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VIRGINIA GAS & OIL BOARD HEARING

JUNE 22, 1993

9:00 A. M.

AT THE 4-H CENTER

CONFERENCE CENTER

ABINGDON, VIRGINIA

INDEX

<u>ITEM</u>	<u>PAGE</u>
I	2
II	28
III	59
IV	73
V	93
VI	107
VII, VIII, IX	118
X	156
XI	165
XII	182
XIII	231

June 22, 1993

This matter came on to be heard on this the 22nd day of June, 1993 before the Virginia Gas and Oil Board at the 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. WAMPLER: Good morning. My name is Benny Wampler and I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. I'd ask each Board member to introduce themselves starting with Kevin.

(MEMBERS INTRODUCED.)

ITEM I

1
2
3 MR. CHAIRMAN: The first item on today's agenda, the Board on
4 its own motion will receive clarification of language on
5 the Oakwood Coalbed Methane Field I and II orders. This
6 is docket number VGOB-93/03/16-0349. This was continued
7 from April. We would ask any parties that wish to
8 address the Board in this matter to come forward at this
9 time.

10 MR. SWARTZ: Mark Swartz on behalf of Buchanan Production and
11 OXY, USA.

12 MR. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
13 Partnership.

14 MR. CHAIRMAN: I would ask Sandra Riggs to first present an
15 overview of the suggested changes and then we will
16 receive any comments that either of you may have.

17 MS. RIGGS: The drafts of the orders that have been passed out
18 are the ones that were prepared Mark and Elizabeth
19 pursuant to instructions at the last hearing, that they
20 get together and come to some agreement. They've been
21 submitted in two forms, one in letter form and one in the
22 form of the draft you see in front of you. I'll just go
23 through the changes between the one that I gave you at
24 the last hearing and this one so that you don't have to
25 read through the whole thing. The first change is in the

1 docket numbers. We've added VGOB-93/03/16-0349 in
2 addition to 336. The next change is on Page 2, Paragraph
3 6. There use to be a reference to an additional well
4 authorized by Section 45.1-361.20.C, Code of Virginia,
5 which were the wells that are required by mine plan -- to
6 follow mine plan. That language has now been changed to
7 "any well authorized by the Code of Virginia". That
8 change appears in about four different places but is
9 consistent throughout the order. Further down in
10 Paragraph 6, like the fourth line up from the bottom,
11 there is a reference to "within the boundaries of the
12 Oakwood II Field" which was deleted and that was agreed
13 to at the last hearing, I think. So the reference now is
14 strictly to the Hurricane Branch Extension. The next
15 change is in Paragraph 7, line five. After the words
16 "pool or reservoir" the following language has been
17 deleted. "separate and distinct from other coalbed
18 methane pools". The next change is in -- the major
19 changes are in Paragraph 7-C. You need to read through
20 the language of 7-C with reference to the application,
21 method of allocation, and the language for definition of
22 -- well, it's the language that appears in the lead-in
23 paragraph as well as C-3 and Paragraph D. The underlined
24 language is new in the lead-in paragraph. (Pause.)
25 MR. MASON: Mr. Chairman, under 7-D of Page 4 where it says

1 that the cost of drilling and operating a well may not be
2 allocated to participants or carried interest owners, I
3 guess I was just curious as to why the two "participants
4 or carried owners" was put in there?

5 MR. SWARTZ: Because that would be the only people to whom you
6 could allocate those costs. They can't be allocated to
7 royalty owners, for example.

8 MR. MASON: I understand that.

9 MR. SWARTZ: I guess it kind of tracks the options that are
10 afforded to people. There are people who lease, there
11 are people who participate, and there are people who
12 elected to carry.

13 MR. MASON: I guess my question is is there any other status
14 other than royalty owner, a participant or a carried
15 interest owner?

16 MR. SWARTZ: A lessor, yes, but that's a royalty. You can be
17 a royalty owner -- well, obviously if you're a royalty
18 owner you can participate, you can be carried, or you can
19 just lease. So there are multiple status and these are
20 not all of the roles you can play. You could just be a
21 lessor with a royalty.

22 MR. MASON: But if you're a lessor would you be force pooled?

23 MR. SWARTZ: Well, this deals with -- no -- well, it depends
24 on your lease.

25 MR. MASON: Generally not but it's possible, I guess.

1 MR. SWARTZ: Well, some leases yes, some no, some maybe. I
2 guess the reason I put that language in there -- Claude
3 and Marty and I kind of worked through this and I think I
4 wound by writing it down. We were trying -- the Board
5 asked us to do two things. One of the two things you
6 asked us to come with was some proposed language which is
7 this paragraph we're talking about right now. And what
8 we were trying to do was come up with some mechanism that
9 allowed mining companies to drill additional wells under
10 C with a minimum of hassle. In other words, basically
11 this provides that they can go to Mr. Fulmer with a mine
12 plan -- I mean, if this were adopted by you all -- and if
13 that satisfies Mr. Fulmer that their mine plan would
14 dictate a well, an increased density or an additional
15 well under C, whatever term, he could permit that well.
16 But the competing concern that you had -- and I have
17 never sensed a desire on the Board's part to make it
18 difficult to get additional mine plan wells, but the
19 competing concern was that we very concerned that none of
20 the costs of those be passed along to anyone unless and
21 until you had an opportunity to address whether or not
22 that was appropriate. And this is intended -- I guess
23 maybe I put that language in there because those would
24 be the people you are protecting to just balance one
25 against the other. The desire is to allow -- to allocate

1 to Mr. Fulmer the ability to permit C wells and yet to
2 not -- to clearly not delegate any costs functions.
3 MR. MASON: I understand that. I haven't got any problem with
4 that at all. I certainly think as long as the cost
5 issues are not a problem and there's no intent, at least
6 from where I sit, to restrict the ability to do that. I
7 guess I'm always cautious when you have language that
8 restricts a prohibition to a defined class as to why that
9 was done as opposed to just leaving the class open. And
10 I just want to be comfortable with the fact that by
11 defining it in this way that there are not other persons
12 to whom allocations may be made that are not covered by
13 that. That's my only concern.
14 MR. SWARTZ: My answer to that question is I do not believe
15 there are other persons to whom allocations can be
16 made and that that list is all inclusive. Those are the
17 two kinds of folks who could do that.
18 MR. MASON: And that's not the intended --
19 MR. SWARTZ: Correct.
20 MR. MASON: Thank you.
21 MR. MCGLOTHLIN: Could you refresh my memory as to when this
22 Paragraph 7-D will come into play with Mr. Fulmer
23 granting the location exception?
24 MR. CHAIRMAN: I wasn't here at the last meeting but the
25 meeting before that and I think the intent of this

1 paragraph is that that authorization would be restricted
2 entirely to additional wells necessary for the safety of
3 the mine, if they were dictated by the mine plan but that
4 could be permitted and produced rather than vented. Is
5 there any different understanding of that from anyone?

6 MR. SWARTZ: Under Oakwood II, Kevin, there is no drilling
7 window. So there's never a need for a location exception
8 in terms of the windows. It would only be distances
9 between wells that would be driven by mining to degas.

10 MR. CHAIRMAN: And there couldn't be any cost of those wells
11 passed on to the participants or carried interest owners
12 according to this language.

13 MS. RIGGS: I think the only thing that I would add to that is
14 the definition of additional well as we have seen it in
15 Oakwood I, which was the reference to Section 20.C, has
16 now been changed to talk about any well authorized by
17 statute which is a much broader term. I don't know --
18 we've never anywhere talked about which wells are
19 authorized by statute beyond those in 20.C. So we have
20 gone broader with the definition of these additional
21 wells. Our prior reference was to 45.1-361.20.C wells.

22 MR. SWARTZ: There were two reasons why we went to any well
23 authorized by the Code. One was the Board seemed
24 troubled either at the last hearing or the hearing
25 before. We had an extended discussion as to what was an

1 additional well under 20.C, what was an increased density
2 well, should we define these terms. I mean, it was clear
3 to me we all had some problems with those terms. What
4 did they mean, were we all meaning the same things when
5 we used them, and it seemed that we needed to deal with
6 that. So the focus was to just make it generic, some-
7 thing that would not require a definition. If you can
8 drill a well under the Code of Virginia and it falls
9 within the other criteria of these field rules these
10 would cover it rather than trying to distinguish between
11 an increased density well and additional well. There was
12 a cost spin on your concern as well. What happened, as
13 soon as we went to the term "any well authorized by the
14 Code" -- you know, Oakwood II was intended and still
15 applies to active gob short hole production basically.
16 And once you start using "any well authorized by the
17 Code" a longwall panel can intersect an Oakwood I well at
18 some point and be producing from the unsealed gob. So
19 this underlying language sort in the middle of that
20 introductory paragraph of C which is at Page 3 specific-
21 ally refers you down to 3i and 3ii which was the other
22 provision you asked us to take a stab at redrafting which
23 covers the circumstances under which the "any well"
24 category gets pulled into this. So if you have any well
25 that is not producing short hole gas or active gob this

1 doesn't apply to it as it's currently drafted until that
2 longwall panel is isolated. Those changes needed to be
3 made if we were going to gestes any additional well or
4 increased density well concept to make sure that we
5 didn't inadvertently pull in a fracked well that wasn't
6 even in a longwall panel.

7 MR. MCGLOTHLIN: Mr. Swartz, I'm concerned with the language
8 in 361.20.C. The Board shall require that drilling units
9 conform to mine develop plan, if any, and if requested
10 by the coal operator. I'm assuming that this new
11 language -- that it will be the coal operator's responsi-
12 bility to petition the Inspector for the additional well?

13 MR. SWARTZ: What part of 20.C are you looking at?

14 MR. MCGLOTHLIN: The whole thing. If requested by the coal
15 operator.

16 MR. SWARTZ: What has happened -- I mean, it's occurred both
17 ways, I think, at least with regard to Buchanan Produc-
18 tion. Island Creek is no longer doing and has not being
19 doing VVHs for some considerable period of time even
20 though they are in theory -- could be permitted as a
21 VVH, they're permitted as a CBM well up front. So OXY
22 has been permitting those and shows up with a mine plan
23 or at least a representation that these are driven by a
24 plan to degas the panel. So if your question is does the
25 coal operator have to make the request, that hasn't been

1 happening and I don't contemplate that that's needs to
2 happen. I mean, if the designated operator is passing
3 along a request made by a coal operator to the Depart-
4 ment, that's what's been done.

5 MR. MCGLOTHLIN: Do you see the gas companies getting an
6 official request from the coal operator to submit with
7 its packet -- its application?

8 MR. SWARTZ: Well, you can't drill a CBM well unless the coal
9 operator signs off on the location. I mean, you've got
10 to give them notice. So it's kind of a chicken to the
11 egg. You're not going to get a permit -- they're going
12 to have to get out of your way.

13 MR. MCGLOTHLIN: I'm just going with the language of the
14 statute and the concern of mine is "if requested by the
15 coal operator". I'm just wondering --

16 MR. CHAIRMAN: Sandra, can you add any clarification on what
17 you believe the intent of the statute is? I think it's
18 really talked about if requested by the coal operator
19 that there's --

20 MS. RIGGS: The spacing shall correspond.

21 MR. CHAIRMAN: Right.

22 MS. RIGGS: It says, "The Board shall require that the
23 drilling units conform to the mine development plan and
24 if requested by the coal operator well spacing shall
25 correspond with mine operations including the drilling of

1 multiple coalbed gas wells in each drilling unit." The
2 way I read that is when you have a request by a coal
3 operator then it mandates what the Board shall do. But
4 it doesn't limit the authority of the Board in the
5 absence of that request. In other words, it doesn't say
6 "only when" or "provided that" but it makes an accommoda-
7 tion to the coal operator when they come forward and make
8 a specific request. That's the way I read that.

9 MR. SWARTZ: And as a practical matter what happens is these
10 wells get spotted during the negotiation process between
11 the coal operator and oil and gas operator. And general-
12 ly speaking, at least between Island Creek and Buchanan,
13 Island Creek wants a couple more per panel than Buchanan
14 is willing to fund. And it is a negotiated process.
15 They are at the same table. They spot the wells and then
16 -- you can make choices when you have a cooperative
17 arrangement as to who's going to be petitioning for the
18 permit applications. As Buchanan has been proceeding,
19 after they have negotiated and located the wells with
20 Island Creek they then petition for the permits to be
21 issued or OXY on their behalf. Obviously the permit
22 process requires that the coal operators get notice
23 and/or sign off on a location. You could only get a
24 permit if there was a screw up without the coal company
25 having an opportunity to participate.

1 MS. RIGGS: The question I have is under this order as
2 drafted is there any scenario where you could end up with
3 multiple wells in a unit prior to isolation of a panel?
4 MR. SWARTZ: Sure.
5 MS. RIGGS: Where the operator would go to the Inspector and
6 ask for an addition well, an increased density well
7 within a unit and it would begin producing prior to
8 isolation of that panel by the driving of entries.
9 MR. SWARTZ: Right.
10 MS. RIGGS: So this order contemplates multiple wells within a
11 single unit prior to isolation and all it does is
12 allocate production differently once that isolation
13 occurs.
14 MR. SWARTZ: Right. The two programs -- Island Creek is not
15 fracking their degas wells in their panels. Consol is as
16 I understand it. So depending on who's programming or
17 involved with it, the answer is definitely yes, there
18 will be production from multiple wells in units prior to
19 isolation. And the costs, you have control of those
20 costs. So the fact that there's production from multiple
21 wells -- it's found production essentially at somebody
22 else's expense.
23 MS. RIGGS: Well, as I understood the concern of the Board it
24 was a two-fold issue. One was the cost issue and the
25 other was protection of correlative rights and the sizing

1 of the units. I feel comfortable that the cost issue has
2 been addressed and the other issue -- that's why I asked
3 the question of could it occur prior to isolation. Once
4 you have isolation of the panels then you don't have the
5 same concerns, I think, as you do prior to that isolation.
6

7 MR. SWARTZ: As a practical matter, though, if you all look at
8 Oakwood I, you've got a 300 foot drilling window in
9 Oakwood I. You're allowing one. There's a presumption
10 essentially now that Oakwood I is in place that a well in
11 the unit drains it almost regardless of where it is. As
12 a practical matter you probably need to look at multiple
13 wells in an 80 acre unit. As long as they're in the unit
14 and there's not an isolation longwall panel where you've
15 got unsealed gob or you've got short hole you ought to,
16 as a practical matter, just say we're going to assume
17 that it's draining this 80 acre unit because Oakwood I
18 has a provision that we've signed off on that acknowledges
19 that. The only counter veiling issue in terms of
20 drainage because drainage is a function of time as I'm
21 sure you're all aware of. In Island Creek's situation,
22 since they're not fracking those wells, any production is
23 minimal and the drainage is fairly local. With Consol
24 fracking the wells obviously you're going to have a
25 better drainage pattern on those wells. As I understand

1 from just listening from the testimony -- Claude can
2 maybe step in and straighten me out -- but they're not
3 twenty years ahead. So you're not looking at twenty
4 years of drainage. You might be looking sometimes at six
5 months, a couple of years. I don't think I've ever heard
6 more than five or six years. So I think you need to bear
7 in mind that because drainage is a function of time and
8 because -- at least what I recall hearing here indicates
9 that they're fairly close out at time. You've got to
10 make some practical determinations as to what reality in
11 terms of drainage is. If you're looking at a five or six
12 year horizon instead of twenty years to fully drain an
13 Oakwood I unit you need to determine, I guess, whether
14 not that seems a reasonable approach. The other situa-
15 tion from a correlative right standpoint, the coal
16 operators and the gas operators have an ability to
17 produce gas from degas -- what are essentially degas
18 wells even though they're permitted as CBM wells. And
19 you don't want to inadvertently prevent them from doing
20 that. From a correlative rights standpoint there's an
21 opportunity to capture and sell gas and generate revenue.
22 That coal needs to be degased. So if you can't capture
23 it and sell it it's gone to be vented. Coal mining
24 dictates multiple wells. It gives you an opportunity to
25 market and sell additional gas. And I think from a

1 practical standpoint and a correlative rights standpoint
2 as long as costs are not passed along without your
3 approval to the extent that gas can be captured it ought
4 to be. And if you're not talking about long periods of
5 drainage, twenty years, fifteen years, that sort of
6 thing, as a practical matter you ought to allocate it to
7 the units like you did in Oakwood I, which is the way
8 this is drafted. Otherwise, you're going to be in a
9 situation, Sandy, where you're going to be getting
10 drainage testimony in an area you've already established
11 field rules every time and it's going to be a nightmare.

12 MS. RIGGS: I guess if I were sitting in Tom's position under
13 this Paragraph D and I were Tom I would be scratching my
14 head with the delegation -- with this kind of delegation
15 and the lack of standards by which he is to apply.
16 That's why, I guess, we really need to know what we're
17 talking about here because not only are we going to allow
18 it but if we're going to delegate the responsibility
19 then it seems to me that we need to be real clear about
20 what it is we are saying.

21 MR. SWARTZ: Well, I think the problem is more likely to arise
22 in voluntary units for Tom. I mean, when I'm here like
23 today, for example, we've got three Oakwood II units that
24 we've got applications to force pool. There are two
25 wells in each unit proposed. If you issue a pooling

1 order he's going to know that you understood there were
2 going to be two wells, one in each panel in each unit.
3 Generally I see Consol coming in here with wells spotted
4 and at least some indication as to where the wells are
5 going to be. The force pooled situation I think the
6 problem that we're talking about right now may not be
7 that big an issue. I think what we're more concerned
8 about is in voluntary units where we don't have an order
9 of the Board, where we have leases or a voluntary pooling
10 agreement, and we're coming to Tom without a Board order
11 because we don't need one. Those are the situations that
12 to me are more likely to come under D.

13 MR. MCGLOTHLIN: My biggest problem with Paragraph D is the
14 first sentence. It provides that the Virginia Gas and
15 Oil Inspector may grant well locations. If we could
16 clarify that as to exactly when and where I wouldn't have
17 as big a problem with it.

18 MR. SWARTZ: Well, that's straight out of Oakwood I. It's
19 been around for three years, just so you understand this
20 is not something that turned up in the Oakwood II order.

21 MR. CHAIRMAN: Are you looking for something like in the cases
22 where the mine plan so dictates or something like that,
23 Kevin? Does that do anything to track from the intent of
24 the language at all, that clarification? (Pause.)

25 MR. SWARTZ: Right now I can't think of any situation --

1 bearing in mind that this is Oakwood II and you can drill
2 anywhere in a unit. So the only thing you would be up
3 against would be the distance to spacing between wells.
4 I'm not even sure this would apply here. Is it even a
5 problem in Oakwood II? Maybe just cross it out because
6 you can drill anywhere in an Oakwood II. So you'd never
7 need any exception. And the statewide spacing or
8 distance requirements don't apply because you've got
9 field rules and the only issue is whether or not you're
10 going to get more than one well and it has to conform
11 with the mine plan. The rest of it takes care of it.
12 So why don't you just cross that out?

13 MR. MCGLOTHLIN: Delete that first sentence?

14 MR. SWARTZ: Right, unless somebody can think of some reason
15 to leave it in. (Pause.)

16 MR. CHAIRMAN: We'll go ahead and finish the overview.

17 MS. RIGGS: I think that's it if you've reviewed the alloca-
18 tion paragraphs that were contained in 3-1 and 3-2 plus
19 the underlined language. The only other concern that I
20 had was just from a tracking point of view. I could no
21 longer tell what is an Oakwood I well versus an Oakwood
22 II because we sort of have this subtle transition where
23 -- I use to have it clear in my mind what was an Oakwood
24 I and what was an Oakwood II well and now the applica-
25 tions are coming in as both and there seems to be no end

1 to one and clear cut transition into another where you
2 could classify as to which field rules are applicable at
3 a certain point in time.
4 MR. SWARTZ: You can but it depends on the extent of mining at
5 that point in time.
6 MS. RIGGS: Which is something we would not necessarily know
7 or have record of. So there's no way from a management
8 point of view we can track that progress that I know of.
9 MR. SWARTZ: Except you have in your orders -- in the field
10 rule orders and certainly in the pooling orders at a
11 point in time you start allocating under Oakwood II if
12 there's a transition from I to II that you've got to have
13 a mine map on file that you're using to allocate.
14 MS. RIGGS: Explain to me how that would work with the escrow
15 agent then, tracking wise?
16 MR. SWARTZ: It would make no different to him.
17 MS. RIGGS: That's royalty. Is there any circumstance where
18 it would impact on the escrow agent or they need to
19 know --
20 MR. SWARTZ: No. He will continue to get checks for a unit.
21 MR. GORDON: He's looking at 80 acres and that's all he should
22 look at. And it makes no difference if it's Oakwood I or
23 II.
24 MR. SWARTZ: He'll notice that the checks are bigger probably
25 depending how much of it is in a panel. There will be a

1 change in the amount. There's a division of interest
2 that's allocated to that unit. He just gets a check.
3 MR. EVANS: The names will be the same.
4 MR. GORDON: On our accounting system as it's set up the names
5 are the same. Everything happens within the accounting
6 system before it gets down to what we call a seven dash
7 number or the 80 acre number that we assign to it. So
8 regardless of the source of the revenue paid into that
9 seven dash it will still get paid to the same people in
10 the percentages that they are set out or the decimals,
11 however you want to call it. So whether it's being
12 allocated from panel production or if it's coming
13 straight off track production they're still going to get
14 that percentage of whatever revenue feeds into it.
15 MR. CHAIRMAN: State your name for the record, please.
16 MR. GORDON: Sam Gordon, OXY, USA.
17 MR. EVANS: I can't think of anything that would be any
18 different. I don't know why that should make any
19 difference, the accounting principal's coming to the
20 escrow agent. He's looking at X number of dollars
21 coming in for a unit. Boom, boom, Joe Doaks and Company
22 in that unit. And that's --
23 MR. FULMER: He'll do the escrowing based upon the docket
24 number, not the unit.
25 MR. EVANS: Right.

1 MR. MCGLOTHLIN: I still have a concern about the request from
2 the coal operator. The way --
3 MR. CHAIRMAN: 20.C.
4 MR. MCGLOTHLIN: 20.C, the way that reads and how we're going
5 to do that -- or how Mr. Fulmer's going to do that. How
6 do we know if it's a request from the coal operator or a
7 request from the gas operator?
8 MR. CHAIRMAN: (Pause.) Well, that's what I said earlier.
9 What the Inspector is dealing with here is an active mine
10 plan, right?
11 MR. SWARTZ: Tom, don't you get a copy of a portion of the
12 mine plan when we're asking for additional wells anyway?
13 Aren't you getting a piece of the mine plan?
14 MR. FULMER: No.
15 MR. SWARTZ: Is that something you could live with or just --
16 MR. CHAIRMAN: If we're talking about the transition from what
17 the Board's been getting to the delegation to the
18 Inspector, what the Board has been getting is going to
19 have to be presented to the Inspector for the Inspector
20 to make --
21 MR. SWARTZ: We're giving you -- both of us in different
22 formats, but we give you a piece of the mine plan that
23 pertains to the unit and I don't see any reason -- Claude
24 doesn't either -- why we can't just do that at Mr.
25 Fulmer's level so that you're getting a mine plan from a

1 mining company showing spotting the wells.

2 MR. MCGLOTHLIN: But is the mine plan a request by a coal
3 operator?

4 MR. SWARTZ: With all due respect, no oil and gas operator is
5 going to be drilling wells without an agreement of the
6 coal operator. I think Mr. Evans is smiling. They get
7 pretty aggressive. It's their coal and they don't -- I
8 understand that there's a technical word issue here, but
9 as a practical matter they get notice, sit down -- I
10 don't have any problem submitting a mine plan or a
11 portion of a mine plan with the well spotted on it.
12 Obviously that mine plan is not developed by the oil and
13 gas owner.

14 MR. MCGLOTHLIN: But usually, Mr. Swartz, when you come before
15 us on one of a request you have somebody from the coal
16 industry that is represented.

17 MR. SWARTZ: Well, actually I quit doing that because Sam sits
18 down with them on these. He can testify that he's talked
19 to them about it and they've agreed on it.

20 MR. CHAIRMAN: Mr. McGlothlin, does it help with the language
21 of Paragraph D that it does, in fact, compel the Inspector
22 to insure that 20.C is complied? I mean, that's the
23 boundary that he has to operate in. So the Inspector
24 will have to stipulate, since this will be a change, the
25 information that he is going to require. The showing

1 that he'll require for compliance of 20.C as I read this.
2 If there's any different reading of that we need to
3 discuss it for the record. But this is a transition
4 requiring the application to come before the Board as
5 we've done in the past and he's got that kind of data to
6 go by to allow the Inspector, at his discretion, to
7 approve additional wells in accordance with the same
8 kind of thing that we've done in the past. They just
9 wouldn't have to schedule it before the Board is the
10 major thing I see here.

11 MR. EVANS: Absent an objection by a coal owner it would be
12 difficult for a gas company to drill with all the notice
13 provisions and if there was no objection by the coal
14 owner implicitly you could say that that's consent
15 versus an explicit showing that there was dissent. That
16 I don't know about legally, but that's what it says
17 practically to me. If you didn't complain when you had
18 ever opportunity right that means by -- silence is
19 consent, that yes, it's okay since I didn't say it
20 wasn't. But that's just as a practical matter. I don't
21 know whether that holds very much water.

22 MS. RIGGS: This says a coal operator, not a coal owner. So
23 we're talking about an operator in active works in this
24 situation with a permit for active work.

25 MR. SWARTZ: Or plans for a planned mine.

1 MR. EVANS: Right.

2 MS. McCLANNAHAN: Another consideration is that this mine
3 development plan is on file with the Department.

4 MR. CHAIRMAN: Right. And that's what we've required in the
5 past.

6 MS. McCLANNAHAN: Right.

7 MR. CHAIRMAN: That's why I was saying rather than getting
8 into all of it, consistent with what we've required as
9 showing the Inspector -- we could assume or stipulate
10 that he require that information in compliance with 20.C.

11 MR. SWARTZ: Whether or not Kevin and I read 7-C the same way,
12 there's no doubt in mind that if you delegate the ability
13 to the Gas and Oil Inspector to permit additional wells
14 under Oakwood II that he needs to satisfy himself by some
15 means that these additional wells are driven by a mine
16 plans. That's the clear intent to me of the statute and
17 it certain has been what you all have been focusing on
18 and I think that's what Mr. Fulmer needs to focus on. I
19 think we all agree on that. The question is whether
20 technically he perceives or wants to know who it's
21 coming from. That's a call you can leave up to him or
22 you can tell him what you want.

23 MR. MASON: It seems to me that the rule that we've got here
24 says that the Gas and Oil Inspectors can authorize the
25 drilling of more than one well pursuant to the provisions

1 of 45.1-361.20.C. I mean, I think that says it.
2 MR. EVANS: That's what that Section says.
3 MS. RIGGS: We could add an additional clause that says upon
4 presentation to the Inspector of evidence of compliance
5 with Section 45.1-361.20.C which then maybe requires some
6 showing -- evidentiary showing?
7 MR. MASON: If you authorize an action pursuant to a Code
8 Section that has requirements in it I would think you
9 would have to comply with it in order to have the
10 authority to do that.
11 MR. MCGLOTHLIN: I --
12 MR. MASON: Go ahead. I'm sorry.
13 MR. MCGLOTHLIN: No. You're still on this. I'm changing the
14 subject.
15 MR. MASON: I think it pretty well deals with itself as it is.
16 I think that our discussions here have given people some
17 understanding of how we perceive compliance with, but as
18 far as this rule's concerned I think it pretty much
19 speaks for itself. It says he can do it and he's got to
20 do it pursuant to this Code Section.
21 MS. McCLANNAHAN: From a legal standpoint you may not want to
22 make some sort of interpretation of that outside of the
23 statute.
24 MR. MASON: Yeah. I think if we go beyond that then we start
25 applying certain definitional aspects of the statute and

1 obviously if there's some problem with the enforcement of
2 the statute or how the statute is applied that we'll
3 probably hear that on appeal at some point.

4 MR. CHAIRMAN: Mr. McGlothlin, did you have another question?

5 MR. MCGLOTHLIN: Another avenue to travel. If we give the Gas
6 and Oil Inspector the ability to do this do I foresee a
7 scenario where we have -- that the individuals -- the
8 mineral owner has lost his appeal or his ability to
9 become a conflicting claimant? Is that a possibility?
10 Or for anybody to become a conflicting claimant?

11 MS. RIGGS: Well, you would still have to have a pooling order
12 if you had unleased interest within the unit. So that
13 would still come before the Board.

14 MR. MASON: And this specifically only applies in the event of
15 a force pooling.

16 MR. SWARTZ: Primarily I think you're going to see it more
17 often in a voluntary pooling, though, because in a force
18 pooling we're going to be in front of you all saying
19 we're going to do two wells or we're going to do three
20 wells or whatever.

21 MR. MASON: Yeah. That's what I meant.

22 MR. SWARTZ: I see them as unrelated issues, Kevin, to respond
23 to your question. Title issues and claims are a pooling
24 issue and this is simply how many wells can you have in
25 an Oakwood unit. It's a technical, kind of regulatory

1 what do you need to do to get a permit.

2 MS. McCLANNAHAN: In other words, this order doesn't supercede
3 a force pooling order that would have to be entered which
4 is where a conflicting claimant would appear.

5 MR. CHAIRMAN: Anything further?

6 MR. FULMER: I just want to mention to help Kevin out a little
7 bit, irregardless of whether I permit another location
8 in a unit they still have to go through the scenario of
9 permitting the well which is the notice criteria which
10 gives a conflicting interest to come in. So that is not
11 dropped in any way as far as permit of the well. What I
12 understand here, the Board has give me authorization to
13 locate or the ability of the operator to locate another
14 well in a unit. That's all I see. That has nothing to
15 do with the permitting process. The permitting process
16 would involve conflicting claims interest -- royalty
17 interest and so forth. If that helps any.

18 MR. CHAIRMAN: The one change I've heard so far as a recommen-
19 ded change of language is in Paragraph D on Page 4 of
20 deleting the first sentence. The delete provides that
21 the Virginia Gas and Oil Inspector may grant well
22 location exceptions. It doesn't have any application
23 here. Any other change? Any other discussion?

24 MR. MASON: I move we approve this order as amended.

25 MR. CHAIRMAN: Motion to approve as amended.

1 MR. EVANS: Second.
2 MR. CHAIRMAN: Motion and a second. Further discussion?
3 All in favor signify by saying yes. (ALL AFFIRM.)
4 Opposed say no. (NONE.) Unanimous approval.
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ITEM II

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3 MR. CHAIRMAN: The next item on the agenda is a petition to
4 force pool by Pocahontas Gas Partnership for the N-40
5 unit located in the Oakwood Coalbed Methane Gas Field I
6 and II, docket number VGOB-93/04/20-0358. We'd ask the
7 parties that wish to address the Board in this matter to
8 come forward at this time.

9 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
10 Partnership.

11 MR. McGLOTHLIN: Excuse me. Mr. Chairman, could I ask that
12 they speak up a little bit.

13 MR. FRANKS: J.C. Franks, agent for several land owners in the
14 area.

15 MR. CHAIRMAN: Elizabeth, you may proceed.

16 MS. McCLANNAHAN: The first witness that I'd like to call is
17 Les Arrington. We have distributed the exhibit books at
18 the last hearing for N-40 and if you'll remember we were
19 stopped in the middle of this. Does the Board have their
20 exhibits from that?

21 MR. CHAIRMAN: Yes.

22 MS. McCLANNAHAN: Do you have a copy, Mr. Franks?

23 MR. FRANKS: Yes.

24 MS. McCLANNAHAN: Les Arrington is our first witness I'd like
25 to call.

1 COURT REPORTER: (Swears witness.)
2

3 LESLIE K. ARRINGTON

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

7 DIRECT EXAMINATION
8

9 BY MS. McCLANNAHAN:

10 Q. Mr. Arrington, could you please state your full name and
11 address for the record?

12 A. Leslie K. Arrington, 26 Mountaintop Drive, Princeton,
13 West Virginia.

14 Q. Mr. Arrington, could you please identify the exhibit
15 that's marked for identification as Exhibit 1?

16 A. That's my educational and work resume.

17 Q. Have you previously qualified as an expert witness before
18 the Gas and Oil Board?

19 A. Yes, I have.

20 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
21 Exhibit 1 and submit Mr. Arrington as an expert witness.

