

**DEPARTMENT OF MINES,
MINERALS & ENERGY**

VIRGINIA GAS AND OIL BOARD

**TRANSCRIPTS FOR CALENDAR
YEAR 1994**

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VIRGINIA OIL AND GAS BOARD

HEARING OF FEBRUARY 15, 1994

9:00 A. M.

AT THE 4-H CENTER, HILLMAN HWY.

ABINGDON, VIRGINIA



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February 15, 1994

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2 This matter came on to be heard on this the 15th day of
3 February, 1994 before the Virginia Gas and Oil Board in the
4 Conference Center at the 4-H Center, Abingdon, Virginia
5 pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the
6 Code of Virginia.
7

8 MR. CHAIRMAN: Good morning. My name is Benny Wampler. I'm
9 Deputy Director for Regulatory Services with the Depart-
10 ment of Mines, Minerals and Energy and Chairman of the
11 Gas and Oil Board. I'd like to welcome all of you here
12 today. I'd ask our Board members to introduce themselves
13 starting with Ms. Presley.

14 (MEMBERS INTRODUCED.)

15 MR. CHAIRMAN: One thing just to report to the other Board
16 members that haven't heard and for others information I'm
17 saddened to report that a Board member, Bill Mason's wife
18 was killed in a car accident last month and then to make
19 matters worse he was taking a friend back to the airport
20 after that and fell in the parking lot on all the ice and
21 broke a hip. So he's not here today and hopes to be back
22 next month. But he's in a wheel chair now and certainly
23 for those of you and many of us do know Bill and we
24 certainly encourage you to send him some encouraging
25 words. I'm sure he could use that.

1
2
3 ITEM I

4 MR. CHAIRMAN: The first item on today's agenda is the Gas and
5 Oil Board will receive a semi-annual report of the escrow
6 accounts established by Board order from Tazewell
7 National Bank, escrow agent for the Virginia Gas and Oil
8 Board. We'd ask that the bank come forward at this time.

9 MR. KING: Good morning. I'm Bill King with Tazewell National
10 Bank. I have a couple of handouts here that I'd like to
11 pass over for everybody. (Pause.) First just let me
12 remind the Board what we're doing on the accounting
13 statements, the VGOB staff is receiving a semi-annual
14 report that breaks down all of the accounts which are by
15 well or unit and all the interests and expense are
16 allocated. So that's being received semi-annually.
17 Monthly they're receiving an overall statement showing
18 all the transactions, deposits received and the interest
19 and the current balance. What I've given you today is an
20 extension of the last report which shows a summary of how
21 the escrow account is doing. I think the last -- even
22 thought it was semi-annually, the last report I think was
23 actually in October and it showed the September figures
24 through a year end, December 31st, 1993. You're looking
25 at the report that says account summary for various
periods. The total royalty receipts are \$437,263. The

1 total income has been \$7,772. Total fees \$7,558 and the
2 balance is \$437,477. The only two things I'd like to
3 point out especially on this is the royalty receipts, as
4 you notice, each quarter since the first quarter of 1993
5 have gone down. I don't know what that means. It's just
6 that the account during the last quarter of 1993 actually
7 didn't grow by very much. The other thing is the concern
8 about the fees out stripping income. As we mentioned
9 last time, the fees totally were greater than the income
10 and that was in the process of reversing and it has done
11 that just barely at this point. But on the quarterly
12 basis the income was substantially more than the fees.
13 Maybe at this point I'd also like to point out that
14 during the last meeting we talked about having the
15 production companies hold small checks and that \$25 would
16 be a minimum and that we are willing -- the transaction
17 fee is \$10 per unit per month. If we receive a check
18 that's for several months we'll charge \$10 for that
19 transaction as opposed to \$20, \$30, \$40, whatever. And
20 that really I don't think we've had a lot of that yet,
21 but one thing that we did discover is that for one of the
22 companies their definition of an account is different
23 than what our's and the Board's is. We're looking at
24 units or wells and, of course, they're keeping records
25 based on owners. And their systems -- I don't know if

1 this applies to all of them, but we did discover that the
2 \$25 was being applied to an owner account. So I think
3 there's -- I felt like I should bring that up just to
4 make sure that if there are other companies they can look
5 at that and if there is a way on their system they can
6 batch their checks by unit and whether it's a batch of
7 checks or one check we'll post it as one transaction and
8 just show what months it's for. If it's for four months
9 we won't break it down and have four postings. We'll
10 have one and we'll show September through December or
11 whatever. I think as long as -- it's my understanding
12 that as long as it's a small account that will be okay.
13 The other sheet that I passed out, we'll take a look at
14 that. We want to address the investment needs of the
15 escrow account and are anxious to do something to improve
16 the income. As we all know, rates in general for
17 whatever -- money market or 30 year treasury bonds or
18 whatever we're talking about are the lowest they've been
19 in perhaps twenty years. The solution, I feel, is we've
20 identified some other funds or mutual funds that are very
21 conservative Government bond funds that could be used.
22 The real question -- and I realize as the escrow agent we
23 have the responsibility for investing the funds, but I
24 believe the RFP indicates that we would make recommend-
25 ations and seek the Board's approval. The real problem

1 is we don't have a definite time horizon and any invest-
2 ment, whether it's an individual bond or a bond fund or
3 anything other than money market or bank deposit, is
4 going to fluctuate in value with interest rates. We can
5 manage in that scenario if we could say a certain amount
6 of this will probably come due in one year and a certain
7 amount in three and a certain amount in ten, but we
8 can't. No one can tell us that. What I would like to
9 do is at least -- we know we're always going to need a
10 certain amount of liquidity. It might be 25 percent or
11 maybe 50 percent. But to move part of the funds into one
12 or two of the more conservative funds on here. The most
13 conservative as far as volatility of price is the one --
14 the third one down shown as federated short intermediate
15 Government trusts, average maturity being just a little
16 over a year and a half, this is invested in treasuries
17 and Government agencies. The yield is at least -- it's
18 only but at least one-half percent above the money market
19 rates we're getting now. More than likely -- even if
20 there was a decision on the conflicting claim funds we're
21 holding, my understanding is it would take a while the
22 final decision to work through the courts and we would
23 have at least some time frame. So this being a year and
24 a half would be very conservative. If we could take part
25 of the funds and extend it even a little longer we could

1 go about four percent as show in the first two funds. I
2 don't know at all that the -- the last fund is U.S.
3 Treasury index portfolio. The management of that fund
4 attempts to invest strictly in U.S. Treasuries but to
5 match the index that is used to report Treasury yields.
6 It's about a nine year maturity. But I don't really
7 think for the added yield we can get that that fund --
8 that being the most volatile -- in effect the longer the
9 maturity -- if interest rates rise that can have a more
10 drastic affect on that type of fund. I guess at this
11 point I'm wondering if there are any questions or what
12 the Board may feel about the -- what I would propose is
13 to take maybe at this point start slowly taking perhaps
14 half of the funds and use the short intermediate Govern-
15 ment trust.

16 MR. MCGLOTHLIN: Why not put 25 percent in one of the 3.1 year
17 maturities and 25 in federated and then keep 50 percent
18 for liquid funds -- to be liquid.

19 MR. KING: I would agree with that. As a matter of fact, I'd
20 rather do that than to try -- I'm being maybe a little
21 too conservative, but again I think it would be -- if we
22 can look for the eventual owners of this fund -- if we
23 look at the total return I think that's the best way to
24 go. There is a chance that one of the funds could move
25 down slightly. I really don't think anybody is forecast-

1 ing any drastic increase in interest rates. A small
2 increase, the value of the fund could decline somewhat.
3 But even when you take that against the increased yield
4 we're getting the total return to the account should
5 still be positive compared to the money market fund. So
6 I would agree. I think that's a good idea.
7 MR. McGLOTHLIN: And to be even a little liberal with it, use
8 33 percent and do it that way.
9 MR. KING: I think the real question -- the liquidity question
10 of how much we need is -- let's use say a year to a year
11 and a half -- how much of this money is possible that
12 would be paid out in the coming year and a half.
13 MR. McGLOTHLIN: If we went by thirds we're talking about
14 what, \$150,000 in each. I would think that would be a
15 pretty fair amount of liquid capital if we do it that
16 way.
17 MR. KING: Let me explain, again being the ultra conservative,
18 that -- I guess you can assign probabilities -- if the
19 courts would decide next week what interest had to own
20 this royalty interest that would still probably be
21 appealed by one side or the other. Under that scenario,
22 though, we could be paying out funds, maybe --
23 MR. McGLOTHLIN: A year and a half, two years?
24 MR. KING: Okay.
25 MR. McGLOTHLIN: I'm just guessing.

1 MR. KING: Right. That's what I said. It's probably a
2 reasonable assumption. In other words, in that scenario
3 we would have if you say two years a third of the fund --
4 only a third of the total invested in something that
5 would be one year beyond that likely payout. That isn't
6 a very risky option, I don't believe.

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

8 MR. EVANS: For the longer term funds is there a penalty for
9 liquidating early?

10 MR. KING: No.

11 MR. EVANS: Okay.

12 MR. KING: On these funds there wouldn't be any loads or sale
13 charges going in or out or any type of penalties. The
14 very last column, the expense ratio, is the annual
15 percentages that the fund charges and these yields are
16 net of that. Those are all very reasonable when you
17 compare to all the funds in the mutual fund industry. As
18 a matter of fact, of course, there are hundreds of funds
19 out there. These were selected because they're ones
20 we're familiar with, they're very conservative, and we're
21 comfortable with them for all of our trust accounts.

22 MR. MCGLOTHLIN: If we go with the mutual funds we'll be
23 paying two different fund expenses. We'll be paying you
24 to administer the fund and then be paying them to
25 administer the fund.

1 MR. KING: Twice.

2 MR. MCGLOTHLIN: And that doesn't seem -- as I recall, the RFP
3 was that we were to pay you to administer the fund and
4 not to be --

5 MR. KING: Right.

6 MR. MCGLOTHLIN: Why can't you go in and buy these same
7 securities without going to a mutual fund?

8 MR. KING: Well, we can. I think for the amount -- you're
9 paying us to administer the fund and invest the fund.
10 The reason I'm recommending these funds as opposed to say
11 individual Treasury bills and Government agencies --
12 that's what we're saying. Correct?

13 MR. MCGLOTHLIN: Yeah.

14 MR. KING: For purposes of diversification and for purposes of
15 allocating the interests to -- I don't know how many --
16 100 funds or something -- this is interest that pays
17 monthly as opposed to various funds that are every six
18 months. It really wouldn't be -- I'll say it's possible,
19 but it really isn't feasible to hold individual bonds
20 where you're having coupon payments every six months and
21 allocating those to all these various accounts. The
22 system is really set up to use funds. Now I'm talking
23 from the administrative point of view. Even from an
24 investment point of view, like I'm showing the yields
25 here are net of these expense ratios and these are very

1 equivalent to what we would get on individual issues. So
2 in effect you are paying -- you could say you're paying a
3 double fee. If we're getting a value for this fee, you
4 know, what we're buying, I don't really see a problem
5 with it. I really believe that overall for safety,
6 diversification, looking at risks and the net return that
7 we're better using the fund.

8 MR. McGLOTHLIN: What's the problem with Tazewell Bank paying
9 the expenses for those out of your expense that we're
10 paying you?

11 MR. KING: I can look into that. I can't say at this point
12 that we would do that but --

13 MR. McGLOTHLIN: We're paying you to administer this account.

14 MR. KING: Uh-huh.

15 MR. McGLOTHLIN: And now you're coming back and saying yeah,
16 but to get you some interest we want you to pay another
17 fee. As I recall the RFP that's not the way it was set
18 up.

19 MR. KING: Well, I don't think it addressed the use of mutual
20 funds. It's an indirect certainly and not actually
21 paying cash out. We're not using -- for instance, we
22 could have our own common fund. We've chosen not to do
23 that. This would be just a more efficient way of
24 running the portfolio. What I would probably say is that
25 instead of trying to make any adjustments we would

1 prefer, if it were the Board's use or direction, that we
2 use individual issues. I'd rather do that than try to
3 make any other adjustments. If you look at the amount of
4 funds versus the income it's very substantial -- practic-
5 ally all the income. But you also have to look at the
6 time and systems we've allocated to the account. We're
7 happy to work on this for the Board, but it's a major
8 allocation of our time and effort. I don't know. I
9 think we should leave it that way. We would either try
10 to use some Treasury bills and Treasury notes in the same
11 one and a half year, three year --

12 MR. MCGLOTHLIN: A Treasury note one and a half year, what's
13 the yield on it?

14 MR. KING: It's actually very close to this three and a half
15 percent. The other advantage, these being Government
16 funds other than the last one that's the longest matur-
17 ity, they're not 100 percent Treasury obligations and
18 Government agencies such as the Federal National Mortgage
19 Association or Federal Home Loan Banks or other Govern-
20 ment agencies debt obligations would be part of these
21 funds. They're still as close to risk free -- almost as
22 close to risk free as a Treasury is. And there's probably
23 on a one and a half or two or three year obligation maybe
24 a tenth to two-tenths of a point of a percent difference
25 in yield between a Treasury and another Government agency

1 fund. To really look at that I would want the exact
2 yields in the market from yesterday. I don't have that
3 with me, but I do believe they are very close to these
4 numbers. The only one that is off substantially is the
5 longer - for instance, a U.S. Treasury for nine years is
6 probably yielding more like five and a half to 5.6. So
7 that would be a little higher than what the long term
8 fund -- on the others, like I said, they're extremely
9 close.

10 MR. CHAIRMAN: Other questions? Let me revisit the \$25
11 amount. Is that an appropriate amount, you think, the
12 cut off of \$25? What does that do versus \$100, for
13 example?

14 MR. KING: There probably wouldn't be too many units in a
15 month that would have \$25. And even still a \$26 check
16 comes in and we post it and it's a \$10 fee. Here again,
17 we want to be helpful on this. If our transactions are
18 less and our fees are less that's fine because that does
19 save us some time. To us it really -- I don't know if
20 there's any -- from your point of view for enforcement or
21 other purposes if it presents any problems. But \$100
22 minimum wouldn't be a problem. It would probably -- I
23 can't tell you how much, but it would certainly save some
24 addition expenses over a year's time.

25 MS. RIGGS: It seems to me that the problem is, though, that

1 the operators that are applying this \$25 are applying it
2 to individuals and not to the total unit account. So
3 even if you set the \$100 at the total unit account it
4 wouldn't address the underlying problem of having to
5 batch all checks for deposit for a particular unit
6 account as opposed to an individual account.

7 MR. KING: My understanding is that the accounting systems
8 used now really recognize owners and that at a certain
9 point, once everything's established, the well identity
10 isn't important, but I know that one company was going to
11 look at changing so that they could use this.

12 MS. RIGGS: It would seem that that's what we need to address,
13 whether or not the companies who are having a problem
14 with that can batch those checks and then apply the limit
15 of whatever the Board sets it to the account as opposed
16 to the individual interest within the account.

17 MR. CHAIRMAN: Do any of you that are here representing
18 companies have anything to say?

19 MS. BARRETT: Anita Barrett. I work Equitable Resources. At
20 our last meeting we when talked about the \$25 we define
21 an account as one royalty owner. That's how our system
22 is set up. We recently found out from Mr. King -- he
23 defines an account as what's coming into that well
24 escrow. So what we've decided to do is we are going to
25 try to write one check per month to the bank and keep

1 track of all the individual royalty owners ourselves
2 internally.

3 MS. RIGGS: So in paying that one check, though, are you
4 including monies for individual accounts only after they
5 exceed \$25?

6 MS. BARRETT: No.

7 MS. RIGGS: Are you still applying the --

8 MR. BARRETT: If everything for the well is over \$25 it will
9 go to the bank.

10 MS. RIGGS: Okay.

11 MR. EVANS: It will just come in one check. You'll do your
12 in-house royalties and owners and everything else all
13 out, you'll send it to the bank in one check who will
14 have that same list basically for that unit or that well
15 and it goes into that account.

16 MS. BARRETT: Right. And Exhibit B to the supplemental order
17 reflects the various interests that are involved \$25. We
18 can do that.

19 MR. CHAIRMAN: Any others? (Pause.)

20 MR. KING: It would certainly cut down the transactions.

21 MR. EVANS: In which case if -- is anybody else having this
22 problem that you know of other than EREX?

23 MR. KING: All of the reports we get do show owners but I
24 believe they're botched -- I think that the others may be
25 submitting by well or unit.

1 MR. EVANS: If that is the case then we can probably seriously
2 discuss raising \$25 to \$100 or \$200 or whatever. Does
3 that present a problem?

4 MS. BARRETT: I don't know. I would have to check with our
5 accountant. Our system is set up right now to monitor
6 accounts to \$25 and automatically kick out a check once
7 it exceeds \$25. I think we could work something out
8 where we can monitor it to \$100, but I'll have to check
9 with Rick Price who's our accountant.

10 MR. EVANS: The reason I asked is if you've already got it to
11 the point where you can batch a unit to one check to the
12 bank you've already made that adjustment. It should be
13 simply a question of raising that flag from \$25 to \$100.

14 MS. BARRETT: We haven't made that adjustment yet.

15 MR. EVANS: Oh, okay.

16 MS. BARRETT: As a matter of fact, we sent Mr. King a report
17 Friday and we talked to him on Monday and that's when we
18 discovered his definition of an account is much different
19 than ours.

20 MR. EVANS: How much lead time -- have you discussed this with
21 your accounting people, how much lead time you would need
22 to make the change?

23 MS. BARRETT: I plan on working to revise all the division
24 orders when I get back later on this week. I don't think
25 -- we could probably do it by the time February produc-

1 tion is paid in March.

2 MR. EVANS: But you don't know right now that it's even
3 possible because you haven't really discussed the
4 situation as to what all that would entail as far as your
5 accounting procedures and what changes would need to be
6 made.

7 MS. BARRETT: Right.

8 MR. EVANS: In that case I don't think we ought to mess with
9 raising it or anything else until such time as you can
10 come back and say okay, this is how we're going to do it.
11 But in explaining it to your people I would like to see
12 you also explain to them that hey, don't set that hard in
13 the system, that \$25. Set it such that you could move
14 that flag for kicking out a check to some higher aggregate
15 if and when we decide that that's probably the best
16 way to do it.

17 MR. KING: That sounds good.

18 MR. CHAIRMAN: Then that brings us back to giving some
19 direction on the investment of the accounts.

20 MR. MCGLOTHLIN: I would request that we table this until the
21 next quarterly report -- and personally for me so I can
22 have a chance to review the RFP or the contract.

23 MR. CHAIRMAN: Any problems with that, Board members? Okay.
24 I might ask, too, for the next quarterly report that
25 along with this we may get the other investments earnings

1 if the bank actually purchase the bills like you're
2 doing now, in essence, what those earnings may be along
3 side of these so we could see how much difference this
4 kind of investment would make in the long run.

5 MR. KING: Okay.

6 MR. MCGLOTHLIN: Also, Mr. Chairman, may I ask that we be sent
7 a copy of the contract? I'm sure I have it but it may
8 take me a long time to dig it up.

9 MR. CHAIRMAN: Okay.

10 MS. RIGGS: I would just like to make a note that the royalty
11 receipts that you say are declining by quarter -- I would
12 suspect that that's due to the fact that we approved the
13 process for entry of supplemental orders and that a lot
14 of moneys that have been held were then suddenly released
15 and now those supplement orders have worked themselves
16 through the system and you'll start seeing a leveling out
17 then of what you can anticipate.

18 MR. EVANS: More along that lower number than the higher
19 number.

20 MR. KING: On a continuing basis, okay.

21 MR. CHAIRMAN: Anything further?

22 MR. FULMER: Just a point of clarification. I understood they
23 said a quarterly report. I do believe that Tazewell only
24 presents semi-annual.

25 MR. CHAIRMAN: Semi-annual.

1 MR. MCGLOTHLIN: Excuse me. I believe the contract said they
2 would be --

3 MR. FULMER: They submit a quarterly report, but as far as
4 their coming to the Board, unless the Board wishes it
5 otherwise, it was set at semi-annual.

6 MR. MCGLOTHLIN: Then I request that they be here at the next
7 quarter.

8 MR. FULMER: That was just a matter of clarification.

9 Whatever the Board wishes.

10 MR. KING: I'm willing to come whenever you need us here. You
11 wanted to wait another quarter?

12 MR. MCGLOTHLIN: Yeah. This is February already. So we're
13 looking at March anyway. That's next month. When would
14 you normally do your quarterly report to the Board?
15 April? That way --

16 MR. KING: Actually -- I don't know if it was set semi-
17 annually or quarterly as far as appearing. But, like I
18 said, that doesn't matter. It can be whatever you want.
19 It can be monthly. The actual statements that go into
20 the staff, though, there is a monthly and then a semi-
21 annual which are two different type of reports. What I
22 will probably do on this summary that we've started to
23 use -- and this isn't etched in stone. It's something --
24 I just felt like -- we worked through this, I think, at
25 the last couple of meetings and this maybe gave you a

1 good picture. But what I'll probably do is eliminate the
2 court -- in other words, in the next one maybe have
3 12/31/92, 12/31/93 and then 3/31/94. It would be year
4 end and each quarter I'll do this report. So yes, this
5 will be available next time in April. If you want me to
6 come back before April I can update this through any
7 month and as far as estimating -- it would be in a future
8 basis anyway. In other words, what I could do is give
9 the Board a report showing what the estimated annual
10 income is now which would be pretty close to taking the
11 income for the last quarter -- the 2979, if you take that
12 times four at that point that would probably be a pretty
13 close estimate for the year. I can take that versus
14 maybe your two other scenarios with maybe investing one-
15 third in money market, one-third in the 1.6 year, one-
16 third in a three year.

