come from?
6 MR. KING: I don't know -- I can't tell you for sure which
7 producer. That's something that I actually don't have
8 with me. A transaction statement that shows the
9 receipts, it actually shows receipts from the different
10 producers.
11 MR. CLYDE KING: That would be very interesting, to have
12 that information.
13 MR. KING: Okay. I didn't bring my transaction file with m
14 and I should have done that. I did bring -- what we
15 are doing currently is monthly. I'm pretty sure it's
16 monthly. We send a report to the staff that shows all
17 the transactions for that month and the holdings. Then
18 semi-annually we provide an allocation report. That's
19 what we call it. It's a breakdown of all the different
20 units. And I can say that those were units -- wells?
21 MR. CHAIRMAN: Right.
22 MR. KING: Groups of wells that range from under a dollar to
23 over $200,000. So there are -- and I could probably
24 estimate -- I don't know if you know but correct me if
25 I'm wrong, there's probably a good handful of accounts

over $100,000. I'd say at least a half a dozen or something in that range. As far as what company the majority of the funds are from, is that what you --

MR. BRENT: I'm not as interested in that as I was just --

MR. KING: This recent money?

MR. BRENT: What caused this great increase.

MR. CHAIRMAN: Tom, do you have any insight on that?

MR. FULMER: The only insight I can give you is that the two times that he's talking here in 1995 and 1996 we jumped from 37 billion cubic feet of gas to over 50 billion cubic feet of gas in those two years.

MR. CHAIRMAN: Was that from wells coming on line?

MR. FULMER: Yeah, in 1994 and 1995. So what you're seeing is a reaction of that gas being -- a jump in gas production over a period of time. You can see that.

MR. SWARTZ: Plus the prices.

MR. FULMER: The prices have changed dramatically from last year to this year from production and then royalty payments would be much higher. It got down to like $1.40 on average in 1995 and then it's jumped back up to about $2.60, something like that.

MR. KING: That's probably a good bit of it. I think we can see funds coming in on current accounts and opening new accounts, but I don't know that the new ones are that dramatic.

1 MR. CLYDE KING: Do you keep a record of this, of where it
2 all comes from?
3 MR. KING: Yes.
4 MR. CLYDE KING: You have to, I guess, because that's what
5 is suppose to be distributed.
6 MR. CHAIRMAN: Right.
7 MR. KING: We have a duel record keeping system where we
8 have one fund and all the money is managed and the
9 statements I mentioned monthly that show the trans-
10 actions within that account. Then that's broken down
11 by the -- well, actually for our records -- the VGOB
12 account number which I think is assigned per unit.
13 And in this report there's basically one per page. I
14 can't tell you how many are there but it's a good
15 number of units. So then the earnings that we have we
16 allocate prorata to each unit.
17 MR. CLYDE KING: I notice TVA has dropped some. What do you
18 -- is that not guaranteed by the Federal Government?
19 MR. KING: That's a Government agency. So it's an indirect
20 guarantee. I think the terminology they use is an
21 implied guarantee. But it is not a guarantee like the
22 US Treasury. US Treasury is a direct guarantee of the
23 US Government. An agency whether it be -- TVA is the
24 same status as Federal Home Loan Banks or Federal
25 Nation Mortgage Association. Again, the valuation on

that one being less than the cost is more a function of its rate. Let's see if we have any of the -- well, same as the Treasury note that's due -- actually we would have already collected the first one there showing 83196. That's now collected and in the money market fund, but we received $100,000. The market value had it been sold based on the rate was down to low par. But again that's why we want to be awful careful at how much we invest in bonds because we don't want to have something come up where there's a settlement and all this money's going out and we have to liquidate. That's always a possibility but as long as we have a large percentage in cash -- and overall, as you can, we're just about -- overall in the account we're a little over $700 ahead of par. So there's no credit risk really on any of these bonds. It's more of a market risk or the function of interest rates moving around which causes the bonds to move in value. But the strategy is we would hold those to maturity. We fell like from everything -- the information we have gathered in talking to staff and different industry people is that it's going to be here a while. And having money out till 1999 is not probably in a practical matter much of a risk. I guess our only question from time to time is anyone who wants to give

1 us input as far as -- well, that could probably be in
2 the year 2001, 2001. In other words, if I bought
3 another $100,000 bond and if I go ahead and add to the
4 latter and put it into $200,000 -- of course, at this
5 point that's only four years away and a lot can happen
6 in three or four years, I guess.
7 MR. HARRIS: Let me just ask a question that relates to
8 that. Actually out of curiosity I was wondering. You
9 mentioned earlier about not going beyond 2000. Is
10 there a reason for that other than that's four or five
11 years away and you're just not sure? Is that --
12 MR. KING: No. There's no magic number there. It's more or
13 less --
14 MR. HARRIS: I just wondered if there was something special
15 about 2000 that we didn't know about.
16 MR. KING: No. As a matter of fact, when we bought the 1999
17 bond that was probably -- it may have been earlier this
18 year. I think we've tried not to go beyond a three or
19 four year maturity and as money would roll off of that
20 we would go ahead and add it. So really now or even in
21 the near future we probably would buy a bond due in
22 2000 -- early 2000. At this point really I guess
23 that's only a little over three years. You might be
24 talking about a three and a half year maturity.
25 MR. HARRIS: Currently, though, we invest a percentage and

1 there's another percentage that we're holding or are we
2 investing 100 percent?
3 MR. KING: You mean --
4 MR. HARRIS: In terms of the money that you all are collect-
5 ing, isn't there a percentage of it that's
6 MR. KING: Everything to the dollars is swept -- in other
7 words, this money market fund is an overnight daily
8 institutional money market fund invested in treasuries
9 and Government. They're paying about 5.1 percent. So
10 it's all earning. It's just a question of committing
11 that fund -- in other words, if we needed a million
12 dollars tomorrow it's no problem. We'd write the
13 check.
14 MR. HARRIS: Now, are you asking about taking more money out
15 of that fund and putting it into bonds? Is that what
16 I'm hearing?
17 MR. KING: Right. In other words, that would be -- the
18 preferred strategy, I think, would be to take maybe a
19 little more of that and keep -- buy another 100 or 200
20 in treasury notes. Right now on a three year we could
21 get something in the neighborhood of 6.2/6.3, in that
22 range, and rates -- it's probably a good time to buy
23 bonds. The rates have dropped off just in the last few
24 days just a little bit -- but if on September 24th the
25 Fed meets and if they raise the Fed funds rate that

1 will almost immediately affect the money market fund as
2 far as what it's yield is. The money market fund is a
3 non-fluctuating dollar price but the rate can fluctuate
4 every day and it does just by a few hundredths of a
5 percentage point or something. The bonds, though, a 25
6 or 50 basis point or half a percent on rates -- on
7 overnight rates or very short term rates will affect
8 these bonds in price. In effect, if a rate increase is
9 made it will affect the one year and two as far as the
10 rate that they're going to offer from that time on more
11 than say a ten year. But here again by having money
12 like this coming due every year -- out three or four
13 years these rate swings won't affect us too much that
14 way.
15 MR. HARRIS: Suppose we decide to put more money in, take it
16 out of the market fund and put it in bonds. Let's say
17 we take one-third of what's there what is the worse
18 case? That all of a sudden the court cases will
19 settle and we'll have to pay out lots of money? How
20 does that affect -- I know that with CDs and bonds I
21 would assume that there's a penalty for early withdraw-
22 al.
23 MR. KING: No. On these it's in effect the market value.
24 If we pay -- let's take the very last one, the treasury
25 note on this report due 5/15/99. The very last

1 treasury note, that's the longest investment we hold.
2 It's 6.375 due 5/15/99. It's $100,000. Actually on
3 that one we paid -- the first column is the cost. We
4 paid 99,656 because we bought that in the secondary
5 market and the value as of the end of August if we sold
6 it right then would have been around $100,218. Now,
7 here is the danger. Let's say that we decided we could
8 invest most all this money -- went into bonds. We
9 could take -- let's just call it a million. Take a
10 million dollar that's currently earning 5.1 and we
11 could average on that 6.1 and we could increase a
12 million dollars, get an extra one percent. That's not
13 bad. We're talking about a million dollars. The
14 problem is we have this money invested. To sell the
15 bond you sell it at the market. If rates -- if we did
16 this now and later this year or early next year rates
17 went up the value of our bond portfolio will go down.
18 Now, that's not a problem if we're going to hold those
19 to maturity. If this goes on ten years and does roll
20 over it will mean nothing in the long run. But, again,
21 if we have a settlement and we have to pay this whole
22 thing out and we have a million or more in bonds and
23 the market is down then we've got to sell those and
24 take a loss. So there is a trade off there and that's
25 really -- again, in managing the money our preference

1 would be to invest and get the higher yield.
2 MR. CHAIRMAN: One thing we may want to consider as a Board,
3 and I'll just toss it out, is that we hold the money
4 market fund at a million dollar and we take the excess
5 of that and move it into the other -- anything over a
6 million. That should be a -- I mean, who knows. I
7 certainly don't have any magic answer. But at least
8 until we build more experience that may be a more
9 reasonable approach and that will give you another
10 300,000 dollars to invest in long return higher
11 interest bearing accounts.
12 MR. KING: Right. That would be good and we operate on that
13 basis if that's the --
14 MR. CLYDE KING: Do you have a figure that would give you
15 what -- if the scenario went to the point that you had
16 to pay out, say the court decided this, what figure is
17 that? The original principal?
18 MS. RIGGS: All of it theoretically if everybody came in
19 and applied to get their money.
20 MR. CLYDE KING: But if's been making money is that added
21 back?
22 MS. RIGGS: Allocated to the drilling unit's proportion-
23 ately.
24 MR. KING: That income accrues for them. In other words, in
25 effect they are paying our fees. And the net income is

1 allocated to those accounts so that while -- in the
2 interim before this is decided their money's at least
3 earning something and it's earning much better net than
4 say a savings account or bank money market rates.
5 MR. BRENT: I think the question is is there someone that
6 can keep a real good handle on the potential for these
7 payouts. I don't know who that person is.
8 MR. KING: I think it is Tom and the staff. And we talk
9 fairly regularly and I think if there were something
10 coming up -- and I think also the companies paying in
11 that deal with their interest holders, if they know
12 something's going on a lot of times they will let us
13 know. Really I think the small amounts that we've paid
14 out so far have all been unlocateable people found.
15 MS. RIGGS: You've got two scenarios. You've got coalbed
16 methane gas where the courts have not yet determined
17 who is entitled to receive the money as between the
18 coal owner or the gas and oil owner and we even have
19 some surface owners who have made claims. When that
20 underlying issue is resolved as to who is entitled to
21 receive this royalty theoretically then depending on
22 which class was in the pooling they would come in and
23 apply to get their money. And that would be across the
24 board as to all coalbed methane units. So you could
25 theoretically get a court decision that said the gas