22 MR. CHAIRMAN: It's accepted.

23 Q. (Ms. McClannahan continues.) Mr. Arrington, have you
24 given notice as required by Virginia Code Section 45.1-
25 361.19 to each person or entity identified on Exhibit C

1 of the force pooling application?

2 A. Yes.

3 Q. Could you identify Exhibit 2?

4 A. That's the hearing notice mailed to each person -- party.

5 Q. Each party listed on Exhibit C?

6 A. Yes, it was.

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

8 Exhibit 2.

9 MR. CHAIRMAN: Any objection? Mr. Franks, do you have

10 objection you stipulate otherwise?

11 MR. FRANKS: No.

12 MR. CHAIRMAN: That's accepted then.

13 Q. (Ms. McClannahan continues.) Mr. Arrington, was this

14 notice of hearing mailed by certified mail, return

15 receipt requested to each of the parties on Exhibit C?

16 A. Yes.

17 Q. And copies of those returned receipts are at Exhibit 3,

18 is that correct?

19 A. Yes, they are.

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

21 Exhibit 3.

22 MR. CHAIRMAN: It's accepted.

23 Q. (Ms. McClannahan continues.) Were there any persons

24 whose names and/or addresses were unknown at the time of

25 the filing of this application?

- 1 A. No. However, we still published in the Virginia Mount-
2 aineer and Bluefield Daily Telegraph on April 1st and
3 March 26th.
- 4 Q. Were the proofs of publication previously submitted to
5 the Board?
- 6 A. Yes, they have been.
- 7 Q. What percentage of the coal rights in the tracts that
8 comprise the N-40 unit does Pocahontas Gas Partnership
9 control?
- 10 A. 94.975 percent of the Pocahontas #3 seam and 100 percent
11 of all coal below the Tiller seam less the Pocahontas #3.
- 12 Q. What percentage of the oil and gas rights in the tracts
13 that comprise the N-40 unit does Pocahontas Gas Partner-
14 ship control?
- 15 A. 97.878 percent.
- 16 Q. And what percentage of the coalbed methane gas rights
17 that comprise the N-40 unit does PGP control?
- 18 A. 94.975 percent.
- 19 Q. Are the unleased owners and the lease hold owner listed
20 on Exhibit D of the N-40 force pooling application with
21 their percentages of ownership in the respective tracts?
- 22 A. Yes.
- 23 Q. Is the information on Exhibits C, D and E still correct?
- 24 A. No.
- 25 Q. Have you made appropriate changes to those exhibits to

1 reflect additional owners?

2 A. Yes, we have. That's Exhibit 4.

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

4 Exhibit 4.

5 MR. CHAIRMAN: It's accepted.

6 Q. (Ms. McClannahan continues.) Are the conflicting

7 claimants whose funds are to be escrowed listed on the

8 revised Exhibit E submitted as a part of Exhibit 4?

9 A. Yes.

10 Q. Are you requesting that the Board pool the interest of

11 the parties listed on revised Exhibit C?

12 A. Yes, we are.

13 MS. McCLANNAHAN: Those are all the questions I have of Mr.

14 Arrington. I'd like to call Ron Wood.

15 MR. CHAIRMAN: Any questions, members of the Board of Mr.

16 Arrington?

17 MR. EVANS: What are the changes so I can take them off on

18 Exhibit C.

19 MR. ARRINGTON: We had some percentage changes. To be exact I

20 can't remember. It's a couple of months ago.

21 MR. EVANS: Okay. No problem.

22 MR. CHAIRMAN: Did you get an answer?

23 MR. EVANS: He said he didn't know.

24 MR. ARRINGTON: It's been a couple of months back when we made

25 those changes. I'd have to sit down with the applica-

1 MS. McCLANNAHAN: We'll give you one.

2 MR. CHAIRMAN: Elizabeth, we have all that. You substituted
3 those last time and we have all that. They have a copy,
4 I'm sure. Mr. Arrington, would you give a copy of that
5 to Mr. Franks, please?

6 MR. ARRINGTON: Sure.

7 MR. CHAIRMAN: Is that a revised copy?

8 MR. ARRINGTON: Yes.

9 Q. (Ms. McClannahan continues.) Does the revised Exhibit 5
10 reflect your work history and qualifications, Mr. Wood?

11 A. Yes, it does.

12 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
13 Exhibit 5.

14 MR. CHAIRMAN: It's accepted.

15 Q. (Ms. McClannahan continues.) Have you previously
16 qualified as an expert witness before the Gas and Oil
17 Board?

18 A. Yes.

19 Q. Where has your experience in obtaining mineral leases
20 been concentrated?

21 A. Pennsylvania, New York, West Virginia, Virginia.

22 Q. In your experience in obtaining leases in Virginia are
23 you familiar with the fair market value for oil and gas
24 leases and coalbed methane leases in the N-40 unit area?

25 A. Yes.

1 Q. What are the fair market value terms for an oil, gas and
2 coalbed methane lease in this area?
3 A. \$5 per acre per year, a one-eighth royalty.
4 Q. The \$5 per acre per year, is that --
5 A. That's a rental.
6 Q. And the coalbed methane lease?
7 A. \$1 per acre per year rental, one-eighth royalty.
8 Q. What is the standard primary terms for oil, gas and
9 coalbed methane leases?
10 A. Ten years.
11 Q. With regard to the unleased owners that are listed on the
12 N-40 unit force pooling application have you contacted
13 them or tried to contact them to obtain a lease?
14 A. Yes, we have.
15 Q. With regard to these lease hold owners and unleased
16 owners were you able to come to an agreement with them?
17 A. Not at this time.
18 Q. By what method did you contact each of them?
19 A. Either verbal and/or certified mail.
20 MR. CHAIRMAN: Mr. Wood, would you speak up just a little bit,
21 please. This fan is roaring back here. Kevin and I are
22 losing some of our hearing, too.
23 MS. MCCLANNAHAN: Those are all the questions I have for Mr.
24 Wood.
25 MR. CHAIRMAN: Questions, members of the Board?

1 (Witness stands aside.)

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

3 MS. McCLANNAHAN: Randy Albert.

4 COURT REPORTER: (Swears witness.)

5

6 RANDALL ALBERT

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

9

10 DIRECT EXAMINATION

11

12 BY MS. McCLANNAHAN:

13 Q. Mr. Albert, would you please identify the exhibit
14 identified as Exhibit 6?

15 A. Exhibit 6 is my work history resume.

16 Q. Does that also include your educational background?

17 A. Yes, it does.

18 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
19 Exhibit 6.

20 MR. CHAIRMAN: It's admitted.

21 Q. (Ms. McClannahan continues.) Have you previously
22 qualified as an expert witness before the Gas and Oil
23 Board?

24 A. Yes, I have.

25 Q. Has a drilling permit been previously refused to PGP on

1 any of the tracts that comprise this unit?

2 A. No, it has not.

3 Q. Have any well work permits been issued for the N-40 unit?

4 A. Yes. There have been two permits issued for wells 608

5 and 611 as permit numbers 2304 and 2185 for coalbed

6 methane wells.

7 Q. Have you received any written responses from the owners

8 of the tracts within the unit to the force pooling

9 application?

10 A. No, we have not.

11 Q. That's true except till today, is that correct?

12 A. That is correct.

13 Q. And you received a response from Mr. Franks at this

14 particular hearing?

15 A. Yes.

16 Q. Please identify the exhibit marked for identification as

17 Exhibit 7.

18 A. Exhibit 7 is Exhibit B-1 from the N-40 application.

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

20 Exhibit 7.

21 MR. CHAIRMAN: It's admitted.

22 Q. (Ms. McClannahan continues.) Does the unit follow the

23 boundary lines of the Hurricane Branch Extension 80 acre

24 unit designated as N-40?

25 A. Yes, it does.

- 1 Q. Does the plat attached to the force pooling application
2 filed by PGP indicate the area within which the wells
3 will be drilled on the N-40 unit?
- 4 A. Yes, it does.
- 5 Q. Does the drilling unit embrace two or more separately
6 owned tracts?
- 7 A. Yes, it does.
- 8 Q. Are the costs and expenses for the wells set forth on
9 detailed well estimates attached to the force pooling
10 application as Exhibits H and I?
- 11 A. Yes, they are.
- 12 Q. Do these exhibits reflect the costs of drilling the wells
13 to total depth and completed for production costs?
- 14 A. Yes, they do.
- 15 Q. Generally could you please explain you calculated the
16 costs that are shown on the DWES?
- 17 A. The drilling costs are actual. The completion costs are
18 estimated.
- 19 Q. Are you requesting that PGP be designated as well
20 operator authorized to operate the N-40 unit?
- 21 A. Yes, we are.
- 22 Q. Are you requesting the relief sought in Paragraph 4 of
23 the application?
- 24 A. Yes, we are.
- 25 Q. Are you asking that the Board approve the addition well

1 for same as shown on Exhibit B-1 in that location on the
2 N-40 force pooling application?

3 A. Yes, we are.

4 MS. McCLANNAHAN: Those are all the questions I have for Mr.
5 Albert.

6 MR. CHAIRMAN: Mr. Albert, are all the costs still the same as
7 shown on your exhibit?

8 MR. ALBERT: Yes, sir.

9 MR. CHAIRMAN: No changes since the last --

10 MR. ALBERT: No changes since the previous hearing.

11 MR. CHAIRMAN: Any other questions of Mr. Albert?

12 MR. MASON: Mr. Albert, are you requesting the Board that we
13 allocate the costs of both of these wells to the unit?

14 MR. ALBERT: Yes, Mr. Mason, I am.

15 MR. MASON: Why?

16 MS. McCLANNAHAN: Mr. Morgan is here to testify and he's
17 actually my next witness. So could we have him answer
18 those questions?

19 MR. MASON: Certainly.

20 COURT REPORTER: (Swears witness.)

21

22 CLAUDE MORGAN

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

25

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Morgan, could you please state your full name for the record?

A. Claude Dale Morgan.

Q. Mr. Morgan, is Exhibit 8 which Mr. Arrington is handing to you a copy of your resume?

A. Yes, it is.

Q. And does this resume reflect your educational background, work history, and qualifications?

A. Yes, it does.

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

MR. CHAIRMAN: Did you get a copy, Mr. Franks?

MR. FRANKS: Yes.

MR. MORGAN: Excuse me. There is one correction. I have it there twice. Our manager of gas projects is Consol, Inc. not Consolidation Coal Company.

MR. CHAIRMAN: If there are no objections it's admitted.

Q. (MS. McClannahan continues.) Mr. Morgan, have you previously qualified as an expert witness before the Gas and Oil Board?

A. Yes, I have.

MR. MASON: Ask MS. McClannahan -- she's offering Mr. Morgan

1 as an expert witness in what regard?

2 MS. McCLANNAHAN: In mining engineering and management of

3 coalbed methane gas projects.

4 MR. MASON: Thank you.

5 Q. (Ms. McClannahan continues.) With regard to the costs

6 that are listed on the DWEs that Randy Albert has

7 described and submitted for the wells in the N-40 unit

8 how do you propose to allocate the costs among the owners

9 in the unit?

10 A. On a net mineral acre basis.

11 Q. Mr. Morgan, could you please identify what's been marked

12 as Exhibit 9?

13 A. This is a mine plan for reserve coal properties proposed

14 Hurricane Branch mining operation with the N-40 unit

15 overlaying and highlighted and the wells 608 and 611

16 shown in the unit.

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

18 Exhibit 9.

19 MR. FULMER: If they're referring to this one, here is Exhibit

20 8 that they submitted at the last hearing.

21 MR. CHAIRMAN: Well, what happens here -- that's why I was

22 going to ask her to clarify the introduction of the

23 exhibit. You inserted Mr. Morgan's resume as Exhibit 8

24 which is probably -- now you've changed this to Exhibit 9

25 and you had an Exhibit 9 before which would now be

1 Exhibit 10, I presume.

2 MS. McCLANNAHAN: Oh, in the previous hearing. Okay.

3 MR. FULMER: Mr. Morgan's would be Exhibit 10.

4 MS. McCLANNAHAN: Okay. I apologize.

5 MR. CHAIRMAN: So this would be Exhibit 10?

6 MR. EVANS: Claude's resume is 10. This remains 8 as before.

7 MR. CHAIRMAN: The other exhibits would remain the same that

8 way.

9 MS. McCLANNAHAN: Okay. All right.

10 MR. CHAIRMAN: Is everybody with me? Mr. Franks, do you

11 understand what we're doing? Mr. Morgan's resume would

12 be Exhibit 10 since we already had 1 through 9 before.

13 MR. FRANKS: Okay.

14 MR. CHAIRMAN: It's admitted. Is it unchanged?

15 MS. McCLANNAHAN: Yes, it's unchanged. For the benefit of Mr.

16 Morgan since he wasn't at the last hearing we probably

17 should show him old Exhibit 9?

18 MR. CHAIRMAN: Uh-huh.

19 MS. McCLANNAHAN: We do have a more clear picture of Exhibit

20 9. So we should submit that at this time, I think, as

21 Exhibit 11.

22 MR. CHAIRMAN: Okay.

23 Q. (Ms. McClannahan continues.) Mr. Morgan, could you

24 please explain to the Board what is depicted on Exhibits

25 9 and 11?

1 A. Exhibit 9 is a reproduction of some information in an
2 exhibit that was presented by Dr. Wilson during the
3 Oakwood I hearings. It is a model that is showing
4 cumulative methane production with different spacings of
5 wells between anywhere from 20 acres up to 320 acre
6 spacing. I've used this model to show what the produc-
7 tion would be from two wells which would be at the 40
8 acre spacing and from -- well, this one doesn't apply to
9 three wells. For two wells from a 40 acre spacing.

10 Q. Would the additional well in the N-40 unit result in
11 increased production?

12 A. Yes, it would.

13 Q. And can you explain what the increased production would
14 be based on the charts that are at Exhibits 9 and 11?

15 A. Exhibit 11 -- I took Exhibit 9 and the information
16 contained on Exhibit 9 and I changed it to an 80 acre
17 unit production. Exhibit 9 was done on 320 acres and I
18 changed it to production from 80 acres and then pulling
19 the data off of the Exhibit 9 and re-plotting it for a
20 one, two and three well per 80 acre spacing. Exhibit 11
21 will show the cumulative production by year or a one,
22 two and three well scenario in 80 acres.

23 Q. For purposes of the N-40 units there are two wells
24 located in the unit. So the difference in production
25 would be the difference between the green line and the

1 line designated in red?

2 A. That is true.

3 Q. Can you explain to the Board what the purpose of the two
4 locations -- the particular locations of the two wells in
5 the N-40 unit?

6 A. These wells were located so that they would facilitate
7 degasification of these longwall panels as projected by
8 reserved coal properties within a fairly short time
9 frame. The locations were also dictated by topography.
10 If you'll look at well 608, it is located in the middle
11 of a longwall panel. It is in steep topography, but
12 there was an existing bench at that location that was
13 utilized for that well. The same with 611. 611 is
14 located in the middle of a panel and it's located on the
15 end of an existing strip bench.

16 Q. Is it your proposal that the royalty owners that are
17 contained within the N-40 unit and listed on Exhibit C of
18 the force pooling application would be paid for this
19 additional production as shown on Exhibit 11?

20 A. Yes.

21 MS. McCLANNAHAN: Those are all the questions I have of Mr.
22 Morgan.

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

24 MR. EVANS: Yes. On Exhibit 8 the outlined area shows two
25 blackened in circles, 611 and 608. Immediately south on

1 the map 605 and to the southeast, I guess, 604, 603 or
2 683 -- I'm not sure -- are those wells drilled?
3 MR. MORGAN: Yes, they are.
4 MR. EVANS: And my copy is pretty much -- in the panel that
5 contains well 608 how many wells do you propose? It
6 appears that there are two in that panel?
7 MR. MORGAN: We normally would put three wells in that panel.
8 You'll see the area there that shows a fairly flat --
9 that is Jewell Ridge's refuge area and I cannot --
10 MR. EVANS: I was going to say, the refuge has kept you from
11 punching another hole into that panel?
12 MR. MORGAN: Right.
13 MR. EVANS: Okay. I was making sure what I was looking at
14 here.
15 MR. CHAIRMAN: Other questions? Mr. Franks, did you have any
16 questions of this witness?
17 MR. FRANKS: No.
18 MR. MASON: How long do you expect these wells to be produc-
19 ing?
20 MR. MORGAN: Based on the plan that we have in place now, Mr.
21 Mason, these wells should have about an eight year life.
22 MR. MASON: Do you know what the difference in the actual
23 dollar amount of production that's expected over that
24 eight year life between having one well and two well is?
25 MR. MORGAN: On present value or total dollar amount --

1 MR. MASON: Either that or just dollar amount. (Pause.)
2 Maybe I should put my question in a different way. If
3 you look at this graph on Exhibit 11, at the end of eight
4 years with one well it shows about -- somewhere around,
5 what would you say, 4,400 and what?
6 MR. MORGAN: (Pause.) About 425.
7 MR. MASON: Yeah. In the same period of time you would expect
8 to have six --
9 MR. MORGAN: 640, right.
10 MR. MASON: Which would be an increase of about 200?
11 MR. MORGAN: Roughly 55 percent.
12 MR. MASON: Do you know what that difference translates into
13 in terms of dollars?
14 MR. MORGAN: On a present worth basis it translates to about a
15 50 percent increase in present worth.
16 MR. MASON: But you don't know what that is in dollars? What
17 I'm trying to get to is like we're looking at an addit-
18 ional cost allocation of approximately \$220,000 and what
19 I'm trying to get at is -- I mean, is that justifiable in
20 terms of the amount of money that you're going to
21 collect?
22 MS. McCLANNAHAN: He has calculations. So I think he just
23 needs a minute to come up with the number you're looking
24 for.
25 MR. MORGAN: Fortunately I had not looked at that particular

1 unit and my calculations were for a seven year and a ten
2 year life and I've got to do some matriculation for you.
3 MR. MASON: Have you done others with seven and ten, is that
4 what you're saying?
5 MR. MORGAN: Yes, I have.
6 MR. MASON: Why don't you just give me the seven?
7 MR. MORGAN: Present value of two wells on a seven year life
8 based on this production scenario is \$391,000. That is
9 pretext. The present value of one well for that seven
10 year life is \$266,500.
11 MR. MASON: We're talking about an increase in income of
12 roughly \$130,000?
13 MR. MORGAN: That's right given parameters and development. I
14 mean, they're relative. I used the same parameters for
15 both and obviously they can fluctuate with the price.
16 That was using a projected price that was being projected
17 in January and escalating 4 percent per year, escalating
18 expenses 4 percent per year.
19 MR. MASON: Well, I understand that all this is subject to all
20 kinds of economic indicators or variables. See, what I'm
21 troubled by is that we're talking about a well cost of
22 approximately -- depending on which one of these wells
23 you look at. One of them is 216 and one is 248. The
24 cost increase -- if you took the more expensive well it's
25 \$248,000 and a gross increase in income \$130,000, that -

1 MR. MORGAN: Mr. Mason, I'll save us both some time. I know
2 where you're coming from. These present values I did at
3 your request after the last hearings.
4 MR. MASON: Right.
5 MR. MORGAN: I'd be prepared at this time to propose that we
6 go with the cost of 1.5 wells as opposed to the two which
7 Mr. Albert had previously spoken of.
8 MR. MASON: Which is roughly the same ratio --
9 MR. MORGAN: Which is roughly the same ratio as the dollars of
10 income.
11 MR. MASON: I have no objection to the costs. I understand if
12 they get more money faster there's an economic value and
13 that that should bear the burden of whatever it took to
14 produce it. And as long as there's some reasonable
15 relation -- I feel like -- sometimes I feel like I'm
16 always against things, but it's like -- I just feel like
17 that we have an obligation to -- particularly in terms of
18 the fact that we have put so much emphasis since we've
19 been existence on the size of the units and the cost per
20 unit that if we penalize essentially people in one of
21 these units to where their burden of cost per dollar
22 earned is much greater than someone else -- if we could
23 work this out so that scenario is roughly equivalent then
24 I think we've discharged our duty and I'm very comfort-
25 able with that.

1 MR. MORGAN: I would be willing to put that forth as an
2 amendment to our force pooling, that we go with one and a
3 half times the cost of -- the average cost of the two
4 wells as submitted as the cost to be allocated.
5 MR. MASON: That certainly would satisfy my feelings about it.
6 MR. CHAIRMAN: Any other questions?
7 MR. MASON: That seems almost too easy.
8 MR. EVANS: In looking at this this seems to suggest that --
9 what is the maximum that you -- had you not requested two
10 wells, what reserves are allocated to an 80 acre unit?
11 MR. MORGAN: Again, this is a production scenario and I'm
12 relying on this production scenario because this is a new
13 animal in that we are doing multiple seam stimulations
14 over here. We're stimulating zones that we have not done
15 before and that Mr. Wilson looked at in his production
16 scenario over here. So we've relied on this to do that.
17 We do not have a history to build on ourselves for three
18 and four zones of production and using the upper seams.
19 Using this scenario one well will drain economically for
20 twenty years if you have twenty years for it to drain.
21 Two wells using the parameters which I said I used there
22 just a little while ago would drain economically under my
23 evaluation here for eight years at which time the cost of
24 operating the well starts coming together with the cost
25 of the production. They still produce gas.

1 MR. EVANS: Possibly I'm reading this wrong, but it appears to
2 me that -- what this says to me is that the total
3 reserves recoverable from any particular 80 acre unit is
4 more with -- or markedly more with two wells as opposed
5 to one first off --

6 MR. MORGAN: That is true.

7 MR. EVANS: -- and I don't understand if it's only economical
8 with one well over a twenty year life how it becomes
9 economical to drill two wells on a shorter life. You've
10 only got --

11 MR. MORGAN: No, you misunderstood. I did not say it was only
12 economical for one well with a twenty year life. I said
13 one well would remain economical under these projections
14 for twenty years. In other words, economical to operate.
15 The cost of operation does not --

16 MR. EVANS: Does that imply that at some interval longer than
17 twenty years that that is the cut-off? That's what I'm
18 asking you. Is --

19 MR. MORGAN: Under the production scenario that was worked up
20 from Mr. Wilson's model twenty years was the time when
21 the economical life came together with the production
22 from the well. I did not run it out to twenty years to
23 test his theory on it. I only ran mine to ten years.

24 MS. MCCLANNAHAN: Mr. Evans, I think the point that Mr. Morgan
25 is making is that he took the Oakwood I testimony which

1 the Board has accepted and used that as hard -- he used
2 that as his beginning point for this particular model
3 without questioning Mr. Wilson's projections because
4 those have already been accepted by the Board and that is
5 what the Board has based all of the Oakwood I, Oakwood II
6 units on. So we didn't want to revisit that issue.

7 MR. EVANS: And I don't blame you. That's why I was asking if
8 that's what this is doing is pushing back and revisiting
9 that issue again and saying something different than --

10 MR. MORGAN: If you throw cost out the window, in other
11 words, if PGP doesn't have to make a profit or nobody
12 else has to make a profit you will recover significantly
13 more gas with two wells than you will with one but you
14 won't do it in the latter years economically. That's
15 essentially what it says. When you get to overall
16 recovery with the projections your two wells will recover
17 a little bit more gas economically, but it's so close
18 it's almost the same on an economic basis.

19 MR. EVANS: So you're at the point of diminishing returns real
20 quick?

21 MR. MORGAN: Right.

22 MR. MASON: But you also technically should get an economic
23 drive from the fact that your operating costs are
24 compacted over a shorter period of time and your gross
25 revenues in relation to your monthly operating costs are

1 -- the ratio is lower because -- in other words, if
2 you've got a \$500 a month operating well cost and that's
3 stretched over twenty years and if you reduce to eight
4 years and get the same amount of gross dollars obviously
5 you're going to get a better economics unit. I would
6 think that the economy of this -- the two primary
7 factors are the time value of money plus the reduction in
8 operating costs versus gross dollars. Is that --

9 MR. MORGAN: That's right because after a period of time the
10 operating cost on a well becomes fairly fixed.

11 MR. MASON: Right.

12 MR. MORGAN: And production continues to decline.

13 MR. MASON: Exactly. So that intersection is brought closer
14 in.

15 MR. CHAIRMAN: Other questions?

16 MR. MCGLOTHLIN: Mr. Morgan, for clarification on my part on
17 your figures of 391 for two wells, are those net figures?
18 Gross figures or net figures?

19 MR. MORGAN: Those are pretext margins based on a price for
20 the gas as was forecasted by -- I think it was Nymex or
21 some similar recognized outfit in January of this year
22 escalated 4 percent per year subtracting normal operating
23 costs -- pretext.

24 MR. MCGLOTHLIN: So it's net before taxes.

25 MR. MORGAN: Right.

1 MR. MASON: This whole process can be called creeping unitiza-
2 tion if you look at what we're doing.
3 MR. MORGAN: We wanted to jump there. We didn't want to
4 creep. Ha, ha.
5 MR. CHAIRMAN: Clearly that's where we're headed.
6 MR. MASON: It really is.
7 MR. CHAIRMAN: Clearly. Mr. Franks, do you have anything you
8 wish to address the Board with? Excuse me just one
9 second. Mr. Evans?
10 MR. EVANS: I do have one question. Refresh my memory. I
11 have mine projections here. What's the timing on those?
12 MR. MORGAN: Timing?
13 MR. EVANS: Yeah. I've got lines on the map.
14 MR. MORGAN: That's what I spoke to there. Our timing as
15 presented now is the first panel would be about a six
16 year life to about a ten year life up about where the
17 well 620 is.
18 MR. EVANS: And as far as the mining projections go, how solid
19 are those? Do you have --
20 MR. MORGAN: The mine is not in place. Those are our projec-
21 tions at this time. They are subject to change obvious-
22 ly. That is a stab at them at this point.
23 MR. EVANS: Have these been filed -- has a permit been applied
24 for?
25 MR. MORGAN: Yes.

1 MR. EVANS: With these projects as shown to the DMLR?
2 MR. MORGAN: Yes. Not approved yet.
3 MR. EVANS: Pardon me?
4 MR. MORGAN: Not approved yet. Obviously from the economics
5 here, if we weren't planning to mine this in the near
6 term we would not be drilling this close. I mean, our
7 own economics here would show that you don't drill one
8 and a half wells worth of gas with two wells if we
9 weren't planning to mine in there in a near term.
10 MR. CHAIRMAN: Anything further, members of the Board?
11 (Witness stands aside.)
12 MR. FRANKS: I have an update to the documents that I handed
13 out at the previous hearing, the package of data I gave
14 you concerning all of the interest of which I am in-
15 volved. There has been some changes made and I thought
16 I'd give you the update.
17 MR. CHAIRMAN: Thank you. (Pause.)
18 MR. FRANKS: All I've done here is update some information
19 that I've received from Pocahontas Gas after the previous
20 meeting. And I found that I had not deleted a small
21 square in one of the tracts that was involved at N-40. I
22 redid my numbers there. And R-40 wells are now included
23 -- the R-40 pool. Previously I deleted that. I included
24 it in my numbers. On sheet two the totals include R-40
25 but I did not include the totals of my acreage. They are

1 within one or two acres of the total Pocahontas Gas -- or
2 the pool. But when you look at the 80 acre diameter
3 readings as I gave before the differences in the percent-
4 age equivalence of well reduced from 78 to 69. So the
5 percentages have come together but it still isn't
6 complete. My last statement is -- there was some
7 discussion as to what may or may not be done about the
8 dispairagence in the numbers before and I didn't know if
9 any consideration had been taken to that and I'm still
10 interested in it.

11 MR. CHAIRMAN: Elizabeth, do you want to address that beginn-
12 ing in his last paragraph at the last question?

13 MS. McCLANNAHAN: I believe the Board made a decision to
14 approve those applications as they were submitted. So we
15 were not under the impression that we were in a position
16 to do anything because we're subject to whatever the
17 Board's order is for those force poolings.

18 MR. CHAIRMAN: Do you have anything further, Mr. Franks?

19 MR. FRANKS: Well, I would request that the Board attempt to
20 make an adjustment of some sort that might equalize this
21 a little better. But I don't know what that would be
22 because, as you stated before, it does get involved in
23 other poolings and other property. I believe it was
24 stated by Pocahontas Gas last time that they were willing
25 to consider anything the Board would permit.

1 MS. McCLANNAHAN: That's correct.

2 MR. CHAIRMAN: I think it boils down to, Mr. Franks, is that
3 we need more of a showing, I guess, by you or whomever on
4 clarification of the numbers or reconciliation of the
5 numbers. Essentially what the Board approved was a
6 presentation by Pocahontas Gas that your challenge we
7 didn't feel met the test of causing a change in the
8 figures. I'm asking the Board if you concur with that or
9 not. What we had to have -- in other words, the burden
10 of proof is on you to show that those figures were in
11 error. We didn't have enough information to make that
12 determination.

13 MR. FRANKS: I didn't say their figures were in error.

14 MR. CHAIRMAN: Well, I think that was the problem. It was
15 just a matter of how do we reconcile. Like you say, some
16 of those -- for lack of a better word -- odd shaped plats
17 of land in there within the units.

18 MR. FRANKS: It was the expected bleeding of the areas and I
19 don't think there was any argument anywhere about that
20 consideration. It does appear that there will definitely
21 be a considerable draining of gas from properties other
22 than the pool in which it's paid.

23 MR. CHAIRMAN: I think what you did is very eloquently and
24 graphically depicted for the Board things we need to be
25 on the look out for as we have proven fields so that any

1 future modifications could be considered. I don't think
2 we have the facts and figures at this present time to
3 arrive at those reconciliations. We're open to any
4 suggestions on how we might do that, but until some
5 production life gets into --

6 MR. FRANKS: That's what I was going to say. The only time
7 anyone will know with certainty or have a true, positive
8 back-up is after the fact and at that point it's a little
9 late to do the balancing.

10 MR. CHAIRMAN: I understand that. Anything further?

11 MS. McCLANNAHAN: Just as a point of clarification, the
12 revisions that you've listed on this exhibit that you
13 presented, Mr. Franks, are revisions to your attachment
14 A, is that right?

15 MR. FRANKS: That's correct.

16 MS. McCLANNAHAN: Okay.

17 MR. CHAIRMAN: Anything further? What's your pleasure.

18 MR. McGLOTHLIN: I move that we accept the application as
19 amended by PGP.

20 MR. MASON: Mr. Chairman, I second that with considerable
21 pleasure.

22 MR. CHAIRMAN: A motion and second. Further discussion?
23 If not all in favor signify by saying yes. (ALL AFFIRM.)
24 Opposed say no. (NONE.) It's unanimous. Let's take a
25 five minute break.

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

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1 ITEM III

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 force pooling by Pocahontas Gas Partnership for the 0-41
5 unit. This is docket number VGOB-93/04/20-0362 continued
6 from May. We would ask the parties that wish to address
7 the Board to come forward at this time.

8 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
9 Partnership.

10 MR. FRANKS: J.C. Franks for landowners.

11 MR. CHAIRMAN: You may proceed.

12 MS. McCLANNAHAN: The first witness I'd like to call is Les
13 Arrington.

14 MR. CHAIRMAN: We'll just stipulate that they've been prev-
15 iously sworn and that their resumes have been accepted by
16 the Board.

17 MS. McCLANNAHAN: And that they're all submitted as expert
18 witnesses?

19 MR. CHAIRMAN: They have all been accepted.
20

21 LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Arrington, have you given notice as required by Virginia Code Section 45.1-351.19 to each person or entity identified on Exhibit C of the force pooling application?

A. Yes, we have.

Q. And is that hearing notice at Exhibit 2?

A. Yes, it is.

Q. Was this notice of hearing mailed to the parties listed on Exhibit C?

A. Yes, it was.

Q. By certified mail, return receipt requested?

A. Yes.

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

MR. CHAIRMAN: It's admitted.

Q. (Ms. McClannahan continues.) Are the copies of return receipts which you received identified as Exhibit 3?

A. Yes.

MS. McCLANNAHAN: Mr. Chairman, I move the introduction of Exhibit 3.

MR. CHAIRMAN: It's admitted.