17 MR. CHAIRMAN: April will be fine, won't it?

18 MR. EVANS: Yeah.

19 MR. CHAIRMAN: We'll just schedule it for the Board meeting in
20 April then.

21 MR. KING: Okay.

22 MR. CHAIRMAN: Thank you very much. We appreciate it.
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ITEM II

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3 MR. CHAIRMAN: The next item on today's agenda is a petition
4 from Equitable Resources Exploration for establishment of
5 Roaring Fork coalbed methane gas field rules and drilling
6 units for the production of coalbed methane gas. We'd
7 ask the parties that wish to address the Board in this
8 matter to come forward.

9 MR. SWARTZ: I think that was continued. Wasn't that motion
10 granted?

11 MR. CHAIRMAN: That's okay. Come forward.

12 MR. SWARTZ: I'm Mark Swartz. I represent Columbia Natural
13 Resources. I think Elizabeth McClannahan communicated
14 with that Board that she wanted to continue this to the
15 March docket. I was under the impression that perhaps
16 that motion had been granted. If it hasn't I have no
17 objection.

18 MR. CHAIRMAN: It was granted. It's because it got printed,
19 though, I called it just to see if anyone wanted to
20 address it. Thank you very much. Anything further on
21 this? That docket number has been continued.
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ITEM III

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 appeal from Ratcliff Gas Company, Incorporated on the
5 decision of the Gas and Oil Director's decision dated
6 October 25th, 1993. We'd ask the parties that wish to
7 address the Board in this matter to come forward at this
8 time.

9 MR. MULLINS: My name is Tom Mullins. I'm with the Street Law
10 Firm in Grundy, Virginia and I'm here representing
11 Ratcliff Gas Company.

12 MR. RATCLIFF: I'm Wyatt Ratcliff, president of Ratcliff Gas
13 Company.

14 MR. SWARTZ: Mark Swartz. I represent Buchanan Production
15 Company.

16 MR. CHAIRMAN: All right.

17 MR. MULLINS: If it please the Board, we're here today on an
18 application on a petition for appeal on the Director's
19 decision. If I can just a brief overview of the situa-
20 tion and some of the agreements that the parties have
21 reached contingent upon this Board approving our propos-
22 al. Some of the issues raised in the petition are
23 constitutional questions which I know this Board can't
24 address and I'm not asking the Board to address. The
25 other issue concerns the time limitation upon which we

1 can form a unit and get our application in to the Board.
2 I think Mr. Ratcliff is here willing to testify that he
3 just can't get it done within that period of time. We're
4 going to be asking the Board to give us an extension of
5 time for one year within which to get that unit formed,
6 get the application properly before the Board. The only
7 concern that the Board may have is, of course, it's been
8 permitted, is there any production coming from the well.
9 I have a letter here today from the State Corporation
10 Commission. As some of the Board members are probably
11 aware, this well has been in existence for over twenty
12 years. It was supplying house gas to many homes in the
13 area. The State Corporation Commission, of course, came
14 in as probably the Board is aware and had that distribu-
15 tion system closed down. The only gas that's being taken
16 from the well now with, I think, the approval of the
17 State Corporation Commission is for his personal use --
18 Wyatt Ratcliff's use. I've spoken with one of the
19 party's counsel who objected below to the issuance of the
20 permit, Tom Pruitt. I spoke to him yesterday evening.
21 He indicated to me that he would be faxing a letter to
22 the Board or to the Director. I have not seen the
23 letter. He indicated to me in the letter that he was not
24 objecting to the granting of the year extension. Mr.
25 Swartz and I have talked. I'll let him basically state

1 -- I don't want to put words in his mouth. I'll let him
2 state what his position is on that.

3 MR. SWARTZ: Buchanan Production has really never been opposed
4 to the permitting of this well and really has been
5 interested more in creating a unit and, if necessary,
6 pooling it as a condition of the permit. From my
7 conversations with Tom Mullins and I talked to Mr.
8 Ratcliff on occasions as well it's my understanding that
9 they intend to go forward and get a unit created and an
10 appropriate one. As the Board probably understands,
11 it's an expensive process for an individual or for a
12 small company. It's going to take them some time to do
13 that. The permit as originally issued -- frankly I don't
14 know what Mr. Pruitt's position was with regard to his
15 clients at that time, but Tom Fulmer's office did issue a
16 permit. The way in which it was issued was not object-
17 ionable to Buchanan Production and we found it an
18 acceptable way of dealing with the problem. The permit
19 that was issued by Mr. Fulmer's office on October 25th
20 had a 120 day time limitation which you've seen before
21 with Buchanan Production and OXY sometimes. Mr. Fulmer
22 has issued a permit to OXY or Buchanan Production or
23 others and indicated that he wanted a unit to be created
24 if necessary or a unit to be pooled if it was in the
25 Oakwood Field as a condition of issuing the permit. I

1 mean, we've seen this before. This is a fairly standard
2 response by Mr. Fulmer's office. Here the time limit was
3 120 days. As I read this, going back to October 25th and
4 forward, I gather that the 120 days will expire the end
5 of this month which is why Tom is here. Buchanan
6 Production and Consol, Inc. as operator have no objection
7 whatsoever to affording Mr. Ratcliff the time he needs to
8 do the title work and to get his ducks in order in terms
9 of creating an appropriate unit. I say that particularly
10 because the distribution system has apparently been shut
11 down and it's my understanding the only production
12 that's coming out of this well at this point is for Mr.
13 Ratcliff's personal house. Under the circumstances I
14 think we're in a status quo situation. No significant
15 amount of resource is being removed and I think that the
16 Board ought to favorably entertain Mr. Mullins' request
17 on behalf of his client, that they be given a significant
18 amount of time given their available resources to do the
19 work that needs to be done to create this unit and then
20 pool it.

21 MR. CHAIRMAN: Do you have anything further?

22 MR. MULLINS: The only thing, if the Board would like Mr.
23 Ratcliff to testify as to what I've just said that's
24 fine. If not, I'd like to make it as a motion from Mr.
25 Ratcliff to the Board to consider to take action on it.

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

2 MR. FULMER: Mr. Chairman, taken on the other hat as the

3 Division of Gas and Oil Office and the permitting

4 process, I would like the Board to clarify the fact that

5 the order also required that no production come from the

6 well. I understand that there is and Mr. Ratcliff is

7 using some of the gas for his house which is very

8 minimal. I understand. We're not very restrictive on

9 that, but I want to make sure that the Board is aware of

10 that and if the Board should do so -- to allow him to go

11 on and produce it for his house use I have no problem

12 with that as far as the Division. But I just want to

13 make that very clear to you, that that's put in the order

14 as with any standard order regarding these type of

15 permits being issued.

16 MR. EVANS: What you're saying then is the amendment will have

17 to include to allow the use of the gas for Mr. Ratcliff's

18 personal residence?

19 MR. FULMER: For his personal use. Since we're talking about

20 interest and interest bearing and involving pooling and

21 the payment of royalties and so forth I wanted the Board

22 to be very aware of that. But I also wanted to make it

23 very clear that the Division itself is not trying to be

24 hard on this subject. This is a standard procedure that

25 we use in issuing those types of permits.

1 MR. MULLINS: I guess just as a matter of history, most of you
2 are probably aware of -- well, some of you may not be --
3 this well was originally drilled by Island Creek Coal
4 Company back in the early 70's. And Mr. Ratcliff began
5 using the well probably within a couple of years after
6 that, 1972 or 1973, and it's been in continuous produc-
7 tion since that time. I don't think that allowing him to
8 use it for his personal use -- as I said, it has been
9 going on for over twenty years and, of course, there is,
10 as the Board is also aware, a certain court case pending
11 on it. It's going to prejudice anybody's rights. The
12 amount of gas is minimal. And if I didn't make that
13 clear I'd like to have that as an amendment to request to
14 the Board that he be allowed to do that.

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

16 MR. EVANS: You've ask for a year's extension?

17 MR. MULLINS: Yes, sir.

18 MR. EVANS: A year from what date?

19 MR. MULLINS: Today.

20 MR. EVANS: Okay.

21 MR. CHAIRMAN: Do you have a means of monitoring the amount of
22 gas that's coming from the well at the present time?

23 MR. RATCLIFF: That's going to be taken care of immediately.

24 MR. CHAIRMAN: So you will have a meter on the well?

25 MR. RATCLIFF: Yes, sir.

1 MR. CHAIRMAN: Will there be a record kept of the usage?
2 MR. RATCLIFF: Yes, sir.
3 MR. MCGLOTHLIN: And submitted to the Oil and Gas Inspector on
4 a monthly basis?
5 MR. RATCLIFF: The reports will be mailed to the Inspector.
6 MR. CHAIRMAN: I think in order to protect all interested
7 parties we'd have to have that. Anything further,
8 members of the Board?
9 MR. EVANS: I don't have anything further.
10 MR. CHAIRMAN: Do you have anything further, Mr. Swartz?
11 MR. SWARTZ: Other than to make it clear that I guess what
12 we're jointly asking you to do is to consider issuing an
13 order amending the permit that was issued just from a
14 procedural standpoint. Amending the permit that was
15 issued by Mr. Fulmer on October 25th to do three things;
16 One, afford the permit applicant one year from today's
17 date within which to comply with the creation of the
18 unit compulsory pooling requirements. Two, and I think
19 that it's prudent that he be required to install a meter
20 and tender at least monthly records or reports to Mr.
21 Fulmer so we know what's happening. And thirdly,
22 limiting the production or permitting some limit of
23 production to the extent that he uses the gas at his
24 home. I think those are the three amendments to the
25 permit that was issued that Tom Mullins and I are asking

1 you to accomplish.

2 MS. RIGGS: So that we can identify the residence in the
3 order, what is an address or a reference to that proper-
4 ty?

5 MR. MULLINS: The Wyatt and Grace Ratcliff residence.

6 MS. RIGGS: Is there a street address?

7 MR. MULLINS: It's just up Garden Creek.

8 MR. CHAIRMAN: Are there any others present that wish to
9 address the Board in this matter? (Pause.) The record
10 will show there are none. What's your pleasure?

11 MR. MCGLOTHLIN: I move that we accept the petition as amended

12 MS. PRESLEY: Mr. Chairman, I second that.

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

14 If not, all in favor signify by saying yes. (ALL
15 AFFIRM.) Opposed say no. (NONE.) We have a unanimous
16 approval. We'll take a five minute break.

17 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:
18
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ITEM IV

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition from
4 Buchanan Production Company for the pooling of the
5 drilling unit P-4, Docket number VGOB-94/01/18-0423.
6 We'd ask the parties that wish to address the Board to
7 come forward at this time. (Pause.) Are there any other
8 parties that wish to address the Board in this matter?
9 The record will show there are none. You may proceed.

10 MR. SWARTZ: Mark Swartz. I'm appearing there this morning on
11 behalf of Buchanan Production Company. This is a pooling
12 application with regard to unit P-4. P-4 was previously
13 pooled under VGOB docket number 92/09/15-0258 and a
14 pooling order was entered as a result of that application
15 on December 14th, 1992. Before we start with Les'
16 testimony I thought I would give you an overview of why
17 we're back here on this unit. There are four reasons.
18 When the land people at Consol were going through this
19 application it was determined that a revised plat needed
20 to be submitted. So the plat that was filed with the
21 Board that I'm sure you have in your paper work with the
22 original application is a revised plat. It is different
23 than the one that was originally filed and there are
24 additional tracts. You can tell which tracts are new by
25 looking at the new plat which is in the -- I don't think

1 that's in the black book. I think the new plat is in the
2 application that was filed. They have like a point. So
3 it would be -- well, to give you one that actually
4 exists, there's an 11.1, for example. There's a 7.1. So
5 any tract that is a number with a point and then either a
6 one, two or three after it -- for example, there's an 8.3
7 -- those are the new tracts. So you can pretty easily
8 tell what revisions have been made to the plat by looking
9 for that.

10 MR. CHAIRMAN: Mr. Swartz, just for clarification, you're
11 referring specifically to Exhibit A?

12 MR. SWARTZ: Yes.

13 MR. CHAIRMAN: Okay. Thank you.

14 MR. SWARTZ: And obviously when additional tracts show up the
15 plat needed to be corrected and we have filed that
16 corrected or properly revised plat with you as part of
17 the application. And then there were interests in claims
18 that would be affected so that certain divisions of
19 interest changes occurred as a result of the revised
20 plat. If the acreage in the unit changes there will be
21 changes in division of interests. So that has resulted
22 in changes in acreage and interests which are reflected
23 in amended Exhibit B. Now, there are two Exhibit Bs.
24 One came with the application. The amended correct
25 Exhibit B is in the black packet of exhibits that you got

4

1 today. As a result of the revisions of the plat there
2 were changes in Exhibit B. We have not named as respond-
3 ents to this application which essentially amends the
4 prior order in some respects and adds additional respond-
5 ents. We have not named as respondents or mailed to
6 anyone who has obviously leased -- we don't do that -- or
7 who was previously pooled whose interest is not being
8 affected. I mean, there were some tracts that there
9 weren't any changes. If there's not a point something
10 associated with the tract there's no change there. Their
11 acreage remain the same. Their interests remain the
12 same. So we haven't re-pooled people whose interests
13 have not been affected by this application. The second
14 reason that we're here is to identify, notice and pool
15 the Emiline Anderson heirs who were listed as unknown in
16 the first application. Now, that group interest for that
17 estate was pooled but at that point we were not able to
18 identify those people. Continuing efforts for due
19 diligence to identify these people occurred and we have
20 been able to identify them. The third reason is to pool
21 the interests of the Yates family, Y-A-T-E-S, and the
22 M.B. and C.A. Elswick families. Those are new people
23 that have been added. And then the last thing, the
24 fourth reason that we're here, is to provide for elect-
25 ions for two minor children and one adult who is in a

1 nursing home and probably ought to have a guardian
2 appointed. That's the fourth reason why we're here with
3 regard to this. We have been through the election issue
4 with the Board before. The two pieces of paper that I
5 gave you that are not in the -- just to kind of give you
6 an indication of where we're headed with that -- that are
7 not in the binder of exhibits are two pages from an order
8 that was entered previously with regard to another unit
9 that was pooled by this Board regarding Matthew Deskins.
10 As some of you may recall that we ultimately kind of
11 agreed on a procedure for the appointment of a guardian
12 as is contemplated by 45.1-361.21.E and to allow the
13 guardian to exercise the elections. What I am ultimately
14 asking here is that with regard to the two minor children
15 who are Sarah Mullins -- she is in tract 2-2 which is at
16 Page 6 in Exhibit B -- Carrie Anderson is also a minor
17 child. She is in tract 1 identified as AA on Page 3.
18 The adult who we are concerned about here in terms of
19 getting a guardian appointed for her is Georgia Elswick
20 Blankenship. She's in a nursing home or at least that's
21 what we understand. She is in -- I don't have a note of
22 that tract off hand, but I may have it elsewhere as we go
23 through this today. Those are the four reasons basically
24 why we're here. A revised plat, deal with the Emiline
25 Anderson heirs, the Yates family, the M.B. and C.A.

1 Elswick heirs and then provide for these three people
2 who need guardians so that they can have a mechanism to
3 elect. We're going to ask you to just simply file the
4 procedure that was established and followed in the
5 Deskins case which ultimately resolved in the appointment
6 of a guardian and the guardian signing a lease. With
7 that, unless there are any questions as to the introduc-
8 tion, I'd like to start with Les' testimony.

9 COURT REPORTER: (Swears witness.)

10
11 LESLIE K. ARRINGTON

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

14
15 DIRECT EXAMINATION

16
17 BY MR. SWARTZ:

18 Q. Would you state your name for us?

19 A. Leslie K. Arrington.

20 Q. Who do you work for?

21 A. Consol.

22 Q. And your title with them, Les?

23 A. Permit specialist.

24 Q. Did you prepare the notices of hearing that have been
25 filed and mailed in this matter and the application?

1 A. Yes, I did.
2 Q. And you've signed those documents?
3 A. Yes, I have.
4 Q. Was there more than one notice of hearing sent out?
5 A. Yes, there was.
6 Q. Are they both in the black packet of exhibits?
7 A. Yes, as Exhibit 1 and 1-A.
8 Q. Why was there an additional notice of hearing?
9 A. We did not have listed correctly the M.B. Elswick heirs
10 and Bonnie Anderson.
11 Q. So that second notice which is in the exhibits went out
12 to deal with those two issues?
13 A. Yes, it did.
14 Q. Was that second notice also published?
15 A. Yes, it was.
16 Q. We'll get to that in a minute. Was it mailed to the
17 appropriate people?
18 A. Yes, it was.
19 Q. The applicant here is Buchanan Production Company, is
20 that correct?
21 A. Yes, it is.
22 Q. And Buchanan Production is a Virginia general partner-
23 ship?
24 A. Yes.
25 Q. And it's two partners are Appalachian Operators, Inc. and

1 Appalachian Methane, Inc. Both of these corporate
2 partners in Buchanan Production are wholly owned
3 indirect subsidiaries of Consol, Inc., is that true?
4 A. Yes.
5 Q. Is Buchanan Production Company authorized to do business
6 in Virginia?
7 A. Yes, they are.
8 Q. With regard to the designated operator, is the applicant
9 Buchanan Production Company requesting that Consol, Inc.
10 be designated unit operator by the Virginia Gas and Oil
11 Board?
12 A. Yes, they are.
13 Q. And Consol, Inc. is already the designated operator of
14 the existing unit that was previously pooled?
15 A. Yes.
16 Q. Consol, Inc. is a Delaware corporation authorized to do
17 business in the Commonwealth, registered with the DMME,
18 and has a blanket bond on file as required by law, is
19 that correct?
20 A. Yes.
21 Q. We have discussed this before with the Board and I think
22 there are some exhibits relevant to Buchanan Production's
23 delegation to Consol, a certain authority, that are in
24 the packet, is that correct?
25 A. Yes.

1 Q. What exhibit number would that be?
2 A. That's Exhibit #6. It has the professional management
3 committee and management resolution.
4 Q. And in effect, do those documents which are set forth as
5 Exhibit 6 -- are they evidence of the fact that Buchanan
6 Production has delegated to Consol, Inc. the authority to
7 explore, develop and maintain the property and assets of
8 Buchanan Production Company and then designated specific
9 people within Consol, Inc. to perform those duties?
10 A. Yes, it does.
11 Q. Have you listed all of the respondents, in other words,
12 the people whose interest are affected by this applica-
13 tion, in the two notices of hearing that were published
14 and mailed?
15 A. Yes.
16 Q. The respondents that we have listed their names in the
17 notice, are their addresses listed in the amended Exhibit
18 B which is Exhibit 5 in the bound volume of exhibits?
19 A. Yes, it is.
20 Q. So if you have addresses for the respondents their
21 addresses appear in Exhibit B?
22 A. Yes, they do.
23 Q. Do you wish to add any respondents today?
24 A. Yes. Carrie Anderson.
25 Q. Carrie Anderson was one of the minor children?

1 A. Yes, she was.
2 Q. When this matter was noticed who did we notice?
3 A. Her mother.
4 Q. Who is?
5 A. Margaret Farmer.
6 Q. Right. Do you wish to dismiss any respondents?
7 A. Yes, we do.
8 Q. Who would be the first one?
9 A. Dolly Staten. She was listed as number 75 on the notice
10 of hearing. She was one of the Emiline Anderson heirs
11 and we have acquired her interest.
12 Q. So her 263rds interest has been purchased by Buchanan
13 Production?
14 A. Yes, it has.
15 MR. CHAIRMAN: What was the name again?
16 MR. SWARTZ: It's Dolly Staten, S-T-A-T-E-N, and if you look
17 at the original notice of hearing she's number 75.
18 MR. FULMER: Page 44 of 49 in the application.
19 Q. (Mr. Swartz continues.) Any other dismissals?
20 A. Yes, there is. Some of the M.B. Elswick heirs which we
21 have taken a lease on. It was Patsy Deel.
22 Q. Why don't you spell the last name?
23 A. Okay. D-E-E-L. Juanita Waters. Donald Thayer.
24 Virginia Elswick. Ollie Stump. James Lee Elswick.
25 Q. And those are people that are listed as M.B. Elswick

1 heirs from whom Buchanan Production Company has obtained
2 a lease?

3 A. Yes, it is. We'd also like to have dismissed Bonnie
4 Anderson which was originally listed in the first
5 application, Exhibit B. We have later found out that she
6 was divorced before the death of her husband.

7 Q. Who was Cecil Anderson?

8 A. Which was Cecil Anderson. I'm sorry. Also we'd like to
9 have Albert Horne dismissed. He was incorrect. We
10 listed him in the first pooling, 0285 docket number. He
11 was incorrectly listed as an owner of oil and gas in that
12 unit.

13 Q. Subsequently you've determined that he does not?

14 A. He does not.

15 Q. Have you had conversations with Mr. Horne with regard to
16 that?

17 A. Yes, we have. I informed him of such and that letter
18 that I sent to him is at Exhibit 7.

19 Q. In the bound volume. Essentially is Exhibit 7 your
20 explanation in writing to Mr. Horne following a telephone
21 conversation with regard to the information that you had
22 acquired that he did not have an interest in this
23 particular unit?

24 A. Correct.

25 Q. But he does have interests in other units?

1 A. Yes, he does.

2 Q. For example?

3 A. 0-4.

4 Q. Since sending this January 6th letter to Mr. Horne has he
5 called you back or written to you or communicated in any
6 way that he disagrees with what you have told him?

7 A. No communication.

8 Q. You have submitted an affidavit of due diligence with the
9 original application, but I would nevertheless ask you if
10 Consol, Inc. has, in fact, under your direction and
11 control exercised due diligence to identify and locate
12 persons having record title to oil, gas and/or coal and
13 having identified those person exercised due diligence in
14 trying to locate them?

15 A. Correct. And we will continue to do so if there should
16 be the need.

17 MR. MCGLOTHLIN: Mr. Swartz, before you get further on I have
18 a question about Dolly Staten. She owns property in
19 tract -- or had an interest in tract 22 and I also see
20 her in tract 23?

