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VIRGINIA GAS & OIL BOARD HEARING

MAY 18, 1993

9:00 A. M.

AT THE 4-H CENTER

CONFERENCE CENTER

ABINGDON, VIRGINIA

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May 18, 1993

This matter came on to be heard on this the 18th day of May, 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. MASON: I'm acting as Chairman today. We're here pursuant to the authorization to have our monthly Oil and Gas Board meeting pursuant to notices and published for this effect. To get started I'd like to call this meeting to order and ask that the members of the Board and staff identify themselves commencing with Mr. Fulmer.

(MEMBERS INTRODUCED.)

1 ITEMS II, III, IV, V

2
3 MR. CHAIRMAN: Any questions, comments, continuances?

4 MR. TWEED: Mr. Chairman, Item II on the docket is to be
5 dismissed by the petitioner.

6 MR. CHAIRMAN: Yes, sir. I understand a letter has been
7 received that Item II be dismissed. Is there anyone here
8 that objects to -- this is VGOB-93/04/20-0368 for the T-
9 96 well known as Clinchfield Coal Company, Marion McCoy
10 tract T-96, petitioned by Equitable Resources. Does
11 anyone here object to the dismissal of this request? If
12 not, it is so dismissed. I understand from Mr. Fulmer
13 that Pocahontas Gas Partnership has requested the
14 continuance of three items, VGOB-93/04/20-0358, 0362 and
15 0364. Is that correct?

16 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
17 Partnership. Correct.

18 MR. CHAIRMAN: Is there any objection to the continuance of
19 those three petitions. These are all three a petition
20 for a force pooling order. They're all in the Jewell
21 Ridge Quadrangle, Garden District of Buchanan County,
22 Virginia. Are there any objections to those continuanc-
23 es? MS. McClannahan, these are to be continued until
24 next month?

25 MS. McCLANNAHAN: Yes, sir. That's correct.

1 MR. CHAIRMAN: Thank you. If no objection, it's so continued.

2 Okay. That brings us back. Is there any additional
3 procedural matters to be dealt with at this time? If
4 not, we'll proceed with the first matter on the docket.

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3 ITEM I

4 MR. CHAIRMAN: This is a motion by the Board on its own to
5 receive clarification of language on the Oakwood Coalbed
6 Methane Field I and II orders. It's Docket number VGOB-
7 93/03/16-0349. This motion was continued from April. Is
8 there anyone present who would like to be heard on this
9 matter at this time? (Pause.) We have Ms. McClennahan
10 and Mr. Swartz. Are there any other people present that
11 would like to be heard on this matter? If not, how would
12 you all like to proceed?

13 MR. SWARTZ: I thought when we adjourned last month that we
14 would be looking at proposed language to revise the
15 Oakwood I and II orders and what I see this morning is a
16 revised draft of an order regarding the Hurricane Branch
17 Extension which we've kind of been tinkering with for a
18 while which, of course, addresses in some respects things
19 that ultimately need to be changed in Oakwood I and II.
20 I guess procedurally I would like to know if we're just
21 dealing with the Hurricane Branch Extension order this
22 morning or if we have other language that's under
23 consideration that we need to address?

24 MS. RIGGS: This Docket 336 is the one that came before the
25 Board that gave rise to this question, I think, and I
already had that order drafted. So in order to put it in

1 context I just put the revised language in the form of
2 the order so that it would hang together. I was asked to
3 bring back language relative to the definition of an
4 additional well and this order just does that. I mean,
5 that's my purpose for distributing the order today.

6 MR. SWARTZ: Where is that, Sandy?

7 MS. RIGGS: The definition, per say, which is in 7-A of the
8 Oakwood I order did not change. It still makes reference
9 to the statutory section. But then when you get to
10 Paragraph 7-E which talks about the allocation of
11 production from the additional well the changes in the
12 language would occur in the lead-in paragraph and in
13 Paragraph C-3, I think it is. And I think what it does
14 is talk about before, during and after mining production
15 and clarifies that Oakwood I covers the before, Oakwood
16 II applies to the during, mining by making reference to
17 isolated longwall panels.

18 MR. SWARTZ: So you've essentially left the definition the
19 same but we've addressed the allocation issues that we
20 needed to address in terms of how you calculate it?

21 MS. RIGGS: In the Oakwood II which is the during mining order
22 when you talk about the phases of development --

23 MR. SWARTZ: Right.

24 MS. RIGGS: -- it talks about production from an additional
25 well that is related to an isolated longwall panel.

1 MS. McCLANNAHAN: Mr. Swartz and I have actually made the
2 changes that we just submitted as one document to Ms.
3 Riggs, but we would recommend -- I suppose we could just
4 go through those real quickly. In the relief sought in
5 legal description paragraphs at the beginning of the
6 first page I believe the reference to 7-B should actually
7 be to 7-A. The same thing is true in Paragraph 3. The
8 reference to 7-B should be 7-A.

9 MR. SWARTZ: If you come down about nine lines there is a 7-B.
10 It ought to be 7-A.

11 MS. McCLANNAHAN: Then in Paragraph 6 which is entitled relief
12 requested, if you go to the bottom of the paragraph and
13 come up four lines, this change -- starting with the word
14 "within" to the word "and" in that line should be deleted
15 and the word "to" should be inserted. This was the same
16 change that has previously been made in the Oakwood I
17 order which was already made pursuant to our discussions
18 at that time. Paragraph 7, line five, starting with the
19 word "separate" to the word "pools" should also be
20 deleted. That again was a change that was made to the
21 Oakwood I order and we're just carrying through --

22 MR. MCGLOTHLIN: You lost me. Where is this located?

23 MS. McCLANNAHAN: Paragraph 7, line five, starting with the
24 word "separate".

25 MR. MCGLOTHLIN: Okay.

1 MR. SWARTZ: Through the word "pool" should be crossed out.

2 MS. MCCLANNAHAN: In Paragraph 7-C, line eleven, the word
3 "entities" is just misspelled.

4 MR. SWARTZ: It should be "entries".

5 MS. MCCLANNAHAN: I mean entries, right. Then Paragraph 7-
6 C.1. again I just think this was a typographical mis-
7 placement. If you look at line six starting with the
8 word "total" if you delete from the word "total" into the
9 next line to the word "total". So it should read "bears
10 to the total mineral acreage, when platted on the
11 surface,".

12 MR. SWARTZ: And if you'll look at subparagraphs two and
13 three, that is how they read. So it looks like the
14 typist just picked it up twice.

15 MS. MCCLANNAHAN: The only other thing which -- I guess the
16 date on this maybe needs to be -- the effective date is
17 listed as February 16th which I think is correct, but
18 then it's listed as executed in March.

19 MS. RIGGS: Yeah. That will get done when they --

20 MS. MCCLANNAHAN: Right.

21 MR. SWARTZ: There's another change, Sandy. If you go to
22 Paragraph 7-C there is an introductory portion and then
23 the subparagraphs one, two and three. And if you stay in
24 the introductory portion, go up about four lines, there's
25 a line that starts with the words "commencement of

production" and that is a change from what we had in the original order which provided that prior to the payment of any revenue based on these formulas you had to file the mine plan of record. And I would like to stay with that because --

MS. RIGGS: I wrestled with that and it seems to me that the way that it's actually been happening is you come in and file your mine plan as part of your evidence to get the additional well authorized by the Board in the first place. Isn't that the way we've been doing it? So I wrestled with whether it's at time of application for the additional well for approval of the additional well before you start commencement of production or before you make a payment because it seems to me that if you're going to charge for the additional well that mine plan is part of what would be considered as the election right and the authority for getting the additional well in the first place. It's sort of a catch twenty-two is what I'm saying. If you don't have to file it until after -- until you're ready to pay out the revenues --

MR. SWARTZ: A problem that I see is if a fracked well becomes a gob well. So you go from Oakwood I who you've been paying under Oakwood I and you mine through that well and it's now a gob well. That would be a situation where you would be paying revenue in advance of ever filing a mine

1 plan. I mean --

2 MS. RIGGS: Would you not have to come back and pool under
3 Oakwood II at that point if it was an additional well
4 anyway?

5 MR. SWARTZ: Yeah, I agree with you. But it would be a
6 situation where money would be paid out of a well bore
7 before -- in advance of poolings under Oakwood II.

8 MS. RIGGS: I was looking at the reverse situation where the
9 payment of revenue would occur after the pooling. And
10 you're saying there could be a situation where there's an
11 entitlement prior to the pooling where it's a transition.

12 MR. SWARTZ: Where there are actually payments before out of a
13 frack well.

14 MS. RIGGS: And you don't want to halt production is what
15 you're saying. You want an --

16 MR. SWARTZ: Well, the biggest problem in a gob well is that
17 those wells need to be vented -- or they need to be
18 produced or vented. We don't want to get in a situation
19 where we have to vent the gas if we can capture it and
20 sell it, which is particularly true in a gob. I think
21 originally the reason we wanted it to track the payment
22 -- was that you had to file supporting paperwork to
23 justify the payments you're going to be making was that
24 it would not interfere with production or your ability to
25 produce. And I agree with you as a practical matter

1 absent provisions of mine plans which do happen. As a
2 practical matter you're right, there will be a mine plan
3 on file or a portion of a mine plan at the time it is
4 force pooled. But some of the things that you see here
5 in Board hearings are several years to as much as five or
6 six years in advance and anyone familiar with mining
7 operations -- I mean, things change. So I think we could
8 have circumstances and probably will certainly have
9 circumstances where the mine plans that were submitted
10 with the pooling application have changed and that the
11 revenue will be paid on some different basis. And this
12 basically says you can -- this anticipates that problem.
13 If you're going to split revenue on some basis you better
14 file the paperwork so if it's changing you can file it.

15 MR. CHAIRMAN: Mr. Swartz or Ms. McClannahan, on the two
16 changes on Paragraph 2, the first one you said there
17 would be a deletion of "and" and replacement with "to"?
18 MS. MCCLANNAHAN: No. You delete starting with the word
19 "within".

20 MR. CHAIRMAN: Within the boundaries?
21 MS. MCCLANNAHAN: Right. You delete "within the boundaries of
22 the Oakwood II Field and".

23 MR. SWARTZ: And in place of that you put in the word "to"
24 MS. MCCLANNAHAN: T-O.

25 MR. CHAIRMAN: I'm having a hard time understanding what that

1 accomplishes.

2 MR. SWARTZ: Well, what it does is it says that we are
3 extending the applicability of Oakwood II to the Hurri-
4 cane Branch.

5 MS. RIGGS: Well, I don't have any problem with that, but as
6 amended I guess the thing we want to clarify is that as
7 to these provisions of Oakwood II that are deleted in
8 toto and amended with the language, that they not only
9 apply to the Hurricane Branch but to the combined area.
10 And I don't know if that makes that ambiguous or not.

11 MS. McCLANNAHAN: Isn't that taken care of in Paragraph 7-A?

12 MR. CHAIRMAN: Isn't it consistent to have both the request
13 and the relief granted?

14 MS. McCLANNAHAN: Maybe we need to think about the bigger
15 picture here because again, this is the order for only
16 the Hurricane Branch Extension, right?

17 MR. CHAIRMAN: No.

18 MS. RIGGS: No. It amends certain language within Oakwood II
19 as relates to --

20 MR. CHAIRMAN: Take a look at 7-A.

21 MS. RIGGS: It's a combined order.

22 MR. CHAIRMAN: Paragraph 7-A amends the Oakwood II order.

23 MS. RIGGS: By adding the Hurricane Branch Extension.

24 MR. SWARTZ: Right.

25 MS. RIGGS: And then you get to Paragraph B and that really

1 creates the same grid over the Hurricane Branch Extension.
2 Then you get to Paragraph C and it deletes in
3 toto the language of Oakwood II and replaces it with
4 certain definitional. So it does impact Oakwood II --
5 MR. CHAIRMAN: Beyond the Hurricane Branch.
6 MS. RIGGS: Right.
7 MR. SWARTZ: But if you go back to Paragraph 6, for example,
8 where we're talking about getting rid of -- within the
9 boundaries of the Oakwood II field. The relief that was
10 requested was to extend the Oakwood II order to the
11 Hurricane Branch Extension and if you delete that
12 language that's what that says.
13 MS. RIGGS: Then what kind of problems do you have with
14 Paragraph 7-D?
15 MR. SWARTZ: D or B?
16 MS. RIGGS: D.
17 MR. SWARTZ: Well, to the extent you're modifying the Oakwood
18 II orders, Sandy, the Oakwood II order was not limited to
19 OXY as the sole operator. So if the purpose of this is
20 to simply amend --
21 MS. RIGGS: I think it might have been. That was the problem.
22 MS. McCLANNAHAN: No, just the Oakwood I.
23 MR. SWARTZ: It was the Oakwood I.
24 MR. CHAIRMAN: Yeah, the Oakwood I did.
25 MS. McCLANNAHAN: Right, but not the Oakwood II.

1 MR. SWARTZ: So to the extent you're modifying the Oakwood II
2 order, I don't think you need D.
3 MS. McCLANNAHAN: It's really unnecessary.
4 MR. CHAIRMAN: Okay. What you're saying basically is that the
5 relief requested did not include -- this recites some-
6 thing that wasn't actually requested, correct?
7 MR. SWARTZ: Right.
8 MS. McCLANNAHAN: Right.
9 MR. CHAIRMAN: Upon it reciting a request that wasn't, in
10 fact, made. Okay. What about in Paragraph 7, the
11 deletion there of "separate and distinct from other
12 coalbed methane pools". What is the effect of that?
13 MR. SWARTZ: Well, I don't think that you should treat the
14 Hurricane Branch as a separate and distinct pool separate
15 and distinct from the Oakwood II pool. And that's why I
16 would like to cross that language out. Essentially
17 you're saying they're the same pool.
18 MS. McCLANNAHAN: That's the necessary requirement for
19 applying the Oakwood II rules to the Hurricane Branch
20 rules, that they're alike.
21 MS. RIGGS: I think the resolution of this is to make this
22 docket apply not only to 93/02/16-0336 but also 93/03/16-
23 0349 and make it a combined order.
24 MR. SWARTZ: Right.
25 MS. RIGGS: And then it is within and then Paragraph D does

1 apply. I mean, it all hangs together when you combine.
2 MR. SWARTZ: Right, if you combine.
3 MS. RIGGS: And do under relief requested do another restitu-
4 tion that talks about the Board on its own motion
5 bringing up this and how it got expanded.
6 MR. SWARTZ: Correct. Going back to your question, Bill, with
7 regard to Paragraph 6 in sub-B where we're crossing some
8 of this language out, that starts off "extend the
9 applicability of the Oakwood II order to the Hurricane
10 Branch Extension".
11 MR. CHAIRMAN: Right. I see.
12 MR. SWARTZ: Which is why I would cross out "within the
13 boundary". I mean, it just doesn't work.
14 MR. CHAIRMAN: Okay.
15 MR. SWARTZ: And I think, Sandy, you're right. If you
16 reference the other docket it's going to be a lot clear
17 to people that two things happened in this order.
18 MR. MASON: Any further comments?
19 MS. McCLANNAHAN: One other question that was posed to me
20 earlier this morning, and that is when we have these 7-E
21 one, two and three subparagraphs which would be for
22 unsealed gob gas, gas from an addition, and short hole
23 gas -- under this additional well paragraph the question
24 was posed to me after the complete isolation of a
25 longwall panel wouldn't it be the production of any well

1 that's within that panel that should be allocated on this
2 basis?