1 and oil owner, the coal owner, the surface owner,
2 whoever, is entitle to receive the royalty on this and
3 once that case was final, no longer subject to appeal,
4 that class of people would come in and apply to get
5 their money out of escrow. That would be the greatest
6 demand on the fund. The other classification of people
7 whose moneys is in this fund even in the conventional
8 side are people who are unknown or unlocateable heirs
9 where if they could find them they would pay it to them
10 today but they can't locate them and so in the interim
11 they escrow the money. Now, the distributions that
12 have been made to date is in that classification of
13 people. Suddenly they appear, they say, "Here I am
14 and I want my money" and we go through this application
15 process and it comes before the Board and we approve
16 the bank to distribute. Those have been very minuet
17 distributions. I mean, probably under a hundred
18 dollars or whatever. Very fractured interests within
19 the unit. So the one that would create the big demand
20 that would probably impact on this would be a court
21 decision that decided the underlying issue of who's
22 entitled to the royalty on the coalbed methane gas.
23 And there are cases pending in the Circuit Court in
24 Buchanan County that have been on hold five years and
25 have never been decided. There's nothing actively

1 going on. Now, there's a third scenario which is I
2 think something that perhaps Mark has been working on
3 and I think that he's referring to Mark's situation
4 where they got wind that there may be a distribution.
5 And that's where all the parties regardless of what the
6 courts say get together and reach a settlement and as
7 to that drilling unit then there's a distribution
8 pursuant to the settlement as opposed to pursuant to a
9 court order. Now, that would not be across the board
10 as to all drilling units but it would be unique to
11 those in which those parties had an interest.
12 MR. CLYDE KING: Is there any figure as to how much that
13 would be?
14 MR. SWARTZ: A lot.
15 MS. RIGGS: Well, the settlement that I think they are
16 talking as a half a million. Is --
17 MR. SWARTZ: I think it would be reasonable to assume it
18 would be over a half a million dollars. But this deals
19 blows hot and cold. It could happen tomorrow and it
20 could not happen for a couple of years.
21 MS. RIGGS: So the answer to the question is there's nobody
22 that can control those variables and give you the
23 answer that you're really looking for.
24 MR. KING: But it sounds like a million dollars liquid. As
25 far as that scenario, the third one you outlined, would

1 be pretty safe. In as far as a case getting a lot of
2 attention -- I mean a court case -- and some decision,
3 isn't it likely that would be appealed?
4 MS. RIGGS: Yes.
5 MR. CHAIRMAN: It would be several years. If it moved today
6 it would probably be two to three years if it were
7 moving through the system.
8 MS. RIGGS: And I think that's where we picked this three to
9 four year window. It's even assuming that the courts
10 activated one of these cases and it went through the
11 full appellant process you're probably talking -- well,
12 the down side is that you might have a small market
13 risk if you had to cash them in. But it probably
14 wouldn't exceed the interest. When you compare the
15 market value to the cost you just have to look at that
16 risk and --
17 MR. KING: Right. And on treasuries, again staying say no
18 more than four years, the chance of anything really
19 substantial as far as a loss is pretty minimal. And
20 given -- let's say something happened and I would
21 assume -- let's just make this assumption. Worse case,
22 if there were a judicial decision we would probably
23 have at least a year and using that time period we
24 could try to sell -- instead of having someone call and
25 -- we get an order that this money has to go out at the

1 end of the month, that would be a disaster. But I
2 think that's very, very unlikely. So if we know we
3 have a time frame to work on we should be okay.
4 Generally looking at this, every so often we -- not
5 just with maturities but as it grows we would add. But
6 right now that would -- well, we'd be getting close to
7 about 50/50 but say 40 percent in permanent bonds
8 right now, something like that.
9 MR. CLYDE KING: Is it your legal opinion to the Board that
10 if we put the million dollars cap and then reinvested
11 the other in bonds that we would be not --
12 MS. RIGGS: That's not a legal opinion. That's an invest-
13 ment decision.
14 MR. CLYDE KING: You are our legal advisor.
15 MR. KING: Well, that's the thing and I understand the Board
16 doesn't -- if the Board was going to make the invest-
17 ment decisions they probably wouldn't need us.
18 MS. RIGGS: Yeah. They're just looking for some guidance.
19 They're not really looking for the Board to make that
20 decision.
21 MR. BRENT: Mr. Chairman, I think your recommendation is as
22 good as any, that we hold one million dollars in money
23 market funds and then invest any excess of that in
24 treasury instruments.
25 MR. CHAIRMAN: It gives them a little more flexibility.

1 MR. HARRIS: I do have one question about that, though. The
2 money is continuously coming in, payments from the
3 companies. Are we saying -- at present that money
4 automatically goes to the money market fund, is that
5 what's happening?
6 MR. KING: Right. It sweeps the day it comes in, yes.
7 MR. HARRIS: So it drops in there and then when you get
8 permission from us, suggestions or whatever, however
9 it's done, then that's when you're buying the treasury
10 notes? Are you doing this automatically at this point
11 or are you waiting for us to say yes --
12 MR. KING: No, not necessarily waiting. When I come to
13 visit you all I like to have any input and maybe
14 discuss this. As an example, right now absent this
15 maybe I would feel comfortable because we just had the
16 maturity, buying another one or two. So certainly
17 maybe adding another two to three bonds of $100,000
18 each right now I don't have a problem with. And from
19 the information I'm hearing -- that's the critical
20 thing. We're willing to be held accountable for
21 investing the money but based on the based information
22 that we can get. And that's really the critical thing.
23 I'm comfortable with that.
24 MR. HARRIS: Is that a motion down there or what?
25 MR. CHAIRMAN: I don't think we need to do that really. I

1 mean, it's basically just saying to them that based
2 just on an open discussion that we've had that they
3 ought to stay conservative, stay on the track we've had
4 and not drop the money in the market below a million
5 dollars and that still leaves them their investment
6 discretion.
7 MR. KING: Right. And I think that also -- when this gets
8 over two million dollars then that million might need
9 to change. In other words, I don't think we would go
10 over 50 percent in permanent investments. So that
11 sounds good.
12 MR. CLYDE KING: Do you give this to the Board? For us few
13 fellows have only been here a while -- some of us. Is
14 this annually?
15 MR. KING: That statement actually is with the -- like I
16 say, this monthly report we give shows the transactions
17 and that list and that goes to the staff every month.
18 Now, we could do anything else that you'd like as far
19 as --
20 MR. CLYDE KING: I'd like to see it a little more than just
21 once every six months or something.
22 MS. RIGGS: He reports. He comes here and physically
23 reports quarterly. That's the inkling that it's set up
24 on right now.
25 MR. KING: Actually I think it's been a while. I think it's

1 been six months.

2 MR. FULMER: They had agreed that there would be two reports

3 done from the escrow agent -- the previous Board --

4 involving a mid-year type reporting and then a final

5 year reporting based upon the fact that the incomes

6 come in differently during the year. So it's kind of

7 like a post 1996 -- next time that the escrow agent

8 comes back will be at the end of the year and then

9 he'll do one in September which reflects the first

10 part.

11 MR. CLYDE KING: But you get one monthly?

12 MR. FULMER: We get a report from them monthly in regards

13 to --

14 MR. CHAIRMAN: He can copy the Board with that if you want.

15 MR. CLYDE KING: Could you copy us with that?

16 MR. FULMER: Yes, sir.

17 MR. CLYDE KING: We're talking about a pretty good sizeable

18 amount of money.

19 MR. FULMER: What report do you want? We get two reports.

20 MR. KING: No, no. Copying this would be much too --

21 MR. CHAIRMAN: Right. You wouldn't want the individual.

22 You would want the summary.

23 MR. CLYDE KING: The summary like this.

24 MR. KINGS: Just the one page asset list holding. I don't

25 know that the transactions would be all that meaning-

This report which is by via account is done semi-annually. Like I said, the other asset listing is monthly and that's on one page.

MR. HARRIS: I seem to remember that in the past we had received some kind of summary that did indicate -- I don't know if it had well numbers or companies or something. I keep thinking we did and it wasn't that thick. I don't know if it was in a different format.

MR. FULMER: Well, it was kind of the same report but back then we didn't have that many wells.

MR. HARRIS: Okay. Maybe that's what it was.

MR. KING: I think only probably a year or two ago this was a third this size.

MR. HARRIS: Maybe that's what it was. I remember seeing a series of documents. Okay.

MR. CLYDE KING: And they're going to get bigger.

MR. CHAIRMAN: Oh, yeah. Tom can do that. Any other questions of Mr. King? Thank you for your time. We appreciate it very much.

MR. KING: Are there any members that are not here that may need one of these?

MR. CHAIRMAN: Yes, sir. We can submit the copies to them.

MR. KING: I'll just leave these with you.

ITEM II

MR. CHAIRMAN: The next item on today's agenda is the Virginia Gas and Oil Board will consider a petition from Equitable Resources Energy Company for an order to pool a conventional gas well identified as V-3400. This is docket number VGOB-96/09/17-0554. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. KAISER: Mr. Chairman and members of the Board, Jim Kaiser on behalf of Equitable Resources Energy Company. This is a forced pooling of a conventional well in the Indian Mountain area. We do have a revised Exhibit #B that we will submit to you in conjunction with Mr. Baker's testimony. I think at this point we have 97.43 percent of the unit under lease, leaving just one tract representing 2.57 percent of the unit unleased and thus the reason for our appearance before you today. Our witnesses in this matter will be Mr. Dennis Baker on land matters and Mr. Bob Dahlin on operations. I'd ask that they be sworn at this time.

COURT REPORTER: (Swears witnesses.)

MR. CHAIRMAN: The record will show there are no others that wish to address the Board in this case. You may proceed.

DENNIS BAKER

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

DIRECT EXAMINATION

BY MR. KAISER:

Q. Mr. Baker, could you state your full name for the record, who you're employed by and in what capacity?

A. My name is Dennis Baker. I'm employed by Equitable Resources Energy Company, Eastern Region, as a senior landman.

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

A. Yes, they do.

Q. Are you familiar with Equitable's application for the establishment of a drilling unit and pooling order for EREC well V-3400 that was dated August 16th, 1996?

A. I am.

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

A. Yes, we do.

Q. Does the proposed unit depicted at Exhibit #A include all the acreage within 2,500 feet and 1,250 radius of proposed well V-3400?

1 A. That's correct.
2 Q. What is the interest of Equitable in the unit?
3 A. At the time of the application we had 72.76 percent.
4 At the time of hearing we have a revised exhibit which
5 indicates a 97.43 percent interest leased.
6 Q. Could you indicate the percentage of unleased interests
7 within the unit?
8 A. At the time of application the unleased interest was
9 27.24 percent. At the time of the hearing as reflected
10 on the revised exhibit it's 2.57 percent.
11 Q. Are all the unleased parties set out at the amended
12 Exhibit #B?
13 A. Yes, they are.
14 Q. Prior to filing this application did you continue to
15 make efforts to attempt to work out an agreement
16 regarding the development of the unit involved here
17 with any unleased interest?
18 A. Yes, we did.
19 Q. Subsequent to the filing of the application have you
20 continued to attempt to reach an agreement with the
21 respondents listed at Exhibit #B?
22 A. Yes.
23 Q. As a result of these efforts as we have pointed out
24 could you list for the Board the additional lease that
25 we have acquired since the time of the filing of the

1 application?