21 THE WITNESS: The Emiline Anderson heirs had a one-ninth
22 interest in quite a number of tracts and we purchased her
23 entire interest in those tracts.

24 MR. MCGLOTHLIN: In all of them?

25 THE WITNESS: Uh-huh.

1 MR. McGLOTHLIN: Okay. I wanted to clarify that. Thank you.

2 Q. (Mr. Swartz continues.) With regard to notice require-
3 ments and publication requirements, Les, did you mail via
4 certified mail, return receipt requested as required by
5 Section 45.1-361.19 to all respondents listed in the two
6 notices of hearing for whom you had addresses?

7 A. Yes, we did.

8 Q. Have you submitted as part of the exhibits today the
9 return receipts and an analysis of that mailing?

10 A. Yes, we did.

11 Q. And by reference to Exhibit 2 one can immediately tell
12 the date of mailing and when the green card was received
13 back by Consol, whether it was refused, whether it was
14 returned without having been signed for?

15 A. Yes.

16 Q. So the mailing is tracked in that exhibit?

17 A. Yes, it is.

18 Q. And, in fact, copies of the cards that came back are
19 included?

20 A. Yes.

21 Q. And all cards are accounted for?

22 A. Yes, they are.

23 Q. What newspaper were the notices published in?

24 A. The notices were published in the Bluefield Daily
25 Telegraph, the first notice being published on December

1 27th, 1993. And the second notice was published on
2 January 20th, 1994.

3 Q. Have you filed certificates of both publications with Mr.
4 Fulmer's office?

5 A. I filed the original publication and then he should have
6 gotten one this week.

7 Q. Exhibit A to the application which would not be -- don't
8 look in here for Exhibit A. If you look at the original
9 application there's Exhibit A which is the plat map and
10 then A, Page 2, and just to indicate what we're seeking
11 to accomplish here in terms of interests -- down at the
12 bottom of Exhibit A, Page 2, is there an indication of
13 the interests from a total standpoint that is affected
14 by this application

15 A. A total standpoint. We're seeking to pool in this
16 application 0.8125 percent of the coal interest and
17 20.795893 percent of the oil and gas interest. That new
18 exhibit is -- Exhibit A, Page 2, is Exhibit 4 in the
19 black book.

20 Q. Oh, it is in the black book, too?

21 A. Yes.

22 Q. And there's also an indication of what was previously
23 pooled?

24 A. Yes, there is.

25 Q. And no coal interest pooled. So we're picking up a coal

1 interest?

2 A. Correct.

3 Q. And less of an oil and gas interest?

4 A. Correct.

5 Q. In terms of a recommendation to the Board regarding the
6 election options, one of which, of course, is always the
7 option to lease or the deem to have leased procedure,
8 could you tell the Board what terms Buchanan Production
9 and Consol, Inc. as its designated operator generally
10 offer to lease coalbed methane gas?

11 A. Yes. That's one dollar per acre rental and a one-eighth
12 royalty with a five year term.

13 Q. Is the rental payable on an annual basis but only until
14 production would commence?

15 A. Yes, it is.

16 Q. And after production commences do your standard leases
17 provide that the sole consideration would be the royalty?

18 A. Yes.

19 Q. Would you recommend those terms to the Board as something
20 they should adopt in dealing with the election and deemed
21 to have leased issues?

22 A. Yes.

23 Q. Have you, in fact, attempted to lease most if not all of
24 the acreage in these units?

25 A. Yes, we have.

1 Q. And have you been relatively successful? Give us some
2 idea of what you have under lease?

3 A. We have approximately 69 percent of the oil and gas and
4 99.1875 percent of the coal.

5 Q. To the extent that additional people -- for example,
6 we've dismissed some people who have leased very recent-
7 ly. To the extent that additional people would contact
8 your company with these terms that you've just discussed
9 be on the table and would you be happy to lease to them?

10 A. Yes, we would.

11 Q. This drilling unit is identified as unit P-4 in the
12 Oakwood Coalbed Gas Field II, correct?

13 A. Yes, it is.

14 Q. And it's basically in short hole production and in the
15 foreseeable future there will be active gob production?

16 A. Yes.

17 Q. Does Exhibit G, Page 1, have a dark outline around the
18 unit?

19 A. Yes, it does.

20 Q. And Exhibit G, Page 1, also shows the mine plan, does it
21 not?

22 A. Yes, it does.

23 Q. Basically this unit P-4 is affected by only one longwall
24 unit, correct?

25 A. Correct.

1 Q. Which panel is that?
2 A. That would be 1-Development West.
3 Q. And how many acres are in unit P-4?
4 A. It's an 80 acre unit.
5 Q. Are you seeking to pool, in effect, and coal seams below
6 the Tiller?
7 A. Yes, we are.
8 Q. Have you submitted an amended DWE or Exhibit C with this
9 application?
10 A. Yes, we have.
11 Q. Would that exhibit capture all allowable costs pertaining
12 to unit P-4?
13 A. Yes.
14 Q. Exhibit C, who prepared that exhibit?
15 A. I did.
16 Q. And did you sign it?
17 A. Yes, I did.
18 Q. When was it prepared?
19 A. December 16th, 1993.
20 Q. And that was within 60 days of the filing of the applica-
21 tion?
22 A. Yes, it was.
23 Q. The projected depth of the target formation -- well, the
24 target formation here would be the Pocahontas #3 seam,
25 correct?

1 A. Yes.

2 Q. And the depth of that target formation is?

3 A. 2,065.

4 Q. And the total depth of the well is?

5 A. 2,115.

6 Q. Slightly below the seam?

7 A. Yes.

8 Q. Now, Exhibit G, Page 2, is a listing of units affected by
9 this panel 1-Development West?

10 A. Yes, it is.

11 Q. Which, of course, also affects P-4. Have those numbers
12 changed since the first application and the first pooling
13 order?

14 A. No.

15 Q. They have remained the same. Exhibit G, Page 3, with
16 regard to that, it captures the cost allocated or
17 attributed to the units affecting the 1-Development
18 panel, correct?

19 A. Yes, it does.

20 Q. Since the first application have the cost estimated with
21 regard to P-4 changed?

22 A. Yes, it has.

23 Q. They're now indicated to be in the amount of \$187,171.30,
24 correct?

25 A. Correct.

1 Q. And that's the amount off the DWE?
2 A. Yes, it is.
3 Q. Were the costs as originally estimated with regard to
4 that unit \$280,075?
5 A. Yes, it was.
6 Q. Is one of the major differences between your current cost
7 estimate and what was originally estimated considerably
8 less money spent on title and acuity?
9 A. Yes, it was.
10 Q. And because your estimated costs have decreased by almost
11 \$100,000 the total costs to that unit needed to be
12 adjusted, did they not?
13 A. Yes, it was.
14 Q. And the total cost to all units affected by that panel
15 had to be corrected?
16 A. Yes.
17 Q. So Exhibit G, Page 3, is a new exhibit insofar as it
18 affects P-4?
19 A. Correct.
20 Q. And if you go down to 1-Development West the allocable
21 costs now, taking 10.75775 percent times the total of all
22 costs with regard to all units affected by that panel, is
23 now down to what number?
24 A. 98,779.
25 MR. SWARTZ: Now, there is also a change in format here from

1 what the Board may have been use to seeing from Buchanan
2 Production. If you all look at the amended Exhibit B
3 which is Exhibit 5 in the bound volume it looks pretty
4 similar to what you've seen in the past. It identifies
5 the respondents, identifies what interest it is, whether
6 they have an oil and gas interest, a coal interest, or in
7 some instances a fee interest to identify the acreage but
8 then we're using Exhibit B to include what use to be the
9 last part of Exhibit G which was -- we used the last few
10 pages of Exhibit G to report their undivided net interest
11 in the unit and then their undivided net interest in the
12 panel. So you've got one exhibit which reports all the
13 information with regard to the respondents. And in --

14 MS. RIGGS: To calculate their proportionate cost of the
15 estimated cost of completion you apply which column to
16 the 98,779.41?

17 MR. SWARTZ: You would apply the last column would be my
18 understanding. I was just going to get to that.

19 Q. (Mr. Swartz continues.) Les, if a person who is a
20 respondent in this unit were to receive a pooling order
21 from the Board and wanted to participate what would they
22 do to calculate the amount of the check that they should
23 tender to the operator?

24 A. The last column on the right.

25 Q. Which is titled?

- 1 A. Undivided net interest in 1-Development West. They would
2 simply multiply that percentage -- that decimal that they
3 have for their individual interest -- times 98,779.
- 4 Q. With regard to Exhibit C which is the amended DWE, is it
5 your opinion that that is a reasonable estimate with
6 regard to the money that has been spent and remains to be
7 spent with regard to that well?
- 8 A. Yes.
- 9 Q. With regard to the development of this unit and this
10 panel is it your opinion that the applicant's plan is a
11 reasonable plan to develop the coalbed methane resource
12 within and under the unit for the benefit of the owners
13 of the resource?
- 14 A. Yes, it is.
- 15 Q. Will the proposed well contribute to the protection of
16 correlative rights of the owners of the methane within
17 and under the unit and lessen the likelihood of both
18 physical waste and economic waste?
- 19 A. Yes.
- 20 Q. There are some miscellaneous matters I want to cover with
21 you in conclusion. We've talked about Mr. Horne and
22 we've requested that he be dismissed and your correspond-
23 ence is on file?
- 24 A. Correct.
- 25 Q. With regard to the three people who probably need to have

1 a guardian appointed -- let's just take them one at a
2 time. With regard to Sarah Mullins, who is her mother?
3 A. Sandra Turner.
4 Q. Tell the Board what contact you've had with Sandra Turner
5 and where you all stand with her and with her daughter's
6 interest?
7 A. She has signed and returned a lease which was not valid.
8 She is participating in a process to have herself
9 appointed as a guardian. Once that process is taken care
10 of then she plans on executing a lease.
11 Q. So she signed a lease on behalf of her daughter before
12 she was appointed as a guardian?
13 A. Yes, she did.
14 Q. Now do you have counsel that she's cooperating with who's
15 preparing a petition to have Sandra, the mother, appoint-
16 ed and to allow her to execute a valid lease?
17 A. Yes, we do.
18 Q. With regard to Carrie Anderson, who are her parents?
19 A. We are in contact with them are awaiting their decision
20 as to whether they want to pursue the same process as
21 Sarah Mullins.
22 Q. And her parents are Mr. and Mrs. Farmer?
23 A. Yes.
24 Q. Margaret Farmer?
25 A. Margaret Farmer, yes, I'm sorry.

1 Q. Does Mr. Farmer work for a coal company?
2 A. Yes, he does.
3 Q. And your lawyer has been in contact with him?
4 A. Yes.
5 Q. Has he indicated one way or the other whether or not they
6 would be interested in leasing?
7 A. Yes, he has.
8 Q. But you're still waiting --
9 A. We're still waiting on it.
10 Q. Where is Georgia Elswick Blankenship?
11 A. She's in a nursing home and we're in the process of
12 approaching relatives to have them appointed as a
13 guardian for her.
14 Q. Have some of her relatives signed leases?
15 A. Yes, they have.
16 Q. Assuming you can find one or more relatives who would be
17 willing to serve as guardian would you anticipate
18 following the same procedure that we have followed in the
19 past with Matthew Deskins, for example, and anticipate
20 following with Sarah Mullins?
21 A. Yes.
22 Q. And if not, do you understand that there is a procedure
23 where an oil and gas operator could petition the Court
24 absent cooperation to have a guardian appointed?
25 A. Yes, we do.

1 Q. Would you request that the Board in pooling this unit
2 utilize the option four which was used in the Deskins
3 situation -- frankly it was used, I think, in three units
4 that Matthew was in -- as a mechanism to fairly address
5 the election rights of the two minor children here and of
6 the adult?

7 A. Yes, we would.

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

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

10 MR. MCGLOTHLIN: Mr. Arrington, the lady in the nursing home,
11 why would she need a guardian?

12 THE WITNESS: She is not competent. She's been in the nursing
13 home for several years.

14 MR. MCGLOTHLIN: Non competent by whose standards?

15 MR. SWARTZ: Well, let's put it this way. The land people who
16 have -- I don't want to call someone competent or not
17 competent. I don't think that's our function. The land
18 people who have been tracking these folks down feel very
19 uncomfortable trying to obtain a lease from this woman
20 and feel that it might not ultimately be valid. I think
21 it is prudent under those circumstances to let a court
22 determine whether or not -- she obviously could object to
23 this. But let a court determine whether or not she needs
24 assistance in managing her affairs. You occasionally
25 come across people that you are very concerned that you

1 may obtain their signature on a document but there is no
2 capacity or ability to understand what's going on. And
3 that's the concern here. We are not saying that we know
4 one way or the other whether or not she has the capacity
5 to enter into a contract, but we have significant
6 reservations and feel that it needs to be addressed
7 appropriately.

8 MR. CHAIRMAN: Other questions?

9 MR. EVANS: I have a question. Mr. Swartz, was this original
10 pooling only under Oakwood I or was it Oakwood I and II?

11 MR. SWARTZ: It was Oakwood II. It was pooled as a short hole
12 active gob unit in September of last year.

13 MR. CHAIRMAN: The election options would then only go to
14 those affected parties as you mentioned here today -- the
15 changes in the affected parties?

16 MR. SWARTZ: Yeah.

17 MR. EVANS: The original elections will stand --

18 MR. SWARTZ: Right. The 9 point one, two and three options of
19 the standard order which we see from the AG and the Board
20 would be in here and apply to everyone except -- and I
21 think we probably would need to do what we did before and
22 let that 9.4 -- the option four example that I gave you
23 this morning. We probably need to say election rights of
24 minor children and name the two of them and of Georgia
25 Elswick as well so that the other people know that it

1 doesn't apply to them and these folks know that this
2 paragraph is specifically tailored to their situation.
3 MR. MCGLOTHLIN: When you change the acreage to the individu-
4 als somebody lost some and somebody gained some?
5 MR. SWARTZ: Uh-huh.
6 MR. MCGLOTHLIN: The people cut off, will they be allowed to
7 have an election at their new rate?
8 MR. SWARTZ: Yes. Everyone whose -- there are respondents
9 that we've named in this application who were previously
10 named as respondents and pooled. The reason they have
11 been named is their interests changed. So they are being
12 re-pooled. So every respondent that we haven't dismissed
13 is going to a copy of the order and have a new election
14 option. I mean, you need to do that.
15 MR. MCGLOTHLIN: Also to clarify, the total DWE or whatever
16 we're calling it now a days is 98,779.41?
17 MR. SWARTZ: No.
18 MR. ARRINGTON: No.
19 MR. SWARTZ: The total DWE is the 187,000. But when you put
20 the total costs with regard to all the units, Kevin, I
21 think you come up with about 916,000. Take 10 percent of
22 that which is the --
23 MR. MCGLOTHLIN: Is this an existing VVH or a new hole?
24 MR. ARRINGTON: A new well.
25 MR. CHAIRMAN: Any of the parties that were named in the

1 original application whose interests may have changed, do
2 they need to be renamed?

3 MR. SWARTZ: I was just explaining to Kevin that they -- maybe
4 I'll ask Les this rather than tell you. I'll have him
5 testify.

6 Q. (Mr. Swartz continues.) Les, did you name as a respond-
7 ent -- and this would be in the two notices of hearing --
8 name as respondents all people who may previously been
9 pooled by the previous order but whose interests changed?

10 A. Yes, we did.

11 Q. And is it your expectation having done that that even
12 though these respondents who were previously pooled have
13 gone through one election option process that they would
14 be afforded yet another election option now that their
15 interest has changed under this new pooling order?

16 A. Yes, we do.

17 Q. Is it true that even when peoples interests increase we
18 name them as respondents and don't assume they'll be
19 happy?

20 A. Yes.

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

22 (Witness stands aside.)

23 MR. CHAIRMAN: Do you have anything further?

24 MR. SWARTZ: No.

25 MR. EVANS: I move we accept the petition as filed.

1 MR. CHAIRMAN: A motion to approve.

2 MR. HARRIS: Second.

3 MR. CHAIRMAN: A motion and a second. Any further

4 discussion? If not, all in favor signify by saying yes.

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

6 approval. Thank you.

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3 ITEM VI

4 MR. CHAIRMAN: The next item on the agenda is a petition for a
5 well location exception from Equitable Resources Explora-
6 tion for V-2373. We'd ask the parties that wish to
7 address the Board in this matter to come forward at this
8 time. Before I call the docket number I believe that you
9 requested to go with Item VII, is that correct?

10 MR. KAISER: That's correct, Mr. Chairman. We'd like to
11 switch -- with your permission switch the order of Items
12 VII and Item V.

13 MR. CHAIRMAN: Okay. I'll go ahead and call Item VII, a
14 petition for pooling of drilling unit V-2373, Docket
15 number VGOB-94/01/18-0434 continued from January. This
16 is Item VII on today's agenda. I'd ask the parties to
17 identify themselves, please.

18 MR. KAISER: Jim Kaiser representing Equitable Resources
19 Exploration. Our witnesses in this particular matter
20 will be Mr. J.W. Griffith and Mr. Bob Dahlin. I'd ask
21 that the witnesses be sworn at this time.

22 COURT REPORTER: (Swears witnesses.)

23 MR. CHAIRMAN: Are there any other parties that wish to
24 address the Board in this matter? The record will show
25 that there are none. You may proceed.

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JAMES W. GRIFFITH

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

DIRECT EXAMINATION

BY MR. KAISER:

Q. State your name for the record, please?

A. James W. Griffith.

Q. And you're employed by whom and in what capacity?

A. Equitable Resources Exploration as a land man.

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

A. Yes, they do.

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

A. That's correct.

MR. KAISER: At this time we'd move that Mr. Griffith be accepted as an expert witness.

MR. CHAIRMAN: All right.

Q. (Mr. Kaiser continues.) Are you familiar with Equitable's application for the establishment of a drilling unit in the pooling order for EREX well number V-2373

1 dated December 20th, 1993?

2 A. Yes, I am.

3 Q. Has EREX applied for a permit and is a permit now pending

4 before the DMME?

5 A. That's correct.

6 Q. When was that permit dated?

7 A. January 10th, 1994.

8 Q. Is Equitable seeking to force pool the drilling rights

9 underlying the drilling and spacing unit as depicted in

10 Exhibit A of the application?

11 A. Yes, they are.

12 Q. Does Equitable own drilling rights in units involved

13 here?

14 A. Yes, they do.

15 Q. Does the proposed unit depicted in Exhibit A include all

16 acreage within 2,640 feet, that is a 1,320 foot radius of

17 proposed well V-2373?

18 A. Yes.

19 Q. What is the interest of Equitable in the unit?

20 A. The interest is 97.94 percent.

21 Q. Are you familiar with the ownership of drilling rights of

22 parties other than Equitable underlying this unit?

23 A. Yes, I am.

24 Q. And what is that interest?

25 A. 2.0594 percent.

1 Q. Are all unleased parties set out at amended Exhibit B?
2 A. Yes, they are.
3 Q. Prior to filing the application were efforts made to
4 contact each of the respondents and an attempt made to
5 work out an agreement regarding the development of units
6 involved?
7 A. Yes, they were.
8 Q. Subsequent to the filing of the application have you
9 continued to attempt to reach an agreement with respond-
10 ents listed at Exhibit B?
11 A. Yes, we have.
12 Q. As a result of these efforts have you acquired other
13 leases from any of these respondents listed at Exhibit B
14 as unleased owners?
15 A. Yes, we have.
16 Q. Would you please submit a revised Exhibit B to the Board
17 at this time?
18 A. Yes, sir. (Pause.)
19 Q. Mr. Griffith, would you indicate for the Board the
20 additional leases that have been taken since the time of
21 the application, that is the changes that are reflected
22 in the revised Exhibit B?
23 A. Yes. On Page 2, Ida Buchanan and Robert Edward Buchanan
24 and Kristi Buchanan at the very bottom of Page 2. On
25 Page 3 at the top, Ester Marie Buchanan, Roberta Eugena

1 Buchanan and at the bottom Ida Buchanan. On Page 4 at
2 the top, Robert Edward Buchanan and Kristi Buchanan,
3 Ester Marie Buchanan, Roberta Eugena Buchanan. That's
4 it.

5 MR. KAISER: Mr. Chairman, was everybody able to get those
6 changes?

7 MR. CHAIRMAN: I think so.

8 Q. (Mr. Kaiser continues.) Mr. Griffith, were any efforts
9 made to determine if the individual respondents were
10 living or deceased or their whereabouts and if deceased
11 were efforts made to determine the names and addresses
12 and whereabouts of successors to any deceased individual
13 respondents?

14 A. Yes.

15 Q. Were reasonable and diligent efforts made and sources
16 checked to identify and locate these unknown heirs, to
17 include primary sources such as deed records, probate
18 records, assessors records, treasurers records and
19 secondary sources such as telephone directories, city
20 directories, family and friends?

21 A. Yes, there were.

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

24 A. Yes.

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

1 application the last known addresses for the respondents?

2 A. Yes.

3 Q. With the exception of those parties which you are here by
4 dismissing from this proceeding are you requesting this
5 Board to force pool all other unleased interests listed
6 at Exhibit B?

7 A. Yes, we are.

8 Q. Does Equitable seek to force pool drilling rights of each
9 individual respondent if living and if deceased the
10 unknown successor or successors to any deceased individ-
11 ual respondent?

12 A. Yes.

13 Q. Is Equitable seeking to force pool rights of the person
14 designated as trustee if acting in the capacity of
15 trustee and if not acting in such capacity is Equitable
16 seeking to force pool the drilling rights of the success-
17 or of such trustee?

18 A. Yes.

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

21 A. Yes, I am.

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

23 A. A five dollar bonus, five year primary term with a one-
24 eighth royalty.

25 Q. Did you gain your familiarity by acquiring oil and gas

1 leases and other agreements involving the transfer of
2 drilling rights in units involved here and in the
3 surrounding area?