3 MS. RIGGS: Combined production.

4 MS. McCLANNAHAN: Right. It wouldn't be just the gas from the
5 additional well.

6 MS. RIGGS: I had that same query in my mind when I was going
7 through this.

8 MR. CHAIRMAN: No, I think you're right. It would be any well
9 within the panel.

10 MS. McCLANNAHAN: Right. It's not just any additional well.

11 MR. SWARTZ: Which is the generic term? Is any additional
12 well the term that includes everything? I can't remember
13 from last time.

14 MS. McCLANNAHAN: I don't think additional well includes --
15 what if there's only one well? What if there is only one
16 well, is that an additional well? No. But yet if it's
17 in the panel --

18 MR. CHAIRMAN: I think the theory is that the first well is
19 already taken care of in the prior language and that when
20 you come back and drill an additional well that that
21 just says that will be treated on this basis.

22 MS. McCLANNAHAN: What prior language, though?

23 MS. RIGGS: The definition of an additional well is a well
24 authorized in a unit that already has an existing well.
25 So you'll never have an additional well unless you have

1 more than one.

2 MS. McCLANNAHAN: Exactly.

3 MR. CHAIRMAN: But the first well in the panel would have
4 been dealt with under is unsealed, would it not, or as a
5 frack well? You would already have a mechanism in place.

6 MS. McCLANNAHAN: It wouldn't fall under short hole or
7 unsealed gob.

8 MR. CHAIRMAN: No. Well, then it would have been as a frack
9 well.

10 MS. McCLANNAHAN: Frack well and under Oakwood I.

11 MS. RIGGS: Right.

12 MR. CHAIRMAN: And then you come along and drill a second --

13 MS. McCLANNAHAN: But again that well if you're paying under
14 Oakwood I and then you isolate the panel and you're
15 paying production --

16 MR. CHAIRMAN: Under Oakwood II.

17 MS. McCLANNAHAN: Right. Then that at well would still --

18 MR. CHAIRMAN: It still shifts over and becomes -- the
19 allocations are made on the Oakwood II basis.

20 MS. McCLANNAHAN: Right. Exactly.

21 MS. RIGGS: That's my understanding.

22 MS. McCLANNAHAN: But that's not the way this reads. This
23 really doesn't take care of that.

24 MR. CHAIRMAN: What you're really saying is that there's
25 another category.

1 MS. McCLANNAHAN: Right.

2 MR. CHAIRMAN: Which would be a preexisting, pre-mined --

3 MR. EVANS: A frack well changes over during mine through or

4 isolation of a panel.

5 MR. CHAIRMAN: Right, which in effect, would be allocated

6 under the Oakwood --

7 MS. McCLANNAHAN: It's the same allocation. It's just that we

8 haven't made provisions for that.

9 MR. CHAIRMAN: I think you're correct. Don't you?

10 MS. RIGGS: Uh-huh.

11 MR. CHAIRMAN: So we'll actually end up with four classifica-

12 tions.

13 MR. EVANS: Or just least an explanation of it in the event --

14 MS. McCLANNAHAN: Of A and B.

15 MR. EVANS: Yeah.

16 MR. CHAIRMAN: But you do have this shifting. That's to me

17 one of the most fascinating and perplexing aspects of

18 this, is the well that shifts from -- the allocation

19 formula shifts from the mine through because it goes just

20 from an acreage basis to a panel basis. Isn't that

21 correct?

22 MR. SWARTZ: Right.

23 MS. McCLANNAHAN: Right.

24 MS. RIGGS: We may be able to resolve the other issue that was

25 raised through that definition, too, as to when the mine

1 plan has to be put in filing.

2 MR. CHAIRMAN: Yeah. What about that, Elizabeth?

3 MS. McCLANNAHAN: Pardon? I'm sorry.

4 MR. CHAIRMAN: What about tying this thing about the mine
5 plan filing to that definition also?

6 MS. RIGGS: Cover the transition issue totally.

7 MS. McCLANNAHAN: Yeah. It seems like that would work because
8 at that time you would know which wells you are planning
9 to produce.

10 MR. EVANS: I was going to say, you better know by that time.

11 MS. McCLANNAHAN: Right.

12 MR. CHAIRMAN: If you've mine through I would think that you
13 would have a mine plan at hand.

14 MS. McCLANNAHAN: That's right, let's hope, and you'd be
15 following it.

16 MR. SWARTZ: Sandy, there's a paragraph or there was a
17 paragraph in the Oakwood II order following three which
18 is for gas from any addition well that say -- it was a
19 stand along paragraph -- "prior to actual
20 commencement" --

21 MS. RIGGS: Prior to isolation.

22 MR. SWARTZ: Are you planning on keeping that paragraph or are
23 you going to get rid of it?

24 MS. RIGGS: I was getting rid of it. And now I guess what
25 we're saying is we're going to have to cover it in a more

1 direct way by having a 3-A and B.

2 MR. SWARTZ: I think we need to keep that in some form. I
3 mean --

4 MR. CHAIRMAN: Where is it in the old order?

5 MR. SWARTZ: Well, it was in the original.

6 MR. CHAIRMAN: (Pause.) Okay. It's on Page 6, the fourth
7 paragraph down?

8 MR. SWARTZ: Yes.

9 MR. CHAIRMAN: Of the old order?

10 MR. SWARTZ: Right.

11 MR. CHAIRMAN: Just to make sure everybody is playing from the
12 same program, we've got old order and new order and this
13 is the old one. This paragraph says, "Prior to the
14 actual commencement of coal mining operations by the
15 driving of entries and completion of isolation of a
16 longwall panel gas from an increased density well shall
17 be produced from only the 80 acre drilling unit in which
18 the well is located."

19 MR. SWARTZ: It's the flip-side of the preceding paragraph
20 which says, "after isolation".

21 MS. McCLANNAHAN: This really should be first, then the
22 transition that we're talking about, and the additional
23 wells after. I mean, that complete picture.

24 MS. RIGGS: Well, that leads back to the big question of do
25 you have an additional well prior to isolation which is

1 what got us to this issue in the first place, I think.
2 Unless I misunderstood what the Board said last time
3 around, that was the issue that was presented.

4 MS. McCLANNAHAN: We do have additional wells.

5 MR. SWARTZ: I guess the point is rather than fooling with
6 what's an increased density well, what's an addition
7 well, I think the order ought to simply express the
8 concept that if you're going to produce gas from a well.
9 any well, in a 80 acre unit prior to isolation of a
10 longwall panel that revenue gets allocated out of the 80
11 acre unit. And after isolation Paragraph 3 applies. Do
12 we really need to struggle with what those words mean?
13 If you're going to produce a well in an 80 acre unit
14 prior to isolation you pay revenue to that unit solely.
15 If it's after isolation you allocate it on a panel basis
16 regardless of when the well was drilled or how it was
17 obtained.

18 MS. RIGGS: Historically it was my understanding that the
19 additional well concept came out of 45.1-361.20.C?

20 MS. McCLANNAHAN: Right.

21 MR. SWARTZ: Right.

22 MS. RIGGS: Which I think I gave everybody a copy of. And the
23 question now in my mind is what we're talking about here
24 something different than that concept?

25 MR. SWARTZ: That's how you got the extra wells though. I

1 mean, that's the mechanism.

2 MS. RIGGS: To me what we're talking about now is a different
3 animal, though, that doesn't necessarily tie to mine
4 development plans but is an increased density well.

5 MR. SWARTZ: Well --

6 MS. RIGGS: And that's why the mine plan had to be on file as
7 part of the application for the additional well in the
8 first place because that was the enabling statute.

9 MR. SWARTZ: I don't think the Board has given anyone an
10 increased density well on a coalbed methane unit in the
11 three years that I've been coming down here. I mean,
12 they're all mine plan related or driven. There hasn't
13 been testimony that you need multiple coalbed methane
14 wells to drain an 80 acre unit. I mean, that has not
15 been run by you. I haven't seen that at all. We don't
16 have any technically speaking.

17 MR. CHAIRMAN: Well. I think that the issue here is whether or
18 not -- there was this whole thing involved in our last
19 discussion of how to deal with this increased density
20 well in terms of definitional allocations and so forth.
21 But what I'm hearing now is is that -- what you're
22 suggesting is that that's really irrelevant because we
23 have two methods of allocation, one being a frack well
24 and one being a well into a panel, and it doesn't matter
25 whether it's one well or twenty wells. The allocation

1 formula is based on the nature of the --

2 MR. SWARTZ: Where you are in the mining operation at any

3 point in time.

4 MR. CHAIRMAN: Yeah. And that there's no difference --

5 MR. SWARTZ: Now, in my opinion there's not --

6 MR. EVANS: I thought that was one of the questions that we

7 had as far as participation and everything else. It went

8 right back to who pays for what and what's necessary and

9 what's not necessary.

10 MR. SWARTZ: See, my interest here is allocation. I don't

11 care about cost. My clients have a mechanism for dealing

12 with how many wells are in a unit that they're satisfied

13 with. I don't want to get sucked into a participation

14 cost issue that somehow spills over into the allocation

15 of revenue. And the part of the order that we're

16 talking about is an allocation of revenue and cost on a

17 pretty straight forward basis and if I'm happy with it I

18 don't need it to go beyond that.

19 MR. EVANS: Well, I guess my concern was I don't want it go

20 the reverse, that we say something in the allocation

21 part that can be construed as something different under

22 another context. That's my only concern, that it speaks

23 to the issue only.

24 MR. SWARTZ: I don't care about that resolution at all. You

25 all have pretty strong feelings I can live with. I

1 think Elizabeth on the other hand would like to change
2 that language.

3 MS. MCCLANNAHAN:

4 MR. CHAIRMAN: But you don't think this is the proper place to
5 do that.

6 MS. MCCLANNAHAN: I wasn't talking about changing costs in
7 this order at all. I mean, somehow all these fingers are
8 being pointed. I mean, certainly we have argued for
9 increased density wells -- or my client. But that's not
10 the point at all. This strictly an allocation of
11 production. It has absolutely nothing to do with cost.

12 MR. CHAIRMAN: I think that in the prior language that was
13 suggested before it dealt with it in terms of an increas-
14 ed density well or regular well. Remember the language
15 that was --

16 MS. MCCLANNAHAN: Well, actually that's Paragraph 7-F which I
17 haven't brought up yet because we were trying to deal
18 with issues that were a little easier. What you're
19 talking about is the issue that came up with Paragraph 7-
20 F which again has nothing to do with costs. So just
21 because I'm talking don't think that it has to do with
22 cost. It has to do with the Inspector granting well
23 location exceptions and the Board granting increased
24 density wells because as a matter of fact the Inspector
25 is granting well location exceptions. Our concern was

1 that this order says the Gas and Oil Inspector can grant
2 well location exceptions only on a case by case basis by
3 any Board order when, in fact, he's been granted the
4 general authority to grant well location exceptions and
5 that's not clear in Paragraph 7-F the way it's presently
6 written.

7 MR. CHAIRMAN: I'm lost. That's not in here.

8 MS. McCLANNAHAN: She didn't make any changes to it.

9 MS. RIGGS: Because what I've said is if the Board acts on it
10 case by case and authorizes it then the Inspector can do
11 it. What they want is just to grant --

12 MS. McCLANNAHAN: Wait a minute. Where did --

13 MR. CHAIRMAN: Wait a minute. Let's go back and resolve this
14 issue on the earlier -- Board, we were discussing the
15 question under Paragraph 7-C, I believe, and then we had
16 one, two, three, and there was the notion that we needed
17 to add to that an additional -- like 3-A, 3-B in which we
18 dealt with it in terms of allocation whether you've got
19 one well or two wells or more wells, that you've got two
20 allocation formulas. One is where there has not been a
21 mine-through and which is defined here in terms of the --
22 actually I guess it's done on the basis of when the
23 longwall panel is isolated. That's the triggering event
24 in terms of the language.

25 MR. SWARTZ: The theory was that that created a defined

1 reservoir.

2 MR. CHAIRMAN: Right. And the reservoir shifts, in effect,
3 from the 80 acre unit spacing -- unit allocation to a
4 longwall panel driven allocations when the longwall panel
5 is isolated and that this language should have a 3-A and
6 3-B to recite the allocation in those two events no
7 matter whether you're talking about one well or multiple
8 wells. Is that correct?

9 MR. SWARTZ: Right.

10 MR. CHAIRMAN: Board members, any further comments on that?
11 Anybody else?

12 MR. SWARTZ: This order does not appear to me to address the
13 modification and extension of the Oakwood Field to the
14 west, to the north, and to the east. If it's intended to
15 you need to incorporate the map that was submitted at
16 that hearing which has the description -- the coordinates
17 description that you could recite in here. If it's not
18 intended to be extended by this order --

19 MS. RIGGS: I saw that as a real simple order was this was in
20 place, to do that separately and not combine another --

21 MR. CHAIRMAN: To extend it. May I impose upon counsel to ask
22 you all, how about you all submitted a proposed Paragraph
23 3-A and 3-B for Ms. Riggs?

24 MR. EVANS: Under 7.

25 MR. CHAIRMAN: Under 7, yes.

1 MR. SWARTZ: Okay. What --
2 MR. CHAIRMAN: Simply because we have a hard time trying to
3 put into words the means by which you all make these
4 allocations.
5 MR. SWARTZ: Okay.
6 MR. CHAIRMAN: It's a definitional --
7 MR. SWARTZ: Right.
8 MR. EVANS: Your clients are the people that actually do the
9 do.
10 MR. CHAIRMAN: Would it be possible for the two of you to get
11 together and jointly -- it would be very helpful to us.
12 MS. McCLANNAHAN: We've done that on every --
13 MR. SWARTZ: Sure. We agree on like 90 percent of the stuff.
14 We just get along so well.
15 MS. McCLANNAHAN: We're in complete harmony here on this order
16 with the exception of one --
17 MR. WIRTH: I'm getting sick.
18 MR. CHAIRMAN: Let the record reflect that Mr. Wirth is
19 totally nauseous over this discussion.
20 MR. SWARTZ: Yes, we can. We can do that.
21 MR. CHAIRMAN: Your harmony makes me more nervous than Mr.
22 McGlothlin's silence. Okay. Moving right along.
23 MS. McCLANNAHAN: To the bigger problem issue, the 10 percent.
24 Paragraph 7-F is the one that wasn't changed. Sandra,
25 what were you saying you changed in the order to take

1 care of that?