2 A. Yes. Shown on the revised exhibit under Tract 3 we

3 have acquired an oil and gas lease from Mabel Rasnick,

4 a widow, covering the 24.67 percent of the unit.

5 Q. Were efforts made to determine if the individual

6 respondents were living or deceased or their where-

7 abouts, and if deceased were efforts made to determine

8 the names and addresses and whereabouts of the success-

9 ors to any deceased individual respondent?

10 A. Yes.

11 Q. Were reasonable and diligence efforts made and sources

12 checked to identify and locate unknown heirs to include

13 primary sources such as deed records, probate records,

14 accessors records, treasurers records and secondary

15 sources such as telephone directories, city director-

16 ies, family and friends?

17 A. Yes.

18 Q. Mr. Baker, in your professional opinion was due

19 diligence exercised to locate each of the respondents

20 named within revised Exhibit #B?

21 A. Yes, they were.

22 Q. Are the addresses set out in revised Exhibit #B to the

23 application that was handed out to the Board the last

24 known addresses for the respondents?

25 A. Yes.

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

A. Yes, we are.

Q. Does Equitable seek to force pool the drilling rights of each individual respondent if living, and if deceased the unknown successor or successors to any deceased individual respondent?

A. Yes.

Q. Is Equitable seeking to force pool the drilling rights of the person designated as trustee if acting in that capacity, and if not acting in such capacity is Equitable seeking to force pool the drilling rights of the successor of such trustee?

A. That's correct.

Q. Are you familiar with the fair market value of drilling rights in the unit here and in the surrounding area?

A. Yes, I am.

Q. Would you advise the Board as to what those are?

A. Five dollar per acre consideration, a five year term with a one-eighth royalty.

Q. Did you gain this familiarity by acquiring oil and gas leases and other agreements involving the transfer of drilling rights in the unit involved here and in the surrounding area?

A. Yes.

Q. In your opinion do the terms you have testified to represent the fair market value of and the fair and reasonable compensation to be paid for drilling rights within this unit?

A. Yes.

Q. Based on this and to the respondents who have not voluntarily agreed to lease do you recommend that the respondents listed at revised Exhibit #B who remain unleased be allowed the following options with respect to their ownership interests within the unit; 1) Participation 2) A cash bonus of five dollars per net mineral acre plus a one-eighth of eight-eighths royalty 3) In lieu of a cash bonus and one-eighth of eight-eighths royalty share in the operation of the well on a carried basis as a carried operator under the following conditions: Such carried operator shall be entitled to the share of production from the tracts pooled accruing to his interest exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto of such tracts but only after the proceeds allocable to his share equal A) 300 percent of the share of such costs allocable to the interest of the carried operator of a leased tract or portion thereof or B) 200 percent of the share of such costs allocable to the interest of the carried operator

of an unleased tract or portion thereof?

A. Yes. Those options are correct.

Q. Do you recommend the order provide that the elections by a respondent be in writing and sent to the applicant at Equitable Resources Energy Company, Eastern Region, PO Box 1983, Kingsport, Tennessee, 37662, attention Dennis R. Baker, Regulatory?

A. That's correct.

Q. Should this be the address for all communications with the applicant concerning the force pooling order?

A. Yes.

Q. Mr. Baker, do you recommend the force pooling order provide that if no written election is properly made by a respondent then such respondent should be deemed to have elected to cash royalty option in lieu of participation?

A. Yes.

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

A. Yes.

Q. If an unleased respondent elects to participate should that respondent be given 45 days to pay the applicant for respondent's proportionate share of well costs?

A. Yes.

Q. Does the applicant expect the party electing to

participate to pay in advance that party's share of completed well costs?

A. Yes, we do.

Q. Do you recommend the force pool order provide that if a respondent elects to participate but fails to pay respondent's proportionate share of well costs satisfactory to the applicant for the payment of well costs the respondent's election to participate should be treated as withdrawn and void and such respondent should be treated just as if no initial election had been filed under the force pooling order?

A. That's correct.

Q. Should the applicant be allowed 60 days following the recording date of the order and thereafter annually on that date until production is achieved to pay or tender any cash bonus becoming due under the force pooling order?

A. Yes.

Q. Do you recommend the force pooling order provide that where a respondent elects to participate but defaults in regard to the payment of well costs any cash sum becoming payable to such respondent be paid within 60 days after the last date on which such respondent could have paid or made satisfactory arrangements for the payment of the well costs?

A. Yes.

Q. Do you recommend the force pooling order provide that if a respondent refuses to accept any payment due, including any payment due under said order or any payment of royalty or cash bonus or said payment cannot be paid to a party for any reason where there is a title defect in the respondent's interest that the operator create an escrow account for the respondent's benefit until that money can be paid to the party or until the title defect is cured to the operator's satisfaction?

A. Yes.

Q. Who should be named the operator under the force pooling order?

A. Equitable Resources Energy Company, Eastern Region.

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

MR. CHAIRMAN: Questions, members of the Board?

MS. RIGGS: When you say Eastern Region is that a difference between what we've done in the past where it's Equitable Resources Energy Corporation?

MR. KAISER: No. It's just an identification of the eastern region versus the Gulf coast. I think there's a western region.

MS. RIGGS: But in terms of the operating entity it's the

same?

MR. KAISER: It's the same.

MR. CHAIRMAN: Other questions?

(Witness stands aside.)

MR. CHAIRMAN: Call you next witness.

ROBERT A. DAHLIN, II

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

DIRECT EXAMINATION

BY MR. KAISER:

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

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

Q. Have you previously testified on many occasions before the Virginia Gas and Oil Board and have your qualifications as an expert witness previously been accepted by the Board?

A. Yes, I have.

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

A. They do.

Q. Under your job duties are you familiar with the proposed exploration and development of the unit involved here under EREC's proposed plan of development?

A. Yes, I am.

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

A. 5,175 feet.

Q. Will this be sufficient to penetrate and test the common sources of supply in the subject formations?

A. Yes, it will.

Q. Is the applicant requesting the force pooling of conventional gas reserves not only to include the designated formations but any other formations excluding coal formations which may be between those formations designated from the surface to the total depth drilled?

A. Yes, we are.

Q. Will the initial well be at a legal location?

A. It's a legal location, yes.

Q. What are the estimated reserves of the unit?

A. We anticipate 600 million cubic feet.

Q. Are you familiar with the well costs for the proposed initial unit well under the applicant's plan of development?

A. Yes.

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

A. Yes.

Q. Was this AFE prepared by an engineering department knowledgeable in the preparation of AFEs and knowledge in regards to well costs in this particular area?

A. Yes, it was.

Q. In your opinion does this AFE represent a reasonable estimate of the well costs for the proposed unit well under the applicant's plan of development?

A. Yes.

Q. Would you please state both the dry hole costs and the completed well costs?

A. The dry hole costs are $149,500 with the completed well costs of $275,800.

Q. Do these costs anticipate a multiple completion of the well?

A. Yes.

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

A. Yes.

Q. Mr. Dahlin, in your professional opinion will the granting of this application be in the best interest of conservation, the prevention of waste and protection of

correlative rights?

A. Yes, it would.

MR. KAISER: Nothing further of this witness at this time, Mr. Chairman.

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

MR. KING: I have one. The 600 million cubic feet, is that a normal, abnormal -- what is your opinion?

THE WITNESS: Well, let me preface it by saying that we have three wells drilled in the area and none of which are on line currently. But from the open flow testing and what we encountered during drilling we think this is going to a better than average well for the area.

MR. CHAIRMAN: Other questions?

(Witness stands aside.)

MR. CHAIRMAN: Do you have anything further?

MR. KAISER: Nothing further at this time, Mr. Chairman.

MR. HARRIS: Mr. Chairman, I move that we approve the petition as amended.

MR. KING: Second.

MR. CHAIRMAN: A motion to approve and a second. Any further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) It's a unanimous approval. Let's take five minutes.

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

ITEM III

MR. CHAIRMAN: The next item on today's agenda is the Board will consider a petition from Equitable Resources Energy Company, Eastern Region, to modify a prior order issued under docket number VGOB-93/03/16-0348 for the Oakwood Coalbed Gas Field located in Buchanan County, Virginia. This is docket number VGOB-93/03/16-0348-01. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. WILHOIT: Members of the Board, my name is Tony Wilhoit. I'm here on behalf of Equitable Resources Energy Company, Eastern Region. I have a witness today, Mr. Bob Dahlin from Equitable and Mr. Kaiser seated next to me here.

MR. CHAIRMAN: Are there any others that with to address the Board in this matter at this time? I'd ask Tom Fulmer before you get into the testimony to give the Board a brief overview of the Nora and Oakwood field rules that the Board has previously adopted.

MR. FULMER: As Benny said, he asked me to do a brief overview or try to bring you up to date, especially the newer Board members, of where the Board has been and what's confronted with the Board today. This begins back in 1989 and comes up until today, 1996. So we've

got a span of a couple of years where rules have been made and field orders have been heard by the Board and data and so forth with regards to the development of field orders. This is a small summary sheet I did do for you in regards to the Board orders that have been issued by the Board in regards to the Nora Field and the Oakwood Field. There is one error. The first Board order should read OGCB-989 instead of 189. That was the original Nora Board order that was done in hearing on January 26th, 1989 and the date it was entered was March 20th, 1989. Basically this map shows the Nora Field that the Board order covered. Basically it covers the counties of Wise, Dickenson, Buchanan, Russell. I don't believe it covered any of Tazewell County. And basically it set up 60 acre units for the development of coalbed methane. These were 60 acre units plus or minus a fifteen percent tolerance. They covered seams from the Raven down through the Pocahontas and other associated formations in between. It required that the well could not be located less than 300 feet from the outside unit boundary. No wells would be located less than 600 feet from another well in the field and no more than one well per unit. This is the first Board order the Board entered in regards to the development of coalbed methane. The second

order that the Board issued covered an area in Buchanan County and this was petitioned by OXY, USA at that time. That was done and the Board order number there is OGCB-390. You'll see some of these references in regards to the number and why I do point them out in regards to some of the orders that you will receive. I gave Benny a package of the orders that we'll be discussing today. It's the Board order that was issued and needs to be referenced in those orders as being amended and modified, so forth. This was called the Oakwood Coalbed Methane Field and it was done April 10th, 1990 and entered on May 18th, 1990. Essentially it established 80 acre drilling units and the seams were from the Tiller including the Upper Sea Board all the way through the Pocahontas series and various unnamed seams. Again, it required that no wells were to be drilled closer than 600 feet from any other well in the field. The Board ruled that the Oakwood Field was a distinct reservoir from the Nora Field and thereby modified the Nora Field order to include certain lands which would be in the Oakwood Field. Because of it's unique nature which appears in the field the Board did allow the venting of the wells for purpose of mine safety. Now, that area that we're talking about is this area here that was excluded from

