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VIRGINIA GAS AND OIL CONSERVATION BOARD

HEARING OF MARCH 16, 1993

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

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March 16, 1993

This matter came on to be heard on this the 16th day of March, 1993 before the Virginia Gas and Oil Board in the Conference Center at the 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. WAMPLER: I will call the hearing to order. Good morning. My name is Benny Wampler. I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy. I'll just ask our Board members to introduce themselves starting with Kevin.

(MEMBERS INTRODUCED.)

ITEMS 1 & 2

1
2
3 MR. CHAIRMAN: The first item on the agenda is a petition for
4 force pooling under Section 45.1-361.22 by OXY USA, INC.
5 for V-20 unit located on the Vansant & Keen Mountain
6 Quadrangles. This is docket number VGOB-93/01/19-0310.
7 It was continued from January. We would ask all parties
8 that wish to address the Board concerning this matter to
9 come forward at this time.

10 MR. SWARTZ: Mr. Chairman, my name is Mark Swartz. I am here
11 for OXY USA. Sam Gordon I know is on route because I
12 talked to him about 7:45 this morning. He is not here
13 yet. And I would ask that you just hold this until he
14 shows up. You can put us last if you want, but we are
15 prepared once he gets here to proceed with V-20. Item 2,
16 V-21, which is VGOB-92/07/21-0246 we are going to
17 dismiss. So we will not have to address that. So if you
18 could bear with me until Mr. Gordon gets here I would
19 appreciate it.

20 MR. CHAIRMAN: Are there any parties here today that want to
21 address the Board on this first item that I have called?
22 This is docket number VGOB-93/01/19-0310. If not, we
23 will hold that one until later. The second item is
24 docket number VGOB-93/01/19/0311. You say that is
25 dismissed?

1 MR. SWARTZ: Correct.

2 MR. CHAIRMAN: Give us some background on that.

3 MR. SWARTZ: All I know from Sam is that we are dismissing
4 anything in Row 21. And I understand that it is some
5 title issues that have arisen, that is why they are
6 dismissing this. I will let Marty tell you about it.

7 COURT REPORTER: (Swears witness.)
8
9

10 MARTIN E. WIRTH

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

14 DIRECT EXAMINATION
15

16 BY MR. SWARTZ:

17 Q. State your full name, please.

18 A. Martin E. Wirth.

19 Q. By whom are you employed?

20 A. OXY, USA. V-21 -- all of 21 row we did not complete bore
21 hole 63, therefore, the coal was mined. There will be no
22 production on that 21 row. It butts up against PGP units
23 next to there. Therefore, without any production and
24 everything we will come back before the Board and
25 withdraw the other applications we already did.

1 MR. SWARTZ: Mr. Chairman, they said Sam just drove up if you
2 want to wait one minute.

3 MR. CHAIRMAN: I will recall Item 1. Any questions, members
4 of the Board, on the dismissal of Item 2 on the agenda?

5 MR. EVANS: Mr. Chairman, I have one. You said there is going
6 to be no production from that row? They have already
7 mined it through?

8 MR. WIRTH: That is correct. That panel is gone. And there is
9 one panel affecting V-21 from -- V-21, W-21, X-21 and Y-
10 21, if you refer to Exhibit G, Page 1 of the application
11 on V-21 you will see that Development 5 there is a .923
12 percent interest in V-21 with the other units also
13 having small amounts that overlapped into that unit. If
14 you picture over to the east that is where the PGP units
15 were located. And by the time we -- if you go into
16 Development 4 you will see VVH on Y-20, 6.323. That well
17 did not get completed and drilled by the time the
18 longwall had already gone through and they are coming
19 back through there.

20 MR. CHAIRMAN: Any other questions?

21 MR. MCGLOTHLIN: Mr. Wirth, any foreseeable gob production in
22 that area?

23 MR. WIRTH: It has already been gobbed and we tried to see if
24 we could get anything out of that, Kevin, and there is
25 too much air in the mixture and it is not pipeline

1 quality. So we have just abandoned that effort to try it.
2 There has been no parties making an election to partici-
3 pate. They all deemed to lease and, therefore, we will
4 release all interest that may have been pooled in that
5 area.

6 MR. CHAIRMAN: Any other questions? Any objections to the
7 dismissal of Item 2? (None.) Docket number VGOB-93/01/-
8 19-0311 is dismissed. I am going to recall Item 1, a
9 petition for force pooling by OXY USA for V-20 unit.
10 This is docket number VGOB-93/01/19-0310. It was
11 continued from January. We would ask all parties that
12 wish to address the Board in this matter to come forward
13 at this time, please.

14 MR. SWARTZ: Appearing for OXY, USA, Mark Swartz and Howard
15 Salisbury.

16 MR. CHAIRMAN: The record would show that there are no other
17 parties. You may continue.

18 MR. SWARTZ: This particular unit -- an application to pool
19 this unit was previously heard by the Board on July 21,
20 1992. The docket number at that time was 92/07/21-0243.
21 After the original application was filed regarding this
22 unit the applicant made further efforts to identify
23 people or a group who were listed in the original force
24 pooling application as the W. S. Ellis heirs. And
25 efforts in that regards were successful and we did locate

1 additional devises, successors and assigns. And the
2 reason for this force pooling application is to specific-
3 ally list those heirs of the W. S. Ellis and join and
4 name them as respondents. And the Exhibit B to the
5 current application on V-20 does, in fact, list all the
6 W. S. Ellis heirs that were located by OXY USA, subse-
7 quent to the first force pooling hearing in this case.
8 The reason that we are here is to pool all of these
9 people, specifically, and to have an order entered in
10 effect amending the order that resulted from the July
11 21st hearing so that we have all the proper people. So
12 that is why we are here and the history of this par-
13 ticular unit. I would like to call is Mr. Sam Gordon as
14 my first witness.

15 COURT REPORTER: (Swears witness.)
16
17

18 SAMUEL E. GORDON

19 a witness who, after having been duly sworn, was examined and
20 testified as follows:
21

22 DIRECT EXAMINATION
23

24 BY MR. SWARTZ:

25 Q. State your name.

1 A. Samuel Edward Gordon, II.
2 Q. Where do you live?
3 A. Tazewell, Virginia.
4 Q. Mr. Gordon, who do you work for?
5 A. I work for OXY, USA, Inc.
6 Q. And your job title with OXY, USA is what?
7 A. Regulatory affairs coordinator.
8 Q. Have you testified before this Board before?
9 A. Yes, I have.
10 Q. Have your qualifications as an expert witness with
11 regards to these matters been accepted?
12 A. Yes, they have.
13 Q. Who is the applicant on this petition?
14 A. Buchanan Production Company.
15 Q. Is Buchanan Production Company a Virginia general
16 partnership?
17 A. That is correct.
18 Q. And are the two partners in Buchanan Production Company
19 Appalachian Operators, Inc. and Appalachian Methane, Inc?
20 A. Yes, that is correct.
21 Q. And are both of these corporate partners wholly owned
22 subsidiaries of Oxydental Oil and Gas Corporation?
23 A. They are, yes.
24 Q. Is Buchanan Production Company authorized to do business
25 in Virginia?

1 A. Yes, it is.

2 Q. Is Buchanan Production requesting that OXY USA be
3 designated unit operator by the Board?

4 A. Yes, it is.

5 Q. Is OXY USA a Delaware corporation authorized to do
6 business in the Commonwealth of Virginia?

7 A. Yes, it is.

8 Q. And is OXY registered with the DMME and does OXY USA have
9 a blanket bond on file as required by law?

10 A. Yes, it does.

11 Q. Does Buchanan Production Company have a management
12 committee that runs its affairs or managers its affairs?

13 A. Yes, sir does.

14 Q. And has that management committee delegated to OXY USA
15 "the authority to explore, develop, and maintain the
16 properties of Buchanan Production Company as professional
17 manager"?

18 A. Yes, it has.

19 Q. And have you filed anything with the Board in writing
20 with the application as evidence of that delegation?

21 A. Yes. You will find that as Exhibit J. Page 1 of our
22 application.

23 Q. And has this delegation of responsibilities by Buchanan
24 Production Company to OXY USA is there other specific
25 responsibilities delegated to certain individuals within

1 OXY USA?

2 A. Yes, there is. We have three people designated. Glen
3 Van Golen is General Manager, Martin E. Wirth is Land
4 Manager and Samuel E. Gordon as Regulatory Manager.

5 Q. Has OXY USA consented to consented to service unit
6 operator or designated operator if the Board should
7 appoint OXY USA on this unit.

8 A. Yes, it has. You will find that statement as Exhibit J,
9 Page 2 of the application.

10 Q. And that is actually a consent that has been signed on
11 behalf of OXY?

12 A. That is correct.

13 Q. I think you heard me explain to the Board that the reason
14 there is a second pooling here with regard to this
15 particular unit in that subsequent to the first hearing
16 and the first order that was entered you were able to
17 identify the W. S. Ellis heirs?

18 A. That is correct, yes.

19 Q. Is that, in fact, the reason we are here today?

20 A. That is why we are here today.

21 Q. Have the names and addresses of those heirs been listed
22 in Exhibit B to the application?

23 A. Yes, they have.

24 Q. Is there an amended Exhibit B?

25 A. Yes, there was.

1 Q. And it is actually the only Exhibit B with this applica-
2 tion, but it is called an amended exhibit?
3 A. That is correct.
4 Q. Do we need to modify any portion of the amended Exhibit B
5 that was filed with this application?
6 MR. CHAIRMAN: While you are looking at that I might call your
7 attention to the fact that we have an amended B and an
8 amended B-1.
9 MR. WIRTH: I am trying to sort out to make sure we have got -
10 MR. CHAIRMAN: Is Diana Graham here by any chance or anyone
11 representing Diana Graham? The record will show that no
12 one identifies themselves.
13 Q. (Mr. Swartz continues.) In addition, Mr. Gordon, to
14 picking up the W. S. Ellis heirs did you also pick up
15 Norfolk & Southern Corporation?
16 A. Yes, we did.
17 Q. And anybody else?
18 A. We picked up the Jackson Cook heirs and they are also
19 listed on Exhibit B.
20 Q. The Exhibit B that has been filed in regard to this
21 docket, 93/01/19-0310, do you wish to amend that or is
22 that accurate and correct as filed?
23 A. To the best of my knowledge it is correct as filed with
24 this application.
25 Q. And Exhibit B-1 is different than the original B-1 that

- 1 was filed, correct?
- 2 A. That's correct. We picked up some tax liens against one
3 or more of the parties and we are also showing them.
- 4 Q. And the reason that they are shown on B-1 is not that you
5 are seeking to force pool the IRS or the Commonwealth of
6 Virginia, Department of Taxation, it is simply to advise
7 them of this proceeding?
- 8 A. That is correct.
- 9 Q. With regard to Exhibit A, Page 2, and with reference to
10 OXY's interest or Buchanan Production Company's interest
11 in this unit what is the interest of all of the folks
12 that is sought to be pooled or has previously been pooled
13 from the coal estate?
- 14 A. We are seeking to pool the remaining 3.13 percent of the
15 coal interest.
- 16 Q. What is the extent of the outstanding oil and gas
17 interest that was affected by the first order and will be
18 affected by this proceeding?
- 19 A. We have a remaining 5.7048 percent on the oil and gas
20 interest that needs to be pooled.
- 21 Q. Now, the notice of application and application that was
22 prepared with regard to unit V-20 did you do that?
- 23 A. Yes, I did.
- 24 Q. And did you sign both of those?
- 25 A. Yes, I did.

1 Q. And did you also mail these applications to all persons
2 for whom you had addresses and whose addresses are shown
3 on the amended Exhibit B by certified mail as is required
4 by the Code?
5 A. Yes, I did.
6 Q. And did you subsequently file proof of mailing with Mr.
7 Fulmer's office?
8 A. Yes, we did.
9 Q. Did you also cause a notice to be published in any
10 newspaper?
11 A. Yes, we did. We published this in the Virginia Mountain-
12 eer.
13 Q. On what date would that have been published?
14 A. It was published on January 21, 1993.
15 Q. Did you file an Exhibit E, certification of publication,
16 with Mr. Fulmer's office?
17 A. Yes, we did.
18 Q. When was that mailed to his office
19 A. January 22, 1993.
20 Q. In negotiating leases -- obviously a good bit of this has
21 been leased?
22 A. That's is correct.
23 Q. In negotiating lease and obtaining leases on this acreage
24 and other acreage could you describe the terms that have
25 been have been offered by Buchanan Production Company on

1 the leases?

2 A. The term for the coalbed methane has been for \$1 per acre
3 as a bonus consideration. It is a one time payment up
4 front. The royalty provisions in the lease call for 1/8
5 royalty. And the term is to be as long as production
6 continues.

7 Q. And would you recommend that to the extent that the order
8 contemplates affording the options under the statute and
9 contemplates people deemed to have been leased, that the
10 Board incorporate those types of lease terms with
11 reference to people who are deemed to have been leased?

12 A. Yes, I do.

13 Q. With regard to this unit is this a unit that is going to
14 start off as short hole production and ultimately have
15 gob production?

16 A. Yes, it is.

17 Q. If you look at Exhibit G, Page 1, this unit has been
18 outlined in kind of a dark square?

19 A. Yes, it has.

20 Q. And that shows the development panels that are an-
21 ticipated to affect this unit? That would be Development
22 4 and 5?

23 A. That's correct.

24 Q. Are there any methane production holes contemplated to be
25 drilled within unit V-20?

1 A. No, there is not.

2 Q. And none are shown on Exhibit G, Page 1?

3 A. That is correct.

4 Q. The acreage in this unit is how many acres?

5 A. 80 acres.

6 Q. And you are seeking to develop coalbed methane in seams
7 below the Tiller seam?

8 A. That is correct.

9 Q. Now there is a DWE in this packet which you indicate was
10 reviewed by you on December 10, 1992. Do you see that?

11 A. Yes, I do.

12 Q. Is this the same numbers that were in the original
13 application?

14 A. Yes, they are.

15 Q. So the math does not change in terms of cost?

16 A. No change. No, sir.

17 Q. And is the sum \$25,250 the total shown on Exhibit C a
18 reasonable estimate in your judgement as to the amounts
19 -- title work and other work that will be necessary to
20 go forward with production from this unit?

21 A. Yes, it is.

22 Q. Again, with regard to Exhibit G, Page 1, does that
23 exhibit show the percentage of each longwall panel? That
24 would be production from each longwall panel and cost
25 from each longwall panel that would be allocated to unit

1 V-20?

2 A. Yes, it does.

3 Q. With regard to Development Panel 4 what is the percentage
4 that would be allocated to V-20?

5 A. 6.25 percent.

6 Q. And with regard to Development 5?

7 A. 5.076 percent.

8 Q. And Page 2 of Exhibit G was that prepared by you?

9 A. Yes, it was.

10 Q. And was the purpose of this in part to show the total
11 coast with regard to both Development Panel 4 and 5?

12 A. Yes it was.

13 Q. And are they, in fact, shown on this exhibit?

14 A. Yes, they are.

15 Q. And then is there a further effort to allocate those
16 total costs of each panel to unit V-20 on a percentage
17 basis?

18 A. Yes, there is.

19 Q. And with regard to each of the two panels what is the
20 allocated cost?

21 A. In Development 5 V-20's proportionate part would be
22 \$34,428 and in Development 4 the proportionate part would
23 be \$26,766.

24 Q. Now Exhibit G, Page 3, does this set forth the division
25 of interest for all people who have been added as

- 1 respondents or all people who were originally respondents
2 who interests have changed?
- 3 A. Yes, it does.
- 4 Q. And is the last column on the right-hand side, which is
5 entitled "Division of Interest" will that be used for
6 royalty calculations?
- 7 A. Yes, it will.
- 8 Q. Could it also be used in conjunction with dollars or the
9 allocate costs on Exhibit G, Page 2 for people to figure
10 out their anticipation costs or their carried interest
11 recoup?
- 12 A. Yes.
- 13 Q. Is it your opinion that the development plan shown on
14 Exhibit G, Page 1, is a reasonable method and plan to
15 develop the coalbed methane resources within and under
16 unit V-20?
- 17 A. It is, yes.
- 18 Q. And is it your opinion that this plan and the allocation
19 that as set forth in this application will protect
20 correlative rights of the owners of the methane within
21 and under the unit in question lessen the likelihood of
22 physical waste and economic waste?
- 23 A. Yes, it is.
- 24 MR. SWARTZ: That is all I have.
- 25 MR. CHAIRMAN: Questions members of the Board?

1 MR. MCGLOTHLIN: Mr. Gordon, back to Exhibit G-1, refresh my
2 memory if we have gone over this before. 6.250 on Panel
3 4 and 5.076 on Panel 5, does that incorporate the
4 (inaudible) pillar above that, as well, or is that just
5 off the longwall?

6 MR. GORDON: It is just off the longwall.

7 MR. MCGLOTHLIN: You don't anticipate any gas coming off that
8 (inaudible) pillar section?

9 MR. GORDON: If there is gas coming off that pillar section it
10 will be allocated back across the unit. It is hard to
11 probably distinguish between where the gas -- you know,
12 which part of that unit that gas has actually migrated
13 from.

14 MR. MCGLOTHLIN: What I am asking is, are the people listed
15 here also the owners of the entire V-20?

16 MR. GORDON: Yes, they are.

17 MR. SWARTZ: That's a good question. With regards to control-
18 ling oxygen content it terms of the VVH's that are
19 serving -- let's just stay with Development Panel 4.

20 Q. (Mr. Swartz continues.) Can you tell me whether there is
21 an effort made to not pull on those VVH's or those
22 methane production holes to the extent that you will
23 start getting general mine ventilation air into the
24 panel? Is that something that you try not to do?

25 A. Yes. That is regulated both with Island Creek and with

1 our own computer system. And we will only pull hard
2 enough where we get quality gas and we don't start
3 incorporating the oxygen that is down there for the
4 miner's safety.

5 Q. So, in effect, is there an oxygen content monitor at
6 every methane production hole?

7 A. Island Creek does monitor each bore hole, yes.

8 Q. And if your oxygen level starts to increase on a bore
9 hole is there, in fact, a mechanism whereby the suction
10 pressure on that bore hole is decreased so that you are
11 not pulling oxygen from the mine?

12 A. Yes, it is regulated through the command center at Island
13 Creek Coal Company.

14 Q. Therefore there may be oxygen or gas coming in from the
15 pillared section here or the development entry, is it the
16 design of the system to minimize that?

17 A. Yes.

18 MR. CHAIRMAN: Other questions? Any other witnesses?

19 MR. SWARTZ: No.

20 MR. CHAIRMAN: What is your pleasure, Board?

21 MR. MCGLOTHLIN: One clarification, Mr. Chairman. Will the
22 force pooling of the heirs when we do this will it also
23 allow the previous pooling to have a chance to partici-
24 pate again or is this just for this one group of individ-
25 uals?

1 MR. SWARTZ: It's just for the new folks in terms of partici-
2 pation.

3 MR. CHAIRMAN: It wouldn't change what the other parties have
4 elected?

5 MR. SWARTZ: Correct. I mean, that would be our expectation.
6 I mean, that is what we have done before.

7 MR. MCGLOTHLIN: Mr. Chairman, I move that we accept the
8 petition as filed.

9 MR. EVANS: Second.

10 MR. CHAIRMAN: A motion and a second to approve the petition.
11 Any further discussion? If not, all in favor signify by
12 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
13 The motion carries.

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2 ITEM 3
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4 MR. CHAIRMAN: The third item on today's agenda is a petition
5 for well location exception by Ashland Exploration, Inc.,
6 for G.P. A-3 located in Hurley Quadrangle. This is
7 docket number VGOB-92/12/15-0297, continued from Febru-
8 ary. We would ask the parties that wish to address the
9 Board in this matter to come forward at this time.

10 MR. SWARTZ: Mark A. Swartz and Howard Salisbury representing
11 Georgia Pacific, Island Creek, Buchanan Production and
12 OXY USA.

13 MR. CHAIRMAN: Is Ashland represented here today?

14 MR. MCGLOTHLIN: Mr. Chairman, Mr. McGuire, called and
15 requested a continuance on these matters due to inclement
16 weather.

17 MR. CHAIRMAN: Did he call here this morning?

18 MR. MCGLOTHLIN: He called the Division office and I think he
19 faxed -- Diane called and said that he had faxed something
20 into the office requesting a continuance.

21 MR. CHAIRMAN: Are there any parties here today other than the
22 ones that have been identified here that came today to
23 address the Board regarding this petition for well
24 location exception?

25 MR. WILLIAM YEARY: Well location exception where, sir? You

1 all aren't speaking loud enough for us to hear you. You
2 have got microphones for these lawyers representing the
3 gas companies, but the public can't hear the people that
4 are suppose to be representing us.

5 MR. CHAIRMAN: Sir, we will try to speak up. You may also
6 move forward to where you can hear. The acoustics in the
7 room are not good. I'll grant you that.

8 MR. YEARY: Could we borrow one of those microphones and set
9 it over there?

10 MR. CHAIRMAN: These are just for recording. I have one
11 here, but it is just for the recorder. We are transcrib-
12 ing the hearing today. It is not to make it carry the
13 sound. This is a petition for well location exception by
14 Ashland Exploration, Inc., for G. P. A-3 located on the
15 Hurley Quadrangle in Knox District in Buchanan County is
16 what this is about. Mr. Swartz, do you have any problem
17 with the continuance?

18 MR. SWARTZ: I talked to Grant late yesterday and -- I mean,
19 the weather is bad. I am not going to object. You all
20 can do whatever you feel is appropriate. I mean, this
21 affects 3, 4, 5, and 6. It's not just the one you called.

22 MR. CHAIRMAN: Well, if people have come here today to address
23 the Board on these matters we will hear what they have to
24 say. I know you are here to address the Board --

25 MR. SWARTZ: Well, I don't think I need to say anything

1 because Mr. McGuire -- there is nothing to respond to. I
2 mean, he has not made a record yet.

3 MR. CHAIRMAN: Okay. On the docket I just called does any
4 member of the Board have any problem continuing to this
5 to the April docket? (None.) Okay that will be con-
6 tinued. Of course, I understand that Items 4, 5 and 6 --
7 I am going to go ahead and call them in case the people
8 that traveled here today are here to address the Board
9 regarding this.

10 MR. WIRTH: Mr. Chairman, I have a clarification on those.
11 Is Ashland allowed to keep on drilling these units? If
12 you remember, we flew out our engineers from Oklahoma and
13 they weren't prepared and the next time they weren't
14 prepared and the next time they weren't prepared. But I
15 think they have gone ahead and drilled a couple of the
16 wells.

17 MR. CHAIRMAN: Well, they are not suppose to be drilling wells
18 if they don't approval from the Board.

19 MR. WIRTH: Well, I think the pooling application may have
20 been approved but the permits have. On that one.

21 MR. CHAIRMAN: Well, if they need a location exception --

22 MR. FULMER: A-3 has not, because of the location exception.
23 But the pooling applications have.

24 MR. CHAIRMAN: Were you talking about the others?

25 MR. WIRTH: The others, yes. I'm sorry.

1 MR. CHAIRMAN: Do you know about those, Mr. Fulmer?

2 MR. FULMER: The status of drilling? I would have to check
3 and get back with the Board as to what the status of them
4 actually is. But the permits have been issued.

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ITEM 4

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4 MR. CHAIRMAN: I am going to go head for those of you that are
5 here today and call these in case you are here to address
6 the Board on these matters. We do have a request by the
7 attorney in this matter to continue it until the next
8 hearing. The next one is a petition for force pooling by
9 Ashland Exploration for A-3 located in Hurley Quadrangle
10 of Buchanan County. This is docket number VGOB-92/12/15-
11 0298. Anyone here to address the Board in that matter,
12 other than Mr. Swartz and his representation? Any
13 problem, members of the Board, in continuing this until
14 next month? (None.) That will be continued.
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ITEM 5

MR. CHAIRMAN: The next item on the agenda is a petition for force pooling by Ashland Exploration for G. P. A-4 located in Hurley Quadrangle, Knox District of Buchanan County. This is docket number VGOB-92/12/15-0299. Anyone here to address the Board, other than Mr. Swartz? Any problem, members of the Board, in continuing that until next month? (None.) That will be continued.

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2 ITEM 6
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4 MR. CHAIRMAN: And finally a petition for force pooling under
5 Section 45.1-361.21 by Ashland Exploration for G. P. A-5
6 located in Hurley Quadrangle, Knox District of Buchanan
7 County. This is docket number VGOB-92/12/15-0300.
8 Anyone here to address the Board in this matter, other
9 than Mr. Swartz? Any problem, members of the Board, in
10 continuing that until next month? (None.) That will be
11 continued.

12 MR. MCGLOTHLIN: Mr. Chairman, regarding those items I'm
13 concerned about the drilling of these wells considering
14 the objection that has been made and the possibility of
15 us -- the filed unit in that area. What do you think
16 about putting a moratorium on those wells until such time
17 as we can straighten this out?

18 MR. CHAIRMAN: Is that a proposal or is it up for discussion?

19 MR. MCGLOTHLIN: It's just up for discussion to get the
20 Board's feel of this.

21 MR. HARRIS: Do we have any legal basis for that? I mean, if
22 the permit has been granted can be put a moratorium on
23 drilling?

24 MR. SWARTZ: I think the issue is production probably at this
25 point. You may have the ability to do that --

1 MR. CHAIRMAN: For production, but not for drilling.
2 MR. SWARTZ: Right. You can have the well sitting there, but
3 you can't produce it until you know who you need to be
4 paying. I mean, they should know enough not to produce
5 it until they have a unit, but you never know.
6 MR. KELLY: I want to ask Tom -- you say these all have been
7 permitted?
8 MR. FULMER: Yeah. 4, 5 and 6.
9 MR. KELLY: You couldn't permit until they got any exception
10 to it.
11 MR. FULMER: Right. 4 and 5 was issued. And if you will note
12 these have been continued since December at the same time
13 that this one was filed. However, they have been
14 continued since that time. In normal cases what I
15 usually do is put a restriction on production on these
16 wells, but since the petition was filed -- and now we are
17 in the fifth month of continuance I may need to, and if
18 the Board wishes I can go back and issue an order for no
19 production until such time.
20 MR. KELLY: But they did satisfy the requirements to get a
21 permit to actually drill a well?
22 MR. FULMER: Yes. They satisfied the State requirements for
23 permitting these wells.
24 MR. KELLY: And drilling?
25 MR. FULMER: And drilling, yes.

1 MR. KELLY: The permit automatically does that, except for the
2 one that would require an exception?

3 MR. FULMER: Except for the one requiring an exception.

4 MR. WIRTH: The concerns that are raised and Mr. McGlothlin
5 brought it up is that OXY USA, Georgia Pacific and
6 Buchanan Production Company desires to have field rules
7 established in this area. If they keep continuing with
8 drilling -- and in their own testimony last time said
9 the one well, which surprised me, had already been
10 drilled. There is drilling units in filed rules and we
11 wanted to make sure that, at least, whatever units the
12 Board desires to come up with 160, 120, 180, whatever
13 form, shape or size that -- because my objection is they
14 are bonding against my lease rights and they are draining
15 -- until I find out what the units are going to be I have
16 very strong objections to it.

17 MR. MCGLOTHLIN: Mr. Chairman, I'll put it in a motion that no
18 production come from these wells until such time that we
19 have an opportunity to hear these items.

20 MR. CHAIRMAN: That the Board direct the Inspector to issue an
21 order that there be no production?

22 MR. MCGLOTHLIN: Yes.

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1 MR. KELLY: Mr. Chairman, I would just like to get a little
2 more clarification. Mr. Wirth, I don't have a map here
3 to refer back to -- I remember that from last time. The
4 permits have been issued so apparently, at least, the
5 1320 distance -- within that distance there was no
6 objection from --

7 MR. WIRTH: In a circle radius?

8 MR. KELLY: Right.

9 MR. WIRTH: We weren't even notified. But if you go to a
10 square or rectangle --

11 MR. SWARTZ: We wouldn't get notice of a permit application so
12 we didn't have a chance to object to the permit.

13 MR. WIRTH: If we would go to a rectangle or a square there is
14 a good possibility my acreage would come inside that
15 unit, which we are asking the Board to consider.

16 MR. SWARTZ: The other problem, Mr. Kelly, is -- I filed a
17 memorandum on these pooling applications with regard to
18 field rules and there was a plat attached. At the last
19 hearing we learned that a pre-existing voluntary unit
20 overlapped two of these units. I mean, this is a
21 problem. Even a 1,320 is a problem. And something needs
22 to be done in that area to square this away. I mean,
23 there are a lot of well up there. If Grant were here
24 today we would get into it. Marty has platted a bunch
25 of other wells. These are not exploratory wells. And

1 there is a lot of island acreage being carved out and
2 there is some overlap problems. It is a situation where,
3 I think, we need to think about imposing some kind of
4 uniform system of development for the remaining acreage.
5 That map that you are looking at, which I offered as an
6 exhibit awhile back, it is even worse than that because
7 of that voluntary unit. I can't remember if you were
8 here last time or not --

9 MR. KELLY: Yeah. I remember the problem with the voluntary
10 unit.

11 MR. SWARTZ: You know, which was a lease unit. It looks like
12 Italy or something.

13 MR. EVANS: As to Mr. McGlothlin's motion, I will second his
14 motion that no production be allowed from these wells
15 until such time as this matter is heard.

16 MR. CHAIRMAN: I have a motion and a second. Any further
17 discussion? If not, all in favor signify by saying yes.

18 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.

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ITEM 7

MR. CHAIRMAN: The next item on the agenda is a petition for force pooling by Equitable Resources Exploration for V-2536. This is docket number VGOB-93/02/16-0331. We would ask the parties that wish to address the Board on this matter to come forward at this time.

MR. TWEED: Mr. Chairman, Douglas Tweed with Hunter, Smith Davis here on behalf of EREX with a request that this particular docket number, Item 7, be continued until the April docket. EREX and our firm has been advised by the people doing the title work that they had to do some corrective work and some additional notifications need to go out before this would be right for hearing. and that is the reason why the continuance is necessary. We haven't gotten everybody properly notified yet.

MR. CHAIRMAN: Does anyone object to that?

MR. WILLIAM YEARY: What well and so forth is this?

MR. CHAIRMAN: This is a force pooling for V-2536. Any problems with that, members of the Board? (None.) It will be continued.

ITEM 8, 9, 10 & 11

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 force pooling under Section 45.1-361.22 by Pocahontas Gas
5 Partnership for unit L-41 located in Jewell Ridge
6 Quadrangle, Garden District of Buchanan County. This is
7 docket number VGOB-93/03/16-0338. We would ask the
8 parties that wish to address the Board in this matter to
9 come forward at this time.

10 MS. MCCLANAHAN: I am Elizabeth McClanahan and I represent
11 Pocahontas Gas Partnership. Some of our witnesses left
12 Bluefield this morning at 6:00 and they are not here yet.
13 So is there any way we could put these four docket
14 numbers, 338, 240, 341 and 342, at the end of the docket
15 after EREX? We are expecting them to be here.

16 MR. CHAIRMAN: The request is that docket number VGOB-93/03/-
17 16-0338, 0340, 0341 and 0342 be held until later on in
18 the docket today. Is there any problem with that? Is
19 there anyone here that came here today to address the
20 Board in these matters? (None) Is there any problem,
21 members of the Board, of holding that over until later
22 today? (None.) Okay. We will hold those four until
23 later on. They will be moved to the end of the docket.

24 MS. MCCLANAHAN: Thank you very much.
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2 ITEM 12
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4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 force pooling under Section 45.1-361.22 by Equitable
6 Resources Exploration for VC-2846, located on the Duty
7 Quadrangle, Ervington District of Dickenson County,
8 Virginia. This is docket number VGOB-93/03/16-0343. We
9 would ask the parties that wish to address the Board in
10 this matter to come forward at this time. We will take a
11 five minute break.

12 (AFTER A RECESS FROM 10:05 A.M. - 10:15 A.M., THE
13 PROCEEDINGS CONTINUED AS FOLLOWS:)

14 MR. CHAIRMAN: Item 12 on the Board's agenda is a petition for
15 force pooling by Equitable Resources Exploration for VC-
16 2846, located on the Duty Quadrangle, Ervington District
17 of Dickenson County. Docket number VGOB-93/03/16-0343.
18 We would ask the parties that wish to address the Board
19 in this matter to come forward at this time.

20 MR. TWEED: Doug Tweed and Jim Kiser with Hunter, Smith &
21 Davis law firm here on behalf of EREX. With us on this
22 particular matter will be Dennis Baker, who is present,
23 and Bob Dallin, who is answering a telephone call but
24 will be present very shortly.

25 MR. CHAIRMAN: I would ask that you gentlemen just identify

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DIRECT EXAMINATION

BY MR. TWEED:

Q. Would you state your full name, please?

A. Dennis Baker.

Q. By whom are you employed, Mr. Baker?

A. Equitable Resources Exploration.

Q. And in what capacity?

A. As a leasing supervisor.

Q. And have your responsibilities as a leasing supervisor include lands involved here with this application, as well as land in the surrounding area?

A. Yes, they do.

Q. And have you been involved in these types of responsibilities for several years?

A. Yes, I have.

Q. And have you, in fact, testified and been accepted by this Board as an expert witness in your field on prior occasions?

A. Yes, I have.

Q. And are you familiar with the Equitable's application for the establishment of drilling unit and pooling order for Well VC-2846?

1 A. Yes, I am.

2 Q. And is Equitable seeking to force pool the drilling
3 rights underlying the drilling and spacing units as
4 depicted on Exhibit A of the application?

5 A. Yes, that is correct.

6 Q. And does Equitable own the drilling rights in the units
7 involved here?

8 A. Yes, they do.

9 Q. Is the location proposed for Well VC-2846 on this
10 approved unit in the Board's order for the Nora Coalbed
11 Field Rules dated March 26, 1989?

12 A. Yes.

13 Q. Now, we filed an Exhibit B reflecting the various leased
14 and unleased interests in this unit with the application.
15 Have we an amended Exhibit B at this time?

16 A. Yes, we do.

17 Q. That is due to continued efforts to lease interest and
18 some additional leased interest we can now reflect to the
19 Board?

20 A. That is correct.

21 MR. TWEED: I am going to ask Mr. Kiser at this time to hand
22 out amended Exhibit B to the Board.

23 Q. (Mr. Tweed continues.) What is the percentage of
24 interest rounded off to the nearest tenth or hundredth of
25 EREX in the unit at this time?

- 1 A. The current interest being leased at this time is 81.35
2 percent.
- 3 Q. And are you familiar with the ownership of the drilling
4 rights of parties other than EREX underlying this unit?
- 5 A. Yes.
- 6 Q. And what is that percentage at this time?
- 7 A. The interest being unleased at this time is 18.65.
- 8 Q. And would you point out to the Board at this time which
9 parties are involved in the changes between this amended
10 Exhibit B and the Exhibit B that was filed earlier with
11 the application?
- 12 A. Well, on Page 1 of the revised Exhibit B all of the
13 individuals listed under Tract 4 being changed from an
14 unleased status to a leased status. Those are the only
15 changes.
- 16 Q. Prior to filing the application with respect to this
17 matter were efforts made to contact each of the respond-
18 ents in an attempt to work out an agreement regarding the
19 development of the unit involved here?
- 20 A. Yes, they were.
- 21 Q. I take it that the amended Exhibit B reflects a continued
22 effort in that regard since the filing of the applica-
23 tion?
- 24 A. That is correct.
- 25 Q. Were efforts made to determine if the individual respond-

1 ents were living or deceased or their whereabouts, and if
2 deceased we efforts made to determine the names and
3 addresses and whereabouts of successors and interest to
4 any deceased respondents?

5 A. Yes.

6 Q. And were diligent and reasonable efforts made and sources
7 checked to identify and locate unknown heirs to include
8 primary sources such as deed records, probate records,
9 assessors records, treasurers record as well as secondary
10 sources such as telephone directories, city directories,
11 family and friends?

12 A. That is correct.

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

15 A. Yes.

16 Q. And are the addresses set out in the amended Exhibit B to
17 the application the last known addresses for the respond-
18 ents?

19 A. That is correct.

20 MR. TWEED: Mr. Chairman, we would be the admission of amended
21 Exhibit B to this application at this time.

22 Q. (Mr. Tweed continues.) Mr. Baker, are you requesting the
23 Board to force pool all the other unleased interests as
24 listed in amended Exhibit B?

25 A. Yes.

1 Q. Is EREX seeking to force pool drilling right of each
2 individual respondent, if living, and if deceased the
3 unknown successor or successors to such deceased individ-
4 ual respondent?

5 A. Yes.

6 Q. And is EREX seeking to force pool the drilling rights of
7 any person designated as trustee, if acting in the
8 capacity of trustee, and if not acting in such capacity
9 to force pool the drilling rights of the successor of any
10 such trustee?

11 A. Yes. That is correct.

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

15 A. Yes, I am.

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

17 A. \$5 bonus consideration. A 5 year term and 1/8 royalty.

18 Q. Did you gain your familiarity by acquiring oil and gas
19 leases and coalbed methane leases and other agreements
20 involving the transfer of drilling rights in units
21 involved here and in the surrounding areas?