2 MS. RIGGS: I didn't change anything. The way I read it is
3 the delegation to the Inspector is on a case by case
4 basis as authorized by Board order which means it's come
5 before the Board already anyway. Is that the way you --

6 MR. SWARTZ: I agree with Elizabeth on one part of this. I
7 think the Oakwood I order just gave the Gas and Oil
8 Inspector (Inaudible.) on location exceptions. So it
9 doesn't come on a case by case basis under Oakwood I.
10 Now, under Oakwood II --

11 MS. RIGGS: Well, I guess the reason we've got a concern was
12 that we have the additional well issue when you get to
13 Oakwood II.

14 MR. SWARTZ: Right, but there's a difference the way that's
15 handled. Your Oakwood II order, your recollection of it,
16 that you get to call the shots on the additional wells.
17 That's the way the Oakwood II order reads. But the
18 Oakwood I definitely gave -- my recollection is definite-
19 ly gave Mr. Fulmer or the Gas and Oil Inspector the right
20 to deal with location exceptions.

21 MR. CHAIRMAN: I think that's correct.

22 MS. RIGGS: The only thing I would add to that is the original
23 Oakwood I contemplated one well per unit and what we're
24 seeing now is pooling of Oakwood I's and requesting
25 additional wells in the before mining situation and it

1 never contemplated at the time it was entered -- that
2 this order was entered that the application would
3 contemplate combined Oakwood I/II orders all at one time.
4 I think that's where the problem is probably arising.
5 When you just have one well in the unit that authority is
6 fine, but when you come in and pool under Oakwood I but
7 ask for an additional well under Oakwood II then the
8 Oakwood II scenario kicks in.

9 MR. CHAIRMAN: Well, they're really two separate issues. One
10 is can you have the additional well and secondly where do
11 you put it. Isn't that right?

12 MS. RIGGS: Right. And generally that's part of the applica-
13 tion for the approval of the additional well to begin
14 with. The locations on the plat map becomes fixed at
15 that time.

16 MS. MCCLANNAHAN: Except that Tom is granting additional wells
17 under Oakwood II. Isn't that right, Tom?

18 MR. FULMER: No. I'm not granting any additional wells.

19 MS. MCCLANNAHAN: Location exceptions.

20 MR. FULMER: Exceptions.

21 MS. MCCLANNAHAN: Under Oakwood II. See, that's the part that
22 isn't consistent with this.

23 MR. CHAIRMAN: Where does that become meaningful? I don't
24 think there's any -- at least I understand there would be
25 no problem in having Mr. Fulmer continue to grant well

1 location exceptions as long --

2 MR. EVANS: For single wells.

3 MR. CHAIRMAN: For single wells. The problem comes when that
4 inherent or as a part of that there's the concept of the
5 permitting of an additional well.

6 MR. FULMER: No. I'm going to straighten this out. What she
7 is talking about is once the Board has approved a number
8 of wells in a panel then the question is location or the
9 location of that well becomes evident. That's what I'm
10 ruling on, that location exception.

11 MR. CHAIRMAN: Let's suppose that they come before the Board
12 for an additional well and the Board says yes and as a
13 part of that application there is a map and it shows the
14 location. We approve that. But suppose subsequent to
15 that for some reason they want to move that then I would
16 think you have the authority to do that.

17 MR. FULMER: Yes. Looking at the aspects that were granted in
18 Oakwood I which is topography, mining and so forth. Now,
19 that's what I've been doing as far as location except-
20 ions. Now, there is also the deal in Oakwood I talking
21 about the 300 foot window which then becomes subject of
22 the topography, blah, blah, and so forth which I have
23 been doing. But as far as location exceptions on
24 additional wells I have not.

25 MR. CHAIRMAN: I think inherent in there -- even though as a

1 part of having an additional well you have an inherent
2 location exception problem. Correct?

3 MS. McCLANNAHAN: Right.

4 MR. CHAIRMAN: That if you really want to be technical about
5 it they're two separate issues.

6 MS. McCLANNAHAN: And that's why we separated it. That's what
7 we talked about the last time. We tried to separate
8 those two issues in the language we have proposed. But
9 then the question came up well, how do we define increas-
10 ed density well versus an additional well in that
11 particular situation.

12 MR. CHAIRMAN: How do you?

13 MR. SWARTZ: I think we've decided we don't have to define it
14 for allocation and revenue purposes.

15 MR. CHAIRMAN: That's correct.

16 MR. SWARTZ: I mean, we decided that today.

17 MS. McCLANNAHAN: Exactly. And I think that's the way to
18 resolve it, is not to make any distinction with regard to
19 the wells, not with regard to the issue --

20 MR. CHAIRMAN: Okay. But it's my understanding based on last
21 month that it's not the Board's intention to grant the
22 Inspector the right to grant additional wells. Is that
23 correct?

24 MR. SWARTZ: Right. And the current order provides that.

25 Paragraph F of the current Oakwood II order basically, as

1 I read it, says to the extent you have giving an operator
2 the right to drill additional wells Tom can address well
3 location exceptions for those additional wells.
4 MR. CHAIRMAN: That's exactly correct.
5 MR. SWARTZ: To the extent that you have not allowed them, he
6 can's say you can have additional wells. I mean, I think
7 that's what it currently says.
8 MR. CHAIRMAN: I agree and I don't think that's a problem. So
9 what's the issue?
10 MS. McCLANNAHAN: Well, I suppose there is an interpretation
11 question about that's the way you interpret that para-
12 graph or not.
13 MR. CHAIRMAN: What do we need to do here?
14 MS. McCLANNAHAN: What I'm saying is that Tom is actually well
15 location exceptions not on a case by case basis, but what
16 you're saying is the Board by inference has given him the
17 authority to grant a well location exception when it
18 grants an additional well.
19 MR. CHAIRMAN: No. I think he has the right to do that
20 period. I just don't think he has the right to grant
21 additional --
22 MS. McCLANNAHAN: Not the way this language reads.
23 MR. SWARTZ: I think what Elizabeth is telling you and I'm
24 inclined to -- I understand what she's saying. She's
25 saying that unless the order of the Board -- the pooling

1 order that gives multiple wells within a unit says Tom
2 has the right to grant a location exception with regard
3 to these wells, she's concerned that there will be some
4 inference drawn that he doesn't.

5 MR. McCLANNAHAN: Right.

6 MR. SWARTZ: And point of fact, he's doing it, the Oakwood II
7 says it. So --

8 MR. CHAIRMAN: That was certainly not my intent. I can't
9 speak for other members of the Board. What do we need to
10 do to fix it? How does the Board feel about it?

11 MR. EVANS: Do you want explicit language in F?

12 MR. SWARTZ: Maybe you just need to say that the Virginia Gas
13 and Oil Inspector may grant well location exceptions with
14 regard to wells approved or allowed by the Board. And
15 then you can go on and say in another sentence that the
16 question of whether or not there will additional wells or
17 whatever we want to call it is an issue that will be
18 addressed by the Board. Separate two sentences out of
19 that. Maybe we can provide you some language to that
20 effect. Does that seem to --

21 MR. EVANS: That's, in fact, the way it does occur. That is,
22 in fact, what the intent was I suspect. And if that's
23 the case clarifying language is simply that, clarifying
24 language. That's what this is all about.

25 MR. CHAIRMAN: Sandra?

1 MS. RIGGS: Uh-huh.
2 MR. CHAIRMAN: Kevin?
3 MR. MCGLOTHLIN: Okay.
4 MR. HARRIS: Does the main -- is that any name for it other
5 than "the well"? I know we've been saying additional
6 wells for that. But is there something we can call the
7 main well other than the main well?
8 MR. SWARTZ: No.
9 MR. EVANS: Initial?
10 MR. SWARTZ: Because sometimes you come in and ask for them
11 both at the same time.
12 MR. HARRIS: Yes, that's what I'm thinking. And then wouldn't
13 be initial even.
14 MR. EVANS: The whole idea is predicated on one well per
15 drilling unit and everything after that is --
16 MS. RIGGS: Multiple coalbed development.
17 MR. EVANS: How ever you want to phrase that. I don't what
18 designation -- the concept is one well per unit and
19 after that everything is --
20 MR. HARRIS: What was the last statement of F then? Were we
21 going to make that two sentences?
22 MR. CHAIRMAN: Yes.
23 MR. EVANS: Make clarification that once we authorize an
24 additional well the Inspector can say okay, if you can't
25 put it right where you applied for it you can move it

1 over. But they've already been granted the ability to
2 put that second well in or an additional well or wells
3 and --

4 MR. CHAIRMAN: And then other than that situation the
5 Inspector can grant well exceptions as he always has.

6 MR. EVANS: Right.

7 MR. HARRIS: If --

8 MR. EVANS: See, we've got two orders, Bill.

9 MR. HARRIS: I'm just looking at the language. It says the
10 Gas and Oil Inspector may grant well location exceptions.
11 What I was thinking is for the initial and additional
12 wells.

13 MR. EVANS: That's the clarifying language that they're
14 wanting.

15 MR. SWARTZ: The concept, though, when the original Oakwood II
16 order was implemented essentially what we had told the
17 Board, we being OXY and Buchanan Production since it was
18 our proposal, was that we were suggesting to the Board
19 that we would be coming back asking for one well per unit
20 per panel and that that was the parameter, that that
21 seemed to make drainage sense. I don't think that was
22 actually written down in the order, but in terms of how
23 many wells are likely to be approved that, I think, was
24 the threshold assumption. It was certainly what we were
25 advancing as a reasonable mechanism and I think based on

1 your conduct since then that that's what you've applied.
2 It's not written down in there but there was an under-
3 standing, I think, of everybody of what we were talking
4 about in terms of how many wells there would be likely to
5 be that would be allocable from a cost or participation
6 standpoint.

7 MR. CHAIRMAN: I think the Board feels like that the evidence
8 that we've been presented supports that conclusion.

9 MS. McCLANNAHAN: But that doesn't have anything to do with
10 this.

11 MR. CHAIRMAN: Are we okay?

12 MS. McCLANNAHAN: Yes.

13 MR. CHAIRMAN: Do we all understand where we are?

14 MR. FULMER: Mr. Chairman, before we get away from this
15 subject I think it's very important that -- Elizabeth
16 hasn't brought this up, but we also have other orders out
17 there that what we've been talking about as Oakwood I and
18 Oakwood II, that this circumstance occurs in other orders
19 that are not subject to the Oakwood I and Oakwood II.
20 Mainly the BUNE-1 and the -- what is it, the south
21 longwall --

22 MS. RIGGS: Five through twelve.

23 MR. FULMER: Five through twelve. These two are separate
24 orders. They're separate. Now, whether Elizabeth wants
25 to continue on that line of questioning, I don't know,

1 because this subject has came up.

2 MS. McCLANNAHAN: We filed an application about that yesterday
3 which will be heard next month. That really is a
4 separate issue.

5 MR. CHAIRMAN: Well, even the allocations and everything in
6 those are different from this, isn't that correct?

7 MR. FULMER: With the same concept of well location excep-
8 tion --

9 MS. McCLANNAHAN: Absolutely, yes.

10 MR. FULMER: But the same concept of well location exception
11 comes up in those orders, too.

12 MR. CHAIRMAN: Okay. At this point is there any additional
13 comments from anyone? Ms. Riggs?

14 MS. RIGGS: Well, I'd like to summarize my understanding just
15 for the record. That is on the proposed order that was
16 handed out today that refers to VGOB-93/02/16-0336, that
17 will be expanded to cover 93/03/16-0349 as well as the
18 expansion of the Oakwood II Field beyond the Hurricane
19 Branch Extension that was acted on during the April
20 docket, that the typographical errors pointed out in
21 Elizabeth and Mark's combined comments have been acted on
22 by the Board and will be incorporated and that Mark and
23 Elizabeth will get together and come up with some
24 proposed language to break out Paragraph 7-C.3 to break
25 out allocation before and during mining so that we can

1 account for the transition on a mine-through, and to
2 clarify the combined production issue where there's an
3 additional well within the unit, that the allocation is
4 on the combined production and we will insert a 7-F that
5 clarifies the delegation of authority for well location
6 exceptions to the Inspector.

7 MR. CHAIRMAN: Reserving the granting of additional wells to
8 the Board.

9 MR. SWARTZ: It's up to you all. It's your order.

10 MR. CHAIRMAN: Any further comments? Does the Board have a
11 motion or some action here basically saying, "Yes, this
12 is what we wish to do."?

13 MR. EVANS: Mr. Chairman, I so move.

14 MR. CHAIRMAN: Is there a second?

15 MR. HARRIS: Second.

16 MR. CHAIRMAN: All in favor signify by saying yes. (ALL
17 AFFIRM.) Opposed say no. (NONE.) The record will
18 reflect the motion is passed.

19 MR. FULMER: Does this need to appear on the next docket?

20 MR. CHAIRMAN: Yes.

21 MS. RIGGS: I would just like to remind the Board that there
22 are -- I think OXY had four or five pooling orders from
23 the April docket and PGP and OXY each have one from the
24 March docket that are dependant upon the revised lang-
25 uage. Last time the Board's action was that we would

1 hold up on entering those orders until we had the new
2 language. Does that instruction continue?
3 MR. CHAIRMAN: Is that a problem with you all? I don't know
4 what else we can do.
5 MR. SWARTZ: As long as there is no stay implicit in that on
6 production because we're producing.
7 MR. CHAIRMAN: Is that a problem?
8 MR. SWARTZ: As long as you all understand that. You've
9 pooled the units but we just don't have a written order.
10 MS. McCLANNAHAN: The order is effective the date you approve
11 it in accordance with the application, isn't that
12 correct?
13 MR. CHAIRMAN: Yeah. And the only unresolved issued relate to
14 allocation, do they not?
15 MS. RIGGS: And elections.
16 MR. CHAIRMAN: And elections and so forth?
17 MR. SWARTZ: Except they don't change the way it's being
18 allocated. They just clarify the language.
19 MR. CHAIRMAN: Any problems?
20 MR. MCGLOTHLIN: Mr. Chairman, before Elizabeth gets out of
21 here, in regards to agenda items III, IV and V, the
22 reasoning for continuances? I don't have a problem. I'd
23 just like it on the record as to why.
24 MS. McCLANNAHAN: Mr. Morgan, we would prefer that he testify
25 as to the information that the Board requested for those

1 particular docket items in accordance with your request
2 last month. Mr. Morgan couldn't be here today because
3 he's been in an accident and still is not working full-
4 time.