4 A. Yes.

5 Q. In your opinion do the terms you've testified to repre-
6 sent the fair market value of and a fair and reasonable
7 compensation to be paid for drilling rights within this
8 unit?

9 A. Yes, they do.

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

1 interest of a carried operator of a leased tract or
2 portion thereof or B) 200 percent of the share of the
3 costs allocable to the interest of the carried operator
4 of an unleased tract or portion thereof?
5 A. Yes.
6 Q. Do you recommend that the Board's order provide that
7 elections by a respondent be in writing and sent to the
8 applicant at Equitable Resources Exploration, P.O. Box
9 1983, Kingsport, Tennessee, 37662-1983, attention Dennis
10 R. Baker, Regulatory?
11 A. Yes.
12 Q. Should this be the address for all communications with
13 the applicants concerning the forced pooling order?
14 A. Yes, it should.
15 Q. Do you recommend the force pooling order provide that if
16 no written election is properly made by a respondent then
17 such respondent shall be deemed to have elected to cash
18 royalty option in lieu of participation?
19 A. Yes.
20 Q. Should the unleased respondents be given thirty days from
21 the date of the order to file a written election?
22 A. Yes.
23 Q. If an unleased respondent elects to participate should
24 that respondent be given 45 days to pay applicant for
25 respondent's proportionate share of well costs?

1 A. Yes.

2 Q. Does the applicant expect the party electing to partici-
3 pate to pay in advance that party's share of completed
4 well costs?

5 A. Yes.

6 Q. Should the applicant be allowed 60 days following the
7 recordation date of the order and thereafter annually on
8 that date until production is achieved to pay or tender
9 any cash bonus becoming due under the forced pooling
10 order?

11 A. Yes.

12 Q. Do you recommend the force pooling order provide that if
13 a respondent elects to participate but fails to pay
14 respondent's proportionate share of well costs satisfact-
15 ory to applicant for payment of well costs then respond-
16 ent's election to participate shall be treated as
17 having been withdrawn and void and such respondent shall
18 be treated just as if no initial election had been filed
19 under the force pooling order?

20 A. Yes.

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

made satisfactory arrangements for the payment of well costs?

A. Yes.

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

A. Yes, I do.

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

A. Equitable Resources Exploration.

MR. KAISER: That's all the questions I have for this witness,
Mr. Chairman.

MR. CHAIRMAN: Questions, members of the Board?

(Witness stands aside.)

MR. CHAIRMAN: Call your next witness.

MR. KAISER: Our next witness will be Mr. Dahlin. I believe he's been sworn.

1 ROBERT A. DAHLIN, II

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

5 DIRECT EXAMINATION
6

7 BY MR. KAISER:

8 Q. State your full name, please, sir.

9 A. Robert A. Dahlin, II.

10 Q. And you're employed by whom and in what capacity?

11 A. I'm employed by EREX as an operations specialist.

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

15 A. They have.

16 MR. KAISER: I ask that Mr. Dahlin be accepted as an expert
17 witness at this time.

18 MR. CHAIRMAN: Without objection.

19 Q. (Mr. Kaiser continues.) Do your responsibilities include
20 the land involved here and in the surrounding area?

21 A. Yes, they do.

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

25 A. Yes, I am.

- 1 Q. What is the total depth of the proposed initial well
2 under that applicant's plan of development?
- 3 A. 1,250 feet.
- 4 Q. Is that depth consistent with the well work permit to
5 include the formations with the well work permit that's
6 now before the DMME?
- 7 A. That's correct.
- 8 Q. Would you list those formations?
- 9 A. Those are the Devonian Shells, Burea, Weir, Big Lime,
10 Raven Cliff, Maxon, Cleveland Shells and Sunberry Shells.
- 11 Q. Will this be sufficient to penetrate and test the common
12 sources of supply in the subject formations?
- 13 A. Yes, it will.
- 14 Q. Is the applicant requesting the force pooling of conven-
15 tional gas reserves not only to include the designated
16 formations but any other formations excluding coal
17 formations which may be between those formations de-
18 signated from the surface to the total depth drilled?
- 19 A. Yes.
- 20 Q. What are the estimated reserves of this unit?
- 21 A. 500 million cubic feet.
- 22 Q. Are you familiar with the well cost for the proposed
23 initial unit well under applicant's plan of development?
- 24 A. I am.
- 25 Q. Has an AFE been prepared, reviewed, signed and submitted

1 to the Board?

2 A. It has.

3 Q. Was the AFE prepared by an engineering department
4 knowledgeable in the preparation of AFEs and knowledge-
5 able in regard to well costs in this area?

6 A. It was.

7 Q. Does this AFE represent a reasonable estimate of the well
8 cost for the proposed unit well under applicant's plan of
9 development?

10 A. Yes, it does.

11 Q. What are the dry hole costs?

12 A. Dry hole costs are \$140,650.

13 Q. And the completed well cost?

14 A. \$258,150.

15 Q. Do these costs anticipate a multiple completion?

16 A. Yes, it does.

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

18 A. Yes, it does.

19 Q. Mr. Dahlin, in your professional opinion will the
20 granting of the application be in the best interest of
21 conservation, prevention of waste and protection of
22 correlative rights?

23 A. Yes, sir, it will.

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

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

2 MS. RIGGS: I thought I heard you say that in the event one
3 elects to participate -- what was the time frame you gave
4 them for exercising elections?

5 MR. CHAIRMAN: 60 days.

6 MS. RIGGS: It differs from what our standard order is which
7 is why I'm asking.

8 MR. KAISER: 45 days. If the unleased respondent elects to
9 participate should that respondent be given 45 days to
10 pay their proportionate share. Is that not in accordance
11 with the statute?

12 MS. RIGGS: I think the way the standard order reads is a 30
13 day -- are you seeking something different than what the
14 Board's standard order reads is what I'm asking?

15 MR. KAISER: No, we're not.

16 MS. RIGGS: Which is a 30 day period. I heard a reference to
17 an annual period, I think, that they had to pay within
18 so many days and then annually?

19 MR. KAISER: The question -- if what we've asked is not
20 consistent with the standard Board order then I would
21 like to amend the question to reflect to be in accordance
22 with the standard Board order. The question we asked was
23 whether or not if an unleased respondent elects to
24 participate should that respondent be given 45 days to
25 pay the applicant for the respondent's proportionate

1 share of well costs. In other words, come up with their
2 share of the cost in electing to participate. And then
3 the next question is does applicant except the party
4 electing to participate to pay in advance. The answer to
5 that is yes. And then the next question, which I think
6 you're referring to, should the applicant be allowed 60
7 days following the recording date of the order and
8 thereafter annually on that date until production is
9 achieved to pay or tender any cash bonus becoming due
10 under the order.

11 MS. RIGGS: Oh, tender the cash bonus.

12 MR. KAISER: Right.

13 MS. RIGGS: Okay.

14 MR. CHAIRMAN: Any other questions?

15 (Witness stands aside.)

16 MR. CHAIRMAN: Call your next witness.

17 MR. KAISER: I have no further witnesses.

18 MR. CHAIRMAN: Do you have anything further?

19 MR. KAISER: No, not at this time.

20 MR. EVANS: I have a question. What's the distance to V-2707?

21 MR. DAHLIN: This well is also on the (Inaudible.) bearings.

22 It's not a legal location currently.

23 MR. EVANS: This is not a legal location?

24 MR. DAHLIN: That's correct.

25 MR. CHAIRMAN: That's why they're coming back to Item V on

1 the agenda and asking for a location exception for the
2 same well.

3 MR. DAHLIN: Right.

4 MR. EVANS: Just as a matter of my own personal information,
5 why would you pool something prior to having a legal
6 location? Why not get a legal location first and then
7 pool it afterwards so that you don't change anything?
8 Suppose for some reason somebody would object to -- it
9 seems to me to be putting the cart before the horse as
10 far as --

11 MR. KAISER: We wanted to force pool the unleased interests
12 before we sought the variance.

13 MR. EVANS: I understand why you would want to do that, but if
14 the variance is not granted and you move this well that
15 kind of negates that forced pooling order.

16 MR. KAISER: As Mr. Dahlin is stating, currently we don't
17 have the right to drill it. So --

18 MR. DAHLIN: It's kind of wash either way. If we don't
19 receive the rights to drill the well we can't drill it
20 either. So --

21 MR. EVANS: It's just that in this case it may not matter, but
22 as a -- just for my own gratification and notification I
23 just don't understand why you wouldn't have a location
24 exception first to make sure that the area you're talking
25 about doesn't change and negate --

1 MR. KAISER: In other words, it's to keep from having to come
2 back and forth to pool it again.

3 MR. EVANS: Uh-huh. And do all of your homework again because
4 the location's changed.

5 MR. KAISER: I think probably in this case --

6 MR. EVANS: I don't know what the upshot of it is. Like I
7 said, in this case it may not matter that much. But I
8 don't want to end up feeling pressured because a forced
9 pooling order has already been issued. I don't want to
10 make a lot of --

11 MR. DAHLIN: In this particular situation, as you'll see in
12 the subsequent testimony, if we can't drill it right here
13 we can't drill it. So it really didn't make any differ-
14 ence to us. I mean, if we don't get the force pooling at
15 this point and you don't give us the variance -- either
16 one of them is going to prevent from drilling this well.

17 MR. EVANS: Like I said, in this instance it may not matter.

18 MR. DAHLIN: Right.

19 MR. EVANS: But in some other instances it may where you have
20 -- you can do it however you want to, put it up on the
21 docket and bring it before us and whatever else and, like
22 I said, in this case it probably doesn't matter that
23 much. But in other cases it would matter to me. I don't
24 want to end up wasting the Board's time on something that
25 -- because of another --

1 MR. KAISER: And in the future we'll certainly take that into
2 consideration.

3 MR. EVANS: Like I said, in this case it may not be material
4 since it doesn't appear that we have anyone that's here
5 to object or whatever else. And you may have real good
6 reasons for this location if you can't drill it anywhere
7 else.

8 MR. KAISER: I think probably in my experience this may be the
9 first time where we've sought both a forced pooling and a
10 variance on the same well on the same day.

11 MR. CHAIRMAN: Anything further?

12 MR. MCGLOTHLIN: I move we accept the petition as filed.

13 MR. HARRIS: Second.

14 MR. CHAIRMAN: A motion to approve, a second. Further
15 discussion? If not, all in favor signify by saying yes.
16 (ALL AFFIRM.) Opposed say no. (Evans votes no.)
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3 ITEM V

4 MR. CHAIRMAN: The next item on the agenda is Item V on the
5 Board's docket, a petition for a well location exception
6 from Equitable Resources Exploration for V-2373. This is
7 docket number VGOB-94/01/18-0432. We'd ask the parties
8 that wish to address the Board in this matter to come
9 forward at this time.

10 MR. KAISER: Jim Kaiser on behalf of Equitable Resources
11 Exploration. Mr. Chairman and members of the Board, our
12 witnesses in this matter will be Mr. Don Hall and again
13 Mr. Bob Dahlin. Mr. Hall has not been previously sworn.
14 So I'll ask that he be sworn at this time.

15 COURT REPORTER: (Swears witness.)

16 MR. CHAIRMAN: We'll just remind Mr. Dahlin that he's
17 previously been sworn and accepted as an expert witness.

18 DON C. HALL

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

21
22 DIRECT EXAMINATION

23
24 BY MR. KAISER:

25 Q. Would you state your full name for the Board, please?

1 A. Don C. Hall.

2 Q. You are employed by whom and in what capacity?

3 A. Equitable Resources Exploration as a district land man.

4 Q. Have you qualifications as an expert witness previously

5 been accepted by the Board?

6 A. Yes, sir.

7 MR. KAISER: Mr. Chairman, I'd like to offer Mr. Hall as an

8 expert witness at this time.

9 MR. CHAIRMAN: Without objection.

10 Q. (Mr. Kaiser continues.) Do your responsibilities include

11 the lands involved here and in the surrounding area?

12 A. Yes, they do.

13 Q. Are you familiar with the application for location

14 exception to well V-2373 and the relief requested?

15 A. Yes, sir.

16 Q. Have all interested parties been notified as required by

17 Section 4B of the Virginia Gas and Oil Board regulations?

18 A. Yes. Diane Davis has received copies of the certified

19 mailings by a letter dated December 20th, 1993.

20 Q. Does the mental entry sheet attached to the application

21 submitted to the Board accurately depict the ownership of

22 the oil and gas underlying well V-2373?

23 A. Yes.

24 Q. Are all these tracts covered by an oil and gas lease

25 and/or have all these tracts been force pooled and does

1 EREX have a working interest covering these tracts?

2 A. Yes.

3 Q. Does EREX operate or have an existing permit to operate
4 the reciprocal wells, namely V-2707?

5 A. Yes.

6 Q. Mr. Hall, have you personally conducted a physical
7 inspection of the proposed location that is the subject
8 of this request for a location exception?

9 A. Yes, I have.

10 MR. KAISER: At this time, Mr. Chairman, I'd like to move the
11 introduction of Exhibits A and B which will assist Mr.
12 Hall in his testimony as to the reasons we're requesting
13 this. Exhibit A is a rather big exhibit and probably
14 rather than giving you each a copy I may just give three
15 or four copies and people can look on them together, if
16 that's okay?

17 MR. CHAIRMAN: That's fine with me. If anyone wants an
18 individual copy so stipulate. (Pause.)

19 Q. (Mr. Kaiser continues.) Mr. Hall, based upon your
20 personal physical inspection of the site and the exhibits
21 that have been introduced to the Board, that being
22 Exhibit A and Exhibit B, would you summarize for the
23 Board the reasons that EREX is seeking to drill well V-
24 2373 at the requested location?

25 A. As you can see on Exhibit A, our closest reciprocal well

1 is 249952 which is 2707. In Exhibit B the area that's
2 outlined in yellow is the area in which a legal location
3 could be achieved. The red area to the north of that
4 exhibit, as you see, is Route 58 which goes between
5 Coeburn and St. Paul. That area outlined in yellow
6 depicting the areas in which a legal location could be
7 achieved, if you notice from the top of that ridge north
8 toward Route 58, about two-thirds of that area high-
9 lighted in yellow lies north of the ridge. All of that
10 area north of the ridge is very, very steep and any
11 disturbance or anything that might happen on top of that
12 ridge could very easily end up on Route 58. So we
13 consider that a safety problem from the standpoint of
14 drilling on top of the ridge or on that side of the
15 ridge. If you'll notice, the contours on this 400 topo
16 are 10 foot intervals and a large portion of that block -
17 - that's so steep that they were not able to even get the
18 intermediate contours in between the heavy contours. So
19 this is a very, very steep area and it's not that far off
20 to Route 58 and we just feel like it's not a safe area to
21 try to build a location on that side of the road. On
22 the south side of the road which is about one-third of
23 the window is also very steep. The location itself is in
24 a more level area on out of the window, but as you go up
25 that hill -- this map probably doesn't accurately depict

1 how steep it is. There is also about an eight foot reign
2 running up the right-hand side of that window which would
3 be hard to manage if we got up into that section of the
4 legal location window. In addition, those side slopes
5 are so steep that it would just be -- it would be hard to
6 effectively manage the soil and erosion controls that we
7 would need in that area. In addition, if we tried to get
8 up into that window we would have to build about another
9 quarter mile of access road up the hollow crossing the
10 creeks up in there about two times and then back into the
11 window. And the road itself would create a bunch more
12 disturbance and more area to try to maintain control of
13 the erosion and so forth. We just feel like that this
14 location -- the access road coming to the location will
15 just come straight up the hollow into the location
16 running in a south westwardly direction. If we were to
17 go into the window we'd have to go on up into the hollow
18 and then back up on the hill to the window. But it's
19 just straight up and down on the side of that hill and
20 it's just physically almost impossible to build a
21 location there.

22 MR. McGLOTHLIN: Mr. Hall, would you give me a little bit more
23 detail on where this location is on Route 58?

24 MR. HALL: Just after you cross -- let's see. It's about --

25 MR. McGLOTHLIN: Is it at the end of the four-lane?

1 MR. HALL: Yeah, near the end of the four-lane.
2 MR. McGLOTHLIN: Going into Coeburn?
3 MR. HALL: Right.
4 MR. DAHLIN: Just after you cross through the gap.
5 MR. HALL: Just after you cross through the gap going into
6 Coeburn. If you're coming from St. Paul it's on your
7 right. If you've ever driven by there and looked up you
8 can see what I'm talking about.
9 MR. McGLOTHLIN: Thank you.
10 MR. CHAIRMAN: Other questions?
11 MR. EVANS: I have one. P-344, where's the access road for
12 that well?
13 MR. HALL: It comes up -- I believe it comes up that hollow to
14 the north of it there. Yes. I think that's called
15 Markham Road. You would cross a railroad track, as I
16 recall, down on 58 when it's a two-lane and we come up
17 the hollow there. You'll see the hollow due north --
18 MR. EVANS: I'm with you.
19 MR. HALL: Come up that hollow and switch back over into it.
20 I believe that's the way the access comes for that. I
21 haven't been to the location in some time. I can't
22 really remember for sure, but I think that's the way it
23 comes to it.
24 MR. EVANS: Does that road continue on and then hook up on the
25 south side anywhere?

1 MR. HALL: To that ridge top?

2 MR. EVANS: Uh-huh.

3 MR. HALL: It doesn't connect that way, but initially when we
4 were looking at a location on top of that ridge before we
5 determined that it was going to be too steeped we looked
6 at running that ridge through there and you have the same
7 problem with building the road. Once you get out there
8 coming down that very narrow ridge you have the same
9 problems building a road along that ridge as you would a
10 location. We looked at coming in that way, though, when
11 we initially looked at a legal location on top of that
12 ridge. We've looked at several alternates in this window
13 area and they've all been just not feasible to pursue.

14 MR. EVANS: What scale is this, one to 400?

15 MR. HALL: 400.

16 MR. EVANS: You're talking about a fair to middle chunk of
17 road coming out through there?

18 MR. HALL: Right. The road that comes up to the location of
19 2373 is partially existing now also.

20 MR. EVANS: Oh, okay.

21 MR. HALL: The road that we're planning on using coming up in
22 there.

23 MR. CHAIRMAN: Other questions?

24 MR. MCGLOTHLIN: Mr. Hall, how much site preparation on 2373
25 at your proposed location are you talking about?

1 MR. HALL: Size wise?

2 MR. MCGLOTHLIN: You're saying it's steep on either side.

3 What's going to be your plan on the south side?

4 MR. HALL: We'll have less of a steep area, less of a slope
5 and less area below it for anything to filter off in. We
6 will just be constructing it with our normal erosion
7 sediment control plans and so forth as depicted in the
8 operations plan of the permit application. That area
9 down there is not nearly as steep as the window area and
10 there will be less high wall and less of a slope to
11 manage.

12 MR. CHAIRMAN: Other questions? Do you have anything further?

13 MR. KAISER: Nothing further for Mr. Hall.

14 (Witness stands aside.)

15 MR. KAISER: I do have another witness in this matter, Mr.
16 Dahlin, and I'd like to call him at this time. Mr.
17 Dahlin, I'll remind you that you are still under oath.
18
19

20 ROBERT A. DAHLIN, II

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

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3 BY MR. KAISER:

4 Q. Would you state your name and qualifications once again
5 for the Board?

6 A. My name is Robert A. Dahlin, II and I'm employed as an
7 operations specialist with EREX.

8 MR. KAISER: I'd once again like to move Mr. Dahlin as an
9 expert in this matter.

10 MR. CHAIRMAN: He's previously been accepted.

11 Q. (Mr. Kaiser continues.) In the event this location
12 exception is not granted and the well is not drilled can
13 you project the estimated loss of reserves?

14 A. Yes, sir. The reserves we've assigned to this drilling
15 are 500 million cubic feet.

16 Q. Should all formations from the surface of the ground to
17 the total depth drilled, being 5,250, feet be covered by
18 any order issued by the Board?

19 A. Yes, sir.

20 Q. In your professional opinion are there any other feasible
21 locations which allow well number V-2373 to be drilled
22 without requiring an additional location exception?

23 A. No, there are not.

24 Q. In your opinion will the granting of this location
25 exception be in the best interest of preventing waste,

1 protecting correlative rights and maximizing recovery of
2 gas reserves underlying V-2373 and best promote public
3 safety?

4 A. Yes, it will.

5 MR. KAISER: I have no further questions at this time for this
6 witness.

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

8 (Witness stands aside.)

9 MR. CHAIRMAN: Do you have anything further?

10 MR. KAISER: Nothing further.

11 MR. CHAIRMAN: What's your pleasure?

12 MR. EVANS: Mr. Chairman, I move that we grant their petition
13 for a location exception for this well.

14 MR. CHAIRMAN: A motion to grant the location exception.

15 MS. PRESLEY: I second that motion.

16 MR. CHAIRMAN: A motion and a second. Any further discussion?
17 If not, all in favor signify by saying yes. (ALL
18 AFFIRM.) Opposed say no. (NONE.) The motion carries.
19 We're going to go ahead and break for lunch now and come
20 back at 12:30.

21 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
22 FOLLOWS:)

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3 ITEM VI

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 the pooling of a drilling unit from Equitable Resources
6 Exploration for unit V-3106. This is docket number VGOB-
7 94/01/18-0433. We'd ask the parties that wish to address
8 the Board in this matter to come forward at this time.

9 MR. KAISER: Jim Kaiser of Hunter, Smith & Davis on behalf of
10 Equitable Resources Exploration. My witnesses in this
11 matter will be Mr. J.W. Griffith and Bob Dahlin.

12 MR. CHAIRMAN: The record will show there are no other
13 appearances. Your witnesses are reminded that they've
14 been previously sworn.

15 MR. KAISER: I'll remind you, Mr. Griffith and Mr. Dahlin,
16 that you've previously been sworn earlier this morning.
17 We'll start with Mr. Griffith on this matter.

18 JAMES W. GRIFFITH

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

21
22 DIRECT EXAMINATION

23
24 BY MR. KAISER:

25 Q. Would you please state your name again and who you are

1 employed by and in what capacity?