22 A. Yes.

23 Q. In your opinion do the terms that you have testified to
24 represent the fair market value of and a fair and
25 reasonable compensation to be paid for drilling rights

1 within this unit?

2 A. Yes, they do.

3 Q. And based upon that and as to respondents who have not

4 voluntarily agreed to pool do you recommend that the

5 respondents listed in amended Exhibit B who remain

6 unleased be allowed the following options with respect to

7 their ownership interest within the unit, 1: Participa-

8 tion 2: A cash bonus of \$5 net mineral acre plus a 1/8 of

9 8/8's royalty or 3: In lieu of cash bonus and 1/8 of

10 8/8's royalty a share in the operation of the well on a

11 carried basis as a carried operator under the following

12 conditions. That the carried operator shall be entitled

13 to the share of production for the tracts pooled accord-

14 ing to his interest exclusive of any royalty or overrid-

15 ing royalty reserved in any leases, assignments thereof

16 or agreements related thereto of such tracts, but only

17 after the proceeds allocable to his share equal either

18 300 percent of the share of such cost allocable to the

19 interest of the carried operator of the leased tract or

20 portion thereof or 200 percent of the share of such cost

21 allocable to the interest of the carried operator of an

22 unleased tract or portion thereof?

23 A. Yes, that is correct.

24 Q. Do you recommend that an order provide that elections by

25 respondent be made in writing and sent to EREX at the

1 name and address of our law firm, Hunter, Smith & Davis,
2 1212 N. Eastman Road, P.O. Box 3740, Kingsport, Ten-
3 nessee, 37664, Attention: Douglas S. Tweed.
4 A. That is correct.
5 Q. And should this be the address for all communication with
6 applicant concerning the force pooling order?
7 A. Yes.
8 Q. Do you recommend that the force pooling order provide
9 that if no written election is properly made by a
10 respondent that the respondent should be deemed to have
11 elected the cash royalty option in lieu of participation?
12 A. Yes.
13 Q. And should the unleased respondents be given 30 days from
14 the date of the order to file any written election?
15 A. That is correct.
16 Q. And if an unleased respondent elects to participate
17 should that respondent be given 45 days from the latter
18 of the date of the mailing or o pay applicant for
19 respondent's proportionate share of the well costs?
20 A. Yes. That is correct.
21 Q. And does applicant expect the party electing to partici-
22 pate to pay in advance that party's share of completed
23 well cost?
24 A. Yes.
25 Q. Should applicant be allowed 60 days following the

1 recordation date of the order and thereafter annually on
2 that date until production is achieved to pay or tender
3 in a cash bonus becoming due under the force pooling
4 order?

5 A. Yes.

6 Q. Do you recommend that the force pooling order provide
7 that if respondent elects to participate but fails to pay
8 respondent's proportionate share of well costs satisfac-
9 torily to applicant for payment of well cost that
10 respondent's election to participate be treated as
11 having been withdrawn and void and that such respondent
12 should be treated just as if no initial election had been
13 filed under the force pooling order?

14 A. Yes.

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

22 A. Yes.

23 Q. Do you recommend that the force pooling order provide
24 that if respondent refuses to accept any payment due
25 including any payment due under said order or if any

1 payment of royalty or cash bonus cannot be paid to a
2 party for any reason such if there is a title defect in a
3 respondent's interests and we have conflicting claims to
4 the coalbed methane gas as between a coal interest and an
5 oil and gas interest that the operator pay into an escrow
6 account created by this Board all the cost and proceeds
7 attributable to the conflicting interest so that they can
8 be held for the respondent's benefit until such time as
9 the funds can be paid and any title defect or conflicting
10 claim can resolved to the operator's satisfaction?

11 A. Yes. That is correct

12 Q. And who should be named the operator under this force
13 pooling order?

14 A. Equitable Resources Exploration.

15 MR. TWEED: Mr. Chairman, I have no further questions for this
16 witness.

17 MR. CHAIRMAN: Any questions, members of the Board? You may
18 call your next witness.

19 MR. HARRIS: In respondents making their responses I think you
20 indicated your law office, is that correct?

21 MR. TWEED: Yes.

22 MR. HARRIS: Is that normal? Is that where these are normally
23 done? I was think there was a land office or a company
24 or whatever.

25 MR. TWEED: Yes, sir. We represent them. We have just found

1 it easier because of the paralegal base that we have for
2 mailings and receipt of mailings for the notifications to
3 go out from our offices as agent for the client. And not
4 everybody does that, but it seems to be in full com-
5 pliance with the statutes and regulations. And that's
6 the way the client likes us to handle it.

7 MR. CHAIRMAN: Do you gentlemen have any questions you would
8 like to ask at this point in time?

9 MR. BREEDING: I don't.

10 MR. CHAIRMAN: You may continue.

11 MR. TWEED: I call Mr. Bob Dallin.

12
13 BOB DALLIN

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

16
17 DIRECT EXAMINATION

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19 BY MR. TWEED:

20 Q. Would you state your full name?

21 A. Robert A. Dallin, II.

22 Q. By whom are you employed, Mr. Dallin?

23 A. I am employed by EREX.

24 Q. In what capacity?

25 A. I'm operations specialist.

1 Q. And have you held that position and had experience in
2 that field for several years?
3 A. Yes, I have.
4 Q. And have you testified before this Board and have your
5 qualifications as an expert witness previously been
6 accepted by the Board with respect to your professional
7 duties?
8 A. Yes, I have.
9 Q. And do your responsibilities including the lands involved
10 with this application and the surrounding area?
11 A. They do.
12 Q. Are you familiar with the proposed exploration and
13 development of the units involved here under EREX's plan
14 of development?
15 A. Yes, sir.
16 Q. And is this correct as to the total depth of the proposed
17 initial well and the formations to be included? 2,230
18 feet to include the formations consistent with the well
19 work permit now pending before the DMME, including but
20 not limited to all Pennsylvania aged coal seams from the
21 top of the Raven including all splits to the top of the
22 Red and Green shells, including but limited to the Raven,
23 the Jawbone, the Upper Horsepin, the Middle Horsepin, the
24 War Creek, the Beckley, the Lower Horsepin, the Pocahon-
25 tas 8, the Pocahontas 4, the Pocahontas 3, the Pocahontas

1 1 and all other unnamed coal seams and other associated
2 formations known as the Nora Coalized Gas Field.

3 A. Yes, sir, that is an accurate statement.

4 Q. And will this depth be sufficient in your opinion to
5 penetrate and test the common sources of supply in the
6 subject formations?

7 A. Yes, sir, it will.

8 Q. Will the well be in a legal location?

9 A. Yes, sir.

10 Q. And what are the estimated reserves of the unit?

11 A. We estimate 350,000,000 cubic foot of gas be assigned to
12 this drilling unit.

13 Q. Are you familiar with the well costs of the proposed
14 initial unit well under EREX's plan of development?

15 A. Yes, sir, I am.

16 Q. And has a signed AFE been reviewed and submitted to the
17 Board by EREX?

18 A. It has.

19 Q. And was the AFE prepared by an engineering department
20 knowledgeable in the preparation of AFE's and knowledge-
21 able in regard to well costs in this area?

22 A. Yes, sir.

23 Q. And I believe you have testified in preceding months
24 docket about the quality control checks that EREX has on
25 its AFE's to insure that they are reasonably and general-

1 ly accurate?

2 A. Yes.

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

6 A. Yes, sir.

7 Q. And what are the dry hole costs with respect to this
8 unit?

9 A. \$63,953.

10 Q. And the completed well costs?

11 A. \$216,653.

12 Q. And do these costs anticipate a multiple completion?

13 A. Yes, sir, they do.

14 Q. And does the AFE include a reasonable charge for super-
15 vision?

16 A. Yes, sir.

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

21 A. Yes, sir.

22 MR. TWEED: I have no further questions of this witness.

23 MR. CHAIRMAN: Any questions members of the Board? (None.)

24 Do you folks have any questions?

25 MR. BREEDING: No.

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

2 MR. TWEED: We have no further witnesses with respect to this
3 application at this time.

4 MR. CHAIRMAN: What about the AFE?

5 MR. TWEED: I had questioning from him. We had a signed AFE
6 submitted with the application and he has testified to
7 it.

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

9 MR. CHAIRMAN: Do you want to go ahead and make your state-
10 ment?

11 MR. BREEDING: Yes. On Exhibit A you show in Tract 1,
12 Madeline Presley. Again, I am just speaking for Ms.
13 Presley. And we are showing that Clinchfield Coal
14 Company and Price's Resources owning 45 acres of coal.
15 Ms. Presley thinks she has the documents to prove that
16 this may be in error. We ask EREX to check that, because
17 Ms. Presley thinks she owns those minerals.

18 MR. TWEED: What is the full name again?

19 MR. BREEDING: Opal Madeline Presley.

20 MR. TWEED: And this is on Tract 1?

21 MR. BREEDING: Yes.

22 MR. TWEED: Mr. Chairman, we will be glad to double check this
23 out with this gentlemen on behalf of Ms. Presley, and
24 with Clinchfield. And if there appears to be a reason-
25 able chance of a legitimate dispute here to include any

1 monies involved with this in the escrow and protect it.

2 MR. CHAIRMAN: And you will submit that to the Board?

3 MR. TWEED: Yes.

4 MR. CHAIRMAN: Anything else?

5 MR. BREEDING: I think just for clarification purposes I know
6 that the lease has already been made and we are kind of
7 late in the ball game, but could clarify just one thing.
8 You mentioned something about a dry hole cost. Will the
9 people that are leasing are they going to have to pick up
10 part of this percentage of this cost on a dry hole?

11 MR. DALLIN: That would depend on your elections. You have a
12 right to participate in the drilling of the well and the
13 proceeds from the well. You also have the right to be
14 deemed as leasing. In that case you would not put up any
15 money. You would only benefit from the royalty interest.
16 I believe there is a third option. It's carried. In
17 that case also you would not contribute any money, only
18 participate in the production after pay-out. I forget
19 the percentage he put in. But there is only one case in
20 which you would put money up and that is a working
21 interest position.

22 MR. BREEDING: You are saying working interest -- if they were
23 participating in the actual physical drilling?

24 MR. TWEED: It amounts to basically going into partnership
25 with the people operating the well and putting up money

1 and then basically getting a part of the net profits of
2 the well and some of the tax implications, just as if you
3 were being the operator. And you have that option as
4 well as the royalty option. I will tell you what we will
5 be glad when we get off this table today to have somebody
6 sit down with you and answer any questions you have with
7 respect to those options and make sure you understand
8 them.

9 MR. BREEDING: Okay. That will be fine.

10 MR. CHAIRMAN: And so on the dry hole costs if they are a
11 leased party -- the only case that you are saying where
12 they would share in any dry hole cost is if they decide
13 to participate in the total cost of the well?

14 MR. DALLIN: That's correct.

15 MR. CHAIRMAN: And if they have 10 percent ownership or 10
16 percent of the interest and it's a \$200,000 well they
17 have put up \$20,000. Then if it is a dry hole they would
18 run the risk of that, is that what you are saying?

19 MR. DALLIN: That's correct.

20 MR. WILLIAM YEARY: Could I ask a question on that because it
21 is going to be the same company on the same issue? If he
22 could answer it now it would save us some time later.

23 MR. CHAIRMAN: Sir, I really can't do that. I have to stay
24 with this well. We will try to get all your questions
25 answered, but I have to stay with this subject. Did you

1 have anything you wished to say?

2 **SAM BARTON:** Well, I have not leased to the gas company.

3 **LANCE BARTON:** We own 59.5 acres. Approximately 18.65 in
4 Tract 2. I am the son of Chan R. Barton. We have not
5 leased none of it. Some people came down there and
6 talked to us, but they don't want to give you nothing.
7 In other words, what I am wanting to know is if we do
8 lease it we will get that 300 percent but if we don't we
9 will take the 200?

10 **MR. CHAIRMAN:** No, I don't -- will you clarify that. I think
11 that that is one thing that admittedly when we are
12 talking about carried interest and all this it is hard to
13 understand. There is no question about that. We will
14 ask for some clarification and we may chime in with some
15 further clarification of what that means for you.

16 **MR. TWEED:** Mr. Barton, what you have got as I understand it
17 -- and I may need to get clarification as well -- one
18 option that you have is to become a leased party where
19 you just accept a royalty payment. And you get a
20 royalty that is based on 1/8 of the production and it is
21 not a net profit off the production. A transportation
22 cost is cranked in there. Okay? And your percentage is
23 based upon what your percentage of ownership is in this
24 drilling unit. Now, under those circumstances you are
25 not paying any money up front. You are not participating

1 in the operation. You are just taking a royalty. Okay.
2 Now, Option #2 is to participate in the well. And then
3 as Mr. Wampler was saying you basically come up front and
4 make a payment based on your percentage of ownership in
5 this unit as to what the well costs are going to be.
6 And then you get to participate in the profit that comes
7 out of that well, if it works.

8 LANCE BARTON: After that well is paid for.

9 MR. TWEED: Well, that is what profit means. Okay? You
10 participate and then --

11 LANCE BARTON: That's what I thought.

12 MR. TWEED: And then the third option is that you can be a
13 carried operator, which means you participate in the
14 profit of the well, but you don't come up with the up-
15 front money out of your pocket. And under that cir-
16 cumstance they are not going to start giving you money
17 out of the proceeds or profit of the well until they have
18 recovered enough monies. Okay? DO you understand what I
19 am saying?

20 LANCE BARTON: No, I don't.

21 SAM BARTON: I do. I've done heard that before. All I have
22 to say about it is the best thing for EREX to do is to
23 send somebody to talk to me and try to deal with me on
24 it.

25 LANCE BARTON: You first spoke about the 18.65 percent, if you

1 will look on Tract 2 that is where that is at.

2 MR. TWEED: I understand that you are on Tract 2. My under-
3 standing is -- from his own testimony is that there has
4 been an attempt to contact him and we will be glad to
5 have somebody sit down -- Mr. Baker will be glad to sit
6 down and talk to you right now, right after we finish
7 today to try and answer your questions and help you
8 understand what the options are. We have not heard from
9 these gentlemen with the sole exception of our person
10 having gone out to try and contact them once before.

11 LANCE BARTON: That's what I was going to say. There is not a
12 person down through there that we have talked to. It's
13 been someone else.

14 MR. TWEED: Oh, I know. But somebody else did contact you,
15 didn't they?

16 LANCE BARTON: Yeah. But you are saying that they have come
17 back and told you something that you don't even know what
18 they told us, is what I am saying.

19 MR. BAKER: Well, the terms that they have offered you have
20 been, basically, the same terms that we have dealt with
21 the other people and acquired leases on in the same unit.

22 SAM BARTON: The way I take it right now I understand most of
23 this thing. You are just as well off not owning the gas
24 and oil if you own the surface. You get just about as
25 much out of it as you get if you own the gas and the oil

1 and the surface. Right? Because I can't see where you
2 are offering anything.

3 LANCE BARTON: Me neither. We bought the land with the gas on
4 it. That's why we bought it. It cost us more with the
5 gas on it than what you all are going to pay us to take
6 it off.

7 MR. DALLIN: I don't believe I understand your question. You
8 do receive benefits from the production of the reserves
9 under your portion of the unit. That is different than
10 the surface owner. Typically, you would just have
11 damages if you incurred damages.

12 LANCE BARTON: But doesn't that come back to until the well is
13 paid for?

14 MR. DALLIN: No, sir. Through the various options you have in
15 front of you --

16 LANCE BARTON: Well, I know we have got those three options.
17 One option, we can either go in with the company and if
18 they hit a dry hole there we are going to be stuck with
19 -- say the well cost \$200,000 we are going to be stuck
20 with the \$20,000 owing the company. Right?

21 MR. DALLIN: Only if you participate in the drilling of the
22 well at which time participate to your percentage of the
23 unit of what you would contribute in the drilling of the
24 well. You also have the option of being leased at which
25 time you get your proportion of the 1/8 immediately on

1 production. You would put no money forward -- predomi-
2 antly everyone that we deal with, unless they are a joint
3 venture partner or some other aspect, they are a leased
4 part and they receive the 1/8 royalty.

5 MR. TWEED: You get the royalty as the gas comes out -- is
6 produced after the well is paid for.

7 MR. MCGLOTHLIN: Mr. Dallin, would you explain -- I might be
8 wrong on my question here. But explain to Mr. Barton,
9 if he just leases when he will get his royalty and -- he
10 doesn't have to come up with any money?

11 MR. DALLIN: That's true.

12 MR. MCGLOTHLIN: At what point does he start receiving benefit
13 money from the well?

14 MR. DALLIN: As soon as we start selling gas from the well
15 your money would come back to you as a royalty owner.
16 Immediately on production and sale of the gas for the
17 well.

18 SAM BARTON: Well, who is going to pay me for going over my
19 property, tearing it down, tearing the roads up and so
20 on?

21 LANCE BARTON: Who is going to do that? Do we have to do
22 that?

23 MR. BAKER: No. I believe an individual by the name of Wayne
24 Mannis, who has been talking with you about trying to
25 gain access. That is a representative of EREX that

1 negotiated these surface rights to properties.

2 MR. DALLIN: What we would do, typically -- and I am not in
3 the land department, but the land agent that Dennis
4 mentioned to you will negotiate and pay for whatever
5 damages that you incur if it crosses your surface. I
6 personally don't know where the access road is coming
7 through here, but we won't come across your property
8 unless we compensate you and work out with your agreement
9 where we put that road.

10 SAM BARTON: In other words, you are telling me that you will
11 make an agreement with me on the damage before you do it?

12 MR. BAKER: Absolutely.

13 SAM BARTON: If I would refuse to lease to you then how are
14 you going to make roads if I don't agree for you to do
15 that?

16 MR. BAKER: We will probably have to find an alternate access.

17 LANCE BARTON: They can't.

18 MR. BAKER: Under those circumstances if there are no options
19 for an access road the probability of the well location
20 being abandoned would be probably take over. We probably
21 wouldn't drill the well.

22 SAM BARTON: Okay. Well, all I have got to say then is the
23 best thing for you people to do is to come to me -- not a
24 day like today -- a fair day and show me what you where
25 you are going. I have not been shown by your man that you

1 are talking about Wayne whoever he is. And then I might
2 can work out something with him from there.

3 MR. BAKER: Okay.

4 SAM BARTON: And I will tell you something else, too, I don't
5 appreciate driving no 65 miles over here to meet you
6 people. I live in Dickenson County. That's all I have
7 got to say, sir.

8 MR. CHAIRMAN: Thank you for your time. Hopefully, they will
9 get with you and get things explained to you and get
10 things worked out. Anything else?

11 MR. BREEDING: I have one more question. Just for clarifica-
12 tion. I am looking through this document and I am trying
13 to determine which option Ms. Presley chose.

14 MR. BAKER: The lease option. When she executed the lease she
15 preferred to be leased.

16 MR. BREEDING: Is that in this document or is it in some other
17 document?

18 MR. TWEED: She is listed as a lease option in Exhibit B to
19 the application.

20 MR. KISER: So she will be a 1/8 royalty interest.

21 MR. BREEDING: Thank you. That is all I have.

22 MR. CHAIRMAN: Any other questions? All right. Do I have a
23 motion?

24 MR. EVANS: Mr. Chairman, I move that we approve the applica-
25 tion for force pooling as filed.

1 MR. CHAIRMAN: Motion to approve.

2 MR. KELLY: Second.

3 MR. CHAIRMAN: I have a second. Any further discussion?

4 MR. MCGLOTHLIN: Mr. Evans, may I request an amendment to
5 your motion stating that EREX will supply us with
6 documentation that they contacted and tried to work an
7 agreement out with Mr. Barton?

8 MR. EVANS: I have no objections to that.

9 MR. HARRIS: That's going to have to happen anyway. I don't
10 know that we need written proof that that happened. If
11 that doesn't work out we will know it, because the well
12 won't get drilled or won't get drilled in that location.

13 MR. TWEED: We are going to obviously attempt to deal with the
14 surface owner problems that he is bringing up that were
15 not really pertinent to the force pooling aspect that we
16 are dealing with today. This is, to my knowledge, the
17 first time that we have heard of any objections or
18 concerns expressed by this man. Communication is a two-
19 way street. But there is definitely going to be an
20 effort by EREX to work out any surface problems or
21 objections or damages with respect to a route if it
22 involves his tract. I can assure you of that.

23 MR. HARRIS: It may be appropriate to have a separate motion.
24 I'm not sure if a motion for approval should be -- I am
25 sure that that should be attached, that kind of a motion

1 should be attached to a motion for approval for a well.
2 I mean, it is up to you, but I am not sure that that --
3 MR. MCGLOTHLIN: I just feel that Mr. Barton was not -- he
4 left here not truly understanding, I don't think, truly
5 understanding what his options are and --
6 MR. TWEED: I understand, but I believe what happened to Mr.
7 Barton is that Mr. Barton -- he didn't want to lease when
8 he was contacted. But Mr. Barton's concerns were
9 surface. I think he came here primarily concerned about
10 surface and was not aware that the force pooling applica-
11 tion aspect of this really isn't pertinent to what his
12 concerns are.
13 MR. BAKER: At the present time we have been unable to
14 successfully negotiate an agreeable price for this
15 disturbance.
16 MR. CHAIRMAN: Mr. Fulmer, is there an application approved on
17 this for the well drilling? Has an application been
18 submitted to drill the well?
19 MR. FULMER: I am not too sure about that. We get so many. I
20 can certainly check and get back with the Board on that.
21 MR. TWEED: My understanding is that the application -- the
22 permit was to be filed on or about the 15th. And whether
23 or not that was done with the inclement weather or not I
24 can't tell you. When I last talked with the client that
25 was the expected date of filing the permit.

1 MR. KISER: In addition, I think it is safe to say that in
2 addition to the negotiations of surface damages with the
3 Bartons an additional attempt will certainly be made to
4 clearly explain the options that will be available to
5 him either as a voluntary leased party or the options
6 that are available if he subject to -- if he doesn't
7 lease between now and the order, if he is subject to this
8 force pooling order. I'm not sure they understood the
9 difference between participating and carried well
10 interest and just being a 1/8 royalty interest. So there
11 will be additional efforts made certainly in that area.

12 MR. CHAIRMAN: I think companies really need to reach out to
13 do that, to clearly explain what all these options mean
14 to people because it is hard to understand. Even if you
15 work in it everyday you can get confused. When you move
16 from one to the other it's easy to get them confused.

17 MR. BAKER: The problem we have run into from that aspect is
18 when we are trying to deal with people we try to work
19 with them to understand the lease. When you get into
20 these options -- if they do not want to lease you really
21 don't have an opportunity to go into the application for
22 force pooling and just exactly what is going to be
23 involved. You run into a problem there.

24 MR. KISER: And certainly when they receive the application
25 and those elections are set out for them, like you said

1 even if you are involved in this on a daily basis it can
2 sometimes be hard to understand. And if they are just
3 reading it from the application then certainly most of
4 the time they won't understand it. We encourage people
5 to call our office with any questions. And some do,
6 certainly.

7 MR. MCGLOTHLIN: I am just concerned. We have heard this same
8 argument over and over again on the oil and gas com-
9 panies' land people. I don't know. We are not getting a
10 good communication between the companies and the surface
11 -- or I don't perceive the communication between the oil
12 and gas companies and the mineral and surface owners are
13 that great. I don't know what the problem is or how to
14 fix it, but it just seems to me we keep hearing this over
15 and over and over. It is getting to become old hat.

16 MR. TWEED: Well, the experience I have seen in the last
17 several months, Mr. McGlothlin, is that communication is
18 a wonderful thing. But it is a two-way street. I know
19 that these people try to go out, the oil and gas com-
20 panies, and lease these and try to sit down. A lot of
21 the time they lease -- we bring in a very high per-
22 centages of lease most of the time on force pooling and
23 don't even force pool many wells. Then, when you get to
24 the secondary point, the people who don't want to lease,
25 and you start dealing with the force pooling you get into

1 the statutory and regulatory requirements of how you
2 provide applications and notice and cover all this legal
3 issues, at that point in time you can only communicate
4 with people that seek to communicate with you. And when
5 they come in here and they haven't sought legal advise
6 and they don't come up here and they don't try to find
7 you and they don't try to talk to you or refuse to talk
8 to you -- until they step up before the Board oftentimes
9 -- my experience over the last few months that I have
10 been observing the communication break-down was because
11 there was an attempt to communicate by the oil and gas
12 company and no desire to communicate before they got to
13 the Board by the people. I am not sure how you can fix
14 that. That's a reality that kind of comes with some
15 territorial attitude that are understandable but not
16 necessarily always helpful to two-way communication.

17 MR. CHAIRMAN: Mr. Tweed, on the other hand I think that we
18 have heard from a number of citizens -- and not to get
19 this into a debate, but we have heard from a number of
20 citizens who have come forward enough, at least, enough
21 to convince me and I am sure some of the other Board
22 members, that some of the land men for the companies are
23 more or less saying, "Here is a lease. Sign it or forget
24 it." And that may not be just the way it is, but there
25 is enough confusion out there that I think we all need to

1 do more to lay out what people's options are and try to
2 build a good working relationship. It is clearly a two-
3 way street and if someone doesn't want to do that then
4 you can't force it. This Board can't force it and you
5 can't force it. But that's when the provisions of law do
6 kick in. But I think what I hear Mr. McGlothlin and
7 others saying is we just need to see a more concerted
8 effort to trying to resolve those. When people come in
9 here and your people who are showing up at the Board are
10 explaining it it appears that they understand a lot
11 better. And if that is a phenomenon then it just is, but
12 if it is something that may be working through the land
13 people -- and I am not picking on EREX. I think it goes
14 for every company that is doing business in Virginia. We
15 all need to work to make sure that people understand what
16 their rights are. And the more we all can do that I
17 think the better people will be able to make decisions.

18 MR. TWEED: Well, Mr. Dallin and Mr. Baker and Jim and I will
19 certainly take that back to EREX. And in addition to
20 that rest assured that we will send somebody to speak
21 with Mr. Barton to do our absolute best to make sure his
22 questions are all answered.

23 MR. MCGLOTHLIN: Mr. Chairman, I will withdraw my amendment.

24 MR. CHAIRMAN: We had a motion and a second. Any further
25 discussion? If not signify your acceptance by saying

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yes.

BOARD: Yes.

MR. CHAIRMAN: Opposed say no. (None.) A unanimous decision.

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ITEM 13

MR. CHAIRMAN: The next item on the agenda is a petition to force pool by Equitable Resources Exploration for P-289C located in the Haysi Quadrangle, Sandlick District of Dickenson County. This is docket number VGOB-93/03/16-0344. We would ask the parties that wish to address the Board in this matter to come forward at this time.

MR. TWEED: Doug Tweed and Jim Kiser here on behalf of EREX.

MR. CHAIRMAN: Are there any others? The record would show there are none.

MR. TWEED: Our witnesses, Mr. Chairman, will be the same as they were for the previous docket matter heard. I will first call Mr. Baker. I will remind you, Dennis, that you are still under oath.

DENNIS BAKER

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

DIRECT EXAMINATION

1 BY MR. TWEED:

2 Q. Would you state your full name, please?

3 A. Dennis Baker.

4 Q. By whom are you employed, Mr. Baker?

5 A. Equitable Resources Exploration.

6 Q. And in what capacity?

7 A. As a leasing supervisor.

8 Q. Do your responsibilities as a leasing supervisor incor-
9 porate the lands involved here with this application, as
10 well as land in the surrounding area?

11 A. Yes, it does.

12 Q. And are you familiar with EREX's application for estab-
13 lishment of drilling unit and pooling order for EREX well
14 number P-289C?

15 A. Yes, I am.

16 Q. And is Equitable seeking to force pool the drilling
17 rights underlying the drilling and spacing units as
18 depicted on Exhibit A of this application?

19 A. Yes, that is correct.

20 Q. And does Equitable own the drilling rights in the units
21 involved here?

22 A. Yes, they do.

23 Q. Is the location proposed for Well P-289C and the pool
24 unit involved in this application do they fall within the
25 Board's order for the Nora Coalbed Field Rules dated

1 March 26, 1989?

2 A. Yes, they do.

3 Q. And I believe that there was an Exhibit B filed but that
4 there have been some modifications and that you have an
5 amended Exhibit B with respect to this application, as
6 well, is that correct?

7 A. Yes, that is correct.

8 Q. And that there are some additional parties now that are
9 leased that were reflected on the original Exhibit B as
10 unleased, is that correct?

11 A. Yes, it is.

12 MR. TWEED: I am going to ask Mr. Kiser at this time to hand
13 out amended Exhibit B to the Board.

14 Q. (Mr. Tweed continues.) What is the interest that EREX
15 has in this unit at this time?

16 A. The current interest being leased at this time is 95.176
17 percent.

18 Q. And as to the small remaining percent that is not leased
19 are you familiar with those parties and the percentage
20 that is unleased at this time?

21 A. Yes. It is 4.824 percent.

22 Q. And are all the unleased parties set out in the amended
23 Exhibit B?

24 A. That is correct.

25 Q. And would you point out to the Board at this time which

1 parties are involved in the changes between this amended
2 Exhibit B and the Exhibit B that was filed earlier with
3 the application?

4 A. On Page 1 of the revised Exhibit B being Tract 4, the
5 third individual down, Nina Jean Brown is now leased to
6 EREX. The respondent directly below Anthony Wayne
7 Grizzle and Cynthia Grizzle are now leased to EREX.
8 Those are the only two changes at this time.

9 Q. Prior to filing this application were efforts made to
10 contact each of the respondents in an attempt to work
11 out an agreement regarding the development of the units
12 involved here?

13 A. Yes, they were.

14 Q. Can we assume that the reason for amended Exhibit B is
15 that there has been a continued effort in that regard
16 since the filing of the application?

17 A. Yes, there has.

18 Q. Were efforts made to determine if the individual respond-
19 ents were living or deceased or their whereabouts, and if
20 deceased we efforts made to determine the names and
21 addresses and whereabouts of successors and interest to
22 any deceased respondents?

23 A. Yes.

24 Q. And were the efforts that were made to locate unknown
25 heirs the same types of primary and secondary sources

1 that you describe with respect to the previous docket
2 matter today?

3 A. That is correct.

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

6 A. Yes, there was.

7 Q. And are the addresses set out in the amended Exhibit B to
8 the application the last known addresses for the respond-
9 ents?

10 A. Yes, it is.

11 Q. Are you requesting the Board to force pool all the other
12 unleased interests as listed in amended Exhibit B?

13 A. Yes.

14 Q. Is EREX seeking to force pool the drilling right of each
15 individual respondent, if living, and if deceased the
16 unknown successor or successors to such deceased individ-
17 ual respondent?

18 A. Yes.

19 Q. And likewise to any trustees if acting in the capacity of
20 trustee, and if not acting in such capacity the successor
21 of any such trustee?

22 A. Yes. That is correct.

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

1 A. Yes, I am.

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

3 A. \$5 bonus consideration. A 5 year term and 1/8 royalty.

4 Q. Did you gain your familiarity in the same sense that you

5 testified to earlier concerning the previous docket

6 matter today?

7 A. Yes.

8 Q. In your opinion do the terms that you have testified to

9 represent the fair market value of and a fair and

10 reasonable compensation to be paid for drilling rights

11 within this unit?

12 A. Yes, they do.

13 Q. And as to the elections and the provisions of the force

14 pooling order that we are requesting would those be

15 identical to the ones you testified to with respect to

16 the docket matter previously today?

17 A. Yes, that is correct.

18 Q. And that would include the appropriate request with

19 respect to the escrow provision, etc.?

20 A. That's correct.

21 Q. And who should be named the operator under this force

22 pooling order?

23 A. Equitable Resources Exploration.

24 MR. TWEED: Mr. Chairman, I have no further questions for this

25 witness.

1 MR. CHAIRMAN: Any questions, members of the Board?
2 MR. MCGLOTHLIN: Mr. Baker, the \$5 a year bonus is that for
3 all oil and gas or just the coalbed methane?
4 MR. BAKER: That is a consideration that we pay each individu-
5 al that owns an interest in the oil and gas rights.
6 MR. MCGLOTHLIN: That's everything? Not just the coalbed
7 methane?
8 MR. BAKER: That is for executing an oil and gas lease.
9 MR. CHAIRMAN: Any other questions? For the record this
10 amended Exhibit B is distinguishable by having the docket
11 number on it. Because it really didn't say amended
12 Exhibit B. Anything else?
13 MR. HARRIS: This may not be the time to ask this, but we do
14 have a copy of a letter from Jeffrey Counts in Richmond
15 and he makes reference to signing a lease with EREX. Is
16 that another lease at a different time or what? I think
17 under Item 13 the very first thing we have is a letter
18 from him. It says he has a lease signed. But in Exhibit
19 B he is listed as unleased and I am just wondering --
20 MR. BAKER: Does he indicate when he signed the lease?
21 MR. HARRIS: No. It says, "I signed a lease with them and
22 gave them 5 years." So I am not sure --
23 MR. BAKER: Okay. That was in 1987 and that leased has
24 expired.
25 MR. HARRIS: This is another --

1 MR. BAKER: Right. We had attempted to renew that lease with
2 Mr. Counts.

3 MR. CHAIRMAN: Any other questions? You may continue.

4 MR. TWEED: I call Mr. Bob Dallin at this time. Mr. Dallin,
5 you are still under oath.

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BOB DALLIN

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

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DIRECT EXAMINATION

13

14 BY MR. TWEED:

15 Q. Mr. Dallin, you have testified concerning your position
16 and experience with respect to the docket matter just
17 previous. Let me ask you if this would correctly
18 describe the total depth formations to be involved with
19 application. 2,365 feet to include the formations
20 consistent with the well work permit now pending before
21 the DMME, including but not limited to all Pennsylvania
22 aged coal seams from the top of the Raven including all
23 splits to the top of the Red and Green shells, including
24 but limited to the Raven, the Jawbone, the Upper Horse-
25 pin, the Middle Horsepin, the War Creek, the Beckley, the

1 Lower Horsepin, the Pocahontas 8, the Pocahontas 4, the
2 Pocahontas 3, the Pocahontas 1 and all other unnamed coal
3 seams and other associated formations known as generally
4 as the Nora Coalized Gas Field.

5 A. Yes, sir, that is an accurate statement.

6 Q. And you are familiar, of course, with this application
7 and the surrounding areas for it, correct?

8 A. Yes, sir, I am.

9 Q. And will this penetration be sufficient to penetrate and
10 test the common sources of supply in this subject
11 formation?

12 A. Yes, sir.

13 Q. Will this initial well be in a legal location?

14 A. Yes, sir, it will.

15 Q. And what are the estimated reserves of the unit?

16 A. 300,000,000 cubic foot of gas.

17 Q. Are you familiar with the well costs for the proposed
18 initial unit?

19 A. I am.

20 Q. And has a signed AFE been reviewed and submitted to the
21 Board by EREX?

22 A. It has.

23 Q. And was this signed AFE prepared in the same manner and
24 by the same general department personnel as the one on
25 the docket previous?

1 A. Yes, sir.

2 Q. And does this AFE represent a reasonable estimate of the
3 well costs for the proposed unit well unit under EREX's
4 plan of development?

5 A. Yes, sir, it does.

6 Q. And what are the dry hole costs with respect to this
7 unit?

8 A. \$66,048.

9 Q. And the completed well costs?

10 A. \$194,518.

11 Q. And do these costs anticipate a multiple completion?

12 A. Yes, sir, they do.

13 Q. And does the AFE include a reasonable charge for super-
14 vision?

15 A. Yes, sir.

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

20 A. Yes, sir.

21 MR. TWEED: I have no further questions of this witness.

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

23 MR. EVANS: Just one quick one. This in the Nora?

24 MR. DALLIN: This is in the Nora Coalbed Methane Field, yes,
25 sir.

1 MR. CHAIRMAN: Other questions? (None.) Do I have a motion?
2 MR. EVANS: Mr. Chairman, I move that we approve the applica-
3 tion for force pooling as submitted.
4 MR. CHAIRMAN: Motion to approve.
5 MR. HARRIS: Second.
6 MR. CHAIRMAN: We had a motion and a second. Any further
7 discussion? All in favor signify by saying yes.
8 BOARD: Yes.
9 MR. CHAIRMAN: Opposed say no. (None.) The motion is
10 unanimously approved..
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4 ITEM 14

5 MR. CHAIRMAN: The next item on the agenda is a petition for
6 force pooling under Section 45.1-361.22 by Equitable
7 Resources Exploration for VP-2691 located in the Coeburn
8 Quadrangle, Gladeville District of Wise County. This is
9 docket number VGOB-93/03/16-0345. We would ask the
10 parties that wish to address the Board in this matter to
11 come forward at this time. I believe all of you were
12 present when we conducted the one before. What we will
13 have them do is go forward, but we would like all of you
14 that plan to address the Board to state your name for the
15 record, please.