1 the original Nora Field order. A closer view of it is
2 here at a much larger scale or smaller scale, however
3 you want to look at it. This was the meshing of the
4 Nora Field and the Oakwood Field. And this was the
5 area that was exempted out of the Nora Field and put
6 into the Oakwood Field. The next orders involved the
7 Oakwood II. Now, before I get there I do want to
8 explain something. This map right here shows the area
9 basically in this area and represents basically the
10 mining areas of Consolidation Coal and at that time
11 Oxidential which owned Island Creek Coal Company.
12 These are various areas of what they called the
13 Virginia Pocahontas series. I do not recognize this
14 one. I believe this is the Beatrice area that we're
15 talking about or the Board has heard things about.
16 This area in here is the Buchanan Mine by Consolidation
17 and the reason I bring this out is there are several
18 orders that were issued by the Board during this time
19 period after the Oakwood that involved the establish-
20 ment of longwall panel units and some sealed gob units
21 that were separate and distinct from the Oakwood order
22 here. The Oakwood order itself did not address itself
23 to active mining areas. It only involved itself in
24 areas not being actively mined. So there was a large
25 area where development was desired by Consolidation at

1 the time and they came before the Board and requested
2 that units be established in regards to some sealed gob
3 areas and in regards to the development of their
4 longwall mining units that they were developing in the
5 Buchanan #1 mine. And that's in this area here. Those
6 covered several areas and they were -- I've got it
7 listed on another sheet. But they covered basically
8 the longwall panels of what they called NELW-1 through
9 10 and SLW-1 through 12. They had sealed gob units of
10 the Bun-1 and the BUNE-1 areas. In the chain of events
11 there was a Board order issued for what they called the
12 Oakwood II. The Oakwood II basically covered those
13 areas that were in active mining. So it kind of
14 reversed itself, came back full force. OXY came in
15 wanting to establish a means by which they could
16 develop their active mining gas -- produce from the
17 active mining and allocate it back to the longwall
18 panel -- across longwall panels using the same grid
19 system they had developed in the Oakwood I as far as
20 different allocations. And that developed into the
21 Oakwood II order which covered that. You'll see those
22 references throughout a lot of these orders, Oakwood I,
23 Oakwood II, so forth. That was what happened in the
24 Oakwood II. Now, that was done in 1991 -- December
25 17th, 1991 and entered May 26th, 1992. The next phase

1 was a petition that was submitted by Pocahontas Gas
2 Partnership, I believe, at that time in regards to
3 their extension of the Oakwood Field and that order was
4 92/02/16-0336, to establish the Hurricane Branch
5 Extension. That area -- I think I copied in regards to
6 what I handed out is the last two maps. I believe
7 there's a couple of maps at the end there with that
8 little summary I submitted. This was the petition that
9 came before the Board in regards to extending the
10 Oakwood Field to the east in the area designated as the
11 Hurricane Branch Extension. The first petition was
12 requiring that they wanted to include 4 more units to
13 the east in regards to the Oakwood Field and that the
14 rules that applied would be only the Oakwood I Field
15 order. It would not include active mining period.
16 They again came before the Board in regards to the
17 Hurricane Branch and there they wanted to -- that was
18 February 16th, 1993. It was unclear to my knowledge in
19 reading the order exactly what particularly that
20 modification actually did. I believe they included one
21 order on another order in the same hearing. That's the
22 way I look -- I think I'm looking at it that way. But
23 eventually what that did was again, establish the
24 extension of the Hurricane Branch.
25 MR. DAHLIN: Tom, let me ask you, this extension was from

1 the existing Oakwood to the west?
2 MR. FULMER: This went into the east.
3 MR. DAHLIN: That went to the east?
4 MR. FULMER: This was the Hurricane Branch to the east in
5 Oakwood.
6 MR. DAHLIN: All right.
7 MS. RIGGS: Tom, I don't recall exactly without reviewing
8 these in depth but I think what that order did was do
9 away with those longwall panels and put them back under
10 the Oakwood scheme of things. You mentioned the
11 Northeast Longwall and the Southwest Longwall and the
12 BUN-1 and BUNE-2.
13 MR. FULMER: Yeah.
14 MS. RIGGS: I think we had an order at some point that
15 revoked those orders and put all those areas back under
16 the Oakwood scheme where it would be allocated based on
17 the longwall panel.
18 MR. FULMER: Right. Those two that I mentioned, again, then
19 culminated in the next one on the second page which
20 was VGOB-93/03/16-0438 which essentially modified the
21 Hurricane Branch Extension and included the rules of
22 the Oakwood I and the Oakwood II field rules in that
23 area that was extended. The next step occurred --
24 MR. KING: Can I ask a question?
25 MR. FULMER: Yeah.

1 MR. KING: You said -- maybe I'm not following correctly.
2 You said Oakwood II. Now, that's an active mine?
3 MR. FULMER: That's active.
4 MR. KING: Then you said something about Oakwood I.
5 MR. FULMER: Oakwood I was the original petition that came
6 before the Board to establish these units for the
7 extension and they -- it culminated in this order which
8 is the 93/03/16-0348 in regards to adding the Oakwood
9 II orders.
10 MS. RIGGS: The Oakwood I basically applies to in advance of
11 mining. Oakwood II is during active mining. Neither of
12 the Oakwood orders apply to sealed gob production. So
13 when they get to the sealed gob in Beatrice they come
14 in and rather than the 80 acre grid you're talking
15 about the entire area of the sealed mine. And that's
16 done by separate field order. So Oakwood I is in
17 advance of mining. Oakwood II is during active gob
18 production and active mining. Neither of the Oakwood
19 orders cover the sealed gob scenario which is post-
20 mining.
21 MR. KING: Which is what we have now there?
22 MR. FULMER: Yeah.
23 MS. RIGGS: Beatrice was a sealed gob that we considered
24 last month. That's an example of that.
25 MR. FULMER: The extension that they were requesting at the

time to add to the Oakwood Field in general was an area in which they planned to develop a mine. They drilled a series of wells ahead of preparation of the mine and they had come in and they showed some projections involved in what that anticipated mine may do. So as thing came about they decided to come back in and do the Oakwood II rules on that same area because they had set up the panels for the allocation. And that was just only in that one extension. Now, the one thing that the 0348 does also at the time was not only did this area exist in the previous Board orders in regards to the Hurricane Branch Extension but it also expanded the field. And that expansion occurred -- I don't know if I can show you on this map. But anyhow, this line here basically shows the top of the Oakwood Field. It's not out of Virginia. The order that was entered at that time, this 0348, extended the boundaries -- you may want to come up here and look at this if you need to. It extended the boundaries from the original line which is here and that extension was somewhere in here. It extended it all the way up to the State line and set the 80 acre units. Again, coming down through here to this point it was in the Oakwood Field. All this in here is under the Nora Field order and this here is the Oakwood Field. It comes down to this point right here.

1 This is still Nora here. This is Oakwood here. You
2 have five units that was extended to the western part
3 of the Oakwood Field, came down all the way to the
4 original bottom section. So this section right here
5 was also added into the Oakwood Field and this area
6 over here was added up to the State line. And that's
7 what 0348 did. The next series was the 0349 which I
8 mention here only in the aspect that there was some
9 language, I think, that was introduced into the order
10 in regards to how the Oakwood I wells that were
11 originally drilled in the extension area would be
12 handled as to allocation across the longwall panel,
13 that that would not come into effect until such time
14 that that well would be located in the longwall panel.
15 That in a nut shell is about the generation of what you
16 have today and the scenario I guess the Board members
17 will be looking at in the next issue. I've kind of
18 stream lined it quite a bit because there was a lot of
19 other things involved in it. Do you have any ques-
20 tions?
21 MR. CHAIRMAN: Thank you, Tom.
22 MR. KING: Can I ask you something? I'm sorry to belabor
23 you with this. What are the basic coalbed methane
24 units that we're dealing with? Oakwood and Oakwood II,
25 the Hurricane and Nora --

1 MS. RIGGS: With regards to this application?
2 MR. KING: Or totally.
3 MS. RIGGS: This application deals with an overlapped area
4 between Nora and Oakwood grid under -- in which
5 physical location is --
6 MR. FULMER: Again going back to this map, this is the
7 original. This is the original mesh between the two
8 fields at the time that they were generated. What this
9 map shows over here is the extension of the original
10 Oakwood Field as extended this way with this last
11 order. And the area that is of concern to the Board is
12 this area right here that was overlapped during the
13 last Board order, the 0348 Board order. Does that help
14 you, Mr. King?
15 MR. KING: Yes, sir.
16 MR. CHAIRMAN: All right. You may proceed.
17 MR. WILHOIT: Members of the Board, I'm glad Mr. Fulmer
18 stream lined that because I was going to stream line it
19 even more. We're really interested in this appli-
20 cation. This application applies to the 1989 rule
21 that set up the Nora Field with the 60 acre spacing and
22 the very last order he talked about where they extended
23 it and created that overlap down there in the corner of
24 that map. What I've passed out to you is a small
25 reproduction of this map which this area -- the solid

black line running down beside the letters of the alphabet was the original Oakwood Field -- Nora Field. The red solid line shows the extension that Mr. Fulmer just talked about in the order of 1993 that added this area to that southwest portion. The blue squares indicate the 80 acre spacing that are set up under the Oakwood rules. The green represent the 60 acre spacing set up under the Nora rules. As you can see on that map the overlap that occurred in 1993 affected Equitable's interest down here in this southwest portion of the red area as you can see where the 60 acre spacing meets the 80 acre spacing. So what we're asking the Board to do in this application is to modify that 1993 rule to exclude from that order this area down here in the southwest corner represented by the green squares and allow Equitable to continue to produce that field on 60 acre spacing rules of the original Nora Field because we've been there. We were there when this happened. This overlap I'm sure wasn't intentional to take up that space. As you can see, the development in that area really cut us off in this part right here. So what we're asking the Board to do is modify that order, just exclude the interest of Equitable in that area and let us continue to develop it on 60 acre spacing as originally set up.

MR. KAISER: Now, the area that we want to develop under the Nora Field rules, under the 60 acre spacing, you have in your application the meets and bounds description of it. It's important to point out that of the acreage included in this area that we want to modify and drill in the Nora Equitable owns the lease interest on 82 percent of that acreage. The other 18 percent I think is controlled either by Consol or Pittston. They were both notified of this application and neither one of them have objected.

MR. WILHOIT: At this time, members of the Board, I'd like to call Mr. Bob Dahlin as a witness.

MR. CHAIRMAN: You've been previously sworn.

MR. DAHLIN: Yes, sir.