2 A. James. W. Griffith, Equitable Resources Exploration as a
3 land man.

4 MR. CHAIRMAN: We'll go ahead and stipulate their qualifica-
5 tions as before.

6 Q. (Mr. Kaiser continues.) Are you familiar with Equit-
7 able's application for the establishment of drilling
8 unit and pooling order for EREX well V-3106 dated
9 December 20th, 1993?

10 A. Yes, I am.

11 Q. Has EREX applied for a permit and is a permit now pending
12 before the DMME?

13 A. Yes, it is.

14 Q. What date was that permit dated?

15 A. January 13th, 1994.

16 Q. Is Equitable seeking to force pool the drilling rights
17 underlying the drilling and spacing unit as depicted at
18 Exhibit A to the application?

19 A. Yes.

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

22 A. Yes, they do.

23 Q. Does the proposed unit depicted at Exhibit A include all
24 acreage within 2,640 feet, that is a 1,320 foot radius of
25 proposed well number V-3106?

1 A. Yes, it does.

2 Q. What is the interest of Equitable in this unit?

3 A. 88.06 percent.

4 Q. Are you familiar with the ownership of drilling rights of
5 parties other than Equitable and underlying this unit?

6 A. Yes, I am.

7 Q. And what are those?

8 A. 11.94 percent.

9 Q. Are all unleased parties set out at Exhibit B?

10 A. Yes, they are.

11 Q. Prior to the filing of the application were efforts made
12 to contact each of the respondents and an attempt made to
13 work out an agreement regarding the development of the
14 units involved?

15 A. Yes, there were.

16 Q. Subsequent to the filing of the application have you
17 continued to attempt to reach an agreement with respond-
18 ents listed at Exhibit B?

19 A. We have.

20 Q. As a result of these efforts have you acquired other
21 leases from any of these respondents listed at Exhibit B
22 as unleased owners?

23 A. No, we have not.

24 Q. Were any efforts made to determine if the individual
25 respondents were living or deceased or their whereabouts

1 and if deceased were efforts made to determine the names
2 and addresses and whereabouts of the successors to any
3 deceased individual respondents?

4 A. Yes.

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

11 A. Yes, there were.

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

14 A. Yes, sir.

15 Q. Are the addresses set out in Exhibit B to the application
16 the last known addresses for the respondents?

17 A. Yes.

18 Q. With the exception of those parties which you are hereby
19 dismissing from this proceeding are you requesting this
20 Board to force pool all other unleased interests listed
21 at Exhibit B?

22 A. Yes, sir.

23 Q. Does Equitable seek to force pool drilling rights of each
24 individual respondent if living and if deceased the
25 unknown successor or successors to any deceased individ-

1 ual respondent?

2 A. Yes.

3 Q. Is Equitable seeking to force pool the drilling rights of

4 the person designated as trustee if acting in capacity of

5 trustee and if not acting in such capacity is Equitable

6 seeking to force pool the drilling rights of the success-

7 or of such trustee?

8 A. Yes, we are.

9 Q. Are you familiar with the fair market value of drilling

10 rights in the units here and in the surrounding area?

11 A. Yes.

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

13 A. Five dollars per net acre bonus, five year primary term

14 with a one-eighth royalty.

15 Q. Did you gain this familiarity by acquiring oil and gas

16 leases and other agreements involving the transfer of

17 drilling rights in units involved here and in the

18 surrounding area?

19 A. Yes, I did.

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

21 represent the fair market value of and the fair and

22 reasonable compensation to be paid for drilling rights

23 within this unit?

24 A. Yes, sir.

25 MR. KAISER: Mr. Chairman, at this time could I move to

1 incorporate the testimony regarding the election options
2 available to the respondents in accordance with the
3 earlier force pooling this morning or would you like for
4 me to go through that?

5 MR. CHAIRMAN: That's fine with the understanding that you did
6 say that you did not intend to change the existing leases
7 as in the previous order.

8 MR. KAISER: Right. Ms. Riggs and I talked about that during
9 break.

10 MS. RIGGS: We reviewed that.

11 MR. CHAIRMAN: Okay. That's fine.

12 Q. (Mr. Kaiser continues.) Do you recommend the force
13 pooling order provide that if a respondent refuses to
14 accept any payment due including any payment due under
15 said order or any payment of royalty or cash bonus or
16 said payment cannot be paid to a party for any reason or
17 there is a title defect in a respondent's interest that
18 the operator create an escrow account for the respond-
19 ent's benefit until the money can be paid to the party or
20 until the title defect is cured to the operator's
21 satisfaction?

22 A. Yes, sir.

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

25 A. Equitable Resources Exploration.

1 MR. KAISER: That's all I have for this witness at this time,
2 Mr. Chairman.

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

4 (Witness stands aside.)

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

6 MR. KAISER: Mr. Dahlin, I'll remind you that you are under
7 oath. Can we stipulate as to his qualifications as an
8 expert?

9 MR. CHAIRMAN: Yes.

10

11

ROBERT A. DAHLIN, II

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

14

15

DIRECT EXAMINATION

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17 BY MR. KAISER:

18 Q. Are you familiar with the proposed exploration and
19 development of units involved here under the applicant's
20 proposed plan of development?

21 A. I am.

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

24 A. 5,500 feet.

25 Q. Will this be sufficient to penetrate and test the common

1 sources of supply in the subject formations?

2 A. Yes, sir, it will.

3 Q. Is the applicant requesting the force pooling of convent-
4 ional gas reserves not only to include the designated
5 formations but any other formations excluding coal
6 formations which may be between those formations design-
7 ated from the surface to the total depth drilled?

8 A. We are.

9 Q. Mr. Dahlin, I'm sorry. Can you go back and designate
10 those formations?

11 A. The formations are the Devonian Shells, Burea, Weir, Big
12 Lime, Raven Cliff, Maxon, Sunberry and Cleveland Shells.

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

14 A. Yes, it will.

15 Q. What are the estimated reserves of this unit?

16 A. Approximately 400 million cubic foot of gas.

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

19 A. I am.

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

22 A. Yes, it has.

23 Q. Was this AFE prepared by an engineering department
24 knowledgeable in the preparation of AFEs and knowledge-
25 able in regard to well costs in this area?

1 A. It was.

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

5 A. Yes, sir.

6 Q. What are the dry hole costs?

7 A. The dry holes costs are \$149,900.

8 Q. And the completed well costs?

9 A. \$285,000.

10 Q. Do these well costs anticipate a multiple completion?

11 A. Yes, they do.

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

13 A. Yes, it does.

14 Q. Mr. Dahlin, in your professional opinion will the
15 granting of the application be in the best interest for
16 conservation, prevention of waste and protection of
17 correlative rights?

18 A. Yes, sir, it would.

19 MR. KAISER: That's all I have for this witness, Mr. Chairman.

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

21 (Witness stands aside.)

22 MR. CHAIRMAN: Do you have anything further?

23 MR. KAISER: Nothing further at this time.

24 MR. MCGLOTHLIN: I move that we accept the petition as
25 submitted.

1 MR. CHAIRMAN: A motion to approve.

2 MR. HARRIS: Second.

3 MR. CHAIRMAN: A motion and a second. Any further
4 discussion? If not, all in favor signify by saying yes.
5 (ALL AFFIRM.) Opposed say no. (NONE.) Unanimous
6 approval. Thank you.

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ITEM VIII

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3 MR. CHAIRMAN: The next item on the agenda the Board calls on
4 its own motion. This is docket number VGOB-94/02/15-
5 0436. In this item, for clarification, the Board has
6 already approved the pooling orders. There is however
7 the need -- we felt like the need to come back and
8 further discuss the election options. So the discussion
9 will be narrowed to the election options that would be
10 afforded to all pooled parties regarding these orders.
11 We'd ask the parties that wish to address the Board in
12 this matter to come forward at this time. (Pause.) We'd
13 ask the parties to identify themselves.

14 MS. McCLANNAHAN: Elizabeth McClannahan for Equitable.

15 MR. SWARTZ: Mark Swartz for Columbia Natural Resources.

16 MS. McCLANNAHAN: I think Tim Scott representing Penn-Virginia
17 was going to be here also. He's back there on the phone.

18 MR. CHAIRMAN: We'll take a five minute break.

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

20 MR. CHAIRMAN: We'd ask the parties to identify themselves for
21 the record, please. I think we got everybody but Tim.

22 MS. McCLANNAHAN: Yeah.

23 MR. SCOTT: Tim Scott for Penn-Virginia Resources Corporation.

24 MR. CHAIRMAN: The Board wants to hear in this matter argument
25 on the election options. When the Board heard and

1 decided this issue Elizabeth brought before the Board
2 election options and I'll quote from the record of the
3 opening statements to get us started and then we'll hear
4 arguments on this. She said to the Board, "Pursuant to
5 the statute Equitable is requesting that CNR be given
6 methods of election electing to be a participating
7 operator or electing to be a carried operator. And if
8 CNR chooses not to make an election, of course, under the
9 statute then CNR would be deemed to be carried." That
10 was in the record. That was in the opening address when
11 the orders were being reviewed. There's been continuous
12 discussion about the election options that are offered
13 or afforded under the statute. We decided to bring this
14 back before the Board for a final decision on the
15 election options. Here again, that's all that's before
16 the Board. We've already decided the case.

17 MS. McCLANNAHAN: My position is still the same as it was on
18 the day of the hearing as you've read it in the tran-
19 script.

20 MR. SWARTZ: I went ahead and made a copy of a portion of the
21 Virginia Code. I think it's relevant. I know you all
22 probably are familiar with this provision, but I thought
23 I'd give you something handy to refer to. Basically my
24 view is that the Virginia Code specifically addresses the
25 options that are to be made available. The things that

1 we're interested in here, the first page that I've given
2 you has a section at about the middle of the page,
3 Section 45.1-361.22. This is the section that is
4 specific to pooling coalbed methane gas wells. The
5 portion of this that I would bring to your attention is
6 the second sentence after the capital letter A which
7 reads, "In addition to the provisions of 45.1-361.21 of
8 this article the following provisions" -- basically what
9 it says is in addition to the three provisions in 361.21
10 when you've got a coalbed methane well these are the
11 additional things you're going to consider. So it's
12 clear, I think, at least to me that Section 45.1-361.22
13 which deals with coalbed methane wells says you also need
14 to follow the requirements of Section 21 which is the
15 more generic Code Section. The second page of this
16 handout where it says Page 17 at the top and then down
17 about two-thirds of the way is a copy of 45.1-361.21
18 attached. The part that I'm really interested is on the
19 last page which is C-7. If you look at C it says, "All
20 pooling orders entered by the Board pursuant to the
21 provisions of this section shall" and it's kind of got a
22 laundry list of what the Legislature thinks you ought to
23 be doing. Number 7 -- and I think I highlighted on the
24 copies you have -- establish a procedure for people who
25 get notice and do not become participating operators.

1 "Establish a procedure whereby they may elect to either
2 one, sell or lease his gas or oil ownership to a partici-
3 pating operator." So my position is essentially the
4 Legislature has specifically addressed and listed the
5 things that a pooling order needs to contain. And one of
6 those things is to set forth a procedure affording
7 certain options. Option one is sell or lease. Option
8 two is a voluntary agreement. Option three is the
9 carried situation. I guess in a nut shell I think that
10 the Code specifically addresses and requires that a sales
11 option be afforded. I think historically this option --
12 the sales option has not been addressed by the Board or
13 parties. I mean, I have never in the last -- I guess
14 it's been four years been a party to a situation where
15 somebody wanted the option of being able to sell their
16 interest. I don't recall people coming before the Board
17 and saying we were interested in selling our fee or
18 selling our oil and gas severed interest or whatever. I
19 don't think companies have gone out of their way to
20 invite invitations along those lines either, but the
21 statute certainly contemplates this. In this particular
22 situation, you may or may not remember, there were six
23 units pooled in October that we're haggling about the
24 order now. My client is interested -- I mean, I've
25 discussed the elections with them and my client will

1 probably participate in one or more of those wells and
2 will probably try to sell their interest in the balance
3 of them. On the six wells as a group they may elect to
4 participate on a couple that they're interested in and
5 they may elect to sell on some. If we go through this
6 exercise I can tell you that I have discussed this with
7 my client and they are interested in selling their
8 interest in several, perhaps as many as four, of these
9 units. So I think the Code contemplates this and
10 requires that this option be afforded if someone is
11 interested in receiving it. What I would anticipate in
12 terms of the mechanics, I would anticipate that the Board
13 order affording a sales option -- a sales purchase option
14 -- would simply apprise the respondent that that was an
15 option and if they elected or chose to elect that option
16 they would have to within the thirty days notify the
17 operator that they were electing to sell. Then the order
18 should place on both parties, the operator and the
19 respondent, an obligation or affirmative duty to enter
20 into good faith negotiations to agree upon a sales price.
21 Now, you need to look at the context here. You've got a
22 situation where you have two oil and gas companies, both
23 of whom value cash streams, buy and sell oil and gas
24 properties, buy and sell wells. I mean, there are
25 economic models that my client has to plug numbers into

1 discount this to present -- assume cash flow stream at
2 present value tract, operating costs, back out the
3 participation interests which will be a cash up front
4 interest. And these parties before you here are certain-
5 ly capable of entering into good faith negotiations and
6 have the experience to place a value on the well and
7 negotiate toward an agreement. Obviously if a voluntary
8 agreement is reached once the sales option is elected or
9 chosen nobody is going to come back to you all. You just
10 order them to do that. In the event that there is an
11 inability to reach a negotiated price one or the other of
12 the parties would have to set it up for hearing. I mean,
13 the Board has continuing jurisdiction over costs and
14 expenses and over items under the Code. I would expect
15 that if the parties can't agree they can come back and
16 make their pitch and -- I'm not going to sit here today
17 and tell you that you may never see these people again,
18 but I think that people need to be given an opportunity
19 to reach a negotiated agreement. And that's the proced-
20 ure that I would expect to see in an order that afforded
21 a sales option. Kind of a two step process. If this is
22 your election option you need to enter into a good faith
23 negotiations and in failing in ability to reach an
24 agreement one or the other party needs to come back to
25 the Board and present evidence and testimony to allow the

1 Board to value the interests. With regard to what
2 happened at the last hearing -- and the photocopy
3 machine here doesn't like me and will not make copies of
4 the page that I wanted to copy for you guys -- each one
5 of the pooling applications that were filed by EREX
6 contained this paragraph under relief requested. You may
7 not have these in front of you today, but I'm looking at
8 VGOB-93/10/19-0411. And at Page 8 under 4E which is the
9 relief sought Paragraph E -- and this is what EREX was
10 asking for when they filed the paper work to pool these
11 units. I'm just going to read it verbatim slowly.
12 "Established a procedure whereby Columbia Natural
13 Resources, Inc. here and after CNR shall have the right
14 to elect; One, to participate in the development and
15 operation of the unit as provided by the Board. Two, to
16 sell its coalbed methane gas interests in the unit to the
17 operator." Now, I knew before I came to this hearing
18 that my client was interested perhaps in participating in
19 some of these wells and in selling its interest in
20 certain other wells. I read this, as did my client, as a
21 petition for a pooling application. It specifically
22 asked the Board to afford a sales option and I assumed
23 that it was going to be there. Now, I didn't assume that
24 Sandra Riggs was going to put it in the order, but I
25 assumed that I would get a draft order and I could

1 address that issue with her at that point in time because
2 typically the Board has not in its standard orders -- so
3 when I got the order I had some other problems with it.
4 But Sandra and I spoke and I said, "You need to put in a
5 sales option." And she said, "Well, I need to address
6 that with Benny and perhaps even with the Board and
7 ultimately I guess she communicated my concerns -- I
8 assume she did to Elizabeth. As I understand Elizabeth's
9 position it's that she made an opening statement which
10 frankly went by me as excluding options and that I am
11 somehow bound by that opening statement and the Board is
12 somehow bound by that opening statement and the sales
13 option does not need to be offered. My response to that
14 is EREX specifically requested that a sales option be
15 afforded to my client and in that paragraph even referred
16 to my client by name as one of the four options. The
17 statute requires, as I read it, the Board to provide a
18 sales option. I would hope that the Board would A,
19 follow the requirements of the statute and B, essentially
20 give EREX what it asked for. I think the reason the
21 sales option is in the EREX application -- this is my
22 speculation, but I suspect this is why it's in there.
23 It's because it's required in the statute. So I would
24 ask that the Board direct the AG or I guess the Assistant
25 Attorney General to try to come up with some language

1 that affords a sales option. My recommendation would be
2 that it direct the parties to negotiate toward a resolu-
3 tion and yet give them an opportunity in the event they
4 cannot reach a negotiated settlement an opportunity to
5 come back and present their views and evaluation to the
6 Board. Lastly I think -- I'm not even sure that this
7 can occur but I think if you are asking the Board to
8 depart from the requirements of the Code and to give
9 people less options than the Virginia Code says you are
10 suppose to -- I'm not even sure you can do that. But
11 let's assume that you could or you wanted to. I think
12 there would have to be some compelling reason in a
13 record. some factual reason or evidence -- some compell-
14 ing reasons or evidence offered during the hearing that
15 the Board could make some kind of a finding that this is
16 a special circumstance justifying our departing from the
17 requirements of statute. I mean, I haven't heard
18 anything that I remember from the hearing certainly and
19 obviously there's been no testimony today indicating
20 that there is some compelling reason, some factual
21 situation that's here that's unusual that would justify
22 denying the statutory election option to a person who
23 says I want to sell you my interest. That's my position.

24 MR. CHAIRMAN: Mr. Scott, do you have anything?

25 MR. SCOTT: No.

1 MS. McCLANNAHAN: If I could just respond.

2 MR. CHAIRMAN: Sure.

3 MS. McCLANNAHAN: I think Mark is correct in that the Board
4 has never looked at nor taken testimony on the sales
5 option at all. It seems to me, though, in reading the
6 statute that in 7.1, Subsection 1, when it says sell or
7 lease gas or oil interests to a participating operator it
8 seems clear to me that the intent of that was for an
9 unleased property owner to sell or lease. In this case
10 we have an already leased property owner who is saying
11 that they now want to sell their lease. CNR doesn't have
12 any fee ownership interest in any property. What they
13 have is an 11.65049 percent working interest in a lease.
14 So when Mark suggests that they can just sell this
15 interest I'm not certain how 7.1 contemplates a sale of a
16 working interest and certainly not a working interest
17 that's less than 100 percent. But in any event I think
18 what the contemplation of this was is a mutually ex-
19 clusive remedy for an unleased property owner. It's not
20 something that someone who has leased -- in other words,
21 if I'm an unleased property owner and I'm being force
22 pooled which is the conventional manner in which these
23 applications generally come before the Board then that
24 person can either sell or lease their gas or oil owner-
25 ship to a participating operator. I think that was the

1 contemplation of the statute, not that a leased party
2 would sell a lease. That's completely different than
3 selling a fee ownership interest in some mineral estate.
4 Secondly, with regard to Mark's suggestion that if the
5 Board says yes, there is a sell option under this statute
6 for a leased party then I think the Board has to also
7 look at this penalty that is applied under the par-
8 ticipating section which is 200 percent because that is
9 directly tied into whether you're leased or unleased.
10 Third, the suggestion that the Board should require the
11 parties to negotiate a sale of their leased interests
12 between now and the date the order is entered or the date
13 the election period runs -- I don't believe that's within
14 the jurisdiction of the Board. But what I do think is
15 that subsection 2 of Section 7 allows for a voluntary
16 agreement by the parties at any time prior to that
17 anyway. I mean, certainly any of the parties can
18 negotiate any kind of voluntary agreement outside the
19 scope of a Board order. That happens all the time. The
20 Board enters a force pooling order between the time that
21 the order's entered and the time that the party makes an
22 election they enter into an agreement and those people
23 are taken out of the force pooling. I mean, certainly
24 parties can make voluntary agreements at any time. To
25 ask the Board to not only demand that we negotiate which

1 again that's -- I think it's something that's not within
2 the contemplation of this statute, but to then say that
3 we come back to the Board for testimony as to what this
4 particular interest would be sold for, I think, is asking
5 the Board to essentially condemn property owners inter-
6 ests. And I don't believe that condemnation is within
7 the purview of this force pooling statute nor do I think
8 the Board wants to get into a situation where -- the
9 Board's well aware that there are a number of times when
10 operators file forced pooling applications and unleased
11 owners don't come to this Board. They don't come to
12 these hearings. But what the Board does is take testi-
13 mony from the operators and anyone else who's here about
14 what a standard industry lease term is, whatever the
15 standard industry lease term is, what the royalty rate
16 is, what the bonuses and rentals are, and then that
17 individual is deemed to be leased. That's a completely
18 different animal than actually having the Board force a
19 sale of someone's ownership interest in property. I
20 don't think the Board has the ability to condemn property
21 because it is an effective condemnation.

22 MS. RIGGS: How are you forcing a sale if you're giving the
23 person who owns the property the right to make an
24 election? I mean, you're not forcing -- it's their
25 election. It's not the Board's election. And the party

1 whose property would allegedly be taken is the party who
2 is exercising the choice.

3 MS. McCLANNAHAN: So what you're suggesting then in this case
4 is that the party can elect the option of selling and if
5 they elect the option of selling then the Board will
6 determine what it will be sold for. That's the way it
7 would work. So you're saying it's not a condemnation for
8 a specific amount because the party is electing to be
9 sold at the Board's decision for the amount to be sold.

10 MS. RIGGS: The value. Just like on the lease, what the value
11 of a lease would be is based on appraisal testimony. I'm
12 just addressing the takings issue, not the other issues
13 raised here.