5 MR. MCGLOTHLIN: Thank you.

6 MR. CHAIRMAN: Mr. McGlothlin, that was communicated to the
7 Board earlier and I apologize for not sharing that with
8 you. Okay. We'll take a five minute recess.

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

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ITEM VI

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3 MR. CHAIRMAN: The next matter for consideration is a petition
4 for force pooling under Section 45.1-361.21 by Equitable
5 Resources Exploration for P-289C located on the Haysi
6 quadrangle, Sandlick District of Dickenson County,
7 Virginia. This amends previous docket number VGOB-
8 93/03/16-0344 and the docket number of this petition is
9 VGOB-93/05/18-0371. This matter is called for present-
10 ment. Is there anyone here other than those either with
11 or on behalf of Equitable who wish to be heard in this
12 matter?

13 MR. LAWSON: I would.

14 MR. CHAIRMAN: Sir, which matter are you here in regard to?
15 You seem to be --

16 MR. LAWSON: The Rose property in Wise, VGOB-93/05/18-0377.

17 MR. CHAIRMAN: Okay. I'll tell you what, since you have this
18 item -- go ahead.

19 MR. TWEED: We've arranged through the kindness of OXY and Mr.
20 Swartz to have Item XIII which I think Mr. Lawson is
21 involved in heard following this application. So he'll
22 be next on the docket.

23 MR. CHAIRMAN: Okay. No objection from OXY?

24 MR. SWARTZ: No.

25 MR. CHAIRMAN: We'll hear this case and then the one you're

1 involved in, sir. Will all witnesses to be heard in this
2 matter be sworn in please.

3 COURT REPORTER: (Swears witnesses.)

4 MR. TWEED: Mr. Chairman, Doug Tweed along with Jim Kiser here
5 on behalf of the petitioner, Equitable Resources Explora-
6 tion. Our witnesses will be Dennis Baker and Bob
7 Dahlin. For clarification to the Board in advance, this
8 is a coalbed methane gas well where a force pooling
9 application was heard and granted during the March docket
10 and that is docket number VGOB-93/03/16-0344. The reason
11 why we have returned to the Board is that following the
12 granting of that petition we were advised by Mr. Jeffery
13 Brent Counts who is a mineral owner who at the time had
14 been noticed and had not objected and had a 2.01 percent
15 interest in this unit that he had leased 40 percent of
16 his interest to a couple, Terry D. and Lisa K. Ball, and
17 that lease had been recorded but was overlooked by our
18 personnel. Therefore, we had a notice problem in that we
19 had not force pooled Terry D. and Lisa K. Ball and their
20 interest of approximately .08 percent. So the notice and
21 application that we have today is really the equivalent
22 of a modification request as to the previous pooling
23 order that is limited in scope to the request to pool
24 Terry D. and Lisa K. Ball and their interest. It will by
25 its very nature also modify the previous order as to

1 Jeffery Counts, but only in the sense of reducing his
2 percent from 2.01 to approximately 1.2. Mr. Ball and his
3 wife have filed a written objection as to this petition
4 and that objection has also been treated by Mr. Fulmer's
5 office as an objection to pending permit that has been
6 applied for. Mr. Counts has likewise filed an objection
7 in writing before this Board that has been treated by Mr.
8 Fulmer as an objection as to the pending permit. As to
9 those objections in relation to the permit application an
10 Informal Fact Finding Hearing has already been scheduled
11 by Mr. Fulmer in his office for May 27th of this year.
12 The only point of clarification I guess I would need to
13 make in advance of evidence is that we object to and move
14 to strike before this Board the objections of Mr. Counts.
15 Mr. Counts has filed objections but Mr. Counts was a
16 noticed party as to his entire interest at the March
17 docket and had no objection at that time to the force
18 pooling. Therefore, we consider Mr. Counts to be pooled
19 already by previous order of this Board and consider his
20 objections at this time to be untimely and therefore not
21 to be heard. As a practical matter it makes no differ-
22 ence because the Ball objections and the Counts objec-
23 tions are for the most part duplicable.
24 MR. CHAIRMAN: Excuse me a minute. Do we have copies of those
25 objections?

1 MR. FULMER: You should have, Mr. Chairman.

2 MR. CHAIRMAN: Maybe I missed them but I don't have them.

3 MR. TWEED: I might add, Mr. Chairman, while we're looking for
4 copies that as an alternative to objecting to Mr. Counts'
5 objections on the grounds that they are untimely I would
6 also point out that as to him and to the degree that he
7 is trying to assert any objections as a coal owner that
8 his objections would be treated as objections to a
9 proposed drilling unit modification. I think Mr. Ball
10 would have to be treated in his objections as objections
11 to a pooling unit because, of course, he didn't have
12 notice before. But this is a drilling unit modification
13 as it applies to Mr. Counts and under Code of Virginia,
14 Section 45.1-361.11 his objections as a coal owner to a
15 drilling unit modification are limited to only two
16 sources neither of which have been raised in his written
17 objections. So I think that's a second or back-stop
18 ground for our position, that his objections are not
19 relevant to what the Board decides today. I have copies
20 right here, but I don't have an extra copy.

21 MR. FULMER: I'll get my copies if you could give the Board a
22 copy of the objections for them to review.

23 MR. TWEED: Okay. The one on the top, Mr. Chairman, is the
24 objection of Terry D. and Lisa Ball that we acknowledge
25 has the right to be before and the one underneath that

1 would be the fairly duplicate objections of Mr. Counts
2 that we feel are untimely.

3 MR. FULMER: I apologize, Mr. Chairman, you don't have a copy
4 of those.

5 MR. CHAIRMAN: Well, let us take a moment to look at these.

6 MR. TWEED: Okay.

7 MR. FULMER: They're in my IFFH file.

8 MR. TWEED: (Pause.) For clarification I thought what I would
9 do is initially have my witnesses bring forth the
10 testimony on what we might call the more uncontested
11 aspects of the evidence needed to establish a record for
12 approval and then specifically address each of the
13 objections raised by Mr. Ball with testimony and comment.

14 MR. CHAIRMAN: Just for clarification we have, in fact, two
15 objections by mineral interest claimants in this unit,
16 that of Mr. Counts' unit interest and the Ball interest,
17 correct?

18 MR. TWEED: That's correct.

19 MR. CHAIRMAN: You are asserting that A; The objections of
20 both of them are groundless?

21 MR. TWEED: That's correct.

22 MR. CHAIRMAN: On their substantive allegations. And B; That
23 the objection of Mr. Counts should be denied to be even
24 considered by the Board on the basis that is procedurally
25 defective in the fact that it was not timely filed?

1 MR. TWEED: That's correct. And, in fact, he has already been
2 pooled without objection by the March hearing.

3 MR. CHAIRMAN: Right. I understand. But you're saying that
4 Mr. Counts -- that this particular petition by EREX only
5 effects Mr. Counts in that it reduces the amount of
6 acreage of his in which the pooling order would be
7 effective and that he was properly noticed by the earlier
8 petition and did not object?

9 MR. TWEED: That's correct. I might add, Mr. Chairman, that a
10 secondary or back-stop objection from Mr. Counts is that
11 as to Mr. Counts our hearing today and application would
12 necessarily be treated as a drilling unit modification
13 and to the degree he's asserting the claims as a coal
14 owner he may have some rights independent of what
15 happened in March on a drilling modification but they are
16 limited to two specific areas, specifically a safety
17 objection and an unreasonable and arbitrary exercise
18 objection under 361.11 neither of which has been asserted
19 by him in his written objection.

20 MR. CHAIRMAN: While we're looking over these objections you
21 can proceed.

22 MR. TWEED: Here's extra copies for you. Would you like me to
23 proceed?

24 MR. CHAIRMAN: Please.
25

1 DENNIS BAKER

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

5 DIRECT EXAMINATION
6

7 BY MR. TWEED:

8 Q. Dennis, state your full name for the record, please?

9 A. Dennis Baker.

10 Q. Did you, in fact, testify at the application with respect
11 to force pooling in creation of this unit in March?

12 A. Yes, I did.

13 MR. TWEED: We would ask, Mr. Chairman, that Mr. Baker's
14 testimony concerning his involvement and familiarity with
15 the well and the lands involved and that his testimony
16 with respect to the specific provisions of the election
17 order being sought be incorporated from the March
18 testimony since they are identical and since there is no
19 party here other than us that would need clarification
20 other than what they can get by review of the record. It
21 would save some time.

22 MR. CHAIRMAN: So you're specifically requesting that the
23 testimony he presented in regard to VGOB-93/03/16-0344 be
24 incorporated in the record for this hearing?

25 MR. TWEED: That's correct.

1 MR. CHAIRMAN: Any objection, Board? So ordered.

2 Q. (Mr. Tweed continues.) Mr. Baker, do you, in fact, have
3 a modified or revised Exhibit B with respect to this
4 application?

5 A. Yes, I do.

6 Q. I believe that what it does is two things. 1; With
7 comparison to the Exhibit B in March it reflects that Mr.
8 Counts' interest is 1.206 percent and that there is an
9 additional pair of parties with interest, to wit, Terry
10 D. Ball and Lisa K. Ball, and that they have an interest
11 of .804 percent, correct?

12 A. That's correct.

13 Q. And then in addition to that just as a matter of informa-
14 tion two parties who were force pooled in March have
15 since been leased and their names are reflected now as
16 being leased status on this revised Exhibit B, correct?

17 A. That's correct.

18 Q. And who are those people?

19 A. On Page 1 of Exhibit B revision, at the bottom of the
20 list, Paula Diane Brooks, and on Page 2 of the exhibit,
21 second from the top, Judy Carolyn Deel.

22 Q. The fair market value with respect to our efforts on
23 behalf of the Balls is identical to the effort that we
24 made on behalf of the other parties in March?

25 A. That's correct.

1 Q. In your opinion the fair market value for drilling rights
2 in this unit remain the \$5 bonus, five years and one-
3 eighth of eight-eighths royalty?
4 A. Yes. That's correct.
5 Q. Were efforts made to obtain voluntary lease from the
6 Balls?
7 A. Yes, it was.
8 Q. And, in fact, again from Mr. Counts, I believe, correct?
9 A. We have had conversations with Mr. Counts, yes.
10 Q. And were we able to successfully negotiate an arrangement
11 with them?
12 A. No. We were unsuccessful.
13 Q. And is it your request on behalf of Equitable that the
14 Balls be pooled and that the respective interest as
15 adopted by the Board be those reflected in the new
16 revised Exhibit B?
17 A. Yes. That's correct.
18 Q. Let me ask a specific question with respect to the
19 objections that have been made on behalf of Mr. Ball and
20 without waiving our objections to untimeliness, etcetera,
21 by referencing Mr. Counts' as well.
22 MR. TWEED: What I'd like to do, Mr. Chairman, is to the
23 degree that simply it's a matter of position on our part
24 I'll reference it and then when there's something that
25 requires testimony I'll evoke it from the witness. As

1 far as objection number one they're simply objecting on
2 the grounds that there was a previous lease --

3 MR. CHAIRMAN: Which one are you on?

4 MR. TWEED: Mr. Ball's objections.

5 MR. CHAIRMAN: You're now addressing specifically the allega-
6 tions of Mr. Ball's objections?

7 MR. TWEED: Yes, sir. Objection number one is the one that
8 starts "applicant held a full five year lease". Our
9 position on this is twofold. Obviously we consider it
10 irrelevant whether there was a prior lease on some
11 property where there was or wasn't drilling as it relates
12 to the force pooling today. Number two, as to the Balls,
13 they have no standing. They didn't get the transfer of
14 their rights from Mr. Counts until October 6th, 1992. So
15 this predates their having any interest in the property
16 whatsoever. We don't offer testimony on this one. We
17 simply point out we don't consider it to be a statutory
18 or regulatory proper objection and do not consider it
19 relevant to your ruling. Number two I will have Mr.
20 Dahlin speaking to because it's a distance issue as well
21 as number three. Number four we would simply submit that
22 that's what force pooling orders are for and there's no
23 evidence whatsoever that they're offering a competing
24 proposal as an operator or otherwise for the development
25 of this gas. Therefore, we simply find that statutorily

1 and regulatorally insufficient. Number five appears to
2 be, members of the Board, the one area that has some
3 relevant concern and that is an objection by the Balls,
4 and again by reference Mr. Counts, that a consent to
5 stimulate is necessary for a coalbed methane well. They
6 are, in fact, approximately 375 feet from this well. So
7 they are within the 750 feet and an appropriate signed
8 consent is required by EREX. And that's where I'd like
9 to submit further evidence because it's our position that
10 we have the appropriate consent. Let me ask the witness.
11 Q. (Mr. Tweed continues.) Is it correct that Motivation
12 Coal Company is a subsidiary of Pyxis, formally called
13 Pegasus?
14 A. Yes. That's correct. It is.
15 Q. And has your research, in fact, determined that Motiva-
16 tion Coal Company has a lease with Jeffery Brent Counts
17 that predated any transaction that he had with the
18 Balls?
19 A. Yes. That's correct.
20 Q. And this lease is unrecorded?
21 A. That's correct. It is not.
22 Q. In fact, Motivation Coal Company executed this lease not
23 only with Jeffery Brent Counts but also the other people
24 who had an ownership interest in this undivided tract, is
25 that correct?

1 A. That's correct.

2 Q. And the date of this lease is October 12, 1989 and we
3 have a copy of it with us today?

4 A. Yes.

5 Q. And under the terms of that five year lease which would
6 not lapse until October 12, 1994 it is understood that
7 the coal was leased and the mine and development plans
8 will be at the sole control and discretion of lessee, to
9 wit Motivation Coal Company, in accordance with Paragraph
10 2 of that lease?

11 A. That's correct.

12 (Witness stands aside.)

13 MR. TWEED: I apologize for the fact that we did not bring
14 eight copies of the lease. We intended to incorporate by
15 testimony the fact that we are dealing with the coal
16 lessee. For the record, I would like to incorporate the
17 attachments to our pending permit application with Mr.
18 Fulmer's office which include a stimulation consent from
19 Pegasus, now Pyxis, and its subsidiary. Our position is
20 that we have a consent to stimulate that is good and
21 valid at least through the life of this lease which is
22 continuing into effect until at least October 12, 1994
23 and that Motivation Coal Company and its parent, Pyxis,
24 have sole control over mine and development plans and
25 they have, in fact, as per our permit given us the

1 consent and therefore we have the consent from the
2 appropriate party under the statute to stimulate. And
3 the grounds of objections filed by the Balls and by
4 reference, Mr. Counts, are inadequate. I will be glad to
5 submit this copy of the lease as an exhibit again with
6 the apology to the Board that we did not obtain the eight
7 copies that I know you would normally want to have.

8 MR. EVANS: I have a question. In that lease what is the
9 description of the coal seams leased? Is it all minable
10 and merchantable from seams or seams excluded?