ROBERT A. DAHLIN, II

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

DIRECT EXAMINATION

BY MR. WILHOIT:

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

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

1 Q. And where are you employed?
2 A. I'm employed by EREC as a production specialist.
3 Q. In your capacity as a production specialist have you
4 testified before this Board as an expert in previous
5 hearings including the one immediately prior to this
6 one?
7 A. Yes, I have.
8 Q. Are you familiar with the history, as Mr. Fulmer has
9 laid out, and your company's activities in this area?
10 A. That's correct.
11 Q. Are you familiar with the application that's been filed
12 and presented to the Board here today?
13 A. Yes, I am.
14 Q. Would you explain to the Board some reasons why it
15 would be necessary and expeditious to continue to
16 operate this field under the 60 acre ruling of the Nora
17 Field?
18 A. Okay. Well, basically we've got four major points.
19 During the development and the extension of our Nora
20 Field we've drilled something in excess of 250 gas
21 wells for coalbed methane. This is the extension of
22 that field on to the northeast and under what we felt
23 were still our 60 acre units. I can tell you from a
24 planning and development aspect it -- you can see
25 there's been a lot of Board orders and quite frankly we

1 weren't paying attention to the OXY modifications. We
2 didn't feel it was concerning us and we were laying out
3 our yearly drilling programs under our own spacing
4 considerations on the Nora Field. Up until -- we
5 drilled one well back in 1993 as a conventional well.
6 It was a dry hole and we converted it in 1994. I'll
7 show you these wells as I approach this easel here in a
8 second. But I just want to give you a time frame. We
9 drilled this well in 1993, converted it in 1994. We've
10 since drilled two more wells in 1994 and then just
11 completed one about a month ago. In addition, we have
12 one well, VC-2400, that is in this overlap area that we
13 do have a permit issued from the State of Virginia on
14 our 60 acre spacing in which, I might add, we are under
15 the gun like all other operators that have been
16 testifying in front of you. It's very important to our
17 drilling program and our drilling program is acceler-
18 ated. It is one we are anticipating drilling very
19 soon. The final point is that in the ongoing develop-
20 ment of this program we have obligated ourselves to the
21 extent of about 25 of these units to another contract-
22 or, the joint drilling venture partner. That would
23 represent somewhere between two and two and a half
24 million dollars worth of plans that's tied to another
25 agreement. I'll just kind of point these areas out to

1 you at this point. Again, the overlapped area which
2 is, I guess, the extension of the Hurricane --
3 MR. FULMER: That occurred in that order.
4 MR. DAHLIN: During that time.
5 MR. KAISER: The western extension I guess you could call
6 it.
7 MR. DAHLIN: This was the point of confusion for us. This
8 is kind of where we got off track and didn't really
9 realize what was going on. But, anyhow, this repre-
10 sents the overlap area -- which by the way, we don't
11 have any concerns with other than where it does impact
12 those drilling units we were counting on. The contour
13 lines up here are a structure map drawn on two differ-
14 ent coal seams, the Kennedy and the Tiller, and it
15 basically outlines for you what our drilling program
16 has been trying to chase. Our plans are chasing this
17 structural feature as it went from our field to the
18 northeast. And the wells that I mentioned to you that
19 are drilled are in these units here. The most recent
20 one is right here and the permitted well is right here
21 in the third unit of the extension. I think it's
22 pretty clear that there was a lot of information going
23 on and even to the point where we were going ahead and
24 making applications like we didn't even know -- in
25 fact, we did not know that there were two different

grid systems here. Again, the red outline indicates the acreage that we control which is approximately 82 percent of the area that we're asking for relief and the modification of the Oakwood field. The remainder of the area, again, we don't have any holdings in or it doesn't impact our development. We would just ask that this area be accepted and be developed under 60 acre units.

MR. WILHOIT: That's all we have from this witness.

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

(Witness stands aside.)

MR. KING: I have a question for you. It looks to me like the big red line takes in some of the 60 acres to make them 80. Is that what we're doing?

MR. WILHOIT: Well, what the red line did was establish the extension.

MR. KING: But it overlaps those --

MR. WILHOIT: And it overlaps some 60 acres. Now, the green drawn in there just continually show the 60s.

MR. CHAIRMAN: The red line has been approved by the Board to be 80 acre area. They're asking to modify to that area. They've shown on these green boxes to ask that to be considered to be Nora and not Oakwood, if you will. The Board's previously found those are separate

and distinct fields based on the record at the time and now have been asked to modify that to accommodate the lease interest of Equitable. Is that correct?

MR. WILHOIT: That's correct.

MR. KAISER: The drilling program and the fact that we have established production adjacent to that and well control and feel it would be proper to develop on a 60 acre spacing.

MR. WILHOIT: Basically, I guess, if Equitable had been here in 1993 and had pointed our lease boundary lines we could have requested at that time to carve it out. But since we were unaware of it at the time it didn't happen. So we're coming back now asking that -- really kind of go back and say let's run the Oakwood up to our boundary line and then keep the 80 acres on the Oakwood side and 60 acres on the Nora side.

MR. KING: There's two different regulations. The Oakwood and --

MR. KAISER: Field rules by the Board. Yes.

MR. KING: And you've contacted the other parties?

MR. KAISER: Yes. They've been notified. And what we've tried to do in carving out this modification area is stay along our lease lines so that we don't effect -- or minimally affect anybody else.

MR. CHAIRMAN: You haven't talked about notice. What form

of notice -- you talked about contacting the other lease holders. What about notice for the hearing?

MR. KAISER: We've provided publication notice and we provided actual notice to Consol.

MR. SWARTZ: You can stop pointing at me. I'm just a lawyer. Ha, ha.

MR. CHAIRMAN: I guess I'm questioning whether or not notice is proper for this type of hearing based on what I've heard so far.

MR. KING: Is there any major thing that distinguishes Oakwood from Nora?

MR. DAHLIN: The drilling unit size. We are set on 60 acres and the Oakwood is on 80 acres.

MR. KING: I mean, is that the only thing really?

MR. DAHLIN: That's the primary point.

MR. HARRIS: Can I talk about that also? We had -- I'm trying to remember when we go 60s and 80s. A lot of it we look at the pool size and the potential for drawing gas -- the drainage of gas. I'm trying to think of why -- why did we extend this? I think that may relate -- I can't remember why it is that we extended that western boundary. What was it that caused us to that do to begin with? Was not Nora in place at that time?

MR. CHAIRMAN: Nora was in place.

MR. KAISER: Nora was established prior to Oakwood.

MR. FULMER: If you're looking at me for an answer --

MR. RIGGS: We have transcripts. Do we the transcripts?

MR. FULMER: Yeah. We do have the transcripts.

MR. KAISER: We've reviewed that transcript and didn't really find any technical evidence.

MR. CHAIRMAN: It's based on the testimony, that the field was a separate and distinct pool and that the drainage area through the experience of the number of wells that have been drilled that have shown that that drainage pattern is 80 acres just as in the Nora side the testimony there was by reservoir engineers that it was a separate and distinct pool and it was 60 acres. The dilemma the Board's in is how flexible are these borders and is this all 80 acres or is it all 60 acres or is there really truly a separate and distinct pool. I think it's a little more complex than just the boundary, perhaps.

MR. DAHLIN: I can give you a couple of indications of what is involved in the size from our prospective and how I think it fits with OXY's perceptions. There's a couple of things that are similar to our field and a trend toward their field, and this is the boundary between the two. Generally speaking gas contents increase as you move in an east and northeast direction. In other words, towards OXY from us. Our gas contents are

lower. That's the distinctive factor in towards why they have their 80 acres, I think. I mean, I'm speaking of my own opinion here. The thing that ties it to the field that we're developing is we find that it's very structurally controlled. And that's the reason I told you of the development from 1993, 1994 and as of just last month we are continuing to remap, re-contour and develop our field on these structures. And that is the contour lines up here that I've indicated in real big black numbers. I think you can see the area to the northwest and then a nose runs up and plunges to the northeast. That's the area where we've got VC-2400 permitted. So that's kind of the tie between the two fields and why some factors are grading from one field into the other. I mean, this is a geologic feature. I'm not saying that OXY isn't correct in having 80 acres in predominance of their field. But this is where the two join.

MR. CHAIRMAN: Let me ask in a little more simplistic way. Why couldn't you just develop on the 80 acre?

MR. DAHLIN: The biggest thing -- how it impacts us is that it was an ongoing two or three year joint venture program with our other partners. That's the greatest impact for us, from the business side. This is something that we've been doing for the past two or

three years and now we're obligated contractually. We've indicated fifteen drill sites that are not going to be fifteen drill sites if we made them all 80 acres. We'll lose drill sites. And we feel very comfortable in the size of our units and how we're effectively draining. We think it's a very economic issue to drain reserves faster and we continuously do our reserve revisions. We feel that the gas in place supports the drilling on 60 acres and we would prefer to drill it at an escalated rate. It's a continuously revised thing and again, it's based our structures, the coal presence, and we see nothing that would make us back away from how we chose to develop this for the past couple of years and have been reenforced by the drilling as late as last month.

MR. WILHOIT: Let me ask a question of Mr. Dahlin. The gas content of these wells that you've drilled recently last month and the ones you expect to drill soon, permit 2400, would that gas content be consistent with the Nora Field production as opposed to the Oakwood production?

MR. DAHLIN: Again, Tony, it's a -- to answer the question simply it's yes but to answer it in more detail, as you move further east the gas contents will increase making OXY's sizes maybe the more appropriate as you go

further into their field. I've got gas contents about four units away from our most recent drilled well that are consistent with Nora. So it's actually something that changes over an area. It's not something that changes on a line.

MR. WILHOIT: So this is truly a transition area?

MR. DAHLIN: It is a transition area. If I could make some copies, I've got a tabulation here of gas contents on the well that I'm referencing. It indicates something in the range of 272 to 466 cubic feet per ton which is consistent with our ranges that we were developing in the Nora.

MR. WILHOIT: We'll be happy to copy that and attach it as an exhibit to our application if that's all right with the Board.

MR. CHAIRMAN: Okay.

MR. KAISER: Procedurally and historically let me point out that in the 1993 extension if you take a look at the transcript you all essentially did for Virginia Gas what we're requesting you to do here in that they had some wells that were drilled under Nora in some acreage and you resolved that by cutting out an area between lines L and M on your map there to preserve the different spacing of the two fields. We're not asking you to change the spacing in Oakwood obviously. What

1 we're asking you to do is to allow us based on our
2 analysis of the structure to continue to develop our
3 acreage in this southwest corner, the overlap area, on
4 60 acre units not only consistent with the well control
5 and the production that we have now but consistent with
6 contractual obligations that we have.
7 MR. CHAIRMAN: Go back and address notice for me, if you
8 will. I raised that issue. Do you represent that
9 notice has been effectively conducted in accordance
10 with 19?
11 MR. KAISER: Yes, sir.
12 MR. CHAIRMAN: We didn't have any testimony regarding notice
13 at all. That's the reason. I know in the application
14 you say who you've sent notice to, but do you believe
15 that that covers all of the -- so far as your search
16 for owners -- mineral owners, gas and oil owners, that
17 you've sent by certified mail copies to them?
18 MR. KAISER: I think so, Mr. Chairman. Once again if you
19 look at the transcript it was consistent with the
20 notice that was factuated for this hearing on the
21 modification.
22 MR. CHAIRMAN: How did you -- I'm not trying to pick on you.
23 I'm trying to get a clean record here on notice for
24 that area -- for the area of the extension. Have you
25 looked at who the owners are?