14 MS. McCLANNAHAN: Well, that certainly is a distinction to be
15 made if that person can always elect for their property
16 to be sold if that's the way you put it. I still don't
17 believe that this statute contemplated that the Board
18 would be deciding what fee ownership interests would be
19 sold for. And in this case I don't think -- when we go
20 back to number one that this statute contemplated the
21 selling of a leased interest which is what is being
22 suggested here. As far as a voluntary agreement on the
23 part of the parties, that can be done at any time and
24 that is an option here, that the parties can enter into a
25 voluntary agreement.

1 MR. MCGLOTHLIN: I'll throw this question out to the attorney.

2 The definition on the gas and oil owner -- define what a
3 gas and oil owner is.

4 MR. SWARTZ: It's defined as any person who owns, leases, has
5 an interest in or who has the right to explore for, drill
6 or operate a gas or oil well as principal or as lessee.
7 What I'm saying is, you know, Elizabeth's argument that
8 the statute didn't contemplate that it applied to a
9 leased interest which was her first point -- the term is
10 defined. I mean, it says establish a procedure for a gas
11 and oil owner. And then you go to the front part of the
12 statute and it says a gas and oil owner is a person who
13 owns or leases. I mean, the statute because it uses a
14 define term applies to leased interest, owned interest
15 and other interest and these are the options those people
16 are going to be afforded. If it wasn't a defined term
17 maybe we'd have a problem where as to what people
18 intended or so forth. It's a defined term in 361.1. I
19 think I'll just cover the four points that Elizabeth
20 raised. That was the first response I would have, that
21 the defined term sort of answers that question. In
22 addition she makes it sort of a generic argument that
23 there is a portion of the Code Section, Section 7, that
24 talks about a difference between leased tracts and
25 unleased tracts. Well, it does. It's under three and it

1 talks about if you are carried -- if your interest is
2 going to be carried, if it's leased it's one penalty and
3 if it's unleased it's the other. That suggests to me
4 that the Legislature knew that there were leased tracts
5 and unleased tracts. And if they were going to differen-
6 tiate between them in Subsection 3 and wanted to differen-
7 tiate in Subsection 1 with regard to selling or
8 leasing I think we need to assume from the rest of the
9 statute that they knew that there were leased tracts.
10 There would be unleased tracts. If they draw one
11 distinction I don't think we should assume ignorance with
12 regard to the other option. If they wanted a distinct-
13 ion, especially when they were dealing with a defined
14 term -- I think we can either assume they knew what they
15 were doing or they wouldn't have put it in there. The
16 third point that she makes -- and I'm misquoting her and
17 I'm pushing it a little bit, but basically I think she's
18 telling you that the parties shouldn't be ordered to
19 enter into good faith negotiations. I mean, I think
20 that's, in substance, her third point which I don't agree
21 with at all.

22 MS. McCLANNAHAN: You are misquoting me.

23 MR. SWARTZ: I think I'm stretching it a little bit, but this
24 Board tells oil and gas operators that in the exercise of
25 due diligence and in the exercise of discharging their

1 responsibility to oil and gas owners that they ought to
2 be out there trying to lease this acreage. And that has
3 been the bent of the Board and the companies that come
4 before you in general can testify honestly that they have
5 been out there trying to enter into voluntary agreements
6 and that force pooling is a last resort. I think that a
7 party who resists a direction to negotiate in good faith
8 to resolve a dispute is just blowing smoke. I mean, the
9 first step in any administrative judicial or other
10 proceeding ought to be for the parties to try and resolve
11 their differences. That's all I was suggesting when I
12 said that I thought that if you had a sales option step
13 one ought to be decide whether or not you want to sell
14 and make an election, if you elect that you want to sell
15 negotiate, try and reach a voluntary agreement. And if
16 you can't come back to us. I think that it just -- from
17 an administrative efficiency standpoint and frankly from
18 the cost standpoint of the parties they need to try and
19 work this stuff out before they come back to you. And
20 that's why I proposed that. Lastly, I can't believe this
21 condemnation argument. I mean, force pooling is condem-
22 nation. We've got the applicant in a force pooling --
23 you could make the analogy, the applicant in a force
24 pooling hearing saying that if a person can elect to sell
25 their interests which is being taken in a force pooling

1 proceeding initiated by the applicant there is some
2 problem here. Force pooling causes people who do not
3 want to participate in development to be dragged along in
4 that development and what the legislative solution was is
5 we need the resource to be developed so we need to be
6 able to force people to participate in development, but
7 if we're going to do that we're going to afford them
8 certain options so that they can pick how they want to be
9 treated. They can pick sell. They can pick leasing.
10 They can pick participating. They can pick being
11 carried. I mean, the first step occurs in a force
12 pooling. You make people do something they might not
13 otherwise want to do and that is participate in develop-
14 ment. And in exchange for that the Legislature is
15 trying to find some mechanism to fix compensation for
16 that involuntary participation at some reasonable level
17 and to give people some control over what their options
18 are. I think Sandy's point is well taken. A person is
19 not being told you must sell your fee. A person is being
20 told you can lease -- in effect, you've got a fifth
21 choice, I guess, and that is don't do anything and you'll
22 be deemed to have leased. But nobody is being told you
23 must sell and convey your interest, you must lease.
24 You've got those choices and you can make them by default
25 or you can affirmatively make them. But I think the

1 reverse is true, that if you afford these statutory
2 options the operator is stuck with the election.

3 MS. RIGGS: Well there's one major difference in what you're
4 recommending, though, and that is the Board order
5 normally spells out the terms upon which you would make
6 your election. Here you're locking yourself into an
7 election without knowing. What if you come back to the
8 Board and you don't like the price and now you want to
9 change your election because suddenly it wasn't an
10 informed election because the terms -- it's not a
11 complete offer.

12 MR. SWARTZ: It's no different than participation, though,
13 Sandy. I mean, when you elect to participate you know
14 what the amount of the check you're going to write is but
15 you don't know what the pay off is going to be.

16 MS. MCCLANNAHAN: That's completely different because that's
17 taking a risk in a well which happens all the time.

18 MR. SWARTZ: So was this --

19 MS. MCCLANNAHAN: No. You're divesting yourself of your fee
20 property ownership interest.

21 MR. SWARTZ: The risk associated, though, is it's the risk of
22 failing to reach a voluntary agreement and the Board
23 setting fair compensation of the value less than what you
24 might otherwise expect. I mean,

25 MR. MCGLOTHLIN: How do we do that?

1 MR. SWARTZ: You hear testimony from both sides on what they
2 think the thing's worth.

3 MR. MCGLOTHLIN: Who determines the fair market value if
4 someone comes in and says I want to -- an unknown who's
5 force pooled and he has a right to -- or you know and he
6 just doesn't show up and he has a right to sell his
7 property. He can sell. He can elect to sell. So he
8 goes to Buchanan Production or whoever and he says, "All
9 right. I want a million dollars for my one-tenth of one
10 percent."

11 MR. SWARTZ: And Buchanan Production says we value your
12 interest at one one-thousandth of that. We come back.
13 You make a decision based on the testimony in the record.
14 If either party is unhappy they appeal and they put on
15 testimony in front of the Circuit Court. I mean, other
16 states actually fix a value up front and say -- I'm kind
17 of giving you guys an out here. You don't have to do
18 anything. But I sense a reluctance on the part of this
19 Board at this point in time. I mean, things may be
20 different a couple of years from now. To try to value
21 interests for sales purposes up front because it's a
22 serious insignificant undertaking and the -- but other
23 jurisdictions at this pooling hearings, this kind of
24 evidence from economic modeling, price assumptions,
25 inflation assumptions is offered and the administrative

1 body says an interest is worth X. And the order that
2 goes out with the election options has a value plugged
3 in. My sense is that this is not something that we're
4 prepared to do right now -- I mean, and you are prepared
5 to do right now. It's no big deal. I've seen the
6 economic wild wing on these wells. It isn't hard to do.
7 Companies do it all the time.

8 MS. RIGGS: Well, the concern is that if the statute requires
9 a sale option it requires it for everybody, not just for
10 these two particular parties. And if the Board is going
11 to undertake the implimental procedure to include a sale
12 option there's going to come the time when the bargaining
13 positions at the table are not as equal as they are at
14 this table. If you create a procedure that sends the
15 parties out of this room to negotiate in good faith when
16 you know that the bargaining positions are not equal, to
17 me that doesn't really solve the ultimate problem and
18 that is the Board -- that party if they elect to sell and
19 start down that path there's no way back from it because
20 they've made that election without knowing what they're
21 going to get at the end. So it's not an informed
22 decision. I mean, that's the problem I'm having with the
23 delayed negotiations.

24 MR. SWARTZ: I guess I see that problem as comparable al-
25 though, of course, you can draw distinctions. But some

1 guy off the street who elects to become a partner in a
2 gas well in my best judgement has no idea what he's
3 getting into and the potential liabilities and the
4 problems and the risks associated with that. I guess,
5 you know, the Code requires you to afford options to
6 people which puts them in complex business relationships
7 which they may or may not have the experience -- unless
8 you're in the oil and gas business -- of course, there's
9 going to be a huge disparity in -- forget bargaining
10 strength. It's just the knowledge. I mean, how many
11 people off the street are going to have an ability or an
12 understanding to create an economic model to come at some
13 ball park evaluation of their fee interest, you know,
14 just picking at it.

15 MS. RIGGS: But that to me only points up the reason why that
16 testimony has to be before the Board so that the Board
17 sets that price and makes that a part of the election
18 option so that when that person elects that option they
19 know what they're getting into, that they're not locked
20 into something that they then have to negotiate for
21 themselves. You know what I'm saying?

22 MR. SWARTZ: I understand. But I guess I'm coming from --
23 this sales option was an issue that I have discussed
24 informally with your predecessor Mike because when we
25 were looking at orders back then it was something we were

1 talking about. I think I have talked to more than one
2 Board member informally about this and that was several
3 years ago when we were trying to standardize this stuff.
4 And my sense was that until someone raised this issue and
5 said I want this option there was a real reluctance to
6 open this can of worms and I think it's an issue that's
7 been out there that ultimately was going to surface. My
8 sense was -- and it never was officially before the Board
9 and was never really something that Mike (Inaudible.) had
10 to officially deal with. But my sense was there was a
11 real reluctance to get involved that issue. And maybe
12 the time has come or is coming. I think you're talking
13 about two things, Sandy. I think one is what's a
14 reasonable solution to dispute with regard to these six
15 wells given who you're dealing with. Okay. I mean, this
16 ought to be a fair fight on price. Then having done
17 that, now that our attention is focused on the sales
18 option and is it an option that needs to be embedded in
19 the standard order that everybody gets whether or not
20 they know enough to ask for it. And if that's going to
21 happen, should the Board and I would hope participation
22 from operators come up with some mechanism to deal with
23 that. Now, that's a policy decision you guys need to
24 make. One thing, I guess, that I need to suggest to you
25 guys that I think you sometimes lose sight of is you as a

1 Board afford a lot of protection to the folks who walk in
2 off the street and you may not realize what you're doing,
3 but when you pick a cost and you look and compare numbers
4 and you ask those kinds of participation numbers, cost
5 issue questions, which from time to time have consumed a
6 lot of time in front of the Board and when you look at
7 other issues -- the guy off the street has an advocate
8 here, and I'm not saying this in a sense that you
9 shouldn't be doing this, but I think -- and this is
10 something you probably need to think about if you're
11 going to do some thing about this generally. The guy may
12 show up unrepresented and say I want a million and the
13 company is saying no, it's worth a thousand, Kevin, to
14 take your example, but the company would have to offer
15 testimony at the hearing, be subject to cross-examination
16 and scrutiny from you all. And whether you view your-
17 selves as the advocate or protector of the guy in off
18 the street, I mean, to some extent that happens. And the
19 kinds of questions that you ask to assess the information
20 that's being provided and to make a judgement as to
21 whether or not it's reasonable essentially would inure
22 to the benefit of the citizens who come before you. So I
23 don't think people show up alone sometimes and I'm not
24 complaining about that process. I think that needs to
25 happen and I think in the process of satisfying yourself

1 that you've got a sufficient record to make a finding you
2 do a lot of that work. But this is a policy decision.
3 All I'm saying today is I have a client who wants to
4 sale, thinks he has a right to that option, and I'm
5 proposing a fairly simple mechanism for these two
6 companies to negotiate, in failing that to come back
7 here. Whether you want to go beyond that and look at
8 this as a policy decision to be applied generally, I
9 can't tell you what your policy ought to be. And I can
10 see heads nodding affirmatively and no way, Mark, when I
11 say one thing. I'm watching all of you and some of you
12 are like yeah, maybe we ought to do that and at the same
13 time somebody's looking like maybe we should think about
14 that and somebody else is going no way, I don't want to
15 do that. This is a policy decision and it's an important
16 question and I think that -- but it is a policy decision
17 apart from. We've raised some issues here that I think
18 require more thought and attention than I would suggest a
19 resolution of this narrow issue in these six wells given
20 who you're dealing with here.

21 MS. McCLANNAHAN: I would just state, first of all, that there
22 was an offer made prior to the time that we came to the
23 force pooling hearing between Equitable and CNR and that
24 was a part of the testimony at the previous hearing. So
25 to present this to the Board as the parties have never

1 negotiated on anything is not correct because the force
2 pooling statute does require an offer to be made prior to
3 the time that we show up at this table to force pool.
4 That's true even of coalbed methane interests. Secondly,
5 I think the more complicated question here is that CNR
6 represents a leased interest. So the policy questions
7 that we've been talking about and that Mark has indicated
8 that may need to be made are much more general and may
9 not even apply in this particular case. Because in this
10 case it's simpler. They've already leased. I mean,
11 that's why they came to this table as a conflicting
12 claimant. They are claiming that their coalbed methane
13 interest was leased under an oil and gas lease of 1972.
14 So they're a leased party coming to this table. How do
15 you sell that percentage of working interest in a lease
16 which they now retained after numerous assignments?
17 Since we're looking at definitions, it seems to me that
18 you have to look at what is the selling of a leased
19 interest. Well, that's a farm out according to John
20 Lowe, Southwest Law Journal, according to Howard Williams
21 in his manual of oil and gas terms. Farm out is never
22 mentioned here in this statute. Again, this isn't a sale
23 of a fee interest. They've already signed a lease and
24 they came and claimed the coalbed methane gas under that
25 leased interest. And if I understand what he said that's

1 not in dispute. Is that right, Mark?

2 MR. SWARTZ: What's that?

3 MS. McCLANNAHAN: That your client has leased its interest?

4 MR. SWARTZ: Well, your client and my client are joint tenants
5 in the same lease. I mean --

6 MS. McCLANNAHAN: In the 1972 lease, right. So your interest
7 -- CNR's interest is leased, is that correct?

8 MR. SWARTZ: So is your's.

9 MS. McCLANNAHAN: We're not arguing about what my client's
10 interest is, but yes, we've signed the lease --

11 MR. SWARTZ: But we're partners in a lease and we want to sell
12 our interests to you in that lease. And you became a
13 partner in this lease because you bought your predecessor's
14 lease interest from ANR or whoever it was. I mean,
15 these things get sold all the time.

16 MR. CHAIRMAN: Let me clarify for the Board again. I think
17 you can see why we're back here. I think the key
18 question for the Board really is -- and I'll certainly
19 subject this to the scrutiny of the attorneys at the
20 table, but the key question for the Board is have you
21 heard evidence enough to narrow the -- that may not be an
22 appropriate term -- but narrow the election option as I
23 initially read or should the election option be fully
24 afforded as in the statute as Mark's presented. To me
25 that's the first key question. And then the other parts

1 get more into how far do you want to go with the sale
2 option. You obviously have an interest in a sale option,
3 how far do you go with that? Do you leave it to the
4 parties to go away once elected for sale to try to work
5 that out and then a subsequent hearing to hear all the
6 issues or do you go further now with the policy on that,
7 such as the option that Mark presented or have both
8 parties bring back a sales proposal. But you may have
9 one not interested in offering sales proposals. I mean,
10 it's some key questions.

11 MR. MCGLOTHLIN: And another part of the question there is if
12 we put the sale -- specify it in the orders then that
13 means somebody has to buy.

14 MR. SWARTZ: If you make the election.

15 MR. MCGLOTHLIN: If Joe comes off the street and says I want
16 to sell mine then ANR or Equitable or Buchanan has to buy
17 it.

18 MR. CHAIRMAN: That's what I was trying to say, that there's
19 not any guarantee that they're willing to buy it at any
20 price for that matter.

21 MR. SWARTZ: Then they ought not be force pooled.

22 MR. CHAIRMAN: That's what I'm saying.

23 MR. SWARTZ: Right.

24 MR. CHAIRMAN: It's a catch twenty-two going on here.

25 MS. McCLANNAHAN: Well, that's definitely condemnation.

1 MR. SWARTZ: Yeah. Somebody who wants to take -- somebody's
2 interest being forced to pay for it in a way they didn't
3 contemplated. It's just kind the dog biting back.

4 MR. MCGLOTHLIN: Do we eventually if we do this hear testimony
5 on what it's worth. Do we have to bring in appraisers
6 and --

7 MS. McCLANNAHAN: Let me just say this, too, about that. This
8 is the problem here going back to what the Chairman here
9 has indicated is the first question that the Board has to
10 answer. And that is do need to hear -- are you going to
11 hear this question at all because certainly I stated at
12 the hearing that those were the two options that were to
13 be given to CNR. No objection was made at that time. We
14 then were told by Ms. Riggs that this was a question and
15 that's why the Board had brought us here today. We
16 thought, and rightly so I think, that if the Board
17 determined that a sales option should be given or that a
18 farm out option was the thing that the Board picked or
19 for that matter when we came here we weren't certain if
20 we were also looking at a leased option. So we were
21 prepared to answer those questions from A to Z. And now
22 it sounds like that we're here to have the hearing on
23 this and then Mark is suggesting that we also come back
24 to have a hearing on a sale should the Board chose to
25 make that decision. It appears to me that there is

1 simply a delaying tactic at hand here of how long can we
2 delay an order to be entered on the six forced poolings
3 that were decided by the Board in October.

4 MR. SWARTZ: Well, I didn't come in here and tell the Board in
5 an opening statement something that was totally different
6 than what I'd asked for in writing and alert anybody
7 today. I mean, my first incline that there was some
8 narrowing of the election options was when I talked to
9 Sandy. And I gathered, although she can speak for
10 herself, that she was also surprised that there had been
11 a verbal request that was different than what was in
12 writing. I guess we can -- but getting past that, my
13 client has a statutory right to these election options.
14 They actually want to sell their working interest under
15 this lease in some of these wells. And to suggest that
16 I'm over here delaying because they want to sell their
17 interest in some of these wells and don't want to be
18 carried and don't want to participate, you will see this.
19 And if they don't want to negotiate in good faith or you
20 -- we go and a sales option is afforded, fine, we'll be
21 back here. It is not a big deal to offer testimony to
22 value a working interest or a portion of a working
23 interest in a well.

24 MS. McCLANNAHAN: Are you prepared to do that today?

25 MR. SWARTZ: No, because it's not set for that today. I

1 mean, my client has already -- I've seen the numbers. We
2 have backed it down and I've got numbers and if you don't
3 want to allow our clients to try and negotiate and pick a
4 figure and you'd rather have a hearing, fine, I'll be
5 here. But I would assume that people ought to be given
6 an opportunity to try and agree on a number and come back
7 if they can't. I'm not going to be affording the relief,
8 but I guess what I was suggesting to the Board was that
9 my client is prepared to negotiate in good faith.
10 They've already worked up some modeling. I assume that
11 EREX has the same kind of modeling and the same kind of
12 ability to do this and they've probably looked at this
13 anyway. I mean, you don't drill a well unless you make
14 some projection on what it's going to pay out. Don't
15 open a mine unless you think you're going to make money.
16 I don't care -- I mean, if they don't want to negotiate
17 and you don't want us to negotiate that's fine. All I
18 want is the option for my client to sell its interest --
19 its working interest under the lease. It's a co-tenant
20 with EREX in some of these units.

21 MS. McCLANNAHAN: I want to make it clear, he keeps indicating
22 that we're not wanting to negotiate. I have never said
23 that at all and my client has certainly never indicated
24 that. I don't think that's even at issue. With regard
25 to what's on the docket today it says these further

1 proceedings are for clarification of election options to
2 be afforded gas and oil owners under the Board orders to
3 be entered and said docket items, all which are listed
4 there, and such other matters which may be properly
5 brought before the Board. I certainly didn't request
6 this hearing. So --

7 MR. CHAIRMAN: No. I put it back on the Board's agenda.

8 MS. McCLANNAHAN: Right, but I think Mark was suggesting that
9 we weren't here to talk about a sales option and he's the
10 one that requested us to be here to talk about a sales
11 option.

12 MR. SWARTZ: No. I just suggested to Sandy that my client
13 wanted that option. She didn't feel it had been fully
14 explored at a hearing, I gather, or Benny didn't and the
15 Board said if we're going to deal with this we need to
16 talk about it. I agree. You understand my view. I'm
17 not going to restate it again. Some decision needs to be
18 made of whether or not a sales option ought to be
19 afforded as an election option and beyond that you can
20 take it as far as you want. But I think that's the
21 threshold question.

22 MR. CHAIRMAN: Any questions, members of the Board? Any
23 questions you'd like to hear testimony or evidence on?

24 MR. EVANS: Yeah. I'd like to hear someone say -- we've heard
25 why there should be. Now I want to hear someone say how

1 do you get around the definition of oil and gas owner and
2 Section 7, "Establish a procedure for an gas and oil
3 owner who received notice of a hearing and who does not
4 decide to become a participating operator may elect to
5 either sell or lease his gas and oil interest." What do
6 think that means if it doesn't mean what it says?

7 MS. McCLANNAHAN: What I think is that it's meant for unleased
8 parties and they're mutually exclusive. I think that's
9 one argument that can be made here. If there --

10 MR. EVANS: Go back to your definitions.

11 MS. McCLANNAHAN: This is not gas or oil owner.

12 MR. EVANS: Establishing a procedure for a gas or oil owner
13 who does receive --

14 MS. McCLANNAHAN: Right. But with regard to Subsection --
15 once you get to Subsection One it says sell or lease his
16 gas or oil ownership to a participating operator and what
17 I'm suggesting is --

18 MR. EVANS: What's the difference between how do you use it
19 in the sentence establishing a procedure for a gas and
20 oil owner. Now, what's the difference between a gas and
21 oil owner selling his gas or oil ownership? How does
22 that differ?