16 MS. YEARY: I am Florence Yeary. Coeburn, Virginia.

17 MR. YEARY: My name is Claude S. Yeary. Coeburn, Virginia.

18 MR. YEARY: William Yeary. Coeburn, Virginia.

19 MR. YEARY: James Yeary. Coeburn, Virginia.

20 WILLIAM YEARY: I would like to make a little observation to
21 the Board. Now these proceedings are kind of like a
22 shotgun marriage. That's about what they are like, with
23 the gas company holding the shotgun and a fellow has got
24 the land and the minerals. He is there waiting to be
25 shot. And the only protection he has got now is you
gentlemen on the Board. That's the only protection we

1 have got. Thank you.

2 MR. CHAIRMAN: You may proceed.

3 MR. TWEED: I need to swear one additional witness, if I can,
4 because we did have an objection filed on behalf of some
5 members of one undivided interest tract concerning
6 allegations as to whether there was an effort to lease.
7 And this gentleman was personally involved with the
8 effort. And so we thought we would have him here for the
9 Board's knowledge. If I could have J. W. Griffith sworn.

10 COURT REPORTER: (Swears witness.)

11 MR. TWEED: And we would start with Dennis Baker. Mr. Baker,
12 you are still under oath.

13

14

15

DENNIS BAKER

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

18

19

20

DIRECT EXAMINATION

21

22 BY MR. TWEED:

23 Q. And are you familiar with EREX's application for estab-
24 lishment of a drilling unit and pooling order for EREX
25 well VP-2691?

- 1 A. Yes, I am.
- 2 Q. And I believe that the permit has been applied for on
3 this well?
- 4 A. Yes, that is correct.
- 5 Q. And that was on February 18, 1993?
- 6 A. Yes.
- 7 Q. And is Equitable seeking to force pool the drilling
8 rights underlying the drilling and spacing units as
9 depicted on Exhibit A of this application?
- 10 A. Yes.
- 11 Q. And does Equitable own the drilling rights in the units
12 involved here?
- 13 A. Yes, we do.
- 14 Q. Does the proposed unit depicted in Exhibit A include all
15 acreage within 2,640 that is a 1,320 foot radius of the
16 proposed well site?
- 17 A. Yes, that is correct.
- 18 Q. And is there an amended Exhibit B with respect to this
19 application?
- 20 A. Yes, there is.
- 21 Q. My understand is that in this case we don't have any
22 changes of status from unleased to leased but we do
23 reflect some different addresses, is that correct?
- 24 A. Yes, it is.
- 25 Q. And in addition to that on Tract 8 I believe involving

1 Claude and Ruby Yeary that would reflect a corrections in
2 terms of their respective ownership rights where a tract
3 was previously listed as being entirely owned by them in
4 the entirety, but it is now reflected as half of it is
5 owned in its entirety and half of it is owned solely by
6 Ruby Yeary, is that correct?

7 A. That is correct.

8 MR. TWEED: I am going to ask Mr. Kiser at this time to hand
9 out amended Exhibit B to the Board and to these parties.

10 MR. CHAIRMAN: Let me just ask a question. Is there an
11 attorney involved in this as well for you -- on your
12 behalf?

13 WILLIAM YEARY: We don't have him here today.

14 MR. CHAIRMAN: Was he going to be here?

15 WILLIAM YEARY: He was going to be here, but he hasn't shown
16 up.

17 MR. CHAIRMAN: I am a little concerned in that we had a phone
18 call yesterday and I believe that both myself and Mr.
19 Fulmer represented that based on the location in the
20 docket number that it would likely be early afternoon. I
21 know that we typically tell everyone that we take them as
22 we call them and that's the way we do. But I am somewhat
23 concerned that we may have misrepresented.

24 MR. TWEED: I have no problem with us moving forward elsewhere
25 and having somebody make a call to Emmitt Yeary's office.

1 I have had two conversations with him and several letters
2 since he filed the application and I had any contact with
3 him about when he was going to be here this morning. But
4 if one of the family members would like --

5 WILLIAM YEARY: No. Don't put that on us. Put it on him.

6 MR. TWEED: Well, I am not concerned personally. I am here on
7 time and Emmitt is not here on time his obligation as a
8 lawyer is --

9 WILLIAM YEARY: We had to hire us a tractor to dig us out.
10 The State hadn't even cleaned our road. We had to have
11 a State road cleaned to get here.

12 MR. TWEED: But the bottom line is that I don't have any
13 problem with us moving forward with the others and have
14 somebody make an effort to contact Mr. Yeary.

15 MR. CHAIRMAN: I will have Tom make that call, if you don't
16 mind. Do you folks mind if we do that just so --

17 WILLIAM YEARY: We don't care if you make the call but --

18 MR. CHAIRMAN: I will have our inspector make the phone call.
19 I just happened to think about that, that he did call and
20 I didn't want to misrepresent that. We won't hold you up
21 on anything.

22 WILLIAM YEARY: Well, we appreciate that because we have
23 cattle that we have to hand feed. They haven't been fed
24 today. We had to leave home at 7:00 this morning to get
25 out here. And all of us are on medication and I person-

1 ally forgot to bring mine that I have to take about
2 12:30.

3 MR. CHAIRMAN: We should be able to make one phone call. As I
4 understand it he lives here in Abingdon.

5 CLAUDE YEARY: I believe you have a letter where we wrote the
6 Board?

7 MR. CHAIRMAN: Yes, sir.

8 CLAUDE YEARY: And I got a letter from the attorney for the
9 gas company and they said they would absolutely not
10 postpone under any circumstances. And we had prayed that
11 we could get a postponement because of the weather or
12 anything like that. We have a letter from their attorney
13 there saying that they would not agree to a postponement.

14 MR. CHAIRMAN: Tom, would you go make that phone call and just
15 let him know that the hearing is in progress.

16 MR. TWEED: For clarification, as far as Mr. Claude is
17 concern, we had received a copy of his objection. His
18 objection indicated where to coal reserves although our
19 research indicated that he has no ownership rights within
20 500 feet of where this well site is. And he indicated
21 that he wanted additional time until EREX would provide
22 him with a copy of the application. And what I did in my
23 letter, which we sent to him promptly after getting a
24 copy of this, was to advise him that we didn't understand
25 where he had any coal right objections, but if he wanted

1 to clarify it to me we would be glad to listen. And that
2 if he wanted to look at a copy of the application that it
3 was on file as a matter of public record at DMMS. I did
4 indicate to him at that time that I saw no grounds at
5 that time for a postponement. This was well in advance
6 of any weather problems that developed.

7 WILLIAM YEARY: We received that letter Friday with about 6
8 inches of this snow already on the ground. That's when
9 we received your answer.

10 MR. CHAIRMAN: Let's take a 10 minute break and maybe you all
11 can talk a little bit while we are doing that and just --
12 if there are some misunderstandings you all can talk
13 them out. And we will know whether or not the other
14 fellow is coming and we will go ahead with this hearing.

15 (AFTER A BRIEF RECESS FROM 11:15 A.M. UNTIL 11:45 A.M.,

16 THE PROCEEDING CONTINUED AS FOLLOWS:)

17 MR. CHAIRMAN: Okay. We are back on record. This is docket
18 number VGOB-93/03/16-0345. And I understand that Mr.
19 Emmitt Yeary is here now. Mr. Tweed, you may continue.

20 Q. (Mr. Tweed continues.) I think at the time that we had
21 just confirmed that this unit is designated as being all
22 the acreage within 2,640 feet per statute. Mr. Baker,
23 what is the interest that EREX has in this unit at this
24 time?

25 A. The current interest being leased at this time is 74.57

1 percent.

2 Q. And this is the same interest being leased that was
3 referenced in the original Exhibit B, is that correct?

4 A. Yes.

5 Q. Are you familiar then with the unleased interest as well?

6 A. Yes.

7 Q. What is that percentage?

8 A. It is 25.43 percent.

9 Q. And are all the unleased parties set out in the amended
10 Exhibit B?

11 A. That is correct.

12 Q. Prior to filing this application were efforts made by
13 EREX to contact each of the respondents in an attempt to
14 work out an agreement regarding the development of the
15 units involved here?

16 A. Yes, they were.

17 Q. My understanding is that an objection has been filed by
18 Attorney Emmitt Yeary on behalf of maybe himself and
19 certainly some other individuals concerning efforts to
20 contact him. Was it J. W. Griffith who actually made the
21 efforts on behalf of EREX?

22 A. That is correct.

23 Q. And he works with you on these matters?

24 A. Yes. He works for Equitable.

25 MR. TWEED: If I could take a moment to ask J. W. Griffith

1 specifically about Tract 9, because that involves some of
2 the Yearys and I think would be most pertinent to that
3 aspect of their objection.

4 MR. CHAIRMAN: Go ahead.

5
6
7 J. W. GRIFFITH
8 a witness who, after having been duly sworn, was examined and
9 testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. TWEED:

- 14 Q. Mr. Griffith, what is your job title with EREX?
15 A. I am independent oil and gas broker in charge of acqui-
16 sitions.
17 Q. And as to this particular well site how did EREX obtain
18 its rights?
19 A. By oil and gas assignments or purchased from A & R
20 primarily, I think. This was an A & R location and
21 during the acquisition of their leases we acquired the
22 leased interests on this unit.
23 Q. And do you have documentation with you that reflects the
24 efforts that were made to reach out to respondents with
25 respect to this unit?

- 1 A. All land men, when they make contact with land owners do
2 a report submitted to the client. The client likes to
3 see what they are getting paid for, so we do a dated
4 report each time a contact with any land owner we make.
- 5 Q. And in this particular case did I ask you to be here and
6 to bring your documentation, specifically with the
7 efforts that you made to contact people involved with
8 what amounted to an undivided set of interests on Tract
9 9?
- 10 A. That is correct, sir.
- 11 Q. And would you reflect what your -- from that document
12 what your first efforts and contact was?
- 13 A. Well, once we determined who owned the unit and who the
14 undivided owners were we attempted to locate them. The
15 first person we located was Jim Yeary. We did this by
16 telephone in an effort to set up an appointment. Jim
17 requested that we call Woodrow Yeary and suggested that
18 he would contact the others involved and see if this was
19 something they wanted to do. I called Woodrow and he
20 wanted a few days to think about it and suggested that I
21 call back. In a week we did call back. And I called Jim
22 and he said that he had contacted the others involved and
23 that they were not interested in leasing. And we let it
24 go at that. But then I called Woodrow again and tried to
25 see if there was some kind of negotiations that we might

1 be able to do on the oil and gas lease and he said that
2 he was going to do pretty much what the others did and
3 they had decided not to lease.

4 Q. Did you have any follow-up contact with A & R concerning
5 prior history on leasing efforts with the Yearys on this
6 tract?

7 A. The reason we called the Yearys and tried to set up an
8 appointment to discuss the possibility of leasing the
9 tract is that we were well aware that A & R had spent
10 considerable time and effort trying to lease these two
11 tracts and were unable to do so. Normally you just send
12 the land man out and he knocks on the door and says, "I
13 would like to talk to you about an oil and gas lease."
14 In this case we thought that an appointment would be
15 worthwhile to try and get everybody involved and discuss
16 the matter.

17 Q. I think we are talking -- if we were to add it all up,
18 all the percentage ownerships on Tract 9 with these
19 various individuals I think it ends up being approximate-
20 ly 6 percent of the unit give or take?

21 A. I would think so, yes, sir.

22 Q. And there was an effort, as well, to contact Mr. Claude
23 Yearly. I know he has not, in his objection, stated
24 anything about lack of contact. He did not want to lease
25 either, is that correct?

1 A. That's correct. He did not want to discuss leasing.
2 And, again, Mr. Claude Yeary was contacted by phone in an
3 effort to attempt to arrange an appointment.

4 MR. TWEED: And I can represent to the Board that when I
5 received indications from Attorney Emmitt Yeary that
6 everybody had been contacted. We sought to find out what
7 was the scoop because I had sent out with the application
8 a confirmation that there had been a good faith effort to
9 try and reach these people. And I have by telephone and
10 by writing tried to indicate repeatedly that if anybody
11 there wanted to talk about leasing that we would be glad
12 to talk about it. Although I keep hearing about people
13 saying, "You didn't contact us about leasing" what we
14 have never heard is any expression of interest in leasing
15 up to and including the question asked over in the corner
16 there just a few minutes ago, which is, "Is there anybody
17 that really is interested in talking about the pos-
18 sibility of leasing?" Which we got an unqualified "no"
19 from Mr. Claude Yeary and from one of the other Yearys
20 involved. I don't remember the gentleman's full name --
21 an indication that the only way he would consider it is
22 if oil wasn't involved with the recognition that from an
23 engineering standpoint we can't preclude the oil may come
24 up in that well even though we have no reason to believe
25 that it will occur. So I do want to point out that to

1 the degree that these objections have been stated, even
2 though there is no statutory obligation to go out and
3 seek these leases we tried to do it and we have tried to
4 do it pretty hard and pretty diligently and we just have
5 people who have said, "No." And that's why we have to be
6 here. If I could, I would like to proceed with Mr. Baker
7 again on the --

8 EMMITT YEARY: Excuse me. Mr. Chairman, as a point of order
9 is Mr. Tweed -- these representations I take it -- are
10 these considered testimony or just mere representation of
11 counsel? If it is testimony I would ask that he be
12 treated as any other witness.

13 MR. TWEED: I wasn't trying to be a witness. I was simply
14 trying to indicate that efforts that were made.

15 MR. CHAIRMAN: We are taking it as representation.

16 EMMITT YEARY: I would object to anything he would have to say
17 since it would not be considered as evidence. And I
18 would ask the Board not to consider it as such.

19
20 DENNIS BAKER

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

DIRECT EXAMINATION

1
2
3 BY MR. TWEED:

4 Q. Mr. Baker, with respect to notice of respondents concern-
5 ing this application were efforts made to determine
6 whether individual respondents were living or deceased or
7 their whereabouts, and if deceased we efforts made to
8 determine the names and addresses and whereabouts of
9 successors to any deceased respondents?

10 A. Yes.

11 Q. And I believe that with respect again to the Yearys on
12 Tract 9 the best known addresses that we had on this
13 undivided interest were from the tax records?

14 A. Yes, that is correct.

15 Q. And so we sent them out in accordance with the tax
16 records?

17 A. Yes, that is right.

18 Q. Were reasonable and diligent efforts made and sources
19 checked to identify and locate unknown heirs to include
20 primary sources such as deed records, probate records,
21 assessors records, treasurers record as well as secondary
22 sources such as telephone directories, city directories,
23 family and friends?

24 A. Yes.

25 Q. In your professional opinion was due diligence exercised

1 to locate each of the respondents named herein?

2 A. Yes, it was.

3 Q. And to your best knowledge are the addresses set out in
4 the amended Exhibit B to the application the last known
5 addresses for the respondents as best as we could find
6 them?

7 A. Yes.

8 Q. Are you requesting this Board force pool all of the
9 unleased interests as listed in amended Exhibit B?

10 A. Yes.

11 Q. Is EREX seeking to force pool the drilling right of each
12 individual respondent, if living, and if deceased the
13 unknown successor or successors to such deceased individ-
14 ual respondent?

15 A. Yes.

16 Q. And likewise to any trustees if acting in the capacity of
17 trustee, and if not acting in such capacity the successor
18 of any such trustee?

19 A. Yes. That is correct.

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

23 A. Yes, I am.

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

25 A. \$5 bonus consideration. A 5 year term and 1/8 royalty.

- 1 Q. Did you gain your familiarity by acquiring oil and gas
2 leases and other agreements involving the transfer of
3 drilling rights in the unit involved here and the
4 surrounding areas?
- 5 A. Yes.
- 6 Q. In your opinion do the terms that you have testified to
7 represent the fair market value of and a fair and
8 reasonable compensation to be paid for drilling rights
9 within this unit?
- 10 A. Yes, they do.
- 11 Q. And as to the options to be elected by unleased parties
12 are the options being requested for this order identical
13 to the ones you testified to with respect to the docket
14 matter previously today?
- 15 A. Yes, that is correct.
- 16 Q. And that would include the appropriate request with
17 respect to the escrow provision, etc.?
- 18 A. That's correct.
- 19 Q. And who should be named the operator under this force
20 pooling order?
- 21 A. Equitable Resources Exploration.
- 22 MR. TWEED: Mr. Chairman, I have no further questions for this
23 witness.
- 24 MR. CHAIRMAN: Any questions, members of the Board? (None.)
25 Do you folks have anything you want to follow up on?

1 WILLIAM YEARY: I would like to say one thing about notifying
2 people. I am William Yearly and I am speaking on behalf
3 of my mother, Florence Yearly and my father, Claude Yearly,
4 and my uncle Jim Yearly. They can't hear well and I can't
5 either. But yesterday afternoon I called Mr. Vernon
6 Porter that lives down at Coeburn. He is listed as one
7 of those tracts not being leased. And I asked him -- I
8 said, "Has anyone from the gas company tried to lease
9 your acreage?" And he said, "No." And I said, "Have
10 they talked to you about it?" And he said, "No." I
11 said, "Have they written to you about it?" And he said,
12 "No." I said, "Are you going to the meeting tomorrow?"
13 He said, "No. The weather is so bad and everything I am
14 not going. Don't know anything about it." Now, he was
15 the second Porter that I called out of the Coeburn
16 directory. And I believe if they had of made a good
17 effort to find the porter heirs that they would have
18 talked to him. He would have been the second person they
19 would have talked to there.

20 CLAUDE YEARY: Well, I would like to make an observation. I
21 am Claude Yearly. There was no legitimate effort made by
22 this gas company to lease my property. The only contact
23 was made by telephone one night about 9:00 about a year
24 ago, something like that. And a gentleman called and
25 said he was from Equitable Resources and he wanted to put

1 a pipeline across my property. We border --

2 WILLIAM YEARY: This is a different lot not affecting this
3 well.

4 CLAUDE YEARY: -- State Route 654. Now, they drilled a well
5 right up from my home about 900 feet. And the State
6 highway comes right about 150 feet of the well. They
7 wanted to bring the pipeline out to the road, follow the
8 road down to my property, and go across my property to
9 adjoining property. And the gentleman that talked to me
10 -- he was glorifying what a good thing it would be, the
11 pipeline and all. And I told him that I had land right
12 there facing the road and along through there that I had
13 been offered \$10,000 an acre. And that runs right along
14 the Jefferson National Forest. My land borders it. They
15 was wanting to come on the inside of my property there
16 and run a pipeline about 1,500 feet to an adjacent
17 property over there. And I told them I wasn't interested
18 in no pipeline there because it would devalue my proper-
19 ty. And my home is about 225 feet from where that
20 pipeline would be, running right across in front of me.
21 And I told him I wouldn't be interested in that. And he
22 began to tell me this and that and the other. And I told
23 him -- I said, "Sir, I'm just not interested." He said,
24 "You don't even know what you are talking about." I
25 thought I knew enough about what I had been talking

1 about and all, that I didn't want a pipeline there
2 distracting from the value of my property. And he said
3 something about out to the other land there. They
4 already had dealings with my brother -- and we have a
5 signed letter right there. One of the gentlemen read it
6 there and it shows that they told him that they would
7 have a fair and honest settlement with him for a drilling
8 a well on his property there before they put machinery
9 on it. We have a copy of the letter. And what did they
10 do? They told him they would meet him on Wednesday, but
11 before Wednesday came on Monday they put machinery on his
12 property. They also locked him out of his property for
13 about 60 days.

14 MR. CHAIRMAN: Now, let me make sure for the record. You are
15 doing this as an illustration.

16 CLAUDE YEARY: Absolutely.

17 MR. CHAIRMAN: It is for a different well, though?

18 CLAUDE YEARY: Yes.

19 WILLIAM YEARY: What he is saying is when they say they tried
20 to lease off of him what they did was they called and
21 asked him about running a pipeline over to where that
22 other well was located. Then after they told him that he
23 didn't know what he was talking about they said, "Well,
24 you wouldn't want to lease your property out in the
25 Quarter Town then, would you?" That was the way he was

1 approached. And, no, he wouldn't want to lease it under
2 those terms.

3 MR. CHAIRMAN: I just want to make sure we understood for the
4 record that you were doing that as an illustration. Any
5 other comments at this point?

6 MR. TWEED: Could I mention something about Mr. Claude Yeary
7 now that he is finished for the moment and ask him one
8 question? I know that he made a statement. Mr. Yeary,
9 I had the gentleman that had been on the telephone with
10 you about leasing over there in the corner during the
11 break, did I not? Mr. Griffith. The guy that said he
12 called you and spoke about leasing? When we were
13 speaking over in the corner by the window?

14 CLAUDE YEARY: He was talking over there, yes.

15 MR. TWEED: And I asked you again if you had any interest
16 whatsoever in leasing your property and you told me you
17 had me you had no interest at all, didn't you?

18 EMMITT YEARY: I object to that. If this gentleman is going
19 to testify then I would ask that he be placed under oath.

20 CLAUDE YEARY: You have a letter to that effect. I am not
21 interested in giving them any surface lease or anything
22 like that.

23 MR. CHAIRMAN: I am going to sustain the objection.

24 MR. TWEED: I just thought it would be relevant, Mr. Chairman,
25 when people talk about various testimony --

1 MR. CHAIRMAN: You can ask your witness and do it that way.

2 MR. TWEED: Okay. I would be glad to. I would also like to
3 point out with respect to what Mr. William Yeary said the
4 Porters, that the Porters both on Exhibit B and amended
5 Exhibit B with respect to this application are unknown
6 despite our best efforts. We haven't made any effort or
7 represented to make any effort to contact the Porter
8 heirs because the Porter heirs were not reasonable known
9 based upon the title search that was done. I mean, that
10 is a part of the application that was filed.

11 CLAUDE YEARY: It was a very superficial effort if they made
12 it. All they had to do was to look in the telephone
13 book. They could have gotten some information about the
14 Porters.

15 WILLIAM YEARY: In regard to -- he said there if we would
16 release the oil there that -- and he couldn't help it if
17 oil come up in that hole. And I had asked several of you
18 there about the company asking for a lien against our
19 oil rights, even though they are just drilling for gas
20 out there and they aren't drilling deep enough to hit
21 oil. And they said there is nothing about that. But
22 this is on Page 2 of the Hearing Notice that we received
23 certified mail. If you look down there in Item D, on the
24 eighth line, "have an operator's lien on the oil and gas
25 estate and rights on your claim by the persons named

1 herein in the subject drilling unit." Now, I don;t see
2 how it could be constitutional for a gas company drilling
3 for gas to name you there in pooling you and set their
4 company up and say each partner is allowed to have this
5 much profit and we are going to take a lien on your oil
6 that you own even though we are not drilling for oil. I
7 don't think that is constitutional and that's what we are
8 objecting to the pooling on is the constitutionality of
9 it. What you are doing General Motors can't even get the
10 government to guarantee them a profit. Chrysler got
11 bailed out, but they couldn't get guaranteed a profit.
12 What you are doing here in effect is holding our mineral
13 rights as hostage to them making a profit and that is
14 unconstitutional. Because they don't own any property
15 there. Like I said, there is no local people to be
16 working on it. It's just a bunch of people that had bid
17 from out of state. It's nothing to help our state, so I
18 don't think it is constitutional at all.

19 **CLAUDE YEARY:** We can't buy none of the gas.

20 **WILLIAM YEARY:** We can't even buy the gas.

21 **MR. CHAIRMAN:** Anything else?

22 **EMMITT YEARY:** If I may, Mr. Chairman. I was a little late
23 coming in. As you have been kind enough to point out I
24 was anticipating we would be on the docket this after-
25 noon. As a result I failed to get the full names of the

1 two gentlemen that have testified since I have been here,
2 a Mr. Griffith and a Mr. Baker.

3
4 DENNIS BAKER

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

7
8 CROSS-EXAMINATION

9
10 BY MR. EMMITT YEARY:

11 Q. Would you state your full name, please?

12 A. Dennis Baker.

13 Q. What is your age and where do you reside?

14 A. I'm 42 and live in Kingsport, Tennessee.

15 Q. What is your position with Equitable?

16 A. I'm leasing supervisor.

17 Q. There has been certain allegations that you made in your
18 application. Do you have any first-hand knowledge of
19 whether there were any efforts made to contact any of the
20 persons in this notice?

21 A. The reports that I received from the field indicates --

22 Q. No, sir. The question is do you have any personal first-
23 hand knowledge other than some reports?

24 A. No.

25 Q. And the reports that you received from the field who are

1 they from?

2 A. They are from the land agents that did the actual
3 contacting and J. W. Griffith.

4 Q. Are any of those land agents here today?

5 A. Mr. Griffith.

6 Q. Anyone besides him?

7 A. No.

8 MR. YEARY: If I may take it out of order and go to Mr.
9 Griffith.

10

11

J. W. GRIFFITH

12

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

14

15

CROSS-EXAMINATION

16

17

BY MR. EMMITT YEARY:

18

Q. What is your full name, sir, and where do you reside?

19

A. J. W. Griffith. Clinton, Mississippi.

20

Q. And you referred to a document earlier from A & R?

21

A. No, sir.

22

Q. I believe when Mr. Tweed was asking you certain questions
23 you referenced A & R.

24

A. A & R originally worked this area and acquired the leases
25 within the unit that we are here dealing with today.

25

- 1 Q. Did you not pull out of you pocket some document?
- 2 A. A document, but not an A & R document.
- 3 Q. May I see the document you were referring to?
- 4 A. Sure.
- 5 Q. You contacted Mr. Jim Yearly, you say?
- 6 A. Jim Yearly and Woodrow Yearly.
- 7 Q. Where did you locate Jim Yearly?
- 8 A. By telephone directory.
- 9 Q. Was that in the Coeburn, Virginia telephone directory?
- 10 A. I can give you his phone number. I am not sure what
- 11 directory it was in.
- 12 Q. If you will just answer the question. Was that in the
- 13 Coeburn, Virginia telephone directory?
- 14 A. I don't know.
- 15 Q. Did you ever go to his house?
- 16 A. I did not.
- 17 Q. Did you ever ascertain what his mailing address was?
- 18 A. I did not.
- 19 Q. How did you arrive, for example, at my name?
- 20 A. By deed.
- 21 Q. Did you ever ask Jim Yearly or anybody else, "Where does
- 22 Emmitt Yearly live?"
- 23 A. Where you live?
- 24 Q. Yes, sir.
- 25 A. No.

1 Q. Or what my telephone number might be? Or how you might
2 get in touch with me?
3 A. I did not.
4 Q. There are a number of other owners of this property.
5 Roger Yeary. Did you make any effort to locate Roger
6 Yeary?
7 A. I did not.
8 Q. Did you make any effort to locate and/or contact Doris
9 Ann Yeary Cox?
10 A. I did not.
11 Q. Did you make any effort to locate and/or contact Kaye
12 Yeary Rhiner?
13 A. I did not.
14 Q. And the same would be true of Edna Yeary Kilgore?
15 A. That is correct as far as personal contact.
16 Q. And you had made some contact you say by telephone by a
17 person answering to be Jim Yeary when you made this
18 telephone call?
19 A. Jim and Woodrow Yeary.
20 Q. Sir, do you think it a little unusual that you would then
21 -- if you talked with Jim and Woodrow personally why
22 would you then send their supposed notice in care of Edna
23 Yeary Kilgore, who you never even contacted?
24 A. It was the official address we had. It was the only
25 address of record. It was acquired from the tax role.

1 You pay your taxes in her name in care of her address.

2 Q. Would you not consider it a little more prudent regard-

3 less of who pays the taxes to just find out from somebody

4 there in the neighborhood where does Edna Yeary Kilgore

5 live? Especially if you are mailing this notice to her.

6 A. We had Ms. Kilgore's address.

7 Q. So you knew where she lived?

8 A. Right.

9 Q. Well, why didn't you just knock on her door and say,

10 "Would you like to lease your interest in this property?"

11 A. Jim and Woodrow purported to speak for the family.

12 Q. Well, have you ever known it that all family members do

13 not see exactly alike on various matters?

14 A. It is very common when you have an undivided interest

15 for one or two family members to speak on behalf of the

16 family.

17 Q. And the contrary is very common, too, is it not?

18 A. It's not common.

19 Q. We are not leasing this property as a family unit. You

20 were attempting to acquire individual rights to this

21 property, were you not?

22 A. That is correct.

23 Q. And you had no evidence that anyone was acting as an

24 agent or a spokes person for any of the other, whether it

25 be Jim Yeary or Woodrow Yeary or anyone else?

1 A. You are saying evidence. We had a lot of knowledge that
2 a lot of effort had been made to lease this property over
3 a period two years with the same success that we have
4 had.

5 Q. By contacting two people out of ten?

6 A. Mr. Yeary, I am not going to say that you were ever
7 contacted by A & R, but I personally know of the effort
8 that they made to lease the property. And, primarily, I
9 know that they talked to Jim and Woodrow also.

10 Q. You personally know what efforts were ever made to lease
11 any portion, my interest or any of the other persons that
12 I represent, Edna, Roger, Doris Ann or Kaye -- any
13 efforts made to those people --

14 A. We called you last Tuesday and you wouldn't speak to us.

15 Q. You called me last Tuesday?

16 A. Tuesday, I think. Yeah.

17 Q. Who called me?

18 A. Bob Powell.

19 Q. Were you there?

20 A. Yes, sir.

21 Q. Was it a speaker phone?

22 A. No, but I understand that you wanted our counsel to call
23 you and we had him call you, too.

24 Q. Was it not -- so you don't know what I said?

25 A. Did you not say that you wouldn't --

1 Q. Well, if you would answer my question, sir.

2 A. No, I don't know what you said.

3 Q. And was it not reported to you by Mr. Powell that since
4 -- this was after the application had been filed, is that
5 correct?

6 A. That was Tuesday. I am not sure when the application was
7 filed.

8 Q. You don't even know when this application was filed?

9 A. No. That's not my job, sir.

10 Q. So you made some effort you say to contact me but
11 sometime after the -- this past Tuesday?

12 A. A week ago today, I believe.

13 Q. And you don't know whether the application was filed
14 before then or not?

15 A. It probably was. I don't know when the application was
16 filed.

17 Q. And did not Mr. Powell tell you that since you had a
18 lawyer that it might be improper for me to -- that I
19 would be happy to speak to you all concerning this
20 matter. However, since you had retained counsel I would
21 need the permission of your lawyer to talk to you
22 directly about this? Was that the gist of the conversa-
23 tion?

24 A. Mr. Powell told me that you would not speak to him
25 without our lawyer saying it was okay.

1 Q. That is was okay to speak to you?
2 A. Correct.
3 Q. And did Mr. Powell say anything about the surface?
4 A. The surface?
5 Q. The surface interest. Whether or not you might be --
6 well, are you claiming any rights to the surface of this
7 property?
8 A. I am not claiming any right to anything.
9 Q. Or trying to acquire a permit that might affect the
10 surface?
11 A. We are trying to pool the property. If that affects the
12 surface then it affects the surface.
13 Q. Do you know?
14 A. I'm not sure.
15 Q. Well, maybe I can go back to --
16 A. Mr. Yeary, my job is to purchase oil and gas leases. And
17 that's what I do for a living. And I am one of probably
18 about ten percent of the people that do that for a living
19 that is working right now, so I do it pretty well. All
20 right. Every effort was made to lease the property.
21 Q. Well, that is what you say and we would, of course, would
22 contradict that matter.
23 A. Would you like to lease that property, Mr. Yeary?
24 Q. Sir, I am directing my questions to you.
25 A. This is not a court, sir. This is a fact finding

1 hearing.

2 EMMITT YEARY: Mr. Chairman --

3 MR. CHAIRMAN: You are out of order, Mr. Griffith.

4 MR. GRIFFITH: Excuse me, sir.

5 Q. (Mr. Yeary continues.) So you are a purchasing agent.

6 What if I ask you, will this application affect the

7 surface?

8 A. Yes.

9 Q. Will you have the right if this permit is granted, as you

10 see it, would you have the right, for example, to put a

11 pipeline on this acreage?

12 A. I am not sure.

13 Q. You are not sure?

14 A. I am not sure.

15 Q. Well, then, how could I reasonably entertain any offer or

16 negotiate with you if you would not yourself know whether

17 or not that would be the case?

18 A. Would you like to discuss oil and gas leases? I know

19 about oil and gas leases.

20 Q. Well, this is an oil and gas lease that you are trying to

21 acquire, is it not?

22 A. That's correct.

23 Q. My question is whether or not that will affect the

24 surface of this property?

25 A. I assume so.

- 1 Q. Do you contemplate that you would have the right under
2 your application --
- 3 A. Under an oil and gas lease we would have the right --
- 4 Q. Under this application?
- 5 A. Under this application I am not sure.
- 6 Q. And under an oil and gas lease and if this application is
7 consistent with the lease that you expect people to sign
8 would it affect the surface then?
- 9 A. If it is consistent with the lease, yes, sir.
- 10 Q. And would it give you the right, for example, if you
11 determine that this well where you are proposing to
12 locate it on this plat that you submitted with the
13 application, that it was more advantageous to move it
14 over onto my land as opposed to the Porter property,
15 could you do that?
- 16 MR. TWEED: If I could entertain an objection. Certainly
17 everybody here but Mr. Yeary may know that this force
18 pooling application is with respect to a set well
19 location and is only good as to that set well location.
20 So I would object to a question that is trying to get
21 into a debate whether if this force pooling application
22 is granted we can put a well location anywhere we want.
23 I think we are getting a bit far afield from reasonable
24 questions when something like that is asked.
- 25 MR. CHAIRMAN: I will sustain that.

1 EMMITT YEARY: Mr. Chairman, if I may, I would point out the
2 Notice of Hearing, which they have prepared. And I think
3 if you read that it would allow them to do just that.
4 And that is what I am trying to find out that if this
5 permit is granted how much leeway will this company have
6 in relocating that well if they deem it appropriate to
7 do that later.

8 MR. TWEED: I will state for the record that this application
9 is with respect to a set well permit and set location.
10 and it is only good for that location as a matter of law
11 and as a matter of regulation. It doesn't allow us to
12 move the location of the well anywhere.

13 EMMITT YEARY: As I might point out on Page 2 of their
14 Notice --

15 MR. SCOTT: Just as a matter of pointing out so that you can
16 look at this, what he is addressing, I think, is on Page
17 2 in Paragraph D which says, among other things -- the
18 last part of the paragraph says, "In granting the
19 operator the right drill at any legal or specially
20 permitted location on the subject drilling unit." I
21 think that is the language that Counsel has got in mind.

22 EMMITT YEARY: Yes, sir. And it is a very broad language.

23 MR. TWEED: That's in the notice or the application?

24 EMMITT YEARY: Which you filed.

25 MR. CHAIRMAN: It's in the notice and that's what he received.

1 WILLIAM YEARY: See, once this is pooled is that right?

2 MR. SCOTT: The language that you may want to look at -- you
3 may want to look at this in respect to the application
4 itself. Because I think the language in the application
5 is tighter than the language in the notice. But that is
6 what he is talking about is what is in the notice.

7 MR. TWEED: The application itself, which the notice is simply
8 giving notice of the hearing as to -- it specifically
9 referenced the drilling site as a site specific.

10 EMMITT YEARY: Well, are you withdrawing that in your applica-
11 tion?

12 MR. TWEED: No. The application says exactly what we are
13 looking for, Mr. Yeary.

14 MR. SCOTT: Just to make something clear to you, there is two
15 separate documents. There is an application which asks
16 for specific relief and there is a notice which tells you
17 that through an application they are asking for the
18 relief. If you want to look at the applicable language
19 on, Page 3 of the application -- I think the language
20 that, I think, Mr. Tweed is referring to is "underlying
21 the tracts encompassed by the drilling units supporting
22 Well #VP-2691" and then goes through and makes reference
23 to that specific well.

24 EMMITT YEARY: Yes, sir. However, I was served -- well, not
25 served. It was forwarded to an aunt at an address that

1 was not mine. But the notice says -- to me it's pretty
2 unequivocal. "Notice is hereby given that the applicant
3 is requesting among other things that the Board issue an
4 order providing as follows." And then among the things
5 is they are asking this Board to issue an order granting
6 them, the operator, the right to drill at any legal or
7 specially permitted location on the subject drilling
8 unit. Now, I have to take that at face value and read it
9 just for what it says and that is it is asking for a very
10 broad authority. The notice which I was given and for
11 which I am here today to respond is this notice which as
12 been sent out by this gas company. And it is very broad
13 and it is asking this Board to give them the right to do
14 just what I am saying.

15 MR. CHAIRMAN: I am going to go back and overrule Mr. Tweed's
16 objection based on the fact that you did clarify you were
17 questioning the notice. And if you continue in that
18 discussion you may continue in that line of questioning.
19 The Board is acting on the application. The notice issue
20 comes under, as I see it, and the questions that you
21 raised under the category of what constitutes due
22 diligence in notification, is that --

23 EMMITT YEARY: Yes.

24 MR. CHAIRMAN: I mean, I know you are going beyond that, but
25 it is dealing with notice per se? We are dealing with

1 the issue of due diligence. Was due diligence exercised
2 in this application? That's really what you have been
3 probing and what I have heard come up in a lot of the
4 questions.