Q. (Ms. McClannahan continues.) Were there any persons

- 1 whose names and/or addresses were unknown?
- 2 A. No. However, we still published in the Virginia Mount-
3 aineer and Bluefield Daily Telegraph on April 1st and
4 March 26th.
- 5 Q. Do you have the proofs of publication?
- 6 A. Yes. They have previously been submitted to the Inspect-
7 or.
- 8 Q. What percentage of the coal rights in the tracts that
9 comprise the 0-41 unit does PGP control?
- 10 A. 100 percent of all coal below the Tiller Seam.
- 11 Q. What percentage of the oil and gas rights in the tracts
12 that comprise the 0-41 unit does PGP control?
- 13 A. 96.471 percent.
- 14 Q. What percentage of the coalbed methane gas rights?
- 15 A. 100.
- 16 Q. Are the unleased owners and lease hold owner listed on
17 Exhibit D of the 0-41 unit force pooling application with
18 percentages of ownership in the respective tracts?
- 19 A. Yes.
- 20 Q. Is the information on Exhibits C, D and E correct from
21 the date that you filed the application?
- 22 A. No.
- 23 Q. Have you made appropriate changes?
- 24 A. Yes, we have, to show the additional owners.
- 25 Q. And are those additional owners on revised Exhibits C, D

1 MR. CHAIRMAN: I have a cover sheet that says "Ron Wood's
2 resume" and it is his resume.

3
4 RONALD WOOD

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

7
8 DIRECT EXAMINATION

9
10 BY MS. McCLANNAHAN:

11 Q. Mr. Wood, where has your experience in obtaining mineral
12 leases been concentrated?

13 A. In Pennsylvania, New York, West Virginia, Virginia and
14 Tennessee.

15 Q. In your experience in obtaining leases in Virginia are
16 you familiar with the fair market value for oil and gas
17 leases and coalbed methane leases in the O-41 unit area?

18 A. Yes, I am.

19 Q. What are the fair market value terms for an oil, gas and
20 coalbed methane gas lease?

21 A. \$5 per acre per year rental with a one-eighth royalty.

22 Q. And a coalbed methane lease?

23 A. \$1 per acre per year rental with a one-eighth royalty.

24 Q. And what is the standard primary term?

25 A. Ten years.

1 Q. With regard to the unleased owners that are listed on the
2 0-41 unit force pooling application have you contacted
3 these landowners or tried to contact them to obtain a
4 lease?

5 A. Yes, we have.

6 Q. By what method did you contact them?

7 A. Verbal and/or certified mail.

8 Q. With regard to the lease hold owner Cabot Oil & Gas that
9 is listed on 0-41 unit force pooling application did you
10 make an offer regarding an assignment of its lease hold
11 interest?

12 A. Yes, we did.

13 Q. By what method did you contact Cabot?

14 A. Verbal.

15 Q. Were you able to come to an agreement as to the leases
16 offered or the proposed assignment?

17 A. Not at this time.

18 MS. McCLANNAHAN: Those are all the questions I have for Mr.
19 Wood.

20 MR. CHAIRMAN: Questions, members of the Board? Mr. Franks?

21 MR. FRANKS: No.

22 (Witness stands aside.)

23 MR. CHAIRMAN: Call your next witness.

24 MS. McCLANNAHAN: Randy Albert.

25

1 RANDALL ALBERT

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

5 DIRECT EXAMINATION
6

7 BY MS. McCLANNAHAN:

8 Q. Mr. Albert, has a drilling permit been previously refused
9 to PGP on any of the tracts that comprise the unit?

10 A. No, it has not.

11 Q. Have any well work permits been issued for the 0-41 unit?

12 A. Yes, they have, for wells 604 and 607 as permits 2110 and
13 2183 as coalbed methane gas wells.

14 Q. Have you received any written responses from the owners
15 of the tracts within this unit?

16 A. No.

17 Q. Does the plat attached to the force pooling application
18 filed by PGP indicate the acreage and the shape of the
19 acreage to be embraced within the 0-41 unit?

20 A. Yes, it does.

21 Q. Could you please identify the exhibit marked for iden-
22 tification as Exhibit 7?

23 A. Exhibit 7 is Exhibit B-1 from the 0-41 application.

24 Q. Does the unit follow the boundary lines of the Hurricane
25 Branch Extension 80 acre unit designated as 0-41?

1 A. Yes, it does.

2 Q. Does the plat attached to the application indicate the
3 area within which the wells will be drilled on the O-41
4 unit?

5 A. Yes, it does.

6 Q. Does the unit embrace two or more separately owned
7 tracts?

8 A. Yes, it does.

9 Q. Are the costs and expenses for the wells set forth on
10 detailed well estimates attached to the force pooling
11 application as Exhibits H and I?

12 A. Yes, they are.

13 Q. Do these exhibits reflect the costs of drilling the wells
14 to total depth and completed for production costs?

15 A. Yes, they do. They're actual costs for drilling and
16 estimated for completion.

17 Q. How did you calculate the costs that are listed in the
18 DWES?

19 A. Again they're actual costs for drilling --

20 Q. I'm sorry. Are you requesting that PGP be designated as
21 well operator?

22 A. Yes.

23 Q. Are you requesting the relief sought in Paragraph 4 of
24 PGP's application?

25 A. Yes, we are.

1 Q. And that the Board approve the additional well and the
2 location of those wells as shown on the 0-41 application?
3 A. Yes, we are.
4 MS. McCLANNAHAN: Those are all the questions I have for Mr.
5 Albert.
6 MR. CHAIRMAN: Mr. Albert, are the exact costs and estimated
7 costs the same as they were when you prepared them March
8 19th?
9 MR. ALBERT: Yes, they are.
10 MR. CHAIRMAN: For both Exhibit H and I?
11 MR. ALBERT: Yes, sir.
12 MR. CHAIRMAN: Any questions, members of the Board?
13 MR. MASON: I'm just curious. Looking at the two wells,
14 Exhibits H and I, on Exhibit H location title it's
15 \$58,169.
16 MR. ALBERT: Yes, sir.
17 MR. MASON: And then on Exhibit I it's only \$8,228. Did your
18 attorneys mess up and not send you a big enough bill on
19 the second one?
20 MS. McCLANNAHAN: I don't do title, Mr. Mason.
21 MR. ALBERT: Mr. Mason, that's just simply the difference
22 between -- when you can get a site that's on an existing
23 strip bench, the road that is existing to it, and one
24 where there is no road or no site.
25 MR. MASON: I'm just curious. Part of that's in making the

1 location?

2 MR. ALBERT: Yes, sir. The vast majority of it is in the
3 making of the location.

4 MR. MASON: Oh, okay. It's the principle difference on the
5 costs of the two wells. It has to do with the actual
6 location and the cost of getting it?

7 MR. ALBERT: That's right, the physical part of the location.

8 MR. MASON: Thank you.

9 (Witness stands aside.)

10 MS. McCLANNAHAN: The next witness I'd like to call is Mr.

11 Claude Morgan. I believe we need to submit Mr. Morgan's
12 resume as Exhibit 8. The Chairman has indicated that he
13 accepts that resume pursuant to previous hearing and also
14 qualifies Mr. Morgan as an expert witness.

15 MR. CHAIRMAN: While he's giving those out, let me just ask
16 Mr. Franks, did you have any questions of the last
17 witness?

18 MR. FRANKS: No.

19 MR. CHAIRMAN: You may proceed.

20

21 CLAUDE MORGAN

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

24

25

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Morgan, with regard to the costs that are listed on the DWES that Randy Albert has described and submitted for the wells in the 0-40 unit how do you propose to allocate the costs among the owners in the unit?

A. On a net mineral basis.

Q. Mr. Morgan, would you please identify Exhibit 9?

MR. MASON: Is that the same --

MS. McCLANNAHAN: Exhibit 9 should be a topographical map with the mine plan shown on it for this unit.

A. (The witness continues.) Exhibit 9 is a topographic map with the mine plan for the proposed reserve coal properties Hurricane Branch mine and the 0-41 unit highlighted and with the location of wells 604 and 607 shown.

Q. Looking at this mine plan could you please explain the timing for the panel to be mined where this unit is located?

A. The timing for this panel is about seven years.

Q. Has the mine plan that's shown on this particular exhibit been submitted to DMLR?

A. The mine plan has been submitted to DMLR.

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

1 MR. CHAIRMAN: It's admitted.

2 Q. (Ms. McClannahan continues.) Mr. Morgan, would you
3 please identify the exhibit that's been marked for
4 identification as Exhibit 10?

5 A. Exhibit 10 is a projection of cumulative production from
6 the one, two and three wells per 80 acre scenario. This
7 information was taken from the model that was depicted by
8 Dr. Wilson in the Oakwood I hearing. On this exhibit the
9 green line represents the one well per 80 acre unit, the
10 red two wells per 80 acre unit.

11 Q. And the increase for production from the additional well
12 will be the difference between the red and the green line
13 where ever it is shown on this graph, is that correct?

14 A. That is correct.

15 Q. Can you explain to the Board what the purpose of the
16 particular locations of the two wells in the 0-41 unit
17 is?

18 A. Both wells were spotted as nearly to the middle of the
19 projected longwall panel as the topography and existing
20 Jewell Ridge refuge area would allow. 607 is actually
21 located on the haul road to this refuge area and it is on
22 a wide spot in the road which is basically the only spot
23 it could be located. 604 was located on a diversion
24 bench going around that side and again, as near the
25 middle of the panel as it could be.

1 Q. Could you please explain to the Board the difference in
2 production as it related to the difference in costs for
3 both those wells?

4 A. In the seven year projected life of these two wells,
5 utilizing Dr. Wilson's model, two wells will produce
6 slightly more than 50 percent as much gas as one well on
7 a -- looking at the costs of production versus realiza-
8 tion projected for these volumes. That translates to a
9 present worth differential of about 1.5. In other
10 words, two wells will produce about 1.5 times the
11 economic benefit of one well in the seven year life.

12 Q. Would you then propose an amendment to the application as
13 it's been submitted for the 0-41 application requesting
14 that the Board approve 1.5 percent of the total costs of
15 these two wells be allocated to the royalty owners in
16 this unit?

17 A. I recommend that the Board approve the allocation of 1.5
18 times the average cost of the two wells.

19 MS. McCLANNAHAN: Those are all the questions I have for Mr.
20 Morgan.

21 MR. CHAIRMAN: Questions, members of the Board? Mr. Franks?

22 MR. FRANKS: No.

23 (Witness stands aside.)

24 MR. CHAIRMAN: Do you have anything further?

25 MS. McCLANNAHAN: No.

1 MR. CHAIRMAN: Mr. Franks, do you have anything you would like

2 to --

3 MR. FRANKS: No, I don't. The same objections I had before.

4 MR. CHAIRMAN: Okay. Objection noted. Do I have a motion?

5 MR. MASON: Mr. Chairman, I move we approve the application
6 as amended.

7 MR. CHAIRMAN: Motion to approve as amended.

8 MR. MCGLOTHLIN: Second.

9 MR. CHAIRMAN: Motion and second. Further discussion? If
10 not, all in favor signify by saying yes. (ALL AFFIRM.)
11 Opposed say no. (NONE.) Unanimous approval.

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1 ITEM IV

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 force pooling by Pocahontas Gas Partnership for the M-42
5 unit. This is docket number VGOB-93/04/20-0364 continued
6 from May. I would ask the parties that wish to address
7 the Board in this matter to come forward at this time.
8 (Pause.) You may proceed.

9 MS. McCLANNAHAN: The first witness I'd like to call is Leslie
10 Arrington.

11 MR. CHAIRMAN: I would remind all of your witnesses that
12 they've been previously sworn -- if we can find Mr.
13 Arrington.

14 MS. McCLANNAHAN: In addition would you accept the resumes
15 that have already been submitted as exhibits for each of
16 my witnesses and accept them as expert witnesses?

17 MR. CHAIRMAN: Yes.

18 MS. McCLANNAHAN: I'll just call Mr. Wood since Mr. Arrington
19 is unavailable.

20
21 RONALD WOOD

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

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Wood, in your experience in obtaining leases in Virginia are you familiar with the fair market value for oil and gas leases and coalbed methane leases in the M-42 unit area?

A. Yes, I am.

Q. What are the fair market value terms for an oil, gas and coalbed methane lease in the area?

A. \$5 per acre per year rental with a one-eighth royalty.

Q. And for a coalbed methane lease?

A. \$1 per acre per year with a one-eighth royalty.

Q. What would be the standard primary term for oil, gas and coalbed methane leases in this area?

A. Ten years.

Q. With regard to the unleased owners that are listed on the M-42 unit force pooling application have you contacted those land owners or tried to contact them to obtain a lease?

A. Yes, we have.

Q. By what method did you contact them and offer the lease?

A. Verbal and/or certified mail.

Q. With regard to the lease hold owner Cabot Oil & Gas listed on the M-42 unit force pooling application did you

1 make an offer regarding an assignment of its lease hold
2 interests?

3 A. Yes, we did.

4 Q. By what method did you contact Cabot?

5 A. Verbal.

6 Q. Were you able to come to an agreement as to the proposed
7 assignment or as to the proposed leases for the unleased
8 owners?

9 A. Not at this time.

10 MS. McCLANNAHAN: Those are all the questions I have for Mr.
11 Wood.

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

13 (Witness stands aside.)

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

15 MS. McCLANNAHAN: Mr. Albert.

16

17 RANDALL ALBERT

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

20

21 DIRECT EXAMINATION

22

23 BY MS. McCLANNAHAN:

24 Q. Has a drilling permit been previously refused to PGP on
25 any of the tracts that comprise this unit?

1 A. No, it hasn't.

2 Q. Have any well work permits been issued for the M-42 unit?

3 A. Yes, they have. Permits for 612 and 613 have been issued
4 as permits 2134 and 2291 as coalbed methane wells.

5 Q. Have you received any written responses from the owners
6 of the tracts?

7 A. No, we have not.

8 Q. Does the plat attached to the force pooling application
9 filed by PGP indicate the acreage and the shape of the
10 acreage to be embraced within the unit?

11 A. Yes, it does.

12 Q. Could you please identify Exhibit 6?

13 A. Exhibit 6 is Exhibit B-1 of the M-42 application.

14 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
15 Exhibit 6.

16 MR. CHAIRMAN: It's admitted.

17 Q. (Ms. McClannahan continues.) Does the unit follow the
18 boundary lines of the Hurricane Branch Extension 80 acre
19 unit designated as M-42?

20 A. Yes, it does.

21 Q. Does the plat attached to the force pooling application
22 indicate the area within which the wells will be drilled?

23 A. Yes, it does.

24 Q. Does the drilling unit embrace two or more separately
25 owned tracts?

1 A. Yes, it does.

2 Q. Are the costs and expenses for the wells set forth on the
3 detailed well estimates attached to the force pooling
4 application as Exhibits H and I?

5 A. Yes. However, I have just noticed a problem with Exhibit
6 I. It is identical to Exhibit H which is wrong. That's
7 where Mr. Arrington is, trying to get the right DWE faxed
8 to us. However, I don't believe it will be a material
9 amount of money difference in the two. They are fairly
10 close in depth. But yes, those are the DWEs.

11 Q. With the amendment to Exhibit I that needs to be made, is
12 that correct?

13 A. Yes. That's correct.

14 MR. MASON: Do you know what the total is on the amended one?

15 MR. ALBERT: I was just sitting here trying to kind of rough
16 into. Not knowing what the difference in locations are,
17 just the depth type differences right now should be about
18 \$11,000 less than is shown. However, that could be off
19 balance by location.

20 Q. (Ms. McClannahan continues.) Are you requesting that
21 Pocahontas Gas Partnership be designated as the well
22 operator authorized to operate the M-42 unit?

23 A. Yes, we are.

24 Q. Are you requesting the relief sought in Paragraph 4 of
25 PGP's application?

1 A. Yes, we are.

2 Q. Are you asking that the Board to approve the additional
3 well and grant the location as it is shown on Exhibit B-1
4 of the application?

5 A. Yes, we are.

6 MS. McCLANNAHAN: Those are all the questions I have for Mr.
7 Albert.

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

9 (Witness stands aside.)

10 MR. CHAIRMAN: Call your next witness.

11 MS. McCLANNAHAN: Mr. Morgan. I believe we need to submit his
12 resume. Mr. Morgan's resume would be submitted as
13 Exhibit 7 as previously accepted by the Board.

14

15 CLAUDE MORGAN

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

18

19 DIRECT EXAMINATION

20

21 BY MS. McCLANNAHAN:

22 Q. With regard to the costs that are listed on the DWSs that
23 Randy Albert has described and submitted for the wells in
24 the M-42 unit how do you propose to allocate the costs
25 among the owners in the unit?

- 1 A. On a net mineral acre basis.
- 2 Q. Mr. Morgan, could you please identify Exhibit 8?
- 3 A. Exhibit 8 is a topo map overlying mine plans for the
4 proposed Hurricane Branch mine by reserve coal propert-
5 ies. It shows unit M-42 highlighted and it shows well
6 locations 612 and 613.
- 7 Q. Could you please explain the timing with regard to the
8 longwall panels that are located in that particular unit?
- 9 A. This panel should be about ten years away.
- 10 Q. Has the mine plan that's been submitted for this particu-
11 lar unit been submitted to the Division of Mine Land
12 Reclamation?
- 13 A. Yes, it has.
- 14 Q. Mr. Morgan, could you please identify Exhibit 9?
- 15 A. Exhibit 9 is a chart showing the projected production
16 from a one well, two well and three well 80 acre scenar-
17 io. It is cumulative production versus year. One well
18 in green, two wells in red. This information was taken
19 from the chart prepared by Dr. Wilson, as a result of his
20 modeling that was done in the preparation of Oakwood I
21 field application.
- 22 Q. Will the additional well in the M-42 unit result in
23 increased production?
- 24 A. Yes, it will.
- 25 Q. Could you explain what the increased production is?

- 1 A. Two wells in a ten year time frame in 80 acres from this
2 model will produce about 680 million cubic feet. One
3 well in that same time frame would produce about 450
4 million cubic feet. So about a 51 percent increase in
5 production.
- 6 Q. Can you explain to the Board what the purpose of the
7 particular location of the two wells in the M-42 unit?
- 8 A. Both wells are located in the middle of proposed longwall
9 panel. Well 612 is also located on the crest of a ridge.
10 Well 613 is located on a small point with steep topo-
11 graphy on both sides.
- 12 Q. Could you explain to the Board what your proposal is for
13 allocation of the costs to the royalty owners in this
14 unit?
- 15 A. Based on the projected economic benefit from two wells
16 versus one well with a ten year life, looking at the
17 present value of production from two wells as opposed to
18 one well, it would be about 1.4 multiplied times the
19 average cost of a well.
- 20 Q. So are you recommending an amendment to the application
21 for the M-42 unit to reflect a 1.4 percentage of the
22 average cost of the two wells?
- 23 A. 1.4 times the average cost of the two wells should be the
24 costs allocated to the unit.
- 25 MS. McCLANNAHAN: Those are all the questions I have for Mr.

1 Morgan.

2 MR. MCGLOTHLIN: Mr. Morgan, can you explain why 613 is in the
3 same longwall panel and 612 and -- I guess why it can't
4 be moved over to N-41?

5 MR. MORGAN: We attempted to put that well in N-41. In fact,
6 we actually permitted a site for that well in N-41. But
7 when we got in the field we couldn't physically build the
8 site. The only place there would be on the next point up
9 and Jewell Ridge has a road coming up through there and
10 there was no wide spot there that opportunity allowed us
11 to find on the lower road that would permit the location
12 of that well. So it was just not -- a physical site was
13 not available to us for it.

14 MR. MCGLOTHLIN: No mining constraints there if it were to be
15 in --

16 MR. MORGAN: It was not mining constraints. It was topography
17 driven.

18 MR. MASON: Where is there a well going to be in that panel in
19 M-41? This is M-42. I know that. But --

20 MR. MORGAN: There will be one in M-41. In fact, we may be
21 coming in with an application for that next north panel.
22 We have to talk to -- we still have not ran that location
23 by Jewell Ridge, but we have a location picked out in
24 that next panel for M-41.

25 MR. MASON: Because you've got a pretty large section of panel

1 there with no drainage in it.

2 MR. MORGAN: Right.

3 MR. MASON: Are there any other wells like over in 43 area

4 because you've got those entry ways and all in there,

5 don't you?

6 MR. MORGAN: Yes.

7 MR. CHAIRMAN: Other questions? Call your next witness.

8 MR. MASON: I just want to ask you one question. The differ-

9 ence in the valleys and peaks, I can't read these, in

10 this area what is the difference in topography like in

11 the bottom of these valleys and the tops in these ridges?

12 Do you have any idea? I mean, just a guess.

13 MR. CHAIRMAN: A lot. See how tight those lines are? Ha, ha.

14 MR. MASON: I know. That's what I'm talking about. I'm not

15 accustomed to anything like this. I just wondered

16 what --

17 MR. MORGAN: It's steep. It looks like about 1,000 to 1,100

18 feet.

19 MR. EVANS: Yeah. 800 to 1,000 feet is typical for local

20 relief.

21 MR. MASON: Over what distance?

22 MR. MORGAN: Over probably 2,000 feet. See, you're looking at

23 50 percent slopes.

24 MR. MASON: When you talk about topography problems -- that's

25 major?

1 MR. MORGAN: It's problems. If you build a 100 foot wide side
2 you would have a 50 foot high wall behind it.

3 MR. MASON: You'd have to have a drill rig with legs on it.

4 MR. EVANS: Out-riggers 50 foot long.

5 MR. CHAIRMAN: Other questions.

6 MR. MCGLOTHLIN: Just a point of clarification. You do not
7 foresee a well in that longwall panel in the M-41 area?

8 MR. MORGAN: In the near term we're not going to be able to
9 get one in there because of their active roadway.
10 Hopefully by the time we get there mining we will be able
11 to get us a gob well location in there, whether it be by
12 relocation of their road or whatever. But at this time
13 we couldn't locate it there. We tried. We even wasted a
14 permit on it.

15 MR. MASON: Well 617, is it already in production?

16 MR. MORGAN: It is drilled. It is not in production yet.

17 (Witness stands aside.)

18 MR. CHAIRMAN: Call your next witness.

19 MS. McCLANNAHAN: Mr. Les Arrington.

20

21 LESLIE ARRINGTON

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

24

25

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Have you given notice as required by Section 45.1-361.19 to each person or entity identified on Exhibit C of the force pooling application?

A. Yes.

Q. Is that hearing notice marked for identification as Exhibit 2?

A. Yes, it is.

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

Q. (Ms. McClannahan continues.) Is this the notice of hearing that was mailed to the parties listed on Exhibit C in the force pooling application?

A. Yes, it is.

Q. How was this accomplished?

A. By certified mail, return receipt.

Q. Are copies of those return receipts identified as Exhibit 3?

A. Yes, they are.

MS. McCLANNAHAN: Mr. Chairman, I move the introduction of Exhibit 3.

MR. CHAIRMAN: It's admitted.

MS. McCLANNAHAN: And also Exhibits 8 and 9.

1 MR. CHAIRMAN: They're admitted.

2 Q. (Ms. McClannahan continues.) Were there any persons
3 whose names and/or addresses were unknown?

4 A. No. However, we still published it in the Virginia
5 Mountaineer and Bluefield Daily Telegraph on April 1st
6 and March 26th.

7 Q. Were the proofs of publication previously submitted to
8 the Board?

9 A. Yes, they were.

10 Q. What percentage of the coal rights in the tracts that
11 comprise the M-42 unit does PGP control?

12 A. 98.775 percent of all coal below the Tiller seam.

13 Q. And what percentage of the oil and gas rights?

14 A. 95.9 percent.

15 Q. What percentage of the coalbed methane gas rights?

16 A. 98.775 percent.

17 Q. Are the unleased owners and the lease hold owners listed
18 on Exhibit D of the M-42 force pooling application with
19 the percentage of ownership?

20 A. Yes, it is.

21 Q. Is the information on Exhibits C, D and E still correct
22 from the date of filing?

23 A. Yes, it is.

24 Q. Are the conflicting claimants listed on Exhibit E of the
25 application?

1 A. Yes.

2 Q. Are you requesting that the Board pool the interest of
3 the parties listed on Exhibit C?

4 A. Yes, we are.

5 MS. McCLANNAHAN: Those are all the questions I have for Mr.
6 Arrington.

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

8 MR. EVANS: With regard to the one in question here, that's
9 strictly topography driven? Is that what I understood
10 Mr. Morgan --

11 MR. ARRINGTON: Topography drove it back inside that unit. It
12 was located inside the middle of the longwall panel which
13 confined it from going north and south. But it was
14 driven to the east by topography.

15 MR. EVANS: Will it still serve the purposes of the mine plan?

16 MR. ARRINGTON: It will not degas the area as well as we would
17 like to have it degased. It will serve -- the location
18 would still serve as a gob well location hopefully in the
19 future. And at some point in the future we will have to
20 -- as I understand it, that mine may finish before we get
21 there in which case we could utilize the road.

22 MR. EVANS: So the utility of the second well is marginal?

23 MR. ARRINGTON: Sir?

24 MR. EVANS: The utility to the mine of the second well is
25 marginal as far as purpose --

1 MR. ARRINGTON: It will not drain quite the area we would like
2 it to drain. Our first pick was not that location.

3 MR. EVANS: I have a bit of a problem in that you're request-
4 ing 1.4 times the average cost of both wells when one of
5 the wells is marginal with regard to the purpose to degas
6 which is driven by the mine plan. Is that what I'm
7 hearing from you?

8 MR. ARRINGTON: Not marginal from a production standpoint.
9 It's marginal from the standpoint that it may not drain
10 the spot in the mine that we would like to have seen it
11 drain.

12 MR. EVANS: I'm making a distinction here. The reason I'm
13 making this distinction is because everything else that
14 you've come today with is the mine plan and projections
15 say that we have to degas this area in seven or ten
16 years. And you've been asking for two wells a unit.

17 MR. ARRINGTON: Right.

18 MR. EVANS: Based on that I think for me, anyway, that's why
19 I've been willing to say okay, yeah, we'll give you one
20 and a half times the cost because that makes sense. In
21 this case you're saying that that second well is not
22 going to accomplish the purpose of degasing that mine in
23 ten years. This is strictly a production issue. You're
24 saying I want 1.4 times the cost of these two wells, one
25 of which it might serve as a gob well afterwards but it

1 really doesn't do such a good job for degasing out in
2 front of this mine. There's a difference there in my
3 mind.

4 MR. ARRINGTON: It's a matte of degree. It's not that it's
5 not going a job and this is not the opportune and I don't
6 always get the wells in the opportune locations I would
7 like it to be. If I was to put my finger on a point here
8 and locate that well I would probably move it a little
9 bit to the west. It will still drain that coal signific-
10 antly, but not as well --

11 MR. EVANS: As another location?

12 MR. ARRINGTON: -- as another location would. There would
13 still be significant benefit and significant production
14 from that well.

15 MR. EVANS: I understand all that. When you say significant
16 benefit in my mind we're getting into a grey area here.
17 What is significant versus insignificant? Is 25 percent
18 significant? Is over 50 percent significant?

19 MR. ARRINGTON: I'm talking about a move from where I would
20 ideally like to have had it. I'm talking a move of maybe
21 400 feet.

22 MS. McCLANNAHAN: I think the explanation of that particular
23 move was simply because that is located so close to the
24 line. That was the purpose of that particular explana-
25 tion. Secondly, the purpose of granting additional costs

1 should be tied to production, not
2 MR. EVANS: It's tied to your mine plan as far as I'm concern-
3 ed because that's what is driving it as far as I'm
4 concerned.
5 MR. ARRINGTON: The number of permits, okay, but we are tying
6 the cost to be allocated based on production.
7 MR. EVANS: If we're going to permit you to drill two frack
8 CBM wells out ahead we're going to have to have a reason
9 to do that. In my mind the mine plan that you submit or
10 the projections that you submit is what drives that. It
11 says look, I've got a panel here and I've got to drain
12 this panel because I've only got seven years and I'm
13 going to mine it.
14 MR. CHAIRMAN: The issue here, you're saying, is the approval
15 of the second well?
16 ME. EVANS: Yes.
17 MR. CHAIRMAN: He's not getting into the business with how you
18 came up with the costs here. He's dealing with have you
19 justified the second well period.
20 MS. MCCLANNAHAN: It's already been permitted and drilled.
21 MR. ALBERT: It's permitted and drilled at this point.
22 MR. EVANS: But you want the costs now.
23 MR. ALBERT: It's a separate issue. That should be only tied
24 to production, not whether that well serves as the best
25 degasification well in Buchanan County. That issue is

1 based on production of benefit to the participating
2 royalty owners, not whether it degasses the mine as well
3 as any other particular location would do. That should
4 be a question of only the production of the well. Mr.
5 Chairman, I think we're confusing two completely issues
6 obtuse here.

7 MR. EVANS: I guess maybe we are because I had a different
8 outlook here. Regs and law says one well per unit.
9 That's what it says.

10 MR. ALBERT: The regs clearly give you the option for a mine
11 plan to drill more than one well per unit.

12 MR. EVANS: Very good and that's my point.

13 MS. McCLANNAHAN: These wells were drilled under statewide
14 spacing prior to the time that a unit was established.

15 MR. EVANS: Thank you.

16 MR. CHAIRMAN: That's what I was trying to get at a minute
17 ago. When you said that you hadn't presented that
18 evidence. You just went with the assumption that two
19 wells were granted and started talking about costs. I
20 know it's in your application but --

21 MS. McCLANNAHAN: Right.

22 MR. EVANS: That's fine. As long as they were drilled under
23 statewide spacing they were legally put in, that's fine.
24 I didn't --

25 MS. McCLANNAHAN: I'm sorry that I didn't make that clear from

1 the beginning.

2 MR. CHAIRMAN: Anything further?

3 MR. MCGLOTHLIN: The DWs, do we have a --

4 MR. ARRINGTON: I'll have to get that submitted.

5 MR. MCGLOTHLIN: Could you give us a cost on it?

6 MS. MCCLANNAHAN: We've been unable to contact the office, but

7 we have two other items on the docket today. So if you

8 would allow us to submit it at that particular time.

9 MR. CHAIRMAN: Do you just want to defer the vote until then?

10 Until we get the information? Okay. We'll recess for

11 lunch.

12 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS

13 FOLLOWS:)

14 MR. CHAIRMAN: The Board will continue discussion on Docket

15 number VGOB-93/04/20-0364. This is a petition for force

16 pooling by Pocahontas Gas Partnership for the M-42 unit.

17 MS. MCCLANNAHAN: I've submitted revised Exhibit I which is

18 the detailed well estimate for CBM PGP 613 well as I

19 earlier promised to the Board.

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

21 deferred vote until we received this.

22 MR. MASON: Mr. Chairman, I move we adopt the petition as

23 submitted.

24 MR. MCGLOTHLIN: Second.

25 MR. CHAIRMAN: Motion and second. Further discussion? All in

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favor signify by saying yes. (ALL AFFIRM.) Opposed say
no. (NONE.) Unanimous approval.

ITEM V

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2
3 MR. CHAIRMAN: The next item on the agenda is pursuant to
4 Section 45.1-361.35.F the Director of the Division of Gas
5 and Oil has referred to the Virginia Gas and Oil Board
6 for consideration the application submitted by Ashland
7 Exploration for proposed well GP-A4. This is docket
8 number VGOB-93/06/22-0378. We'd ask the parties that
9 wish to address the Board in this matter to come forward.