23 MS. McCLANNAHAN: There are two ways to read this. You can
24 read it in the strictest sense and that is if you go back
25 to the gas or oil owner. My point is it doesn't make

1 sense. You can't carry it if you read it this way in the
2 strictest sense that you're reading it then it doesn't
3 make sense because this party is already leased and to
4 sell a leased interest is a farm out. There's noting
5 here about a farm out. A farm out is you sell your
6 working -- you transfer or convert your working interest
7 ownership to an overriding royalty ownership. So if the
8 Board chooses that this statute is to be read in that
9 strictest sense then what you're doing is saying what
10 that ownership interest can do is farm out their inter-
11 ests.

12 MR. EVANS: Is there anything in here that says you can't farm
13 it out?

14 MS. McCLANNAHAN: No. There's nothing here that says you
15 can't.

16 MS. RIGGS: But farm outs are private voluntary agreements.
17 They are not agreements that are imposed in pooling
18 statutes. So what would be the equivalent of a sale
19 option in a pooling situation to a farm out in a volun-
20 tary situation.

21 MR. SWARTZ: Just a straight up assignment. I mean, people
22 sell their working interest by assigning it. It's just
23 called an assignment of interest. There are a million
24 ways that you can transfer --

25 MS. McCLANNAHAN: And option is provided for in Subsection

1 Two, enter into a voluntary agreement.

2 MS. RIGGS: That would be the farm out agreement or that would
3 be one --

4 MS. McCLANNAHAN: Or an assignment.

5 MR. SWARTZ: Well, it could be a joint operating agreement. I
6 mean, it could be a lot of things.

7 MS. RIGGS: But what Mark is saying is a farm out is not the
8 exclusive method of assigning or selling your interest.

9 MR. SWARTZ: There are a whole bunch of ways.

10 MS. RIGGS: You don't have to convert it. You could assign
11 it.

12 MR. SWARTZ: The most common way is an assignment.

13 MR. McGLOTHLIN: I'd like to make the motion that we adjourn
14 to Executive Session to discuss items with our attorney
15 dealing with this proposal. I forget the Code Section.

16 MR. CHAIRMAN: 2.1-344.

17 MR. McGLOTHLIN: Pursuant 2.1-344 of the Code Section.

18 MR. CHAIRMAN: We have a motion.

19 MR. EVANS: Second.

20 MR. CHAIRMAN: A motion and a second. Further discussion?
21 All in favor of Executive Session signify by saying yes.
22 (ALL AFFIRM.) Opposed say no. (NONE.) We're in
23 Executive Session.

24 (Thereupon, the Board went into Executive Session at 2:00
25 P.M. and returned to open hearing at 2:40 P.M.)

1 MR. CHAIRMAN: To come out of Executive Session all in favor
2 signify by saying yes. (ALL AFFIRM.) Opposed say no.
3 (NONE.) To the Board members, two questions and then
4 role call. Do you affirm that during Executive Session
5 you discussed only public business matters lawfully
6 exempted from the statutory requirements for open
7 meetings and do you further affirm that during the
8 Executive Session you discussed only business matters
9 identified in the motion convening the Executive Session?
10 Just call your name out if yes. (ALL AFFIRM.) What's
11 your pleasure?

12 MR. MCGLOTHLIN: Mr. Chairman, I make the motion the Board
13 will establish a procedure for the gas and oil owner to
14 elect to either sell his gas or oil ownership to a
15 participating operator and establish -- also would move
16 that the order will provide 30 days from the recording of
17 the order for the parties to elect. And third, the
18 procedure for the sales option is once the elections have
19 been made the participating operator will immediately
20 enter into good faith negotiations with any party
21 electing to sell. If an agreement is reached the parties
22 will be governed by such agreement. However, if the
23 parties are unable to reach an agreement upon notice by
24 any party that the Board will schedule a hearing for
25 evaluation and testimony and accordingly establish a

1 sales price applicable to the sales option.

2 MR. EVANS: Second.

3 MR. CHAIRMAN: Further discussing? All in favor signify by
4 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
5 It's unanimous. Any questions? I mean, we've con-
6 cluded --

7 MS. McCLANNAHAN: I do have a question. On paragraph eight of
8 the order as it's been previously submitted by Sandra it
9 tracks my argument about the statute did not contemplate
10 that a leased interest could be sold because it says in
11 the event any person named in Exhibit B has not reached a
12 voluntary agreement then these elections would be
13 available. This, of course, is the same language that
14 has been used in all the previous Board orders. So I
15 assume that all that language is going to be changed so
16 that even individuals who have leased, entered into a
17 previous voluntary agreement, will also have an election
18 to sell. That also has implications for notice because I
19 am aware that -- this means that all leased parties in
20 every force pooling application will be given this
21 option. Is that correct?

22 MR. CHAIRMAN: That's the decision for this case.

23 MS. McCLANNAHAN: So only in this case?

24 MR. CHAIRMAN: The Board has decided that it's a clear
25 statutory requirement that there be a sell or lease

1 option.

2 MS. McCLANNAHAN: Even in the case of parties who've entered
3 into a voluntary agreement?

4 MR. CHAIRMAN: I don't think that enter into a voluntary
5 agreement is another option.

6 MS. McCLANNAHAN: No. The way paragraph eight of the order
7 presently reads is that --

8 MS. RIGGS: That tracks the statute that way.

9 MS. McCLANNAHAN: Right.

10 MS. RIGGS: That's why it reads that way. It tracks the
11 statute.

12 MS. McCLANNAHAN: Okay. Which means that all the parties on
13 Exhibit B who have leased their interest have entered
14 into a voluntary agreement. So what this means is that,
15 for example, any conventional oil and gas lease that we
16 bring to you -- and 98 percent of the parties are leased
17 -- they've entered into a voluntary agreement. In other
18 words, they also all are going to have the same option to
19 sell. Is that --

20 MR. CHAIRMAN: In this case.

21 MS. McCLANNAHAN: So it's not true generally speaking. You're
22 just going to do it in this case? ~~I'm not certain how~~
23 that can work.

24 MS. RIGGS: I don't think the Board's making a policy decision
25 at this point relating to anything other than what's

1 before it.

2 MR. CHAIRMAN: That's what I'm saying.

3 MS. McCLANNAHAN: Is every operator required also to give

4 notice to every party who has leased for a force pooling

5 application?

6 MR. CHAIRMAN: In this case, are you asking?

7 MS. McCLANNAHAN: In this case every party is leased. There

8 are no parties that are unleased in this particular case.

9 MS. RIGGS: And notice was given to leased parties in this

10 case?

11 MS. McCLANNAHAN: Yes, absolutely. I know for a fact that's

12 not true for other force pooling applications that are

13 before this Board. So that's why I'm just trying to

14 clarify, if you're giving every leased party an option

15 then every leased party is going to have to be notified.

16 MR. SWARTZ: We've got a little spin going on here. Normally

17 a leased party in a normal situation has, in fact,

18 reached a voluntary agreement to share in the operation

19 of the well in question. The reason CNR and EREX are

20 here is regardless of whatever leases are in place they

21 don't have an agreement and they're arguing about which

22 lease applies. I don't read the statutory language or

23 the way paragraph eight is currently worded as suggesting

24 that people who are in agreement by virtue of existing

25 leases that everybody concedes applies to the well

1 production, that those people need to be pooled or
2 noticed or anything else. I mean, I don't think para-
3 graph eight currently says that. I don't think the
4 statute contemplates that. And to the extent that
5 Elizabeth is suggesting that your ruling even in this
6 instances somehow sends that message -- I'm not receiving
7 that message from you all and I think you understand that
8 unless -- a voluntary agreement to me means where you've
9 got parties who say when the production comes out of this
10 well this is how we're going to split it up. I mean,
11 you don't pool those kind of people. It's where you have
12 multiple leases and a dispute as to which one covers --
13 we've seen this before with Cabott and else where that
14 you've got a notice problem which is why CNR was noticed
15 to begin with and why we're here. The other thing with
16 regard to the order, and I think Elizabeth's comment is
17 appropriate, when you change one thing in an order you've
18 got to look at the whole order. I just -- I'm hoping
19 that both of us would get a draft like we normally do
20 that we can respond to. The other thing with regard to
21 this -- I don't know if the Board's aware of this or not.
22 There was some language in the initial proposed order
23 with regard to field rules. And I don't know where we
24 stand on that, Sandra, but we need to either keep these
25 orders with regard to the provisional units that were

1 established or we -- you need to do something.

2 MR. CHAIRMAN: The Board made a decision based on provision

3 units. So that's the way that one will stand.

4 MR. SWARTZ: There is an application pending and we'll see

5 what happens.

6 MR. CHAIRMAN: Right. But this will be based on the decision

7 on provisional units.

8 MS. McCLANNAHAN: Let me make sure I understand the testimony.

9 What did you say, in thirty days -- can we get a copy of

10 what this order says actually?

11 MS. RIGGS: Well, the thirty days isn't any different than

12 what's there now. The elections have to be made within

13 thirty days of recording.

14 MR. CHAIRMAN: Election within thirty days.

15 MS. McCLANNAHAN: Thirty days of the recording?

16 MS. RIGGS: Right.

17 MS. McCLANNAHAN: And if the parties don't come to an agree-

18 ment as to the sale of the interest then they notice the

19 Board?

20 MS. RIGGS: The only issue left outstanding once the election

21 is made is price. And if the parties can't agree to a

22 price then the Board will establish it based on testi-

23 mony. In other words, once you make the election that is

24 the election.

25 MS. McCLANNAHAN: So what is being sold? Is the Board

1 ordering that we negotiate as to a sale of a potential
2 interest in an oil and gas lease in a coalbed methane
3 interest on a unit basis, on a well basis, on undeveloped
4 acreage? How are we suppose to negotiate this? Is this
5 the negotiation of a farm out? Is this the negotiation
6 of an assignment? Of what interest is a negotiation of?

7 MR. CHAIRMAN: It's up to you. This is just simply affording
8 the option that's already in the statute that they may
9 elect to sell.

10 MS. McCLANNAHAN: But the problem is that if we don't come to
11 an agreement and one party elects to come back before the
12 Board to require a sale then the Board would be deciding
13 on a sale of a potential interest in coalbed methane in
14 an oil and gas lease and would be requiring the sale of
15 that interest when, in fact, the statute requires that
16 any potential interest in coalbed methane in an oil and
17 gas lease be escrowed. So then is the money for the sale
18 of this potential interest going to be escrowed also?

19 MR. CHAIRMAN: I think that would all be questions the Board
20 would ask and answer whenever it comes back before it. I
21 don't think the statute lays out any of that here at this
22 point.

23 MR. MCGLOTHLIN: And I think that every case that's brought
24 before this Board will be unique and I don't think we can
25 set the guidelines down now until we hear it.

1 MS. McCLANNAHAN: The only thing we would request since we
2 don't know when a Board order may be entered on this
3 particular matter --

4 MR. CHAIRMAN: Probably this week. The Board has just decided
5 the terms. The only thing we were here to decide is
6 whether or not to include the sale option. It's decided
7 that we would include it and that the parties would have
8 thirty days to make the decision. That's all we did
9 actually. The other language was just to say that if you
10 can't come to an agreement you can come back before the
11 Board. That goes without saying, though.

12 MS. RIGGS: That testimony could have been presented as part
13 of the application in chief, but since it wasn't in this
14 particular case the Board has no testimony before it to
15 create sale terms or determine what these interests -- I
16 mean, the leases aren't even in evidence. So we don't
17 know what the interests are that we're talking about or
18 what the potential evaluation of that interest would be.
19 None of that's been presented to the Board at this point.

20 MS. McCLANNAHAN: Are you willing to hear that testimony
21 today?

22 MR. SWARTZ: I think you have to file a petition and like sore
23 of alert people that that's what's coming is my view on
24 that.

25 MS. McCLANNAHAN: So the Board is not willing to hear testi-

1 mony on that today?

2 MR. CHAIRMAN: I think we feel that we have to afford that
3 option and then once the election is made -- I mean, he
4 may change his mind and not go with the sale option.

5 MR. SWARTZ: I better not. Ha, ha. They could.

6 MS. McCLANNAHAN: For our purposes, if we need to produce
7 these wells since this has been pending since October --
8 through what I would consider no fault of ours, if we
9 need to produce these could the Board allow us to produce
10 these on its order today if we escrow 100 percent of the
11 money as opposed to just the differentials until the
12 Board order is entered?

13 MR. SWARTZ: I don't think there's a production stay in place.
14 I mean, the division of interests have been determined.
15 There's no impediment --

16 MR. FULMER: The permit's been issued. As I mentioned to the
17 Board in there, that would be left up to the Board as to
18 what they want to do in these particular force pooling
19 situations because the permit itself has been issued.
20 There's no stipulate of stay on production on those
21 permits.

22 MR. SWARTZ: Right, and we're not interested in that. I
23 assumed you could produce these wells.

24 MS. McCLANNAHAN: Is the Board saying that we can produce
25 these wells?

1 MS. RIGGS: They haven't stayed production. I think that's
2 what the Board said.

3 MR. CHAIRMAN: That's right.

4 MS. McCLANNAHAN: There was one other issue that we had asked
5 about and that is that in paragraph 9.1 of the Board's
6 order, "Upon completion of the well and within 90 days
7 after production into the pipeline is obtained and
8 restoration of the location is completed" -- we had
9 requested a 90 day period instead of -- was it sixty?

10 MS. RIGGS: Sixty days in the order.

11 MS. McCLANNAHAN: The reason for that was that -- and I can
12 put on testimony as to this matter -- we have 45 day
13 billing cycles and in order to get everything in it
14 usually takes two billing cycles which would be 90 days.
15 In addition, the reason we had requested that it be after
16 restoration of location is because those are costs which
17 we, of course, don't know until the location is restored.
18 And I would assume that the Board is concerned about
19 environmental restoration of the location and therefore
20 we'd want actual costs on all those. And that's we had
21 requested that change.

22 MR. KAISER: May I ask a question?

23 MR. CHAIRMAN: Just identify yourself for the record.

24 MR. KAISER: Jim Kaiser with Hunter, Smith & Davis. Is what
25 I'm hearing -- are you going to limit the institution of

1 this sale option that's afforded to the parties that are
2 pooled as one of their elections to this particular case
3 for this particular matter?

4 MR. CHAIRMAN: I think that in this case we have decided to
5 make sure that this order contains that option because
6 that has been specifically requested. It's the only time
7 we've had that come before us. I think on an ongoing
8 basis -- and I'm certainly open for any Board comment
9 here -- that the statute stands on its own, that the
10 options afforded by statute are there by statute. I'm
11 not trying to be evasive. If you have any follow-up
12 that's fine, but that's the way we view it. This is the
13 first case we've had before us that specifically said we
14 request the option of sale and the Board has just decided
15 to put that in the order.

16 MR. MCGLOTHLIN: I also think that the subsequent orders down
17 the road will also contain that language. Was that the
18 question you were asking?

19 MR. KAISER: That was my question and that was my concern
20 because I think if you're going to interpret the statute
21 strictly like you are there certainly then what Elizabeth
22 is saying about the first paragraph of paragraph eight
23 that tracks the statute that is in the orders clearly
24 lies in the face of the statute. What that says, if
25 you've got a voluntary agreement that has been negotiated

1 between the parties which is what an oil and gas lease is
2 then you're still afforded these elections. And if
3 that's the case why would any prudent operator -- after
4 they've obtained twenty-five percent of the acreage in
5 the unit, if they've gotten that under a voluntary lease
6 why would they lease any further than that if the leased
7 parties are going to have the same options as unleased
8 parties? Do you see what I'm saying? There's all kinds
9 of things to consider here.

10 MR. FULMER: I don't see how leased parties are even involved
11 in that. Don't you have under you lease the option to
12 pool?

13 MR. KAISER: What is a voluntary agreement, Tom? Is a lease
14 not a voluntary agreement?

15 MR. FULMER: Well, now you're talking apples -- I'm not going
16 to get in a fight with you. You're talking about apples
17 and oranges here because you're talking about two
18 different leases. You're claiming you have the same
19 lease that lease has.

20 MR. KAISER: I'm not talking about in this particular case.
21 I'm talking about if this election is afforded in every
22 case subsequent to this.

23 MR. MCGLOTHLIN: It's been afforded to every case previous to
24 this as well according to the statute.

25 MR. KAISER: But it's not in the orders, is it?

1 MS. McCLANNAHAN: Only for unleased parties.

2 MR. KAISER: And only for unleased parties. Do you see the
3 point I'm making?

4 MR. CHAIRMAN: Yes, I understand. That's why I answered you
5 the way I did before. We had not had anyone come before
6 us asking for a sale option until now and that was how
7 the Board made this decision that you just heard. That's
8 why I answered and I wasn't trying to cut Elizabeth off
9 in saying for this case.

10 MS. RIGGS: Getting back to Elizabeth's question, and that was
11 whether when the completed for production cost the final
12 costs have to be filed, there had been a provision of
13 thirty days and I think that got extended to sixty.
14 There's never been any testimony before the Board. That
15 was an operational concern that the DGO Office had. At
16 one point we asked them through this Board to gather
17 information related to final costs so we could do a
18 comparison of how those compared to estimated costs. And
19 low and behold there was no requirement that the final
20 cost necessarily be on file. So there needed to be some
21 enabling language in there so that those comparisons
22 could be made and that monitoring done. The times have
23 never been set by the Board nor has there been any
24 testimony from the operator's point of view as to what
25 those time frames ought to be. So it's really a case of

1 first impression for the Board and it's at whatever --
2 there's no pride of authorship in what's there.

3 MR. SWARTZ: Well, since there's only responding party here,
4 if they want 90 days in this particular application as
5 opposed to 60 I have no problem with that. I wouldn't
6 insist on them offering some explanation. I mean, we'll
7 just go along with that. If they need 90 days fine, on
8 this order. And then you can perhaps --

9 MS. MCCLANNAHAN: There are six orders.

10 MR. SWARTZ: Well, the six orders. And to the extent that
11 needs to be revisited on a generic basis for everybody,
12 well, you might need to take some evidence. But for
13 these six cases CNR would agree to that change in time
14 period if it's acceptable to the Board.

15 MR. EVANS: In which case do we need a motion for that? I
16 guess we probably do since the other one didn't include
17 anything.

18 MR. CHAIRMAN: Uh-huh.

19 MR. EVANS: I move that the request for 90 days versus the
20 sixty days be granted for this particular docket item and
21 these six particular pooling orders.

22 MR. MCCLANNAHAN: Just to make sure we're clear on this, it
23 also is 90 days after restoration of location. Is that
24 -- did you need to include that in your motion?

25 MR. EVANS: That's fine.

1 MR. SWARTZ: I don't have a problem with that.

2 MS. RIGGS: So it's 90 days after the production -- the later
3 then of production or restoration of the location?

4 MS. McCLANNAHAN: Right, exactly. The only part that wasn't
5 in there was "and restoration of the location is complet-
6 ed."

7 MR. CHAIRMAN: We have a motion. Do I have a second?

8 MS. PRESLEY: Second.

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

12 MS. McCLANNAHAN: Also, I guess, are we clear that a 300
13 percent penalty applies in the case of carried versus
14 non-carried under the participating option since this is
15 a leased interest?

16 MS. RIGGS: I guess the problem I'm having here is that we
17 have pooling orders -- applications come before the Board
18 all the time and we've never had to tailor those to the
19 unique circumstances of who the respondents in the
20 particular case have to be. The options follow the
21 statute and then it's presumed that the party making the
22 election will govern themselves accordingly depending on
23 their particular circumstances, their particular owner-
24 ship interests and so forth and so on. What's happening
25 in this particular case is we're being asked to model the

1 pooling order to fit title evidence in the case and
2 that's what's making it somewhat difficult. If they are
3 leased or unleased that's what they are, I would presume,
4 and they would have to elect accordingly without the
5 Board deciding what their status is because there's no
6 testimony before the Board to determine that status.

7 MS. McCLANNAHAN: Oh, yes, there is. The conflicting claim-
8 ants exhibit lists them. I also asked Mr. Swartz today,
9 are you a leased party and he indicated yes. And my
10 question is we need to notice -- you can't just tell us
11 -- you've on the one hand said they're an unleased party
12 or we're treating this as an unleased interest for
13 purposes of the force pooling and then -- but they've
14 indicated they're a leased party and we have to know
15 that. We have to calculate. We're not asking you to
16 taylor it --

17 MR. SWARTZ: Well, first of all we would have to elect to be
18 carried before this can of worms would even surface. I
19 mean, I've told the Board that my client is telling me
20 they're either going to participate or want to sell. I
21 haven't heard nothing that they want to be carried. If
22 they want to be carried in any of these units and we
23 can't agree with their statuses I guess we can come back.
24 But I think it's a waste of time right now. I don't even
25 think my client's going to elect to be carried on any of

1 these wells.

2 MR. CHAIRMAN: I'm lost, Elizabeth. I don't follow where --

3 MS. McCLANNAHAN: The 300 percent penalty applies if it's a

4 leased interest.

5 MR. CHAIRMAN: I understand, but only in cases where it is

6 carried.

7 MR. SWARTZ: Right.

8 MS. McCLANNAHAN: Exactly, but we're not going to know that

9 until after the order is entered. So I'm just asking for

10 purposes of if they elect carried then does this 300

11 percent statutory penalty apply.

12 MR. CHAIRMAN: I think it applies to anyone who elects to be

13 carried. 300 and 200.

14 MS. McCLANNAHAN: Right. But --

15 MS. RIGGS: She's dropped out the 200 --

16 MR. CHAIRMAN: Oh, well, that's what I was trying to under-

17 stand. Okay, because it's a leased tract.