1 MR. KAISER: Yes.
2 MR. CHAIRMAN: Just being more specific. And you believe
3 that you've notified all of the owners required to
4 receive notice in accordance with 45.1-361.19?
5 MR. KAISER: We believe that the oil, gas and coal owners
6 representing the 18 percent that is not under lease to
7 EREC have been notified, being Consol or some branch of
8 Consol, Pittston in the publication notice.
9 MR. CHAIRMAN: Do you anticipate these to be voluntary
10 units?
11 MR. KAISER: Yes.
12 MR. KING: Has this area been mined?
13 MR. KAISER: No.
14 MR. KING: So it's not a gob?
15 MR. DAHLIN: No, it is not. It's a standard coalbed methane
16 well. The gas contents on that hand-out I gave you,
17 they are indicated over in that boxed area on the right
18 and they are by seam.
19 MR. CHAIRMAN: Are you aware or do you believe there are any
20 correlative rights issues here?
21 MR. KAISER: Based on the 60 acre spacing and the 15 percent
22 tolerance -- let me put it this way. I think any time
23 you may have some irregularly shaped units based upon
24 any interface of different field rules -- and we may
25 conceivably get into that and if we have to come before

the Board to establish that obviously we'd do that whether it be a variance or whatever. But I think if you look at the exhibit we have provided you with the 60 acre spacing and 15 percent tolerance that -- and based on the ownership of the 18 percent that's not under an Equitable lease I do not think there would be any correlative rights issues. In other words, we would form the units so that we would not have gaps in there between the 60s and 80s where people would not be being paid.

MR. CHAIRMAN: Thank you. Anything else?

MR. KAISER: By the way we drafted the modification or mapped the modification we did try to stay as close to the lease lines as we possibly could for that particular purpose.

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

MR. HARRIS: I'm still trying to figure out this 80 and 60 merging. The only thing I can read is about frack lengths in the 80 acre wells, that there was some evidence to show that when they were drilling earlier in the Oakwood over to the right that the frack lengths were longer. Apparently the frack lengths were longer than 60 acres but not as long as the 80 acres. So they thought that was appropriate, to put the 80 acre units. I haven't read all of this but this is one of the

things --

MR. DAHLIN: Again, Bill, that's what I feel like I kind of addressed on the gas contents. I'm not saying that -- we don't propose to change their spacing or their sciences. It's a by the degree type thing. As you do continue to the northeast gas contents will increase. Therefore, I'm agreeing that that is probably a more appropriate size there. But what do you do in a situation where we are already adjoining here. We've found over -- since 1988 that 60 acres is a very good development scheme for us. Again, that's the original that was in place and we've continued to develop on that since and we're very pleased with our results. That is again in the overlap area between where our established field was, where Oakwood was and then extended over onto us. So I can't resolve it any better for you than those situations and just stating that they occur.

MR. WILHOIT: Again I think the basic issue is -- and we need to get this on the record, too -- will this encourage development of the field if you leave it 60 acres, will it prevent waste and does it protect correlative rights. Have you made provisions for all that?

MR. DAHLIN: Yeah. Exactly. It will actually escalate the

development -- the development that's already in plan. There will be more wells.

MR. CHAIRMAN: And you've noticed all parties that have interest that would be affected?

MR. KAISER: Right.

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

MR. KING: These red lines that have a name in them, those are the ones that you have under lease?

MR. DAHLIN: That's correct.

MR. KAISER: Yes, sir. Those represent the leases and the lease owners.

MR. KING: And there's little small spaces in there that you've done that?

MR. DAHLIN: That's correct. That comprises the 18 percent that we do not have under lease that is within the area we're asking for relief on.

MR. KING: Those are the ones that you're going to notify to be here and they are aware of it?

MR. KAISER: As you can see, most of the time you're talking about just a little -- because of the 60s and 80s you're talking about -- and I think Mr. Chairman Wampler was trying to point that out. You've got little gaps in there and we will formulate the units under the tolerance, and we may have to come before the Board to do that, to make sure that there's not

uncompensated royalty interests out there that will be caught between the 60s and the 80s.

MR. KING: So if you close to those unleased areas you will come to the Board.

MS. RIGGS: The unleased areas -- what he's referring to are these little slivers, part of the units where they butt up to each other. Those are not necessarily the unleased areas. Those are just where you don't have a complete block. A complete either 60 or 80 block. It's where they butt up and you get a part of a unit. And what he's saying is when they form this unit, for example, they will use the 15 percent tolerance to assume that sliver so that that gets -- it will be a 60 plus.

MR. CHAIRMAN: But he's working from this map and he's looking at their lease hold and he's saying maybe there are several areas that they don't have leased. And that's what I was probing a minute ago.

MS. RIGGS: What I thought Jim was addressing were these areas that they will --

MR. KAISER: That was.

MR. DAHLIN: We would compensate the unit size to include those gaps. But the other portion is the 82 percent that's under our control. The balance -- I believe there's 2,259 acres and we have 1,847 leased that would

be the carved out areas

MR. KAISER: I'll tell you exactly. 2,259.67. Under voluntary lease to Equitable is 1,847.08 which represents 81.73 percent of the acreage to be exact.

MR. CHAIRMAN: Over what time span do you plan to develop this area here?

MR. DAHLIN: Well, the two wells -- the one that we have permitted now was in the drilling program for this year, 1996. There's one other well obligated to be drilled prior to 1997 and the 15 -- those are two of the fifteen wells that are anticipated to be drilled as soon as we can complete the rest of our work and tie it into the rest of our development plans. It's immediate, in other words.

MR. KING: But you made the comment that if we approve this it will accelerate the wells?

MR. DAHLIN: Yes.

MR. KING: In 1996/1997?

MR. DAHLIN: They are in our immediate drilling program as soon as we accomplish it. We anticipate drilling through the next month or so and then not being real active during the winter and it will probably be part of the immediately following drilling program.

MR. KAISER: For instance, we would drill VC -- if were to get your permission today we can drill the VC-2400

which we do have permitted next week, for instance.

MR. DAHLIN: VC-2400 was one of the next four intended rig moves.

MR. KING: That's already permitted?

MR. DAHLIN: It's permitted, yes.

MR. CHAIRMAN: Picking up on what Mr. King was asking, the two areas -- I have difficulty describing this for the rest of the record so that the record will actually reflect it. Just to show you where, you have a couple of 60 acres here and then up here you have very little leased acreage that touches those. How would you plan to develop those areas?

MR. HARRIS: Are we looking at Y and Z negative three, somewhere in that area.

MR. KAISER: To the northwest of T-248.

MR. CHAIRMAN: That's right. That's just a couple I picked out as an example. There's some others.

MR. DAHLIN: I didn't actually come prepared to submit this, but this is part of our planned development. The blue blocks are the ones in sequence to be drilled next. The yellow are currently drilled and the green is the location that will be in a different drilling program. The two blocks that you're pointing out were up in here.

MR. CHAIRMAN: Right.

1 MR. DAHLIN: They're not ones that are in this solidified
2 drilling program area that we have again, like I
3 mentioned, the (Inaudible.) in developing the acreage.
4 Obviously we have to secure the interest in the unit.
5 We will either do that voluntarily or be back to the
6 Board.
7 MR. KING: The way your red line runs there, you're going to
8 make some of those 60 acre grids smaller?
9 MR. DAHLIN: If we have to, yes.
10 MR. KAISER: Some may be smaller and some may be bigger.
11 MR. DAHLIN: Again, it's just part of our development -- our
12 continuing development. It's something we recognize
13 and we have not planned to drill those. We have
14 planned to drill the ones that are under our control.
15 MR. CHAIRMAN: Any other questions, members of the Board?
16 MR. BRENT: Having not been a member of the Board at the
17 time these were previously decided I'm still at a loss
18 from the Board's prospective as to how they came to
19 decide that - in this extension that what was 60 acres
20 grid should now be 80 acres. In effect, I understand
21 -- It's my impression the Board was really reversing
22 it's previous finding.
23 MR. CHAIRMAN: That's right.
24 MR. BRENT: And I'm at a loss to understand the basis on
25 which that decision reversal was made.

1 MR. CHAIRMAN: Well, the testimony that the Board received
2 in support of that extension area was such that based
3 upon the drilling program that was -- you have drilling
4 programs moving in two directions now. But at that
5 time as they more or less found the -- is that the
6 west, the western edge -- the western edge of the
7 Oakwood Field that they still found the same type gas
8 concentrations. Therefore, more in support of the
9 technical standards of the Oakwood. Now, we could call
10 some folks up here that could talk about that better
11 but Mark's just an attorney. But, in essence, the
12 transcript speaks for itself in regard to --
13 MR. WILHOIT: It's basically a grey area. You're getting in
14 to where they're coming this way and they say 80 acres
15 and we're coming this way with 60 areas and we're in
16 that area where they start to merge. So you've got to
17 determine how to develop that area. And if they've got
18 evidence that shows that they need to be 80 like they
19 came forward and did the Board made that decision.
20 Then we came back a couple of years later and say,
21 we're still developing in that area and we're still
22 seeing 60 acre units and we'd like to continue to
23 develop 60 areas. So we're finding 60s. They're
24 finding 80s. Eventually they're going to merge and
25 you're going to have that grey area.

1 MR. BRENT: But isn't my understanding that where they
2 merged the Board approved this extension as reversed
3 itself on the 60s and the 80s?
4 MR. WILHOIT: Well, they did. Yeah. You can see where in
5 1989 they established the 60s. They came back in 1993
6 and then throw that red line just straight down through
7 there without any consideration for the lease lines or
8 development and let's just draw it here. So we're
9 coming back and saying that wasn't exactly correct,
10 according to our activity it should be -- we think it's
11 better if you draw it along the lease lines because
12 we've developed up to that point and they've developed
13 to this point. We think that instead of a straight
14 line down through there which is impractical it's more
15 realistic that this is the line that it should be.
16 MR. KAISER: Had we been aware of the impact of this
17 modification on our lease hold interest at the time we
18 would have been seeking the same cut out provision that
19 Virginia Gas sought and was given in this hearing.
20 What the petitioners really relied upon, if you review
21 this transcript there is not technical data in here for
22 this hearing. They relied on technical data that they
23 presented in an earlier hearing. But there was no
24 technical data presented as far as this modification.
25 You can go through this whole thing and you can't find

1 it.

2 MR. FULMER: Maybe I can give you a little insight. In

3 regards to whether you extend the Oakwood or the Nora

4 Field or whatever, both companies were no where near

5 the boundaries at that time, in 1993. There was

6 testimony given in regards to distinct reservoirs and

7 where those reservoirs may or may not exist. A lot of

8 the orders involved who had the lease hold or who had

9 the interest and they were formulated upon "this is

10 what we'd like to see the boundaries be because we have

11 lease hold interest or we have some kind of interest in

12 this area." The fields itself were way apart and

13 what's happened since 1993 is the two areas are

14 starting to converge in that regard. Testimony was

15 given in regard to the Nora Field in regards to what

16 they thought the frack length would be and what the

17 maximum recovery of a unit should be suiting their

18 economic production. At that time when that was given

19 there was two or three or four wells sitting out there

20 that they relied that on. In regards to the Oakwood

21 Field the testimony came in on a same type of informa-

22 tion in regards to what they had found and what they

23 had thought to be the recoverable reserves per acre of

24 coal that existed at the time. So what you've got is

25 two theories about how you're going to develop coalbed

methane and what has transpired since then is they have converged to this point. In 1993 when this was done there was this feeling that this was part of that distinct reservoir, the Oakwood area. Because on the other side there was nothing in the Nora Field to even come near it at the time of development. Now they've approached that area and they're coming back in and say our evidence indicates that it should be 60 acres. They're really disputing 80 acres either. They're doing only on what they consider their economic drilling pattern.