5 EMMITT YEARY: Yes, sir, that is one of the issues.

6 MR. TWEED: If I could make one clarification, Mr. Chairman.

7 The due diligence that he is making the allegation to is
8 to whether or not reasonable efforts were made to get
9 into voluntary leasing arrangements before filing the
10 application. There has been no contest with respect to
11 notification for this application in terms of getting to
12 the right parties. In fact, Mr. Yeary and all of the
13 people he represents got that notice and filed an
14 objection and appeared today. And there was no attack on
15 the validity in terms of our getting timely notice to all
16 these people the fact that this application would be
17 appearing. And I believe that is the only statutory due
18 diligence requirement that exists with respect to this
19 application.

20 EMMITT YEARY: Mr. Chairman, I would take exception to Mr.
21 Tweed. It was only just a fortuitous event by which I
22 received and many of the others received this notice. If
23 I am going to notify you and especially if I have spoken
24 to you on the telephone I don;t notify one of your
25 cousins or your relatives who may or may not pass that

1 same information along to you. There is a verification
2 in the statute that is very clear that it is not after
3 the fact but before the application can be filed, that a
4 bona fide due diligence effort be made to notify the
5 people of the application. Now, on the face of this and
6 based upon their testimony they have failed to do just
7 that very fact. They are not here with what we call in
8 the law "clean hands." They have filed #1, a false
9 verification. Because you cannot exercise due diligence
10 and notify me, for example, through an aunt and make no
11 reasonable efforts to ascertain my whereabouts, especi-
12 ally where you have contacted one of the people and then
13 send that person that you contacted notice to another.
14 That makes absolutely no sense and it is totally contrary
15 to any showing of any due diligence to notify these
16 people of this application. So they are not even
17 properly before this Board. I think they are in viola-
18 tion of the statute and they should have sanctions issued
19 against them and certainly should not have this hearing
20 at all in view of that violation.

21 MR. TWEED: In the first place we used the tax rolls. And
22 certainly I think if it is reasonable for the tax
23 accessors is probably reasonable for us. And 2; The
24 reasonableness is best proved by the fact that it worked
25 remarkably well because within just a matter of about a

1 day or two after we sent out these notices all of the
2 parties that we sent the notice to received it and all
3 had filed an objection through Mr. Yeary that made it
4 very clear that we had actual, definite, complete
5 notification of this hearing by these people. And they
6 have it. They are here.

7 EMMITT YEARY: Sir, that was just a fortuitous event.

8 MR. TWEED: And they have all refused to lease. Today. Two
9 days ago. Four days ago and prior.

10 EMMITT YEARY: If we may have a point of order. My point was
11 that --

12 MR. MCGLOTHLIN: I would like for clarification for myself --
13 Mr. Baker, on the Yeary tract you knew Jim Yeary, Emmitt
14 Yeary, Edna Yeary Kilgore, Doris Ann Yeary, et al, they
15 were on deed of record some place and that they were
16 individual owners, is that right?

17 MR. BAKER: They had an undivided interest, yes.

18 MR. MCGLOTHLIN: Do you have green cards -- was anything
19 mailed to them individually?

20 MR. BAKER: Not to my knowledge, no.

21 MR. MCGLOTHLIN: Did the green cards say anything -- that they
22 received anything through certified mail?

23 MR. BAKER: Notice of the hearing, I believe -- probably. But
24 not from the leasing standpoint.

25 MR. MCGLOTHLIN: Was Notice of Hearing delivered to, for

1 instance, Mr. Emmitt Yeary personally through the
2 registered mail?

3 MR. BAKER: To the address that, I believe, is shown on
4 Exhibit B. It was obtained from the tax office.

5 MR. MCGLOTHLIN: You sent ten different ones to that address?

6 MR. BAKER: Yes.

7 MR. TWEED: The mailed the undivided interest to the lady that
8 is listed the tax assessors office. And she got them to
9 all the people just like she does the tax notices.

10 MR. MCGLOTHLIN: One notice or ten notices?

11 MR. TWEED: They were separate notices, I believe.

12 MR. MCGLOTHLIN: Were they addressed to the individual people?

13 MR. TWEED: One was sent to Emmitt Yeary, C/O Edna Yeary. One
14 was sent to Edna Yeary. One was sent to Doris Yeary, C/O
15 Edna Yeary. And that's the way we represented it on the
16 exhibit. And as with the tax records Edna clearly got it
17 to them all immediately and gave them the notification
18 and they received it.

19 MR. MCGLOTHLIN: Mr. Fulmer, do we have the green cards on
20 record?

21 MR. FULMER: We have the affidavit that they sent.

22 MR. MCGLOTHLIN: Do you have copies of the green cards?

23 MR. TWEED: I have a green card on Emmitt Yeary, C/O Edna
24 Yeary Kilgore that is signed by Diana Cox that is dated
25 2/22/93 in my file.

1 MR. MCGLOTHLIN: Are we not suppose to have copies of those?

2 MR. FULMER: The law only requires an affidavit. I do have
3 what they have submitted which involves the dates that
4 these notices were received and signed for. If the Board
5 wishes to see that --

6 MR. TWEED: Edna Yeary signed for Edna Yeary and Faye Yeary
7 for Doris Ann Yeary, C/O Edna Yeary. And Faye Yeary
8 signed for Roger Yeary, C/O Edna Yeary. So Faye Yeary
9 signed for several and Edna signed for her own and Dianna
10 Cox signed for Emmitt. They were all sent to the same
11 address and they were all signed.

12 EMMITT YEARY: You are saying they were all sent to Edna
13 Yeary? I think all these notices were sent to one person.

14 MR. CHAIRMAN: I don't believe her said that.

15 MR. TWEED: No. They were all sent to that address. Emmitt
16 Yeary, C/O Edna Yeary. Just like is on the amended
17 Exhibit B that we handed to your clients a little while
18 ago and filed.

19 EMMITT YEARY: I think it's very clear. You do not notify all
20 members of your family through you or through one
21 individual. And this is the way the notices were sent.
22 Even though there may have been individual envelopes they
23 were nevertheless sent to Edna Yeary, all of these, even
24 though they had made contact apparently with Woodrow
25 Yeary and Jim Yeary. Yet notwithstanding that even went

1 out of the way to not send them a direct notice. And it
2 was just a fortuitous event that Edna Yearly happened to
3 get this in time and notified me and some of the others.
4 Now, it could have been just as likely that I wouldn't
5 have known about this and wouldn't have shown up today
6 and this representation that they had made this due
7 diligence would nevertheless be the same. Now this
8 statute -- to me it is very clear that before they file
9 this application they have to make due diligence to
10 notify the parties. They have not done this. As a
11 matter of fact, it states that if they violate some of
12 these provisions that it is even a misdemeanor. Now, I
13 think, in fact, if we wanted to look at it strictly
14 speaking as we should that the law has been violated
15 here. Because 1: A false verification has been made.
16 And I think this goes to the extent of the credibility of
17 just a number of their representations. I don't want to
18 digress too much on this point. If I may I would like to
19 proceed with my questions. Mr. Baker or Mr. Griffith,
20 which one of you purportedly know about what this
21 application covers? Which has the primary information
22 about this? The meaning of this application? Would that
23 be Mr. Baker or Mr. Griffith?

24 MR. BAKER: I have a copy of the application, yes.

25 Q. (Mr. Yearly continues.) Mr. Baker, are you a superior to

1 Mr. Griffith in the hierarchy of your company?

2 A. Yes.

3 Q. So you are his superior company-wise?

4 A. Yes.

5 Q. As you perceive this application and if you would
6 interpret it and your notice, would the company if this
7 permit as you are asking to be granted would it give you
8 the right, for example, to go from this well across my
9 tract of land?

10 A. My understanding is, yes, it would and that would also
11 depend on your election.

12 Q. Well, let's say that right now -- let's assume for the
13 purposes of the question, and don't make that assumption
14 that that is going to be the final outcome, but for
15 purposes of this question assume that I am objecting to
16 this today and you get your permit as you are asking
17 would you then contemplate if you wanted to put a
18 pipeline, for example, from your well as you have it
19 shown on your map -- could you have that pipeline from
20 which your recover and transport that gas, could that
21 pipeline run across the surface of my property?

22 A. I believe it probably could.

23 MR. CHAIRMAN: Mr. Yeary, let me interrupt you here and tell
24 you that what is before this Board is not an authoriza-
25 tion to run a pipeline or to even drill a well. What is

1 before this Board is a force pooling application. Now,
2 the company has to apply to the Gas and Oil Inspector for
3 the authority to drill a well or to place a pipeline.
4 Now, I am not questioning the point that you made about
5 notice and what the notice could constitute, but what I
6 want to clarify is what we are dealing with here today is
7 force pooling only.

8 WILLIAM YEARY: Sir, this affects others, too. I'm William
9 Yeary. Once that you form this pool, which is the purpose
10 of this meeting today -- if we are forcible pooled in it
11 -- in other words, if we don't want to lease and we are
12 took into it then we are out of the chain between them
13 and the Department of Gas and Oil and reclamation, is
14 that correct? We don't have any right to object about
15 them about anything they do. Once you do this pooling -

16 MR. CHAIRMAN: You have every right that is in the law and
17 regulation with or without pooling as it relates to the
18 location and how a pipeline is installed or anything
19 else. This doesn't grant or take away any of those other
20 rights. I just wanted to clarify that. That's the
21 purpose of me mentioning that to Mr. Yeary earlier. You
22 may continue.

23 Q. (Mr. Yeary continues.) So, Mr. Baker, in addition you
24 contemplate if this pooling is granted that you would
25 have the right to put a pipeline across my property or

1 either of these Yearys tracts, correct?

2 A. Yes.

3 Q. And by the same token would you have the right if it is
4 your determination that you needed to put a road across
5 there to conduct your operation? Would you contemplate
6 that right to be gained by this application, if granted,
7 also?

8 A. My understanding is yes.

9 Q. And at no specified place for the pipeline or any
10 specified place for the road, for example? Just any
11 place that you all might some time in the future deem
12 appropriate for your pipeline and road you could do it if
13 the application is granted, is that correct?

14 A. Yes.

15 Q. And by the same token when you do this if you have to
16 grade --

17 EMMITT YEARY: Could we have this witness answer the questions
18 without having --

19 MR. CHAIRMAN: Sir, I am chairing the hearing, not you. So if
20 you will continue to direct the questions and I will
21 continue to run the hearing.

22 EMMITT YEARY: Yes, sir. With all due respect, Mr. Chairman -

23 MR. CHAIRMAN: You can go ahead with your questions.

24 MR. TWEED: Can I just impose an objection?

25 MR. CHAIRMAN: No.

1 MR. TWEED: Not even --

2 MR. CHAIRMAN: Well, you are overruled.

3 EMMITT YEARY: All right.

4 Q. (Mr. Yeary continues.) Now, if you put this road, for
5 example, that you need for this pipeline -- is there any
6 timber on this land, for example, do you know?

7 A. No, I don't.

8 Q. So you don't know whether there is one tree or 1,000
9 trees?

10 A. I have never been there.

11 Q. Do you know anything about the terrain involved as to
12 whether or not there would be any grading that might
13 necessary in cutting into the land?

14 A. I have never seen the property.

15 Q. And would there be any trees that might be destroyed for
16 this pipeline?

17 A. I'm sure that if there is a road or a pipeline or any
18 surface disturbance it would probably take in a tree if
19 there was one on it.

20 MR. CHAIRMAN: Let me just stop you. And here I am going to
21 go back and get this whole thing back in order. Where we
22 are out of order is that this application is not for
23 putting in a road. It is not for putting in a pipeline.
24 And it is not an authorization to do either one of those.
25 So I am not saying that you are wrong in asking the

1 questions, because the notice talked about those kinds of
2 things, but I am saying that what you are getting back in
3 answers is, in fact, wrong as far as what the Board is
4 dealing with. And I guess that is where you were coming
5 from a minute ago. But I do want order here. I am
6 dealing with two attorneys here. It's a lot different.
7 But I am also dealing with citizens here who are not
8 represented by an attorney. Mr. Yeary is representing
9 himself. I don't know if he is representing all of them.
10 I am trying to be lenient, but I am going to be tougher
11 on you two that you play by the rules. Okay? So you can
12 go ahead. He is trying to get a clarification here of
13 what this application is all about. And if you will you
14 call whoever can clarify for him what this application is
15 about.

16 MR. TWEED: Yes, sir. Do you want me to do that now?

17 MR. CHAIRMAN: Yes.

18 EMMITT YEARY: Well, could I finish my line of questioning?

19 MR. CHAIRMAN: If you will get off the -- your line of
20 questioning is about this application dealing with roads
21 and the other things, this Board is not going to consider
22 that. This is a force pooling application.

23 EMMITT YEARY: Mr. Chairman, I guess what bothers me with this
24 application, among other things -- it is very broad. And
25 as I read the statute once this Board issues an order

1 this is going to go down in the deed records in the
2 Clerk's office of the Circuit Court of Wise County. Now,
3 if this application is granted in the manner that they
4 are asking among other things it will give them this
5 right, if what they want -- now whether you do this or
6 not I think is one of the things that we have to decide
7 here today. But if what they have asked for -- this will
8 be one of the things that will be put in the deed records
9 there in Wise County. Now, I have asked what will they
10 contemplate and what was the interpretation -- let's say
11 this comes up twenty five years from now. What was the
12 interpretation that the people had of this order? And
13 what this man here is saying -- and we will now have a
14 permanent record that he is saying, yes, he would
15 contemplate that it would include these additional
16 rights. Now one of the things this Board should also
17 consider is whether the application, if granted, will
18 effect -- unfortunately it doesn't talk about trees.
19 Now, I think the Constitution when it talks about
20 landowners rights that will cover the trees. But one of
21 the things it does cover and we are sensitive to in
22 Southwest Virginia it covers coal rights. Now, so I would
23 like to pursue and further question if you can cut the
24 timber and you can put these pipelines any place and put
25 the roads any place you want then that will effect your

1 access to the coal. Now, if I could --

2 MR. CHAIRMAN: Let me go back and just clarify one thing. You
3 received the Notice and you are referring to the Notice
4 that you received and you are questioning the Notice
5 along those lines. The Board has before it relief
6 sought. Okay? Specific relief sought of what they are
7 asking this Board to do. Do you have a copy of that?

8 EMMITT YEARY: I have a copy of the application, yes, sir.
9 And I also have a copy of the Notice of Hearing in which
10 it tells that they will be asking for these various
11 things. It says that they will ask the Board --

12 MR. CHAIRMAN: I understand.

13 EMMITT YEARY: -- and they will do these various things today.

14 MR. CHAIRMAN: That was not in their application. And in
15 order for them to do those things they are going to have
16 to amend their application.

17 MR. TWEED: We are not asking to do those things in the
18 application, Mr. Chairman. Notices are sent out very
19 broadly worded because if you don't and there is some-
20 thing that is not included in the notice then you have
21 people come in and say after the fact "You didn't give me
22 notice of that and therefore your application is no
23 good." The relief we are seeking is specifically stated
24 in the application which is drafted in accordance with
25 forms produced by this Board as well as by the applicable

1 statutes and regulations.

2 MR. CHAIRMAN: That is all I was trying to get before Mr.
3 Yeary.

4 EMMITT YEARY: If they are not asking for anything other than
5 what is in the application why couldn't they just simply
6 just state, "You are hereby notified that on March 16,
7 1993, at the 4-H Center in Washington County, Virginia,
8 we will ask for the relief sought in the application, a
9 copy of which is attached hereto and made a part hereof."
10 Now, will they now take that position, that they are
11 withdrawing any of their requests other than what is in
12 the application?

13 MR. SCOTT: Well, as a legal matter from the Board's stand-
14 point the Board can't legally act on anything except what
15 is in the application. And the kind of relief you are
16 talking about is not authorized under the statute under a
17 forced pooling order. So if they sought a force pooling
18 and asked for the kind of relief you are talking about it
19 would be denied by the Board as being outside the scope
20 of that particular statute. And, in fact, they haven't
21 asked for it and so there is no application before the
22 Board to trigger that in. It's like a Notice of Hearing
23 in court. I am going to move the Court for all kinds of
24 relief that I can get and here is a copy of my petition.
25 And in the petition we actually set out what kinds of

1 relief we are specifically asking the Court for. You
2 can't get relief from the Court under your Notice. You
3 get relief under the petition. And this functions the
4 same way from a legal point of view with respect to this
5 application and this notice. So they can't get any
6 relief outside the four corners of their application.

7 EMMITT YEARY: Well, I think what will happen as a practical
8 matter, though, that with this Notice attached to this
9 application that then a year or two from now then they
10 could very well come in and certainly argue, and perhaps
11 legitimately so -- I would not concede that, but I can
12 foresee the argument -- that they would have that right
13 because everybody was put on notice of it. That even
14 though the Board's order was a little more restrictive
15 that nevertheless this was contemplated by everybody
16 present and as matter of fact here was a notice to
17 exhibit. And you can just see that coming --

18 MR. CHAIRMAN: That's what I was saying to you earlier. I am
19 not you are inappropriate in asking the questions on the
20 notice. I am just simply clarifying for you what is
21 before this Board properly today. And all that is
22 properly before this Board is the application and the
23 relief that that application receives. Okay? I will
24 allow you to ask all the questions you need to ask
25 regarding the notice. I am not saying you are out of

1 line with that. I just want to make it abundantly clear
2 for everyone that all this Board has before properly is
3 this application and the relief sought therein.

4 Q. (Mr. Yeary continues.) Well, Mr. Baker, on the applica-
5 tion is it asking for any rights or access to the surface
6 of the either of the tracts in issue here today?

7 A. I believe it references that a proposed plan of develop-
8 ment and operation has been filed with the permit
9 application.

10 Q. Well, my question is will that effect the surface of this
11 property? Does your application contemplate any action
12 that would affect the surface of this property?

13 A. I don't have that exhibit in front of me.

14 Q. Did you bring it up here today with you?

15 MR. TWEED: Mr. Chairman, we will be a lot more effective in
16 helping Mr. Yeary to get his questions asked if Mr.
17 Talbott is allowed to answer him. He is the one that
18 deals with the permit applications and is familiar with
19 this Board and the statutes and the regulations and
20 working with Mr. Fulmer and the fact that the permit was
21 filed and all of the things that will be responsive to
22 what Mr. Yeary has decided to inquire about today, if we
23 want to bring him up here. He is the one who works with
24 those. Mr. Baker doesn't work with that.

25 EMMITT YEARY: Well, perhaps I can ask Mr. Talbott in the

1 regular course of things, but right now I am addressing
2 my questions to Mr. Baker, if he knows.

3 A. (The witness continues.) I do not know right off hand,
4 no.

5 Q. Well, if you were coming to me and you want to negotiate
6 with me, for example, and I said, "Well, does this cover
7 the surface or does it not?" Mr. Baker, how would you
8 answer that question?

9 A. If I was approaching you with an oil and gas lease I
10 would answer, "Yes, it does" because the oil and gas
11 lease addresses the surface rights and being able to
12 access the well site.

13 Q. So if I said, "Well, I don't want it to affect the
14 surface in any way." What is my alternative then? That
15 you will force this pooling upon me?

16 A. Apparently, yes.

17 CLAUDE YEARY: You wouldn't be safe building a house or
18 anything out there.

19 Q. (Mr. Yearly continues.) Now, going back to the other
20 question. Do you whether the application affects the
21 surface?

22 A. I believe it does, yes.

23 Q. In what way is it your understanding that it would? What
24 would it allow you to do?

25 A. Allowing a certain portion to be used for access if

1 necessary.

2 Q. And by access, what type of access?

3 A. An access road.

4 Q. A road. A pipeline?

5 A. A pipeline would be for the transportation of the

6 product.

7 Q. Would that be contemplated by the application?

8 A. Yes, it would.

9 Q. And that would go on or under the surface?

10 A. Yes, it would.

11 Q. At any part of the, in my case the 5.2 acres, at any

12 location that you all would deem necessary for that

13 pipeline or for that roadway, correct?

14 A. The pipeline would be to the nearest existing pipeline.

15 Q. But as we look at the map that could be at any place on

16 that 5 acres, correct?

17 A. Yes, sir, it could.

18 Q. And the roadway likewise could be placed on that 5 acres?

19 A. Yes, sir, it could.

20 Q. And if I wanted to put a coal tipple in trying to sell

21 this land to develop the coal where could I safely tell

22 the coal operator that he could put his tipple without

23 fear or risk of your making him -- because you have

24 already put this thing on record now, so he takes it with

25 all notice -- where could he put his coal tipple on this

1 5.22 acres and in the case of Claude Yearly, his 18 acres?
2 A. Well, if the well location was built and the access road
3 was evident I would say you would probably need to avoid
4 the access road.
5 Q. Well, what if that access road happens to be the best
6 place for that coal tippie?
7 A. Well, you are getting into an area that I can't answer
8 right now.
9 Q. So do you not consider this taking of -- let me ask you
10 this in terms of -- are you just a private corporation?
11 A. Yeah.
12 Q. Do you purport to be any type of public utility?
13 A. Equitable Resources Exploration is not a public utility.
14 Q. And so this is purely for monetary gain for a private
15 company, correct?
16 A. We are in business to make money, yes.
17 Q. So you are not contending in any way that this is for the
18 benefit of the public as a public utility?
19 MR. CHAIRMAN: Mr. Yearly, I don't see the relevance of this
20 line of questioning. If you can tell me where you are
21 going with this.
22 EMMITT YEARY: We have objected to this, Mr. Chairman, on the
23 basis that this is unconstitutional.
24 MR. CHAIRMAN: I understand.
25 EMMITT YEARY: Under the law of the United States and as well

1 as Virginia the law of imminent domain is a very re-
2 stricted --

3 MR. CHAIRMAN: I am going to stop you and say that we recog-
4 nize that you have challenged unconstitutionality. We
5 are not going to have -- the Board is not going to
6 consider the constitutionality of this law. The law is
7 the law and that will have to be challenged before a
8 proper court.

9 EMMITT YEARY: If I may just clarify in response to your
10 question. If you are a private company or private person
11 you cannot take another person's land in this country.
12 It is unconstitutional in both Virginia and the U.S. And
13 even the government can only do so much in very limited
14 circumstances. And they can delegate this right in
15 sometimes in cases of public utilities. But even then
16 under very limited circumstances. But the law of
17 Virginia is very clear that I cannot take your land for
18 my private purpose. Now, the law also -- the statute
19 that we are being concerned with today it says that any
20 objections before -- if there should be any further
21 action that before the courts of Virginia will consider
22 them that they have to be made clear -- those objection
23 need to be made clear before this Board so we can't later
24 come up and say, "Now we are raising these questions, but
25 this Board didn't have the opportunity to hear that."

1 And now I am saying that this Board is being asked under
2 -- according to Mr. Baker's testimony this Board is being
3 asked not only to drain the pool of gas and oil from the
4 property, but also now they are asking for you to give
5 them the right, if you grant this application, to also do
6 things that will affect the surface of the property.
7 Now, clearly that is a taking of property that is for a
8 private interest. So what I am saying to this Board, if
9 you would grant this application as they are asking you
10 to do, then this Board will be giving a permit unlawfully,
11 illegally in violation of the Virginia as well as U.
12 S. Constitution, because it will violate this basic
13 tenant of our law in this country.

14 MR. CHAIRMAN: Okay. Thank you.

15 EMMITT YEARY: So I am asking -- that's why I wanted to
16 clarify that and ask that that not be done. If I may
17 defer just a minute to my colleague here.

18 MR. GRAHAM: My name is Mark Graham. I am representing
19 Woodrow Yeary's interest here today. And since I was not
20 notified by Mr. Woodrow Yeary prior to the expiration of
21 the written notice period running I am here today for the
22 purpose of making some oral objections, one of which
23 would be based on the last line of questioning that the
24 application affects the surface rights of the property.
25 And so for the record I would indicate Mr. Yeary's

- 1 objections as to the constitutionality of this permitting
2 and this application. I have some other questions in
3 regards to the due diligence of the notice and applica-
4 tion, but I will defer that for the time being and let
5 Mr. Yeary continued with his line of questioning. I did
6 want to take this opportunity to get that on the record.
- 7 Q. (Mr. Yeary continues.) Now, Mr. Baker, prior to this
8 application were any efforts made to negotiate with Edna
9 Yeary Kilgore, Roger Yeary, Doris Ann Yeary Cox, Kaye
10 Yeary Rhiner or me for a lease?
- 11 A. Not to my knowledge based on the information that the two
12 individuals previously contacted Jim Yeary and Woodrow, I
13 believe. And they had pretty much indicated they would
14 discuss with the other family members and let us know
15 their decision. We normally do not contact everyone when
16 we are speaking with individuals that supposedly repre-
17 sent the family.
- 18 Q. And even today if I said I will lease my land to you but
19 only without the surface and all your testimony is I
20 would either have to enter into the regular oil and gas
21 lease with you or stand by this application?
- 22 A. It would depend on what your request was and whether or
23 not the upper management would approve it.
- 24 Q. Who is upper management?
- 25 A. The president and vice-president and director of land.

1 Q. And who are they?
2 A. I can't name all of them now, but if you --
3 Q. Do they live around here?
4 A. In Kingsport, yes.
5 Q. This Equitable it's a Tennessee corporation, if you know
6 without coaching from your partner there?
7 A. I am not sure what it is.
8 Q. Do you know if it is a subsidiary of a larger company?
9 A. Yes, it is. We have a parent company.
10 Q. And what is the parent company?
11 A. Equitable Gas out of Pittsburg, Pennsylvania.
12 Q. Do you know who the owners of that is?
13 A. No, I sure don't. Stockholders.
14 EMMITT YEARY: I will defer to Mr. Graham for further ques-
15 tions at this time.
16 MR. TWEED: I just need to clarify if Mr. Graham is with a
17 separate law firm than Mr. Yeary?
18 MR. GRAHAM: Yes, sir. I am with the law firm of Boucher &
19 Hutton here in Abingdon. I have a couple of quick
20 questions for Mr. Griffith.

21
22 J. W. GRIFFITH

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

CROSS-EXAMINATION

1
2
3 BY MR. GRAHAM:

4 Q. According to the application, Mr. Griffith, there is an
5 allegation that due diligence was made to locate each of
6 the oil and gas owners listed on the exhibit. You
7 indicated that you had spoken personally with Woodrow
8 Yeary, was that correct?

9 A. I spoke to him by phone.

10 Q. And do you recall when that was?

11 A. The 23rd of January and one week later.

12 Q. Would that have been of this year?

13 A. No, of '92 was the last conversation. He was contacted
14 this year, but not by me.

15 Q. Okay. In that discussion was there ever any -- you've
16 never been to Mr. Woodrow Yeary's house, have you?

17 A. No, sir. That was the purpose of the phone call to set
18 up an appointment.

19 Q. Did you ask Woodrow Yeary his correct mailing address at
20 that time?

21 A. I did not.

22 Q. Did you ask him if he lived a separate location than Edna
23 Yeary?

24 A. The purpose of the phone call was to set up an appoint-
25 ment talk about an oil and gas lease and that's what we

1 discussed.

2 Q. But you didn't make any effort to verify any address in
3 this phone conversation you had with Woodrow Yeary?

4 A. As I said the phone conversation was a year ago. It was
5 for the purpose of getting an appointment to obtain an
6 oil and gas lease. I wanted to come to his house and I
7 asked if I could.

8 Q. So when this application was filed it listed Mr. Woodrow
9 Yeary's address as being in care of Edna Yeary at Route 1
10 Box 95, Coeburn, no one asked him if that was his correct
11 address or not?

12 A. I didn't. I don't know if anyone else did.

13 Q. Would you not generally want to do that in order that you
14 could correspond with him in the future by mail?

15 A. Well, perhaps. But the Yearys made it obvious that they
16 did not want to be bothered by this. They didn't want to
17 meet with us. And to call him back and ask for an
18 address to send him a certified notice might have been in
19 order, but normally in a case like this you would take
20 whatever address was of record. The of record address
21 was in care of Edna Yeary Kilgore so apparently that's
22 where the notices were sent.

23 Q. So you all made no further efforts to contact Woodrow
24 Yeary and made no offers whatsoever regarding price or
25 anything else of that nature?

1 A. Yes, we have.

2 Q. Have you all ever discussed a price?

3 A. Yes.

4 Q. What was that price?

5 A. \$5 an acre. \$3 a year for a five year lease. \$5 an
6 acre for the initial year and \$3 a year for each year
7 thereafter. In an effort to establish this meeting Mr.
8 Yeary was also asked if a non-surface would interest any
9 one and he stated "No."

10 Q. Now, was any of this ever put in writing?

11 A. No.

12 Q. So this is your oral representation that this was the
13 substance of this conversation?

14 A. I will remind you that I am under oath and that's --

15 EMMITT YEARY: Well, we will remind you of that, sir.

16 MR. CHAIRMAN: Let's just cut out that kind of conversation.

17 EMMITT YEARY: Thank you, Mr. Chairman. I apologize for that,
18 but I am glad he acknowledges that.

19 MR. GRAHAM: That is all the questions I have.

20 MR. TWEED: I have one more question for Mr. Griffith and then
21 we will have Mr. Talbott clarify some of things.

22

23

24

25

DIRECT EXAMINATION

1
2
3 BY MR. TWEED:

4 Q. Mr. Griffith, were you over there in the corner with me and
5 Mr. Claude Yeary and I think Mr. William Yeary and some
6 of the other Yeary family were over there during the
7 break earlier?

8 A. Yes, sir, I was.

9 Q. Did you hear me ask Mr. Claude Yeary in the presence of
10 the other Yearys if anyone had any interest whatsoever in
11 discussing a lease of this property?

12 A. Yes, sir, I did.

13 Q. And was Mr. Claude Yeary's response?

14 A. "No."

15 Q. Have any of the Yearys at any time during the entire day
16 ever indicated they didn't receive notice of this
17 hearing?

18 A. No, sir, they did not.

19 MR. TWEED: No further questions.

20 CLAUDE YEARY: Can I make a report to that?

21 MR. CHAIRMAN: Yes.

22 CLAUDE YEARY: Never ask me anything about my brothers or
23 sisters. I am always very careful not to try to commit
24 them in any way whatsoever. Because we are a family that
25 absolutely don't let one dictate to the others or

1 anything like that. And a lot of this information has
2 been absolutely false.

3 FLORENCE YEARY: They never sent me a notice. I never
4 received any notice.

5 EMMITT YEARY: Do you have any more questions of him?

6 MR. TWEED: No, I don't have any more questions of Mr.
7 Griffith.

8
9 CROSS-EXAMINATION

10
11 BY EMMITT YEARY:

12 Q. Mr. Griffith, you are saying this conversation that
13 supposedly took place just earlier today that was here
14 over in the corner just before this hearing began, is
15 that what you are saying?

16 A. That's correct.

17 Q. And knowing that now you have multiple objections from,
18 at least, five or six individual Yearly family members
19 speaking for themselves why do you then -- you have tried
20 to speak through Edna Yearly for everybody or notify her
21 and now you are trying to put the onus on Mr. Claude
22 Yearly to speak for the rest of them, why at this late
23 hour when you know that everybody are individuals and
24 they have their say about this matter why do you then try
25 to bind the Yearlys through Mr. Claude Yearly even today?

1 MR. TWEED: Object to the question. The response was that Mr.
2 Claude Yeary, who has a separate tract and is not a part
3 of the undivided interest of the others.

4 MR. CHAIRMAN: Sustained. Do you have any other questions,
5 Mr. Yeary?

6 EMMITT YEARY: Yes, sir.

7 Q. (Mr. Yeary continues.) Now, you say in this supposed
8 conversation that took place over a year ago with Mr.
9 Woodrow Yeary that the offer was \$5 an acre for a year?

10 A. A five year term. \$5 an acre for the initial year.

11 Q. \$5 an acre for the initial year?

12 A. For the first year.

13 Q. And for a five year term?

14 A. That's correct.

15 Q. And what was it going to be for the second year?

16 A. \$3 per acre.

17 Q. So your offer then to Woodrow Yeary was \$5 an acre even
18 though you could build roads, cut the timber, use the
19 surface for whatever, for gas lines and it was going to
20 be \$5 an acre?

21 MR. TWEED: I am going to object.

22 Q. (Mr. Yeary continues.) And do you consider that a
23 legitimate offer as you have represented in this notice
24 or your verification?

25 MR. TWEED: I would like to enter an objection, again, on the

1 basis that dealing with pipelines or damages for surface
2 access or anything of that nature is not before the
3 Board. And, secondly, I would like to object on the
4 grounds that with respect to redirect or cross -- I know
5 we are not a court, but he had many times to ask a lot of
6 questions and it is my understanding as a rule that when
7 you get back to questions after mine it is limited to the
8 subject matter of mine. And he has totally left that and
9 got back into the subject matter he was dealing with
10 about half an hour ago.

11 MR. CHAIRMAN: Sustained.

12 Q. (Mr. Yeary continues.) Why did you pick Woodrow and
13 Claude Yeary instead of just -- if Edna Yeary was on the
14 tax notice why did you not go to her?

15 A. I tried to find her and a phone number wasn't available
16 or maybe I overlooked it. Jim was the first person I was
17 able to get in touch with. He suggested that I call
18 Woodrow and he would talk to the other family members.
19 But he wanted me to call Woodrow.

20 Q. Do you ever go out into the field?

21 A. Sure.

22 Q. Have you ever been to this land?

23 A. Have I been there? No.

24 Q. Would you even know how to get there?

25 A. Yes.

1 Q. When you are trying to locate people do you ever knock on
2 somebody's door and say, "Hey, have you ever heard of Mr.
3 Wampler? He lives in Big Stone Gap. Do you know where
4 he might live?" Do you ever do anything like that?

5 MR. TWEED: The same objection. This is an area of inquiry he
6 went over a half an hour ago and it is far beyond the
7 scope of the two questions that I asked of him on
8 redirect.

9 MR. CHAIRMAN: Sustained.

10 EMMITT YEARY: Well, as a point of order if we doing it on
11 that basis I think he went out of order and interrupted
12 my cross-examination, if we are talking about a point of
13 law.

14 MR. CHAIRMAN: Mr. Yeary, I think that the question has been
15 asked and answered a number of times. I think the point
16 that you are making on due diligence is a point that has
17 been made and the Board will have to decide that issue.
18 If you want to address how you think that that impacts
19 the Board's ruling one way or the other as it's directed
20 by law then that is, I think, the appropriate place to
21 put your testimony or your questioning.
22
23
24
25

1 DENNIS BAKER

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

4
5 CROSS-EXAMINATION

6
7 BY EMMITT YEARY:

8 Q. Mr. Baker, on your application you are talking about the
9 operation, asking this Board to grant you the right for
10 this pooling and to tie up the pool as a practical matter
11 for as long as you are in operation. And operation being
12 -- defining operation as being as long as you are
13 conducting any operation on any part of the pooled area.
14 What do you contemplate an operation to be? If you had
15 just the gas casing itself or the casing for the gas
16 well and the pump there would that be an operation if you
17 are not producing?

18 A. It would be considered to be operating as long as the
19 well was not plugged.

20 Q. So you could drill that well and as long as it is not
21 plugged you would consider it in operation?

22 A. Uh-huh.

23 Q. For the next hundred years?

24 A. (Witness nods head in affirmative response.)

25 Q. So then you have not allowed anyone else to have access

1 to that pool for that 100 years period, correct?

2 A. Right. That is correct.

3 Q. And so you are asking the Board not to put any outside
4 perimeters on you as to -- that if you are going to get
5 this gas you have got to get in there and get it within a
6 reasonable period of time? If you put the well in there
7 that's all you have to do, correct?

8 MR. TWEED: Mr. Chairman, I want to enter an objection.

9 Again, the questioning was ended. I didn't even ask Mr.
10 Baker questions so I am not sure how we got into re-
11 direct. I thought it was going to be one or two ques-
12 tions and then done. And I would also like to object on
13 the grounds that he is asking for legal conclusions from
14 a land man. This application says what it says. And
15 this Board is going to rule on it based upon the regula-
16 tions and the statutes that apply and the law. And to
17 get into a bunch of verbal staring with Mr. Baker over
18 what that means from a legal standpoint in terms of 100
19 years seems to be to be inappropriate and it seems to
20 also be redundant on ground that has already been covered
21 at length.

22 EMMITT YEARY: I beg your pardon, but that is a very important
23 point. If they don't know what it means then how is the
24 landowner going to know what it means. And how is this
25 Board, when you put down such an order, what is your

1 intention as to what it means. Now, I think we have to
2 assume it means or they contemplate it means exactly what
3 Mr. Baker says, it goes on forever.

4 MR. CHAIRMAN: Well, Mr. Tweed offered to put on the witness
5 that could answer those questions and you kept wanting to
6 go to Mr. Baker.

7 EMMITT YEARY: At this time.

8 MR. CHAIRMAN: Okay. And then if he's not the witness to
9 answer those questions then I can't allow you to continue
10 to ask him those kinds of questions when there is another
11 witness that needs to be called to answer those.