11 MR. TWEED: It's my understanding under the copy of this lease
12 as I reviewed it by memory and I'm looking at it as I
13 talk to you that it was an all inclusive reference of
14 mineral rights and was not limited by seam in any way.
15 Mr. Evans. Let me, if I can, provide a copy -- I'm
16 sorry.

17 MR. EVANS: I was just going to ask another simple question.
18 Is it a stipulated term of five lease with extension to
19 exhaustion?

20 MR. TWEED: My understanding again is that this is a five year
21 lease and there are no references whatsoever with respect
22 to extension. Therefore, that would be a matter for
23 negotiation between the parties.

24 MR. EVANS: That's fine. Those were my questions, whether it
25 dealt with all seams or excluded any.

1 MR. TWEED: Yes, sir.

2 MR. CHAIRMAN: Questions, members of the Board? (Pause.) Did
3 you not indicate that you were going to have some
4 evidence from your present witness about objection number
5 three?

6 MR. TWEED: Yes, sir. I'm going to have somebody to testify
7 as to the distances involved, Mr. Dahlin.

8 MR. CHAIRMAN: Is it your contention in this matter that
9 Motivation Coal Company is the operator?

10 MR. TWEED: Without doubt they are a coal owner and a coal
11 operator. I think as the lessee would control the
12 mineral rights it's a pretty broad definition of a coal
13 owner as I read the statute but they would definitely, I
14 think be the operator.

15 MR. CHAIRMAN: Are there any active mining activities on this
16 lease now?

17 MR. TWEED: My understanding -- correct me if I'm wrong that
18 there are not -- is that, in fact, the seam we're talking
19 about with respect to this 2 percent interest is a seam
20 that has been deemed uneconomical to mine by everybody
21 for the foreseeable future. (Pause.) I'm advised by Mr.
22 Sterling, in-house counsel for EREX, that there is some
23 surface mining that has gone on in this area and apparen-
24 tly with respect to this lease it is nearing an end. But
25 again, we do have permission from Motivation Coal

1 Company --

2 MR. CHAIRMAN: My question is directed to the issue of has --
3 that Motivation Coal Company has conducted, to your
4 knowledge, mining operations pursuant to this lease?

5 MR. STERLING: Yes, sir.

6 MR. CHAIRMAN: My point being is to establish that if that is,
7 in fact, true that they are, in fact, a coal operator on
8 this lease.

9 MR. EVANS: I have one other question. There is no stipula-
10 tion as to the type of mine. It's all seams --

11 MR. TWEED: It's not limited as to seams. It's not limited to
12 type of mining other than Motivation having sole discre-
13 tion.

14 MR. EVANS: That's fine. That's all I needed to know.

15 MR. TWEED: Mr. Chairman, if I could call Mr. Dahlin briefly.

16

17

BOB DAHLIN

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. Dahlin, you testified at the March hearings concern-
25 ing the pooling and the creation of this drilling unit,

1 did you not?

2 A. Yes, I did.

3 MR. TWEED: We would request the incorporation of his testi-
4 mony at the March hearing by reference today as well.

5 MR. CHAIRMAN: The same previous docket numbers?

6 MR. TWEED: Yes, sir.

7 MR. CHAIRMAN: Okay. Let me interrupt you a second. I'm
8 curious as to one thing -- one question that I will refer
9 back to your prior witness. Is it the intention of EREX
10 and is it reasonable to expect that the stimulation of
11 this coal seam will occur prior to the expiration of this
12 lease?

13 MR. TWEED: I think that it would be very risky for us to
14 assume that our permission to stimulate would extend
15 beyond the life of this lease.

16 MR. CHAIRMAN: Any questions?

17 MR. EVANS: I agree with what Mr. Tweed just said.

18 MR. CHAIRMAN: I'm just trying to make sure we've got all the
19 corners here. Okay. Continue, please.

20 O. (Mr. Tweed continues.) Mr. Dahlin, in the objections Mr.
21 Ball makes in two and three he makes a reference to
22 producing wells P-209 and P-212. Both is talking about
23 land locking and reserves, etcetera. Both 209 and 212
24 are, in fact, conventional wells whereas this well is a
25 coalbed methane well, correct?

1 A. That's correct.

2 Q. And I believe you have checked the distances with respect
3 to 209 and 212 from this unit and in each case we're
4 talking about at or in excess of 4,500 feet?

5 A. Yes, sir.

6 MR. TWEED: That would be all the questions I would have for
7 this witness in light of the incorporation of his prior
8 testimony.

9 (Witness stands aside.)

10 MR. TWEED: We simply take the position that the wells we're
11 objecting over are 1; Obviously going after a different
12 product and 2; Are too far away for there to be any
13 reasonableness to these written objections as to land
14 lock or interference. I have no further evidence to
15 submit unless the Board would like to make a copy of the
16 Motivation lease a written exhibit. I believe we have
17 adequate testimony by record and, of course, this may
18 become an exhibit at the Informal Fact Finding Hearing on
19 the permit anyway. But other than that we would rest and
20 request approval of the application.

21 MR. MCGLOTHLIN: Mr. Dahlin, when was P-212 drilled? Never
22 mind. I just saw it. Excuse me. I'm slow today.

23 MR. TWEED: I have no further evidence and would request the
24 granting of the application.

25 MR. CHAIRMAN: Any further questions from the Board? I was

1 discussing here with Ms. Riggs the question of what is
2 the legal -- when we examine the evidence in relation to
3 these objections what burden of proof does the objecting
4 party have and has that burden of proof been met by this
5 written objection. Secondly, I just want to make certain
6 that the Board is comfortable with -- we haven't address-
7 ed this issue of consent to stimulate in a while and we
8 have previously, as I recall, made a decision that we
9 would not appoint an operator of a well unless that
10 operator had a consent to stimulate. I guess the issue
11 here is when we know that there is an objecting coal
12 owner who has a lease with someone that has the apparent
13 authority to consent but that lease has a fairly short
14 term do we wish to consider that and do we in this case
15 need any clarification in these issues from our legal
16 counsel. I pose that to the Board and ask --

17 MR. MCGLOTHLIN: Mr. Chairman, I think this is one case
18 that's brought before that the lease -- the deadline was
19 brought to our attention. It's not to say that other
20 leases in the past have not had a small amount of time
21 before they lapsed as well and we have consented.

22 MR. CHAIRMAN: I'm not advocating any position. I just raised
23 the issue and asked whether everyone is comfortable with
24 ruling on this without any further clarification in terms
25 of what are the correct basis for allowing an objection

1 and do we wish to consider any further legal clarifica-
2 tions as to whether or not the right to stimulate is
3 affected in any way by a term of lease. I don't necess-
4 arily advocate that. I'm just raising the issue and want
5 to make sure everybody is comfortable with it.

6 MR. HARRIS: Mr. Chairman, when is the expiration date of the
7 lease?

8 MR. TWEED: In October of 1994.

9 MR. HARRIS: So we're talking more than a year?

10 MR. TWEED: Yes, sir. And I think it would be very, very
11 difficult for the Board to get into the situation of
12 beginning to subjectively evaluate how a single stimula-
13 tion is impacted by the length of a lease in terms of a
14 year or three years or five years. That would get into
15 some pretty sophisticated discretionary problems.

16 MR. CHAIRMAN: Yeah. My (Inaudible.) of the issue is not
17 related to that, but in terms of whether the Board feels
18 comfortable with making a decision on whether your
19 evidence is adequately supported in terms of what we are
20 required to do as a matter of law.

21 MR. EVANS: As far as consent to stimulate goes we have
22 required in the past some form signed by a responsible
23 company official that indicates that consent.

24 MR. TWEED: We have that with the permit. It's signed by
25 Pegasus and incorporates their subsidiary, Motivation,

1 MR. EVANS: If this is a force pooling then I don't have a
2 problem. That's under a different --

3 MR. MCGLOTHLIN: Mr. Chairman, one thing I'm concerned about
4 is that with the pending Informal Fact Finding Hearing do
5 the Jeffery Counts and Terry and Lisa Ball -- are they
6 under the impression that these objections will be heard
7 then and they need not be here today?

8 MR. TWEED: Their written objections when they were filed with
9 this Board made a specific reference therein by letter
10 that they did not intend to be here today. The cover
11 letter said that and predated the much more recent
12 treatment by Mr. Fulmer of these objections as relating
13 to the permit as well.

14 MR. MCGLOTHLIN: They were noticed of this hearing?

15 MR. TWEED: Yes, sir. I might add that the comment at the end
16 makes it very clear that what they really want to do is
17 they want to approach him further about negotiations and
18 I think we have a 2 percent owner trying to put a club
19 over our head. But they've referenced from the outset
20 that they did not intend to be here when they filed it.

21 MR. CHAIRMAN: If the Board is prepared I guess that we should
22 deal with this procedurally in terms of the objections.
23 First, there seems to be two general themes in these
24 objections. One relates to spacing and the other relates
25 to the coal owner objection on the basis of signed

1 consent. Does the Board have a motion in regard to these
2 objections?

3 MR. EVANS: With respect to signed consent, I don't think that
4 comes under the force pooling issue which is the reason
5 we're here today. That's a different issue. This is in
6 the Nora gas --

7 MR. DAHLIN: Yes, it is. It's in the Nora Coalbed Methane
8 Field.

9 MR. EVANS: There are field rules established for that and I
10 see no reason that the distance limitations are way
11 beyond any that are specified in the regulation sought.
12 I see no merit in the objections for force pooling from
13 the Balls. I will put that in the form of a motion if so
14 desired.

15 MR. CHAIRMAN: I think that is appropriate, that the objection
16 be denied.

17 MR. EVANS: That the objections be denied.

18 MR. KELLY: I'll second it.

19 MR. CHAIRMAN: There's a motion and a second. Any further
20 comment or questions? All in favor say yes. (ALL
21 AFFIRM.) Opposed say no. (NONE.) The objections are
22 denied. The motion of counsel for EREX with regard to
23 the procedural objections, I believe in the face of that
24 dies and need not be taken up. Is there additional
25 motion with regard to the pooling application itself?

1 MR. EVANS: Mr. Chairman, I move that we grant the petition to
2 modify and amend the previous pooling order, to grant
3 EREX's petition.

4 MR. MCGLOTHLIN: Second.

5 MR. CHAIRMAN: There is a motion by Mr. Evans and a second by
6 Mr. McGlothlin. Any additional discussion?

7 MS. RIGGS: I have a question and that is Exhibit B renames
8 all parties or respondents. Does that mean that the modifi-
9 cation will grant a new election to all respondents --
10 extend the election period?

11 MR. TWEED: It is my understanding that it would not and that
12 was not our intent in making the request, Ms. Riggs.

13 MS. RIGGS: So this Exhibit B which normally gets attached to
14 your pooling order would not be the Exhibit B that you're
15 proposing be used?

16 MR. TWEED: Well, I believe that the Exhibit B is necessary as
17 it stands because it reflects a differing interest of the
18 Balls and Counts as well as a change in lease status to
19 the other two. However, I don't think that having an
20 Exhibit B that shows, I guess, the correct respective
21 interest of the people automatically invokes an expansion
22 of the election period for them when the new election
23 order is promulgated by the Board.

24 MS. RIGGS: So you're saying that the modification would only
25 extend the right of election to the Balls?

1 MR. TWEED: That's my understanding. I believe that's
2 correct. And it would be a full election time period.
3 MS. RIGGS: That's consistent with what the Board has done in
4 the past with repooling orders.
5 MR. CHAIRMAN: With that clarification, Board, any further
6 discussion? All in favor signify by saying yes. (ALL
7 AFFIRM.) Opposed say no. (NONE.) The motion is passed.
8 Counsel for the Board will prepare an order in accordance
9 with the motion.

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ITEM XII

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3 MR. CHAIRMAN: Is there anyone here on behalf of Pauline
4 Childress? This is VGOB-93/05/18-0372. We are passing
5 over the consideration of this item at the present time
6 as well as other items on behalf of Buchanan Production
7 Company and we're moving to Item XII on the docket which
8 is docket number VGOB-93/05/18-0377 which is a petition
9 for force pooling under Section 45.1-361.21 by Equitable
10 Resources Exploration for the V-1835 well located on the
11 Coeburn quadrangle, Lipps District, Wise County, Virgin-
12 ia. All persons who wish to be heard in this matter
13 please so indicate. Are you -- you are to be heard, is
14 that correct?

15 MR. LAWSON: Yes, sir.

16 MR. CHAIRMAN: Would you come on up here, please. How do you
17 do, sir. Your name?

18 MR. LAWSON: Clonnie Lawson.

19 MR. CHAIRMAN: Mr. Lawson, the petitioner generally goes
20 first, presents his evidence. You have the right during
21 the course of that once they have presented their
22 evidence to ask questions of their witnesses. At your
23 wish you also have at the conclusion of their evidence --
24 if you have an objection or other matters you wish to
25 put on in your own behalf and you also have the right to

1 make statements and address the Board as you wish.
2 MR. LAWSON: I'm also here representing my brother, Claude
3 Lawson.
4 MR. CHAIRMAN: Okay. You will be testifying, I assume?
5 MR. LAWSON: I will be objecting to certain clauses or certain
6 portions of this thing.
7 MR. CHAIRMAN: All persons who will be testifying in this
8 matter now need to be sworn in, if the Clerk would please
9 do so.
10 COURT REPORTER: (Swears witnesses.)
11 MR. CHAIRMAN: If you would, please identify yourself again
12 and proceed.
13 MR. TWEED: Doug Tweed along with Jim Kiser on behalf of the
14 applicant, Equitable Resources. Our witnesses will be
15 Dennis Baker and Bob Dahlin, both of whom have been
16 previously sworn today and we would request would be
17 treated as sworn. This is a force pooling application
18 for a conventional gas well. For clarification as to Mr.
19 Clonnie Lawson, he and his brother Claude Lawson and
20 their respective wives each own a one-third interest in
21 the undivided tract 6 with respect to this plat. That
22 would have Mr. Clonnie Lawson and his wife with approxi-
23 mately a 4.76 percent interest in the unit and his
24 brother and his wife with a similar interest in the unit.
25

1
2 DENNIS BAKER

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

6 DIRECT EXAMINATION
7

8 BY MR. TWEED:

9 Q. Mr. Baker, what is your position with EREX, please?

10 A. Leasing supervisor.

11 Q. Do your responsibilities include the lands that are
12 involved with this drilling unit and the surrounding
13 area?

14 A. Yes. That's correct.

15 Q. Are you familiar with this application?

16 A. Yes, I am.

17 Q. And is Equitable seeking to force pool the drilling
18 rights underlying this unit as depicted at Exhibit A of
19 the application?

20 A. Yes. That's correct.

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

23 A. Yes, they do.

24 Q. I believe in this particular case Exhibit B that was
25 filed with the application remains unchanged and there is

1 no amendment, is that correct?