18 MS. McCLANNAHAN: Yes, exactly.

19 MR. CHAIRMAN: So you're trying to get us to rule on whether

20 or not we have before us a leased tract.

21 MS. McCLANNAHAN: No. I'm saying is it a 300 percent interest

22 or is it a 200 percent interest in terms of penalty?

23 Yes, you're right. You're going to have to tell me. I

24 mean, they've already said it's a leased tract.

25 MR. CHAIRMAN: I'm not trying to play games with you either.

1 I'm trying to just make sure I understand. You're trying
2 to get us to agree that we've heard evidence to say that
3 this is a leased tract that's before us.

4 MS. McCLANNAHAN: Yes.

5 MR. CHAIRMAN: Mr. Swartz, is that in dispute, the fact that
6 we have a leased tract before us at 300 percent?

7 MR. SWARTZ: We were pooled under our lease for goodness
8 sakes. I mean, we claim we have a lease and we were top
9 leased. No, it's not in dispute. But on the other hand
10 we haven't elected -- I'm telling you I don't think we're
11 going to elect to be carried. I mean, this is all a
12 waste of time. We were pooled because we have a lease
13 and we're parties to a lease. That's in the record and
14 I've never taken a position that we're a fee owner. I
15 think you can assume one of the reasons we're not
16 interested in being carried is we don't want a 300
17 percent penalty.

18 MS. McCLANNAHAN: Well, are you suggesting you're making your
19 election now?

20 MR. SWARTZ: No. You've got to give me an order first and
21 then I've got thirty days.

22 MS. McCLANNAHAN: Precisely. So I need to know what that
23 means when the order goes out.

24 MR. CHAIRMAN: (Pause.) I think what they're trying to get at
25 is to cut out that part of the option.

1 MS. RIGGS: To taylor the pooling orders --

2 MS. McCLANNAHAN: No, no.

3 MS. RIGGS: -- so that if they elect to be carried that 300 is
4 the applicable penalty. Is that what we're saying?

5 MS. McCLANNAHAN: No, we're not requesting that.

6 MR. MCGLOTHLIN: Excuse me. First of all, they have to make
7 the option if they're going to sell or lease or be deemed
8 leased or whatever or participate or not participate or
9 be carried or whatever.

10 MS. McCLANNAHAN: I don't think, though, it makes sense for us
11 to keep coming back to the Board every month to determine
12 yet one more provision of the order. So I was just
13 trying to get this taken care of in case carried as an
14 option.

15 MR. SWARTZ: Well, it is an option and it's in the record. I
16 wouldn't want to come back here and tell these people
17 that we don't have a lease. I mean, gee, where am I
18 headed here? You've got to assume that the record means
19 something and that people don't do stuff that's crazy.
20 There is a lease here.

21 MS. McCLANNAHAN: If the record meant something, Mark, we
22 wouldn't be here today.

23 MR. SWARTZ: Well, I guess it meant more in my interpretation
24 than yours. I mean, why didn't you lay it out a month
25 ago. I think you've got to assume I have never disputed

1 there's a lease. So why would I ever come back here and
2 argue that it was fee or something. I think --

3 MR. CHAIRMAN: Enough folks. Okay.

4 MR. SWARTZ: I'm sorry. I'm done. You can do whatever you
5 want.

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ITEM IX

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3 MR. CHAIRMAN: The next item on today's agenda is a petition
4 from Equitable Resources Exploration for modification of
5 VCP-3099, a provisional drilling unit. This is docket
6 number VGOB-94/01/18-0430. We'd ask the parties that
7 wish to address the Board in this matter to come forward
8 at this time.

9 MS. McCLANNAHAN: Elizabeth McClannahan representing Equit-
10 able.

11 MR. SWARTZ: Mark Swartz for Columbia Natural Resources.

12 MR. SCOTT: Tim Scott for Penn-Virginia Resources Corporation.

13 MR. SWARTZ: Maybe to save time I have no -- CNR has no
14 objection to modifying this unit to include the addition-
15 al seams and pooling them. If that's all that needs to
16 happen today we would consent to that happening. If
17 we're going to get back into the notice with elections
18 and everything else and costs -- I think we already have
19 the costs unless they've been modified. I would consent
20 to this on behalf of my client to the extent that it
21 seeks to -- additionally to modify the prior order,
22 adding additional seams and pooling those seams. If
23 that's all that needs to happen today my client will
24 consent to that.

25 MR. CHAIRMAN: Elizabeth, this is your application.

1 MS. McCLANNAHAN: I assume Penn-Virginia has something to say
2 in this.

3 MR. SCOTT: We don't object.

4 MS. McCLANNAHAN: Could I take about a five minute break?

5 MR. CHAIRMAN: Sure.

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

7 MR. CHAIRMAN: The parties have already identified themselves
8 and we've had some information in the record. Elizabeth,
9 have you made a decision?

10 MS. McCLANNAHAN: Yes. We certainly appreciate Mr. Swartz
11 agreeing to stipulate to, I assume, the application as
12 its submitted and all exhibits that are submitted with
13 that application. The way I understand this is in
14 addition to the stipulation that an order be entered like
15 the other five that were on the docket before -- this is
16 one of the six -- the other five that are on the docket
17 previous to this which would be docket number VGOB-
18 94/02/15 -- I can't read my fax copy.

19 MR. FULMER: 94/02/15-0436.

20 MS. McCLANNAHAN: Thank you, Tom. That an order be entered in
21 accordance with the Board's previous decision on those
22 six applications, one of which was this 3099. Is that a
23 correct summary of your stipulation?

24 MR. SWARTZ: Right. And then in addition the order with
25 regard to this well 3099 would add these seams which you

1 need -- I mean, that would be a difference.

2 MS. McCLANNAHAN: Right. That's in the application.

3 MR. SWARTZ: Right. It would deal with what you've asked for

4 in paragraphs A, B and C.

5 MS. McCLANNAHAN: Of the application, you're talking about?

6 MR. SWARTZ: Of this new application.

7 MS. McCLANNAHAN: Right.

8 MR. SWARTZ: You're asking that these seams be added in A,

9 that the well be able to produce from those seams, and

10 that the interests in these additional seams which

11 haven't been pooled previously be pooled. So we'd get an

12 order like the six that we've been talking about but it

13 would be different in those three respects -- to give you

14 the relief that you're asking for here.

15 MS. McCLANNAHAN: Right. So you are stipulating to the

16 application as it's been submitted with all the exhibits.

17 MR. SWARTZ: Well, the problem is you've asked for relief here

18 beyond what I've just talked about in A, B and C and I

19 have no quarrel with any of your exhibits but I -- you

20 know, I don't want to get back into election procedures

21 which is your paragraph E of the notice. All this other

22 stuff --

23 MS. McCLANNAHAN: Is there a problem with paragraph D?

24 MR. SWARTZ: Well, you're already the designated operator. I

25 mean, you don't even need that. No, I don't but EREX is

1 already the designated operator for this unit. There's
2 already been a provision for costs in F.

3 MS. McCLANNAHAN: The costs though -- there are additional
4 costs.

5 MR. SWARTZ: I can see that.

6 MS. McCLANNAHAN: So are you stipulating to the additional --

7 MR. SWARTZ: I don't have a problem with your exhibits with
8 regard to costs and I will agree that you would testify
9 that they are reasonable and I don't have a quarrel with
10 that.

11 MS. McCLANNAHAN: Are there any problems with any other
12 paragraphs besides paragraph E?

13 MR. SWARTZ: I'm telling you that I'm agreeing to the entry of
14 an order just like the one we talked about in the
15 previous hearing except you would need that order to
16 address paragraphs A, B and C. If you need something
17 else tell me what it is and I'll let you know.

18 MS. McCLANNAHAN: Okay. With regard to paragraph E I would
19 just request that the Board include my testimony and
20 objections that were previously given in docket number
21 94/02/15-0436 for this particular application also rather
22 than us going through all those arguments again. But I
23 certainly would like those noted for purposes of the
24 record.

25 MR. CHAIRMAN: That will be noted for the record.

1 MS. McCLANNAHAN: Our request is, of course, that our applica-
2 tion paragraph E be amended to delete the sale option and
3 instead only include one, three and four obviously
4 understanding that the Board has overruled us on that
5 particular interpretation in it's decision in 94/02/15-
6 0436.

7 MR. SCOTT: I have one comment to make and this relates to
8 0436 which has already been decided by the Board. I have
9 raised an issue -- or one of the members of my firm have
10 raised an issue on the application and the order with
11 regard to the escrowing of the working interests. I've
12 spoken with counsel for EREX about the way that was set
13 up and we don't have any objection. I think that EREX
14 has taken a very cautious approach to this to which we
15 have no objection because our interest is small in this
16 but we feel like that they've gone beyond the mandates
17 of the statute. Again, we're not raising an objection.
18 I just wanted to go on record on that issue.

19 MR. CHAIRMAN: Do you have anything further, Elizabeth?

20 MS. McCLANNAHAN: I want to call two witnesses, please, for
21 the questions we'll need to go through, I believe.

22 MR. CHAIRMAN: Okay. Proceed.

23 MS. McCLANNAHAN: Don Hall.

24 MR. CHAIRMAN: He's been previously sworn. He's qualifica-
25 tions have been accepted. So we'll stipulate to that

1 also.
2

3 DON HALL

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

7 DIRECT EXAMINATION
8

9 BY MS. McCLANNAHAN:

10 Q. Just to make sure we have the record here, Mr. Hall, you
11 previously testified and your qualifications were
12 accepted by the Board in today's matters, docket numbers
13 94/01/18-0432, 94/01/18-0433, 94/01/18-0434, is that
14 correct?

15 A. Yes.

16 Q. Have you given notice as required by Virginia Code,
17 annotated, Section 45.1-361.19 to each person or entity
18 identified on Exhibit B of the modification and pro-
19 visional unit and compulsory pooling of additional coal
20 seams application as the potential owner of the coalbed
21 methane gas underlying this provisional unit?

22 A. Yes.

23 Q. Were there any persons whose names and/or addresses were
24 unknown?

25 A. No.

- 1 Q. Did you publish notice in the Bristol Herald Courier
2 paper on December 26, 1993?
- 3 A. Yes.
- 4 Q. Were copies of the proof of publication previously
5 submitted to the Board?
- 6 A. Yes.
- 7 Q. Are you proposing that the Board modify the provision
8 drilling unit established pursuant to Virginia Code,
9 annotated, Section 45.1-361.20.E?
- 10 A. Yes.
- 11 Q. Is this modification necessary because EREX has determin-
12 ed that additional coal seams may be capable of coalbed
13 methane production in the VCP-3099?
- 14 A. Yes.
- 15 Q. Is there any coal being removed with the provisional unit
16 area?
- 17 A. No.
- 18 Q. Is there any active mining within 750 feet of the well?
- 19 A. No.
- 20 Q. Do you have a consent to stimulate the Rocky Fork coal
21 seam and the seams below the Rocky Fork in this unit in
22 addition to the Norton coal seam and below obtained in
23 conjunction with the previous docket number 0413?
- 24 A. Yes, we do.
- 25 Q. Has a drilling permit been previously refused to EREX on

1 any of the tracts that comprise this unit?

2 A. No.

3 Q. Has a well work permit been issued for this unit and this

4 well?

5 A. Yes. Permit number 2555 was issued on October 13th,

6 1993.

7 Q. Has this well been drilled?

8 A. Yes, it has.

9 Q. Does the plat attached to the modification of the

10 provisional unit and compulsory pooling of additional

11 coal seams application filed by EREX indicate the acreage

12 and the shape of the acreage to be embraced within this

13 unit?

14 A. Yes, it does.

15 Q. Does the plat indicate the area within which the well has

16 been drilled on the unit?

17 A. Yes.

18 Q. Does the unit embrace three or more separately owned

19 tracts or are there separately owned interests in all or

20 part of this unit?

21 A. Yes.

22 Q. And those interests have not agreed to pool their

23 interests?

24 A. Pardon?

25 Q. Those interests have not agreed to pool?

1 A. Correct.

2 Q. Have you obtained a coalbed methane gas lease on the
3 acreage within 3099 unit?

4 A. Yes.

5 Q. Is EREX the operator of 100 percent of the coalbed
6 methane gas within the 3099 unit under this 1993 coalbed
7 methane gas lease?

8 A. Yes.

9 Q. Are there also oil and gas leases on the acreage within
10 the 3099 unit?

11 A. Yes.

12 Q. Are these leased dated 1972 and 1988?

13 A. Yes, they are.

14 Q. And these leases are referenced in Exhibit B of the
15 modification and the provisional unit and compulsory
16 pooling application?

17 A. Yes, they are.

18 Q. Is EREX the operator of the 72/88 leases?

19 A. Yes.

20 Q. Is the reason for filing a compulsory pooling application
21 under the conflicting claimant statute the result of CNR
22 claiming an interest in the CBM under the 1972 and 1988
23 oil and gas leases as alleged by CNR and a suit filed in
24 the Circuit Court of Wise County, Law Number L-93317?

25 A. Yes.

1 Q. If CNR participates under the elections previously ruled
2 on by the Board in the prior docket number today are you
3 requesting that it contribute 11.65049 percent of the
4 cost of the well?
5 A. Yes.
6 Q. To be escrowed pursuant to statute?
7 A. Yes.
8 Q. If CNR participates are you requesting that 10.19418
9 percent of its net revenue interests be escrowed?
10 A. Yes.
11 Q. If CNR participates are you requesting that a two and a
12 half percent royalty differential between the 72/88 oil
13 and gas leases and the 1993 CBM lease be escrowed?
14 A. Yes.
15 Q. If CNR participates are you requesting that the differen-
16 tial net revenue interest of all conflicting claimants
17 listed on Exhibit C be escrowed?
18 A. Yes.
19 Q. If CNR elects to be carried after pay-out of the 300
20 percent statutory penalty are you requesting that the
21 differential net revenue of all the conflicting claimants
22 listed on Exhibit C be escrowed?
23 A. Yes.
24 Q. If CNR is a carried operator are you requesting that the
25 two and a half percent royalty between the 72/88 oil and

1 gas leases and the 1993 CBM lease be escrowed?

2 A. Yes.

3 Q. If CNR does not make an election are you requesting that

4 its interest be deemed to be carried?

5 A. Yes.

6 Q. Are you requesting that CNR be allowed the standard

7 period of time in which to make an election thirty days

8 after recording the order in the appropriate clerk's

9 office?

10 A. Yes.

11 Q. Are you requesting that the Board modify the 3099 unit

12 and pool the interest of the conflicting claimants listed

13 on Exhibit B?

14 A. Yes.

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

16 Hall.

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

18 MR. EVANS: I've gone one quicky. Did you say there's no

19 mining within 700 feet of this well?

20 MS. McCLANNAHAN: I believe there is no presently active

21 mining within 750 feet of the well.

22 MR. EVANS: Obviously from the plat there's some abandoned

23 works?

24 MR. HALL: Yeah.

25 MR. EVANS: That mine is no longer working or is that section

1 just abandoned?

2 MR. HALL: I don't think that mine is working at all.

3 MR. EVANS: In what seam, do you know?

4 MR. HALL: Pardon?

5 MR. EVANS: What seam are those in?

6 MR. FULMER: Imboden.

7 MR. HALL: I think it's on the plat there.

8 MR. EVANS: Oh, I see it. Thank you. That's it.

9 (Witness stands aside.)

10 MR. CHAIRMAN: Any other questions? Mr. Swartz, do you have
11 any questions?

12 MR. SWARTZ: I think that Elizabeth requested that if CNR did
13 not make an election they be deemed to have been carried.
14 The statute says if you don't do anything you're deemed
15 to have leased. The order sort of deals with that -- the
16 standard order. I don't know if she mis-spoke, but I'm
17 trying to listen carefully to what we're being asked.

18 MS. RIGGS: I think that was part of the comments to the prior
19 six in that the language she had requested in the letter
20 which is included in the docket requested -- well, it
21 didn't offer a lease option and it didn't offer a sale
22 option and therefore the deemed to be was carried as
23 opposed to a lease since there was no lease option.

24 MR. SWARTZ: All right. I just caught that and wanted to make
25 sure it was noted and that -- I guess she was telling us

1 that because she was continuing her objection to what had
2 happened before. I have no problem with what I heard.
3 I've agreed to this on behalf of my client in the sense
4 that we're adding the seams, that the costs have changed
5 for a recompletion, that these additional seams be pooled
6 and that the interest of CNR in these additional seams be
7 pooled as well -- the interest, if any. So I have no
8 problem with it.

9 MS. McCLANNAHAN: With regard to what Mark is talking about
10 with the elections, again, this is the point I was making
11 earlier. That if you're a leased interest you can't be
12 deemed to be leased which is what the statute, of course,
13 contemplated that it would apply to unleased parties, not
14 leased parties. So if you apply the statute to a leased
15 party then you have to deem them to be carried in our
16 estimation. Bob Dahlin, please.

17 MR. CHAIRMAN: Just a second. Did you have any questions, Mr.
18 Scott?

19 MR. SCOTT: I just wanted to clarify something because I think
20 we discussed this before. You're going to escrow
21 whatever the difference is between the 1993 and the 1972
22 lease, both EREX's interest and Penn-Virginia's interest
23 and CNR's interest.

24 MS. McCLANNAHAN: Right.

25 MR. SCOTT: That's all I needed to know. Thanks.

1 be capable of coalbed methane production in this unit?

2 A. That's correct.

3 Q. How did you determine that additional seams were necess-
4 ary for the operation of the well?

5 A. During drilling we encountered a natural up-flow in the
6 zones above what had previously been force pooled.

7 Q. In the additional coal seams from which you intend to
8 produce are the coal seams from the top of the Rocky Fork
9 including the upper Clintwood, bottom Clintwood, Blair
10 Lines, Dorchester and any other unnamed coal seams,
11 coalbed or pools, rock strata associated therewith strata
12 correlative to the coal seams and coalbeds, is that
13 correct?

14 A. That's correct.

15 Q. And these seams are additional seams to those that you
16 have already previously included in the application under
17 docket number 0413, is that correct?

18 A. That is also correct.

19 Q. Are the costs and expenses for the well set forth on the
20 supplemental authority for expenditure attached to the
21 application of the provisional unit and compulsory
22 pooling of additional coal seams as Exhibit G?

23 A. They are.

24 Q. Does the supplemental AFE reflect the additional stimula-
25 tion costs of the additional seams to be included in the

1 well?

2 A. Yes, it does.

3 Q. Does the supplemental AFE reflect the cost of drilling
4 the well to total depth and completed for production
5 costs?

6 A. It reflects the additional costs subject to drilling to
7 total depth and recompletion, yes.

8 Q. Are you requesting that EREX continue to be designated as
9 the well operator authorized to operate this unit as
10 modified?

11 A. Yes, we do.

12 MS. McCLANNAHAN: Those are all the questions I have for Mr.
13 Dahlin.

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

15 MR. EVANS: These completed well costs are in addition to what
16 was originally --

17 MR. DAHLIN: That's correct.

18 MR. EVANS: Okay. So, in other words, we're talking 177,000
19 more than what was --

20 MR. DAHLIN: No. Just 47,000 additional.

21 MR. EVANS: That's what I was asking, what totals were
22 totals.

23 MR. DAHLIN: You have in front of you a supplemental AFE with
24 the total of \$47,000?

25 MR. EVANS: Yes.

1 MR. DAHLIN: That's the only additional costs that will be
2 covered under this.

3 MR. EVANS: In other words, I guess, the original for 177?

4 MR. DAHLIN: That sounds right. I don't have a copy of that
5 with me.

6 MR. EVANS: Is that right? Am I reading that right, Tom?

7 MR. FULMER: September, 1993.

8 MR. EVANS: So we've got 47,000 in additional to that 177,000?

9 MR. DAHLIN: That's correct.

10 MR. EVANS: That's fine. Okay.

11 MR. CHAIRMAN: Other questions? Mr. Scott, any questions?
12 Mr. Swartz?

13 MR. SWARTZ: No.

14 MR. CHAIRMAN: Anything further, Ms. McClannahan?

15 MS. McCLANNAHAN: No.

16 MR. CHAIRMAN: Members of the Board?
17 (Witness stands aside.)

18 MR. MCGLOTHLIN: I move we accept the petition as presented.

19 MS. PRESLEY: I second that motion.

20 MR. MCGLOTHLIN: Make that noting Mr. Swartz and Mr. Scott's
21 comments.

22 MR. EVANS: Consistent with all the testimony we've received
23 on this decision and the prior five.

24 MR. CHAIRMAN: He's just trying to clarify the motion because
25 it is --

1 MS. RIGGS: Would it be approved as submitted subject to the
2 decision of the Board in the prior docket and the
3 stipulations of Mark Swartz related to the relief being
4 sought?

5 MR. MCGLOTHLIN: Yeah, that's what I said.

6 MR. EVANS: We're making sure that's what you said.

7 MR. CHAIRMAN: Any further discussion? Do we have a second?

8 MS. PRESLEY: Second.

9 MR. CHAIRMAN: Any further discussion? All in favor signify
10 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
11 It's a unanimous approval.

12
13 (End of Proceedings for
14 February 15, 1994.)
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1 CERTIFICATE

2
3 COMMONWEALTH OF VIRGINIA

4 COUNTY OF WASHINGTON

5
6 I, Deborah J. Bise, Notary Public in and for the Common-
7 wealth of Virginia, at Large, do hereby certify that the
8 foregoing is a true transcript of the proceedings had in the
9 Virginia Gas and Oil hearing on February 15, 1994; that all of
10 said proceeding was electronically recorded and was reduced to
11 writing by me and that said transcript is true and correct to
12 the best of my ability.

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

16
17 GIVEN under my hand this 8th day of March, 1994.

18
19 Deborah J. Bise
20 DEBORAH J. BISE
21 NOTARY PUBLIC

22 My commission expires September 30, 1996.
23
24
25