12 EMMITT YEARY: Well, that will be up to Mr. Tweed whether or
13 not he wants to call that witness.

14 MR. CHAIRMAN: I understand. But I have to sustain his
15 objection based on that because this is not the person
16 that can answer those kinds of questions. And to
17 continue to ask him those kinds of questions gets us
18 nowhere.

19 EMMITT YEARY: I suppose the observation would be that if the
20 people that were negotiating in field would not know how
21 to answer these questions how could they reasonable
22 expect to have any kind of bona fide negotiations with
23 anybody that they are dealing.

24 MR. CHAIRMAN: I understand. That's why I said I think the
25 Board understands you point on the notice and diligence

1 effort and the efforts to negotiate. Does any members of
2 the Board have any questions or comments at this point?
3 (None.) Here, again, we are bound by the law and
4 regulation on what we can address and so far we have had
5 an hours worth of discussion on notice issue and we
6 haven't had that tied into what we can and can't address.
7 Just to be open with you, as I heard it, the entire
8 discussion has in no way tied to what we can and can't
9 consider in deciding this relief.

10 EMMITT YEARY: It's my understanding, Mr. Chairman, that you
11 can consider whether or not, even under the Virginia
12 statute, whether or not this would affect any recover-
13 ability of coal. As a matter of fact, I think "you
14 shall" are the words that the mandatory language uses.
15 That you shall consider whether or not this would affect
16 the recovery of coal when you start messing with the
17 surface.

18 MR. CHAIRMAN: Are you a coal owner? The coal owner has a
19 right to object.

20 EMMITT YEARY: We own the minerals. We are the owners of the
21 fee simple ownership of this property, so therefore, yes
22 we own that, I guess, to the middle of the earth which
23 would include the coal.

24 MR. CHAIRMAN: Then what I am saying is then you have to
25 address things the Board can consider. The Board can

1 consider coal owner objections and the coal owner has to
2 put on the objection.

3 EMMITT YEARY: Well, I believe I stated that in writing. It
4 says that.

5 MR. CHAIRMAN: Right. We have that. But I am just pointing
6 out that the debate about "Did you tell us?" and "When
7 did you tell us?" and "Why did you do this?" and every-
8 thing else -- to continue to go along with those kinds of
9 questions and answers is not giving us anything that we
10 can deal with this application on, except redundancy.

11 EMMITT YEARY: Except, Mr. Chairman, and I won't belabor it
12 any further at this point, but they have verified in
13 writing and made certain allegations to you which are
14 false and we are attempting to point that out to you.
15 And whether or not it was necessary for them to make
16 those allegations -- that will be for you to decide. But
17 if lie and you don't even need to lie then you question
18 whether the next thing that you do is telling the truth.
19 And that's what I am saying is that if they made false
20 allegations when they didn't even need to make them then
21 you should very, very carefully scrutinize everything
22 else they may have to say to you.

23 MR. CHAIRMAN: Okay.

24 MR. TWEED: Mr. Chairman, that gives me an opportunity to say
25 something because now Mr. Yeary has decided to call us a

1 bunch of liars. So let me make a statement for the
2 record in response to his statement for the record about
3 liars. Our people, who are very professional, went out
4 there and tried to contact the people on this undivided
5 lease, dealing with about 6 percent of this tract. And
6 they talked to two people. They talked to one and then
7 they talked to the one that he said they should talk to
8 additionally while he talked to the rest of the family.
9 and they came back and they said they didn't want him to
10 come by. They didn't want him to come by and visit to
11 talk about anything further, that the family wasn't
12 interested. Now, that was what was communicated and that
13 he verified that it had been communicated the same way to
14 a previous operator, A & R. Then, in addition to that
15 they went to another member of the family on Tract 8,
16 Claude Yeary. And they went and wanted to talk to him --
17 and I know there are different statements about what the
18 scope of that conversation was, but the effort was
19 clearly made. And Mr. Yeary has been asked again and he
20 got a letter asking him if he had any interest in
21 leasing and he has expressed that he doesn't. And then
22 when we sent out the notices for this hearing -- sure,
23 they used the tax records because that is a valid way to
24 give notice. Is it the only way to give notice? Maybe
25 not. But it is a valid way and that is the way this

1 family preferred to have it done with the tax assessors.
2 And sometime the proof is in the pudding. A good effort
3 was made to give notice and notice was given to everybody
4 and everybody is here. And they had notice of the
5 application and a copy of the application of what we were
6 trying to do and access to the statutes and the regula-
7 tions and access to the permit and all of those things
8 that we are trying to do. And there hasn't been a lie at
9 any point in time by this company. The only inference of
10 falsehood that has existed has been the suggestion by Mr.
11 Yeary that there somehow would have been some leasing
12 opportunity there that just isn't their now for some
13 reason and has never been offered. Also, there is a coal
14 objection that doesn't state any specifics. And the fact
15 is their tract on Tract 9 is over 500 feet from where
16 this well site is. And there isn't any coal objection
17 that is valid although they will have an opportunity.
18 And they were asked in writing and letters, "Do you have
19 anything that you want to say to us about this? Do you
20 want to talk to us about it?" And they didn't want to do
21 it. They just want to come in here and call the company
22 a liar and it ain't so. Now, that is the gospel truth
23 about this thing and if they want to talk about access
24 roads and pipelines then when they refer to the regula-
25 tions and statutes they will recognize that those aren't

1 before the Board today, that those are matters for a
2 separate situation. And that the permit is pending with
3 the access road and the pipeline thing hasn't been filed
4 and is a separate matter. So I will state for the record
5 that I don't appreciate my people being called liars.
6 They made a good effort. These people don't want to
7 lease their property. They don't like what is going on.
8 They think that the law and everything that you folks do
9 here is unconstitutional. And they have the right to
10 make that statement, whether they are right or wrong. But
11 I don't think they have the right to call us a bunch of
12 liars and I don't care for it.

13 MR. CHAIRMAN: Well, of course, the Board wants to be in a
14 position here of being open and listening to the citizens
15 and open and listening to the company's side. We are
16 guided by what is in the law and in the regulations and
17 therein lies our boundary -- and what is in the applica-
18 tion. And when I interjected my comments earlier after
19 we have listened to a lit of discussion I am simply
20 saying that on the objection side -- and I think that is
21 probably what drew out the statement as blunt as it was
22 made. It was the challenge that there's falsification in
23 the application. I probably drew that out by some of my
24 earlier comments and certainly am not trying to throw
25 this into a sparing match. If anything we would like to

1 see the parties work things out. We would encourage both
2 of you to do that, to try to find a medium ground. But
3 the statute also recognizes that there will be con-
4 flicts. And it also provides for dealing with that
5 conflict and that is what this Board has to recognize,
6 too. We're placed in a position here of having to deal
7 with those situations where we have conflict of interest.
8 So to the extent that by some of the things that I have
9 said -- if I have contributed to us taking this on a
10 plane we don't want to be on then I apologize to both of
11 you and we will do whatever I can do get us on a more
12 professional course to where we are laying out the issues
13 and the facts. Do you have anything further, Mr. Yeary,
14 of this witness?

15 EMMITT YEARY: Not of this witness, Mr. Chairman. We were,
16 of course, addressing the issue about the coal and we
17 have made the statement that we own the coal interest as
18 well as other minerals interests -- what other minerals
19 may lie under this. And if you cover the surface or can
20 affect the surface you can affect the recoverability of
21 that coal. And so we are stating the objection now that
22 we stated in writing and I want to make that clear.

23 CLAUDE YEARY: Sir, I believe I made an objection there in a
24 letter to the Board and told them that I thought it would
25 damage our coal rights there. And I would like to ask

1 you, in case the Board does go ahead and grant this
2 application for pooling when do we have to make a
3 decision on what of the three alternatives that the gas
4 company offers us and -- when we objected and don't want
5 to become a participating member?

6 MR. CHAIRMAN: If the Board grants the pooling application
7 that will come to you in the form of a Board order and
8 that order will stipulate the time frame that you have.

9 WILLIAM YEARY: Will that be mailed to us?

10 MR. CHAIRMAN: Yes. That would be mailed to each individual of
11 record that we have.

12 WILLIAM YEARY: It won't be in care of our cousins?

13 MR. CHAIRMAN: It will be mailed to the addresses that this
14 Board has. Now, if you have any doubt about the ad-
15 dresses or anything you need to get that to the Board.

16 MR. CHAIRMAN: Do you have any more witnesses?

17 MR. TWEED: I need to call Mr. Dallin to conclude the aspects
18 of our application. I will state that I appreciate your
19 comments, Mr. Chairman.

20 MR. CHAIRMAN: I know there is a lot on the line here and
21 certainly as I said I didn't want to do anything to be
22 irritant to either party. I am not trying to do that.
23 This Board sets here to try to be an independent body to
24 help people come to terms rather than to help people get
25 further apart. That's not our business.

1 MR. TWEED: I understand. I just hope you understand some-
2 times I will say something as an attorney that may be
3 more personally motivated. But it is EREX's position
4 that they are always trying to work things out and try to
5 communicate with people as best they can. And they try
6 to keep the doors open to communication. But we have yet
7 to receive any indication that any of the people that are
8 objecting at this time want to negotiate as lease. And
9 you can't negotiate with somebody that don't want to.
10 Mr. Dallin, you remain under oath.

11
12 BOB DALLIN

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

15
16 DIRECT EXAMINATION

17
18
19 BY MR. TWEED:

20 Q. You have previously testified today concerning your
21 employment and your capacity and your areas of expertise.
22 Are you familiar with the lands involved here and in the
23 surrounding area?

24 A. Yes, sir, I am.

25 Q. And with the proposed exploration and development of the

1 units involved here?

2 A. Yes, sir.

3 Q. Let me ask you if this would correctly describe the total
4 depth formations to be involved with application. 4,600
5 feet to include the formations consistent with the well
6 work permit now pending before the DMMS, to include the
7 formations Devonian shell, Berea, Weir, Big Lime,
8 Ravencliff and Maxim?

9 A. That is correct.

10 Q. And will this penetration be sufficient to penetrate and
11 test the common sources of supply in this subject
12 formation?

13 A. Yes, sir.

14 Q. Is applicant requesting the force pooling of the conven-
15 tional gas reserves not only to include the designated
16 formations, but any other formations excluding coal
17 formations which may be between those formations desig-
18 nated from the surface to the total depth drilled?

19 A. Yes, sir.

20 Q. Will this well be at a legal location?

21 A. It will.

22 Q. And what are the estimated reserves of the unit?

23 A. 375,000,000 cubic foot of gas.

24 Q. I understand, based upon the plat, that neither of the
25 Yeary tracts are within 500 feet or by the new statute

1 400 feet of the well site?

2 A. I believe that is correct.

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

4 initial unit well under the plan of development?

5 A. Yes, sir, I am.

6 Q. And has a signed AFE been reviewed and submitted to the

7 Board?

8 A. It has.

9 Q. And was it prepared in the same manner and by the same

10 general department personnel as the one on the docket

11 previous?

12 A. Yes, sir.

13 Q. And does this AFE represent a reasonable estimate of the

14 reasonable well costs for the proposed initial unit well

15 unit under EREX's plan of development?

16 A. Yes, sir, it does.

17 Q. And what are the dry hole costs with respect to this

18 unit?

19 A. \$131,500.

20 Q. And the completed well costs?

21 A. \$229,900.

22 Q. And do these costs anticipate a multiple completion?

23 A. Yes, sir, they do.

24 Q. And does the AFE include a reasonable charge for super-

25 vision?

1 A. Yes, sir.

2 Q. In your professional opinion will the granting of this
3 application be in the best interest of conservation, the
4 prevention of waste and the protection of correlative
5 rights?

6 A. Yes, sir.

7 MR. TWEED: I have no further questions of this witness at this
8 time.

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

10 MR. MCGLOTHLIN: For clarification, what was the completed
11 well costs again?

12 MR. DALLIN: \$229,900.

13 WILLIAM YEARY: We would like to know how much gas they are
14 going to get out of it?

15 MR. DALLIN: We expect -- that's the reserves that I gave.
16 They are expected to be 375,000 cubic feet of gas,
17 ultimate recovery.

18 WILLIAM YEARY: How much does that sell for a foot?

19 MR. DALLIN: We sell on a spot market. It ranges. Hopefully,
20 we will get as much for our gas as we can. Right now it
21 is currently around \$1.80 per thousand.

22 WILLIAM YEARY: \$1.80 a cubic foot?

23 MR. DALLIN: 1,000 cubic foot.

24 WILLIAM YEARY: If that delivers 375,000 cubic foot and
25 Florence Yeary on her tract there with 17 acres what

1 would she recoup out of that?

2 MR. DALLIN: I don't know. It would be her proportionate
3 share that would contribute to that pooling unit. It
4 would be specified and laid out in your election.

5 WILLIAM YEARY: Would you give her any guarantee of one cubic
6 foot of production from out there?

7 MR. DALLIN: No, sir.

8 WILLIAM YEARY: In other words you are going to pool her land
9 there and take her minerals rights and you won't give her
10 any guarantee at all and at the same time you are asking
11 the Board to guarantee you the right to make a profit and
12 still put a lien on her mineral until you get your
13 profit.

14 MR. DALLIN: There isn't anybody that can guarantee that we
15 are going to make a profit or that we will receive one
16 MCF of gas.

17 WILLIAM YEARY: But you are asking for a lien on our property
18 until you get a profit.

19 MR. DALLIN: I am not familiar with that aspect of the
20 application.

21 WILLIAM YEARY: Well, I believe if you read on Page 2 there
22 -- I would like to bring that up again. In your applica-
23 tion you are asking for a guaranteed profit by a lien on
24 the minerals.

25 MR. SCOTT: For a point of clarification, we are in again --

1 you are not in the application. You are talking about
2 thee --

3 WILLIAM YEARY: Once we get past the application then it's all
4 over. It's just like -- if they say, "We notified
5 everybody and made a good effort." The only one that I
6 tried to contact -- and I am a Yeary, but I didn't choose
7 to contact any other Yearys. I just called the first
8 Porter I come to in the phone book and he was one of the
9 three Porter heirs and they say they are unknown.

10 MR. SCOTT: The question I had was are you reading from the
11 notice or from the application?

12 WILLIAM YEARY: This Notice of Hearing, on Page 2 --

13 MR. SCOTT: Okay.

14 WILLIAM YEARY: -- D, "Providing that the operator shall have
15 an operator's lien on the oil and gas estate and rights
16 owned or claimed by the persons named herein in the
17 subject drilling unit. Now, what you are really doing is
18 you're saying that you are going to give mother's
19 property and my father's property to these people till
20 they recover whatever the spend out there. And there is
21 no limit put on them -- they only estimated this. There
22 is no limit put on them at all about how much they will
23 spend. And, frankly, from what I have heard I think they
24 are probably worth less than what they are probably
25 getting, because it seems like there is a terrific amount

1 of people involved in the thing here. There's field
2 agents and there are lawyers and there is this and that.
3 and he don't know who the president is and all, so there
4 is a terrible expense that can be run up there. And you
5 are going to take my mother's property and my father's
6 property and hold it as hostage till they make a profit.
7 And they are not even required to sell that gas to any
8 specific buyer. They can sell it to one of their
9 subsidiaries and beat the price down until they will
10 never get out of the hole. Every bit of that is the very
11 most important part of it and that's where it comes back,
12 in our opinion, to the constitutionality of it. It's not
13 specific enough. And their attorney keeps saying, "Well,
14 that don't apply to this." But it all has to be con-
15 sidered as a whole. And I come right back to saying that
16 Mr. Vernon Porter said he had not been notified by
17 letter, phone or anything. He was only the first one
18 that I decided to call to see if he was coming to the
19 meeting. I was going to give him a ride over here. He
20 is listed in the phone book in Coeburn. Any of you can
21 call him. And yet they say they made a diligent search.
22 Naturally, if they only notify the ones that they leased
23 off of and then all of those that they didn't lease off
24 of if they will bunch them up and mail them to one party
25 -- I am going to tell you, none of the rest of the Yearys

1 have said it. These Yearys are scattered all over the
2 United States. When they notified my aunt out there,
3 Edna Yeary Kilgore, she was several states away from a
4 lot of them. And some of them are located right over
5 here in Abingdon. They absolutely couldn't have made a
6 bona fide effort to notify them. And if they had asked
7 any of them the Yearys are fairly truthful people. They
8 would have given them their address, if they knew it.
9 And if they didn't they would have told them who they
10 could have asked to get it. They didn't any of them ever
11 ask my father for anybody's address. They didn't notify
12 my mama and they had read right up there at the court
13 that it was in her name. She has received no notice
14 whatever. She is sitting right here today even though
15 she objected with my father against this action and did
16 it by certified mail, return receipt requested to you the
17 Board. And we are going to get that little green card
18 because you all received it whenever the mailed delivered
19 it. But we did it in a timely manner. And we also at
20 the same time objected to the gas company. They still
21 have failed to recognize her and none of them have ever
22 talked to her about leasing her property. All they have
23 got to do is stand up here and say it if they did.

24 MR. CHAIRMAN: Anything whether?
25

CROSS-EXAMINATION

1
2
3 BY EMMITT YEARY:

4 Q. Sir, I didn't get your full name.

5 A. My name is Robert Alex Dallin, II.

6 Q. And what is your position with EREX?

7 A. I am employed as an operation specialist for EREX in
8 Kingsport, Tennessee.

9 Q. What does an operation specialist do?

10 A. My specific job is largely dealing with the coordination
11 efforts between land, engineering and geology in accomp-
12 lishing these drilling programs.

13 Q. What is your age and where do you reside?

14 A. I am 39 and I live in Kingsport.

15 Q. What is your educational background?

16 A. I graduated from West Virginia University in 1975 with BS
17 degree in geology. I have been working on the oil and
18 gas field for 18 years.

19 Q. And you are a geologist?

20 A. Yes, sir.

21 Q. How long have your been working for this company?

22 A. I actually started working for them in 1975. I have been
23 employed about three times. The most recent time I think
24 I have been here three years. I consulted for about 2 or
25 3 years before that. Off and on over the eighteen years.

1 Q. Are there coal seams under the subject property?
2 A. Certainly.
3 Q. And what coal seams are they?
4 A. Well, I don't have the names, but we produce from the
5 Nora Coalbed Methane Field. I'm not sure which ones
6 would outcrop, but it is generally all the Pennsylvania
7 aged coal seams.
8 Q. So there are a number of coal seams in this property?
9 A. Certainly.
10 Q. At various depths?
11 A. The sequence is present. Now, whether the coal is
12 occurring and in what thicknesses I have no idea.
13 Q. Did you try to make any attempt to ascertain the extent
14 of the coal seams?
15 A. No. We are not interested in it at this position.
16 Q. Under your application that has been testified to -- and
17 you are under oath -- under the application that you
18 would contemplate, if it's granted, that you would have
19 the right to have access roads and also have the right to
20 lay pipeline and so forth across the acreage covered in
21 the application outside the well itself, correct?
22 A. My particular knowledge about this is only in establish-
23 ing a drilling unit. I have no personal knowledge of
24 surface use of the property.
25 Q. Maybe I misunderstood Mr. Tweed. I thought he said you

1 were the one who knew more about this.

2 A. No, sir, that's not right.

3 Q. Well, who would?

4 MR. TWEED: I have Mr. Lee Talbott here, who I will call as my
5 next witness. Mr. Dallin is her to testify as a geolog-
6 ist because he has information that is relevant and
7 necessary in order for the Board to consider the permit,
8 Mr. Yeary.

9 Q. (Mr. Yeary continues.) What was your testimony then --

10 A. What is your question?

11 Q. So your testimony is being offered for what purpose?

12 A. Establishing a drilling unit.

13 Q. And the drilling unit would be all this acreage involved
14 on this map?

15 A. Within the circle, the 2,640 foot diameter centered at
16 this drilling site.

17 Q. And this 375,000 cubic feet of gas --

18 A. 375,000,000 cubit feet. It is an estimate of what we
19 expect to recover from drilling and producing the
20 formations we listed at this site. It is only an
21 estimate.

22 Q. And if it would be all brought out of the ground, stored
23 today and sold what would it sell for?

24 A. Well, again, I don't have a figure of the actual cost or
25 prices being paid today for gas. We sell on the spot

1 market largely. Our prices vary widely. The last time I
2 checked most of the gas I am seeing in this area is
3 probably \$1.80 per 1,000 cubic foot. Again, that is only
4 as estimate. All the gas can't come out of the ground at
5 one time. There is substantial risk we encounter when we
6 drill for these. Production rates vary widely also.

7 Q. What would you contemplate to be the life of this well?
8 How long would you contemplate that you would need to
9 have access to it to extract this well?

10 A. Well, we hope the thing lasts forever. I wouldn't want
11 to answer that question. For purposes of the economics
12 we only look at about 20 years. We hope it produces well
13 beyond that.

14 Q. When do you plan to start producing?

15 A. As soon as we can.

16 Q. Well, when will that be?

17 A. After the Board --

18 Q. Well, let's say today that this Board would say you have
19 the right to drill this well starting at 9:00 tomorrow
20 morning. When would you contemplate that you would be
21 producing gas and how long would that be?

22 A. Well, in developing the reserves in this particular area
23 -- we do have a drilling rig out in this area currently
24 about tow or three locations away. We do it in a logical
25 fashion. We have structures involved. We do anticipate

1 stepping down somewhat from the current drilling site.
2 What we would do an practical matter is drill one site at
3 a time until we can prove to ourselves the reasonable
4 drilling of this site and the timeliness of drilling at
5 this site. I would anticipate it would be drilled within
6 a year's time, but I could not guarantee that.

7 CLAUDE YEARY: I believe in their request it says if they
8 don't drill within a year it's null and void. The
9 application is.

10 Q. (Mr. Yeary continues.) So if you drill this well within
11 a year but then just kept the well site there I think I
12 heard the testimony that that would be --you would be
13 able to keep it --

14 A. I don't know.

15 Q. You don't know?

16 A. No, sir.

17 Q. Or if drilled it and began operation and started pumping
18 how long would it take you to pump this 375,000,000 cubic
19 feet?

20 A. Again, that would depend on the quality of the type well
21 we found. I found we find this. We have a certain
22 economic limit that we can not drill under. We feel this
23 is a drillable site and we hope it is a drillable site.
24 The drilling prior to doing this will prove to us whether
25 or not we feel it's a drillable site at that time. And

- 1 we hope that that will be within a year.
- 2 Q. Okay. Well, assuming that it's a drillable site and
3 assuming you find that it's a drillable site within a
4 year and it's the anticipated quality that you think it
5 would be otherwise you wouldn't go in there then how long
6 would it take you to extract the gas?
- 7 A. I don't know how long the life of the well would be if
8 that's your underlying question.
- 9 Q. Well, assume it's life is 375,000,000 --
- 10 A. Well, if you only metered at 5 a day it would take a long
11 time to get it. If you metered at 3,000,000 it would
12 take that proportion less. I can't tell you how fast we
13 would get the reserves out of the ground at this loca-
14 tion.
- 15 Q. Well, can you then take it out at whatever rate you want?
- 16 A. Well, it is our intent to make as much money as possible
17 as fast as possible. We like to sell it at a high price
18 as fast as possible. Depending on what contracts we
19 negotiate, the pipeline situation -- a lot of unknowns
20 that I can't represent to you accurately today and I
21 would not care to do so.
- 22 Q. Do you have any problems putting some outside parameters
23 on how long you have the right to pump this so you just
24 can't tie up people's land forever so other people
25 wouldn't have the opportunity to come in there?

1 A. No, sir.

2 Q. Have you done any assessment on what this might do to the
3 overall environment?

4 A. Personally, no. I don't know of any being done.

5 EMMITT YEARY: Thank you.

6 MR. CHAIRMAN: Do you have another witness?

7 MR. TWEED: I will call Mr. Talbott.

8 COURT REPORTER: (Swears witness.)

9

10

11

LEE TALBOTT

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

14

15

DIRECT EXAMINATION

16

17 BY MR. TWEED:

18 Q. Mr. Talbott, would you state who you work for and what
19 your job is?

20 A. My name is Lee Talbott and I am a land administrator for
21 Equitable Resources Exploration.

22 Q. How long have you held that position?

23 A. Since 1987.

24 Q. And are you familiar with the area of this application
25 and the issues that you have been hearing in response to

1 Mr. Yeary's questions over the last -- whatever time has
2 passed?

3 A. Yes.

4 Q. Has EREX applied for permit for this well and has a
5 permit now pending before DMME?

6 A. A permit application to drill and produce Well V-2691 has
7 been submitted to DMME with notices sent to the ap-
8 propriate people on 2/25/93.

9 Q. And did that include, per statute and regulations, the
10 applicable operations plan, etc.?

11 A. That included all requirements necessary for the permit
12 requirement to drill the well within the Commonwealth of
13 Virginia.

14 EMMITT YEARY: I am going to object to that. It's a con-
15 clusion.

16 MR. CHAIRMAN: Sustained.

17 Q. (Mr. Tweed continues.) Are you familiar with the
18 requirements that are placed upon EREX with respect to
19 filing of the application and permits for wells and have
20 you been a part of the supervision for those filings for
21 the last several years?

22 A. I am familiar with both proceedings as to compulsory
23 pooling provisions and also the permits and applications
24 to drill within the Commonwealth of Virginia.

25 Q. And have you testified with respect to your expertise and

1 as to your expert opinion before this Board on many
2 occasions in the past?

3 A. Yes, sir, on numerous occasions.

4 Q. Is a pipeline a part of this application?

5 A. In order to install a pipeline within the Commonwealth a
6 permit application has to be submitted to the Department
7 containing all aspects of that application including
8 erosion and sedimentation control plan. Also, notices
9 are required to be sent along with that application and
10 is separate from any other application to drill or
11 compulsory pooling.

12 Q. And is an access road designated as apart of the plan of
13 operation that was submitted with the well permit
14 application?

15 A. An access road is most certain part of a permit applica-
16 tion to drill. It also contains a soil sediment erosion
17 plan, which is also inspected by the DMMS prior to
18 issuance.

19 MR. TWEED: Mr. Chairman, I wanted to clarify just those few
20 points based on the testimony of Mr. Baker. I want to
21 make one brief statement and then I just wanted to have
22 Mr. Talbott available for Mr. Yearys to ask questions of
23 if he wanted to. And that is with respect to Ruby
24 Florence Yeary, the lady that is sitting in the back,
25 when the original Exhibit B was filed with this applica-

1 tion the impression had been given to EREX in the title
2 search that was done by the parties that Claude and Ruby
3 Yeary owned a tenancy by the entirety as to the entire
4 tract. So at that time as per our Exhibit B we sent the
5 notification only to Claude for this hearing. Now, we
6 immediately or within days received back the objection
7 that was from both Claude and Ruby Yeary, who clearly had
8 both received the application and reviewed it. After
9 that time I was advised by EREX that they had determined
10 that Claude and Ruby owned 50 percent of their tract in
11 the entirety, but 50 percent of it is owned just by Ruby.
12 And they asked me whether they needed to give her new
13 notification of the application, although we made that
14 change on the amended Exhibit B, and I said, "No. She
15 clearly has received the application because she has
16 already filed an objection so it is not necessary to send
17 her another copy at this time." So I wanted to clarify
18 that for the Board as to any confusion that might exist
19 there. It is part of the documentation that was sub-
20 mitted.

21 MR. CHAIRMAN: Any question, members of the Board, of Mr.
22 Talbot?

23 WILLIAM YEARY: Sir, I would like to say that my mother still
24 hasn't been approached about leasing her land. They
25 asked my dad over there, but they never did ask my mother

1 and he admits that she is a bona fide owner. And he was
2 just talking to me over there about the neighboring well
3 to V-2691, which is V-2327 which is on the bottom corner
4 here. What I would like to ask him, is that well already
5 drilled, V-2327? That's in the lower left-hand corner of
6 the map.

7 MR. TALBOT: V-2327 is drilled and is indicated as such by a
8 certified plat.

9 WILLIAM YEARY: When was that drilled, sir?

10 MR. TALBOTT: Sir, I don't have that information available at
11 the present time. I wasn't prepared to discuss 2327.

12 WILLIAM YEARY: How close do you assume that it to my mother's
13 land there? It's within 2,644 foot from the center of
14 the well site that you are going to drill. And they were
15 never notified of that well being drilled. Is that well
16 in production?

17 MR. TALBOTT: I will answer this last question. But in light
18 of Mr. Wampler's directions to stay on target as far as
19 what we are trying to accomplish today, I did not prepare
20 myself to discuss 2327. If it was within the unit they
21 would have been notified as per the regulations of
22 Virginia.

23 WILLIAM YEARY: Is that well in production?

24 MR. TALBOTT: 2327 is well that has been drilled.

25 WILLIAM YEARY: Is it producing?

1 MR. TALBOTT: I am assuming, sir, that it is. Again, I am not
2 prepared --

3 WILLIAM YEARY: The reason I am asking is it is within 1,600
4 foot of all of these Yearys that you are having trouble
5 notifying about this 2691. None of them have received
6 any notice that I know of or any royalties. That's the
7 reason I was asking you. How are they drilling that one
8 and how are they producing gas off of it if it is drawing
9 off of our property -- and we have not received any
10 royalty or any notification or anything.

11 MR. TALBOTT: Again, Well 2327 was drilled under the regula-
12 tions of the Commonwealth of Virginia at which time may
13 have involved a unit of 500 feet or 1,250 feet or 1,320
14 foot. Again, sir, I do not have that information. It is
15 available at the Division of Oil and Gas. And I would be
16 glad to submit it to you and the Board at a later date. I
17 am not prepared to discuss that. And, Mr. Chairman, I
18 would just as soon not do that anymore.

19 MR. CHAIRMAN: That is not a part of this. I mean, the fact
20 that you have a question about that -- you can feel free
21 to go to the Division of Gas and Oil office in Abingdon
22 and all that information should be on record.

23 WILLIAM YEARY: The only reason I asked him was because this
24 right here is stapled to this and made a part of this
25 whole thing. Everything was stapled together and mailed

1 to us certified as a part of it. So if there is a
2 question about any of it right now would be the time to
3 ask it. You can't ask it later.

4 MR. CHAIRMAN: But that is just not before the Board as far as
5 the issues before the Board today. But the information
6 will be available. Mr. Fulmer is the gas and oil
7 inspector and will be available to answer questions at
8 the office on anything about that well. Any other
9 questions?

10 EMMITT YEARY: Yes, sir.

11
12 CROSS-EXAMINATION

13
14 BY EMMITT YEARY:

15 Q. Just for a point of clarification. Mr. Talbot, how do
16 spell your name, sir?

17 A. Talbott.

18 Q. What is your full name and where do you live?

19 A. My name is Lee Talbott. I live at 213 Pactolas Road.
20 Kingsport, Tennessee. 37663.

21 Q. How long have you resided there?

22 A. Four years.

23 Q. And before then?

24 A. Before that I lived at Autumn Chase Apartment Complex,
25 Kingsport, Tennessee. P.O. Box 239. 37660.

1 Q. Have you been living in the Kinsport area the whole time
2 you have been with EREX?
3 A. No, sir.
4 Q. What did you do before then?
5 A. I worked for EREX but I did not live in the Kinsport
6 area.
7 Q. Where did you live?
8 A. I lived in Buchanan, West Virginia.
9 Q. Now, your title is land administrator?
10 A. That's correct.
11 Q. What exactly does that entail?
12 A. It is my obligation and commitment to ensure that our
13 land department functions in a professional manner, makes
14 all contacts necessary to acquire information necessary
15 to reach the objects set forth here today.
16 Q. And what is the objective here today? To get you this
17 pooling?
18 A. It's my understanding for application for a pooling unit
19 for 2691 and to acquire any other information necessary
20 of which -- evidently our objectives have been somewhat
21 acquire in that we are now finding information from the
22 other Yeary family members which was attempted through
23 telephone calls -- that Mr. Griffith in his first attempt
24 -- he normally makes a telephone contact and requests a
25 meeting under EREX's direction to acquire information

1 necessary to send other diligent notices out. That
2 information is also addresses, phone numbers --
3 Q. If you would just respond to my question , sir.
4 A. -- information necessary to submit a lease to you, sir.
5 Q. I believe the question was your purpose then is to -- the
6 purpose of your office is to make all contacts necessary
7 to get the objective of getting the permit today?
8 A. That wasn't your question. My purpose is to insure that
9 all things happen in order to reach the objective.
10 Q. And what is your educational background?
11 A. A graduate of West Virginia Wesleyan College. I attended
12 graduate courses at West Virginia University and the
13 University of Maryland. Methods in administration of
14 production training with management environment with
15 direct specialized training in land petroleum practices.
16 I have 13 years of specialized experience in the Appal-
17 achian Basin.
18 Q. What is your undergraduate degree in?
19 A. A Bachelor of Science in Education and Communications.
20 Q. Now, you indicate that if you went across this land
21 outside where the well is located that you would also
22 have to apply for a permit with someone, you believe, to
23 cross the other land, is that correct?
24 A. If I am reading your question right, sir, prior to any
25 surface disturbance on any property the appropriate

1 parties must be notified and approved.

2 Q. What would happen let's say if -- or you contemplate as
3 you understand it if some of these surface owners are
4 contacted, if you are granted this application and permit
5 that you are seeking?

6 A. Which permit, sir?

7 Q. The application that we are here today on.

8 A. The application for establishment of a force pooling
9 unit?

10 Q. Yes.

11 A. All right.

12 Q. Will that give you any right to get to the surface since
13 these land owners have been notified, supposedly? To use
14 the surface for this road or pipeline?

15 A. If a pooling unit is established and all other necessary
16 permit applications have been applied for in a diligent
17 manner and issued EREX will have the right to operate on
18 those tracts.

19 Q. On the surface?

20 A. With all other requirements upheld.

21 Q. What other permits would you have to get and from whom?

22 A. As stated before, sir, an application and permit to drill
23 and produce a well within the Commonwealth of Virginia.

24 Q. What division of the Commonwealth of Virginia?

25 A. Division of Oil and Gas.

1 Q. What else?

2 A. I might also include since you mentioned coal, any coal
3 properties would be notified.

4 Q. Let's first go down the list of who you are going to have
5 to get these extra permits from.

6 A. Which permits, sir?

7 Q. The permits if you want to go across and use the surface
8 for this road or roads and these pipelines?

9 A. That would be an application and permit to drill.

10 Q. Anything else?

11 A. A pipeline would require an application and permit to
12 install a gathering pipeline within the Commonwealth.

13 Q. Is that also with the Division of Oil and Gas?

14 A. Yes, sir.

15 Q. Any others?

16 A. Any other permits that would be required such as road
17 crossing permit which really would not affect the VGOB.

18 Q. Like the State highway?

19 A. Certainly. An encroachment permit.

20 Q. Anything else?

21 A. In speaking generalities it is my obligation to insure
22 that any specialized permits, a surface use permit from a
23 private agency would also be required. For example, the
24 Corps of Engineers, U. S. Forest Service. Every well
25 site, sir, as I am sure you can understand is special-

1 ized.

2 Q. Well, let's talk about these two here in question. This

3 Tract 8 and 9 as shown on your map.

4 A. Plat.

5 Q. Plat. Map.

6 A. There is a difference, sir.

7 Q. Well, just in lay terms this document that you filed

8 here.

9 A. This is a certified plat and it contains Virginia State

10 plane coordinates as well as United States latitude and

11 longitude. It's also been reviewed by a professional

12 engineer and surveyor.

13 Q. With all of that we will call it a plat. Do you feel

14 more comfortable with that terminology?

15 A. Whatever you can best represent your client, sir.

16 Q. What would you call it?

17 A. I would call it a certified well location plat.

18 Q. Okay. If I just called it a plat will you understand

19 what I am talking about?

20 A. I certainly understand, sir.

21 MR. CHAIRMAN: Mr. Yearly, I am going to correct you on -- a

22 minute ago I tried to get us on a plain of negotiating.

23 I believe you are antagonizing with your questions in

24 doing this and I am going to ask that that not be done.

25 You may continue.

1 EMMITT YEAR: It certainly was not my intent, Mr. Chairman. I
2 was just trying to get the witness to be responsive.
3 MR. CHAIRMAN: I believe he was trying to be responsive.
4 Q. (Mr. Yearly continues.) On the plat what -- this plat
5 that is in question here, what applications would you
6 contemplate other than the two that you mentioned?
7 A. Well, sir, the plat is not in question. The two applica-
8 tions necessary would be a permit and application to
9 drill. And if a successful well was encountered and
10 produced at that time a permit application to install a
11 gathering line would be applied for to the Division of
12 Oil and Gas.
13 Q. And that was to see that the environmental aspects and so
14 forth were taken care of basically, is that correct?
15 A. That, sir, is the responsibility of the VGOB. They will
16 ensure that prior to any issuance.
17 Q. Would you contemplate that there has to be any other
18 permission from the surface owner?
19 A. Would I contemplate that there would be any permission
20 from the surface owners?
21 Q. Yes. Needed?
22 A. In instances where EREX did not have the right to operate
23 it would be trespassing to anything other than that, sir.
24 Q. Let's assume that the Division of Oil and Gas gives you a
25 permit to drill this well, which that will be at this

1 location that you have designated on the plat as V-2691.
2 That would be the first thing that you need to do,
3 correct?