MR. BRENT: I think I understand where we are, the whole theory of the merging fields. But I think I'm hearing Mr. Kaiser say that this line from the Board's prospective is somewhat arbitrary, isn't it?

MR. KAISER: Well, I don't know if I'd want to use the term arbitrary.

MR. WILHOIT: Sure, there was a basis but it may not have been a technical basis.

MR. KAISER: And the Consol people can correct me, but at this point they don't have any development down in that area.

MR. DAHLIN: To my knowledge they are here, these wells. The first well that we converted, like Tom said, was in 1993. That's right here which is the fourth unit away.

1 In the following two or three years then we are at --
2 we have confirmed that these features that I've
3 indicated here -- this structure here is the one we've
4 developing -- is part of and not separate from anything
5 else that we've developed in the Nora Field. So I
6 think the term is separate and distinct. It is the
7 same as ours. It is an extension of ours. We've found
8 that from the continuing drilling efforts we have.
9 And, again, to confirm Tom's assertion about the
10 development, if we would next year acquire leases in
11 here -- we are perfectly happy as we move in this
12 direction we would support OXY's contention that that's
13 appropriate sizing and we would develop those on
14 those --
15 MR. KAISER: As we move to the northeast.
16 MR. DAHLIN: In fact, we do have acreage in here and we're
17 not asking relief from that. We're only asking for
18 this portion. And we find it's consistent with our
19 development and tied to and not separate from our pool
20 as evidenced from the continuing drilling.
21 MR. KING: Of course, what you have there is in the 80 acre.
22 MR. DAHLIN: Yeah. We're not asking for that to be changed
23 to 60s. That's my point. We're only asking for this
24 feature that we have continuously refined and find to
25 be the same as our development in Nora. We're only

1 asking for that portion to be changed. They overlap
2 again there, Clyde, would have been this whole area.
3 We could have asked to move the whole thing back to
4 where we thought it was. But we're only asking for
5 this that's on feature that we've been currently
6 developing.
7 MR. BRENT: You keep referring to Consol and OXY. I assume
8 that since they are not here testifying they wouldn't
9 have any interest in this?
10 MR. KAISER: Well, I wouldn't assume that they have no
11 interest in it but they have not filed an objection or
12 voiced an objection here today.
13 MR. CHAIRMAN: Consol proposed the extension of the field
14 rule, the 80 acres, and I have the testimony here at
15 that and there was technical testimony for that
16 particular extension that was presented. However, it
17 was largely based on the fact that Island Creek which
18 they acquired had -- they had leased interest out in
19 that area and they had other evidence to say the gas
20 content and the type of frack patterns that we're using
21 we'd like to essentially keep that. And I asked
22 specifically "Is there evidence to show that 80 acres
23 is appropriate?" And they stated very honestly that
24 they weren't exactly sure about that at that point in
25 time. So what we have here is this merging of two

fields where we've had testimony why one should be 60 and why one should be 80 and then we have this area where they are bumping against one another, that what you have going on here on the practical side is adjusting out of lease interests as it's retro-fitted into these field rules. That's the bottom line more so than the technical side of it to whether or not the gas content warrants that. From a correlative rights issue and a notice issue if we've protected correlative rights and insure in the future that we do that, I think what it does is instruct us on any future field rules, particularly any adjustments and things like that. But we try to design them so that we have more technical data coming in than we've been doing, if that's the desire of the Board. We have so many things handed to us to protect in the law it gets really fuzzy in some areas. We certainly want to encourage development of the area. It's no one's interest to have it locked out to where it won't be developed. On the other hand we want to make sure we're protecting the interest of those that are being impacted by the development as well.

MR. BRENT: It took you three years to discover this?

MR. KAISER: Well, three years ago our drilling program was not down in this area and since, as Mr. Fulmer and

1 Benny have said, the movement of the program has been
2 in that direction.
3 MR. KING: Do we feel good about everyone being noticed and
4 we feel that the thing is within --
5 MS. RIGGS: We have a representation that that has occurred.
6 MR. CHAIRMAN: That notice has occurred. Certainly we've
7 published notice of the hearing here today. I'll ask
8 again, is there anyone present here today that has any
9 comment or objection to this application? The record
10 will show there are none. Any further questions? Do
11 you have anything further?
12 MR. WILHOIT: No. That's all we have.
13 MR. KING: Mr. Chairman, I move that we allow this.
14 MR. CHAIRMAN: A motion to approve.
15 MR. HARRIS: Second.
16 MR. CHAIRMAN: Second. Further discussion? All in favor
17 signify by saying yes. (ALL AFFIRM.) Opposed say no.
18 (NONE.) Unanimous approval.
19 MR. FULMER: Mr. Chairman, can I make a request to the Board
20 or whatever that in regards to all this coming together
21 could EREC present me with a map showing the meshing of
22 the two fields somewhat similar to this one because
23 what will happen -- I've got this one now and then when
24 people request what is the field I'm getting -- it's
25 getting confusing. In the best interest of every

1 body --

2 MR. KAISER: Absolutely.

3 MR. KING: Could we be a part of that approval?

4 MR. KAISER: Sure.

5 MR. WILHOIT: And ask that the order be effective today.

6 MR. CHAIRMAN: That's fine.

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ITEM IV

MR. CHAIRMAN: The next item on today's agenda is the Virginia Gas and Oil Board will consider a petition from Buchanan Production Company for pooling of the coalbed methane unit identified as N-13 in the Oakwood Coalbed Methane Gas Fields I and II. This is docket number VGOB-96/09/17-0555. We'd ask the parties that wish to address the Board in this matter to come forward at this time. I would also inform the Board that I have a letter and I don't know for sure that you do from Mr. Mark McClannahan who's here today in person but requesting a continuance and he will address that to the Board. If you will identify yourselves starting with Mr. Swartz.

MR. SWARTZ: Mark Swartz appearing for the applicant and Consol, it's management.

MR. McCLANNAHAN: I'm Mark McClannahan for Mack Construction, Incorporated.

MR. CHAIRMAN: The record will show there are no others. Do you want to go ahead -- you're asking for a continuance?

MR. McCLANNAHAN: Yes, until the next regularly --

MR. CHAIRMAN: You might just tell the Board -- don't assume they know anything that you've talked to me about.

1 Just tell the Board your circumstance and why you
2 request a continuance.
3 MR. McCLANNAHAN: Okay. We have had legal counsel for the
4 past nine months and as of Monday of last week MCN of
5 Detroit, Michigan contacted our lawyer and told him
6 that there was a conflict, that he could not represent
7 us. We would like a continuance until next month's
8 regularly scheduled meeting so that we can obtain legal
9 counsel.
10 MR. CHAIRMAN: Mr. Swartz.
11 MR. SWARTZ: There is a history here. I would resist a
12 motion of continuing it again. And I need to give you
13 a little history so you understand why because in a
14 vacuum it sounds pretty reasonable, I suppose. I would
15 point out that I did not receive a copy of the letter
16 you're referring to. So I have no idea when it was
17 sent. Our first notice that a continuance was going to
18 requested was I happened to be here for a meeting
19 yesterday and I think Benny mentioned to me he had
20 received a request for a continuance. But I didn't get
21 anything in the mail. I didn't get a phone call. Mack
22 Construction, Mr. McClannahan's company, filed an
23 application -- this is the history -- for a well work
24 permit. That application was filed with Mr. Fulmer's
25 office on June 17th and it was for a well in the M-13

1 unit that we are seeking to pool today. Within the
2 fifteen day objection day -- you have fifteen from the
3 date on which you receive the notice of the application
4 -- my clients filed objections to this well work permit
5 application which then in the ordinary course of events
6 caused Mr. Fulmer to set it for a hearing. So we
7 showed up for a hearing on July 31st. My objections I
8 think went out about the 2nd. Tom set it for hearing
9 on July 31st. We get to the hearing. At that time
10 they're represented by an attorney named Tim Scott.
11 Tim's an oil and gas lawyer from Kingsport. He knows
12 what he's doing. They request a continuance because
13 they want to file an amended well work permit applica-
14 tion. At that point Les and were there and we said
15 fine, if you need to straighten out your application
16 get it straightened out and we'll come back. They did,
17 in fact, file a modified well work permit application.
18 I got out my objections. I think I dropped one of them
19 but basically I got out the objections. Mr. Fulmer set
20 that for hearing on September 10th. Les drove in from
21 Bluefield -- actually Princeton. My schedule required
22 that I get up that morning and drive in from Charles-
23 ton, West Virginia. We show up at the hearing about
24 five minutes till 10:00 and are told that Mack Constru-
25 ction has fired their lawyer when he arrived to

represent them that morning at this hearing based on a perceived conflict of interest that they had. The story's a little different this morning. What I was being told was Mack was aware of the fact that Tim had done some work for MCN and felt that he could not represent them at that hearing. So there's a request for a further continuance with regard to the well work permit application on September 10th. It was not a pleasant scenario but it was continued, I think, to allow them some additional time, having just terminated Mr. Scott. Another thing that has happened here is during the interim on August 20th Mack Construction commenced a law suit against Buchanan Production Company in the Circuit Court of Buchanan County with regard to some VVH holes in the N-13 unit. In that law suit they're represented by an attorney Scott Mullins. I haven't heard that Mr. Mullins no longer represents them, that Mr. Mullins couldn't be here this morning. And I guess where I am coming from -- and I need to tell you one other thing. This well -- there's an existing hole on N-13. We found out three or four months ago that it had been drilled in 1982. At one of the continued hearings before Mr. Fulmer the representation was made by the Mack Construction people that although it was drilled in 1982 they didn't' capture

1 gas and use gas from the well until some time in the
2 1990s. It is located adjacent to an asphalt plant that
3 Mack Construction has and there's some storage tanks
4 and apparently the existence of this well came to light
5 during OSHA inspections. And the inspector presumably
6 was concerned about it and it somehow then got brought
7 to the attention of Mr. Fulmer's office and I suspect,
8 although I'm not sure, that they were told to plug
9 this or get a permit. So in my view they've had
10 fourteen years to get their act together in terms of a
11 permit, pooling, whatever. Maybe they didn't have to
12 do anything until they started producing but that was
13 sometime in the early 1990s and what's happened now
14 that the regulatory effort has kicked in, now that my
15 client has intervened -- we have leases of the coalbed
16 methane under 100 percent of this unit from Yukon
17 Pocahontas which happens to own the minerals, coal and
18 oil and gas in this entire unit. That's why we are
19 here today, to protect their interests. So I see in at
20 least my limited involvement this summer every time we
21 come to a turning point in terms of an adjudication a
22 request for a continuance for various reasons. And I
23 have gotten to the point where I feel as if it's a
24 strategy. I may be wrong. And I would resist this and
25 I would strongly petition to be allowed to proceed with

1 the applications.