2 A. That is correct.

3 Q. I believe that the interest that Equitable has by lease
4 or otherwise is 90.47 percent?

5 A. That's correct.

6 Q. And that the unleased portion for the purpose of this
7 pooling application is approximately 9.53 percent?

8 A. That's correct.

9 Q. And all of these unleased parties are set forth in the
10 Exhibit B, correct?

11 A. Yes.

12 Q. Prior to filing the application were efforts made to
13 contact each of the respondents in attempt to work out an
14 agreement regarding the development of the units involv-
15 ed?

16 A. Yes, there was.

17 Q. And has that effort continued since the filing of the
18 application?

19 A. Yes.

20 Q. I believe that that includes efforts that were made by
21 Equitable to meet with and attempt to negotiate or obtain
22 a voluntary lease from Clonnie Lawson and his wife and
23 Claude Lawson and his wife?

24 A. Yes. That's correct.

25 Q. And those efforts were unsuccessful, correct?

- 1 A. That's correct.
- 2 Q. In the event of any individual respondents where they
3 were deceased or their whereabouts were unknown were
4 efforts made to determine the names and addresses and
5 whereabouts of successors or other locations?
- 6 A. That's correct.
- 7 Q. Were reasonable and diligent efforts made and sources
8 checked to identify and locate unknown heirs to include
9 primary sources such as deed records, probate records,
10 assessors records, treasurers records and secondary
11 sources such as telephone directories, city directories,
12 family and friends?
- 13 A. Yes.
- 14 Q. In your professional opinion was due diligence exercised
15 to locate each of the respondents named herein?
- 16 A. Yes.
- 17 Q. And the last known addresses of respondents are reflected
18 in Exhibit B?
- 19 A. That's correct.
- 20 Q. Is Equitable seeking to force pool the drilling rights of
21 each individual respondent if living and if deceased, the
22 unknown successor or successors, to any deceased individu-
23 al respondent?
- 24 A. Yes.
- 25 Q. Is Equitable seeking to force pool the drilling rights of

1 the person designated as trustee if acting in that
2 capacity or if not acting in such a capacity the drilling
3 rights of the successor of the trustee?

4 A. That's correct.

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

8 A. Yes, I am.

9 Q. And what are those?

10 A. A \$5 bonus consideration, five year term, one-eighth
11 royalty.

12 Q. Did you gain your familiarity by acquiring oil and gas
13 leases and other agreements involving the transfer of
14 drilling rights in the units involved here and the
15 surrounding area?

16 A. Yes.

17 Q. In your opinion do these terms represent the fair market
18 value of and a fair and reasonable compensation to be
19 paid for drilling rights within this unit?

20 A. Yes.

21 Q. Based upon that and as to respondents who have not
22 voluntarily agreed to pool do you recommend that such
23 respondents as listed in Exhibit B be allowed the
24 following options with respect to their ownership
25 interest within the unit: 1; Participation. 2; A cash

1 bonus of \$5 net mineral acre plus a one-eighth of eight-
2 eighths royalty or 3; In lieu of cash bonus and one-
3 eighth of eight-eighths royalty a share in the operation
4 of the well on a carried basis as a carried operator
5 under the following conditions, that the carried operator
6 shall be entitled to a share of production from the
7 tracts pooled accruing to his interest exclusive of any
8 royalty or are reserved in any lease assignments thereof
9 or agreements relating thereto of such tracts but only
10 after the proceeds allocable to his share equal either
11 300 percent of the share of such cost allocable to the
12 interest of the carried operator of a leased tract or
13 portion thereof or 200 percent of the share of such cost
14 allocable to the interest of the carried operator of an
15 unleased tract or portion thereof?

16 A. Yes. That's correct.

17 Q. Are you recommending that the order provide that elect-
18 ions of respondents be in writing and sent to the
19 applicant at Equitable Resources Exploration, P.O. Box
20 1983, Kingsport, Tennessee, 37662-1983, attention you?

21 A. Yes. That's correct.

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

24 A. Yes.

25 Q. Do you recommend that the order provide that if no

1 written election is properly made by a respondent that
2 the respondent will be deemed to have elected to cash
3 royalty option in lieu of participation?

4 A. Yes.

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

7 A. Yes.

8 Q. If an unleased respondent elects to participate should
9 that respondent be given forty-five days from the latter
10 of the date of the mailing -- well, forty-five days from
11 the date of the mailing to pay applicant for respondent's
12 proportionate share of well cost?

13 A. Yes, sir.

14 Q. Does applicant expect the party electing to participate
15 to pay in advance that party's share of completed well
16 cost?

17 A. Yes, sir.

18 Q. And should the applicant be allowed sixty days following
19 the recordation date of the order and thereafter annually
20 on that date until production is achieved to pay or
21 tender any cash bonus becoming due under the force
22 pooling order?

23 A. Yes. That's correct.

24 Q. Do you recommend that the order provide that if a
25 respondent elects to participate but fails to pay

1 respondent's proportionate share of well cost satisfact-
2 ory to applicant for the payment of the well cost then
3 the respondent's election to participate should be
4 treated as having been withdrawn and void and such
5 respondent should be treated just as if no initial
6 election had been filed under the force pooling order?

7 A. Yes.

8 Q. Do you recommend that the order provide that where a
9 respondent elects to participate but defaults in regard
10 to the payment of well cost that any cash sum becoming
11 payable to such respondent be paid within sixty days
12 after the last date on which such respondent could have
13 paid or made satisfactory arrangements for the payment of
14 the well cost?

15 A. Yes. That's correct.

16 Q. Do you recommend that the order provide that if the
17 respondent refuses to accept any payment due including
18 any payment due under said order or any payment or
19 royalty or cash bonus or said payment can't be paid to a
20 party for any reason or there's a title defect in the
21 respondent's interest that the operator create an escrow
22 account for the respondent's benefit until the money can
23 be paid or until the title defect is cured to the
24 operator's satisfaction?

25 A. Yes. That's correct.

1 Q. Should Equitable Resources Exploration be named the
2 operator under the order?

3 A. Yes.

4 Q. Were any written objections obtained or received from Mr.
5 Lawson or his brother?

6 A. Not to my knowledge, no.

7 MR. TWEED: I have no further questions for this witness.

8 MR. CHAIRMAN: Mr. Lawson, do you have any questions of this
9 witness.

10 MR. LAWSON: Yes. I have a couple of questions on the
11 objections. We objected to the man, but we never got any
12 further than just talking to him over the phone. At the
13 time this was leasing the property that my brother and I
14 own and we had some stipulations that we wanted in there.
15 The land when they were through was to be returned to its
16 present condition or as close as possible. The cessation
17 of pumping or production, we wanted to -- after a period
18 of time that this lease would expire, not to be used as a
19 permanent base there. You can have operations without
20 production. I notice in here that it says that --

21 MR. CHAIRMAN: Sir, would the well location be located on your
22 acreage on your surface -- the actual well location to be
23 located on your surface?

24 MR. LAWSON: At the time they indicated that, but apparently
25 from this it's just across the line.

1 MR. CHAIRMAN: So the restoration would not be a problem in
2 that case, would it not?
3 MR. LAWSON: Provided they stay over on their side.
4 MR. CHAIRMAN: Yes, sir.
5 MR. KELLY: I was just going to say that we are in the
6 assumption the well be located where it's shown on the
7 plat, correct?
8 MR. TWEED: The force pooling order is no good if it's not.
9 MR. EVANS: That's correct.
10 MR. KELLY: Any change of that would require another applica-
11 tion.
12 MR. TWEED: Yes, sir.
13 MR. CHAIRMAN: In other words, what they're saying, of course,
14 is this force pooling application if granted is for that
15 specific well location which would not be on your
16 surface.
17 MR. EVANS: They can't move on you it without coming back and
18 asking us.
19 MR. LAWSON: Well, they can drill the well here but still come
20 right over here across the line using the property as
21 storage or whatever.
22 MR. CHAIRMAN: Do you mean the surface storage?
23 MR. LAWSON: Yes. This was what we were fighting with the
24 leasing arrangement initially. If they're going to drill
25 it keep them on the other side.

1 MR. CHAIRMAN: Yes, sir. Anything else?

2 MR. LAWSON: Well, we object to them taking the gas that we
3 don't want to sell.

4 MR. CHAIRMAN: Yes, sir. Well, I understand that. Of course,
5 the law provides for that. You understand that if they
6 meet the criteria set forth in the law for a pooling
7 application they're entitled to it.

8 MR. LAWSON: Well, that's the same as me walking up to him and
9 I tell him, "Jack, I want your car. I'm going to give
10 you \$15 for it." and I'd be enforced to accept the \$15.

11 MR. CHAIRMAN: That is absolutely correct. The only differ-
12 ence is this Board gets to set the terms.

13 MR. LAWSON: Okay.

14 MR. CHAIRMAN: But in some degree you're right. I mean, the
15 law provides that a person making this petition, if they
16 meet the criteria for it, we have the authority and they
17 are entitled as a matter of law if they meet the criteria
18 basically to lease or transfer your gas rights to them
19 and we set the terms upon which you get paid. That is
20 correct. Of course, you're in the position if you wish
21 to do so to present any evidence as to what those terms
22 should be, how much you should be paid. They'll present
23 evidence to that and you can also.

24 MR. LAWSON: I don't know what to think. I'm sorry.

25 MR. CHAIRMAN: Do you have any further comments?

1 MR. LAWSON: No. That's the extent of it.

2 MR. CHAIRMAN: Okay. Do you want to proceed with your next
3 witness?

4 MR. TWEED: Yes, sir.

5 (Witness stands aside.)

6

7 BOB DAHLIN

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

10

11 DIRECT EXAMINATION

12

13 BY MR. TWEED:

14 Q. Mr. Dahlin, state your full name for the record, please.

15 A. Robert A. Dahlin.

16 Q. And you are an operations specialist with Equitable?

17 A. I am.

18 Q. And you've testified before this Board as has Mr. Baker
19 and your qualifications as an expert witness have
20 previously been accepted?

21 A. Yes, sir.

22 Q. Are you familiar with this application and the lands
23 involved here and in the surrounding area?

24 A. Yes, I am.

25 Q. Are you familiar with the proposed plan of development

1 for this unit?

2 A. I am.

3 Q. Let me ask you if this is the total depth and seams
4 involved. 5,500 feet including formations consistent
5 with the well work permit that was filed and to include
6 the upper Devonian Shells, Burea, Weir, Big Lime, Raven
7 Cliff, Maxim?

8 A. Yes, sir.

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

11 A. It will.

12 Q. Is EREX requesting the force pooling of the conventional
13 gas reserves not only to include the designated forma-
14 tions but any other formations excluding coal formations
15 which may be between those formations designated from the
16 surface to the total depth drilled?

17 A. Yes, sir.

18 Q. And will this well be at a legal location?

19 A. It will.

20 Q. Are the estimated reserves 450 million cubic feet?

21 A. Yes, sir.

22 Q. Are you familiar with the well cost for the proposed
23 unit?

24 A. I am.

25 Q. Has a signed AFE been reviewed and submitted to the

1 Board?

2 A. Yes, sir, it has.

3 Q. Was this AFE prepared by an engineering department

4 knowledgeable in the preparation of AFEs and knowledge-

5 able in regard to well cost in this area?

6 A. Yes, sir.

7 Q. Was this AFE prepared in accordance with the quality

8 control system that's previous been described to this

9 Board by which EREX does to insure accuracy?

10 A. Yes, sir, it has.

11 Q. Does the AFE represent a reasonable estimate of the well

12 cost for the proposed unit under the plan of development?

13 A. Yes, sir.

14 Q. Are the dry hole costs \$142,340?

15 A. That's correct.

16 Q. And the completed well costs \$264,080?

17 A. Yes, sir.

18 Q. Do these costs anticipate a multiple completion?

19 A. They do.

20 Q. Do they include a reasonable charge for supervision?

21 A. Yes, sir.

22 Q. In your professional opinion will the granting of this

23 application be in the best interest of conservation,

24 prevent of waste, and protection of correlative rights?

25 A. It will.

1 MR. TWEED: I have no further questions of this witness at
2 this time.

3 (Witness stands aside.)

4 MR. CHAIRMAN: Mr. Lawson?

5 MR. LAWSON: I did notice one thing on Exhibit B here. The
6 three brothers are supposedly -- the unit interest is
7 4.77, 4.77, 4.76. They're not equal.

8 MR. TWEED: Mathematically speaking we have to round off for
9 the purpose of calculating. I've talked to EREX person-
10 nel before and the computer will make sure that they're
11 equal. But when you round off in order to add it up to
12 100 on Exhibit B somebody had to be a six because
13 otherwise the decimals go out forever.

14 MR. MCGLOTHLIN: We've had other Exhibit Bs in here that go on
15 for two or three decimals -- four or five decimal points.
16 It can be mathematically taken out to show.

17 MR. TWEED: It can. You just have to extend it forever. We
18 just had to come up with a judgement for Exhibit B. But
19 Exhibit B -- the computer will generate based upon the
20 size of the unit by formula in the computer. So if you
21 have equal units by size in undivided tracts you'll get
22 equal payment. Exhibit B is again rounded off to 100
23 because you've just got to round it off somewhere. And
24 no matter how we do it it's going to end up somebody --

25 MR. MCGLOTHLIN: Mr. Tweed, is that also the case in tract 8

1 with a .003, .004, .004, .004?

2 MR. TWEED: I'm being told that the decimal order in the
3 division order that defines payment runs it up forever as
4 well. But Exhibit B is not intended to take equal
5 interest and make them unequal.

6 MR. CHAIRMAN: Yeah, I understand. Let me ask you, do you
7 represent to us that the expression on Exhibit B of the
8 fractional difference between these three interests is no
9 attempt to make any statement or make any conclusion that
10 they're unequal?

11 MR. TWEED: That is correct.

12 MR. CHAIRMAN: And it is your representation further to us
13 that in the division order and the actual allocation of
14 production that these interests will be treated equally?

15 MR. TWEED: That's correct. We just have to round them off
16 somewhere, Mr. Lawson.

17 MR. MCGLOTHLIN: One other question. Mr. Tweed, where is the
18 access road to this well or the location? Has it been
19 planned?