4 A. Sir, I do not assume anything. That is not my position.
5 A permit has not been issued. EREX at the present time
6 has no right to operate Well V-2691 and will not.

7 Q. Well, if you get this application granted today your next
8 step would be then to get this --

9 MR. MCGLOTHLIN: Going on assumptions is a little bit far
10 fetched today. We are getting off the objections. We
11 have sat here and listened to this going on two hours now
12 and it's getting old. There are here to apply for a
13 pooling permit and that's it. No assumptions about if
14 that well is drilled how much it will produce. It's
15 plain and simple. It's an application, Mr. Yeary.

16 EMMITT YEARY: Yes, Mr. McGlothlin. I appreciate that. What
17 I am trying to ascertain is once they get this applica-
18 tion granted before this Board -- and then he says there
19 are two other permits that he will have to go through
20 both of which will be with the Division of Oil and Gas of
21 the Commonwealth of Virginia. The question that I have
22 is would he then contemplate that he would have the right
23 to build -- for roads and pipelines on the surface of the
24 property.

25 A. (The witness continues.) Sir, assuming that everything

1 has taken place, all permits are issued and land owner
2 notification were sent and acknowledged by certified
3 green cards and any surface owner objections had been
4 addressed and all permits were issued EREX would operate
5 Well V-2691.

6 Q. The question is could you go across the surface, assuming
7 that you had these permits of the right to drill and the
8 right to lay the pipeline, could you put your pipeline
9 across the surface of Tracts 8 and 9, and also your
10 roads, without the permission of the land owners?

11 A. Assuming all permits are issued I most certainly would,
12 sir.

13 Q. And would your application -- would you pay the land
14 owners for any damage to their property as a result of
15 this?

16 A. Most certainly.

17 Q. And what procedures are set up for that?

18 A. Well, the normal procedures would to be acquire an oil
19 and gas lease, which was attempted, and discuss that.

20 Q. At \$5 an acre?

21 A. At the time that you turn down a meeting to discuss this
22 we were then left with the only avenue and that would be
23 to discuss this at a compulsory pooling or the designa-
24 tion of the unit. Now, had we had our meeting this would
25 have been discussed with you previously. However, any

1 surface disturbance which requires damages to the
2 property the surface owner would be reimbursed at a fair
3 market value.

4 Q. Are there any procedures set up in case we disagree?

5 A. Most certainly.

6 Q. What?

7 A. That included notifications to the permits we have
8 discussed and your right to object and a request as
9 formal hearing at the VGOB.

10 Q. And that would be the procedure that you understand is
11 set up as to any damage that you might be causing to the
12 surface by the fact that you would construct these roads
13 and lay the pipeline? Is that what you are saying?

14 A. Sir, I am saying that after all permits are issued an
15 appraisal of the subject property prior to disturbance
16 would be accessed and the damaged party would be reim-
17 bursed to all surface damages at a fair market value.

18 Q. Is there any procedure that you know of from your
19 experience that set up that would pay the land owner just
20 for any damages just because you have this right to
21 construct roads and pipelines on the surface of the
22 property?

23 MR. TALBOTT: Mr. Chairman, could I defer answering these
24 questions until such time as we have these surface owner
25 objections at issue. Again, in the spirit of what we are

1 trying to accomplish -- we are trying to establish a
2 drilling unit. The application to drill has not been
3 issued. The application for a pipeline has not even been
4 submitted.

5 MR. TWEED: And the only reason I haven't been objecting is
6 because I thought I was creating more problems by
7 objecting than I was by just trying to get through it and
8 let all the questions be asked. But I will interpose an
9 objection in light of my client's frustration at this
10 time. It's not relevant to the application.

11 MR. CHAIRMAN: Sustained.

12 Q. (Mr. Yeary continues.) How long would you contemplate
13 that this well will be there before you will be in
14 production?

15 A. You need to restate your question, sir.

16 Q. How long will it be before this well will be in produc-
17 tion that you are trying to get this pooling for?

18 A. Again, sir, prior to drilling or any surface disturbance
19 a permit must be issued and a productive well must be
20 established by drilling it. An unproductive well means
21 no pooling it, no unit established. There is nothing
22 that gets forced pooled or you loose no rights. And at
23 the rate we are going, sir, I would be afraid to say how
24 long it is going to be before we get a pooling. My
25 apologies to the Board.

1 MR. CHAIRMAN: Mr. Yeary, we have been very patient. I can
2 assure as a Board we have been very patient with explor-
3 ing this whole avenue. Do you have any other questions
4 relevant to what is before the Board in the pooling
5 issue? I would ask you to keep it strictly with the
6 pooling issue.

7 Q. (Mr. Yeary continues.) You were asked about this V-2327.
8 Is that your well?

9 MR. CHAIRMAN: Mr. Yeary, that is not before this Board.

10 EMMITT YEARY: Well, I am just asking is that his company's
11 well.

12 MR. CHAIRMAN: I am not going to allow that to continue. I
13 will ask you if you have anything dealing with the -- I
14 have explain to the gentleman, the Gas and Oil office
15 will be fully cooperative with him in exploring that. I
16 think it has already been answered by one of the repre-
17 sentatives from EREX that it was their well.

18 EMMITT YEARY: I believe he didn't know whether it was in
19 production and I don't think the question was --

20 MR. CHAIRMAN: That information will be available at the
21 Division.

22 WILLIAM YEARY: Sir, the only reason I asked that awhile ago
23 was to show the veracity of the company. Because if that
24 well is in production it is within that circle of my
25 mother's property and already drawing gas off her

1 property and she has never been notified by anybody.

2 MR. CHAIRMAN: I understood that, but that would be another
3 issue.

4 WILLIAM YEARY: Well, it would be an issue of what this
5 company's practice was, which is definitely the issue
6 here today as I understand it and that's the objection of
7 them pooling.

8 CLAUDE YEARY: May I ask a question?

9 MR. CHAIRMAN: Yes, sir.

10 CLAUDE YEARY: When will the Board render a decision on this?

11 MR. CHAIRMAN: Today.

12 CLAUDE YEARY: That is all I wanted to know. And we will be
13 notified of their decision?

14 MR. CHAIRMAN: Yes, sir.

15 MR. TALBOTT: Sir, at that time upon issuance of the order you
16 will be again notified as to your elections. So you will
17 be notified again, sir, after the decision by the Board.

18 WILLIAM YEARY: Only if it is favorable, I assume? I mean,
19 it's not foregone that you are going to approve it.

20 MR. CHAIRMAN: The Board will rule right here in a few minutes
21 whenever we finish all this -- Mr. Yeary, I am not trying
22 to cut you off on questioning. I am trying to keep it to
23 what we can consider. I hope you understand that. We
24 have been trying to be very patient and allow you to
25 build a complete record here.

1 WILLIAM YEARY: We want you to understand, though, that what
2 you are doing here is binding us and our heirs forever.
3 I mean, there should be no end of patience on it.

4 MR. CHAIRMAN: It's not a matter of patience. It's relevance,
5 okay? That's what I am trying to get at. I think we
6 have displayed patience. I am saying it has to be
7 relevant to what we can consider. Okay? I want you to
8 understand that, too. We are certainly going to try to
9 make a fair decision here.

10 Q. (Mr. Yeary continues.) Mr. Talbot, based upon your
11 experience with EREX and assuming that this well gets the
12 number of cubic feet that you contemplate what would this
13 translate into -- further assuming that the market would
14 be basically as it is today -- what would be the amount
15 that you would contemplate that Tract 8 and 9 would
16 receive?

17 A. I am not qualified to answer that, sir.

18 Q. Who is?

19 MR. TWEED: There is a formula for it. I was trying to do it
20 with some numbers earlier just to see if could --

21 EMMITT YEARY: Excuse me. If I may, I was addressing this to
22 Mr. Talbott.

23 MR. TWEED: Well, you said, "Who is?," Mr. Yeary. Do you
24 want information or do you want to ask questions?

25 EMMITT YEARY: I am asking the question of Mr. Talbott. If

1 this is the man that is in charge of land acquisition
2 shouldn't he know who could supply this information?

3 A. (The witness continues.) Yes, sir, I certainly do and I
4 am directed to refer those questions to our counsel.

5 Q. Okay. So the lawyer has the answer to that question?

6 MR. CHAIRMAN: Mr. Yeary, I think the answer to the question
7 is whatever percentage of ownership that you have based
8 on whatever the gas has sold for. Now, if you want
9 specifics on -- you are asking how much money are you
10 going to get?

11 EMMITT YEARY: Assuming that at today's rates then what would
12 that translate into? This would be the logical question
13 that the average landowner would want to know when he is
14 dealing with anybody about to buy his property. What
15 does this translate into terms of human, practical
16 everyday terms? And it seems to me that these people
17 should be able to readily give you that answer without
18 saying, "Well, check with our lawyer." And how can you
19 negotiate with people, supposedly in good faith, if you
20 don't have those kinds available? I have no other
21 questions at this time.

22 MR. CHAIRMAN: Do you have the formula?

23 MR. TWEED: I did a calculation that if assume that Florence
24 Yeary has 14 percent of the tract -- if you assume that.
25 That looks to be what she had on amended Exhibit B or she

1 and Claude together. I used 14 percent. If you had 14
2 percent of the tract and it did produce at the estimates
3 that Mr. Dallin estimated it would produce in terms of
4 375,000,000 cubic feet and if did sell at about \$1.80 per
5 thousand cubic feet then without trying to crank in
6 transportation costs, which do affect it but I don't
7 think affect it a great deal, and based upon a 1/8
8 royalty if the royalty option was being pursued my math
9 told me that the amount of money by the time all the
10 production was done that that 14 percent ownership would
11 be something in the range of \$15,000 to \$17,000.

12 MR. CHAIRMAN: Does that respond to what you were looking for,
13 Mr. Yeary?

14 EMMITT YEARY: And that would be -- what did you say?

15 MR. TWEED: It came out for me about \$15,000 to \$18,000. But
16 I have to admit that my concentration was at a low ebb
17 when I did the calculations.

18 Q. (Mr. Yeary continues.) Okay. Mr. Talbott, what would
19 that be -- over what period of time would you contemplate
20 that would be?

21 MR. TALBOTT: Mr. Chairman, I am not qualified to answer that,
22 sir.

23 MR. TWEED: Mr. Dallin already testified at length about the
24 production capabilities of the well and the variance. I
25 think what Mr. Yeary misses all the time is the fact that

1 the whole concept behind force pooling is to try to make
2 sure that we drill for all the gas, but that we don't
3 have everybody drilling within 40 feet of each other,
4 but that everybody gets a share of it if it is drilled to
5 the best degree possible. And he keeps making some
6 assumption that because we are drilling it over here and
7 his property is within the pooling unit that that's
8 something awful to him. But if he had come in here today
9 saying, "No, I want to drill the well and I can do a
10 better job of it and here is how." Then he would be
11 making the kinds of objections that are relevant to force
12 pooling. But he is not doing that.

13 MR. CHAIRMAN: Well, we are not going to get into that. I am
14 going to cut you off, too.

15 CLAUDE YEARY: Can I ask one question, please?

16 MR. CHAIRMAN: Yes.

17 CLAUDE YEARY: Now, what they are saying according to this
18 projection is for us to release control of our land and
19 our property also including our coal rights to them for a
20 promise we might get \$15,000 to \$17,000. Now, the coal
21 rights out there they let on like they don't know
22 anything about them, but I was offered a lease by one of
23 the biggest coal companies in the United States and what
24 they proposed that they would pay me would be \$1.05 a ton
25 for all the minable coal on there, all that they ex-

1 tracted. Well, if you can figure the size of the seams
2 out there -- and it is absolutely on record that it has
3 been cored drilled and all. And I myself saw the
4 core drills right out from my home down to about 380 feet
5 and they had hit three seams down that far. Now, the big
6 seams out there are supposed to be about 7 to 9 feet out
7 there where the well was drilled back about 1945, which
8 is right above our property. So you can understand that
9 we don't want to give away the rights to our property for
10 \$12,000 or \$14,000. That's the whole question, you know.
11 What are you selling? You are selling so much for so
12 little.

13 WILLIAM YEARY: I would like to interject. There is nothing
14 requiring them to pump that gas out at any time. They
15 can put that in reserve. And evidently that well that I
16 was raising a question about is in reserve and my parents
17 may never profit from that. I am 54. I may never profit
18 from it.

19 CLAUDE YEARY: Well, I don't expect to get any because I am
20 80.

21 MR. CHAIRMAN: Anything else, members of the Board?

22 EMMITT YEARY: I have a statement, please. First of all, it
23 is our continued position that there was not adequate --
24 and certainly no due diligence was exercised and certainly
25 no good faith was exercised in any way in making any

1 attempt to negotiate a lease, making any attempt to
2 contact the individual owners of this property. It has
3 been alluded to -- and I will introduce a letter here.
4 It was only after I received indirectly, fortuitously
5 this notice of this application that I made contact with
6 Mr. Tweed's office when I was looking for Mr. Counts, who
7 at that time had been known to do work in this area. And
8 I was told by Mr. Counts colleague that they has pur-
9 chased this client from Mr. Counts and that they were now
10 representing EREX. I was merely inquiring at that time
11 what this application was all about since I was relative-
12 ly new with this procedure. Mr. Tweed indicated that --
13 when I would ask certain questions he indicated that he
14 would get back to me. And then I received a contact from
15 gentleman that purportedly -- it may have been the man
16 that Mr. Griffith referred to. I didn't copy his name
17 down. I indicated to him at that time that I would try
18 to keep an open mind on this, but however I could not
19 ethically talk to any individual concerning this matter
20 without permission of counsel. I then got a call from a
21 person saying that he was the general counsel for EREX,
22 saying that he had no objection. And this was all within
23 the last few days. I think this all started right around
24 March the 10th. However, I explained to him since he was
25 not on the pleading and I wasn't acquainted with the

1 gentleman that I would need the permission from there
2 counsel of record. I have yet to receive that. Instead
3 we received a couple of correspondences from Mr. Tweed
4 indicating that, "Well, it appeared that you are not
5 willing to lease" and even though I had steadfastly said
6 I would try to keep an open mind on this. And I don't
7 have any objection to you using the correspondence from
8 me and both Mr. Tweed. And I think you will note that I
9 was a little distraught with the fact that I had told
10 them I would keep an open mind and they responded to
11 either do it our way or don't do it at all. But in any
12 event notwithstanding that I: I don't think there has
13 been any good faith attempt to notify the people. and
14 it's indicative of the fact that regardless of whether
15 somebody says they represent the Yearys' interest and
16 whether they do or not then you don't even go to that
17 person that you say that you are taking to represent this
18 interest -- you don't even notify them of this applica-
19 tion. Now, that just doesn't make sense if you are doing
20 something in good faith. If you are trying to ram it
21 down people's throat then maybe that is the way to do it.
22 But that is certainly not consistent with good fair
23 dealings and common sense. And it is certainly not
24 consistent with the verification which they have made
25 before this Board. It's our position that these verifi-

1 cations are false and, therefore, this Board shouldn't
2 even consider this application. In addition, they are
3 asking for very broad rights in this pool. Now, this
4 pooling may be one of possibly three steps in getting a
5 permit, but if that is the case and if they get these
6 permits then they will be tying up in one case 17 acres
7 or so of thousands of dollars of mineral lands not
8 considering the environmental damage and impact that they
9 may be doing to the surface under Mr. Tweed's estimates
10 of under \$15,000 to \$17,000. And that's assuming that
11 everything was extracted today. But they want you to
12 issue a order allowing them to pool this with giving them
13 outside perimeters for going on forever. Even though
14 they just have one well there they can just hold this
15 land basically in hostage and never give the landowners
16 anything for the next 15 or 20 years or whenever they
17 sell this off. Where they would get their corporate
18 profit is when they would then sell all these wells as A
19 & R, whoever their predecessor was, to someone else. But
20 the land owner is left helpless and hostage to this not
21 only in trying to recover any of the benefits, because
22 they are given no requirements as to when they have to do
23 this drilling, even assuming a person was wanting to do
24 this and was willing to do this. And then if you
25 actually put the present fair market value in even into

1 his small amount and you put that over a period of
2 probably 100 years you are probably talking about they
3 could tie up this land for maybe \$2,000, if that, if you
4 spread it out as to what they would actually recover.
5 But with this application, not only would that be grossly
6 unfair, but this application is also asking -- and will
7 ultimately if it is obtained -- asking for this private
8 company to tie up all of these private individual's
9 ownership in this property. Now, the person ownership
10 of property is one of the most sacred aspects that we
11 have in America, the right to hold that property freely
12 and clearly without interference except where in cases of
13 where it is necessary for the public good as a whole to
14 have that property taken. And only then after showing
15 public necessity for the public as a whole. There are
16 certain protects that the Constitution provides that has
17 to be in showing a public necessity, reasonable and just
18 compensation, bona fide offers to negotiate and so forth.
19 Yet this procedure that they are trying to do is to take
20 this land, this property outside the Constitutional
21 requirements. And it's our contention that if they are
22 allowed to do this -- and this is one of the reasons I
23 was asking these questions -- what do they contemplate
24 this application to mean? And certain the notice would
25 contemplate that. It's very clear and it's very broad.

1 And on their testimony even their application they would
2 contemplate that. Oh, they may have to go and get
3 another permit from another body of State, but no real
4 requirement that they have to get any permission from the
5 landowner. They can just take this property. Now,
6 that's a taking of a person's private property for a
7 private interest and that is unconstitutional and in
8 violation of the law. Now, they are asking this Board to
9 give them that right. Not just merely to drain the pool,
10 but also to give them the right to take the surface. And
11 this Board also has to look into whether or not this
12 would affect any coal interest. Now I think actually the
13 law was a little remiss in not just covering all interest
14 because there is more interest than buying property than
15 just coal and minerals. We also have things like trees
16 and plants and the overall environment needs to be
17 considered. But let's just assume that it's just for the
18 coal that is to be extracted there. Apparently, whoever
19 drafted this law that they contemplated that coal would
20 be on at least an equal if not higher plane than gas and
21 oil. And there the Board shall consider what effect this
22 is going to do on extraction of the coal reserves. Now,
23 it's been uncontradicted there are numerous coal seams in
24 this land. Now you don't have to have any expert wit-
25 nesses to tell you that when you tie up the surface of

1 the property that you are going to affect the capability
2 of being able to extract that coal. When you put this
3 order on record, as it will be if it goes down as they
4 are asking, you cannot in good faith legally sell this
5 property or lease it out to a potential coal operator to
6 mine this coal because first the question will be, "Well,
7 what if the gas company deems it appropriate to put a
8 road or a pipeline in there a year from now through the
9 middle of my tipple will I have to move that tipple?"
10 And the answer would be -- any competent lawyer would
11 say, yes, you have taken notice that you will -- once it
12 is put on record, if your surface is tied up in such a
13 method, you would run that risk. And maybe they will
14 just be nice people and maybe they will be consistent and
15 maybe they will actually contact someone like Edna
16 Kilgore and Claude Yearly instead of sending it in this
17 roundabout way and maybe at that time they won't put it
18 through the middle of your tipple. But who is to say
19 that they won't? So in all likelihood you have destroyed
20 the recoverability of that coal in that case. And if you
21 want to build a house there -- because they haven't even
22 looked at this land. If you want to subdivide it -- you
23 have killed this land for subdivision purposes. No
24 lending institution is going to lend you money knowing
25 that this type of interest is on there. Because if you

1 were going to subdivide that where could you safely put
2 your home without running the risk of having it moved?
3 These are the kinds of things they are asking you to get
4 involved in indirectly when you grant the application as
5 they have submitted it. It's not just for the extrac-
6 tion of the gas or oil underneath the land, but it is
7 also allowing them to interfere with the surface. Not
8 only is this not in the interest of the landowners it is
9 not consistent with the statute. It is also uncon-
10 stitutional and overall it is just unfair that they are
11 asking for this. And this Board is, presumably, set up
12 to see that basic fairness is done and certainly that the
13 law is carried out. They have not complied with the law
14 in a number of aspects. And what they are asking for is
15 clearly going outside the law. We would therefore ask
16 that the permit be denied for the application.

17 MR. CHAIRMAN: Mr. Graham, do you have anything?

18 MR. GRAHAM: Yes. Mr. Chairman, I appreciate the Board's
19 being here and I appreciate the Board's time so I will be
20 brief. Mr. Griffith testified that he had spoken to
21 Woodrow Yeary over the telephone. He never asked him his
22 correct mailing address, never made him any written
23 offers. He testified here today about some figures that
24 were offered, but I submit that that is certainly suspect
25 at this point. Mr. Woodrow Yeary is disabled and was

1 not able to be over her for this event, particularly
2 given the inclement weather. But he were here I can tell
3 you that he would tell you that no figures whatsoever
4 have been discussed. In fact, they have had difficulty
5 reaching any figures today at this hearing. Nonetheless,
6 if these figures are correct and they were made certainly
7 no counter-offer was ever made and it's certainly a
8 question for the Board to consider, but I would submit
9 that that does not constitute a bona fide offer -- a
10 bona fide effort to reach an agreement as the statute
11 requires. Mr. Woodrow Yeary was served notice of this
12 application through a relative only several days ago and,
13 again, I submit this is not due diligence as the statute
14 requires and people shouldn't be forced to negotiate
15 under the threat of a force pooling order. In that
16 regard I would submit that this application then is
17 premature. It doesn't seem to me that the burden should
18 be on the landowners to come back and force the company
19 to deal with them. And I understand that this Board is
20 not competent to address an due process arguments but I
21 would certainly renew our objections to that issue for
22 the record at this time. Thank you.

23 MR. CHAIRMAN: Mr. Tweed?

24 MR. TWEED: Very briefly, if I can, Mr. Chairman. If there
25 is anything I have learned in the last several month as I

1 have begun to try to serve before this Board is that this
2 Board is going to do everything in Its power at all times
3 to make sure that the private citizens of this Common-
4 wealth get full and fair consideration under the law.
5 And it is in part because of that, as well as just good
6 business practice, that I think EREX makes its best
7 effort to always try to talk. There is nothing that EREX
8 wants less than to spend five hours in a Board hearing.
9 There is nothing that we want less than to get into
10 constitutional lawsuits. There is nothing we want less
11 than to have to bring a matter before the Board 4 or 5
12 times. Everything is geared toward trying to comply and
13 communicate. Now a little knowledge is a dangerous thing
14 and that is what I have got to be careful with me. The
15 fact is we are not dealing with as animal here today of a
16 private citizen coming in and receiving inadequate
17 communication and having a good faith attitude toward
18 trying to negotiate with EREX. It has been hampered by
19 stonewalling on the part of EREX. We are talking about a
20 family that has come in today along with two lawyers, and
21 two lawyers that have not done their homework. They have
22 not done their homework. They have not sought to find
23 out how the statutes and regulations work and what is
24 relevant today and what is not relevant and what their
25 rights are and what their rights aren't. Now, in point

1 of fact, the pipeline permitting is a separate matter
2 from today, as is the road access. And your regulations
3 and the statutes of this state give full and fair advise
4 to everybody on how they can apply for applications there
5 and what they are. The statutes set forth a coal
6 operator's objection rights, and they are many. And none
7 of them are here. None whatsoever. The fact is is that
8 their property is more than 500 feet away and there is
9 nothing relevant to this force pooling that has any
10 effect on their coal interest whatsoever. And there has
11 been no presentation of evidence. They have a right to
12 object with respect to operators or our operation
13 proposal and none of that as come before you. They have
14 a right to talk about the terms that are being submitted
15 for the force pooling. They keep saying they haven't had
16 a right to negotiate, but they never said once -- and
17 that's why I am glad we are talking last -- not once in
18 the last four hours have you ever heard anybody say, "I
19 don't think those terms are fair. I want these terms.
20 I want to negotiate a lease." All we have heard is to
21 the contrary. With respect to the attempts to negotiate
22 a lease in the past our research indicates that is not a
23 legal requirement. It is a good thing to do and I know
24 this Board wants it done and you have heard testimony
25 about the effort. Not everybody was contacted because

1 they were advised, "I don't want you at my home." And
2 they were advised that the family had been reached. And
3 everybody was without a doubt given notice of this
4 application. Now, was it due diligence? Could it have
5 been better? If the notice on undivided Tract 9 had of
6 been sent out to individual addresses as opposed to the
7 address at the tax assessors office -- in light of the
8 fact that we have been here for 4 hours I sure wish we
9 had. But I will tell you this, 1: It is a good alterna-
10 tive means of notice. And 2: They all got prompt notice
11 and green cards were signed by their family members who
12 accepted this notice on their behalf. They did not
13 reject it, did not say, "This isn't fair." Did not say,
14 "Go find another address." Did not give us any indication
15 whatsoever that this was an unacceptable method to get it
16 to them. They received the notice and they are here and
17 have had the chance to present all the evidence they want
18 that shows that this force pooling is not in accordance
19 with the statute. And they had no evidence whatsoever.
20 We have appropriate terms. We have an appropriate
21 location. We have appropriate presentation before you
22 and we have no evidence to indicate otherwise. If there
23 had been a lack of notification and it was even dis-
24 covered later -- people could come before this Board and
25 say, " There wasn't due diligence." And it would make

1 the application order bad and they would have to come do
2 it again. But everybody knows what you do if you have
3 notice that is inadequate is you make it adequate. And
4 what do you want to do to make it adequate, you want to
5 make sure everybody gets the word. And why? So they can
6 be here. And that's what we have got. And if you want
7 to get into a little plain speak here, as a final word,
8 what we have are some people that have come and they are
9 not interested in trying to negotiate a lease. They
10 weren't interested during the break and they weren't
11 interested before during the letters and they weren't
12 interested before when they were contacted. These are
13 people that are arguing from a constitutional basis and
14 from any other basis whether it has any relevance or not
15 that they want to oppose this. We have this thing 75
16 percent leased. We have a valid will that we will try to
17 get reserves that need to be brought up according to the
18 policy of this State. And we have met all the require-
19 ments of the statute and we have tried to work -- and I
20 think that it is time, if this Board will, to recognize
21 for what we are here for today is simply the force
22 pooling and that we have met our burden and those seeking
23 to object have not met theirs. I really appreciate your
24 patience. I apologize when we get adversarial from time
25 to time, when we don't like the way the allegations are

1 going. But I think that is where we have ended up.

2 MR. CHAIRMAN: Board, what is your pleasure?

3 EMMITT YEARY: Mr. Chairman, can I offer this letter in which
4 I sent? I would like to have it copied. It's a letter
5 in which I advised that I would keep an open mind on
6 this.

7 MR. CHAIRMAN: Yes. You did refer to that. We will receive a
8 copy.

9 EMMITT YEARY: And I would just point out that production
10 rates were not addressed, and as I understand this Board
11 shall provide the maximum recovery of coal or provide an
12 order that would allow for that and that has not been
13 addressed. It just wants to be ignored. And I think we
14 have done -- we weren't the one that verified that
15 notices were sent out and I will stand by everything I
16 said. Thank you.

17 MR. CHAIRMAN: Okay. Do I have a motion?

18 WILLIAM YEARY: Could I ask one thing before you do that? For
19 Florence and Claude Yeary, the State and federal law
20 prohibits deep mining within a certain distance of an
21 active gas well. And that is the reason that we objected
22 there about our coal rights being violated. If that well
23 is sunk then it will absolutely will preclude the
24 majority of extraction of coal from their land. For the
25 \$17,000 they might possibly get for oil there is the

1 possibility of \$300,000 or \$400,000 in coal royalties.
2 We just don't think that is fair at all.

3 MR. CHAIRMAN: Okay. Do I have a motion?

4 MR. KELLY: Mr. Chairman, I would move that the application be
5 approved as submitted.

6 MR. CHAIRMAN: I have a motion to approve.

7 MR. EVANS: Second.

8 MR. CHAIRMAN: A motion to approve and second. Further
9 discussion?

10 MR. MCGLOTHLIN: I'm kind of torn here. Did the Yearys get
11 notice? It seems that they were noticed. I think due
12 diligence was probably done by Equitable. In good faith?
13 Maybe questionable on that. I don't think what they did
14 was good business. I think they had people talking with
15 these people on the telephone. I think they should have
16 said, "Hey, what is your address?" and done their
17 homework a little bit better on that. I just think that
18 EREX ought to think about that the next.

19 MR. TWEED: I think that is a point well taken, Mr. McGloth-
20 lin, to make even better efforts. And we will also try
21 to make sure that we get all of the addresses today from
22 these people, as well.

23 MR. CHAIRMAN: Further discussion? I have a motion and a
24 second. All in favor signify by saying yes. (All.)
25 Opposed say no. (None.) Unanimous approval. The Board

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is going to adjourn for lunch.

(AFTER THE LUNCHEON RECESS FROM 2:45 P. M. UNTIL 4:00
P. M., THE PROCEEDINGS CONTINUED AS FOLLOWS:)

1
2 ITEM 16
3

4 MR. CHAIRMAN: The next item on the agenda -- we have been
5 requested to skip to Item 16. It is a petition for force
6 pooling by Equitable Resources Exploration for V-1829,
7 located on the Clintwood Quadrangle, Willis District of
8 Dickenson County, Virginia. This is docket number VGOB-
9 93/03/16-0346. We would ask the parties that wish to
10 address the Board in this matter to come forward at this
11 time.

12 MR. TWEED: Doug Tweed and Jim Kiser here on behalf of EREX.

13 MR. CHAIRMAN: The record would show there are no others.
14 You may continue.

15 MR. TWEED: Mr. Chairman, for explanation for the rest of the
16 Board 15 and 16 on the docket are the same well. We just
17 wanted to do the force pooling first. We have a witness
18 that needs to go. I had one announcements, if I could,
19 Mr. Chairman. Item 12 on the docket, VGOB-93/03/16/0343,
20 that has already been approved, we will forward Mr.
21 Fulmer's office a modified Exhibit B. Since the prepara-
22 tion of the amended Exhibit B the lease status of
23 Clinchfield Coal Company under "Coal estate only" was
24 changed. The lease was negotiated with them, but is not
25 reflected on this exhibit. So we will forward a new

1 exhibit to reflect that change in status. And that would
2 be to "Coal estate" only. As to those four tracts there
3 is going to be an escrow request in the affidavit when
4 the escrow order comes up.

5 MR. CHAIRMAN: Okay.

6 MR. TWEED: I am going to remind you that you are still under
7 oath. And I am going to ask that the record incorporate
8 your previous testimony as to your responsibilities and
9 experience and background and expertise in this area.
10
11

12 DENNIS BAKER

13 a witness who, after having been previously sworn, was
14 examined and testified as follows:
15
16

17 DIRECT EXAMINATION
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19 BY MR. TWEED:

20 Q. Would you state your full name, please?

21 A. Dennis Baker.

22 Q. By whom are you employed, Mr. Baker?

23 A. Equitable Resources Exploration.

24 Q. And in what capacity?

25 A. As a leasing supervisor.

- 1 Q. And have your responsibilities as a leasing supervisor
2 include lands involved here with this application, as
3 well as land in the surrounding area?
- 4 A. Yes, they do.
- 5 Q. And have you been involved in these types of responsibil-
6 ities for several years?
- 7 A. Yes, I have.
- 8 Q. And have you, in fact, testified and been accepted by
9 this Board as an expert witness in your field on prior
10 occasions?
- 11 A. Yes, I have.
- 12 Q. Are you familiar with the Equitable's application for the
13 establishment of drilling unit and pooling order for Well
14 V-1829?
- 15 A. Yes, I am.
- 16 Q. And has a permit been applied for?
- 17 A. Yes, I believe it has.
- 18 Q. Is Equitable seeking to force pool the drilling rights
19 underlying the drilling and spacing units as depicted on
20 Exhibit A of this application?
- 21 A. Yes.
- 22 Q. And does Equitable own the drilling rights in the units
23 involved here?
- 24 A. Yes, they do.
- 25 Q. Does the proposed unit as depicted at Exhibit A include

1 all the acreage within 2,640 feet or a 1,320 foot radius
2 of the proposed well?

3 A. Yes, it does.

4 Q. Is the location proposed for Well VC-2846 on this
5 approved unit in the Board's order for the Nora Coalbed
6 Field Rules dated March 26, 1989?

7 A. Yes.

8 Q. Now, we filed an Exhibit B reflecting the various leased
9 and unleased interests in this unit with the application.
10 Have we an amended Exhibit B at this time?

11 A. Yes, we do.

12 Q. That is due to continued efforts to lease interest and
13 some additional leased interest we can now reflect to the
14 Board?

15 A. That is correct.

16 Q. What is the interest of EREX in the unit at this time?

17 A. The current interest being leased at this time is 95.76
18 percent.

19 Q. And are you familiar with the unleased interest?

20 A. Yes, sir.

21 Q. And what is that percentage at this time?

22 A. The interest being unleased at this time is 4.24.

23 Q. And are all the unleased parties set out on the Exhibit B
24 that has been filed?

25 A. Yes.

- 1 Q. I believe there is one address change, but those people
2 had notice and gave us simply a new address for future
3 notice that we will use, is that correct?
- 4 A. That's correct.
- 5 Q. And what party was that?
- 6 A. On Page 1 of the exhibit, Tract 2, the second name.
7 Roberta D. Kilgore.
- 8 Q. Prior to filing the application with respect to this
9 matter were efforts made to contact each of the respond-
10 ents in an attempt to work out an agreement regarding the
11 development of the unit involved here?
- 12 A. Yes, they were.
- 13 Q. Were efforts made to determine if the individual respond-
14 ents were living or deceased or their whereabouts, and if
15 deceased we efforts made to determine the names and
16 addresses and whereabouts of successors and interest to
17 any deceased respondents?
- 18 A. Yes.
- 19 Q. And were diligent and reasonable efforts made and sources
20 checked to identify and locate unknown heirs to include
21 primary sources such as deed records, probate records,
22 assessors records, treasurers record as well as secondary
23 sources such as telephone directories, city directories,
24 family and friends?
- 25 A. That is correct.

- 1 Q. In your professional opinion was due diligence exercised
2 to locate each of the respondents named herein?
- 3 A. Yes.
- 4 Q. And with the exception that you have referenced to us
5 that we will use on future notices are the addresses set
6 out in Exhibit B to the application the last known
7 addresses for the respondents?
- 8 A. Yes.
- 9 Q. Are you requesting the Board to force pool all the other
10 unleased interests as listed on Exhibit B?
- 11 A. Yes.
- 12 Q. Is EREX seeking to force pool drilling right of each
13 individual respondent, if living, and if deceased the
14 unknown successor or successors to such deceased individ-
15 ual respondent?
- 16 A. Yes.
- 17 Q. And is EREX seeking to force pool the drilling rights of
18 any person designated as trustee, if acting in the
19 capacity of trustee, and if not acting in such capacity
20 to force pool the drilling rights of the successor of any
21 such trustee?
- 22 A. Yes. That is correct.
- 23 Q. Are you familiar with the fair market value of the
24 drilling rights in the unit involved here and in the
25 surrounding area?

1 A. Yes, I am.

2 Q. What those are?

3 A. \$5 bonus consideration. A 5 year term and 1/8 royalty.

4 Q. Did you gain your familiarity by acquiring oil and gas
5 leases and other agreements involving the transfer of
6 drilling rights in units involved here and in the
7 surrounding areas?

8 A. Yes.

9 Q. In your opinion are these terms a fair market value and
10 do they represent a fair and reasonable compensation to
11 be paid for drilling rights within this unit?

12 A. Yes, they do.

13 Q. And with respect to the terms of the force pooling order
14 are you requesting the same terms that have been re-
15 quested previously today on earlier items on the docket
16 concerning the options, elections and time periods
17 assigned?

18 A. Yes, that is correct.

19 Q. And who should be named the operator under this force
20 pooling order?

21 A. Equitable Resources Exploration.

22 MR. TWEED: Mr. Chairman, I have no further questions for this
23 witness.

24 MR. CHAIRMAN: Any questions, members of the Board? (None.)
25 You may call your next witness.

1 MR. TWEED: I call Mr. Bob Dallin. I will remind you that you
2 are still under oath. And if we could, we would incor-
3 porate your previous testimony as to your expertise,
4 background and familiarity with this area.
5

6
7 BOB DALLIN

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

11 DIRECT EXAMINATION

12
13 BY MR. TWEED:

14 Q. What is your name?

15 A. Robert A. Dallin, II.

16 Q. By whom are you employed, Mr. Dallin?

17 A. I am employed by EREX.

18 Q. In what capacity?

19 A. I'm operations specialist.

20 Q. And have you held that position and had experience in
21 that field for several years?

22 A. Yes, I have.

23 Q. And have you testified before this Board and have your
24 qualifications as an expert witness previously been
25 accepted by the Board with respect to your professional

- 1 duties?
- 2 A. Yes, I have.
- 3 Q. And do your responsibilities including the lands involved
4 with this application and the surrounding area?
- 5 A. They do.
- 6 Q. Are you familiar with the proposed exploration and
7 development of the units involved here under EREX's plan
8 of development?
- 9 A. Yes, sir.
- 10 Q. And is this correct as to the total depth of the proposed
11 initial well and the formations to be included? 4,470
12 feet to include the formations consistent with the well
13 work permit now pending before the DMME, including the
14 formations as follows: Upper Devonian shell, Berea,
15 Weir, Big Lime, Ravencliff, and Maxim.
- 16 A. That is correct.
- 17 Q. And will this depth be sufficient in your opinion to
18 penetrate and test the common sources of supply in the
19 subject formations?
- 20 A. Yes, sir.
- 21 Q. Is EREX requesting a force pooling of conventional gas
22 reserves not only in the designated formations but any
23 other formations excluding coal formations which may be
24 between those formations designated from the surface to
25 the total depth drilled?