10 MR. MCQUIRE: Grant McQuire for Ashland Exploration.

11 MR. SWARTZ: Mark Swartz for Georgia-Pacific.

12 MR. CHAIRMAN: Grant, you may proceed.

13 MR. MCQUIRE: I'm not really sure how this comes up before the
14 Board except for the way it was laid out in the agenda
15 and that was that the objections of Georgia-Pacific would
16 be heard before the Board. And I filed a motion to
17 dismiss because I believe these matters were considered
18 two months ago. Let me briefly tell you how we got here.
19 On the GP-A4 well back in late 1992 we applied for a
20 permit. It appeared that we had not voluntarily pooled
21 everybody in that unit and the Inspector issued the
22 permit and conditioned it upon force pooling. We filed
23 for force pooling. Subsequently we entered into a
24 voluntary unit agreement with the parties and asked at
25 the April hearing if we could have our application for

1 force pooling withdrawn. That request was opposed by Mr.
2 Swartz who argued that there was a need for field rules
3 based upon the objections that he filed and also that
4 Georgia-Pacific hadn't signed on to the voluntary unit
5 agreement. The Board, as I recall, decided not to
6 entertain field rules hearings on its own motion and
7 decided not to order Ashland to apply for field rules
8 and since Georgia-Pacific had not applied for field
9 rules allowed Ashland withdraw. I then informed the
10 Board in April that there was still a condition upon this
11 permit that said "you shall force pool" and that we
12 needed to remove it - remove that condition. And I think
13 we agreed the way to do it would be to go to the Inspec-
14 tor, have Ashland request the removal of the condition
15 and then give Georgia-Pacific the opportunity to be heard
16 and appeal if necessary. We did via letter to the
17 Inspector request that he issue the permit on the basis
18 that there was a voluntary unit now and Georgia-Pacific
19 filed objections to our request for removing the condi-
20 tion. The objections were the same heard before at the
21 force pooling withdrawal and that was the need for field
22 rules and that Georgia-Pacific had not signed on the
23 voluntary unit agreement. Mr. Swartz in his letter
24 evoked part of the statute which requires that Board
25 issues be heard before the Board and that's how we're up

1 before you today, I believe. I have filed a motion to
2 dismiss because I believe these issues have been covered
3 before by the Board. With regard to whether or not
4 Georgia-Pacific should be a party to the voluntary unit
5 agreement, we have the right in our lease to voluntarily
6 pool and we've done that. There's nothing in the lease
7 that requires a written consent by Georgia-Pacific. As
8 the Board has recognized before, this is a contract
9 issue. It involves our title. We have lease hold title
10 with certain pooling rights. And these contract issues
11 aren't proper objections to be heard by the Board. I've
12 cited the statute to you. Ashland has the right to
13 voluntarily enter into agreements with interested parties
14 and if Georgia-Pacific has a complaint about us doing so
15 then that would be properly heard by a court of law who
16 hears contract issues and hears title issues. With
17 respect to the field rules, to my knowledge there has
18 been no application for field rules on behalf of Georgia-
19 Pacific. We have filed and given a copy to the Inspector
20 a circular voluntary unit. This Board has seen many
21 circular units come before the Board. Georgia-Pacific
22 has asked that squares be imposed in this area. We do
23 have a voluntary contract for a circular unit and don't
24 believe that contract ought to be interfered with and do
25 not believe this issue needs to be revisited again. The

1 Board has decided that it will not on its own motion
2 consider field rules, it will not order Ashland to, and
3 it took notice that Georgia-Pacific had not applied for
4 any field rules. I believe this issue has been decided
5 and would ask the Board to dismiss the objections to the
6 removal of the condition based upon those two arguments.
7 They have been heard before.

8 MR. CHAIRMAN: Mr. Swartz.

9 MR. SWARTZ: In December of last year Ashland sought to force
10 pool this unit -- this A4 unit. One of the respondents
11 in that force pooling application in the relief sought
12 section was Georgia-Pacific. I mean, in December they
13 thought apparently that they needed to force pool
14 Georgia-Pacific in the A4 unit. The same holds true with
15 the A5 unit which is the next one on the docket. As you
16 will recall, I brought out a reservoir engineer from
17 Oklahoma. There was testimony. The hearing kept getting
18 adjourned. We had some weather problems which accounted
19 for one of the adjournments. And this kind of dragged on
20 for months until April. It seems to me that at some
21 point before the April hearing Ashland and/or its counsel
22 decided to take the position that they didn't need to
23 force pool this unit. It would be more expedient for
24 them to take the position that they had a voluntary unit.
25 The problem here is they read the lease differently than

1 Georgia-Pacific and I do. There is a pooling order in
2 the lease. Mr. Fulmer's office was provided with a copy
3 of the lease. It's Paragraph or Article 8 of the lease.
4 And it says that Ashland has the right to pool and
5 combine acreage. It does not, however, go on to say that
6 Georgia-Pacific is waiving any of its rights to reason-
7 able development of its property, meaning unit sizing,
8 spacing, or that Georgia-Pacific has waived any of its
9 rights whatsoever under the Virginia Code. It's one
10 thing to say to your lessor you can pool and combine my
11 acreage and it's another thing to say you can pool and
12 combine my acreage over my objections which I can raise
13 under the Code. And essentially Grant is right, we have
14 a legal dispute here. We read this lease differently.
15 They are taking the position and communicating it to you
16 today that they have an absolute right to create a
17 voluntary unit over the objection of my client Georgia-
18 Pacific. Georgia-Pacific's response, which I tender to
19 you today, is no, you don't. We have not waived our
20 statutory objections and we can assert them. I asserted
21 them in the permit posture in front of Mr. Fulmer and I
22 think he did the right thing if you're talking about
23 whether or not this unit needs to be force pooled,
24 whether or not drilling a unit -- I mean, forget field
25 rules for a moment -- whether or not a drilling unit

1 needs to be created. I'm sure you're aware that the
2 statewide spacing rules simply creates spacing. It
3 doesn't create drilling units and they've attempted to
4 create a voluntary unit. Well, if it's not voluntary
5 they need to come before the Board and get a unit
6 created. I have repeatedly suggested that someone needs
7 to address the issue of provisional rules or field rules.
8 In any event, there is a dispute as to what their rights
9 are under the lease. I agree that that's not an issue
10 you're going to resolve one way or the other. But my
11 assumption is that when you're confronted with a situa-
12 tion where one party is saying we can voluntarily this
13 unit and the other party is saying no, you can't that
14 your solution to that problem is to direct Ashland -- if
15 they want to proceed with these units -- to force pool
16 Georgia-Pacific and let Georgia-Pacific and Ashland
17 trash this lease legal out in court. There is a mechan-
18 ism to allow this development to proceed when you've got
19 an unwilling participant in a unit and that's force
20 pooling which is what they started in December. So what
21 I am asking you to do today is to order Ashland in the
22 event it wishes to proceed with development of the A4
23 unit -- and I'll make the same argument in regard to A5
24 so you don't have to hear this twice -- direct them to
25 file a force pooling application on the factual basis

1 that their lessor, Georgia-Pacific, does not concede that
2 it has waived its rights to insist on compliance with
3 the provisions of the Virginia Code when units are
4 formed. That's all I'm asking. And I think what needs
5 to happen is before this thing gets back to Mr. Fulmer is
6 to have the Board -- at Ashland's option, I suppose.
7 They can decide not to proceed -- but is to have the
8 Board create a unit with regard to A4 and A5 presumably
9 based on testimony that would be offered at a hearing at
10 a minimum and perhaps consider provisional field rules or
11 field rules in this area. But in any event there's got
12 to be a unit created and there needs to be a force
13 pooling order because you've got an unwilling participant
14 and you've got a legal issue which Grant asserts in his
15 brief and has told you today is not your province to
16 resolve. It's no different than people coming in and
17 saying I'm a claimant and somebody else saying no, you're
18 not. You don't resolve those issues. You use force
19 pooling as a mechanism to combine the interests and let
20 the parties resolve their ultimate differences in another
21 forum. So that's kind of where I'm coming from on this
22 A4 unit today and on the next item on the docket, A5.

23 MR. McQUIRE: May I respond to two points here to clear
24 something up. One, Mr. Swartz implies that we force
25 pool Georgia-Pacific because Georgia-Pacific was unwill-

1 ing. As we explained to you earlier on, we would have
2 gone in with a voluntary unit much earlier and avoided
3 all these contentious force pooling decisions if CNR who
4 was the person that was unable to make up its mind had
5 been able to sign off on the voluntary unit agreement.
6 It was unable to. It asked us to go ahead and force pool
7 and we did. We didn't even consider Georgia-Pacific
8 because we have the right to pool in the lease and we had
9 to name them as a party because the statute required us
10 to, not because we were dragging them into a force
11 pooling situation. Let me also say that we believe we're
12 right on the lease issue. We don't believe that ought to
13 be before the Board and we'll take our changes before a
14 Circuit Court if Georgia-Pacific wants to contest. We
15 have a voluntary unit, a contract with the appropriate
16 parties. We just want to drill. We have a condition and
17 a stay out there. The condition that a force pooling
18 occur and we would like that removed and ask the Board to
19 order the director to remove the condition and the stay
20 and allow us to produce.

21 MR. SWARTZ: Regardless of what Ashland's intentions may or
22 may not have been in December, the pooling application
23 that was filed in docket number 92/12/18-0299, at
24 Paragraph 4, Page 6, relief sought says that they want an
25 order as follows: A; Pooling all the interests and

1 estates of every individual or entity having an interest
2 in the gas underlying the tracts in the unit, whether
3 known or unknown, named herein in Exhibit C. And if you
4 turn to Exhibit C, the A4 application, it includes
5 Georgia-Pacific, Buchanan, and -- it includes all the
6 parties. Exhibit D to the application only named an
7 unleased owner which was Columbia. The application
8 sought to force pool Georgia-Pacific. Whether or not
9 their intent may have been something different, the
10 expression that was filed with this Board sought to force
11 pool GP in this unit. The same is true with regard to A5
12 which is the next item. I understand that they're
13 telling you under the terms of their lease this was an
14 unnecessary step on their part, but at least at one point
15 in time they took it.

16 MR. McQUIRE: I'm telling you under the terms of the statute
17 that I needed to list them. I think it would have been
18 wrong not to have listed them as our lessor in force
19 pooling applications.

20 MR. SWARTZ: In your relief sought, though, if you didn't
21 intend to force pool Georgia-Pacific my point is you
22 simply would have listed the unleased interests. If I
23 was going to force pool someone I didn't have a lease
24 with I would have said that I want the Board to force
25 pool Exhibit D. And that's the distinction I'm drawing.

1 MR. McQUIRE: The issue is one of contract.

2 MR. CHAIRMAN: Questions?

3 MR. MASON: I have a comment. I think that force pooling is
4 applicable in situations where there is unleased acreage
5 in which there is conflicting claims to acreage or where
6 there are unknown owners and neither of those things
7 exists in these circumstances. What Ashland's considera-
8 tions were when they filed the application -- as I
9 understand it, when they filed the original application
10 there was, in fact, unleased acreage involved and whether
11 or not they included Georgia-Pacific as pooled interest
12 or not I think is largely irrelevant. I think that at
13 the present time the only issue involved in this is
14 whether or not the lease that is in existence authorizes
15 them to create a pooled interest with or without Georgia-
16 Pacific's permission which is a matter of contract
17 interpretation and one that properly belongs in court.
18 (Pause.) Sandra, isn't it true the threshold jurisdic-
19 tional matter is unleased, conflicting claims are unknown
20 owners?

21 MS. RIGGS: Under pooling under 45.1-361.22 we're not talking
22 about separately owned tracts. We're talking about
23 separate interests within the same tract.

24 MR. SWARTZ: You're looking at the wrong statute. This is not
25 a coalbed methane well. You need to look at 21.

1 MS. RIGGS: That's what I'm looking at.
2 MR. SWARTZ: You said 22.
3 MS. RIGGS: I'm sorry. I'm reading from 21. You're talking
4 about separately owned interests in the same tract.
5 We're not talking about two tracts.
6 MR. McQUIRE: Well, in this case Georgia-Pacific --
7 MS. RIGGS: Lessor/lessee.
8 MR. McQUIRE: When we had our force pooling application that
9 you can envision a circle and various slices were
10 unleased Ashland's lessor is Georgia-Pacific. So it's
11 not as if we have somebody who is unleased out there.
12 Ashland is the lessee of Georgia-Pacific.
13 MR. MASON: It seems to me that the whole dispute is what does
14 the term of this lease allow them to do.
15 MS. RIGGS: That's right.
16 MR. MASON: That's something that I don't find that we have a
17 right to deal with.
18 MS. RIGGS: It comes down to a question of have they agreed to
19 pool their interest.
20 MR. SWARTZ: And we're saying we haven't and you have to take
21 our word for it.
22 MS. RIGGS: I thought that you said --
23 MR. SWARTZ: We have not agreed to pool. We have not given up
24 our right to object to their ability to pool or combine
25 acreage. They claim they have. I mean, this statute

1 361.21 doesn't talk about if you've got a lease you're
2 home free. It says that the Board can enter an order
3 pooling all interests and if you look at 2 there are
4 separately owned interests in all or part of any such
5 drilling unit and those having interest have not agreed
6 to pool their interests. What Georgia-Pacific is telling
7 you today is we do not read Article 8 of the lease as
8 giving them the right to pool or combine acreage under
9 that lease over our objections based upon the Virginia
10 Code.

11 MS. RIGGS: I misunderstood what you said. I thought you
12 said it gave them the right to pool but you reserve the
13 right to object to the unit which were two different
14 things.

15 MR. McQUIRE: No. It simply gives us the right to pool and it
16 doesn't say anything else. Mr. Swartz is saying that he
17 does have that extra right. It's not in the contract. I
18 would direct you to the controlling statute which is 18
19 which says people can contract together.

20 MR. MASON: The bottom line, whether it is or it isn't, in my
21 mind is the question of how you interpret a legal
22 document that is in existence. It seems to me that if
23 Georgia-Pacific has a problem with that that they have
24 full access to the Circuit Court in the county which the
25 well -- they can join this if they want to. It has

1 nothing to do with force pooling.

2 MR. SWARTZ: You don't tell claimants who come in with a
3 surface deed and claim they own coalbed methane to go to
4 the Circuit Court first.

5 MS. RIGGS: Because you have conflicting claims --

6 MR. CHAIRMAN: Because the coalbed methane provision specifi-
7 cally provides for conflicting claims.

8 MR. SWARTZ: If someone comes before you, as I read this, and
9 they say they have not agreed to pool their interest as
10 is asserted by the applicant you can enter an order --
11 well, it says "shall". "Shall enter an order pooling all
12 interests in the drilling unit for the development
13 thereof when" and we've got at least three tracts in this
14 unit. You've got Georgia-Pacific saying we have not
15 agreed to pool our interest as proposed period.

16 MR. McQUIRE: There is no interest to pool. It was given all
17 to Ashland in the lease.

18 MR. CHAIRMAN: Any further questions? Do I have a motion?

19 MR. MASON: I move that the objections of Georgia-Pacific to
20 this permit be terminated with the condition that it was
21 sent up to the Board for a force pooling be removed.

22 MR. CHAIRMAN: And the stay lifted?

23 MR. MASON: Yes, sir.

24 MR. EVANS: Would that also lift the stay on production? Is
25 that what you said?

1 MR. MASON: Yes.
2 MR. EVANS: I'll second that.
3 MR. CHAIRMAN: Motion and second. Further discussion? All in
4 favor signify by saying yes. (ALL AFFIRM.) Opposed say
5 no. (NONE.) Unanimous approval.
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ITEM VI

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3 MR. CHAIRMAN: The next item on the agenda has also been
4 referred by the Director of the Division of Gas and Oil
5 for the Board's consideration on the application sub-
6 mitted by Ashland for GP-A5. This is docket number
7 VGOB-93/06/22-0387. Are there any different issues?

8 MR. McQUIRE: None to my knowledge. There is a voluntary unit
9 on the A5 as well. It was attached to the pleading
10 filed.

11 MR. SWARTZ: I guess I would simply tender this comment one
12 more time. I cannot find anywhere in 361.21 language
13 that says directly or indirectly that a person who signs
14 a lease cannot come in front of the Board and say I do
15 not agree with my lessor's interpretation and I am
16 telling I have not agreed to pool this acreage. Unless
17 361.21 somehow authorizes you to ignore a situation where
18 a lessor comes in and says I have not agreed to pool my
19 lease with this acreage or my interest with this acreage
20 -- you need to do something about it. I don't see
21 anywhere in 361.21 the distinction that the Board seems
22 to be drawing. Essentially what you're saying is you're
23 resolving a legal question. You're saying there's a
24 voluntary pooling agreement in existence or you're saying
25 that because there's a lease in existence we're not going

1 to deal with this. I would think that you would want
2 some clear statutory authority for the position you're
3 adopting. Maybe I'm just on a different wavelength --

4 MR. CHAIRMAN: How do you interpret "upon applications" as the
5 language of the statute leads in? What emphasis do you
6 place on that -- upon application to the Board rather
7 than the Board exerting jurisdiction to step into that
8 dispute?

9 MR. SWARTZ: What you're doing, you're taking a permit
10 application which has caused Mr. Fulmer to conclude that
11 there is a dispute as to whether or not Ashland has the
12 right to create a voluntary unit. And he has said I need
13 to be satisfied, in essence -- I suppose that's why he's
14 referred it up here. I need to be satisfied that there
15 is a right to create a voluntary unit or a unit needs to
16 be created before I'm going to allow production under
17 this unit. I need to know who is in it and what it's
18 going to look like. So he's referred a permit objection
19 to you which I have objected to say there is not a
20 voluntary unit. I'm not in front of you saying you need
21 to force pool something today. What I'm suggesting to
22 you is you need to make a decision as to whether or not a
23 lease interpretation dispute which causes the lessee to
24 say we've got the right to do this and Georgia-Pacific,
25 my client, to say we have not given up our rights to

1 scrutinize your conduct and apply the statute and tender
2 objections. Either you need to send it back to Mr.
3 Fulmer and say dismiss the objections or continue the
4 condition for force pooling and let them force pool it.
5 I mean, we're not here on an application for force
6 pooling. I'm not trying to get any force pooling order.
7 The two alternatives that I see are send it back Fulmer
8 and say this is a voluntary unit on which you can issue a
9 permit and lift the stay. That's what's troubling him.
10 That's why it came up today. Or you send it back to him
11 and say we are not going to resolve whether or not this
12 is a voluntary unit because we have two people telling us
13 -- one saying it is, one saying it isn't and we're not
14 going to resolve that issue or we are going to resolve
15 that issue. Obviously if you don't want to resolve the
16 question of whether or not it's a voluntary unit you need
17 to send it back to Mr. Fulmer and say continue the
18 condition that this be force pooled because we're not
19 going to address whether or not a voluntary unit has been
20 formed or can be formed. And if you make a decision that
21 what has been formed then you send it back and there's a
22 unit on which you can issue a permit.

23 MR. MASON: I think Mr. Swartz hit the nail on the head
24 earlier when he said that it seems to me that what
25 you're doing is you're deciding that there's a lease in

1 place and you're not going to do anything else. That's
2 exactly what I think we're doing except we're not making
3 the determination -- you phrased your alternatives in
4 terms of whether or not we concluded that there was a
5 voluntary unit in existence or not. I don't think we've
6 done that at all. All we've done is we have decided that
7 there's a person appearing here who seems to have a claim
8 under a lease to go forth as an operator of this property
9 -- of this well.

10 MR. SWARTZ: If you're not telling Mr. Fulmer that there's a
11 unit are you expecting him to lift the stay on production
12 and let this proceed? Because you need to tell him
13 there's a unit for him to do that.

14 MR. CHAIRMAN: On the previous order that we just entered we
15 did lift the stay and we did dismiss the force pooling.

16 MR. MASON: He's got somebody before him who claims to have
17 the right under their lease to go forward and drill this
18 well and we're saying we're not going to do anything to
19 interfere with those rights. We're not taking the
20 position on whether or not this voluntary unit agreement
21 is effective or not. That's up to the two of you all to
22 decide.

23 MR. SWARTZ: Can you have a producing well on something that
24 isn't a unit? I mean, how can he issue a permit or lift
25 the stay on a permit unless there has been a resolution

1 as to whether or not there's a unit from which it's
2 producing?

3 MR. MASON: If you think there isn't a unit you have redress
4 to the Court to do something about it.

5 MR. SWARTZ: I'm not the applicant. We talk a lot about
6 burdens and that you don't want to put --

7 MR. McQUIRE: It doesn't matter whether -- he can always sue
8 us.

9 MR. SWARTZ: I'm not applying for a permit. My client got
10 notice and I think you're essentially putting the burden
11 on a person who was noticed on a permit application. I
12 mean, you don't -- the person who applies for a permit
13 would seem to have certain threshold burdens that they
14 have to overcome and one of them is that there's a
15 production unit.

16 MR. CHAIRMAN: Mr. Swartz, I believe that the Board order on
17 the previous case indicated that we believe he has
18 overcome those burdens.

19 MR. SWARTZ: So you believe there is a unit?

20 MR. MASON: No. We believe that he has asserted and represen-
21 ted to the Inspector that he has a unit. He's appeared
22 before Mr. Fulmer and he said, "We have a lease. We have
23 the right. We want a permit. We have everything we need
24 to get one." That's what he's represented to Mr. Fulmer.
25 Is that correct?

1 MR. MCQUIRE: That's right.

2 MR. MASON: Mr. Fulmer then gives him the permit. Now, why
3 should we intercede in that because the only basis on it
4 that we could intercede is to say we don't believe that
5 he does have a unit.

6 MR. SWARTZ: Mr. Fulmer gave him a permit conditioned on
7 forming a unit. They came up here to form a unit. They
8 withdrew --

9 MR. MASON: But that was when there were other parties that
10 were unleased.

11 MR. MCQUIRE: I think Mr. Swartz answer to your initial
12 question was no he doesn't have any other arguments.
13 That he --

14 MR. MASON: As I understand the facts from him that CNR --

15 MR. SWARTZ: But he's set it up here to create a unit. He
16 did and now you're saying to go back saying there's a
17 unit. I just want you to understand that when this came
18 up it came up to be force pooled and have a unit created.

19 MR. MASON: I understand that. At that time there was an
20 unleased acreage. As I understand it, that has since
21 been removed. The only issues, as I understand it, that
22 you all are disputing over is whether or not the language
23 in this lease authorizes them to pool this unit voluntar-
24 ily under the language of the lease. That's the only
25 issue.

1 MR. SWARTZ: Over the objection of Georgia-Pacific.

2 MR. MASON: But that's all in terms of interpretation of the
3 lease provision.

4 MR. SWARTZ: So if the applicant can throw any -- well, forget
5 it. You're saying that -- I guess what I don't under-
6 stand, there has to be an assumption in your determina-
7 tion that a unit exists and/or is being created. To get
8 to that point you have to ignore or make a factual
9 resolution of the complete competing assertions you're
10 hearing.

11 MR. MASON: I don't see it as competing assertions of two
12 owners saying we both own the same thing or that we don't
13 know who those owners are or there are owners that are
14 unknown. What you've got here is we know what Georgia-
15 Pacific owns, we know what Ashland owns. The question is
16 what does this contract say that they can do with those
17 things.

18 MR. SWARTZ: Right.

19 MR. MASON: I find that completely different from a conflict
20 between owners as to who owns what. They're different in
21 my mind than people coming in here in which there are two
22 landowners who both claim to have -- when you come in as
23 an applicant and you certify to this Board that you have
24 searched title to this property -- all the property in
25 this unit and you certify to the Board that these are all

1 the owners and these are what percentages of the unit
2 they own, you make that certification to us, we rely on
3 that and we act on it.

4 MR. SWARTZ: Yeah. But what if somebody shows up and says
5 they missed me or they've got it wrong? And that's what
6 I'm saying. They have made a threshold showing and I'm
7 coming in and saying their threshold -- I don't agree
8 with that.

9 MR. MASON: I agree with you. And what's happened here is
10 that there is a dispute about that, but the sole para-
11 meters of that dispute due not relate to anything other
12 than the interpretation of the language of this lease
13 which is not something within our jurisdiction. That's a
14 legal issue that properly lies with the Court.

15 MR. McQUIRE: I would say it's not even a proper objection.
16 35 says a royalty owner has certain objections but he
17 can't object to anything about contract rights. He can
18 object when it threatens his rights aside from his
19 contract rights. Those are not proper objections before
20 the Board.

21 MR. SWARTZ: What I'm saying is I've got a right to assert the
22 statutory objections that a royalty owner has.

23 MR. CHAIRMAN: How do you feel under 35.C that the royalty
24 owner interest objection is properly before this Board,
25 Mr. Swartz? I'm going back specifically to that where is

1 says that the only objections to the permit or modifica-
2 tions may be the following and lists those.

3 MR. SWARTZ: Well, directly impinges upon the royalty owner's
4 gas and oil interests. I mean, this is a correlative
5 rights issue. GP does not the unit shape. We've been
6 through this. They don't like the unit sizing. They
7 would prefer to see a grid -- it's a correlative rights
8 issue. 35.C.1 -- it's going to have an effect on the
9 royalty interest and the development the way in which
10 this area is developed.

11 MR. CHAIRMAN: Has Georgia-Pacific applied for a pooling
12 application?

13 MR. SWARTZ: No.

14 MR. CHAIRMAN: Anything further?

15 MR. SWARTZ: I would like to have ten days within which to
16 file for a force pooling -- to file a force pooling
17 application with regard to this unit because I think I
18 know where we're headed here. And if I could have ten
19 days to consult with my client so they'd have an oppor-
20 tunity to file a pooling application for this unit. Ten
21 days beyond today's date.

22 MR. McQUIRE: I object. I think we are ready to produce. We
23 have been ready to produce for some time. If they've got
24 a problem with what has happened here sue us in Buchanan
25 Court and get a judgement against us. I don't believe

1 they can, but they've got a way of legal redress to the
2 Circuit Court of Buchanan County for interpretation of
3 this contract. Otherwise we'll be back here -- if it's
4 filed in ten days we'll be back here in August going over
5 the same thing we've been going over for months.

6 MR. SWARTZ: All that's going to happen -- it sounds like the
7 stay is going to be lifted, you'll be in business
8 tomorrow. If we file a pooling application it may re-
9 size the unit and -- I don't see that it prevents you
10 from producing. It sounds like your stay is coming off
11 and I gather I'm being told somehow that the Board
12 perceived that Georgia-Pacific has an obligation before
13 it, to raise this issue by filing a pooling application,
14 and I want to give them an opportunity to consider
15 whether or not they want to do that with regard to this.
16 And I'm not suggesting you make a ruling on this applica-
17 tion, to not lift the stay, or that you instruct Mr.
18 Fulmer in any way today or impede Ashland's --

19 MR. MCQUIRE: Georgia-Pacific regardless of what happens
20 today, can file something next week, whether it's for
21 field rules or force pooling or a law suit in Buchanan
22 County. Nothing is going to happen in front of this
23 Board that's going to stop you from doing that.

24 MR. SWARTZ: Well, I don't want this ruling or my silence,
25 specifically having been asked whether or not they had

1 filed a pooling application and indicated that they had
2 not --
3 MR. McQUIRE: I think that stipulates you can file about
4 anything you want. Whether it will be accepted, that's
5 another matter.
6 MR. MASON: I think we've spent enough time on this.
7 MR. CHAIRMAN: I'm ready.
8 MR. MASON: I make the same motion that I made before,
9 that the objection be turned down, the stay lifted, and
10 the third element was --
11 MR. McQUIRE: The condition be removed.
12 MR. MASON: The condition be removed.
13 MR. EVANS: I'll second it.
14 MR. CHAIRMAN: A motion and second. Further discussion?
15 All in favor signify by saying yes. (ALL AFFIRM.)
16 Opposed say no. (NONE.) Unanimous approval.
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ITEM VII, VIII, IX

MR. CHAIRMAN: The next item on the agenda is a petition for force pooling by Buchanan Production Company for the U-14 unit. This is docket number VGOB-93/06/22-0379. We'd ask the parties that wish to address the Board to come forward at this time.

MR. MCGLOTHLIN: Mr. Chairman, due to a possible conflict of interest I would ask to be excused.

MR. CHAIRMAN: We don't have a quorum.

MR. SWARTZ: If you start with a quorum I think you have --

MS. RIGGS: I think that's correct.

MR. CHAIRMAN: Let's go further on the record and then we'll do it. Let's let them introduce everything and see who we've got.

MR. SWARTZ: The next three units, 0379, 0380 and 0381, are all related units involving the same longwall panels. If you could find out if there are folks here, whether or not we could consolidate these --

MR. CHAIRMAN: I'll call the next two docket numbers. A petition for force pooling -- all three of these are. The other two are Buchanan Production Company for the U-15 unit, VGOB-93/06/22-0380, and the U-16 unit, docket number VGOB-93/06/22-0381. We'd ask any parties that wish to address the Board in these matters to come

1 forward at this time. Go ahead.
2 MR. MCGLOTHLIN: Mr. Chairman, I would like to say that I also
3 have a possible conflict on the other two as well.
4 MR. CHAIRMAN: All right. You may sit these out.
5 MR. SWARTZ: Mark A. Swartz appearing for Buchanan Production
6 and OXY, USA. My first witness would be Sam Gordon.
7 MR. CHAIRMAN: Before we go forward the record will show there
8 are no others present that wish to appear today. Mr.
9 Gordon, if you'd be sworn in, please.
10 COURT REPORTER: (Swears witness.)

11
12 SAMUEL E. GORDON
13 a witness who, after having been duly sworn, was examined and
14 testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MR. SWARTZ:

19 Q. Could you state your full name for us?
20 A. Samuel Edward Gordon, II.
21 Q. Who do you work for, Sam?
22 A. OXY, USA, Inc.
23 Q. Did you prepare the notices of hearing and the applica-
24 tions with regard to unit U-14, 15 and 16?
25 A. Yes, I did.

1 Q. Do all of these units involve the same two longwall
2 panels?
3 A. Yes, they do.
4 Q. And if the Board members were to look at any Exhibit G,
5 Page 1, to any one of these three pooling applications
6 before them today they would see the 1-Development Panel
7 and 2-Development Panel that are involved in the U-row,
8 would they not?
9 A. That is correct. Yes.
10 Q. With regard to each of these three units is it expected
11 or intended that they would start out as short hole
12 production units?
13 A. That is correct.
14 Q. And then ultimately as mining progressed, if ultimately
15 mining progressed, then they would become active gob
16 units producing from the de-stress zone associated with
17 the mining of the Pocahontas #3 seam?
18 A. That is correct.
19 Q. So the mining process would be the same for all three
20 units as well?
21 A. Yes, it would.
22 Q. With regard to the U-row are there, in fact, two longwall
23 panels that are in the U-row?
24 A. Yes, there is.
25 Q. And with regard to each of these applications is there

1 one well in each unit proposed in each panel?

2 A. Yes, there is.

3 Q. So there's two wells per unit generated, one per each

4 panel?

5 A. Correct.

6 Q. The applicant on each of these three applications is

7 Buchanan Production Company, is that correct?

8 A. That is correct.

9 Q. And that is a Virginia general partnership?

10 A. That is correct.

11 Q. And the two partners in Buchanan Production are Appalach-

12 ian Operators, Inc. and Appalachian Methane, Inc., is

13 that right?

14 A. That is correct.

15 Q. And BPC is authorized to do business in the Commonwealth?

16 A. That is correct.

17 Q. In each of these three applications is Buchanan Produc-

18 tion requesting that someone other than itself be

19 designated the operator of these units?

20 A. Yes, we are.

21 Q. And who would that be?

22 A. OXY, USA, Inc.

23 Q. OXY is a Delaware corporation authorized to do business

24 in the Commonwealth?

25 A. Yes, it is.

1 Q. Has OXY registered with the DMME and does it have a
2 blanket bond on file as required by law?
3 A. Yes, it does.
4 Q. Has the management committee of Buchanan Production
5 Company delegated to OXY, USA "the authority to explore,
6 develop and maintain the properties of Buchanan Produc-
7 tion Company" as its professional manager?
8 A. Yes, it has. And that is stipulated in Exhibit J, Page
9 1.
10 Q. Have certain people with OXY, USA been delegated specific
11 duties and given specific authority with regard to
12 managing the affairs of Buchanan Production Company?
13 A. Yes, it has. It has appointed Glen VanGolen as general
14 manager, Martin E. Wirth as land manager, and myself as
15 regulatory manager.
16 Q. Has OXY, USA consented to serve as unit operator if it
17 should be appointed by the Board?
18 A. Yes, it has. We have a statement to that effect, Exhibit
19 J, Page 2.
20 Q. With regard to each of these three applications did you
21 mail or cause to be mailed to everyone whose address is
22 listed in Exhibit B the notice of hearing and the
23 application and exhibits?
24 A. Yes, I did.
25 Q. Have you filed copies of the green cards, proof of

1 publication with Mr. Fulmer's office with regard to each
2 of these units?