20 MR. TWEED: It's my understanding that the plan of development
21 and the designation of the access road has not been filed
22 yet. But obviously if he is a surface owner and has
23 rights with respect to an access he will get notice and
24 an opportunity to object and be heard. I don't have any
25 information that there's a plan to go on his tract, but

1 he will have a full due process right if, in fact,
2 something is filed along those lines. I don't think it's
3 applicable today. I just don't know, Mr. McGlothlin.
4 MR. CHAIRMAN: Further questions?
5 (Witness stands aside.)
6 MR. CHAIRMAN: Further witnesses?
7 MR. TWEED: No, sir. We would request approval.
8 MR. CHAIRMAN: No further evidence?
9 MR. TWEED: No, sir.
10 MR. CHAIRMAN: I was going to ask you a question to help me a
11 minute. (Pause.) That's okay. I just resolved it on my
12 own. Any further statements?
13 MR. LAWSON: I know where his access road is.
14 MR. CHAIRMAN: Where is it?
15 MR. LAWSON: Going up the valley there and on our property.
16 MR. CHAIRMAN: Across your property?
17 MR. LAWSON: Uh-huh. The road goes almost to the top of the
18 mountain.
19 MR. MCGLOTHLIN: Mr. Chairman, I'd like to add that it's
20 difficult for the Board to tell a whole lot on a plat map
21 when -- if these could be encompassed or incorporated
22 with a topo map it would be very helpful in the future.
23 MR. CHAIRMAN: Mr. Lawson, let me ask you a question. You
24 have a brother who has signed a lease with EREX, have you
25 not?

1 MR. LAWSON: Yes. That's Alton Lawson.

2 MR. CHAIRMAN: Yes, sir. And you and another brother and he
3 all own joint interest in this tract, is that correct?

4 MR. LAWSON: (Nods head in affirmative response.)

5 MR. CHAIRMAN: So EREX has, in fact, acquired an interest in
6 this tract by virtue of that lease, have they not? EREX
7 has acquired an interest in your tract by virtue of the
8 lease of a fractional interest in the tract from your
9 brother?

10 MR. LAWSON: Right.

11 MR. CHAIRMAN: Okay. And you understand that that does give
12 them certain rights through that lease, not through the
13 order of this Board?

14 MR. LAWSON: Well, the property is inherited from my father.
15 It's never been ran through the courts or whatever. So I
16 think they got a can of worms.

17 MR. CHAIRMAN: I'm just pointing out to you that they acquire
18 by virtue of the lease from him certain rights to this
19 undivided interest in addition to whatever they get from
20 us in terms of just a force pooling order. Any further
21 comments by anyone? Questions, members of the Board?

22 MR. EVANS: Mr. Chairman, I make a motion that based on the
23 evidence presented that the objections to the petition be
24 denied and the petition be granted as submitted for force
25 pooling.

1 MR. KELLY: Second.

2 MR. CHAIRMAN: There's a motion and a second. Are there any
3 other comments or questions?

4 MR. MCGLOTHLIN: You might relate to Mr. Lawson that the Board
5 -- it's become the Board's feeling that once we force
6 pool an area we do not grant surface rights to the oil
7 and gas company.

8 MR. TWEED: I would like to make a request with respect to
9 that and I will simply acknowledge at this point that I
10 think it's premature to determine whether Mr. Lawson has
11 any surface right objections because there's no evidence
12 that such exists now. I know the Board is contemplating
13 an information brochure that may state a position of this
14 Board, but I also know that the Board has requested input
15 from operators and others with respect to legal implica-
16 tion of that one way or the other. And I don't think a
17 final determination has been made and I think that might
18 be premature as well and the submissions of law and
19 argument, in fact, as they come into play. I think it is
20 very clear here that if there are surface right objec-
21 tions that are going to come up to play Mr. Lawson is
22 going to be given notice and due process and an opportun-
23 ity to be heard and we're going to try and work it out
24 with him if we can if, in fact, there's such an issue.
25 We have no real reason to believe as we sit here today

1 that there is.

2 MR. CHAIRMAN: Out of curiosity, you say there is a pending
3 matter related to whether there are any surface rights
4 granted as a part of these?

5 MR. TWEED: My understanding from last month's docket is that
6 Mr. Wampler read portions of a draft information pamphlet
7 that included information to the public and an aspect of
8 that were references as to what the Board might state are
9 the surface right implications or lack of implications
10 for a force pooling order. Mr. Wampler and the Board, to
11 my understanding, have solicited comment from the public
12 to include interested coal operators, etcetera, as to
13 that language and whether it's appropriate or inappropriate.
14 And no final decision has been made pending the
15 receipt of those comments and an opportunity to be heard.

16 MR. CHAIRMAN: Yeah, as to the information contained in that.
17 Okay. I think it's in mind of the Board that the issue
18 of whether there are any surface rights granted pursuant
19 to any pooling order is something that has been decided
20 for some time. There is a motion and a second. Any
21 further comments? All in favor signify by saying yes.
22 (ALL AFFIRM.) Opposed say no. (NONE.) The motion
23 passed. The Attorney General will draft an order in
24 accordance with this motion.

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

ITEM VII

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MR. CHAIRMAN: The next item for consideration is Item VII which is docket number VGOB-93/05/18-0372. All parties to be heard in this matter should please present themselves. Is there anyone here in this matter on behalf of Pauline Childress?

MR. FULMER: Mr. Chairman, Ms. Childress contacted our office yesterday and said she would not be here today.

MR. CHAIRMAN: Did she give any reason?

MR. FULMER: I can only speculate to some personal knowledge that health wise -- she's complained about her health quite a few times.

MR. CHAIRMAN: Did she indicate that anyone would attending on her behalf?

MR. FULMER: Not as far as I know.

MR. SWARTZ: Her attorney filed the appeal, though, I think you should be aware of. She had counsel at this hearing and the appeal that is before you all today. Mark Swartz appearing for OXY. But the appeal that is before you today was filed by her attorney, Mr. Antannuci, and he's not here either.

MR. CHAIRMAN: Okay.

MR. SWARTZ: I would move to dismiss since they have the burden of proof and they're not here and they have not

1 moved for a continuance or adjournment.

2 MR. CHAIRMAN: In your conversation with her --

3 MR. FULMER: I didn't have the conversation with her. She

4 called my office and spoke to my secretary.

5 MR. CHAIRMAN: Was any part of that message any request for

6 continuance or dismissal or delay or any --

7 MR. FULMER: Not to my knowledge.

8 MR. CHAIRMAN: You have no knowledge of that?

9 MR. FULMER: Just the fact that she said she would not be

10 here. There was no mention of a continuance or a request

11 for a continuance.

12 MR. CHAIRMAN: I, of course, have no knowledge. Ms. Riggs,

13 are you aware of any other contact with the --

14 MS. RIGGS: I've had no contact.

15 MR. CHAIRMAN: It is correct, is it not, that the appealing

16 party has the burden of proof?

17 MS. RIGGS: That would be correct.

18 MR. CHAIRMAN: I suppose the correct thing to do would be to

19 request if there is any evidence to be presented by the

20 appealing party in this matter. If there is not it would

21 appear that there is no evidence to support this appeal.

22 I have a motion from the party appealed against that it

23 be dismissed for the lack of evidence. There being no

24 evidence to support any other method. I would entertain

25 a motion by this Board that for their failure of appear-

1 ance and evidence to support the appeal we have no
2 alternative but to dismiss it.
3 MR. EVANS: So moved.
4 MR. KELLY: Second.
5 MR. CHAIRMAN: Any questions or comments? Let's take a vote.
6 Any other comments? Anything from you, Mr. Swartz?
7 MR. SWARTZ: No.
8 MR. CHAIRMAN: All in favor signify by saying yes. (ALL
9 AFFIRM.) Opposed say no. (NONE.) The motion passes.

ITEM VIII, IX, X, XI

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2
3 MR. CHAIRMAN: The next matter is Item VIII, docket number
4 VGOB-93/05/18-0373, which is a petition for force pooling
5 under Section 45.1-361.22 by Buchanan Production Company
6 for the 0-3 unit located on the Vansant quadrangle, South
7 Grundy District of Buchanan County, Virginia. Is the
8 petitioner ready?

9 MR. SWARTZ: Mark A. Swartz and Mary Jo Allen appearing for
10 Buchanan Production and OXY, USA. We're here and
11 prepared to proceed with regard to Item XIII. Before we
12 do that I would like to tell the Board that Items XIII,
13 IX, X, and XI all involve a shift of interest based on a
14 title report that we've received. Initially all four of
15 these units were pooled by the Board prior to today and
16 when they were first pooled the Big Prater Primitive
17 Baptist Church was a party. It subsequently developed
18 that they had no interest in the tract that formed a part
19 of these four units and that it was Norfolk & Southern.
20 So each one of these four applications is to force pool
21 Norfolk-Southern Corporation and to modify the Big Prater
22 Primitive Baptist Church interest to zero since they did
23 not, based on the title opinion that we have received,
24 acquire an interest. If we could consolidate these, each
25 are in two rows and they involve the same parties, the

1 same notices, I think we could handle them much more
2 efficiently if you would favorably entertain my motion to
3 consolidate these four matters.

4 MR. CHAIRMAN: There is a motion by Mark Swartz on behalf of
5 Buchanan Production Company for treating simultaneously
6 the -- as I understand it actually what you want to do is
7 consolidate the presentation of evidence?

8 MR. SWARTZ: Yes.

9 MR. CHAIRMAN: Not consolidate the petitions themselves?

10 MR. SWARTZ: Correct.

11 MR. CHAIRMAN: And that you wish to do so with regard to not
12 only VGOB-93/05/18-0373 but also 0374, 0375 and 0376 in
13 that all matters relating to this share certain identiti-
14 es, specifically the removal of what was considered to be
15 a claimant or owner and the replacement of that with the
16 Norfolk-Southern Corporation?

17 MR. SWARTZ: Correct.

18 MR. CHAIRMAN: So all matters of evidence in relation to these
19 would be similar?

20 MR. SWARTZ: Yes, sir.

21 MR. CHAIRMAN: Is there any objection to that? Anyone? Okay.
22 Mr. Swartz, on that basis we will proceed.

23 MR. SWARTZ: I would also like to request that with regard to
24 each of these units the prior testimony be incorporated
25 from the prior force pooling hearing since we have no one

1 appearing today for Norfolk-Southern or the Big Prater
2 Church. That would further expedite matters. I need to
3 tell you when the hearings occurred and what I'm asking
4 be incorporated. With regard to unit 0-3 which is
5 currently 93/05/18-0373, the first hearing was held with
6 regard to this unit on September 15, 1992. At that time
7 the docket number was 92/09/15-0261. There was a hearing
8 on the 15th of September. It was continued to October
9 20th, 1992. On October 20th, 1992 the Board ordered the
10 unit pooled. Thereafter, the Board order was entered, a
11 pooling order was entered on November 30th. It was
12 recorded in Buchanan County December 8th, 1992. I would
13 request that with regard to unit 0-3 the prior proceed-
14 ings at the September 15th hearing and the October 20th
15 hearing be incorporated to avoid the necessity of
16 repeating all the testimony. With regard to unit 0-4 --

17 MR. CHAIRMAN: Wait a minute. Mr. Swartz has requested the
18 Board incorporate with regard to the current VGOB-0373
19 the earlier evidence with regard to 0261, is that
20 correct?

21 MR. SWARTZ: Right, but it would be 92/09/15-0261.

22 MR. CHAIRMAN: Right. Any objection to that?

23 MR. EVANS: The only change is swapping out the Big Prater
24 Primitive Baptist Church as an owner in tract 6 and
25 substituting Norfolk-Southern Corporation with that

1 interest, correct?

2 MR. SWARTZ: Correct.

3 MR. EVANS: I have no problem with that.

4 MR. CHAIRMAN: Without objection it is so ordered.

5 MR. SWARTZ: With regard to unit 0-4, this was as I indicated
6 previously a unit that was force pooled by the Board.
7 The docket number originally for unit 0-4 was 92/09/15-
8 0257. That matter was heard on September 15, 1992 by the
9 Board. The pooling order was entered on December 14,
10 1992. It was recorded in Buchanan County on December 22,
11 1992. I would request with regard to unit 0-4 that the
12 prior testimony and exhibits from the September 15th
13 hearing under that docket number that I've referenced be
14 incorporated as well today.

15 MR. CHAIRMAN: Any objections?

16 MR. MCGLOTHLIN: Mr. Swartz, does Big Prater Primitive Baptist
17 Church have any property in the tract at all? Are they
18 force pooled under a different --

19 MR. SWARTZ: No. It's -- well, let me put Mr. Wirth under
20 oath.

21 MR. CHAIRMAN: If we might, Kevin, can we get the procedural
22 things and then we'll direct questions as to --

23 MR. MCGLOTHLIN: I needed clarification before we go on and
24 incorporate the testimony.

25 MR. CHAIRMAN: Okay. Fine.

1 MR. SWARTZ: They do not. It will be the testimony that Big
2 Prater Baptist Church does not have a mineral interest in
3 any of the units based on the certified title opinions
4 that my client has received and there will be testimony
5 to that effect.

6 MR. MCGLOTHLIN: Surface only?

7 MR. SWARTZ: Whether or not they own surface Mr. Wirth can
8 address that. I'm not sure at this point.

9 MR. MCGLOTHLIN: That answered my question. Thanks.

10 MR. CHAIRMAN: So with regard to the 0-4 unit we have a
11 request that the testimony and evidence previously
12 presented in VGOB-92/09/15-0257 be incorporated herein
13 with regard to this petition. Without objection so
14 ruled.

15 MR. SWARTZ: With regard to unit N-3 on today's docket, this
16 unit was also previously force pooled by this Board. The
17 original docket number was 92/09/15-0260. The first
18 hearing with regard to that docket number was September
19 15, 1992. That matter was continued and a further
20 hearing was held on October 20, 1992. At the conclusion
21 of that hearing the Board order the unit pooled. The
22 pooling order was entered on November 30, 1992. It was
23 recorded in Buchanan County on December 8, 1992. I would
24 request that the testimony from the September 15th and
25 October 20th, 1992 hearings and any exhibits tendered

1 during those hearings be incorporated for purposes of the
2 hearing with regard to N-3 today.

3 MR. CHAIRMAN: Board? No objections. So ruled.

4 MR. SWARTZ: Lastly with regard to N-4, this again was force
5 pooled prior to today by this Board. The original docket
6 number with regard to N-4 was 92/09/15-0256. The hearing
7 with regard to that matter was held on September 15,
8 1992. At that hearing the Board ordered this unit
9 pooled. The Board's order pooling the unit was entered
10 on December 14, 1992 and it was recorded in Buchanan
11 County on December 22, 1992. I would request that the
12 testimony offered at those hearings be incorporated for
13 purposes of the hearing today.

14 MR. CHAIRMAN: Board? Without objection, so ordered. Mr.
15 Swartz, at this time if you will, I think it is appropri-
16 ate since I previously called Item XIII that I also call
17 Items IX, X and XI which are docket numbers VGOB-93/05/-
18 18-0374, VGOB-93/05/18-0375 and VGOB-93/05/18-0376. Is
19 there anyone here to be heard with regard to those docket
20 numbers? If so please so indicate. Okay. Mr. Swartz,
21 please continue.