1 A. Yes, sir, we are.

2 Q. This well is not at a legal location. It does require a
3 location exception which will be taken up next on the
4 docket, correct?

5 A. Yes, sir.

6 Q. And what are the estimated reserves of the unit?

7 A. We estimate 300,000,000 cubic foot of gas be assigned to
8 this drilling unit.

9 Q. Are you familiar with the well costs of the proposed
10 initial unit well under EREX's plan of development?

11 A. Yes, sir, I am.

12 Q. And has a signed AFE been reviewed and submitted to the
13 Board by EREX?

14 A. It has.

15 Q. And was the AFE prepared by an engineering department
16 knowledgeable in the preparation of AFE's and knowledge-
17 able in regard to well costs in this area?

18 A. Yes, sir.

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

22 A. Yes, sir, it does.

23 Q. And what are the dry hole costs with respect to this
24 unit?

25 A. \$127,200.

1 Q. And the completed well costs?
2 A. \$219,380.
3 Q. And do these costs anticipate a multiple completion?
4 A. Yes, sir, they do.
5 Q. And does the AFE include a reasonable charge for super-
6 vision?
7 A. Yes, sir.
8 Q. In your professional opinion will the granting of this
9 application be in the best interest of conservation, the
10 prevention of waste and the protection of correlative
11 rights?
12 A. Yes, sir.
13 MR. TWEED: I have no further questions of this witness and no
14 further evidence.
15 MR. CHAIRMAN: Any questions members of the Board? (None.)
16 MR. EVANS: Mr. Chairman, I make a motion that we accept the
17 petition as filed.
18 MR. CHAIRMAN: A motion to accept the petition.
19 MR. MCGLOTHLIN: Second.
20 MR. CHAIRMAN: A motion and second. Any further discussion?
21 (None.) All in favor signify by saying yes. (All.)
22 Opposed say no. (None.) A unanimous decision.
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2 ITEM 15
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4 MR. CHAIRMAN: Now we will go back to Item 15 on the agenda.
5 This is a petition for a well location exception under
6 Section 45.1-361.17 by Equitable Resources Exploration
7 for V-1829, located on the Clintwood Quadrangle, Willis
8 District of Dickenson County, Virginia. This is docket
9 number VGOB-93/03/16-0347. We would ask the parties that
10 wish to address the Board in this matter to come forward
11 at this time.

12 MR. TWEED: Doug Tweed and Jim Kiser here on behalf of EREX.

13 MR. CHAIRMAN: The record would show there are no others.
14 You may continue.

15 MR. TWEED: Mr. Chairman, our witness on this one will
16 primarily be Mr. Lee Talbott, who was previously sworn.
17 By way of explanation we are asking for relief with
18 respect to spacing as to three wells. We are going to
19 give your two exhibits. The primary reason for the
20 spacing exception here -- the only location that would
21 not involve a need for a location exception is in the
22 middle of a coal mining development. The owner and
23 operator is SHG Enterprises has discussed it with us and
24 has agreed to the location as an exception that we have
25 made. And we have a certified letter from SHG Enter-

1 Equitable Resources Exploration.

2 Q. And have your qualifications responsibilities as an
3 expert witness in your area previously been accepted by
4 this Board?

5 A. They have.

6 Q. Do your responsibilities include the lands involved here
7 and the surrounding area?

8 A. Yes, they do.

9 Q. I assume you are familiar with the application, this
10 location and the topography mining operations and
11 effective land practices related thereto?

12 A. That's correct.

13 Q. And what we are requesting here in the way of location
14 exception is relief from EREX Well P-368 where we need
15 spacing of 2,533 feet from EREX Well P-499 where we need
16 spacing of 2,411 and from EREX Well P-378 where we need
17 spacing of 2,093, is that correct?

18 A. Yes, that's correct as is illustrated on Exhibit A.

19 Q. In Exhibit A those 3 are in pink and then 3 other wells
20 that are in proximity to the well location we are
21 requesting are in yellow, correct?

22 A. That is correct.

23 Q. And the ownership of the oil and gas surface underlying
24 Well V-1289 as I understand it is 39.2 percent for SHG
25 Enterprises, 19.7 percent for Kilgore heirs, and 40.31

1 percent for Pine Mountain Oil and gas, is that correct?
2 A. That is correct and evidenced on the plat dated 1/18/93
3 Q. And we have an oil and gas lease covering these tracts?
4 A. Yes, sir.
5 Q. And the right to operate the reciprocal wells?
6 A. Yes, sir.
7 Q. Has there already been an attempt to locate this well at
8 a location that would not involve a location exception,
9 but have been unable to do so because of some conflicts
10 with SHG Enterprises coal operation?
11 A. Yes, that is correct.
12 Q. Have you spoken to and met with SHG Enterprises and
13 discussed this location exception with them and received
14 Exhibit B from them, which is a certified letter by which
15 they have shown by attachment their mining operations
16 that create an impossibility for us doing a properly
17 spaced location and their permission and agreement to the
18 location we are proposing today, is that correct?
19 A. That is correct to the fact that although I did not make
20 the contact -- Exhibit B, Page 2, illustrates our
21 original proposed location whereas a variance or location
22 exception would not be necessary. However, in contacting
23 our coal companies it was ascertained that the proposed
24 location as shown on the map on Exhibit B falls within a
25 coal and DMLR permit #110145 and is currently contains

1 ongoing mine operations. At that point Mr. Jim (In-
2 audible) of SHG Enterprises, who is also responsible for
3 the coal and gas estate. I spoke with his engineers and
4 found a suitable location as close to the proposed
5 location as possible. And that is also shown on Exhibit
6 B, Page 2, at the map, to the northwest at approximately
7 600 feet.

8 Q. And the fact is, Mr. Talbott, if we were to move the
9 location North or northeast long enough to get away from
10 location exceptions to the reciprocal wells referenced in
11 our application that by the time we get north of these
12 coal mine operations we are running into location
13 exceptions with the other mines to the north, correct?

14 A. Yes, sir.

15 Q. And in addition to that we are getting into some signi-
16 ficant wastage problems down in the southern area below
17 the coal mining where we are presently trying to locate?

18 A. That is also correct.

19 Q. In your opinion and in the opinion of SHG, who is the
20 coal operator in that area as well as a royalty owner
21 with respect to this mine, is this location exception the
22 appropriate and most reasonable location for this mine in
23 order to maximize recovery of gas assets and still
24 maintain maximum recovery of coal assets and save coal
25 operations?

1 A. That is my opinion which is also supported by Exhibit B,
2 a letter by SHG Enterprises.

3 MR. TWEED: Mr. Chairman, I am going to ask Mr. Dallin a few
4 questions. I have no further questions of Mr. Talbott.

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

6 MR. EVANS: I have got one quick one. From SHG Enterprises,
7 their map shows a hollow (inaudible.) Where is that
8 located based on your Exhibit A?

9 MR. TALBOTT: If you will look at V-1829 and at the base on #1
10 you will see a dot. That is our proposed location.

11 MR. EVANS: That was what you sent to the --

12 MR. TALBOTT: Yes. That's on the 2,000.

13 MR. EVANS: And this stripping operation -- I guess I am
14 trying to relate it to the topo that's there. Now I see
15 where I am. How far north -- as a matter of fact almost
16 due north on the other side of that hollow does the
17 stripping operation continue that far?

18 MR. TALBOTT: I am not sure if it presently continues that far
19 or if that is their proposed operations in regards to SHG
20 recovering both their coal and gas and oil estates.

21 MR. EVANS: If you will see what I am saying -- you said you
22 couldn't move it north, but if you go basically clear
23 across the hollow and maybe even up a little bit, is
24 there a location that will maintain statewide spacing
25 from all the other wells?

1 MR. TALBOTT: Absolutely not, sir. The only possible location
2 that would not require a location exception would be on
3 your map on Exhibit B, Page 2. If you will notice there
4 is a hashed area and those are represented -- that little
5 triangle is relative to a 1,320 arc around each proposed
6 well and existing wells. And that is the only spot that
7 it could go and that conflicts with their mine opera-
8 tions.

9 MR. EVANS: And that includes P-502, V-1831 and P-480?

10 MR. TALBOTT: Yes, sir. Although V-1831 is located on the
11 Corp of Engineers property designated by the hash. That
12 has been approved by the Corp.

13 MR. CHAIRMAN: Any further questions? (None.) You may call
14 your next witness.

15
16
17 BOB DALLIN

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

20
21 DIRECT EXAMINATION

22
23 BY MR. TWEED:

24 Q. Mr. Dallin, I will remind you you are still under oath.
25 And I will refer back to the earlier record today with

1 respect to your employment, expertise and background.
2 Are you familiar with this location exception that has
3 been filed?
4 A. Yes, sir.
5 A. And in your opinion is this location exception necessary
6 to prevent waste, maximize recovery, insure the safe
7 recovery of coal, oil and gas reserves, and accommodate
8 oil, coal and gas reserves, and accomplish effective land
9 management practices?
10 A. Yes, sir.
11 Q. You have heard the testimony of Mr. Talbott. Is that
12 consistent with your opinion concerning the need for the
13 location exception here?
14 A. Yes, sir, it is. If this location is not granted there
15 is, in fact, a drilling unit that can't be recovered.
16 Q. What is the estimated loss of reserves that we would be
17 talking about if we could not have this location and
18 proceed with this unit?
19 A. Currently we expect 300,000,000 cubic feet of gas from
20 the drilling unit.
21 Q. And as to the depth and so forth we just testified to
22 just a few moments ago in the force pooling application,
23 correct?
24 A. That's right.
25 Q. We are requesting this location exception with respect to

1 the formations and surface to depth as described in the
2 force pooling, correct?

3 A. That's correct.

4 Q. In your opinion will granting of the location exception
5 be in the best of preventing waste, protecting coal
6 interest, protecting correlative rights, and maximizing
7 the recovery of gas reserves underlying Well V-1829?

8 A. Yes, sir, it would.

9 MR. TWEED: I have no further questions of this witness and no
10 other testimony to offer, Mr. Chairman.

11 MR. CHAIRMAN: Did you submit an affidavit demonstrating due
12 diligence? Is that something we have in here?

13 MR. TWEED: Let me go back and cover the notifications on
14 this. I need to do that with Mr. Talbott.

15

16

LEE TALBOTT

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

19

20

DIRECT EXAMINATION

21

22 BY MR. TWEED:

23 Q. Mr. Talbott, with respect to the location exceptions on
24 this -- and we have previously testified as to the force
25 pooling -- was notice of this application sent to all of

1 the respondents that have been designated with respect to
2 Exhibit B previously filed?

3 A. Yes, sir.

4 Q. And were the efforts of the type that have been previous-
5 ly described by Mr. Baker today with respect to this
6 forced pooling and other units followed with respect to
7 this location exception in terms of attempting to locate
8 respondents for the purpose of notice?

9 A. For the location exception, yes, sir, that is correct.

10 Q. In your opinion was due diligence exercise by EREX in
11 that regard?

12 A. Absolutely.

13 MR. EVANS: I have another question. With regard to existing
14 Well P-378 and 499 and 368, as well as 1829, are the
15 lease interest in those 3 wells in pink on your exhibit
16 the same or similar to the lease interest that you have
17 in V-1829?

18 MR. TALBOTT: Yes, sir. All tract within the drilling units
19 are under lease with EREX as designated operator for all
20 3 wells. P-368, P-499 and P-378.

21 MR. EVANS: Are there any leased interests that are not
22 represented -- take all four of those units. Are the same
23 interests represented in all four of those units or not?
24 Or are they different?

25 MR. TALBOTT: No, sir. I can take each well individually and

1 discuss each unit and the lessors, if you would like.

2 MR. EVANS: Your notice included lessors in those other three
3 well units, is that correct?

4 MR. TALBOTT: I will refer this to counsel who keeps track of
5 our green cards.

6 MR. TWEED: My understanding is in accordance with the statute
7 and the regulations and with respect to our notice and
8 affidavit filed that anybody that has an interest in the
9 unit, of course, that we are seeking the exception for or
10 any of the reciprocal units was included in our notice
11 and I have a listing of those people.

12 MR. EVANS: That was my question.

13 MR. TWEED: That has been filed.

14 MR. EVANS: If your affidavit covers the fact that they were
15 noticed that is fine with me. That was my question.

16 MR. SCOTT: Just as a point of clarification for me, what do
17 you consider to be your affidavit of the notice?

18 MR. TWEED: There is an affidavit of mailing that went out
19 with Mr. Kiser's signature on it that related to the
20 certificate showing the filing of the noticing and
21 application. The affidavit was executed on the 3rd day of
22 March, 1993. And there was also notice by publication.

23 MR. SCOTT: I was looking at your application and ordinarily
24 in your application you have got a statement that due
25 diligence was exercised and then you swear to that. But

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that doesn't happen to be a part of this application.

MR. TWEED: I believe in this case because of what we are dealing with here we deal with a separate notification and affidavit of notice was given on the location exception.

MR. SCOTT: We just needed to get that into the record.

MR. CHAIRMAN: Anything further?

MR. TWEED: No, sir.

MR. CHAIRMAN: Do I have a motion?

MR. MCGLOTHLIN: Mr. Chairman, I move that we accept the petition as filed?

MR. EVANS: Second.

MR. CHAIRMAN: Motion is seconded. Further discussion? All in favor signify by saying yes. (All.) Opposed say no. (None). Unanimous approval.

(Thereupon, at 4:45 P. M. Board Member Ken Evans left the proceedings leaving a quorum of Kevin McGlothlin, Bill Kelly, Zane Scott and Bill Harris for the remainder of the proceedings.)

1
2 ITEM 17
3

4 MR. CHAIRMAN: The next item on the agenda is on its own
5 motion Virginia Gas and Oil Board will receive testimony
6 and evidence on the proper limits on the Oakwood Coalbed
7 Methane Gas Field in the north, south, and east direc-
8 tions. This is docket number VGOB-93/03/16-0348. We
9 would ask all parties that wish to address the Board in
10 this matter to come forward at this time.

11 MR. SWARTZ: Mark Swartz and Howard Salisbury for both
12 Buchanan Production Company, OXY, USA and I guess I
13 should add Island Creek, as well.

14 MR. RASNAKE: James Rasnake for Virginia Gas Company.

15 MR. CARMONDY: Ken Carmondy for Pocahontas Gas Partnership.

16 MR. CHAIRMAN: Any others? The record will show there are
17 none. You may proceed, Mr. Swartz.

18 MR. SWARTZ: To give you some idea of what we are talking
19 about, Mr. Chairman, this is map that has been prepared
20 that extends the grid system for the Oakwood Field that
21 we are all familiar with. And that grid is essentially
22 at -- in between the letters and numbers is the Oakwood
23 Field. And what we are proposing to do is extend it to
24 the west five rows, 80 acre units, to the east six rows
25 and I think Pocahontas Gas Partnership may want to extend

1 it further and Ken may have some testimony in that
2 respect. And to the north, east of the 82 degree line,
3 which is the boundary of the current location of the Nora
4 Field. To extend the Oakwood Field as you see it on
5 this map and, obviously, the West Virginia border comes
6 into play and that is this line. The existing Nora Field
7 would remain unchanged in this corner which would be the
8 northwest corner of the map. Unfortunately, when we had
9 this map platted they didn't show 60 acres units. They
10 continued the 80. But this is part of the existing Nora
11 Field and we are not proposing to change that. That's
12 the extent of it. Five rows to the west, six to the east
13 and then to the north, as I indicated, finally the West
14 Virginia line. There is two Nora units that Virginia Gas
15 has existing Nora Coalbed Methane wells in that will have
16 to be carved out and we can get to that later. But this
17 is what we are talking about. I have asked Dennis
18 Louellen from Island Creek to prepare a summary of his
19 analysis and reasoning in terms of why he thinks the
20 Oakwood Field should be expanded and the pool enlarged --
21 at least, the Board's view of the pooling enlarged to
22 include these extensions. And I have passed it out to
23 all of you. It's two pages with two attachments. If I
24 could get Dennis up here and get him under oath I think I
25 could just have him summarize the high points of this and

1 then if you have any questions you could put them to him.
2 And I think Ken will also have some information to tender
3 with regard to the extension.

4 COURT REPORTER: (Swears witness.)

5
6 DENNIS LOUELLEN

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

9
10 DIRECT EXAMINATION

11
12 BY MR. SWARTZ:

13 Q. Dennis, have you prepared a memorandum summarizing some
14 information relevant to this request for an extension and
15 then summarizing your opinion?

16 A. Yes, sir, I have.

17 Q. And it is a two page memo with two attachments?

18 A. Correct.

19 Q. Could you kind of run through this? I mean, you don't
20 have to read it word for word, but kind of run through it
21 with the Board in terms of the proposed extension and the
22 description of the field and your recommendations.

23 A. Well, basically, the field and the areas that are to be
24 extended involve the coal seams from below the Tiller
25 seam down to the Pocahontas #2 seam. The seams that we

1 are interested in were the Upper Seaboard, Greasy Creek,
2 Middle Seaboard, Lower Seaboard, Upper Horsepin, Middle
3 Horsepin, War Creek, Lower Horsepin, Pocahontas #9
4 through #2 and also any adjacent strata and any unnamed
5 seams that we haven't mentioned here. The overall
6 stratigraphic interval -- it thins to the northwest in
7 this area on the western side of the field and on the
8 northwestern field it's about 700 to 800 feet thick. And
9 it thickens to the southeast approximately 1,200 to 1,400
10 feet depending on where you are at. Overall the number
11 seams and the amount of coal present also thickens to the
12 southeast. The area overall dips to the north 50 to 100
13 feet depending on where you are at. There are minor
14 anomalies scattered in the area. And overall I don't see
15 a big change in extending it 5 rows to the west or 6 rows
16 to the east, including that small area to the north.
17 It's all been basically treated as the same pool.

18 Q. What are your recommendations to the Board with regard to
19 what should be done and why?

20 A. Based on what we know we would recommend to go ahead and
21 extend the rules. There is no significant changes in the
22 field and I think it's applicable to go ahead and extend
23 them on out.

24 MR. CHAIRMAN: When you are recommending extending this and we
25 are talking about the same field -- have you studied the

1 results of the wells that have already been drilled
2 within the field?

3 MR. LOUELLEN: I have seen some of the results. I haven't
4 studied them in detail.

5 MR. CHAIRMAN: What I am looking for is -- you know, it's all
6 the same pool but is 80 acres the right answer and is
7 that something that is working based on the experience -

8 MR. LOUELLEN: I don't think we can really answer that
9 question yet. No one has done a careful -- at least
10 nobody that I am aware of has looked at it carefully from
11 a reservoir field analysis. Production hasn't been going
12 on for that long of a time anyway.

13 Q. (Mr. Swartz continues.) When the 80 acres units were
14 initially sized were you involved in frack length studies
15 and the impact on the coal to some extent?

16 A. I was involved to some extent and at that time for the
17 development methods they had in mind they thought that
18 would be adequate. Right now I am not aware of anything
19 that would cause them to change it.

20 Q. Were the 80 acre units, in fact, selected because of the
21 frack length?

22 A. Yes.

23 Q. And have those frack lengths to your knowledge remained
24 consistent?

25 A. Right now I just don't know.

1 MR. SWARTZ: Let me put Marty Wirth on for a moment.

2 COURT REPORTER: (Swears witness.)

3

4 MARTIN WIRTH

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

7

8 DIRECT EXAMINATION

9

10 BY MR. SWARTZ:

11 Q. Marty, with regard to the 80 acre unit size did you
12 participate in the development of the original proposal
13 for the Oakwood rules?

14 A. Yes, I did.

15 Q. And as part of that proposal were frack designs utilized
16 to design the unit size?

17 A. Yes. In our test program we were even lucky enough to go
18 underground to physically look at the frack and the
19 extension and we have done that on more than one oc-
20 casion. If you might remember, we have even treated or
21 painted the sand in a florescent color and was able to go
22 underground with a black light and measure the frack
23 lengths of the wells that we have done. We have also had
24 three independent reservoir studied done by independent
25 firms, Advance Resource Inc. -- I believe they may have

1 just changed names. Also we have some Gas Research
2 Institute data and everything like that showing that
3 basically a (inaudible) pool throughout Buchanan,
4 Tazewell, Russell. It does even carry over into West
5 Virginia. Sometimes a little bit of rise in Dickenson
6 County, also.

7 Q. An obvious question would seem to be that if we have 80
8 acre units in the Oakwood Field butting up against 60
9 acre units in the Nora Field is there some reason to be
10 concerned about that? Is there an explanation for why
11 that would work or could work?

12 A. Yes. The Board may remember that when we did the Oakwood
13 Field -- what we did was modify or amend the Nora Field
14 in this section over, basically from 82 over to the
15 point where you see the letters down in here, Row O. We
16 found that once we did that -- and Mr. Fulmer was
17 gracious enough to give us a map that the State prepared
18 -- all operators in the area found some gas -- I don't
19 know if you can see this. Our 80's basically maybe cut
20 in half the 60's. So where we started getting into
21 problems -- like, OXY wanted to do some developing here
22 and Virginia Gas had already done some development we
23 said, "What do we do about this island acreage again
24 here? Do we make these greater units or make these
25 smaller units?" So what we propose to do is butt up next

1 to an adjoining Nora unit. The boundary lines if you
2 remember -- the original of the Oakwood Field as it
3 stands now up in the A Row is basically 111 acres because
4 of a boundary unit. But we found if we come over and
5 butt up against a Nora we found be within the 10 to 15
6 percent tolerance anyway both in the Nora and the Oakwood
7 Field. So what we had intended to do was to make the
8 minor adjustments here and here and carve out the
9 existing wells Virginia Gas has already done in the Nora
10 Field proposed out here.

11 Q. When you said here and here were you referring to moving
12 this 82 degree line over so that it would butt up against
13 an Oakwood unit so you wouldn't have partial units?

14 A. Basically. Right. We came fairly close and we found
15 that there is approximately not quite a 100 acre unit in
16 the Nora on their boundary line. So, therefore, we could
17 come over and make that unit instead of half size or
18 three quarter it would give it a little bit more than 80
19 acres, plus it would probably come closer to 60 acres on
20 the Nora. So that works out real well in this area here
21 and also in this area here.

22 Q. And the last area would be the west side of the Oakwood
23 Field to try and get near a line?

24 A. That's correct.

25 Q. Now the existing Virginia Gas wells, coalbed methane

1 wells, that were drilled in the Nora are both located --
2 I mean, they are not in the same Nora unit, but they are
3 both located in K minus 4 as shown on this map. And what
4 needs to happen to make those units work is to take at
5 least four Nora units out of the field to comprise those
6 units that presently exist and two units immediately
7 above that Virginia Gas intends to develop under the Nora
8 rules. What we would propose then is that it be remapped
9 in that area so that the Oakwood units became slightly
10 larger so there is no island acreage, that all acreage
11 would be accommodated in that unit. And that needs to
12 occur because Virginia Gas has two coalbed methane wells
13 in the Nora, which would turn out to be in K minus 4, and
14 has done the title and apparently two potential locations
15 for two wells immediately above that. And that needs to
16 be done to protect their existing rights and their
17 investment. I assume that PGP will have something to
18 say, but that is all I have.

19 MR. CHAIRMAN: Any questions, members of the Board, on the
20 testimony?

21 MR. KELLY: Mr. Chairman, I have a question. It may not be
22 appropriate right now until we hear some more of the
23 testimony, but I guess one question would be if existing
24 operators with existing Nora Field units see any problem
25 with current development or proposed development that

1 they have underway being affected adversely by this?

2 MR. RASNAKE: As Mark suggested Virginia Gas's concern here
3 would be for the four locations there, two of which are
4 drilled. It really wouldn't cause us any problems.

5 MR. SWARTZ: As long as it is carved out?

6 MR. RASNAKE: Yes. Exactly.

7 MR. KELLY: And if you carve those out how do you propose to
8 do that?

9 MR. SWARTZ: Well, the four Nora units are shown on this map,
10 Mr. Kelly. And what I would propose to do is -- they
11 will obviously not line up with the Oakwood 80 acre units
12 and it would require that two units below and two units
13 above increase in size to accommodate that acreage so
14 that it isn't island acreage and nobody gets a royalty.
15 That is what we would propose to do. Just lay the
16 existing map -- the 4 Nora units that we are talking
17 about there -- onto this new grid system and modify the
18 proposed extension of the Oakwood units. Some of them
19 would be roughly 111 acres.

20 MR. KELLY: I guess my second question then would be what
21 problem, if any, would be created if you just stopped the
22 80 acre units at the current boundary of the Nora Field?

23 MR. SWARTZ: Well, the problem is that Island Creek has
24 acreage to the south and if they continue to use the
25 frack lines we have been using we are going to be

1 draining more than 60 acres. That's the problem.

2 MR. WIRTH: That's the only reason we have extended it out

3 this far. We have covered what we propose for develop-

4 ment with Island Creek and they have proposed the

5 operation plans of what frack lengths we will use and

6 everything. Therefore, that's the reason we stopped

7 there. A lot of the acreage by Virginia Gas falls

8 outside this and didn't want to include all that acreage.

9 MR. SWARTZ: And I should also point out that Virginia Gas

10 has a number of wells in that portion to the northwest

11 there which we have just left alone.

12 MR. WIRTH: This goes all the way up to the border, also.

13 MR. KELLY: Well, I might ask Virginia Gas if they believe

14 their frack lengths or completion procedures are such

15 that their are only draining 60 acres and not extending

16 beyond that?

17 MR. RASNAKE: Yes, that is what we believe.

18 MR. KELLY: So that is two distinct completion philosophies in

19 other words?

20 MR. SWARTZ: Well, I think really those units were designed by

21 EREX and I know nothing about that.

22 MR. RASNAKE: There is expert testimony back in the Nora

23 Coalbed Methane Gas Field order.

24 MR. KELLY: So we do have something in the previous record

25 that indicates for EREX and Virginia Gas in that par-

1 ticular area your completion procedures -- that 60 acres
2 is appropriate?

3 MR. RASNAKE: It was EREX alone at that time.

4 MR. WIRTH: And Island Creek concurs with that, also. Because
5 they are a little bit dissimilar in that nature.

6 MR. CHAIRMAN: Ken, did you have anything you wanted to
7 address the Board with?

8 MR. KORMANDY: Ken KORMANDY. I work for Consol Inc. I would
9 like to pass out a couple of exhibits here. I am shy on
10 one cross-section. What we would like to do, along with
11 OXY, is extend the units farther to the east. Basically,
12 to the squadrangle boundary there at Jewell Ridge. And
13 these cross-sections kind of show along with what Mr.
14 Louellen was saying and testimony all through the Oakwood
15 Field rules that we are basically dealing with the same
16 geology throughout. The map you have -- last month right
17 around Whitewood was our Hurricane Branch Extension that
18 was approved. We continued on out, as Mr. Evans had
19 asked about the geology extending farther out, so what we
20 did was construct cross-sections. The cross-section lines
21 are on here that, again, show the typical geology which
22 fits in with what Mr. Louellen was saying about. And we
23 continued the units a little bit farther east. The
24 exhibit you have in front of you would cover that area.
25 You can see we are talking about that Jewell Ridge Quad.

1 And all we are saying is that looking at the cross-
2 sections and that that the geology is the same through-
3 out. Minor variations, but basically we are in the same
4 geological framework.

5 MR. SWARTZ: And your testimony would have been the same even
6 if you had been under oath, right?

7 MR. KORMANDY: Absolutely. When we were here last month the
8 question was can we extend it. And we feel that based on
9 the information that we have that, yes, we can extend it.

10 MR. SWARTZ: Ken, how many rows further to the east? Do you
11 know?

12 MR. KORMANDY: On this? No, I really don't. We will just
13 have to count them from where the extension was.

14 MR. KELLY: Could you indicate on this map where your eastern
15 boundary up there is? Where is your eastern boundary on
16 this map?

17 MR. WIRTH: Right here.

18 MR. MORGAN: Claude Morgan. Consol, Inc. and PGP. I think
19 what you will see right here, as a point of reference,
20 this is the eastern most boundary of the Hurricane Branch
21 Extension which we did last month. So I think OXY's
22 proposal comes to the eastern boundary of our Hurricane
23 Branch extension last month. So we will be picking up
24 their map at the end of the Hurricane Branch Extension.

25 MR. WIRTH Fourteen more units. The reference we were using

1 is the Norfolk spur railroad coming down here. You will
2 see it on that map. We have already got three rows and
3 then we counted 14 additional.

4 MR. CORMONDY: The cross-section in that, in my opinion based
5 on the core holes that we have previously drilled in this
6 area, which is pretty extensive exploration for reserve
7 coal properties -- also based on our last extension from
8 the wells that PGP has drilled also.

9 COURT REPORTER: (Swear Mr. Cormondy and Mr. Rasnake.)

10 MR. CHAIRMAN: Mr. Johnson, do you want to address the Board
11 in this matter? Mr. Johnson, the Board has been present-
12 ed with three letters.

13 MR. JOHNSON: The purpose on my being here is generally to
14 ask this Board to consider very carefully what action you
15 take with regard to any extension that the Board grants.
16 The Board has heard me speak on these issued previously.
17 I did not speak with regard to the original Oakwood Field
18 Rules, but I speak with regard to the rules which were
19 adopted in May of 1992 and I was here for the hearing on
20 December 17, 1992. I am here for Lon B. Rogers Bradshaw
21 Trust, which I sometimes call Lon B. Rogers Bradshaw
22 Trust I. And that particular entity is a oil and gas
23 owning entity. My client has substantial reserves that
24 are covered by the Oakwood Field rules and also has
25 reserves within the greater boundaries. I think the

1 boundaries that OXY is talking about trying to extend
2 going in several different directions -- in other words,
3 my client owns property surrounding this field, as well
4 as inside it. The Lon B. Rogers Bradshaw Trust II is the
5 coal and surface owner in the same areas. These are two
6 different trusts. They were set up at different times
7 and had different ownership, one being the oil and gas
8 trust and the other one being the coal and surface trust.
9 And I also represent Pocahontas Mining Company Limited
10 Partnership, which has a substantial piece of property
11 lying to the east which would be covered by the rule
12 extension that Consol wants. Pocahontas Mining Company
13 owns the coal, surface, and oil and gas in this area.
14 The coal lease covers approximately 10,000 acres in
15 Buchanan and Tazewell Counties and lies east of the
16 current field rules. When Consol tried to extend those
17 rules with the latest Hurricane Branch extensions I
18 started getting concerned because they were getting very
19 close. I have got just some general concepts that I want
20 to go over with the Board with regard to what has
21 happened and what I think the Board should be consider-
22 ing. First, I think it would be difficult for anyone to
23 say that there are not geological difference within the
24 Oakwood Field, as well as these extensions. The primary
25 coal seam is the Pocahontas #3 coal seam. And that seam

1 varies substantially in height and it is varying out to
2 what I call the smaller heights or the lesser heights
3 where there is not going to be any coal mining, at least
4 under current technology. I believe that this should be
5 taken into consideration with regard to the unit size.
6 And I don't believe that anyone is saying that the units
7 should be smaller. I think it was interesting that we
8 are getting into two different fields, one that has a 60
9 acre unit size and the other that has an 80. And I think
10 certainly as the field gets into smaller coal heights,
11 which is the strata that is being drained -- once you
12 start getting into variations of those coal heights
13 certainly there ought to be a variation in drainage
14 patterns. The second thing is the data which we have. I
15 don't know where that data is. I assume that it can be
16 obtained through Mr. Fulmer's office or directly from the
17 operator. But since the Oakwood Field Rules were adopted
18 in, basically, a totally virgin area with no experience
19 we now have data available from existing coalbed methane
20 wells which are in production. I know of no effort that
21 has been made or no one has said anything -- I wasn't
22 here earlier. I don't know what was said earlier, so I
23 don't know if any effort has really been made to look at
24 whether or not these rules or the 80 acre concept -- the
25 concept that one well in an 80 acre unit will drain that

1 unit. Whether or not with the existing information we
2 would make the same technical conclusion. And I believe
3 that the Board ought to find out whether or not that is
4 true. I don't know if OXY has, in fact, made any studies
5 with regard to this, but I certainly think that the Board
6 should require the operator to show the information that
7 they have got as to whether or not these wells do, in
8 fact, drain 80 acres. And if it is more or less we need
9 to know that. And I think that is what the Board ought
10 to find out. And I also think that the Board should
11 undertake its own study in this regard. Certainly the
12 Board has got people working for it. Certainly staff
13 people. I don't know that the Board has ever hired any
14 consultants, but the Board certainly has staff people.
15 They ought to be able to take a look at the data that is
16 out there to find out whether or not the original field
17 rules, which were done basically on hypothetical informa-
18 tion from other areas. Not necessarily hypothetical, but
19 information not from the Oakwood Field but from other
20 areas. And also the information that is available from
21 the Nora Field. Someone said, "Let's make it 60."
22 "Let's make it 60." Why did they do that? What informa-
23 tion did they have when they did that? What information
24 is now available? I think that the Board should look at
25 that information before it decides what to do with regard

1 to any extensions. My clients don't think that it is
2 improper to have these field rules and it doesn't think
3 that it is improper for the Board to set up a grid
4 system, but what we are asking simply is is the grid
5 system that is now in place correct? And if there are
6 any extensions of that grid system are the units that are
7 established by the new grids correct as far as unit size?
8 I don't know of anything that is more important with
9 regard to paying people properly than to have the unit
10 size correct and to have something that can be operated
11 on correctly with regard to the technical information
12 that is available. Again, I am not saying don't do it.
13 I am saying when you do do it make sure you are doing the
14 right thing. Make sure that OXY and Consol and Virginia
15 Gas and Ashland -- I think Ashland has brought this
16 discussion forward by trying to drill a couple of coalbed
17 methane wells near where my client has some property.
18 And that is what has caused some concern that, "Well, we
19 ought to go ahead and grid this whole county." I don't
20 have any problem with that as long as the Board does it
21 correctly. I continue to complain to this Board about
22 the offsets for the unit boundaries. I don't believe
23 that the Board -- I think the Board has given to the
24 Oakwood Field the very loosest of conditions for opera-
25 tion. And I don't think the Board should have done that

1 originally and I am pointing this out to you again on
2 behalf of my clients. They will be affected by any
3 extensions. What happened was that someone said, "We
4 have got to have a whole lot of variation here because we
5 are in rough terrain and we have got coal companies to
6 deal with." As a result of all that complaining someone
7 said, "Well, let's make the offset 300 feet." Now when
8 they did that no one said, "Well, how many feet are these
9 wells expected to drain?" The drainage assumption for an
10 80 acre unit is 933 feet. The offset is 300 feet. Then,
11 one other little thing was thrown together. "Well, what
12 is going to be the distance that we are going to require
13 the wells to be drilled between?" "Well, we have got
14 offsets of 300 feet and golly gee it's really tough to
15 drill in the coal fields and we have got a lot of
16 problems. So let's make the spacing just 600 feet." So
17 you have got 2 wells 600 feet apart each of them capable
18 of draining 933 feet. According to the rules to what OXY
19 testified to when the 80 acre unit was established --
20 they testified to a drainage assumption of 933 feet. But
21 the spacing between the wells is only 600 feet and the
22 offsets are only 300 feet from the unit boundaries. I am
23 going to hand you these things out that I have handed out
24 before. I will ask that they be made exhibits to the
25 testimony here. This first diagram just simply shows the

1 typical 80 acre unit. This second diagram shows what the
2 drainage ought to be based on the 80 acre unit if the
3 well is in the center. The next diagram shows what
4 happens if the well is in the corner of the 300 foot
5 boundary and shows you that drainage.