3 A. Yes, we have.

4 Q. In addition did OXY, USA cause a notice or a copy of the
5 notice of hearing with regard to each of these three
6 units to be published in a local newspaper?

7 A. Yes, we did.

8 Q. And which one was that?

9 A. Virginia Mountaineer.

10 Q. Have you filed proofs of publication and copies of the
11 notices with Mr. Fulmer's office as Exhibit E?

12 A. Yes, we did.

13 Q. And that would have been on what, June 11th? June 1st,
14 June 11th, something like that?

15 A. That's correct. On U-14 it was June 1st. On U-15 and U-
16 16 it was June 11th.

17 Q. When you filed the proof?

18 A. Yes.

19 Q. Starting with the respondents on unit U-14, if you would,
20 you did, in fact, mail via certified mail/return receipt
21 requested to everyone that you had an address for?

22 A. That is correct.

23 Q. Was the only person on unit U-14 for whom you had mail
24 come back from the post office Frankie Mae Street?

25 A. That's correct.

1 Q. Were there any persons in U-14 for whom you had no
2 addresses and were unable to mail?
3 A. None.
4 Q. What about the B.F. McGlothlin heirs?
5 A. Well, we named the heirs set out above and then we listed
6 the B.F. McGlothlin heirs as a total to capture anyone
7 that we may have missed.
8 Q. So that the heirs to the extent you've been able to
9 determine them all received notice?
10 A. That is correct.
11 Q. And were mailed?
12 A. That's correct.
13 Q. With regard to unit U-14 it's a little different than 15
14 and 16, is it not, because it involves the pooling of the
15 surface owner?
16 A. That is correct. Yes.
17 Q. Are the only folks that you're pooling in unit U-14 or
18 seeking to pool in U-14 surface owners who have affirma-
19 tively made a claim to coalbed methane?
20 A. That is correct.
21 Q. And if the Board were to look at Exhibit A, Page 2,
22 there's an amended Exhibit A, Page 2, does that show, in
23 fact, the interest that's subject to the pooling applica-
24 tion -- Page 2, Sam.
25 A. Okay.

1 Q. That is, in fact, just surface?
2 A. That is correct, just surface.
3 Q. And what percentage of the surface owners have made
4 claims?
5 A. The claim is asserted against 44.31 percent of the
6 surface.
7 Q. Has OXY and/or Buchanan Production obtained leases from
8 100 percent of the coal owners and 100 percent of the oil
9 and gas owners?
10 A. Yes, it has.
11 Q. And that's also shown on Exhibit A, Page 2?
12 A. That is correct.
13 Q. With regard to this unit, U-14, do you wish to add or
14 dismiss any respondents?
15 A. No, we do not.
16 Q. Turning to Exhibit C which is an amended exhibit we're
17 back to a detailed well estimate, aren't we?
18 A. Yes, we are.
19 Q. And we have two because there are two panels within unit
20 U-14 and two proposed wells?
21 A. That's correct.
22 Q. Initially when this application was submitted you
23 submitted an Exhibit C which had a bore hole fee on it
24 that we've been using for quite some time, correct?
25 A. That is correct.

1 Q. Why has this changed?

2 A. Due to the pending sale of Island Creek the bore hole
3 agreement now is not enforce. So we're back to utilizing
4 DWEs for the prospective buyer.

5 Q. Was the bore hole agreement terminated after the last
6 Board hearing?

7 A. That is correct.

8 Q. So at least in the foreseeable future we'll be seeing
9 detailed well estimates with regard to these wells?

10 A. That's correct.

11 Q. Did you yourself prepare Exhibit C?

12 A. Yes, I did.

13 Q. Both of them?

14 A. Yes, sir.

15 Q. Do you have a computer program which generates these for
16 you?

17 A. Yes, it does.

18 Q. Do you essentially insert the total depth and the
19 information with regard to casings and water protection
20 streams and it figures the price for you?

21 A. That's correct.

22 Q. Are Pages 1 and 2, these two detailed well estimates, in
23 your opinion a reasonable estimate of the projected costs
24 to drill and complete these two wells?

25 A. Yes, they are.

1 Q. The first one is in the amount of \$160,623 and the other
2 one in the amount of \$140,923, correct?
3 A. That is correct.
4 Q. Do either of these DWEs include any dollars whatsoever
5 for frack?
6 A. No, they do not.
7 Q. And if they did would they be something in the order of
8 \$80,000 more?
9 A. That's correct.
10 Q. Turning now to Exhibit G, Page 2, does this show the
11 percentage of each panel, 1-Development East and 2-
12 Development East in each of the three units, U-14, 15 and
13 16 that we're dealing with today?
14 A. Yes, it does.
15 Q. And these numbers are relevant to calculating participa-
16 tion costs and calculating royalty interests and cal-
17 culating carried interest if that were to become approp-
18 riate?
19 A. Yes, they are.
20 Q. Turning to Exhibit G, Page 3, which there should also be
21 an amended exhibit, Exhibit G, Page 3 addresses the total
22 panel costs anticipated for 1-Development East and 2-
23 Development East and then prorates those costs based on
24 the percentages that we just looked at on Exhibit G, Page
25 2, correct?

1 A. That is correct.

2 Q. And with regard to unit U-14 and panel 1-Development East
3 what is the allocable costs?

4 A. For U-14 on 1-Development East it's \$113,748.

5 Q. U-15?

6 A. U-15 is \$199,703 and it's the same for unit U-16.

7 Q. And then if you turn to the next page, Exhibit G, Page 4,
8 amended what are the allocable costs given the percentage
9 of the panel and the unit figure that we've previously
10 spoken about and then the total panel cost again for U-
11 14, 15 and 16?

12 A. U-14 is \$86,638. 15 and 16 is \$152,052 each.

13 Q. Is amended Exhibit G, Page 3 and 4, reproduced in the
14 other two pooling applications today? Are you using the
15 same costs?

16 A. That is correct.

17 Q. Because they're in the same panels?

18 A. Correct.

19 Q. Turning to Exhibit G, amended, Pages 5 and 6 again with
20 regard to unit U-14 does that break out each of the
21 interests for each of the respondents in terms of their
22 net interest in the unit, the unit percentage interest in
23 the panel, and then the panel interest?

24 A. Yes, it does.

25 Q. And it does it for each panel. In other words, Page 5 of

1 Exhibit G deals with 1-Development East and Page 6 deals
2 with 2-Development East?
3 A. That is correct.
4 MR. MASON: What's the total amount of well costs allocated to
5 this unit U-14?
6 MR. GORDON: The total amount of well costs?
7 MR. MASON: Yes. It's a combination, is it not, of the
8 \$113,748 and \$86,638, is that correct?
9 MR. GORDON: If I understand your question as to what it would
10 take to buy into this unit that's correct.
11 MR. SWARTZ: Roughly \$230,000.
12 MR. MASON: Do you all have any projected operating costs of
13 these wells like on a monthly basis? No idea what it's
14 going to cost to operate them?
15 MR. GORDON: No. These figures we use are just the drilling
16 of the well, not the operating costs.
17 MR. MASON: I understand that. I'm just curious if you all
18 have any projected operating costs. Do you have any idea
19 what it might be?
20 MR. GORDON: OXY has an operating cost set by the operating
21 agreements that we utilize. I know we don't have an
22 operating agreement in this estate. It's standard policy
23 for us and it's a figure that's set by our accounting
24 group.
25 MR. MASON: When you all make the escrow payments you deduct

1 from that the operating costs, do you not?
2 MR. GORDON: As to what interest? Not on royalty.
3 MR. MASON: No. As to any participant or carried -- have you
4 had any yet?
5 MR. GORDON: Well, Ashland has elected to be carried on
6 several wells, but I'm not sure that we drilled any of
7 those. We've had a few people who elected to be carried
8 but they didn't respond according to the regs. So we
9 don't, in fact, have any that we can --
10 MR. MASON: You have no active carried interest or participat-
11 ing interest for which you're making an expense alloca-
12 tion subject to escrow. Is that an accurate statement?
13 MR. GORDON: I think that's an accurate statement to my
14 knowledge.
15 MR. SWARTZ: There are few people participated but none of
16 them have come up with their participation shares, too.
17 So I think we're in a situation where they're essentially
18 escrowing royalty.
19 MR. GORDON: In fact, in our supplement reports that have been
20 turned in to the State they were deemed to (Inaudible.)
21 or be leased.
22 MR. MASON: I'm just trying to get a handle on the economics.
23 MR. EVANS: Mr. Gordon, you said something about the bore hole
24 fee that I'm not clear on. You are no longer charging a
25 bore hole fee, is that --

1 MR. GORDON: On any future well.
2 MR. EVANS: Including this one?
3 MR. GORDON: As of our testimony last month's hearing the
4 contract that we had with Island Creek was in place. Now
5 with the purchase with Consol that's gone. It's no
6 longer there as far as future wells are concerned.
7 MR. EVANS: And I just have to ask, on Exhibit C, Page 1, on
8 unit U-14 you have a estimate of allowable costs, a bore
9 hole fee of \$142,500. And then it goes on for title
10 opinion and regulatory, blah, blah, for a total of
11 \$164,000.
12 MR. GORDON: \$164,000?
13 MR. SWARTZ: That would be your original exhibit, Sam.
14 MS. RIGGS: Flip two more pages, Sam.
15 MR. GORDON: Okay.
16 MR. EVANS: First of all, how does Exhibit C, Page 1, relate
17 to the two previous pages, the DWE? Does it have any
18 relationship as far as costs goes on the bottom of the
19 DWES versus what this is? I've got \$164,000 here and I
20 don't know how we're going about allocating costs. We're
21 going here to -- go back to G, Page 2, and you get
22 percentages in the units and I understand all that. And
23 then we go back to Exhibit G, Page 3, and that's the DWE
24 estimates.
25 MR. CHAIRMAN: Ken, I think the -- I don't want to take over

1 here, but C has been amended and we probably -- am I
2 correct on that?

3 MR. SWARTZ: That's correct.

4 MR. EVANS: Okay. So C no longer -- this no longer applies?

5 MR. SWARTZ: Correct.

6 MR. EVANS: Thank you.

7 MR. SWARTZ: On the 17th when Sam prepared that, and it's
8 dated May 17th, the bore hole agreement was still a
9 contract that was in effect. As of today it is history
10 because the buyer, Buchanan Production, will be doing
11 business differently and we are now going back to what we
12 did originally, estimating well costs.

13 MR. EVANS: That's all I needed to know, was that Exhibit C,
14 Page 1, I can mark an X through and say don't --

15 MR. SWARTZ: Right. But we thought we needed to give you a
16 reason why.

17 MR. MASON: Are you finished?

18 MR. SWARTZ: No, but if I have an outline I'll remember.

19 MR. MASON: Well, with the DWE are you --

20 MR. SWARTZ: Sure.

21 MR. MASON: This gathering line hook-up fee, \$20,000?

22 MR. SWARTZ: That is the product of --

23 Q. (Mr. Swartz continues.) Mr. Gordon, would you address
24 that?

25 A. That is the fee that under contract arrangements with

1 Oakwood Gather that they charge Buchanan Production
2 Company to connect their wells. This fee includes -- and
3 you'll notice that we don't have anything as far as
4 pricing goes for things like pumping units, electrical,
5 line pine fitting, packers, tank batteries, start tanks,
6 gussles, meter runs. All that is owned by Oakwood
7 Gathering. So those charges are accessed through that
8 hook-up fee by Oakwood because it is their equipment, not
9 Buchanan's.

10 MR. MASON: Why are you all doing that?

11 MR. GORDON: We do it primarily because Oakwood Gathering
12 does not want anybody owning any part of their gathering
13 system.

14 MR. SWARTZ: Also because Oakwood may or may not be sold.

15 MR. MASON: Uh-huh. I mean, it's just an unusual arrangement.
16 You're saying that the pump on the well -- what will
17 Oakwood Gathering own?

18 MR. GORDON: They will own all of the plumbing. They will own
19 all the electric. They will own all the compressors,
20 meter runs, meters, everything that it takes to connect
21 that well and get it monitored -- the production monitor-
22 ed and into their system.

23 MR. MASON: But they'll own the pump on the well?

24 MR. GORDON: No.

25 MR. MASON: No?

1 MR. GORDON: Now, if you're talking about the mono pump that
2 sits right on top of the well head, that is BPCs. That
3 is Buchanan's.

4 MR. MASON: Okay. So where does the gathering system owner-
5 ship start, on the other side of that pump, the outside
6 of it?

7 MR. GORDON: At the inlet valve of their system which --
8 there's a fence out there, Mr. Mason, and once it goes
9 through that fence it becomes Oakwood's.

10 MR. MASON: I can refer that as to Mr. Wirth's dog lots.

11 MR. SWARTZ: Right.

12 MR. MASON: Those little square cyclone dog lot fence things,
13 you say when the pipe goes through that that's where the
14 Oakwood System starts and the well stops. That's what
15 I'm trying to get a handle on.

16 MR. GORDON: Yes.

17 MR. MASON: How was this amount arrived at?

18 MR. WIRTH: To be perfectly honest with you the plumbing gear
19 that Oakwood used cost \$30,000. Now, they will take that
20 after that well goes dead and move it somewhere else. So
21 they come up with a figure that allows them to use that
22 equipment maybe twice.

23 MR. MASON: Is Oakwood Gathering also going to be paid a
24 gathering fee or transmission fee?

25 MR. SWARTZ: Yes, of course.

1 MR. WIRTH: We've still got to pay for the pipeline.
2 MR. MASON: Sir?
3 MR. WIRTH: The pipeline has got to be paid for somehow.
4 MR. MASON: The gathering system.
5 MR. WIRTH: And this is just one end of it.
6 MR. MASON: Okay. Do you know what those charges are going to
7 be?
8 MR. SWARTZ: I'm going to object to that.
9 MR. MASON: Why?
10 MR. SWARTZ: It's private information with regard to operating
11 costs that aren't being accessed anyway.
12 MR. MASON: You're saying that this isn't going to be charged
13 to the well?
14 MR. SWARTZ: We don't have any participants right now.
15 MR. MASON: So you object to disclosing what the production
16 charges would be?
17 MR. SWARTZ: Gathering. Well, I guess if you could indicate
18 to me why it's relevant to this pooling application I
19 would be willing to reconsider.
20 MR. MASON: I mean, I see an indication here of approximately
21 -- what percentage of \$140,000, an arbitrary amount of
22 money stuck on here as a hook-up fee to hook into a
23 system for which there's also going to be use charges and
24 I'd like to know what the economic basis for that is.
25 And it's relevant in terms of -- I don't know how this

1 amount was arrived at at all. It's not something that
2 comes from a third party. It's not an arms length
3 amount.

4 MR. SWARTZ: Well, I think maybe I misunderstood what Mr.
5 Wirth told you, but I believe he just testified that the
6 hook-up equipment costs approximately \$30,000, that the
7 intention was that it could be reused and rather than
8 charging the actual cost of the equipment and the
9 assumption that they could use it twice, it had a useful
10 life for two wells, that they had selected \$20,000 as an
11 estimate. And I think that's what he just testified to.

12 MR. MASON: I agree that's what he said.

13 MR. SWARTZ: I don't see that as an arbitrary figure. There
14 are at least 100 miles of gathering lines out there which
15 the \$20,000 is not going to cover and there is a gather-
16 ing fee. But in terms of -- there is a sensitivity on
17 the part of my client and there always has been to
18 disclose these kinds of fees in the absence of some
19 indication that they're relevant to an issue and
20 unless --

21 MR. MASON: Do you deny that if there's a participant in this
22 well that that will effect their economic interest, the
23 amount of that fee?

24 MR. SWARTZ: But that fee will change every year. It's a
25 function of through-put.

1 MR. MASON: I'm sorry?

2 MR. SWARTZ: It's a function of the gas that goes through the
3 system on an annual basis and the higher the volume --
4 the gathering fees have been relatively large in the
5 start up period because the volume has been low as they
6 have come on line. As the volume increases and OXY
7 and/or BPC uses their have of cardinal's capacity the
8 gathering fees go down. They are in the process of
9 going down and they will change every year.

10 MR. CHAIRMAN: If someone elects to participate what will
11 their participation be based on? Will it be based on
12 these costs as presented to the Board today?

13 MR. SWARTZ: Well, in terms of what you have to come up with
14 to participate?

15 MR. CHAIRMAN: Right.

16 MR. SWARTZ: Yes. From an ongoing relationship as a partici-
17 pant -- this Board has jurisdiction on a continuing basis
18 if a participant thinks he's getting hosed on costs. You
19 have retained that jurisdiction. I know enough about the
20 -- and frankly, there are two gathering fees. There is
21 Oakwood Gathering which has over 100 miles of gathering
22 line which then puts the gas, having compressed it and in
23 some instances treated it, puts into cardinal's states
24 which is about a 45 mile pipeline that goes into West
25 Virginia. And there's a tariff associated with that.

1 Oakwood Gathering owns half of Cardinal, but PGP owns the
2 other half of Cardinal and there is a tariff or gathering
3 fee associated with that as well. And that fee, as I
4 understand it, is also a function of through-put.

5 MR. MASON: Isn't it also true that both sets of these fees
6 are unregulated?

7 MR. SWARTZ: Well, other than by any jurisdictional entity,
8 yes.

9 MR. MASON: Thank you.

10 MR. CHAIRMAN: You may continue.

11 Q. (Mr. Swartz continues.) In terms of leasing acreage, and
12 obviously you've leased quite a bit of acreage in this
13 unit, everything except the outstanding surface
14 claimants --

15 A. That's correct.

16 Q. -- are there standard terms that Buchanan Production and
17 OXY and others offer for coalbed methane?

18 A. Yes, there is. We offer a one time payment of \$1 per
19 bonus per acre for a one-eighth royalty lease for a term
20 of five years.

21 Q. Is the five year term really relevant here?

22 A. No, it's not.

23 Q. Because the order would continue as long as production
24 continued?

25 A. That is correct.

1 Q. Would you recommend the same royalty and bonus payments
2 to the Board in the event that people either deem to
3 elect or choose to lease?
4 A. Yes, I would.
5 Q. In terms of your efforts to enter into voluntary agree-
6 ments have you, in fact, obtained leases from all coal
7 owners and all oil and gas owners?
8 A. Yes, we have.
9 Q. And can I assume that you have not tried to lease the
10 surface owners?
11 A. No, we haven't.
12 Q. Excuse me?
13 A. We have not.
14 Q. And why is that?
15 A. The surface owners are asserting a claim, but the mineral
16 estates are fully leased.
17 Q. But that's the reason why you haven't done this in this
18 particular instance?
19 A. That's exactly right.
20 Q. The projected depth of target formation here is roughly
21 2,200 feet?
22 A. Yes.
23 Q. And your target seam is the Pocahontas #3 seam?
24 A. That's correct.
25 Q. You're seeking to force pool all coal seams and rock

1 strata associated therewith below the Tiller seam?

2 A. That's correct.

3 Q. This is an 80 acre Oakwood II unit?

4 A. That is correct.

5 Q. Is that true with regard to each of these three units?

6 A. That is correct.

7 Q. Turning to the next application, U-15, again you previously
8 testified that you did mail on unit U-15 to everyone
9 -- every respondent for whom you had an address?

10 A. That is correct.

11 Q. I would ask you to tell the Board if any mail came back
12 from the post office unclaimed and if so the people to
13 whom that mail was addressed?

14 A. We had mail returned from Billy Sue Dixon, Kay Child-
15 ress, Patsy Ruth Coleman, Carl and Claudia Childress,
16 Estel Looney, and James C. Sutherland.

17 Q. And there were people for whom you did not have address-
18 es, correct?

19 A. That is correct.

20 Q. And for those people notice would have been accomplished
21 through the publication that you previously testified to?

22 A. That is correct.

23 Q. Could you just list by respondent number in the record
24 with regard to each tract the folks for whom you did not
25 have addresses?

1 A. Just by reference, under tract 3 respondent 17, Jessie
2 Childress heirs. Tract 4 respondent 1, 2, 6, 7, 10, 11,
3 13, 14 through 19, 23 through 28, 30 through 32, 35, 36,
4 50, 67 through 71, 73, 76, 81 through 93, 95 through 103,
5 106 through 114, 116 through 125, and 138.
6 Q. Now, with regard to unit U-15 we have the same Exhibit G,
7 Page 1, correct?
8 A. That is correct.
9 Q. We are seeking here, however, not to pool surface
10 claimants but to actually pool an oil and gas interest,
11 correct?
12 A. That is correct.
13 Q. And what is the outstanding oil and gas interest?
14 A. Outstanding oil and gas interest is 32.82448 percent.
15 Q. Has Buchanan Production leased 100 percent of the coal
16 interests?
17 A. Yes, it has.
18 Q. And has it leased the balance other than the 32.82448
19 percent of the oil and gas interest?
20 A. That is correct.
21 Q. With regard to this unit are there an amended Exhibit C,
22 Pages 1 and 2 with regard to DWES?
23 A. There are amended Exhibit Cs.
24 Q. Did you prepare these?
25 A. Yes, I did.

1 Q. Did you prepare them within the last 60 days?
2 A. Yes, I did.
3 Q. And these are intended to be substituted because of the
4 fact that the bore hole agreement is no longer in effect?
5 A. That's correct.
6 Q. What is your reasonable estimate with regard to the
7 projected costs to drill and put these two wells in?
8 A. In the panel 1-Development East \$178,623 and in 2-
9 Development Est \$140,923.
10 Q. Are these reasonable estimates of those costs in your
11 opinion?
12 A. Yes, they are.
13 Q. Again we've got an amended Exhibit G, Page 3, which
14 allocates panel costs based on the percentages of the
15 panels in the various units that we previously looked at,
16 correct?
17 A. That is correct.
18 Q. And these would be the same numbers shown on Exhibit G,
19 Page 2 and Exhibit G, Page 3 that we previously discussed
20 with regard to U-14?
21 A. That's correct.
22 Q. And you've read in previously the allocable costs for
23 unit U-15?
24 A. That's correct.
25 Q. Exhibit G, Pages 4 through 9 report the various net

1 interests within a unit within the panel and the overall
2 panel interest for each of the respondents, correct?
3 A. That is correct.
4 Q. And would be relevant to escrow, royalty, participation,
5 and carried interest calculations?
6 A. That's correct.
7 Q. OXY has consented to serve as operator in this unit as
8 well?
9 A. That is correct.
10 Q. And the consent is on file?
11 A. That is correct.
12 Q. With regard to the last unit, unit U-16, directing your
13 attention to A, Page 2, we are talking about force
14 pooling what kind of an interest?
15 A. We're force pooling the remainder of the oil and gas
16 interest which amounts to 55.25372 percent.
17 Q. Does OXY have 100 percent of the coal interest under
18 lease?
19 A. Yes, we do.
20 Q. And roughly 45 percent of the oil and gas?
21 A. That is correct.
22 Q. And this is not a surface owner situation, this is an oil
23 and gas situation?
24 A. That is correct.
25 Q. On this unit, meaning U-16, did you mail to everyone

1 listed as a respondent for whom you had an address for?

2 A. That is correct.

3 Q. Could you list the names of those persons to whom you

4 mailed but from the mail came back?

5 A. We received our mailings back from Howard and Shirley

6 Webb --

7 Q. No. Back from the post office not claimed.

8 A. Oh.

9 Q. You've got the right list, but just for the record this

10 is mail that came back from the post office that was not

11 claimed. Who did it come back from unclaimed?

12 A. It came back unclaimed from Howard and Shirley Webb,

13 Kenneth and Martha Whited, Ada and Virgil Hamilton,

14 Nannie Presley Lockhart, Billy Sue Dixson, Carl and

15 Claudia Childress, Kay Childress, Patsy Ruth Coleman,

16 Curtis and Charlotte Broughtner and Estel Looney.

17 Q. Now, with regard to unit U-16 could you list by tract and

18 respondent number the folks for whom you did not have

19 addresses?

20 A. In tract 2 we did not have an address for respondent

21 number 17. Tract 3, respondents 1, 2, 6, 7, 10, 11, 13,

22 14 through 19, 23 through 28, 30 through 32, 35, 36, 50,

23 67 through 71, 73, 76, 81 through 93, 95 through 103, 106

24 through 114, 116 through 125 and 138. Tract 4 the

25 respondents were 2, 26, 29, 37.

1 Q. And you filed proof of mailing as you previously indicat-
2 ed with regard to this unit as well?
3 A. Yes, we did.
4 Q. Again, this is an 80 acre unit and we're talking about
5 all coal seams and associated strata below the Tiller?
6 A. That's correct.
7 Q. Is it your opinion that the applicant's plan of develop-
8 ment for these three units, U-14, 15 and 16, is a
9 reasonable plan to develop the coalbed methane resource
10 within and under the units for the benefit of the owners
11 of that resource?
12 A. Yes, it is.
13 Q. Is it your opinion that the proposed wells, two in each
14 of these three units, will contribute to the protection
15 of correlative rights of the owners by producing methane
16 -- those owners within and under the unit in question --
17 and lessen the likelihood of physical waste and economic
18 waste through venting the gas?
19 A. Yes, it is.
20 MR. SWARTZ: That's all I have.
21 MR. CHAIRMAN: Questions, members of the Board?
22 MR. EVANS: Just one quick question and this goes way back.
23 You mentioned early on in the presentation that you're
24 asking for an Oakwood II order?
25 MR. SWARTZ: Right.

1 MR. EVANS: Or are you asking for a combined?
2 MR. SWARTZ: No. It's an Oakwood II.
3 MR. EVANS: In your application I think it mentions combined,
4 I and II.
5 MR. SWARTZ: It may but we, in fact, need a II order because
6 it's going to start off as short hole. There are no
7 frack wells proposed here at all.
8 MR. EVANS: So this is an Oakwood II only?
9 MR. SWARTZ: Right.
10 MR. EVANS: And production is going to start shortly I would
11 say?
12 MR. SWARTZ: Well, I need to look at the mine map here. It
13 looks like they're fairly close.
14 MR. EVANS: Yeah.
15 MR. CHAIRMAN: Do you have a consent to stimulate?
16 MR. SWARTZ: We will not be stimulating and probably don't
17 have one.
18 MR. CHAIRMAN: You probably won't need one.
19 MR. SWARTZ: Right.
20 MR. MASON: I just want to ask a couple of questions. I'm
21 still having a hard time with this - - back on this hook-
22 up fee business. When you had the original Exhibit C,
23 Mr. Gordon, on unit U-14 and you have this bore hole fee
24 of \$142,500.
25 MR. GORDON: Uh-huh.

1 MR. MASON: When this was done was it anticipated that this
2 well would be hooked up to the Oakwood Gathering system
3 at that time?
4 MR. GORDON: Yes, sir.
5 MR. MASON: Who was to own the equipment then?
6 MR. GORDON: Specifically which --
7 MR. MASON: The same equipment now that's included in the
8 \$20,000.
9 MR. GORDON: There is no equipment -- we're talking about
10 connecting the well. There is no equipment there. We're
11 talking about a hook-up fee of equipment that belongs to
12 Oakwood Gathering.
13 MR. MASON: I understand that. When this was projected
14 through this bore hole fee the same -- Oakwood was going
15 to hook that up and furnish that same equipment under
16 that scenario?
17 MR. GORDON: Yes.
18 MR. MASON: And this former statement for U-14 doesn't show
19 any hook-up fee at all.
20 MR. GORDON: No, it doesn't.
21 MR. MASON: Well, why were they willing to do it then for
22 nothing and now it costs \$20,000?
23 MR. GORDON: They were not doing it for nothing.
24 MR. MASON: Then why wasn't it reflected on here?
25 MR. GORDON: I don't know how to respond to it, Mr. Mason.

1 There is an agreement with Buchanan Production Company
2 and Oakwood Gathering and that fee has been in place for
3 some time.

4 MR. MASON: But if you look at this former Exhibit C for U-14
5 it lists \$142,500 as a bore hole fee and under that it
6 says equipment coal and there is a blank and it says
7 title, regulatory and total of \$164,000. Are you telling
8 me that there was going to be a \$20,000 fee charge then
9 that wasn't reflected on here?

10 MR. GORDON: From my understanding that is correct.

11 MR. MASON: Are you telling me that all the ones that we
12 approved previously -- this same type of thing -- that
13 there's going to be a \$20,000 fee charge that we didn't
14 know about and wasn't disclosed to this Board?

15 MR. GORDON: That charge had nothing to do with the drilling
16 of that well.

17 MR. MASON: Then why is it on this DWE?

18 MR. GORDON: I wish it wasn't right now to be honest with you.

19 MR. CHAIRMAN: Good answer.

20 MR. MASON: I'm just having trouble with this. I don't
21 understand how this sort of didn't exist and now it
22 exists.

23 MR. SWARTZ: He's not telling you it didn't exist. He's been
24 very affirmative that it existed but it was not captured
25 on the previous exhibits.

1 MR. MASON: I understand that, but what I'm trying to say is
2 are you telling me that every one of these that we've
3 approved that there's an additional \$20,000 charge that's
4 going to be charged on this well as a hook-up fee that we
5 weren't told about?

6 MR. SWARTZ: Do you know whether or not it will flow into the
7 unit?

8 MR. GORDON: I do not know that.

9 MR. SWARTZ: Do you know whether or not Island Creek provided
10 a service in exchange for the \$20,000 hook-up fee and no
11 money was changing hands?

12 MR. GORDON: I do not know that.

13 MR. MASON: Let me interpose something. May I suggest before
14 we come here next month that we get a little clarifica-
15 tion on this? It might save both of us some embarrass-
16 ment.

17 MR. SWARTZ: Sure.

18 MR. CHAIRMAN: Is that a part of the JOA that you have? I
19 know that we're not looking at --

20 MR. SWARTZ: We don't have a JOA. Are you talking -- between
21 the companies?

22 MR. MASON: No. Do you have one. We don't.

23 MR. SWARTZ: The affiliates agreement addressed -- I'm talking
24 about an agreement between Island Creek and Buchanan
25 Production --

1 MR. CHAIRMAN: Right.

2 MR. SWARTZ: -- Oakwood and OXY addressed hook-up fees,
3 electrical distribution systems and there was a trade
4 off. And the hook-up fee from Oakwood was a trade off.
5 Island Creek had obligations to extend the power lines,
6 to let us use road -- there was a comprehensive affiliat-
7 es agreements that meshed the various activities and
8 whose responsibility was what. So I'm not sure -- I
9 mean, I don't think Sam knows enough about this affiliate
10 thing --

11 MR. MASON: I personally think that what happened was that
12 this bore hole fee included everything up to the dog lot
13 fence.

14 MR. SWARTZ: It did. It didn't include anything beyond the
15 fence.

16 MR. MASON: That's right. But we're going in the other
17 direction now. That was the bore hole fee -- someone
18 testified previously that what they bought was everything
19 up to the fence coming out of the well. Now we're
20 talking about from where that fence starts over and what
21 I can't understand is why this suddenly goes away and we
22 go to actual costs and we pick up something here that we
23 never had before.

24 MR. SWARTZ: I understand.

25 MR. MASON: I find that inconsistent.

1 MR. SWARTZ: In large measure what Sam is doing his best to
2 deal with is a reconfiguration of the relationship
3 between these related companies, immediately anticipation
4 of the sale that may not include all of it. I mean,
5 that's what you're seeing.

6 MR. MASON: I understand all that, Mark. The problem is when
7 that reconfiguration manifests itself and how there are
8 costs allocated that effect people that elect. That
9 becomes very relevant to what we're doing and I feel
10 like for us to adopt something like this without knowing
11 what those are is improper.

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

14 MR. SWARTZ: No.

15 MR. CHAIRMAN: Do we have a motion?

16 MR. EVANS: Mr. Mason, I've got a question for you. Do you
17 have a -- I've heard the forgoing discussion. Do you
18 want to see a cost break down or some justification of
19 that or what --

20 MR. MASON: No. I'm more concerned about -- actually I'm not
21 as concerned about the \$20,000 on this well as I am of
22 the fact that there may be the same cost associated with
23 wells in the past that we've already approved. That
24 troubles me a lot. It may well be that Island Creek as a
25 part of what they were being paid for this bore hole fee

1 was paying it themselves and it wouldn't end up being
2 charged to the well at all. I mean, that's a possibility,
3 isn't it, Mr. Gordon?

4 MR. SWARTZ: What?

5 MR. MASON: The deal between Island Creek and different
6 parties in this could have been that Island Creek was
7 paying the \$20,000 instead of it being charged to the
8 well. You don't think so? I don't know.