22 MR. SWARTZ: One more housekeeping matter for Sandy's benefit
23 in drafting the order. The N-3 unit was amended in
24 December. The docket number at that point with regard to
25 N-3 was 92/12/15-0318. The hearing was obviously

1 December 15th. It was amended to add two parties who
2 surfaced as claimants. So probably in dealing with
3 pending orders on this unit you need to be aware of that.
4 I'd like to start with Mr. Wirth if I might.

5 MR. CHAIRMAN: Are either one of you going to testify also?

6 MR. SWARTZ: Sam is going to testify.

7 MR. CHAIRMAN: Why don't you swear him in also then.

8 COURT REPORTER: (Swears witnesses.)
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. Mr. Wirth, could you state your name for us for the
18 record?

19 A. Martin E. Wirth.

20 Q. Who do you work for?

21 A. OXY, USA.

22 Q. Has OXY, USA been delegated certain responsibilities by
23 Buchanan Production Company?

24 A. That is correct.

25 Q. And have some of those responsibilities specifically been

1 delegated to you?

2 A. That is correct.

3 Q. And what are those?

4 A. Land manager, basically all duties and responsibilities
5 to oversee and supervise activities in land and regulat-
6 ory matters.

7 Q. Have you been responsible for and been involved in
8 clearing title, checking title, obtaining certified title
9 opinions with regard to the tracts in these four units
10 that we're talking about today?

11 A. Yes, I have.

12 Q. Could you explain to the Board what has happened to
13 necessitate the amendments with regard to these three
14 units?

15 A. Sure. If you'll open to O-3 which is Exhibit A, the
16 first one he called on the docket, maybe I can help
17 explain. N-3, O-3, N-4 and O4 -- you notice Exhibit A of
18 O-3 shows the 80 acre grid. You also notice that it
19 falls on Big Prater Creek, also Highway 83 state major
20 traffic through Buchanan County and we also noted the
21 Norfolk-Southern Railroad as it kind of twists through
22 the valleys throughout Buchanan County. You also notice
23 tract 6 which would be -- looking at the top right hand
24 side or northeast. That is the tract we're talking
25 about in all four units. That comprises of one-quarter

1 of an acre. The Big Prater Primitive Baptist Church in
2 our (Inaudible.) stand-up opinion -- we felt like they
3 owned the oil and the gas and the surface. But the title
4 examination by the attorneys and everything in certain
5 deeds found that it was surface only to answer your
6 question, Mr. McGlothlin. This falls within -- as you
7 see in that one corner, it just happened to fall within
8 all four units. Therefore, their acreage is owned by
9 Norfolk-Southern Corporation and therefore we're asking
10 to amend all four applications to show that interest
11 instead of Big Prater Primitive Baptist Church.

12 MR. SWARTZ: I might also point out to the Board and tell you
13 the tact that we've taken so that you're aware of it.
14 You may have a different preference, but the way we have
15 handled this interest in each of these four applications
16 is to amend Page 4 of Exhibit G. We're not dismissing
17 Big Prater. We're amending their interest to zero. You
18 may or may not recall that some folks from the church
19 showed up at the first hearings. I think they may have
20 come because there was a problem with the name. I don't
21 recall that they had any objections. But it is our view
22 that we are more comfortable amending the order to show
23 their interest as zero rather than requesting that you
24 dismiss them. I think you have the option. I just
25 wanted to alert you to this. In effect, this is a

1 dismissal, but they are still a party should they want to
2 assert a claim. Their opinions differ from our title
3 examination. They'll still be a party. To the extend
4 escrow is required they'll be shown in the orders, I
5 would imagine. But we're not asking that they be
6 dismissed. We're simply asking that Page 4 of Exhibit G
7 in each of these units be amended to modify their
8 interest to a zero interest and just swap their interest
9 into Norfolk-Southern just so you're aware of how we have
10 approached this.

11 MR. EVANS: They still are listed as potential owners, surface
12 owners?

13 MR. SWARTZ: Well, they're listed on Exhibit B but their
14 interest is shown as zero. Exhibit B is where we list
15 claimants.

16 MR. EVANS: But they have not asserted a claim based on
17 surface ownership?

18 MR. WIRTH: As Mark explained, they did show up. There was a
19 problem with the name Big Prater and Primitive Baptist
20 Church. There's two churches with almost the exact same
21 name.

22 MR. EVANS: I do recall that.

23 MR. WIRTH: So we did at that time discussing leasing and
24 everything but the trustees of the church decided not to
25 lease. And then our examinations from the title says the

1 oil and gas interest which is different than the coal
2 interest. Keep in mind for the Board, this is a con-
3 flicting claim. There is a possibility they still
4 recognize that they may have a claim to the methane and
5 we did not want to just say no, that we will recognize
6 your claim and once adjudicated or if the parties get
7 together and methane result that can come out of escrow
8 can come out to the proper party. But we just didn't
9 want to shut the door on the Lord.

10 (Witness stands aside.)

11 MR. SWARTZ: I need to ask Mr. Gordon a few questions.

12 MR. CHAIRMAN: I just think with regard to that that the fact
13 that you keep them in since the issue is a title issue is
14 entirely consistent and our counsel points out to us that
15 it has the effect of us not making a decision based on
16 title -

17 MR. SWARTZ: Right.

18 MR. CHAIRMAN: -- and keeping them in is entirely consistent
19 with that. Thank you.

20 MR. SWARTZ: We're comfortable with that, but I wanted you to
21 understand that there is a zero there and it's probably
22 the first time we've done this.

23 MR. CHAIRMAN: Well, since they've been a party there's
24 potential for a claim and I think that to dismiss them,
25 at least on our behalf, would be taking some action based

1 upon a title question. I think leaving them in is
2 entirely consistent, as Ms. Riggs points out, with our
3 preexisting doctrines relating to not doing anything
4 relating to title.

5 MR. SWARTZ: And that's what we're asking you to do. So
6 apparently that's okay.

7
8 SAMUEL EDWARD GORDON

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

11
12 DIRECT EXAMINATION

13
14 BY MR. SWARTZ:

15 Q. Can you state your name for us, Sam?

16 A. Samuel Edward Gordon.

17 Q. And who do you work for?

18 A. OXY, USA, Inc.

19 Q. Have you also been delegated specific duties with regard
20 to the affairs of Buchanan Production Company in your
21 capacity as an employee of OXY, USA?

22 A. Yes, I have. I've been delegated as regulatory manager.

23 Q. Did you prepare the notices of application and each of
24 the applications with regard to these four units?

25 A. Yes, I did.

1 Q. Did you cause them to be mailed to Norfolk-Southern and
2 the Big Prater Primitive Baptist Church?
3 A. Yes, I did.
4 Q. Did you mail them certified mail?
5 A. Yes, I did.
6 Q. Did you get green cards back with regard to all four
7 applications from the two respondents?
8 A. Yes, we did.
9 Q. And those were filed with Mr. Fulmer's office -- or proof
10 of mailing was filed with Mr. Fulmer's office, Exhibit F,
11 as of when?
12 A. On May 10th of this year.
13 Q. Did you publish or cause to be published the notice of
14 hearing and the small map that accompanies the notice of
15 hearing in any newspaper with regard to each of these
16 four units?
17 A. Yes, we did. We published in the Virginia Mountaineer
18 on April 29, 1993.
19 Q. Did you file a certificate of publication with Mr.
20 Fulmer's office and if so when?
21 A. Yes, we did, on April 30th, 1993.
22 Q. In drafting and preparing the exhibits -- I'm really
23 interested in Exhibit B and Exhibit G to the various
24 applications -- did you, in fact, show in each instance
25 the interest of Big Prater as zero percent?

1 A. Yes, I did.

2 Q. And that was because of the title information that Mr.

3 Wirth has described?

4 A. Yes. That's correct.

5 Q. And did you simply then exchange the interest that had

6 been previously reported as a Big Prater Primitive

7 Baptist Church interest -- simply report the same

8 interest for Norfolk-Southern Corporation?

9 A. That is correct.

10 Q. Are we, in fact, talking about the same small tract that

11 just happens to be in the corner and catch a piece of all

12 four units?

13 A. That is correct.

14 Q. In each of these units are we talking about affecting

15 less than a percentage basically of the oil and gas

16 interest?

17 A. That's correct.

18 Q. By the force pooling application?

19 A. Right.

20 Q. And the only party sought to be force pooled in each of

21 these four applications is Norfolk-Southern Corporation?

22 A. That is correct.

23 Q. Is it true that by exchanging these interests you have

24 not affected the interest of any other parties who were

25 previously force pooled up or down or in any way?

1 A. That is correct.

2 MR. SWARTZ: That's all I have.

3 (Witness stands aside.)

4 MR. CHAIRMAN: Maybe I missed it, but did Mr. Wirth testify
5 that you all attempted to contact Norfolk-Southern about
6 a lease?

7 MR. WIRTH: I've testified previously that for two and a half
8 years we've tried to work with Norfolk. And it brings up
9 a point. I have received a letter saying that it is
10 Norfolk-Southern Corporation. We haven't named them.
11 Record title shows Norfolk-Southern Railroad or Norfolk &
12 Western Railroad. I have named them as they asked but I
13 -- I wish everybody is understood so they don't try
14 something around the table. It does -- the same corpora-
15 tion, the same railroad, and everything. And I explained
16 it to that person and he was suppose to give me title
17 papers but I have not received those yet. I think they
18 just have other pressing matters.

19 MR. CHAIRMAN: Anybody?

20 MS. RIGGS: Does the right of election to be granted under the
21 repooling then only extend to Norfolk-Southern Corpora-
22 tion and not a -- well --

23 MR. SWARTZ: Right.

24 MR. WIRTH: All other parties have made their election.

25 MS. RIGGS: Okay.

1 MR. SWARTZ: And, in fact, I think with regard to these units
2 the supplemental orders and the affidavits of elections
3 have been filed.
4 MR. GORDON: That's correct.
5 MR. SWARTZ: So there's going to be one more round of that
6 with regard to Norfolk-Southern.
7 MR. CHAIRMAN: Out of curiosity, why do you notice them in
8 Atlanta, Spring Street?
9 MR. WIRTH: That is their corporate office. I believe the
10 State Department has directed us for all notices to go
11 there.
12 MR. CHAIRMAN: I was just curious because it's not their
13 corporate headquarters.
14 MR. WIRTH: No. All contracts and real estate and all their
15 minerals and everything are handled out of there and
16 they've requested to be notified there.
17 MR. MCGLOTHLIN: Mr. Wirth, have any of the wells been
18 drilled?
19 MR. WIRTH: This is a gob unit. No wells have been physically
20 drilled in that area that I know of at this time. Island
21 Creek is in preparations and has their mines and have
22 isolated the panels that affect these units, but I don't
23 believe this is one -- well, in fact, I know this is in
24 3-Row. No to answer your question.
25 MR. MCGLOTHLIN: Have any moneys been escrowed so far?

1 MR. WIRTH: Short hole gas escrow has -- the orders -- as soon
2 as we get the supplemental orders the moneys will go to
3 escrow. That is correct. There is short hole production
4 coming out of the 4-Row, I believe, at this time.

5 MR. MCGLOTHLIN: So it's your contention basically we'll be
6 handling Big Prater Primitive as a conflicting claimant?

7 MR. WIRTH: Yes. Island Creek owns the coal. They purchased
8 the coal way back when. They did not purchase the oil
9 and gas or surface with this along this area. So there
10 is a conflicting claim, whether it be Big Prater or
11 whether it be Norfolk-Southern. That moneys will be in
12 escrow.

13 MR. MCGLOTHLIN: Thank you.

14 MR. CHAIRMAN: Further questions or comments? Mr. Swartz,
15 further evidence?

16 MR. SWARTZ: No.

17 MR. CHAIRMAN: Further comments?

18 MR. SWARTZ: No.

19 MR. CHAIRMAN: Further arguments?

20 MR. SWARTZ: I hope I don't need to argue.

21 MR. CHAIRMAN: Board, what's your pleasure?

22 MR. MCGLOTHLIN: I move that we grant the petitions as
23 submitted in regards to VGOB-93/05/18-0373, VGOB-
24 93/05/18-0374, VGOB-93/05/18-0375 and VGOB-93/05/18-0376.

25 MR. EVANS: Second.

1 MR. CHAIRMAN: There's a motion and a second. Any further
2 further comment or questions?
3 MR. HARRIS: Mr. Chairman, is it appropriate to do all four at
4 one time? I know we agreed to hear all four, but it is
5 appropriate to move for approval of all four together?
6 MR. CHAIRMAN: Why don't we for procedural clarity, and I
7 think your point is probably well made, that -- Mr.
8 McGlothlin, may I with your permission divide your motion
9 into four separate motions, each of which represents one
10 of the docket numbers that you recited?
11 MR. MCGLOTHLIN: Sure.
12 MR. CHAIRMAN: And likewise the second?
13 MR. EVANS: Second.
14 MR. CHAIRMAN: We have four separate motions before us with
15 regard to these petitions and a second for each of them.
16 Further discussion? All in favor to the first one being
17 0373 signify by saying yes. (ALL AFFIRM.) Opposed say
18 no. (NONE.) With regard to 0374 all in favor signify by
19 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
20 0375 signify by saying yes. (ALL AFFIRM.) Opposed say
21 no. (NONE.) And 0376, those in favor say yes. (ALL
22 AFFIRM.) Those opposed say no. (NONE.) All four of
23 these motions have been passed and the Attorney General
24 will draft an appropriate order to reflect the motion's
25 approval. Are there any further matters since that

1 concludes the docket? Are there any further matters to
2 be heard? Our next meeting will be June 15th.
3 MR. FULMER: That's been changed to June 22nd. I think that's
4 the next Tuesday.
5 MR. SWARTZ: Is that for sure, Tom? It's definitely the 22nd?
6 MR. FULMER: Yes.
7 MR. CHAIRMAN: The next meeting will be June 22nd, 1993. We
8 have three continuances from this meeting to that meeting
9 on behalf of Pocahontas Gas Partnership as well as a
10 carry over of Item I from this meeting for further
11 consideration and clarification on the Oakwood I and II
12 and the Hurricane Branch rules. With no further business
13 I would say we are adjourned.

14
15 (End of Proceedings for
16 May 18, 1993.)
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1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA
5 COUNTY OF WASHINGTON
6

7 I, Deboarh J. Bise, Notary Public in and for the
8 Commonwealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on May 18, 1993 at the 4-H Center, Conference
11 Center, Abingdon, Virginia, were taken by me and that the
12 foregoing is a true and correct transcript of the proceedings
13 had as aforesaid to the best of my ability.

14 I further certify that I am not a relative, counsel, or
15 attorney for either party, or otherwise interested in the
16 outcome of this action.
17

18 GIVEN under my hand this 3rd day of June, 1993.
19

20 Deborah J. Bise
21 DEBORAH J. BISE
22 NOTARY PUBLIC
23

24 My commission expires September 30, 1996.
25