6 MR. CHAIRMAN: We will label these Don Johnson Exhibit A, B, C
7 and D.

8 MR. JOHNSON: And the next one shows 600 feet and what
9 happens if you have the well 600 feet apart both drilled
10 on the edge of the offset boundary. The other thing I
11 wanted to hand out to you is a copy of 45.1-361.17, which
12 sets forth the original rules with regard to the location
13 of coalbed methane wells. And this is the original
14 statute and it required 1,000 feet between the wells. I
15 would like for this Board to reconsider what it has done
16 on offsets and also on spacing, as well as -- I am
17 talking about within the Oakwood Field as well as any
18 extensions that are granted. I think this Board owns
19 more to mineral owners than just to say, "Well, it's
20 really tough out there, guys." And if it is tough -- if
21 it really is tough and they can't drill and they can't
22 space then they ought to come to you and say so. What
23 the Board has done in the adoption of the Oakwood Rules
24 is to say, "We will give you real loose rules. Don't
25 worry about it. Don't explain anything to us. Just

1 comply with these loose rules." I feel like that what
2 the Board ought to be doing is protecting people from
3 drainage. And it is obvious that the rules -- the
4 offsets and the spacing rules for the Oakwood Field don't
5 so that. And if you look at those diagrams it doesn't
6 take a genius -- and certainly I am not one -- and it
7 doesn't take a geologist or anyone else to tell you that
8 those spacing rules and those offset rules allow gas to
9 be drained from neighbors. And in order for the Oakwood
10 Field rules to work -- and to have these kinds of loose
11 assumptions with regards to spacing and offsets. The only
12 way that is going to work is if there is a well in every
13 single unit. If there is a well in every single unit and
14 it is all drilled at the same time and the all drain the
15 same amount of gas, everybody gets the same. That's the
16 assumption you all have made when you came up with these
17 rules. That there was going to be a well in every unit
18 and everybody was going to get the same bucks. It's just
19 not true. There's not going to be a well drilled in
20 every unit. And the way it's going to work out as you
21 can see is unless those wells really are drilled near the
22 center people are going to loose gas that they are not
23 going to get paid for. And people are going to get money
24 that they are no really entitled to. It's just that
25 simple. I talked to one man who told me that most rules

1 out in the western states with regard to drainage say
2 that the most distance you ought to have between the
3 center and the edge is 50 percent. It out to be right
4 in the middle if you are going to have an offset. And I
5 think that is something the Board out to look at and
6 consider. You might want to look at and consider what
7 other states do with regard to field rules on offsets.
8 And the Board ought to allow for exceptions. No one has
9 ever called me a reasonable man, but I think that is very
10 reasonable. I don't think this Board ought to be saying,
11 "No, we have got to lay down the hard and fast rule and
12 we are not going to let anybody out of this. AND because
13 of that we can't live with what Mr. Johnson is saying for
14 his clients because these guys can't live with that."
15 Every order this Board has entered has said there ought
16 to be a way to get exceptions and I have got no problem
17 with that. And I think that the Board ought to recon-
18 sider what they have done and see if they can't force the
19 operators to try to drill near the centers of the units.
20 And if they can't they ought to come before the Board and
21 explain why they can't do that. Now, the next thing is
22 the validity of the order entered on May 28, 1992.

23 MR. SWARTZ: I am going to object to this. He had a right to
24 appeal. The times have run

25 MR. JOHNSON: No --

1 MR. SWARTZ: Yes. If he wants to bring a motion to ask you
2 to reconsider, fine. But he is objecting to the validity
3 of a two year old order -- year old order.

4 MR. JOHNSON: All I wanted to say to the Board about that is I
5 just think you ought to be notified as to what happened.
6 And if Mr. Swartz wants to tell you something else
7 happened or he wants to tell you that you all have done
8 everything correctly I have no problem with that. As you
9 all know, and I have said before, I appeared here for the
10 Rogers on December 17th and I did the same kind of thing
11 I am doing today and that is to point a lot of problems.
12 And as a result of that the Board said, not knowing what
13 to do, we will adopt ~~check rules~~ a temporary basis.
14 And that is the way I left that hearing -- rules adopted
15 on a temporary basis and we will take any objections up
16 on a case-by-case basis. That is the way it was left.
17 What happened was somehow on May 28, 1992, an order was
18 entered. And that order doesn't say anything about it
19 being temporary or anything else. All I want to do is
20 tell the Board that I think this is a real problem. I
21 think the Board needs to examine what it has done and
22 decide whether or not anything needs to be done about it.
23 I am not going to court. I am not appealing. I am not
24 doing anything. I am just telling you that we left it on
25 December the 17th of 1991 as a temporary order. On May

1 28th without any notice, any other hearings or anything
2 else there was an order entered solidifying all of these
3 rules. And if I am not correct about that Mr. Swartz
4 will certainly tell you. But there was never any hearing
5 or any notice that the Board was going to adopt these
6 rules in final form. Now everybody is saying, "Let's
7 extend these rules out and continue on with these rules."
8 And I don't think the rules were ever properly adopted to
9 begin with, except as temporary.

10 MR. CHAIRMAN: Mr. Johnson, I am overruling the objection in
11 allowing this to continue because you are challenging
12 the validity of the initial order. And we will go back
13 and research that and certainly openly discuss that at
14 the next meeting.

15 MR. JOHNSON: Okay. I think you should. Again, I just feel
16 like this Board ought to be doing whatever it ought to
17 do. I don't jump on anybody and I don't say anybody did
18 anything wrong, but somehow or another a temporary order
19 becomes a permanent order -- or it appears to be a
20 permanent order and people start moving on the permanent
21 order. As you all know I was here on December 17th and I
22 objected to the way that the rules were set up -- or to
23 the request that OXY made with regard to density drilling
24 and short holes and gob gas -- the adoption of those
25 rules. I told you then and I will tell you now that whole

1 thing was done for convenience. And I don't know that
2 anyone could really justify it in any other manner. I
3 think that what the Board ought to look at is whether or
4 not there ought to be some smaller units created for this
5 type of production. I am not that familiar with what
6 Consol has been doing in terms of how they have been
7 trying to pay people for that kind of drilling. But,
8 again, what is being allowed is for someone to drill a
9 "dense drilling hole" in the corner of a unit anywhere.
10 There is no offset rules that are involved in this. With
11 regard to vertical holes someone could drill in a corner
12 of a unit and someone in the other corner of that unit
13 would be getting paid for it even though it's about 1,900
14 feet away. The same thing with short holes. They are
15 drilling in longwall panels and they may even be drilling
16 a short hole in panel that is not even under your
17 property and you still get paid for it. I believe that
18 this Board should not adopt these rules except on a case-
19 by-case basis and should wait until there is more
20 information and should consider some other methodology
21 other than convenience for distributing the proceeds from
22 this production. I have explained all that in my
23 discussion. And I did testify on December 17th and I am
24 not going to go back through all that again. I think
25 that the Board needs to look carefully at what it does

1 with regard to this kind of production. And I think it
2 also needs to consider that there really is no real need
3 for this except in very limited areas in Buchanan County.
4 The only reason to have these rules is if there is actual
5 longwall mining going on. Pocahontas Mining Company is,
6 at least, 5 or more years away from any longwall mines
7 anywhere on its property. And they may never get there.
8 There isn't a mine to serve it. My client, the Roger's
9 interest, hasn't had a coal mine on it in 20 years or so.
10 I believe that the Board ought to look at whether or not
11 it ought to be adopting these rules at all and it ought
12 to look at whether or not the rules should be adopted
13 only when they are really requested, which is only where
14 there is an active underground mine that is longwalling.
15 Otherwise the rules don't mean anything. The Oakwood
16 rules that established 80 acre units in one well, which
17 was the assumption of the rule, those rules cover every
18 situation except actual mining. And I think what you
19 ought to do is look at where is there actual mining and
20 where is there likely to be actual mining and allow the
21 people who are engaged in that activity to come to you
22 and say, "Well, we are within the next two or three years
23 going to mine in this area and we would like to have
24 rules covering this area." When a mine is put down for
25 longwalls in this area of the world it takes years just

1 to get the mine in and then it takes years just to get
2 the setup to actually do longwall. And I think what you
3 all ought to be looking at with regard to any rules which
4 would come under what I would call Rules II order is to
5 only adopt that in areas where it is actually needed and
6 to set back and study what is going on. I don't think
7 that what the Board has done in the past to adopt rules
8 first, make it apply to thousands of acres and then just
9 sit back and see what happens, I don't think you should
10 do that. I think you should only apply the rules on an
11 as needed basis. And I don't think those rules are
12 needed except in areas where there is actual underground
13 mining, either planned where the mine actually exists or
14 actual mining that you can see from a mine map. So, in
15 summary, my clients ask the Board to take no action to
16 expand the field at this time. If there is any action
17 taken by the Board it should be only after the review of
18 data from the Oakwood Field and other fields. And any
19 actions that the Board takes should include notice to all
20 parties as to what action the Board plans to take and
21 allow there to be a full hearing on these matters. And
22 my clients also request that the Board reconsider the
23 Rules II order, which is what I call the May 28, 1992
24 order that was entered upon the evidence taken in
25 November and December of 1991, and allow an opportunity

1 for notice and hearing of any reconsideration of that
2 order. If anybody has any questions of me I will be
3 glad to answer them.

4 MR. CHAIRMAN: Any questions, members of the Board? (None.)
5 Anything else?

6 MR. SWARTZ: I would just like to make a couple of points. I
7 think Mr. Johnson may have lost sight of the fact that
8 this is a request to extend both Oakwood I, which is the
9 80 acre frack spacing order, and Oakwood II, which is the
10 gob gas, short hole gas order. With regard to the
11 Oakwood II the unit size is totally irrelevant. I mean,
12 the production from longwall mining is allocated on a
13 longwall panel basis and whatever units that panel
14 intersects is how the revenue is shared. So drainage is
15 not an issue under Oakwood II because the production and
16 the cost are all allocated on a longwall panel basis. So
17 if the mineral owners -- I mean, it's a drainage on a
18 longwall panel basis. And it doesn't have a one to one
19 relationship. We are not talking frack lengths like we
20 are under Oakwood I. We are talking panel configuration,
21 we are talking mining. With regard to the Oakwood I
22 order, Mr. Johnson raises an interesting point. Essen-
23 tially what he is talking about is allowables. If we
24 were talking about conventional oil and gas wells and
25 they're close to a corner of a unit you could limit

1 production or drainage from adjoining units by imposing
2 an allowable. You could say, "You can only produce 50
3 percent of the capacity of this well or 80 percent
4 depending on where it is." The problem which he has lost
5 sight of is this Board cannot impose -- and it's decided
6 by regulations -- there are no allowables for coalbed
7 methane wells. You either produce then full bore or you
8 vent them full bore. We are not talking about -- the
9 solution you would have from a conventional well doesn't
10 exist here. If you a drill a well based on longwall
11 panel projections and it happens to come in a corner of a
12 unit you either vent it or you produce it. And the last
13 point that I would make to you all -- the job that you
14 have is essentially to make policy decisions that are
15 reasonable. This is not a perfect world. Wells will not
16 be drilled in every unit. Some of them will be off-
17 centered. And all that the statute requires and the code
18 provisions that apply require and your charge from the
19 legislature require is that in light of the data with
20 which you are supply you make reasonable choices to
21 protect correlative rights, meaning get as much royalty
22 for as many people as you can, prevent physical waste
23 which to me would be venting, prevent putting people in a
24 situation where they can't produce the gas and they have
25 to vent, and prevent economic waste which is to prevent

1 people from drilling unnecessary wells. And all of
2 those things are balancing decisions. And what you need
3 to feel is that you have come to a reasonable solution.
4 And essentially what Mr. Johnson is doing today is
5 suggesting that the decisions that you have made in the
6 past seem to him to be unreasonable and are not reason-
7 able solutions. Unfortunately, for him hope, he is
8 simply sharing his personal opinion as an attorney with
9 you. He has called no witnesses. He has three clients
10 who own thousands of acres. They have experts. I know
11 one of them has people on retainer. Where are they to
12 testify that there is something different about the coal
13 in these areas, that the frack lengths are not appropri-
14 ate? I mean, Mr. Johnson has a burden of proof, too,
15 just like everyone else. And he shows up here today
16 representing three clients who could certainly afford to
17 send someone over to share this with you. But he has not
18 sustained his burden of proof. He has not offered not
19 expert testimony, no charts, no graphs, no nothing to
20 suggest that either of the Oakwood orders are not
21 reasonable methods to deal with development. He has
22 given you his personal opinion. It is not a perfect
23 world and I would suggest to you that the decisions that
24 you have made in the past are reasonable under the
25 circumstances, that there is development contemplated and

1 ongoing in the extensions. Mr. Fulmer, for example, has
2 referred -- I think this docket mechanism is the way to
3 deal with it. Pittston and Ashland are proposing some
4 coalbed methane wells in the northern extension there. I
5 mean, we need units. There is development proceeding and
6 a policy needs to be implemented to deal with it. And I
7 think what you have done in the past is reasonable and I
8 think there is nothing today in the way of testimony,
9 evidence, that has been offered to suggest that it would
10 be unreasonable to extend these units as proposed. Thank
11 you.

12 MR. CHAIRMAN: Any one else?

13 MS. MCCLANAHAN: Elizabeth McClanahan on behalf of Pocahontas
14 Gas Partnership. I would only submit that in addition to
15 what Mr. Swartz has listed that because Mr. Johnson has
16 submitted no expert witnesses and no proper foundation
17 for the submission of any exhibits that none of those
18 need to be considered by the Board. In addition, any of
19 his opinions about coal heights, drainage patterns or
20 geology are simply that, as Mr. Swartz has said, opinions
21 only of a lawyer, not a geologist. Mr. KORMANDY and Mr.
22 Louellen, who have testified here today, have the proper
23 credentials to submit testimony to you. In addition, I
24 would suggest that Mr. Johnson has indicated that the
25 Board did not consider the wells that have already been

1 drilled or we did not explain the analysis or information
2 that has been obtained from the wells that have already
3 been drilled and that is not the case at all because Mr.
4 KORMANDY did indicate that his opinion and the exhibits
5 that he introduced are based on the wells that PGP has
6 already drilled in this particular field. I would also
7 suggest that PGP is an operator in this area, but PGP and
8 Reserve Coal Properties are royalty owners in this
9 particular extension area just like Mr. Johnson's
10 clients. And they both are represented here today by
11 PGP's testimony and I think it is important for the
12 Board to understand that not only are they operators in
13 this area but they are royalty owners. Obviously, an
14 extension of this area affects them just the same way
15 that it would affect Mr. Johnson's clients, and they are
16 in support of that.

17 MR. CHAIRMAN: Anything further?

18 MR. JOHNSON: Mr. Chairman, I would like to say one thing. A
19 lot of people criticize me for trying to be a geologist.
20 I don't think it takes a geologist to take a look at the
21 coal height information that has been presented here and
22 to determine that there are different coal heights
23 throughout the area. I don't think it takes a geologist
24 or an expert. I think I could almost get my 7 year old
25 to draw the diagrams that I drew. It just takes a

1 protractor and a ruler. And I want to say that with
2 regard to what this Board has or has not done in the past
3 -- I think the Board needs to look at what it has done in
4 the past. I think the Board needs to decide whether or
5 not certain things were considered. I would also like
6 the Board to consider deferring any action on this and
7 taking the proposals that have been presented by OXY and
8 Consol and allowing my clients and others to review those
9 proposals and to establish a hearing date in which that
10 information can be addressed so that we may an oppor-
11 tunity to present some expert testimony. And I would be
12 willing to try to get my clients to pay for more than
13 just a lawyer for these hearings. And I would like the
14 opportunity to make a technical presentation to this
15 Board, as well as to have an opportunity to consider what
16 is being proposed by the parties. I don't think the Board
17 needs to move hastily on this matter at all. There is no
18 reason for that. We have got two wells that are outside
19 of the field that somebody wants to drill. I think this
20 Board can wait and take a look at what has been presented
21 and move carefully.

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

23 MR. MCGLOTHLIN: I have a question for Mr. KORMANDY. Can you
24 run me across the ridges that you have got there? Your
25 highs and your lows? The names of them?

1 MR. KORMANDY: I can't.

2 MR. MCGLOTHLIN: Do you have a general idea? He doesn't give
3 me any names --

4 MR. KORMANDY: This is just a plan --

5 MR. MCGLOTHLIN: Which one is Sandy Ridge and which one is
6 Bear Hollow?

7 MR. KORMANDY: Our Hurricane Extension starts somewhere right
8 here, south of the Whitewood area. And we are coming
9 across -- and I can't give you the exact locations. You
10 are coming through Laurel and probably Sugar Cove
11 Mountain and then the topo ends.

12 MR. MCGLOTHLIN: Sugar Cove is going to be the first ridge
13 that you --

14 MR. KORMANDY: Yes. Then we lost topo.

15 MR. MCGLOTHLIN: And you went to Jewell Ridge?

16 MR. KORMANDY: Yes. Over to the eastern boundary.

17 MR. MCGLOTHLIN: Also, Mr. Chairman, I have some concerns with
18 that temporary order wording.

19 MR. SWARTZ: I would like to comment on that. What the Board
20 said -- I remember those hearings very well, because you
21 all were struggling with two competing plans at that
22 point in time. And my recollection is that we were told
23 not to count on the order becoming permanent, because
24 you were troubled -- at least, that was my read of the
25 Board -- as to what methodology you were going to be more

1 comfortable with over time. And that we shouldn't regard
2 it as being something that would never be changed by you
3 all. And my sense is that over time you have become more
4 comfortable with the 80 acre unit approach than with the
5 alternative that was under consideration. The message I
6 received from you all was, "We are going to do this and
7 we are going to let you proceed, but don't count on it
8 being this way forever." And I remember that. But the
9 message wasn't, "We're not going to do this." It was,
10 "This might not exist forever." I mean, you can go back,
11 but I am pretty sure that is what we were talking about.

12 MR. MCGLOTHLIN: What concerns me, Mr. Swartz, is that if we
13 adopted a temporary order then it either needs to be
14 dismissed or made a standard.

15 MR. SWARTZ: Well, the problem is Mr. Johnson is saying that
16 it was a temporary order and what I am saying is it was a
17 permanent order, but we were -- it was an order that
18 would be in force until you did something.

19 MR. JOHNSON: I think what the problem really is here is that
20 this Board said, "We are going to adopt this on a
21 temporary basis. We don't know which we should do, so we
22 will just adopt this on temporary basis." Then the Board
23 never set another hearing or gave any notice. The Board
24 didn't do anything but just sign an order five months
25 later. There was an order entered. And the order

1 appears to be permanent.

2 MR. CHAIRMAN: Mr. Johnson, let me tell you. An order is an
3 order. An order of this Board is an order. The order
4 that was entered is the order of this Board. The order
5 was based on this recommendation -- I will tell you my
6 recollection right now. It came from Mr. Mason and it
7 became an order. Now, saying it was temporary or saying
8 it was permanent -- it was an order of the Board. Now
9 that order continues until such time as the Board changes
10 it.

11 MR. JOHNSON: But it would seem that if the Board -- if in
12 making the order the Board said that it was only a
13 temporary order that the Board is then somehow rubber-
14 stamping something saying, "No, it's not temporary." If
15 there is no mention in the order that there is any
16 temporary nature to it -- I don't understand. I can't
17 understand how you can make a temporary order, never
18 reconsider it and then make it permanent. If you wanted
19 to make it permanent it seems that the Board should have
20 met --

21 MR. MCGLOTHLIN: I don't think it's permanent yet. That is
22 what I am trying to figure out is if we need to make it
23 permanent or do away with it.

24 MR. CHAIRMAN: I am not going to get into this debate about
25 some of the insinuations about the Board rubber-stamping

1 things and going off without proper evidence.

2 MR. JOHNSON: I don't mean to say that the Board is doing
3 anything wrong, Mr. Chairman. All I am simply saying is
4 that if the Board was going to adopt this thing and enter
5 an order and not even suggesting in the order that it has
6 any kind of temporary status. Then all of a sudden just
7 out of the blue here comes an order. No one ever got any
8 notice that this "order" was entered. It was just
9 entered.

10 MR. SWARTZ: Didn't you get a copy of the order, Mr. Johnson?

11 MR. JOHNSON: I did about six months later, yes, sir.

12 MR. MCGLOTHLIN: To clarify, I would like to see us take some
13 action as to either sustain the order making it permanent
14 or doing away with it, one way or the other, to get the
15 temporary status off of it.

16 MR. CHAIRMAN: I don't think the temporary status exists
17 anywhere except to reference in the motion itself, as
18 such.

19 MR. SCOTT: In looking at something and in this order or
20 anything else or an order of the court if it truly is a
21 temporary order then it has to bear the earmarks of a
22 temporary order which would be -- it would have suggested
23 in the motion that this order will be adopted to expire
24 on March 30, 1992 or September 30, 1993. And if I look
25 back at the order and those are not in there then my

1 advise the Board is going to turn around and be, "This is
2 just like any other Board order and it exists until you
3 come in and do something different." If, however, it
4 has an expiration date -- for instance, what is the
5 difference in a court order if you and I are arguing over
6 whether something is temporary injunction or a permanent
7 injunction? It's not going to be in what the court
8 articulated, but it's going to be in looking at the
9 injunctive order itself to determine if it bears the
10 earmarks of a temporary order or a permanent one.

11 MR. JOHNSON: I think the question is that the Board says one
12 thing -- the only motion in front of the Board that was
13 made that day, on December 17th, was that rules would be
14 adopted as a temporary thing. And I think if you will
15 read the language in that transcript -- and Mr. Wampler
16 goes on to explain it and I think maybe even explains it
17 a little bit to Mr. Swartz's analysis. But the motion
18 was made by Mr. Mason saying really that he didn't know
19 -- that the Board really didn't know what to do, but we
20 just adopt these rules on a temporary basis and then
21 allow any further requests -- that the request could be
22 made on this basis, but that the Board was subject to
23 reviewing those requests, making changes or whatever. I
24 just felt like that -- I left here with one impression,
25 that the Board was going to reconsider this at some

1 point. And I don't think the Board ever did reconsider
2 it or ever look at it again or ever set another hearing
3 or ever give anyone any notice that it was going to
4 enter a permanent order which adopts these rules covering
5 thousands of acres in Buchanan County.

6 MR. SCOTT: That is what I am suggesting in the legal
7 requirements as to permanency or temporariness. Theor-
8 etically, everything this Board does is temporary, if you
9 define temporary to mean that it only stands good until
10 it does something different. Everything done here today
11 was done temporary. I would suggest to you, lawyer to
12 lawyer, that permanency and temporariness is contained
13 within the four corners of the order. And I will be most
14 anxious to read it. I would also suggest that Mr. Mason
15 is an attorney, as well. And that if he meant that this
16 will be good until we can take it up again at our March
17 meeting that would have been in his motion.

18 MR. JOHNSON: I think the problem I have with it simply is
19 that it was entered as a boldface field rule order that
20 is now applicable to every application that is filed.
21 And I don't know that it was ever intended that way. I
22 think what OXY was hoping to do by getting this --

23 MR. SWARTZ: I am going to object to what anybody else
24 thought.

25 MR. CHAIRMAN: Sustained.

1 MR. JOHNSON: I think that the purpose of submitting, whoever
2 submitted it -- I don't care who submitted it. The
3 purpose was to have these rules incorporated in every
4 unit application that was subsequently filed, so that no
5 one ever had to deal with this issue again.

6 MR. CHAIRMAN: As I said, we will go back and research the
7 record. I would also espouse in my recollection of the
8 record that day was based on the fact that the Board had
9 had before it two different proposals of dealing with
10 this issue of development, particularly as it related to
11 coal mining, the actual mines that were affected. One
12 was from PGP, and they had a proposal that dealt with it
13 one way. And another was from OXY and perhaps others
14 that proposed the 80 acre spacing. And that's why I
15 think the discussion that -- and the record will bear
16 that out -- that we had the kind of discussions that we
17 did. That we would monitor these two ways of developing
18 this to see which worked best. And I consider that to be
19 ongoing.

20 MR. JOHNSON: There was also a lawyer there who was not an
21 engineer or surveyor or anything else, who was question-
22 ing what the Board was doing, and that was me.

23 MR. FULMER: I have been to all these hearings before. My
24 recollection of that particular motion came on cause
25 because of the fact that the Board has issued orders on

1 the BUNN 1 and the BUZZ 2 and there was concern that this
2 order that the Board was issuing would not apply to those
3 particular orders which had not been issued. And that's
4 why the order was asked to be temporary until such time
5 that OXY could present before the Board the exception of
6 the BUNN 1, the BUZZ 2, the BUZZ 3 and the rest of them
7 that the Board had already ruled on. That is my recol-
8 lection of that particular motion.

9 MR. CHAIRMAN: That's what I was referencing.

10 MR. JOHNSON: I think if you will read what Mr. Mason said,
11 though, I think you will get the gist of what was really
12 going on.

13 MR. CHAIRMAN: What do you propose?

14 MR. MCGLOTHLIN: I would like to see the (inaudible) wells cut
15 out and how that is going to affect these rules --
16 extensions.

17 MR. WIRTH: You can't see them but the two wells are marked in
18 the units below the Nora. These were 60's but they are
19 now 80's so they fall here, here and there is another
20 proposed --

21 MR. RASNAKE: Right. And a possible fourth one.

22 MR. WIRTH: What it would do is effectively exclude 4 Nora and
23 6.

24 MR. MCGLOTHLIN: This is all going to be the Nora Field and
25 this is going to be the little --

1 MR. SWARTZ: Kevin, it would be Nora units -- these 4 squares
2 right here. Rows 80 and 81. And they would overly K, L,
3 J and K.

4 MR. MCGLOTHLIN: So how many nits are going to be enlarged to
5 100 and some odd acres?

6 MR. SWARTZ: It looks like there would be 2 below and 2 above.

7 MR. MCGLOTHLIN: The ones on the side are not going to be
8 affected on this? On the right-hand side.

9 MR. RASNAKE: We would request that this area here be ex-
10 cluded.

11 MR. SWARTZ: Six Nora units. It's looks like it would only
12 affect 4 Oakwood units, Kevin. Two on top and two on the
13 bottom.

14 MR. MCGLOTHLIN: Again, why do we need to extend them to the
15 west?

16 MR. WIRTH: We have proposed operations over there we would
17 like to develop over in that western area.

18 MR. CHAIRMAN: Okay. I am going to request that we continue
19 this until the next hearing. and at the next hearing we
20 have a map prepared that will show exactly -- everybody.
21 That will incorporate all of that. And if you have
22 expert witnesses, Mr. Johnson, that you want to bring for
23 that that will be fine to do that, as well. Because I
24 think that the Board has to -- and I am saying this open
25 for the Board members to say what you think -- but I

1 think we have to play by the same rules that we require
2 of others, that we have to have a complete description,
3 meets and bounds, of exactly what we are adopting. We
4 will certainly have an opinion on your challenge to the
5 temporary order issue at the next meeting. We will
6 simply bring all that up then.

7 MR. JOHNSON: I would like to have the Board reconsider what
8 it did with regard to those rules and also the Oakwood
9 rules and if I need to file a motion to that effect I
10 will be glad to. Maybe I should do that.

11 MR. CHAIRMAN: I think you should if you are asking for
12 reconsideration. You need to file a motion to the Board
13 and get that on the docket. I am not agreeing to that
14 today. I am agreeing with the issue you raised about the
15 temporary order, that we will bring that up for discus-
16 sion next time. I take the testimony and ask the parties
17 that have presented testimony today to get that in a
18 meets and bounds description of the extended field. Any
19 questions from any one on that? Does the Board agree
20 with that?

21 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS
22 CONTINUED AS FOLLOWS:)

23 MR. SWARTZ: What kind of notice does Mr. Johnson have to give
24 if he brings a motion to reconsider Oakwood II?

25 MR. CHAIRMAN: He has to get on the docket and publish his

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notice of every party affected.

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ITEM 18

Continued.

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ITEM 11

MR. CHAIRMAN: The next item on the agenda is a petition for force pooling from Pocahontas Gas Partnership under 45.1-361.22 for Unit R-42 located on the Jewell Ridge Quadrangle, Garden District of Buchanan County. This is Docket Number VGOB-93/03/16-0342. We would ask the parties that wish to address the Board in this matter to come forward at this time.

MS. MCCLANAHAN: Elizabeth McClanahan representing Pocahontas Gas Partnership. Our first witness we would like to call is Les Arrington.

MR. CHAIRMAN: For the record, are there any others that wish to address the Board in this matter? The record would show there are none. You may go ahead.

COURT REPORTER: (Swears witness.)

LESLIE ARRINGTON

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

1 DIRECT EXAMINATION

2
3 BY MS. MCCLANAHAN:

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

6 A. Leslie K. Arrington.

7 Q. Would you please identify Exhibit 1?

8 A. That's my resume and work history.

9 Q. Mr. Arrington, have you been qualified as an expert
10 witness prior to this before the Gas and Oil Board?

11 A. Yes, I have.

12 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
13 Exhibit 1.

14 MR. CHAIRMAN: Okay, without objection.

15 Q. (Ms. McClanahan continues.) Mr. Arrington, have you
16 given notice as required by Section 45.1-361.19 to each
17 person or entity identified on Exhibit C of the force
18 pooling application?

19 A. Yes, I have.

20 Q. Could you please identify Exhibit 2?

21 A. That was the Notice of Hearing that was mailed to each
22 person in the application.

23 Q. And you did that mailing?

24 A. Yes, I did.

25 MS. MCCLANAHAN: Mr. Chairman, I would move the introduction

1 of Exhibit 2.

2 MR. CHAIRMAN: Okay. It is admitted.

3 Q. (Ms. McClanahan continues.) That was mailed to all the
4 parties listed on Exhibit C, is that right?

5 A. Yes.

6 Q. By certified mail, return receipt requested?

7 A. Yes, it was.

8 Q. And are copies of those return receipts identified as
9 Exhibit 3?

10 A. Yes, they are.

11 MS. MCCLANAHAN: I would move the introduction of Exhibit 3.

12 MR. CHAIRMAN: It's admitted.

13 Q. (Ms. McClanahan continues.) Were there any persons
14 whose names and/or addresses were unknown?

15 A. No. However, we published it in the Virginia Mountaineer
16 and the Bluefield Daily Telegraph on February 25th and
17 18th, respectively.

18 Q. Were copies of those proofs of publications previously
19 submitted to the Board?

20 A. Yes, they were.

21 Q. What percentage of the coal rights in the tracts that
22 comprise the R-42 unit does PGP control?

23 A. 100 percent of all coal below the Tiller seam.

24 Q. What percentage of the oil and gas rights in the tracts
25 that comprise the R-42 unit does PGP control?

1 A. 96.95 percent.

2 Q. What percentage of the coalbed methane gas rights that
3 comprise the R-42 unit does PGP control?

4 A. 100 percent.

5 Q. Is the unleased owner listed on Exhibit D of the R-42
6 unit force pooling application listed with its percentage
7 of ownership in the respective tracts?

8 A. Yes, it is.

9 Q. Is the information on Exhibits C, D and E still correct
10 as of the date of the hearing as it was filed?

11 A. Yes.

12 Q. Are the conflicting claimants whose funds are to be
13 escrowed listed on Exhibit E?

14 A. Yes.

15 Q. Are you requesting that the Board pool the interest of
16 the parties listed on ?

17 A. Yes, we are.

18 MS. MCCLANAHAN: Those are all the questions I have of Mr.
19 Arrington.

20 MR. CHAIRMAN: Any question, members of the Board? Call your
21 next witness.

22 MS. MCCLANAHAN: William Gillenwater.

23 COURT REPORTER: (Swears witness.)

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1 WILLIAM GILLENWATER

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

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5 DIRECT EXAMINATION

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7 BY MS. MCCLANAHAN:

8 Q. State your name for the record.

9 A. William D. Gillenwater.

10 Q. Could you please identify Exhibit 4?

11 A. That is my resume.

12 Q. And does that reflect your work history and qualifica-
13 tions?

14 A. Yes, it does.

15 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
16 Exhibit 4.

17 MR. CHAIRMAN: Any objections? Proceed.

18 Q. (Ms. McClanahan continues.) Have you been qualified as
19 an expert witness previously before the Gas and Oil
20 Board?

21 A. Yes.

22 Q. Where has your experience in obtaining mineral leases
23 been concentrated?

24 A. Coal leasing, oil and gas, and coalbed methane leasing.

25 Q. In Southwest Virginia?

1 A. Yes.

2 Q. In your experience in obtaining lease in Southwest
3 Virginia are you familiar with the fair market value for
4 oil and gas leases and coalbed methane leases in the R-42
5 unit area?

6 A. Yes, I am.

7 Q. What are the fair market value terms for an oil, gas and
8 coalbed methane lease in this area?

9 A. \$5 per acre, per year rentals. And a 1/8 production
10 royalty.

11 Q. And for a coalbed methane lease?

12 A. \$1 per acre, per year rental with a 1/8 production
13 royalty.

14 Q. What is the standard primary term for both these leases?

15 A. 10 years.

16 Q. With regard to the unleased owner, Norfolk Southern
17 Railroad, that is listed on the R-42 unit force pooling
18 application have you contacted this corporation or
19 attempted to contact them to obtain a lease?

20 A. Yes.

21 Q. By what method did you contact them?

22 A. It was verbal.

23 Q. Were they willing to execute a lease with your company?

24 A. Not at this time.

25 MS. MCCLANAHAN: Those are all the questions I have of Mr.

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Gillenwater.

MR. CHAIRMAN: Questions, members of the Board? Call your next witness.

MS. MCCLANAHAN: Randy Albert.

COURT REPORTER: (Swears witness.)

RANDALL ALBERT

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

DIRECT EXAMINATION

BY MS. MCCLANAHAN:

Q. State your name, please.

A. Randall Mark Albert.

Q. Could you identify the Exhibit marked as Exhibit 5?

A. It's my resume.

Q. Does this resume reflect your background, work history and qualifications?

A. Yes, it does.

MS. MCCLANAHAN: Mr. Chairman, I move the introduction of Exhibit 5.

MR. CHAIRMAN: It's admitted.

Q. (Ms. McClanahan continues.) Have you previously qualified

1 as an expert witness before this Board?

2 A. Yes, I have.,

3 Q. Has a drilling permit previously been refused to PGP on
4 any of the tracts that comprise this unit?

5 A. No, it has not.

6 Q. Has a well work permit been issued for a well contained
7 within the R-42 unit?

8 A. Yes, it has. The permit was issued for Well #410. That
9 is Permit #2095.

10 Q. For what type of well was the permit issued?

11 A. Coalbed methane gas well.

12 Q. Have you received any written responses from the owners
13 of the tracts within this unit?

14 A. No.

15 Q. Does the plat attached to the force pooling application
16 filed by PGP indicate the acreage and shape of the
17 acreage to be embraced within the R-42 unit as it was
18 approved by the Board at its February 16, 1993 hearing?

19 A. Yes, it does.

20 Q. Would you please identify Exhibit 6?

21 A. Exhibit 6 is Exhibit B-1 from the R-42 application.

22 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
23 Exhibit 6.

24 MR. CHAIRMAN: It's admitted.

25 Q. (Ms. McClanahan continues.) Does the unit follow the

1 boundary lines of the Hurricane Branch Extension 80 acre
2 unit designated as R-42 shown on Exhibit B-1 in the
3 application?

4 A. Yes, it does.

5 Q. Does the plat attached to this force pooling application
6 filed by PGP indicate the area within which that well has
7 been drilled?

8 A. Yes, it does.

9 Q. Does this drilling unit embrace two or more separately
10 owned tracts?

11 A. Yes, it does.

12 Q. Are the costs and expenses for the well that has been
13 drilled set forth on a DWE that is attached to the force
14 pooling application as Exhibit H?

15 A. Yes, it is.

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

18 A. Yes, it does.

19 Q. Could you please explain to the Board how these costs
20 were calculated?

21 A. The DWE reflects a mixture of actual costs and estimated
22 costs. Actual drilling costs and estimated completion
23 costs.

24 Q. Are you requested that PGP be designated as the well
25 operator authorized to operate the R-42 unit?

1 A. Yes, I am.

2 Q. Are you requesting the relief sought in Paragraph 4 of
3 PGP's application in accordance with 361.17

4 A. Yes.

5 MS. MCCLANAHAN: Those are all the questions I have.

6 MR. CHAIRMAN: Can you tell me why -- what is different in
7 Exhibit 6? What's different with that than in the
8 application as Exhibit B-1?

9 MS. MCCLANAHAN: There are no differences. We just do that
10 for convenience for you.

11 MR. CHAIRMAN: I just wanted to make sure. Any questions,
12 members of the Board? (None.) Do you have anything
13 further?

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1 MS. MCCLANAHAN: No, sir. We would request that the Board
2 approve this force pooling application.

3 MR. MCGLOTHLIN: I move that we grant the petition as filed.

4 MR. CHAIRMAN: I have a motion to approve.

5 MR. KELLY: Second.

6 MR. CHAIRMAN: I have a second. Any further discussion? With
7 no further discussion, all in favor signify by saying
8 yes.

9 BOARD: Yes.

10 MR. CHAIRMAN: Opposed say no. (None) Unanimous approval.

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ITEMS 8, 9 AND 10

MR. CHAIRMAN: Docket numbers VGOB-93/03/16-0338, 0340 and 0341 are continued. This meeting is adjourned.

Ended at 6:20 P. M.

(End of proceedings for
March 16, 1993.)

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CERTIFICATE

COMMONWEALTH OF VIRGINIA

COUNTY OF WASHINGTON

I, Cleadys D. Griffin, 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 March 16, 1993 in the Conference Room at the 4-H Center, Abingdon, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid to the best of my ability.

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

GIVEN under my hand this 2nd day of April, 1993.


CLEADYS D. GRIFFIN
NOTARY PUBLIC

My commission expires February 28, 1997.