9 MR. GORDON: I don't know either, Bill.

10 MR. SWARTZ: I think it has been charged -- I'm not sure that
11 these charges have been charged to the well and to the
12 extent you have a suspicion that they were I can't --
13 the way I understand how these things work, because I got
14 involved in trying to straighten out the affiliates
15 agreement through a late game, I'm not sure that these
16 were well charges. You had to get certain infra-structure
17 to these wells in that the affiliated companies
18 undertook the responsibility to perform certain functions.
19 Island Creek had a fairly sophisticated power
20 system in place with rights of way and so forth and my
21 recollection is that Island Creek undertook essentially
22 to underwrite and assumed responsibility for a large
23 portion of the electrical distribution system. Oakwood
24 provided other services. They swapped rights of way to
25 roads. And I'm not sure that any of this stuff found its

1 way into well accounts, but that it was kind of a quick
2 arrangement between a group of companies splitting up who
3 builds roads, who builds sites, who does flow lines, who
4 does power lines, who handles compressors. It was money
5 that was changing hands -- company transfers and so
6 forth. I mean, if Island Creek was actually getting the
7 142,500 on an ITC or whatever you call it. But I'm not
8 sure these things were getting charged to wells. We will
9 have an answer for you next time, but I'm not -- do you
10 know?

11 MR. GORDON: I do not know. I'm like you, I'm aware that we
12 had a lot of things going on between companies, swapping
13 and trading and this, that and the other. But all I know
14 is that at this point to the future this document exists
15 between BPC and Oakwood and it's been brought about by
16 the sale.

17 MR. EVANS: I guess from my point of view in any case you're
18 asking us to say -- we're asked to make a decision that
19 yeah, that \$20,000 sounds reasonable, the DWE looks
20 reasonable, okay. If we feel that that's reasonable to
21 go ahead and grant the force pooling and if we don't feel
22 it's reasonable to say hey, come up with a little more
23 meat on that or deny your petitions.

24 MR. SWARTZ: What I would prefer to see, Ken, since the money
25 is fairly close, if you are not comfortable with Sam's

1 explanation that these are actual costs, it's roughly
2 \$30,000 a well, and why this number was selected or if
3 you want more backup I would rather you approve them,
4 line that \$20,000 out. If we want to come back and
5 demonstrate that we ought to get it we can come back at
6 some future date or it will become a dead issue on these
7 three units. We need to have them pooled so we can
8 produce.

9 MR. EVANS: In that case I'll take that suggestion. We can
10 line that \$20,000 out and make the amendments without
11 that \$20,000 in there on each of these three units.

12 MR. SWARTZ: Right.

13 MR. EVANS: And allow you to go ahead. And if at some future
14 time you want to come back and try and sort all this out
15 to our satisfaction that's fine. But for right now
16 that's pig in a poke and since you said that is okay --
17 I'll make a motion that we approve all three with that
18 stipulation, that the \$20,000 gathering line and hook-up
19 fee be eliminated from the DWE and also from all the
20 calculations for participation.

21 MS. RIGGS: And submit revised.

22 MR. EVANS: And submit revised Exhibit Gs for each.

23 MR. SWARTZ: Exhibit G, Page 3 probably, but what ever numbers
24 changed as a result of that we'll submit amended ex-
25 hibits.

1 MR. MASON: I'll second that motion.

2 MR. CHAIRMAN: Motion and a second. Further discussion? All
3 in favor signify by saying yes. (ALL AFFIRM.) Opposed
4 say no. (NONE.) For the record, Kevin McGlothlin
5 abstained. He is present at the meeting. Therefore, we
6 had a quorum. We had a unanimous decision by the
7 remaining members of the Board and a majority.

8 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
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1 ITEM X

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3 MR. CHAIRMAN: The next item on the agenda is a petition for a
4 well location exception. This is an application for the
5 exception for V-2697 by EREX. The docket number is VGOB-
6 93/06/22-0392. We'd ask all parties that wish to address
7 the Board in this matter to come forward at this time.

8 MR. TWEED: Doug Tweed and Jim Kiser here on behalf of the
9 applicant.

10 MR. CHAIRMAN: The record will show there are no others. You
11 may proceed.

12 MR. TWEED: Thank you. By way of initial introduction to the
13 Board this is a location exception of a conventional well
14 being done at the request and mandate of the lessor/coal
15 owner/simple owner Penn Virginia Resources. Our witness-
16 es will be Don Hall and Bob Dahlin. I'd ask that they be
17 sworn at this time.

18 COURT REPORTER: (Swears witnesses.)

19 MR. TWEED: Mr. Chairman, our first witness will be Don Hall.
20

21 DON HALL

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

DIRECT EXAMINATION

BY MR. TWEED:

Q. State your name for the record, please.

A. Don Hall.

Q. And you're an employee of EREX in what capacity and for how long, Mr. Hall?

A. District land man, Virginia. I've been with Equitable for twenty-two years.

Q. Have your qualifications as an expert witness in your field previously been accepted by this Board?

A. Yes, sir.

Q. You are familiar with the lands involved here and the surrounding area and the specific application for a location exception?

A. Yes, sir.

Q. And I believe all interested parties have been notified as required by Section 4.B of the Virginia Gas and Oil Board regulations and that Diane Davis, in fact, received copies of the certified mailings by a cover letter dated May 17th, 1993?

A. Yes.

Q. The ownership of the oil and gas underlying well V-2697 for which this application is filed is owned 100 percent by Penn-Virginia Resources Company, is that correct?

1 A. Yes, it is.

2 Q. There are two reciprocal wells where we are requesting
3 minor exceptions, VP-2442 and VP-2696. Both of those are
4 owned 100 percent by Penn-Virginia as well, correct?

5 A. Yes, they are.

6 Q. So we don't have any dispute into correlative rights
7 issues, is that correct?

8 A. Yes.

9 Q. And it's my understanding, Mr. Hall, that the primary
10 reason for this request of location exception is that
11 after coordination and discussion with Penn-Virginia as
12 the coal owner and lessor this is the location and
13 frankly the only location in this area that they found
14 acceptable in light of prior pending and future mine
15 operations, is that correct?

16 A. Yes, it is.

17 Q. I believe that you in addition to coordinating with Mr.
18 Keith Horton, the vice-president for coal, at Penn-
19 Virginia Resources Corporation, in fact, have prepared a
20 map for the Board and in addition have a copy of a letter
21 that Mr. Horton and Penn-Virginia Resources sent to EREX
22 with respect to this location?

23 A. Yes, we do.

24 Q. The coal operations were also reflected to a degree
25 together with the barrier block where the well is to be

1 located on Exhibit 1 which is the plat to the applica-
2 tion, is that correct?
3 A. Yes.
4 Q. I believe in addition to that that on the permit applica-
5 tion there, in fact, is a letter from Keith Roten of
6 Penn-Virginia which at Paragraph 3 also references the
7 particular location needs for this well in light of the
8 mine operations?
9 A. Yes, it does.
10 Q. I note, Mr. Hall, that the members of the Board now have
11 copies of the document marked Exhibit C. Was that
12 prepared by EREX to reflect the location of the mine
13 location for which we are seeking the exception, VP-2697
14 in green as well as the two reciprocal wells in pink and
15 other surrounding wells where no exception is needed?
16 A. Yes.
17 Q. An unmarked exhibit which we would request be Exhibit B
18 since the plat is Exhibit A is the letter from Mr. Horton
19 that I previously referenced, is that correct?
20 A. Yes, it is.
21 Q. I believe in addition to that that Mr. Horton made
22 reference to a map that he attached his original letter
23 that we did not copy because of its size and because it's
24 fairly duplicative of the plat but that also exemplifies
25 the mining operations and the particular barrier where

1 this well needs to be put?

2 A. Yes, sir.

3 Q. I believe that there are a couple of what we thought were
4 minor discrepancies in terms of the distance markings on
5 this map of Mr. Horton with respect to two ancillary
6 wells, not the reciprocal wells, a matter of 50 or 100
7 feet but otherwise appears to be duplicative of all the
8 relevant issues with our application, is that correct?

9 A. Yes. That's correct.

10 MR. TWEED: Mr. Chairman, we did not make copies of this but
11 would have this available for any member of the Board
12 that wanted to review this and we'd be glad to make it an
13 exhibit if the Board desires.

14 MR. CHAIRMAN: We'd like to have it and look at it. Give it
15 to Kevin and he can pass it down this way.

16 Q. (Mr. Tweed continues.) While that's being done, Mr.
17 Hall, would it be fair to say as per EREX's analysis and
18 coordination with Penn-Virginia that it's necessary for
19 us to put this well in this barrier in order to be able
20 to put a well to handle the resources that would other-
21 wise be wasted in that general area as is reflected in
22 Exhibit C and surrounded by these other wells?

23 A. Yes, sir.

24 Q. It's my understanding that the estimated loss of reserves
25 in the event that we are unable to put a well in this

1 area would be approximately 100 million cubic feet?

2 A. Yes, sir.

3 Q. What we're looking for with respect to the location
4 exception would be all the formations to be covered by an
5 order of the Board. That would be Devonian shells,
6 Burea, Wier, Big Lime, Raven Cliff, Maxim, and Sunberry
7 from the surface to the ground to the total depth drilled
8 for this well, 5,900 feet?

9 A. Yes, sir.

10 Q. In your opinion and based upon your discussions with the
11 coal owner are there any other feasible locations on
12 tract TK-38 or TK-42 which would allow well 2697 to be
13 drilled without requiring a location exception of this
14 sort?

15 A. No, sir.

16 Q. In your opinion will the granting of this location
17 exception be in the best interest of preventing waste,
18 protecting correlative rights, and maximizing recovery of
19 gas reserves underlying V-2607?

20 A. Yes, sir.

21 MR. TWEED: Mr. Chairman, if the Board desires we would read
22 Mr. Horton's letter into the record. But in light of the
23 fact that we've made it an exhibit I would by-pass that.

24 MR. CHAIRMAN: I don't think that's necessary.

25 Q. (Mr. Tweed continues.) Does EREX have a working interest

1 in the oil and gas leases covering all of the tracts for
2 this application?

3 A. Yes, sir, we do.

4 Q. And does the lease cover all of the oil and gas almost
5 within a 1,320 foot radius of this proposed well site?

6 A. Yes, it does.

7 Q. Does EREX have the right to operate the reciprocal wells?

8 A. Yes, sir.

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

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

11 (Witness stands aside.)

12 MR. CHAIRMAN: Call your next witness.

13
14 ROBERT DAHLIN

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

17
18 DIRECT EXAMINATION

19
20 BY MR. TWEED:

21 Q. Mr. Dahlin, would you state your job capacity with EREX
22 and your years with EREX for the Board, please?

23 A. I'm employed as an operations specialist. I've been with
24 EREX this time for four years.

25 Q. And your responsibilities include the areas of drilling,

1 completion and production?

2 A. Yes, sir.

3 Q. And you have previously been accepted as an expert

4 witness before this Board in your field?

5 A. I have.

6 Q. Would it be fair to say that this particular application

7 for a location exception is to prevent waste and maximize

8 recovery?

9 A. That's correct.

10 Q. Is it your opinion that if this location exception was

11 not drilled that the estimated loss of reserves is 400

12 million cubic feet?

13 A. Yes, sir.

14 Q. Did you hear the testimony that I solicited from Mr. Hall

15 concerning the formations of total depth drilled to 5,900

16 feet that need to be covered by this order?

17 A. All those statements are correct.

18 Q. In your opinion is there any other feasible location on

19 these tracts which would allow this well to be drilled

20 without requiring a location exception?

21 A. None that are approved by the coal company.

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

23 exception be in the best interest of preventing waste,

24 protecting correlative rights and maximizing recovery of

25 gas reserves underlying V-2697?

1 A. Yes, sir.

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

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

4 (Witness stands aside.)

5 MR. CHAIRMAN: Do you have anything further?

6 MR. TWEED: No, sir. We would request approval.

7 MR. FULMER: Do you want to keep the topo as an exhibit or
8 give it back?

9 MS. RIGGS: Are they introducing this as an exhibit?

10 MR. CHAIRMAN: No, it's not an exhibit.

11 MR. EVANS: I make a motion that we approve the location
12 exception.

13 MR. CHAIRMAN: Motion to approve the location exception.

14 MR. MCGLOTHLIN: Second

15 MR. CHAIRMAN: Motion and second. Further discussion? All in
16 favor signify by saying yes. (ALL AFFIRM.) Opposed say
17 no. (NONE.) Unanimous approval.

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3 ITEM XI

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 force pooling by Equitable Resources Exploration for V-
6 2341. This is docket number VGOB-93/06/22-0383. We'd
7 ask the parties that wish to address the Board to come
8 forward at this time.

9 MR. TWEED: Mr. Tweed and Mr. Kiser here on behalf of the
10 applicant.

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

13 MR. TWEED: Our witnesses here will be J.W. Griffin and Mr.
14 Bob Dahlin who's previously been sworn. Mr. Griffin
15 needs to be sworn.

16 COURT REPORTER: (Swears witness.)

17 MR. TWEED: This is a force pooling application for a convent-
18 ional well.
19

20 J.W. GRIFFIN

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

DIRECT EXAMINATION

BY MR. TWEED:

Q. Mr. Griffin, would you state your job position with EREX and how many years you've been employed in that capacity?

A. Land man for three years.

Q. Do your responsibilities include the lands involved in the area of this application and the surrounding area?

A. Yes, it does.

Q. And you are familiar with this application for the establishment of a drilling unit and pooling order for well V-2341?

A. Yes.

Q. Have you been accepted as an expert witness by this Board in your field in the past?

A. I have not. Not in the past, no.

Q. I believe you've testified --

A. I've testified before the Board in the past.

Q. Did you have experience as a land man prior to your experience with EREX?

A. Yes, I do.

Q. For how many years?

A. Sixteen.

Q. In general would you tell the Board what types of

1 functions you've been involved with as a land man for
2 EREX and prior to that time including your job responsib-
3 ilities?
4 A. Negotiating leases, title or accurate supervision.
5 Q. Have you dealt with the supervision and development of
6 application for pooling orders and notices and determina-
7 tion of ownership interests, inspecting registrar's office
8 records and title records and things of that nature?
9 A. I have.
10 MR. TWEED: We would ask that he be accepted as an expert in
11 his field as land man for the purpose of his testimony
12 with this application, Mr. Chairman.
13 MR. CHAIRMAN: Any objection? You may proceed.
14 Q. (Mr. Tweed continues.) Is Equitable seeking to force
15 pool the drilling rights underlying the drilling and
16 spacing unit depicted on Exhibit A to this application,
17 Mr. Griffin?
18 A. Yes, sir, they are.
19 Q. Does Equitable own the drilling rights in the units
20 involved here?
21 A. Yes, they do.
22 Q. I believe that the proposed unit on Exhibit A does
23 include all acreage within 2,640 feet or a 1,320 foot
24 radius of proposed well V-2341, is that correct?
25 A. That's correct.

1 Q. Exhibit B has already been filed with the Board and with
2 the application. Did that set forth all unleased parties
3 at the time of the application?
4 A. It did.
5 Q. Prior to filing the application were efforts made to
6 contact each of the respondents in an attempt to work out
7 agreements involving the development of the units here?
8 A. Yes, sir.
9 Q. Subsequent to the filing of the application have you
10 continued to attempt to reach agreement with respondents
11 listed in Exhibit B?
12 A. We have.
13 Q. As a result of those efforts it is my understanding that
14 you have acquired other leases and that there were some
15 parties on Exhibit B as filed where we are moving to
16 dismiss them as parties because they are now leased, is
17 that correct?
18 A. That's correct.
19 Q. Would you identify those three parties on Exhibit B for
20 the Board, please?
21 A. On Page 1 of 7, Terry Leon Roop and Cheryl Roop, husband
22 and wife. They are now leased. On Page 3 of 7, Ervin
23 Wireman and Emily Wireman, husband and wife, and Sara
24 Jenkins and Junior Jenkins, husband and wife, are now
25 leased.

1 Q. In addition to that change in circumstance since the
2 filing of Exhibit B it is also my understanding that with
3 respect to tract 3 on Page 5 of Exhibit B that we have
4 now been advised, quite frankly, advised as of today,
5 that there has since the application been a sale of
6 interest by some of these respondents to another, is that
7 correct?

8 A. That's true.

9 Q. And in point of fact, on Page 5 of 6 in tract 3 Erving
10 Sexton and Tommy Kilgore and Zelma Gibson have each sold
11 their interest to -- if I'm getting this correct.
12 Correct me if I'm wrong. Is it to Van Buren Sexton?

13 A. Erving Sexton and Zelma Gibson and Eugene Gibson sold
14 their interests to Van Buren Sexton.

15 Q. I'm sorry. So Van Buren Sexton has now got an interest
16 within the unit and a gross acreage within in the unit
17 greater than he had before and Erving Sexton and Zelma
18 Gibson and Eugene Gibson do not have interests in the
19 unit. is that correct?

20 A. That's correct.

21 Q. And we have observed that deed which has recently been
22 done but as of yesterday and, in fact, today have not yet
23 been recorded by the purchaser, Van Buren Sexton?

24 A. That's true. There's no record at this time.

25 MR. TWEED: What we plan to do with the Board's permission,

1 Mr. Chairman -- we did not in light of the lateness of
2 this information have the time to prepare an amended
3 Exhibit B to hand out at this time, but we would request
4 the opportunity to late file an amended Exhibit B to
5 reflect these changes in ownership and we would request
6 dismissal of the three parties that are now leased. We
7 use to, as the Board knows, continue to have both leased
8 and unleased persons or owners as parties to our applica-
9 tions, but we've changed that format for a variety of
10 practical reasons. And we would request dismissal of
11 those three and then would reflect that along with the
12 Sexton transfer in an amended Exhibit B that we would
13 file very shortly after this hearing.

14 MS. RIGGS: Would you repeat for me the names of the dismiss-
15 als?

16 MR. TWEED: Yes, ma'am. Mr. Griffin.

17 MR. GRIFFIN: On Page 1 of 7, Tommy Leon Roop and Cheryl Roop.
18 On Page of 7, Erving Wireman and Emily Wireman and Sara
19 Jenkins and Jimmy Jenkins.

20 MS. RIGGS: Thank you.

21 Q. (Mr. Tweed continues.) Mr. Griffin, as to individual
22 respondents were efforts made to determine whether they
23 were living or deceased or their whereabouts and if
24 deceased were efforts made to determine the names and
25 addresses and whereabouts of any successors?

1 A. Yes, sir.

2 Q. Were reasonable and diligent efforts made and sources
3 checked to identify and locate any unknown heirs to
4 include primary sources such as deed records, probate
5 records, accessors's records, treasurer's records and
6 secondary sources such as telephone directories, city
7 directories, family and friends?

8 A. They were.

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

11 A. Yes, it was.

12 Q. Are the addresses set out in Exhibit B and to be set out
13 in the late filed, amended Exhibit B the last known
14 addresses for the respondents?

15 A. Yes.

16 Q. Would you tell the Board, please, what the new percentage
17 of interest of Equitable will be in the unit after the
18 three additional referenced leases?

19 A. The percentage of the unit leased by Equitable is now
20 83.885 percent.

21 Q. Mr. Griffin, with the exception of the parties which
22 we've referenced for dismissal from the proceeding are
23 you requesting this Board to force pool all unleased
24 interest listed on Exhibit B and to be listed on late
25 filed amended Exhibit B?

1 A. Yes.

2 Q. Does Equitable seek to force pool the drilling rights of
3 each individual respondent if living and if deceased the
4 unknown successor or successors to any deceased individ-
5 ual respondent?

6 A. Yes.

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

12 A. Yes.

13 Q. Are you familiar with the fair market value for drilling
14 rights in the units here and the surrounding area?

15 A. I am.

16 Q. And what are those?

17 A. \$5 an acre, five year lease, one-eighth royalty.

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

22 A. Yes, I have.

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

1 within this unit?

2 A. Yes.

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

4 voluntarily agreed to pool do you recommend that the

5 respondents listed at amended Exhibit B who remain

6 unleased be allowed the following options with respect to

7 their ownership interests within the unit: 1; Participa-

8 tion. 2; A cash bonus of \$5 net mineral acre plus a one-

9 eighth of eight-eighths royalty. 3; In lieu of cash

10 bonus and one-eighth of eight-eighths royalty a share in

11 the operation of the well on a carried basis as a carried

12 operator under the following conditions: Such carried

13 operator shall be entitled to the share of production

14 from the tracts pooled accruing to his interest exclusive

15 of any royalty or are reserved in any leases, assignments

16 thereof or agreements related thereto of such tracts but

17 only after the proceeds allocable to his share equal

18 either A) 300 percent of the share of such cost allocable

19 to the interest of the carried operator of a leased tract

20 or portion thereof or B) 200 percent of the share of such

21 costs allocable to the interest of the carried operator

22 of an unleased tract or portion thereof?

23 A. Yes, sir.

24 Q. Do you recommend that the order provide that any elect-

25 ions by respondent be in writing and sent to applicant at

1 Equitable Resources Exploration, P.O. Box 1983, King-
2 sport, Tennessee, 37662-1983, attention Dennis R. Baker
3 (Regulatory)?
4 A. Yes.
5 Q. And should this be the address for all communications
6 with applicant concerning the force pooling order?
7 A. Yes, it should be.
8 Q. Do you recommend that the force pooling order provide
9 that if no written election is properly made by a
10 respondent that such respondent shall be deemed to have
11 elected the cash royalty option in lieu of participation?
12 A. Yes.
13 Q. Should the unleased respondents be given 30 days from the
14 date of the order to file written elections?
15 A. Yes, sir.
16 Q. If an unleased respondent elects to participate should
17 that respondent be given 45 days to pay applicant for
18 respondent's proportionate share of well costs?
19 A. Yes.
20 Q. Does the applicant except a party electing to participate
21 to pay in advance that party's share of completed well
22 costs?
23 A. Yes.
24 Q. Should the applicant be allowed 60 days following the
25 recordation date of the order and thereafter annually on

1 that date until production is achieved to pay or tender
2 any cash bonus becoming due under the force pooling
3 order?

4 A. Yes.

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

13 A. Yes.

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

21 A. Yes.

22 Q. Do you recommend the force pooling order provide that if
23 respondent refuses to accept any payment due including
24 any payment due under said order or any payment of
25 royalty and cash bonus or said payment cannot be paid to

1 a party for any reason or there's a title defect in a
2 respondent's interest that the operator create an escrow
3 account for the respondent's benefit until the money can
4 be paid to the party or until the title defect is cured
5 to the operator's satisfaction?

6 A. Yes.

7 Q. Should Equitable Resources Exploration be named the
8 operator under the force pooling order?

9 A. Yes.

10 MR. TWEED: I have no further questions of this witness. I
11 will call Mr. Dahlin next.

12 (Witness stands aside.)

13 MR. CHAIRMAN: Let me ask one question on your Exhibit B.
14 When you're talking about pooling those parties listed in
15 the amended Exhibit B or the late filed, however you
16 referred to it, in the current Exhibit B you've identified
17 several parties to have been leased before you
18 dismissed others. Is there any relevance to that?

19 MR. TWEED: I think the only relevance here is that we're
20 caught in the transition in our procedures and that we
21 intend to continue with the election order and therefore,
22 treat only as parties those who are released.

23 MR. CHAIRMAN: Let me clarify one other thing, please. On
24 Page 5 of 7, when you talk about the sale of property
25 from Erving Sexton, Zelma Gibson, Eugene Gibson you asked

1 that those be dismissed as well as part of that process
2 since the sale went to Van Buren Sexton?

3 MR. TWEED: Yes. They will have no election and sending them
4 an election order would be confusing to them. We've seen
5 the deed. So we know it's good. It just wasn't record-
6 ed.

7 MR. CHAIRMAN: I just wanted to verify that. Thank you. Any
8 other questions? You may proceed.

9 MR. TWEED: Next I would call Mr. Dahlin and would ask the
10 Board to adopt his testimony with respect to the previous
11 docket number as to his expertise and background.

13 ROBERT DAHLIN

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

17 DIRECT EXAMINATION

19 BY MR. TWEED:

20 Q. Mr. Dahlin, are you familiar with this application for a
21 force pooling unit?

22 A. Yes, sir, I am.

23 Q. I'm going to provide this information and ask you to
24 verify whether it is correct. As to the total depth of
25 the proposed initial well under the plan of development

1 we're talking 4,250 feet and we're to include the
2 formations consistent with the well work permit that, in
3 fact, was approved in March of 1992. This is a transfer
4 from ANR and that includes the following formations,
5 Devonian shells, Burea, Wier, Big Lime, Raven Cliff,
6 Maxim?

7 A. Yes, sir.

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

10 A. It will.

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

16 A. We are.

17 Q. Will this initial well be the legal location?

18 A. Yes, sir.

19 Q. Are the estimated reserves 350 million cubic feet?

20 A. Yes, sir.

21 Q. Are you familiar with the well costs for the proposed
22 initial unit under the plan of development?

23 A. I am.

24 Q. And has a signed AFE been reviewed and submitted to the
25 Board?

1 A. Yes, sir, it has.

2 Q. Was this AFE prepared by an engineering department at
3 EREX knowledgeable in the preparation of AFEs and
4 knowledgeable in regard to well costs in this area?

5 A. Yes, sir, it was.

6 Q. And I believe it was prepared consistent with the
7 quality control procedures set at EREX to verify general
8 accuracy of AFEs?

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

10 Q. In your opinion does this AFE represent a reasonable
11 estimate of the well costs for the proposed unit well
12 under the plan of development?

13 A. It does.

14 Q. Are the dry hole costs \$115,700?

15 A. Yes, sir.

16 Q. And the completed well costs \$228,200?

17 A. Yes, sir.

18 Q. Do these costs anticipate a multiple completion?

19 A. Yes, sir.

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 prevention of waste, and the protection of correlative
25 rights?

1 A. Yes, sir.

2 MR. TWEED: I have no further questions for this witness, Mr.
3 Chairman.

4 MR. CHAIRMAN: Could you explain the JV partner net costs,
5 what the purpose of listing that on here is and what
6 you're doing?

7 MR. DAHLIN: There's no purpose to the list. It's just a
8 generated form. We are under a joint operating agreement
9 and depending on the function that has to be printed it
10 either comes out or does not. That reflects the partici-
11 pation level of our department currently.

12 MR. CHAIRMAN: Those totals are not to match up to anything
13 specifically except just to specifically reflect their
14 participation?

15 MR. DAHLIN: That's correct.

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

17 (Witness stands aside.)

18 MR. CHAIRMAN: Do you have anything further?

19 MR. TWEED: No, sir. We would request approval.

20 MR. EVANS: I make a motion that we grant the petition for
21 force pooling.

22 MR. CHAIRMAN: A motion to grant the petition.

23 MR. MCGLOTHLIN: Second.

24 MR. CHAIRMAN: Motion and second. Further discussion? All in
25 favor signify by saying yes. (ALL AFFIRM.) Opposed say

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no. (NONE.) It's a unanimous approval.

ITEM XII

MR. CHAIRMAN: The next item on the agenda is a petition from Pocahontas Gas Partnership for modification of previously issued Board order VGOB-91/11/19-0160. This is docket number VGOB-93/06/22-0384. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

(AFTER A BRIEF PAUSE OFF THE RECORD, THE HEARING CONTINUED AS FOLLOWS:)

MR. CHAIRMAN: We're back on record. You may proceed.

MS. McCLANNAHAN: I thought I would just explain generally what this application is trying to accomplish prior to the time that my expert witnesses testify. If you'll look at Exhibit 6 as we've submitted it -- Exhibit 6 for today. If you'll recall a couple of years ago the Board approved on November 19th of 1991 to be specific the northeast longwall units 1 through 10 which are shown on this particular map. This was approved as an exception to the Oakwood I order at that particular time because the Oakwood I order was in place.

MR. MASON: I was in place and II wasn't.

MS. McCLANNAHAN: Right. Exactly. And if you'll remember, the basis of this particular application was that these wells produce on a panel basis. So you look at these as

1 units and the production as on a panel basis. Now, at
2 the time that the Board approved this it also approved or
3 limited the drilling of wells to any well in the panel as
4 long as there were no wells closer than 300 feet to each
5 other or 300 feet to a boundary line which is, of course,
6 what the Oakwood I order said. So we just carried that
7 over. Also at that particular time we knew the minimum
8 number of wells that would be drilled in these particular
9 units. And if you see the red dots on this particular
10 map they are listed as Board approved wells, this was
11 probably not the terminology that should have been used.
12 So that's another reason I want to explain this. Those
13 were Board approved wells, but the way the order is
14 written is this is the minimum number of wells that can
15 be drilled in the unit. You can drill as many as -- the
16 order also says you can drill as many as you can get
17 within that unit as long as they're not closer than 300
18 feet to each other or closer than 300 feet to a boundary.
19 MR. MASON: Just for recollection, when you say 300 feet to a
20 boundary are you talking about the longwall panel?
21 MS. McCLANNAHAN: The unit boundary.
22 MR. MASON: The 80 acre unit boundary?
23 MS. McCLANNAHAN: No. Remember these are panels.
24 MR. MASON: That's what I mean. So --
25 MR. CHAIRMAN: Panel boundary.

1 MR. MASON: That's what I meant. So it's the panel boundary.
2 MS. McCLANNAHAN: Except that -- I mean, the unit boundary
3 doesn't necessary follow the longwall panel. So it is a
4 unit boundary which was approved by the Board that
5 follows basically the lines of the panel, but it's not
6 the panel.
7 MR. MASON: Because each one of the panels had actually a
8 meets and bounds description at the time that we approved
9 the order.
10 MS. McCLANNAHAN: Each of the units had a meets and bounds
11 description.
12 MR. EVANS: Each panel was chopped up into units.
13 MS. McCLANNAHAN: So if you look at the yellow dots that are
14 on your map, those are not additional wells in the
15 statutory or a Board order definition of an additional
16 well. What those are are additional wells that were
17 drilled above the minimum number of wells since the date
18 of the order, but they're all in compliance with the 300
19 feet from each other and 300 feet from a unit boundary.
20 I just wanted to make sure that we're straight on what
21 that means since we've been talking about additional
22 wells in other context today.
23 MR. MASON: So all the yellow dots are also in place already?
24 MS. McCLANNAHAN: Yes. All the -- permitted but maybe not
25 necessarily drilled.

1 MR. EVANS: And they are legal as far as original --
2 MS. McCLANNAHAN: Board order permitting -- exactly. Okay.
3 Our only point of being here today is that in connection
4 with this mining we have seen that there may be wells
5 that -- vertical ventilation hole wells that were drilled
6 closer than 300 feet to a boundary or closer than 300
7 feet to each other which were drilled for purpose of mine
8 safety or ventilation. And we have been unable to
9 produce those wells up to this point because that order
10 disallows us from doing that. What we're here to ask the
11 Board to do is to allow us to produce those wells but we
12 would not charge any of the royalty owners in those units
13 any costs at all for the additional wells, but what we
14 would do is credit them with production from those wells
15 so that the royalty owners benefit, the Commonwealth
16 benefits because a severance tax is being paid which
17 hasn't been paid up to this point, and this particular
18 benefit also keeps us from just venting this gas which is
19 what has been happening up to now.
20 MR. MASON: That's what I was going to ask. Is that's what's
21 happening to it now?
22 MS. McCLANNAHAN: Yes.
23 MR. MASON: It's currently being vented?
24 MS. McCLANNAHAN: Yes.
25 MR. MASON: How many of them are there? Do you know?