2 MR. CHAIRMAN: Do you have anything further you want to say?

3 MR. McCLANNAHAN: After him speaking I think you should see

4 that it's evident that we need legal counsel and I

5 request a continuance.

6 MR. BRENT: When were you notified of the conflict that your

7 attorney had?

8 MR. McCLANNAHAN: In the P.M. last Monday prior to the

9 Informal Fact Finding on Tuesday. This is our second

10 attorney that has represented us in the past three

11 years on oil and gas matters. This is the second time

12 this has happened.

13 MS. McCLANNAHAN: We did not fire Mr. Scott either. He's

14 misleading you in that fact.

15 MR. SWARTZ: Maybe we need to get Mr. Scott here someday

16 because Mr. Scott told me that he was not retained to

17 represent them with regard to this application which

18 was mailed to them on August 16th. They sued one of my

19 clients four days later. But Mr. Scott was telling --

20 I said are you going to show up at the Board hearings.

21 He said they hadn't hired him to do that. We sent him

22 a courtesy copy. So he was aware of it. I guess I

23 just see a moving target here, that nothing ever comes

24 to closure, and I would request that we proceed.

25 MR. KING: You talked to Mr. Scott about this application

1 here?

2 MR. SWARTZ: We sent him one and at the -- I believe it was

3 September 10th when we were at Mr. Fulmer's office I

4 said, "Are you representing them with regard to the

5 pooling." We talked about it for a minute. He said

6 no, he wasn't. He hadn't been asked to represent them.

7 MS. McCLANNAHAN: I think that's after he had talked to MCN

8 and they requested him not to represent us.

9 MR. McCLANNAHAN: That was last Tuesday.

10 MS. McCLANNAHAN: Which was prior to the September 10th

11 meeting.

12 MR. McCLANNAHAN: I was on the phone with Mr. Scott on

13 Monday afternoon speaking of the Informal Fact Finding

14 for Tuesday. While we were speaking he was interrupted

15 and then he told me that there was an attorney from MCN

16 out of Detroit, Michigan that was on the phone, would I

17 mind holding. I said, "No. I'll hold." I held for

18 quite some time and then hung up. And he called me

19 back or I called him back like an hour or an hour and a

20 half later and he basically said that they told him

21 that if he represented us in these matters that they

22 would take him before the Virginia Bar Association and

23 try to have his license revoked. And he said that he

24 explained to them that as far as he wasn't representing

25 us concerning this matter here about the pooling, that

1 he was trying to represent us as far as the well that
2 we were trying to get permitted. But he did tell us
3 that he could not represent us and that there was a
4 conflict. And that happened last Monday. We had an
5 appointment with a lawyer yesterday in which the lawyer
6 broke that appointment with us and we have another
7 appointment with a different lawyer tomorrow at 10:00
8 concerning this.
9 MR. CHAIRMAN: And you're asking for a one month continuance
10 till the October meeting?
11 MR. McCLANNAHAN: Yes.
12 MR. KING: I have a question. Mr. Fulmer, are you aware of
13 any of this?
14 MR. FULMER: I'm only aware of what came before me on the
15 IFFH.
16 MR. KING: You didn't hear any of these conversations?
17 MR. FULMER: No. Conversation between Mr. McClannahan and
18 Mr. Mark Swartz involving Tim Scott, no. I know of
19 some circumstance because I had to talk to Mr. Scott.
20 He came in and told me that he would not be represent-
21 ing Mr. McClannahan that morning in the IFFH.
22 MR. KING: Any reason?
23 MR. FULMER: Well, I just want to tell you Mr. Scott told me
24 he had gotten fired. That's just what he said. I
25 couldn't testify to the conversation between Mr.

1 McClannahan and Mr. Scott during that. That's just
2 what Mr. Scott told me.
3 MR. SWARTZ: You all need to meet Mr. Scott. He's a very
4 excitable little fire plug of a guy. He was pretty
5 wild that morning.
6 MR. FULMER: I will say that in the IFFH and it is in the
7 record that Mr. Scott did come in and say he would no
8 longer represent Mr. McClannahan at the IFFH.
9 MR. KING: But he did work -- represent that company in the
10 past?
11 MR. SWARTZ: In the past.
12 MR. KING: What about that, Ms. Attorney, is that a con-
13 flict?
14 MS. RIGGS: I have no way of knowing enough facts about the
15 situation to know whether it would constitute a
16 conflict or not. I don't know what their represent-
17 ation was. I think that if there's an appearance of
18 conflict it really comes down to the attorney's
19 decision of whether to withdraw or not or risk the
20 consequences of not doing so and he made that decision.
21 MR. BRENT: What kind of an impact would a one month delay
22 have on you?
23 MR. SWARTZ: To be honest, annoyance. I mean, our gathering
24 line is headed in this direction and we're going to be
25 producing ultimately from this area. But at some point

1 we need to -- I guess I need to say to my client and
2 they said to me, "Look, we've got one continuance
3 request after another." Basically what we did Mr.
4 Fulmer was extract a -- we are going to have a hearing
5 no matter what and picked a date in advance. Really
6 without such a commitment -- it was by agreement once
7 we had that -- we requested that that hearing go.
8 We've got to have some resolution.
9 MR. BRENT: But there's no catastrophic effect?
10 MR. SWARTZ: No, there is not.
11 MR. BRENT: I'd feel a lot better if, Mr. McClannahan, in
12 the course of last week you at least retained counsel
13 who planned to be here to represented you for a
14 continuance.
15 MR. CHAIRMAN: Let me clarify one thing just for the Board's
16 understanding. The Informal Fact Finding Hearing that
17 Tom's calling the IFFH was for a permit.
18 MR. FULMER: It was for the permit.
19 MR. CHAIRMAN: For Mack Construction?
20 MR. FULMER: Uh-huh.
21 MR. CHAIRMAN: Mr. McClannahan was there for that. This
22 hearing today was for a pooling application. And if
23 the Board approves the extension the Board is saying
24 that it will hold the hearing next month in this
25 matter. He's asking for a one month extension or we

1 need to deny it, one way or the other.
2 MR. SWARTZ: You need to tell them where the hearing is
3 going to be next month, too. I mean, it's a heck of a
4 drive for some of us. The Breaks. They need to know
5 that.
6 MR. CHAIRMAN: I understand if we make that decision.
7 MR. KING: Would it be better to give him a two month
8 extension?
9 MR. SWARTZ: No, no. I don't want another, "Oh, gosh. We
10 couldn't get to the Breaks."
11 MR. CHAIRMAN: He knows where the Breaks is.
12 MR. McCLANNAHAN: Yeah.
13 MR. KING: I have a real problem with someone appearing
14 before this Board and we always hear from attorneys.
15 Whether he fired him or whether he didn't fire him, I
16 guess, is not a question. I think Mr. McClannahan
17 needs to be aware of the fact that he needs to be
18 represented if the request is permitted, that he better
19 have an attorney in plain language. Do you agree?
20 MR. BRENT: Yeah. I'll just reiterate what I said before.
21 I'd feel a whole lot better had he over the course of
22 last week at least retained counsel to come here and
23 represent him in the request for a continuance.
24 MR. McCLANNAHAN: Scott Mullins had a conflict. He was in
25 court in Wise today or he would have been here.

1 MR. HARRIS: Excuse me. Is this the person you talked with
2 yesterday.
3 MR. McCLANNAHAN: No, no.
4 MR. SWARTZ: He's already their attorney in a court case.
5 MR. HARRIS: Okay. I understand.
6 MR. KING: I forgot about that. There is something in
7 Buchanan County Court about it?
8 MR. McCLANNAHAN: Yes, about the two vertical ventilation
9 holes.
10 MR. KING: Is this going to adversely affect our permitting,
11 the court hearing?
12 MR. FULMER: No, not the permit.
13 MR. SWARTZ: The permit hearing is delayed even longer than
14 this. Essentially I think it makes sense for Mr.
15 Fulmer to know where the pooling is headed before he
16 deals with some feudal act. To be blunt, if the
17 pooling application is approved their permit applica-
18 tion is essentially moot.
19 MR. BRENT: I would move that we continue this hearing
20 until next month at the Breaks, also saying as far as
21 I'm concerned we will have it then regardless.
22 MR. CHAIRMAN: A motion and second. Further discussion?
23 All in favor signify by saying yes. (ALL AFFIRM.)
24 Opposed say no. (NONE.) It's continued to next month.
25 MR. SWARTZ: Mr. Chairman, has the time been changed any?

1 MR. CHAIRMAN: I'm sorry?

2 MR. SWARTZ: Has the time of the hearing changed?

3 MR. CHAIRMAN: That's what I'm going to talk to the Board

4 right now about and see if it's convenient for the

5 Board.

6 MR. HARRIS: Mr. Chairman, can I just ask one question?

7 This pertains to the comments about having legal

8 counsel. This isn't required by law, is that right?

9 My understanding is that it's strongly advisable to

10 have counsel but not --

11 MR. CHAIRMAN: I think what Mr. King was saying is if you

12 are intending to get legal counsel your legal counsel

13 needs to be here or something, you could have had a

14 letter or something like that. Always in coming before

15 the Board have something from your attorney if he can't

16 appear in person and those kinds of things so that we

17 have an appearance made on your behalf in that regard.

18 For next month's hearing we had looked and talked about

19 trying to get the Breaks. I think Mr. Garbis who is

20 not here today suggested we tried to do it on Monday.

21 We were not able to get the Sunday night -- get the

22 Breaks for Sunday night. We can get it for Monday

23 night and Tuesday night. I was proposing for the

24 Board's convenience -- and we've talked to some of the

25 applicants for next month's hearing to make sure that

they didn't mind the inconvenience of moving a time on the same day for Tuesday -- that we perhaps start the hearing at 1:00 that day so that everyone could come in that day and then we stay over Tuesday night and do the Board tour on Wednesday -- the field tour. Following the hearing on Tuesday we would have general discussion about drilling activities, about field rules, and it will be an open discussion. If people want to sit in and hear us talk about that that will be available for everyone. But is that more convenient for the Board, that we do that, that we arrange to stay the Tuesday night? That way you're only away two days and one night rather than three days and two nights? We'll start the hearing then at 1:00 on Tuesday, October 15th at Breaks Interstate Park.

MR. KAISER: On the notice issues to respondents, I talked to Tom about that and I guess I'll ask Tom, is the DGO going to renotice the people or are you going to put the burden on the applicant?

MR. CHAIRMAN: Tom has the addresses. We can notice the folks. I don't have a problem with that. Anything further, members of the Board? Thank you. That concludes today's hearing.

(End of Proceedings for September 17, 1996.)

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 September 17, 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 7th day of October, 1996.

Deborah J. Bise

DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 2000.