1 MS. McCLANNAHAN: Well, presently --

2 MR. CHAIRMAN: They'll get into it.

3 MR. MASON: I'm sorry. I don't want to anticipate your
4 testimony.

5 MS. McCLANNAHAN: I personally know of one presently that this
6 has happened -- that this particular situation has
7 happened and I'm sure that Mr. Morgan when he testifies
8 can tell if there were other situations. But I do know
9 that there has been one particular situation where this
10 has happened. So what we're presently asking the Board
11 to do is approve that we can drill wells within 30 feet
12 of each other and produce them, pay royalty to those
13 royalty owners and not allocate any costs to those
14 royalty owners, and that you allow the Inspector to grant
15 wells within 300 feet of the unit boundary for the same
16 purpose. Essentially this accomplishes more severance
17 taxes paid to the Commonwealth, more royalties paid to
18 the royalty owners at no cost to anyone except Pocahontas
19 Gas Partnership. The first witness that I would like to
20 call is Les Arrington. Mr. Chairman, do you want us to
21 reswear these witnesses for purposes --

22 MR. CHAIRMAN: They're just reminded that they are under oath,
23 remain under oath, and we'll accept their qualifications
24 as presented.
25

1 LESLIE K. ARRINGTON

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

5 DIRECT EXAMINATION
6

7 BY MS. McCLANNAHAN:

8 Q. Mr. Arrington, how were the names of the potential owners
9 of the coalbed methane and coalbed methane located in the
10 active gob area identified?

11 A. They were identified from title examination, mapping and
12 field research.

13 Q. Since the development of the mine began how much of the
14 coal estate is controlled by PGP in each of the northeast
15 longwall 1 through 10 units?

16 A. 100 percent of all coal below the drainage of the
17 northeast longwall 1 through 8, 100 percent of the
18 Pocahontas #3 seam, and 87.2129 percent of all coal below
19 drainage less the Pocahontas #3 seam of the northeast 9
20 unit, 49.6049 percent of the Pocahontas #3 seam and
21 49.5768 percent of all coal below drainage less the
22 Pocahontas #3 seam in the northeast longwall 10 unit.

23 Q. What percentage of the oil and gas is controlled by PGP
24 in each of these units?

25 A. 100 percent of the northeast longwall 1 through 8 units

1 and 87.2129 percent of the northeast longwall 9, 44.6933
2 percent of northeast 10.
3 Q. What percent of the coalbed methane gas is controlled by
4 PGP is each of the units?
5 A. 100 percent of the northeast 1 through 8 units, 99.6276
6 percent of the northeast longwall 9 unit, and 96.9317
7 percent of the northeast longwall 10 unit.
8 Q. How much of the coal estate is controlled by PGP in the
9 total acreage for the northeast longwall units?
10 A. 86.2084 percent of the Pocahontas #3 seam and 84.7592
11 percent of all coal below drainage less the Pocahontas
12 #3.
13 Q. What percentage of oil and gas?
14 A. 84.617.
15 Q. And coalbed methane?
16 A. 99.538.
17 Q. These ownership controlled percentages that you've just
18 testified are not listed on Exhibit 4 that's been
19 previously submitted to the Board, is that correct?
20 A. Correct.
21 Q. But you will submit a revised Exhibit 4 to the Board with
22 those percentages as you've just testified to?
23 A. Yes, we will.
24 Q. Will each of the tracts in each unit participate based on
25 mineral acres as reflected on the surface?

1 A. Yes, they will.

2 Q. Do the plat and acreage totals that you've just indicated
3 reflect the relative contribution that each tract is
4 expected to make to each of the northeast longwall panel
5 units production?

6 A. Yes.

7 Q. In connection with those as shown on Exhibit C, D, and E?

8 A. Exhibit C.

9 Q. C.

10 A. Yes.

11 Q. Who are the owners of the coal below the Tiller seam?

12 A. Hue McRae Land Trust, Consolidation Coal, Yukon Pocahon-
13 tas, Sayers Pocahontas, Buchanan Coal and Georgia-
14 Pacific.

15 Q. Are these also your coal lessors?

16 A. Yes.

17 Q. Would you please identify the exhibit marked for identif-
18 ication as Exhibit 2?

19 A. That was our hearing notice.

20 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
21 Exhibit 2.

22 MR. CHAIRMAN: It's admitted.

23 Q. (Ms. McClannahan continues.) Is this the notice of
24 hearing that was mailed to the parties contained in the
25 application for establishment of units for the explora-

tion, development and production of methane gas?

2 A. Yes, it was.

3 Q. And was this notice mailed by certified mail, return
4 receipt requested?

5 A. Yes, it was.

6 Q. Are copies of those returned receipts at Exhibit 3?

7 A. Yes.

8 MS. McCLANNAHAN: I move the introduction of Exhibit 3.

9 MR. CHAIRMAN: It's admitted.

10 Q. (Ms. McClannahan continues.) How were the persons whose
11 names and/or address are listed as unknown notified?

12 A. By publication in the Bluefield Daily Telegraph on May
13 22nd, 1993.

14 Q. Have those proofs of publications been previously
15 submitted to the Board?

16 A. Yes, they have.

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

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

20 (Witness stands aside.)

21 MR. CHAIRMAN: Call your next witness.

22 MS. McCLANNAHAN: Mr. Claude Morgan.

23

24

25

1 CLAUDE MORGAN

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

5 DIRECT EXAMINATION
6

7 BY MS. McCLANNAHAN:

8 Q. Mr. Morgan, when did Consol begin development of the
9 Buchanan #1 mine in the Pocahontas #3 seam?

10 A. Mining started -- it was around 1984.

11 Q. And when did Consol begin mining under the northeast
12 longwall 1 through 10 unit?

13 A. In 1990, I think it was.

14 Q. Could you please identify the exhibit that's been marked
15 for identification as Exhibit 5 -- actually Exhibit 6?

16 A. That is a layout of the units that were established as
17 NELW units 1 through 10 with the originally permitted
18 well locations as well as other wells that have been
19 permitted and/or drilled since the original orders were
20 issued.

21 Q. With regard to the permitted location and/or the drilled
22 location as shown by the red and yellow dots are they all
23 drilled and/or permitted in compliance with the original
24 order that was approved by the Board for the NELW units 1
25 through 10?

1 A. Yes.

2 Q. What is the well spacing that is required by that
3 particular Board order?

4 A. There was a minimum spacing of 300 feet with 300 foot
5 setbacks from the unit boundaries.

6 Q. Could you please explain to the Board the reason for your
7 request in this application that's been filed today that
8 that particular requirement be changed?

9 A. We've seen since we started operation and we been
10 collecting -- actually collecting the gob from these
11 panels in August of last year -- we have seen that there
12 are wells that we're having to drill as vertical ventila-
13 tion holes for degasification of the gob area of the mine
14 which due to the 300 foot space limitation we cannot
15 permit as a gas well and therefore cannot produce the
16 gas. As a result of that we have had to vent that gas
17 and it's been a total loss to everybody.

18 MR. EVANS: I've got a real quick question. Are these panels
19 sealed yet?

20 MR. MORGAN: No.

21 MR. EVANS: Not yet?

22 MR. MORGAN: These are active panels.

23 MR. EVANS: Active panels. The original number of holes
24 you've had down have proved insufficient to maintain the
25 safety in the mine? Is that --

1 MR. MORGAN: The original application showed the locations in
2 red and basically it asked for approval of those loca-
3 tions and then in the force poolings of these we force
4 pooled only those locations. The application gave us the
5 right to drill as many wells as necessary as long as they
6 were 300 feet apart. There was no limit put to the
7 number of wells. At that time we thought it would take
8 care of us, but I'll illustrate a couple of problems
9 that we've run into here where this has happened to us on
10 I know of three occasions so far since we've been in
11 production but we've had to throw the gas away that we
12 couldn't put in a pipeline.

13 MR. MASON: Excuse me. I think what you're getting to,
14 though, is you're finding that the wells that you can
15 drill are just not sufficient to drain. Or the pressure

16 --

17 MR. MORGAN: In some situations that is the case. In other
18 situations we have seen since we've got into this and
19 collection of the gob gas was something totally new.
20 That was something that just had not been done. We
21 didn't know for sure how to do it, what we could do. One
22 of the particular wells we never thought would be really
23 economical to collect. We never anticipated collecting.
24 But now we've looked at it and said hey, the only thing
25 we've got to do to collect this is lay a 20 foot pipe

1 over to the compressor. We've got the hole drilled and
2 it only produces for a short time, maybe two or three
3 weeks, but that's two or three weeks of production at 2
4 or 3 million cubic feet a day.

5 MR. MCGLOTHLIN: What was the number again?

6 MR. MORGAN: That's 2 or 3 weeks of production at maybe 2 or 3
7 million cubic feet a day which simply because it's less
8 than 300 feet from that first hole we can't permit it as
9 a gas well. But we have to have that hole to mine. So
10 it will be drilled whether we can drill it as a gas well
11 or not.

12 MR. EVANS: So these extra holes that you're talking about
13 closer than 300 feet to any other hole are done in order
14 to allow you to continue to mine?

15 MR. MORGAN: Yes. I'll show you exactly what I'm talking
16 about. If you'll look to the next exhibit, Exhibit 7,
17 I've drawn an example of a longwall panel here. Trad-
18 itionally a longwall panel will have six to eight gob
19 wells. But the well in particular that I'm talking
20 about that has a very short life -- if you'll see well 1.
21 We traditionally have located well 1 about 250 to 300
22 feet from the start up of the longwall panel into the
23 block. A well located there will usually -- once you get
24 to it a produced well and produce for some time after you
25 mine on by. We cannot mine to that 300 foot well without

1 another one --

2 MR. EVANS: Behind it.

3 MR. MORGAN: -- that we have drilled directly beside of this

4 one and slant backwards to within 40 to 50 feet of that

5 start up point.

6 MR. EVANS: I understand.

7 MR. MORGAN: Now, that's only two or three weeks of mining

8 time and when this one well takes over that one usually

9 drops off. So the 300 foot barrier has me there on the

10 distance between locations. And really it's drilled on

11 the same site and all I would need to do is put a 20 or

12 30 foot piece of pipe into the same compressor that I'm

13 going to use to compress this well when it comes out.

14 MR. EVANS: Basically what you're doing is at the first few

15 cuts off the longwall panel when you first start in you

16 don't have a method to degas the gob and what you're

17 doing is drilling a twin well at the first site that you

18 can and putting a shoe on that drill and running it

19 back --

20 MR. MORGAN: We use a down hole motor and slope it back to

21 within 40 to 50 foot of that set up.

22 MR. EVANS: In order to degas that gob as you mine through?

23 MR. MORGAN: Right.

24 MR. EVANS: . And that's just for mine safety?

25 MR. MORGAN: The only alternative to that, if you don't do

1 something like that and get it back there close is you
2 can run a shift and shut down for a while.

3 MR. EVANS: So that's for safety purposes?

4 MR. MORGAN: Yes.

5 MR. MASON: Because the gob behind where you're mining just
6 won't degas fast enough to allow you to continue to mine?

7 MR. MORGAN: That's right. Your ventilation system will not
8 handle that amount of methane coming out at one time.
9 The other situation which we have ran into, normally
10 we'll put these six to eight wells on about a 600 foot
11 spacing. That's our normal spacing. To get eight wells
12 600 feet apart in some of these terrain around here is
13 pretty dog gone tough because that may end up in the
14 middle of a spoil field or in the middle of a strip mine
15 spoil or whatever. So we have on occasion -- again if
16 you'll look at number 3, what I've depicted here, let's
17 say I couldn't get to site number 2 as I had planned to
18 or as normal spacing would allow. I may have to set up
19 on 3 and drill both holes from site 3 and what I'll do is
20 I will kick one back. Sometimes I may kick one back and
21 kick one forward to get the spacing. But they're sitting
22 there side by side. They're less than 300 feet. I can
23 only produce one of them.

24 MR. EVANS: And both of them are going to produce. Again
25 because of the situation you could not put a vertical

1 shaft or a vertical hole down due to surface constraints
2 or for whatever reasons.

3 MR. MORGAN: Right.

4 MR. EVANS: So you moved to the next location that you could
5 that was permissible and again shoe the well --

6 MR. MORGAN: Again mining will dictate that I haven't leased
7 this number of wells. I'm going to drill them and I'm
8 going to produce them and we just want to be able to put
9 it in the pipeline.

10 MR. MASON: It's really a problem of using surface 300 foot
11 distances to deal with what needs to be 300 feet really
12 at the top of the seam, isn't it?

13 MR. MORGAN: Yes. That seems to be where it comes in.

14 MR. MASON: Sir?

15 MR. MORGAN: That's a whole lot of it. That is a whole lot of
16 it. In some situations it would be less than 300 feet
17 even at the top of the seam on a set up hole because it
18 may be only 200/250 feet from the strata to begin with.
19 Even that distance you can't go without that other hole
20 running back the --

21 MR. MASON: Do you all have much trouble keeping the holes
22 straight in this terrain?

23 MR. MORGAN: They deviates some. One degree of deviation is
24 not uncommon.

25 MR. MASON: It's not like trying to drill an over thrust or

1 something where it wonders off?

2 MR. MORGAN: No.

3 MR. CHAIRMAN: I may be jumping in ahead of your testimony
4 here, but what kind of safety precautions do you have
5 when you're drilling that second well within the 300 feet
6 area of the first to insure you don't drill into the
7 first one?

8 MR. MORGAN: It is done with a directional down hole motor.
9 We know the position of that hole as it goes down.

10 MR. CHAIRMAN: And you know where the bottom hole is on the
11 first well?

12 MR. MORGAN: We've done a deviation survey on the other hole.
13 We know where it is.

14 MR. EVANS: I've got one question and perhaps someone could
15 expand my knowledge on this. To my understanding it
16 doesn't allow directional drilling and -- is that not
17 true? Does our law permit us --

18 MR. FULMER: Well, what he's talking about is actually a well
19 as a vertical ventilation hole he's drilled under
20 another law which allows for directional drilling.

21 MR. EVANS: That's what I'm asking, for somebody to expand on
22 how should this be viewed. What's the --

23 MR. FULMER: Well, it's done under another law. Then when he
24 comes to me converted then I get a converted well or the
25 status of that well as it is.

1 MS. McCLANNAHAN: It really is a conversion for the Division
2 of Gas and Oil. It's drilled under DMLR.

3 MR. EVANS: DMME?

4 MS. RIGGS: Division of Mines.

5 MR. CHAIRMAN: I think the issue could become if you were to
6 be drilling directional drilling to get it under Division
7 of Mines with sole intent of circumventing the law on the
8 gas and oil side which we have our divisions trying to
9 communicate to make sure that doesn't occur. I'm not
10 suggesting that has occurred, but that is where you would
11 have a problem. If we had a number of these coming in
12 and we had a number of them where it was pretty obvious
13 that's something the Board can watch for. If we feel
14 like there's an obvious pattern, that people are going
15 under VVH to directional drill or do something like that
16 then you have circumvention.

17 MR. MASON: Like looking at this number 3 which was the 3-A
18 well, I guess, the production of that well will be
19 treated just in terms of -- you've got this well coming
20 in and you've got basically a force pooling application
21 related to this number 2 well, correct?

22 MR. MORGAN: That may be the case.

23 MR. MASON: Yet when that's actually produced that well will
24 be brought to the surface at a different location.

25 MR. MORGAN: I haven't had anything to happen along those

1 lines.

2 MR. MASON: Well, I'm just following up on what you're talking
3 about.

4 MR. EVANS: That is where I was going.

5 MR. MORGAN: The well locations, if we have brought them
6 forward, permitted them and brought them forward for
7 force pooling we have determined that location in the
8 field and will in all likelihood drill that location.

9 MR. MASON: But what I'm saying is like -- let's just assume
10 for ease of purposes that you've got an 80 acre unit
11 here. You could drill a well down to here or come over
12 here into the next unit and drill back this way. As I
13 understand what you're saying, you're going to treat the
14 gas that produced out of this hole for purpose of income
15 and all that as if it belonged to this unit. Is that
16 correct?

17 MR. MORGAN: In this scenario we will not be drilling from one
18 unit into another. The hole will be deviated within the
19 same unit.

20 MR. MASON: Okay. That makes a big difference. That's what
21 you were getting to.

22 MR. EVANS: Yeah. That was my next --

23 MR. MORGAN: This hole stays entirely within the unit.

24 MR. EVANS: That's what I was going to get at.

25 MR. MORGAN: We went some leeway to get within 300 foot of the

1 boundary of that unit and maybe kick it back toward the
2 middle which was the other thing I asked about.
3 MR. MASON: But you can understand the problem that would
4 occur in terms of who gets the income if you've got that
5 much of a deviation off --
6 MR. MORGAN: No. The entire hole will always be within the
7 boundary of that unit.
8 MR. EVANS: So it will DT still within the surface expression
9 of that unit?
10 MR. MORGAN: Yes.
11 MR. MASON: I think it's an excellent point, though. That
12 would definitely scramble up the --
13 MR. MORGAN: One other point that is not clear in the applica-
14 tion itself is we're asking this for solely gob wells.
15 We're not talking about expanding this to get within 300
16 foot of the boundary for a frack well. This is solely
17 for gob production.
18 MR. McGLOTHLIN: Mr. Morgan and/or whoever can answer,
19 especially drilling into a gob area with the directional
20 hole, what is the safety concerns and how are you going
21 to address them when subsidence occurs?
22 MR. MORGAN: That is not different than the vertical holes
23 that go in there. The hole goes in prior to the mining.
24 The subsidence that does occur in the breaking of the
25 strata is what creates the flow of the gas. That's the

1 way they function.

2 MR. MASON: If I understand what he's saying and it does seem
3 to make sense, the fact that the hole is drilled at an
4 angle, won't that make your rubble zone go higher up into
5 the roof? Is that what you were getting at?

6 MR. EVANS: No. That will destroy your well bore is what will
7 happen.

8 MR. MASON: Well, I understand that. But if you cut through
9 that roof at an angle I would image when the roof falls
10 that you would get a higher --

11 MR. EVANS: The size of the holes that they're drilling versus
12 the fall that's created, no. You wouldn't be able to
13 tell it -- I mean, it would be different if you were
14 drilling --

15 MR. MCGLOTHLIN: If you do have a directional on this well my
16 concern is the integrity of the pipe and the well bore
17 itself. How is it going to effect that, if you've had
18 experience in this and can give us some --

19 MR. MORGAN: These holes are essentially open hole except for
20 the stream that's set below the water producing or the
21 lowest minable seam. So it's open hole. It's not a
22 matter of protection of the -- (Inaudible.) the pipe.
23 For instance, the one at the rear -- this is not some-
24 thing we just started doing as far as drilling this
25 hole. We've drilled this hole on every panel except the

1 first one that we mined at Buchanan and that's when we
2 found out we couldn't get the 300 feet without it. So
3 from mine safety it makes the mine safety. It's per-
4 mitted under the mining division order for that purpose.
5 MR. MCGLOTHLIN: You've got an open hole and when you drill a
6 gas well we have a different set of rules on how far the
7 line goes down and how far the cement goes down.
8 MR. MORGAN: We use the same casing and cementing procedure
9 here whether we permit it as a VVH or a CBM. We set
10 casing and cement if below the water producing strata or
11 the lowest producible coal seam.
12 MR. MCGLOTHLIN: I thought we went further on that. Maybe I'm
13 thinking about (Inaudible.)
14 MR. CHAIRMAN: 300 feet or 50 foot below the lowest producing
15 water zone.
16 MR. EVANS: Generally what's the diameter of your --
17 MR. MORGAN: Twelve and a quarter.
18 MR. EVANS: Do you neck them down depending on the depth?
19 MR. MORGAN: That first hole that I told you about we will
20 drill usually a 95A on it.
21 MR. CHAIRMAN: Would you like to get back to your questioning?
22 MS. McCLANNAHAN: Oh, that's okay. I do want to move the
23 introduction of Exhibit 7 before I forget to do that.
24 MR. CHAIRMAN: Any objection? It's admitted.
25 MS. McCLANNAHAN: Also with regard to your point about the

1 deviatonal drilling, Section 1.28 of the regulations
2 does allow the director to grant variances for particular
3 holes that have deviated. So I don't know that it's
4 exactly accurate to say there's no such thing as direct-
5 ional drilling.

6 MR. EVANS: When you say a hole has deviated that's after the
7 fact and that kind of implies something went wrong. It's
8 the question of doing it on purpose. That use to be
9 highly illegal. People got shot over putting a shoe the
10 drill rig and running it.

11 MS. McCLAINAHAN: Right. I just -- could I just follow-up
12 with Mr. Albert for one quick second here? He's been
13 previously sworn.

14 MR. CHAIRMAN: Sure.

15 MR. ALBERT: This issue has been raised before many times in
16 the course of permitting, drilling, so forth. I believe
17 --- Tom, correct me if I'm wrong -- the way that this has
18 been interpreted and enforced was that the one degree
19 had to be maintained below the lowest known minable coal
20 seam. And since we don't penetrate the #3 seam in our
21 situation the lowest known minable coal seam in our area
22 was the Tiller or the Jaw Bone. So the State requires
23 you to maintain one degree of vertical to that point.
24 Beyond that point you can get a variance from the
25 director to actually do intentional deviation of that

1 well bore to the area above the #3 seam.

2 MR. EVANS: That answers my question that I asked, how do you
3 go about doing that.

4 MR. FULMER: I want to make sure - I want to clear this up.
5 What he's speaking from is strictly a safety issue
6 regulation. It has nothing to do with directional
7 drilling. Once they get below that part where they have
8 they have the ownership then they have the option.
9 There's an ownership question here below that point, is
10 what I'm saying, as far as the drilling technique. But
11 until they get out of what they don't own they still have
12 to follow that reg.

13 MR. MORGAN: The key to directional drilling that we're
14 talking about is that it's always within the unit, always
15 producing the gob and producing the gob from that unit.

16 MR. EVANS: And it's also a safety concern for the mine if I
17 understand your testimony.

18 MR. MORGAN: It's going to be drilled and for that reason
19 we're not asking to add the cost of these wells to any
20 force poolings. The wells that I'm talking about we're
21 going to drill them for the mining whether we put it in
22 the pipeline or not.

23 MR. EVANS: Let me ask you another question then. Based on
24 your experience to date it looks like we're getting
25 probably a one for one type -- you're having to drill

1 twice as many wells as originally thought or requested?

2 MR. MORGAN: The map that you have in front of you here, the

3 red ones are the ones that originally we drilled and

4 fracked to degasify the Pocahontas #3 seam. Most of

5 these yellow ones are ones that we have come back and

6 drilled in the terrain strictly for gob.

7 MR. EVANS: And to date since you haven't sealed the gob do

8 you feel that -- how many more wells are going to be

9 needed? How well are these doing the job right now?

10 MR. MORGAN: We are seeing -- again it has to be approximately

11 600 foot spacing is about what we are seeing to do it.

12 (Pause.) In all likelihood we will have to come back on

13 those upper three panels and drill two or three more gob

14 wells in there to keel in some of the gas.

15 MR. EVANS: I would suspect on the far end where you only have

16 one frack well --

17 MR. MORGAN: Definitely we will go in and do that one sitting

18 up on that site and drill in backwards. We've done that,

19 as I've said, on every panel except the first one.

20 MR. EVANS: And it would appear that at least one, maybe two,

21 in that end?

22 MR. MORGAN: Right.

23 MR. EVANS: There's a single frack well that -- are these

24 other two yellows one up in block 23, I guess it is, the

25 first unit, back up that way where you have a fair amount

1 of space between two yellow wells and you've got the one
2 red frack well there in the center.

3 MR. MORGAN: Uh-huh.

4 MR. EVANS: Do you anticipate that -- or are those two yellow
5 ones directionally drilled backwards and forwards?

6 MR. MORGAN: Those were drilled pretty much vertically. There
7 will be another well in all likelihood between those two.

8 MR. EVANS: And that's going to be on a as needed basis as
9 determined by what's going on at the time -- IE --

10 MR. MORGAN: Three of these wells in the north we've tried to
11 fracture the upper seams and do some predraining which
12 has not been done previously at this mine. We don't know
13 what the effect of that is going to be at this time.

14 MR. EVANS: How much help it's going to be?

15 MR. MORGAN: Right.

16 MR. MASON: You fracked some of the stuff above the Pokey #37

17 MR. MORGAN: Right. The gob gas that we're talking about is
18 being produced from those upper seams after mining has
19 come through. Up until now we've done no predraining of
20 that area and we're experimenting with some predraining
21 of that area and we don't know what the effects of that
22 will be on our active gob at this time.

23 MR. EVANS: Let me understand then. Your additional wells --
24 is this an illustration only or is the actual location of
25 the additional wells that have been drilled to date?

1 MR. MORGAN: This is an actual location of wells that have
2 been permitted and/or drilled.

3 MR. EVANS: Are most of these -- I'm assuming that most of
4 these have been drilled or is that the other way around,
5 most are permitted but not drilled yet?

6 MR. MORGAN: If you look at the first three panels going south
7 to north the first three panels that have yellow holes,
8 those have all been drilled, I believe, with maybe the
9 exception of 60-A. In the other three panels to the
10 north only four of those have been drilled of the yellow
11 holes.

12 MR. EVANS: Mining is advancing from south to north?

13 MR. MORGAN: Yes.

14 MS. McCLANNAHAN: With regard to the ones that are designated
15 with red dots, those have all been drilled.

16 MR. MCGLOTHLIN: What panel are you in now?

17 MR. MORGAN: We're in -- I think it's 6. Let me look at it.
18 6.

19 MR. MASON: Just out of curiosity, how long does it take --
20 of course, these are all varying in length. Like in
21 those panels 5 and 6 there -- or 6 and 7, how long does
22 it take to mine one of those out?

23 MR. MORGAN: We will mine on the average -- we've got two
24 longwalls operating here and we alternate between the
25 walls.

1 MR. MASON: So you have two machines running?

2 MR. MORGAN: Right. And they don't both usually run at the
3 same time. So we alternate between them and we will
4 average per longwall about 700 foot of advancement a
5 month. So that's 5,000 foot in about seven months.

6 MR. CHAIRMAN: You can proceed with your questioning.

7 Q. (Ms. McClannahan continues.) Production from the wells
8 that are designated with red dots and production from the
9 wells designated as yellow dots as well as any additional
10 wells that you would drill, for example, 1-A and 3-A on
11 Exhibit 7, are all wells that will be producing on a
12 panel basis and from the same pool as those wells
13 originally approved by the NELW 1 through 10 units, is
14 that correct?

15 A. That is correct.

16 Q. The effect on unit production for the additional wells
17 would be to, of course, increase it, is that correct?

18 A. That's correct.

19 Q. And with regard to any of these units that have previous-
20 ly entered into a force pooling orders by this particular
21 Board with wells previously approved for cost allocation,
22 how do you anticipate paying royalty owners for addition-
23 al production from additional wells?

24 A. They will be paid based upon their -- with no additional
25 cost added to these wells they will be paid based upon

1 their election at the time the Boards were given as
2 though this production came from any other well in that
3 unit.
4 Q. And their amount of payment would be the same as their
5 ownership interest as it was previously designated on
6 this force pooling orders, is that correct?
7 A. That is right.
8 MR. MASON: In essence you're just going to deem the produc-
9 tion from these additional wells to be from the prior
10 wells and treat it just in the same way? Is that --
11 MR. MORGAN: Treated the same way for royalty purposes, for
12 income purposes or whatever.
13 MR. MASON: But I mean would it be just the same effect as if
14 they were produced out of the same wells?
15 MR. MORGAN: Exactly.
16 MR. MASON: And since there are no additional costs there is
17 no additional elections or participation or anything and
18 you're going to use the same percentages and the same
19 allocation methods that you used for the original well?
20 MR. McCLANNAHAN: Right. So that the force pooling orders
21 aren't effected by this particular order, exactly.
22 MR. CHAIRMAN: But you are converting to a gas and oil permit
23 and monitoring the production from that particular well
24 from that particular -- what's now a VVH? It will be
25 monitored -- the production will be monitored from

1 that --

2 MR. MORGAN: And afforded as production from that well.

3 MR. CHAIRMAN: Right.

4 Q. (Ms. McClannahan continues.) Will the granting of this

5 unit modification application result in additional

6 revenues to the Commonwealth?

7 A. Yes, it will.

8 Q. In what form?

9 A. In the form of the severance tax on additional production

10 that is now being vented.

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

12 Morgan.

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

14 MR. EVANS: There's one other question I may ask. To what

15 advantage is it to have the Inspector grant you addition-

16 al wells and off sets as opposed to -- if we say okay,

17 you can go ahead and drill closer than 300 feet what --

18 in your request what are you actually asking that we

19 allow the Inspector to do, to say --

20 MS. McCLANNAHAN: We're asking that the Board approve today

21 any well to be drilled closer than 300 feet to another

22 well and that the Inspector be allowed to grant variances

23 for any well closer than 300 feet to a boundary.

24 MR. MORGAN: What we're asking for is essentially the same

25 thing that's already in Oakwood II. Both provisions are

1 already in Oakwood II.

2 MR. MCGLOTHLIN: Ms. McClannahan, would it be acceptable -- I
3 have a real big problem with condoning directional
4 drilling. But let me throw this out for the Board and
5 get some discussion on this. That we allow you to -- if
6 you drill them as VVHs that's one thing and you can do
7 that but allow you to produce off those VVHs that are
8 closer than 300 foot opposed to sanctioning that yes, you
9 can drill them as a coalbed methane -- or is that what
10 you're asking and I'm just not catching it?

11 MR. MORGAN: Essentially that's what I'm asking but I don't
12 think I produce it without a permit on it.

13 MR. MASON: I think as long as basically the bottom of the
14 hole and the top of the hole are all in the same unit
15 that any potential problems from -- from a forced pooling
16 order from a pooling order standpoint that that's solved.
17 I think Tom's comment about as long as the 1 percent
18 deviation is respective as long as the Board's traveling
19 through non-operator controlled territory that that takes
20 care of that problem.

21 MR. CHAIRMAN: And it stays within the unit.

22 MR. MASON: And if the top of the hole and the bottom of the
23 hole are all in the same unit you shouldn't have any
24 functional difference.

25 MR. CHAIRMAN: Right. And you're having to get the permit

1 from the chief of Division of Mines or you're having to
2 get authorization to do the VVH, right?

3 MR. MORGAN: Yes, sir.

4 MR. CHAIRMAN: And you're also having to incorporate that in
5 your mine land reclamation permit as far as any disturb-
6 ance at the top of the hole?

7 MR. MORGAN: Yes.

8 MR. CHAIRMAN: And the permit with gas and oil is a require-
9 ment as well if they produce from it.

10 MS. McCLANNAHAN: Right. That's really a permitting matter
11 separate and apart from the Board's decision in this
12 application. Right.

13 MR. CHAIRMAN: I understand. I was just clarifying that.

14 MR. EVANS: I make a motion that we approve the petition as
15 filed.

16 MR. CHAIRMAN: A motion to approve.

17 MR. MASON: I think Kevin still has some question about it.
18 Excuse me. What's bothering you about it? I understand
19 you've got a problem with this directional drilling.
20 What exactly do -- what do you think the harm from it's
21 going to be?

22 MR. MCGLOTHLIN: I don't see that there's any -- a whole lot
23 of harm from it. I just don't - the statute says that --
24 the regulations have kind of spelled out what we can do
25 on directional drilling and what we can't. Is this

1 going to condone --

2 MR. MORGAN: Let me explain something to everybody because
3 they get the terms deviation and directional mixed up.
4 That section in there talks about deviation when you're
5 intentionally drilling a vertical hole and it deviates.
6 I mean, it deviates one degree or whatever. Directional
7 drilling you go down and purposely do it.

8 MR. MCGLOTHLIN: That's what they're doing here, is
9 purposely --

10 MR. FULMER: Well, I know but it's -- it's not under OUR law.
11 It's under another law with DM.

12 MR. CHAIRMAN: That's his problem. He doesn't want to --
13 you're reading this application and our approval as now
14 bringing an authorization for them to directional drill.

15 MR. MCGLOTHLIN: Yes, sir. And that scares me.

16 MR. CHAIRMAN: Is that your intent of the application?

17 MS. MCCLANNAHAN: No. It's not the intent of the application.
18 It's the intent of the application that --

19 MR. CHAIRMAN: Where you have vertical ventilation holes --

20 MS. MCCLANNAHAN: Where we have a VVH hole which has been
21 previously approved by DM and it would be to the advant-
22 age of a royalty owner in that particular unit to obtain
23 that production that we be allowed to pay it to those
24 royalty owners.

25 MR. CHAIRMAN: Do you have any problem modifying your applica-

1 tion to that --

2 MR. MORGAN: No. What that means is we would go out and
3 permit it -- under that scenario we would go out and
4 permit it as a VVH, drill the hole, and then convert it
5 to a CBM. That really makes no sense. That's what we've
6 been trying to get away from.

7 MR. MCGLOTHLIN: What you plan to do and everything it sounds
8 good. I just have a problem with the way to do that. It
9 generates revenue for the Commonwealth. It generates
10 revenue for the royalty. But it's still that slant on
11 that --

12 MR. FULMER: I can give you a cure to it.

13 MR. MASON: Let me ask you this. I'm lost about what says you
14 can't do directional drilling. What says you can't do
15 that? I'm lost.

16 MR. FULMER: I cannot grant in a permit, which I do under
17 Article 3, directional drilling. The Board --

18 MR. MASON: Why?

19 MR. FULMER: Why? Because there's nothing in the law that
20 says I can do it.

21 MR. MASON: Is there anything in it that says you can't?

22 MR. FULMER: No, but there is a section involving the devia-
23 tion of a vertical drilled hole.

24 MR. MASON: Right. That's in the regulation.

25 MR. FULMER: That's in the regulation. The sixth part of that

1 which says that if the coal owner agrees -- coal owner,
2 not gas owner -- coal owner agrees to a variance of
3 deviation in the hole due to coal then the director may
4 permit that to occur. He may give that variance. So if
5 you want to talk about inferred directional, yes.

6 MR. MASON: What is this reference to something that's a
7 problem and what are you referring to DM? Is there
8 something in the rules of Division of Mines that says --

9 MR. FULMER: No. They're allowed to drill under DM's vertical
10 ventilation and they're allowed to drill directional
11 holes. It specifically says directional drill.

12 MR. MASON: That specifically authorizes drilling of direction
13 holes under the regs from the Division of Mine.

14 MR. FULMER: Yes.

15 MR. MASON: You're saying under the oil and gas regs --

16 MR. FULMER: It does not authorize it.

17 MS. RIGGS: It goes to the definition of units and the way
18 you force pool units and the way you define units. It's
19 all structured vertically. There's no methodology in the
20 regulations or the law to account for units that run --
21 now, here we're talking site specific situations within
22 specific longwall panels with certain constraints on unit
23 to unit deviations and so forth.

24 MR. MASON: I understand that. I'm just trying to get a grasp
25 of what the rules are.

1 MR. FULMER: But basically the law doesn't say the director
2 can allow permits for directional drilling.

3 MR. MASON: As I understand what you're telling me, Sandra,
4 the law doesn't say you can't have directional drilling
5 but the entire frame work -- the way this all works is
6 premised on the idea that there will be vertical drilling
7 and that's how this all works.

8 MS. RIGGS: Collected back to the surface.

9 MR. MASON: That's kind of the cornerstone of the whole thing.

10 MR. CHAIRMAN: That's why it mentions the deviation, the
11 percentage, and all that other stuff.

12 MR. MASON: Of course, as long as the top and the bottom of
13 the hole are in the same unit that's all irrelevant.

14 MR. MORGAN: Not necessarily.

15 MR. MASON: Why isn't it?

16 MR. MORGAN: For gob production only. In this application
17 we're talking gob production only in which that unit
18 boundary is pretty clearly identified as to what area
19 will be drained.

20 MR. CHAIRMAN: To my personally I think that that is the key
21 It's not like you're talking about drilling out into
22 unmined coal or drilling out where -- and with the
23 stipulation that you're going to know where that bore is
24 going to end up, that you are in control of that. So
25 that you are keeping mine safety as the preeminence over

1 everything you're doing. To me that's the key. Tom and
2 Harry will just have to coordinate internally so that
3 they know what's going on.

4 MR. FULMER: We do do that, but as far as -- if you're looking
5 at the two separate laws Harry specifically allows it and
6 mine is silent on it. That's different. I will pull you
7 back to that sixth part which he can allow for variance,
8 but it's based upon the coal owner, not the gas owner
9 which is the big difference. There is a big difference
10 here between a coal owner and a gas owner.

11 MS. McCLANNAHAN: Actually the variance talks to the permittee
12 and coal owner. It indicates -- it's the permittee and
13 the coal owner. Also this regulation controls the
14 direction of drilling to the lowest known coal seam.

15 MR. MASON: Are you saying that if they present to you a
16 variance request from the coal owner and the permittee
17 then it's perfectly okay to do this?

18 MR. FULMER: For the deviation. Deviation of the hole.

19 MR. EVANS: Right. That's not directional drilling. That's a
20 difference. That's what Tom was saying earlier.

21 MR. MASON: I understand that, that one of them is supposedly
22 a mishap and one of them is not.

23 MR. CHAIRMAN: Tom, let me ask you a question. Do you think
24 that you could issue a permit if an application came in
25 to directional drill into a gob area? Do you think that

1 you could issue that permit without DM approval?

2 MR. FULMER: If the well was already drilled.

3 MR. CHAIRMAN: No, not drilled.

4 MR. FULMER: I think I could only if the Board has ruled upon

5 the area it's going to be drilled in because I have to go

6 back to the other involving the Board allowing for

7 deviation from vertical for the purpose of correlative

8 rights protection. That's in the Board's regs.

9 MR. CHAIRMAN: I guess the thing I want to clarify is I don't

10 envision this Board having any power to do anything

11 dealing with the mine safety law and I want to make that

12 part clear as far as I'm concerned. I don't think this

13 Board has any authority to usurp any power that exists in

14 the Division of Mines and the authority of the chief. It

15 wouldn't matter -- if we said it was okay to drill

16 without telling them it would be without authority to do

17 so. I'm not insinuating at all that that's what you're

18 trying to do. It's just a real fine line here that I

19 want to make sure while we're doing this that we do it

20 right. That we don't get something going here that makes

21 you think there is something that we're cutting out and

22 then end up having to do because I'm concerned that --

23 and I guess I don't personally totally know the answer.

24 I'm concerned that even if the Board votes to approve

25 this that it lets you not have to get approval from the

1 chief.

2 MR. MORGAN: As a vertical ventilation hole?

3 MR. CHAIRMAN: Right.

4 MR. MCGLOTHLIN: I know that PGP would like to have this done
5 today. Is there any way that we could set for hearing a
6 way to direct this that they get -- that once the gas
7 company -- a simultaneous permitting?

8 MR. CHAIRMAN: Anything we have like that we have always been
9 able to work it out internally. I mean, the way I look
10 at it it's within DMME -- if it's Harry and Tom then it's
11 their problem and they're going to work that part out.
12 But I just didn't want to in any way, anything we do
13 here, mislead you to say that there might not be an issue
14 remaining there at Division of Mines. I don't know what
15 that is.

16 MR. MORGAN: We've got no problem with that. We're drilling
17 the holes in compliance with all of that anyhow. So that
18 means -- it's no skin off our back to continue to drill
19 them in compliance with Harry's regs.

20 MR. CHAIRMAN: That's an issue we have to resolve, however
21 that is.

22 MR. MCGLOTHLIN: What's the time frame from getting from a VVH
23 to a CBM?

24 MR. MORGAN: Well, you're looking at a doubling up there.
25 You're looking at a permitting time frame for getting the

1 VVH which I think is a 20 day period. Is that right?
2 MR. ALBERT: It's even worse than that because immediately if
3 you're doing VVH then you've involved the DMLR. You
4 can't just do a VVH permit. Before Harry will issue a
5 VVH permit he checks to see if there is a DMLR permit.
6 So if you don't have a DMLR permit you can't get a VVH
7 permit. We're trying to do something to get around the
8 fact that Tom's regs are silent on directional drilling.
9 You're going to end up putting the burden on the operator
10 to have to get a permit from every agency in the State of
11 Virginia to drill a well directionally. I think the
12 legislative intent here was that the coal owner be
13 protected through minable coal seams. If we come to Tom
14 with a permit application that says we're going to drill
15 vertical to below the lowest mine coal seam -- if we own
16 the rest of the coal seams and Pocahontas Gas Partnership
17 and Consolidation Coal Company jointly submit an applica-
18 tion as the regs allow to Tom then in my mind he clearly
19 can allow directional drilling from that point forward
20 and we've satisfied the law -- we've satisfied the
21 regulation and we've fulfilled the legislative intent
22 which was to protect that guy mining in an upper coal
23 seam. The mere fact that the regs don't say that he can
24 permit directional drilling also don't say that he
25 can't. I think that needs to be the issue the Board

1 needs to -- it has to clearly be done on a case by case
2 basis and I understand the dilemma the Board's in. But I
3 don't think by ruling on this application today you're
4 giving cart blank approval for directional drilling in
5 the State of Virginia. I think that has to be retained
6 on a well by well basis.

7 MR. EVANS: You're not making that application to us today.
8 You're asking for the power to be vested to allow
9 additional wells spaced closer than 300 feet from a
10 boundary and from additional wells and it's not on a case
11 by case basis.

12 MR. ALBERT: But the permits are on a case by case basis. We
13 can't drill the well till we have a permit from Tom.

14 MR. MASON: Isn't it true that we actually approve this
15 application we haven't really approved directional
16 drilling. That's a part of the permitting process, is it
17 not? All we're saying is we're basically going to waive
18 the 300 foot spacing requirement and give the Inspector
19 the right to waive the 300 foot boundary. That's all
20 they've asked for in this.

21 MR. ALBERT: That's right. The application says nothing to
22 directional drilling.

23 MR. RIGGS: It seems to me that you have to have some stand-
24 ards built in or some findings that in certain circum-
25 stances and put the parameters of what those circum-

1 stances are.

2 MR. MASON: I think the biggest one is the fact that none of
3 these holes will vary out of one unit from top and
4 bottom. I think that's an essential thing. Don't you?

5 MR. CHAIRMAN: Yes.

6 MS. RIGGS: The things I jotted down were get the permit or
7 authorization for the VVH from the chief from a mine
8 safety point of view and DM. I don't know how you want to
9 resolve that issue. Whether it's an internal coordina-
10 tion or sign off or whether you're talking about VVH and
11 conversion over. Then you talked about the bottom of the
12 hole and the top of the hole being within the same unit.

13 MR. MASON: The fact that there's not but one percent devia-
14 tion until you reach the end of the minable coal -- isn't
15 that the other ones?

16 MR. CHAIRMAN: Well, that's covered.

17 MR. EVANS: Uncontrolled territory is that one percent.

18 MS. RIGGS: That it's within the gob production only, know
19 where the bore will end up, mine safety takes priority.
20 And the other one that I jotted down was the DMLR.
21 Coordinating with DMLR on whatever permit requirements.

22 MR. MASON: I don't understand this. If this is a CBM well
23 why are they involved in it at all?

24 MR. CHAIRMAN: Who's they?

25 MR. MASON: Well, Division of Mines.

1 MR. CHAIRMAN: Let me take them one at a time. Any disturb-
2 ance on the surface of a permitted area comes under the
3 authority of DMLR. Like I said, it's not easy. You guys
4 know we go through -- some way to pick that up. That's
5 why I just didn't want to lead people thinking well,
6 we've fixed everything with one swift blow. It would be
7 great if we could. But they have that jurisdiction.
8 It's disturbance.

9 MR. MASON: But if you go to drill a CBM well -- they come in,
10 we permit it. Do they have to go to the Division of
11 Mines to get a permit?

12 MR. CHAIRMAN: No.

13 MR. MASON: Do they have to go to DMLR?

14 MR. CHAIRMAN: It depends. If it's on a coal mine permitted
15 area, yes.

16 MR. MASON: So that's the criteria, whether the well is in an
17 area that's permitted for mining?

18 MR. CHAIRMAN: That's one of them. You have to take each
19 division -- that's what I was saying. We don't have any
20 powers over these others under law.

21 MR. MASON: Well, I understand that. There's got to be --
22 people are getting CBM permits all the time and the
23 question is what decides? I guess what I don't under-
24 stand is why whether or not you have to get a Division of
25 Mines permit or a DMLR permit is driven by whether or not

1 you waive this 300 foot restriction. I can't connect
2 those two up.
3 MR. EVANS: I agree. That shouldn't be a problem.
4 MR. MASON: I haven't been able to get that together somehow.
5 MR. CHAIRMAN: 300 foot doesn't --
6 MS. McCLANNAHAN: Those two things aren't connected.
7 MR. MORGAN: The only way it ties together, Bill, is if we try
8 to go the VVH route first and then convert to a CBM.
9 Then Harry requires that we have the DMLR permit before
10 we get the VVH permit before can drill the well before we
11 can get the CBM and it's next year and I'm back.
12 MR. MASON: Why do you want to permit the well as a VVH first?
13 MR. MORGAN: I don't.
14 MR. EVANS: He doesn't.
15 MR. CHAIRMAN: What he is wanting to do is to permit the well
16 as a CBM --
17 MR. EVANS: Which is what it's going to be.
18 MR. CHAIRMAN: Or permit the ventilation as a CBM to start
19 with, drill it where he wants to, 300 ahead or however he
20 needs to do that where he's mining ahead of the other
21 well, and to hopefully not have to do all the other
22 notifications and be tied up into everything with DM and
23 DMLR. That's the bottom line. And I'm just saying
24 that's a web I don't know the answer to and I'm not at
25 all convinced this does all that. But I don't want to

1 bog this application down on that. I just wanted to
2 clarify that part of it.

3 MR. MASON: But the criteria, is it not, whether it's a VVH
4 or a CBM is whether you produce the gas or vent it,
5 correct?

6 MR. CHAIRMAN: Well, it's not that simple. It's not that
7 simply stated.

8 MR. MASON: We use to object all the time to the fact that
9 there were permits issued for VVHs that no one ever had
10 any intent to treat as a VVH to convert to a CBM to get
11 around the notification on the permitting of the CBM.
12 Now we're talking about going in the opposite direction
13 and I'm confused.

14 MR. MORGAN: My wrist is still burning on that one.

15 MR. FULMER: If Consol wants to drill a hole which is 300 foot
16 the only way he can do it is go get a vertical ventila-
17 tion hole permit from Harry. He can't do it under mine.

18 MR. CHAIRMAN: What they're trying to do is --

19 MR. FULMER: I understand that.

20 MR. ALBERT: And that's all we're asking for in this applica-
21 tion. Simply put, that's it. So that we don't have to
22 go get a VVH permit and then vent the gas. You can't
23 even convert because Tom can't allow that.

24 MR. CHAIRMAN: I was just trying to get into the heart of it
25 here.

1 MR. MASON: But they are going to produce the gas and not
2 going to vent it.
3 MR. FULMER: The question is to whether allow directional
4 drilling under the oil and gas law.
5 MS. McCLANNAHAN: No.
6 MR. MASON: This application doesn't even mention that.
7 MR. FULMER: I know it doesn't mention it but --
8 MR. ALBERT: That's totally a side issue here. All we're
9 simply asking for is that we be able to permit a well
10 within 300 feet of any other well or within 300 of the
11 boundary line. The fact that it may need to be direct-
12 ional drilled can only be addressed at the time the
13 permit is got and then it needs to be addressed on a case
14 by case basis.
15 MS. McCLANNAHAN: The regulations and the statutes in place
16 with regard to whether a permit application can be
17 granted dependant on how it's drilled are there and we're
18 not asking to change those. What we are asking to change
19 is that a permit application be approved to be drilled
20 closer than 300 feet to a unit boundary or closer than
21 300 feet to another well or in the alternative that if a
22 VVH has been drilled that we be allowed to convert that
23 and produce it even though it's closer than 300 feet to
24 another well or 300 feet to a boundary.
25 MR. CHAIRMAN: And as long as they're in compliance with DM

1 and DMLR and we can work that out internally or whatever
2 it does, personally I think that the Board needs to
3 stipulate that because I don't think doing it any other
4 way gets you anywhere.

5 MR. MASON: We don't presume to tell them what to do anyway,
6 do we?

7 MR. CHAIRMAN: No. I'm trying to address -- I really aim
8 although it may not sound like it. I'm trying to address
9 the problem that they're having. And I think that if we
10 stipulate that it be in compliance with these other laws
11 that Tom can try to work out -- that you can apply there
12 and whatever you do -- see, the thing is if you're
13 missing notice requirements or any other thing under
14 those laws then we've got another hurdle somewhere else
15 that we haven't taken care of. You want to do it through
16 one division one time.

17 MS. McCLANNAHAN: Only those that are drilled initially.

18 MR. CHAIRMAN: Right.

19 MR. MASON: I have a suggestion. Why don't you make a motion
20 on what we ought to do with this.

21 MR. ALBERT: Let me just say one more thing. Claude and
22 myself wrists have been burning here for about the past
23 year. The only VVHs we have permitted have been those
24 that were within 300 foot of a boundary or 300 foot of
25 another well. We have not permitted another single VVH

1
2 -- correct me if I'm wrong, Les -- since a year ago when
3 we were admonished for doing that. It would appear to me
4 now that the Board is almost telling us to go back to
5 what we were told not to do about a year ago.

6 MR. EVANS: That's not what we're saying at all, I don't
7 think. I think we're trying to figure out a way to allow
8 you to do what you want to do.

9 MR. ALBERT: Maybe if we can get this application passed then
10 we would -- I wouldn't never say never -- but the chances
11 of us needing to permit a well as a VVh would be kind of
12 slim to none. There may be some specialized case out
13 there where we would have to, but right off the top of my
14 head I can't think of it. I think we could permit
15 everything as a CBM, be able to produce it, and then we
16 again address the situation whether it needs to be
17 deviated from vertical or not in a controlled manner on a
18 case by case basis with Tom when the well permit is
19 issued.

20 MR. CHAIRMAN: And in all cases none of those would be
21 charged, etcetera.

22 MR. ALBERT: Right.

23 MR. FULMER: I want to interject one more thing here because
24 I'm getting to be the point of all these. In the cases
25 that have happened when the hole has been deviated the
Board has set up the unit and the Board has allowed

1 deviation to occur in the unit. That's been in the Board
2 order.

3 MR. MASON: You mean the reference to deviation?

4 MR. FULMER: Yes. To deviate but not to drill off 300 foot.

5 MR. MASON: He said 40 to 50. I don't know --

6 MR. McCLANNAHAN: Mr. Fulmer, are you saying the Board has
7 previously done this or are you saying the effect of this
8 application is that?

9 MR. FULMER: No. When you go back to where the bottom of the
10 bore hole can be and where the top location is, as long
11 as it stays within the unit a certain distance from the
12 boundary it's okay. They've ruled that previously.
13 That's all I'm saying as far as deviation goes.

14 MR. CHAIRMAN: We have a motion to approve the application.

15 MR. MASON: Second.

16 MR. CHAIRMAN: Motion and second. Further discussion? All
17 in favor signify by saying yes. (MOST AFFIRM.) Opposed
18 say no. (ONE DENIES.) The motion carries.

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ITEM XIII

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition from
4 Pocahontas Gas Partnership under Section 45.1-361.20 for
5 modification of a previously issued Board order, VGOB-
6 92/02/21-0180. This is docket number VGOB-93/06/22-0385.
7 We'd ask all the parties that wish to address the Board
8 in this matter to come forward at this time.

9 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
10 Partnership.

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

13 MS. McCLANNAHAN: Does the Board wish for me to give an
14 opening statement on this or is it enough for me to
15 explain that the south longwall 5 through 12 is also an
16 exception to the Oakwood I Board approved panel units
17 that were done on November 19, 1991 just like the
18 northeast longwall 1 through 10.

19 MR. CHAIRMAN: There are no changes to your request of relief?
20 The same issues, just different --

21 MS. McCLANNAHAN: Same issue, different order, different
22 units.

23 MR. CHAIRMAN: Okay. I think that's sufficient. Call your
24 first witness.

25 MS. McCLANNAHAN: Les Arrington.

1 MR. CHAIRMAN: Here again we'll just remind the witnesses
2 they're under oath and we will accept their qualifica-
3 tions as presented.

4
5 LESLIE K. ARRINGTON

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

8
9 DIRECT EXAMINATION

10
11 BY MS. McCLANNAHAN:

12 Q. Mr. Arrington, since the development of the mine began
13 how much of the coal estate is controlled by PGP in the
14 south longwall 5 through 12 units?

15 A. Do you want it individually?

16 Q. Yes.

17 A. Okay. South longwall 5 we control 97.464 percent of the
18 Pocahontas #3 seam and 10 percent of the coal below
19 drainage less the P3.

20 Q. In the sixth?

21 A. 96.12 percent of the Pocahontas #3 seam and 100 percent
22 of all coal below drainage less the P3. South longwall 7
23 98.96 percent of the Pocahontas #3 seam and 95.43 percent
24 of all coal below drainage less the P3 seam. In south
25 longwall 8 we control 96.07 percent of the Pocahontas #3

1 and 99.768 percent of all coal below drainage less the P3
2 seam. South longwall 9 we control 96.03 percent of the
3 Pocahontas #3 seam and 91.15 percent of all coal below
4 drainage less the P3 seam. In south longwall 10 we
5 control 96.079 percent of the P3 seam and 95.234 percent
6 of all coal below drainage less the P3 seam. In south
7 longwall 11 we control 96.108 percent of the Pocahontas
8 #3 seam and 96.353 percent of all coal below drainage
9 less the P3 seam. South longwall 12 we control 96.101
10 percent of the P3 seam and 91.999 percent of all coal
11 below drainage less the P3 seam.

12 Q. What percentage of the oil and gas is controlled by PGP
13 as a total in south longwall 5 through 12 units?

14 A. We control 100 percent of the south longwall 5 through 10
15 units and --

16 Q. Wait a minute. That's not true of oil and gas, is it?

17 A. No. Right here it is. The next one. Okay. We control
18 78.817 percent of the oil and gas.

19 Q. And coalbed methane gas?

20 A. 98.935 percent.

21 Q. Have these ownership control percentages changed since
22 the date that you filed the application?

23 A. Yes, they have.

24 Q. So Exhibit 4 as we've previously submitted it to the
25 Board will need to reflect the changes as you've just

1 indicated them?

2 A. Yes, it will.

3 Q. Will each of the tracts in the unit participate based on
4 mineral acres as reflected on the surface?

5 A. Yes, they will.

6 Q. Do the plat and acreage totals on the exhibits reflect
7 the relative contribution that each tract is expected to
8 make to each of the south longwall panel unit production?

9 A. Yes.

10 Q. Who are the owners of the coal below the Tiller seam?

11 A. Hue McRae Land Trust, Consolidation Coal Company, Yukon
12 Pocahontas, Sayers Pocahontas, Buchanan Coal, Georgia-
13 Pacific, Coal Mountain Mining, the Lucy D. Wade heirs,
14 Commonwealth of Virginia, and the Hurt McQuire heirs.

15 Q. These are also your coal lessors, is that correct?

16 A. Yes.

17 Q. Please identify the exhibit marked for identification as
18 Exhibit 2?

19 A. That was our hearing notice.

20 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
21 Exhibit 2.

22 MR. CHAIRMAN: It's accepted.

23 Q. (Ms. McClannahan continues.) Was this notice of hearing
24 mailed to the parties contained in the application?

25 A. Yes, it was by certified mail, return receipt requested.

1 Q. Are copies of those return receipts at Exhibit 37

2 A. Yes.

3 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
4 Exhibit 3.

5 MR. CHAIRMAN: It's accepted.

6 Q. (Ms. McClannahan continues.) How were the persons whose
7 names and/or addresses listed as unknown notified?

8 A. We published it in the Bluefield Daily Telegraph on May
9 22nd.

10 Q. Have those proofs of publication previously been sub-
11 mitted to the Board?

12 A. Yes, they have.

13 MS. McCLANNAHAN: Those are all the questions I have for Mr.
14 Arrington.

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

16 (Witness stands aside.)

17 MR. CHAIRMAN: Call your next witness.

18 MS. McCLANNAHAN: Mr. Claude Morgan.

19

20

21

CLAUDE MORGAN

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

24

25

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Morgan, could you please identify what has been marked for identification as Exhibit 6?

A. That's a map showing longwall units SLW 5 through 12 along with the location of holes that were approved -- shown in red that were approved when the units were formed as well as holes that have been permitted and/or drilled since that time shown in yellow.

Q. The red dots indicating Board approved wells were actually the minimum number of wells that were approved at the time this application was granted, is that correct?

A. That is correct.

Q. And all the wells that are shown with yellow dots are either drilled or permitted in compliance with the requirements of the Board order entered November 19th, 1991?

A. That is correct.

Q. What well spacing is presently required by that order that was entered on November 19th, 1991?

A. A minimum of 300 foot, a 300 foot set back from unit boundaries.

Q. And the application that you submitted to the Board today

1 requests that a change be made in this particular
2 requirement, is that correct?

3 A. That is right.

4 Q. Could you please explain that change?

5 A. We ask that the 300 foot minimum spacing be deleted from
6 the order and that the Inspector be able to grant well
7 permits closer than 300 feet to the unit boundary.

8 Q. Are all of the wells that are shown with red dots, the
9 wells shown with yellow dots, and any additional wells
10 that would be drilled in here pursuant to this particular
11 application producing on a panel basis from the same pool
12 as those originally approved by the Board?

13 A. They will all be producing on a panel basis. Not all of
14 these are drilled and not all of them that are drilled
15 have been connected.

16 Q. And those that have been drilled also produce on a panel
17 basis from that same pool?

18 A. Yes.

19 Q. Could you please identify the exhibit that's been marked
20 as Exhibit 7?

21 A. This is example and it's the same format I discussed in
22 the NELW units application showing a typical longwall
23 panel with six wells that would ordinarily be permitted
24 drilled on about a 600 foot spacing. It also shows two
25 alternate holes as 1-A and 3-A which illustrates examples

1 of holes that we have had to drill in the past closer
2 than 300 foot to existing wells and therefore not been
3 able to produce the gas from those wells.

4 Q. If this application were approved would the additional
5 gas that's produced from those wells designated as 1-A
6 and 3-A on Exhibit 7 be increased?

7 A. There would be an increased production to the unit.

8 Q. Would this increase in production be paid to the royalty
9 owners on the same basis as their ownership percentages
10 have been shown?

11 A. Yes.

12 Q. What is currently being done with the coalbed methane gas
13 that is being produced by wells that are closer than 300
14 feet to other wells within any of these units?

15 A. It is vented.

16 Q. Will the draining of this unit modification application
17 result in additional revenues to the Commonwealth?

18 A. Yes, it will.

19 Q. In what form?

20 A. In form of a severance tax on gas that would have to be
21 vented if not for the elimination of the 300 foot
22 spacing.

23 MS. McCLANNAHAN: Those are all the questions I have for Mr.
24 Morgan.

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

1 Will do describe what you would do with these wells when
2 you plug them?

3 MR. MORGAN: When we plug these particular wells?

4 MR. CHAIRMAN: Yes, sir.

5 MR. MORGAN: They'll be plugged under the same standards as
6 any other gas well.

7 MR. MASON: If, in fact, any of these wells deviate off does
8 it make it more difficult to plug them?

9 MR. MORGAN: No.

10 MR. MASON: The technology exists to do that at a safe and --

11 MR. MORGAN: Yes.

12 MR. FULMER: It's no problem. It's a liquid plug.

13 MR. CHAIRMAN: Where is the plug going to be? How far is the
14 plug going to go? I'm trying to address some concerns up
15 here. If you complete open hole and you set your water
16 protection stream where is your plug going to end?

17 MR. MORGAN: The plug will be well below that protection
18 stream. Now, that's going to depend on as with any of
19 the other holes or any of the gas wells -- it's going to
20 depend on the integrity of the hole and how far you can
21 get into the hole to set a plug. But I think at a
22 minimum it has to be 200 feet below the protection
23 stream.

24 MR. CHAIRMAN: Which puts you 500 feet down.

25 MR. FULMER: We always require plugging. When we require

1 plugging they have to case so many feet outside the
2 bottom casing and into the casing. So that casing is
3 left. You cannot pull that casing. So that cuts off
4 your bottom hole from your -- now, if you're talking
5 about multiple zones in a well then there's a different
6 casing procedure where you have to cement or plug in
7 between the different producing zones. But you always
8 have to separate that from the water zone.

9 MR. CHAIRMAN: Well, there's no black board in here. I think
10 some concerns are that if we have the typical steep slope
11 mining scenario and we have a well up here on the
12 hillside that comes down and then it goes in here -- it
13 wouldn't be that dramatic -- but anyway it gets plugged
14 about here you still have a possibility that you would
15 have gas migrating -- I'm hearing some concerns that gas
16 could be migrating. You're allowing it, in other words,
17 to come from several hundred feet down or several
18 thousand feet down up to a higher level and now may
19 present other problems. What measures do you take to
20 insure the integrity of protecting the gas from migrating
21 to the higher levels.

22 MR. EVANS: After production has ceased?

23 MR. CHAIRMAN: Right.

24 MR. EVANS: Upon abandonment of the well?

25 MR. CHAIRMAN: Right. Which the only thing you do is -- the

1 only way you can do that is through the plugging and
2 that's the intent of plugging, right?

3 MR. FULMER: Uh-huh. But the only the gas is going to migrate
4 is if you have a porous upper strata. You have no link.
5 If you have a case where you have a collapse in roof then
6 you have to go up to the integrity zone and usually when
7 you go up to the integrity zone above it then you set a
8 bridge plug at that integrity zone and then plug from
9 there up. You can't plug in a --

10 MR. EVANS: Rubble.

11 MR. FULMER: -- in a rubble.

12 MR. MORGAN: I don't see the plugging of this type well any
13 different than any other well that's there. Any cracks
14 that any gas is going to migrate through are going to be
15 there regardless of whether this twelve and a quarter
16 inch hole is down there.

17 MR. CHAIRMAN: Other questions?

18 MR. MCGLOTHLIN: Mr. Morgan, from surface level to the coal
19 seam when you drill your well what's the direction on --
20 what's the angle that you're going to drill that area?
21 Explain that technology a little bit more to me.

22 MR. MORGAN: We are traveling something like -- it will vary
23 depending on how far we deviate it. But let's say if we
24 deviate it 300 feet even, you're doing that over a
25 distance of about 1,300 or 1,400 feet.

1 MR. MCGLOTHLIN: Do you start from the beginning of the hole
2 on a direction or do you go down so far and then shoot on
3 a direction or --

4 MR. MORGAN: As we were talking, we will go vertically at
5 least through the lowest coal seam to be mined and where
6 we set our casings. We will go vertical for setting on
7 the casing because if you don't it gets a little tough to
8 set the casing. So you're vertical for that part of it.
9 Shortly after you set the casing you start trimming --

10 MR. MCGLOTHLIN: What are we talking about in foot? Give me
11 just a scenario.

12 MR. MORGAN: Well, then you will need to travel maybe as much
13 as 300 feet in 1,400 feet.

14 MR. MCGLOTHLIN: So you're going to go down 300 feet -- you're
15 going to case the well 300 feet or below the water zone.

16 MR. MORGAN: Yes, at least that deep.

17 MR. MCGLOTHLIN: And then we're going to go on a directional
18 from there. And with the topography like it is do you
19 ever foresee an area where you drill here -- you start
20 here and you're heading to my left, you go down 300 feet
21 and then you start your direction, and Mr. Mason has a
22 house here and he drills a well -- I know it's a very
23 slim possibility of him hitting that --

24 MR. MORGAN: We have to case below any water producing zones.
25 So if he's drilling a water well that deep he's not

1 getting any water anyhow.

2 MR. MCGLOTHLIN: Well, if we go to Buchanan County and --
3 there's no water -- we can go 900 to 1,000 feet without
4 finding any water. So are you going to case down to 900
5 feet or 1,000 feet?

6 MR. MORGAN: We have to protect the lower most water producing
7 zone. That's part of the casing requirements.

8 MR. MCGLOTHLIN: One other thing. The deviation on a vertical
9 hole is 1 percent. What's the deviation on a directional
10 hole?

11 MR. MORGAN: That will vary depending on how far you are able
12 to kick the hole. Like I said, probably --

13 MR. MCGLOTHLIN: More or less than one percent?

14 MR. MORGAN: It would be more than one percent.

15 MR. CHAIRMAN: Other questions? Motion?

16 MR. EVANS: Mr. Chairman, I move that we approve the petition
17 as submitted.

18 MR. MASON: Second.

19 MR. CHAIRMAN: A motion and second. Further discussion? All
20 in favor signify by saying yes. (SOME AFFIRM.) Opposed
21 say no. (ONE DENIES.) The motion carries.

22
23 (End of Proceedings for
24 June 22, 1993.)
25

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 June 22, 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 12th day of July, 1993.
19

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

24 My commission expires September 30, 1996.
25