

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VIRGINIA GAS & OIL BOARD HEARING

~~February~~ **MAY 17** 15, 1994

9:00 A. M.

AT THE 4-H CENTER
ABINGDON, VIRGINIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>ITEM</u>	<u>PAGE</u>
I	2
II	11
III	36
IV	79
V	99
VIII	113

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

May 17, 1994

This matter came on to be heard before the Virginia Gas and Oil Board on May 17th, 1994 in the Dickenson Conference Center at the Southwest Virginia 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22B of the Code of Virginia.

MR. HARRIS: We would like to begin today's session. Good morning. I'm Bill Harris and I'm sitting in for Benny Wampler who is out of town today. As I said, I'm Bill Harris and I'm one of the public members on the Board. I'd like for the other Board members to introduce themselves at this time.

(MEMBERS INTRODUCED.)

ITEM 1

1
2
3 MR. CHAIRMAN: This first item on today's agenda is the Board
4 will receive a quarterly report on escrow accounts
5 established by Board order from Tazewell National Bank,
6 escrow agent for the Virginia Gas and Oil Board. I
7 believe we have a representative from the bank here.

8 MR. TWEED: Mr. Chairman, just for convenience if I could make
9 an announcement on behalf of Equitable Resources Explor-
10 ation.

11 MR. CHAIRMAN: Okay.

12 MR. TWEED: We have on today's docket Items V through IX and
13 at the request of the potential complainant VI and IX
14 have been continued by the Board through Mr. Fulmer. We
15 wanted to announce that Item VII we wish to continue with
16 your permission today. There was a notice clarification
17 we were going to seek and it turned out we were able to
18 contact the person and negotiate a lease and that person
19 has led us to another individual they have power of
20 attorney for. So we'd like to continue it for one month
21 in hopes that we may be able to announce a dismissal
22 because we've fully leased as required. We wanted to be
23 able to announce Item VII as a continuance request by us
24 so that if there was anyone here they could be released
25 by the Board now and not have to wait around.

1 MR. CHAIRMAN: Any questions or concern about Item VII? On
2 Item VII is there anyone else present -- the item is a
3 petition from Equitable Resources Exploration for pooling
4 of a drilling unit under 45.1-361.21 for V-2378 located
5 in the Lipps District, Coeburn Quadrangle, Wise. The
6 docket number is 94/05/17-0446. Is there anyone else
7 present to speak to that? Any objections? (Pause.)
8 Okay. Then we can continue Item VII to next month's
9 docket.

10 MR. TWEED: Thank you.

11 MR. CHAIRMAN: Mr. King, you may proceed.

12 MR. KING: Good morning. I'm Bill King with Tazewell National
13 Bank. Actually my report today should be fairly brief.
14 I've passed out a short summary of the escrow account
15 that we started a while back showing the deposits,
16 income, fees on a quarterly basis. I'm going on calendar
17 quarters and so the most recent one is as of March 31st,
18 1994. The deposits, as you can see, seem to be coming in
19 at a declining rate. From looking at the balance we hold
20 approximately -- yesterday -- if I project for this
21 current quarter through the end of June we're probably
22 looking at about the same. The last couple of quarters
23 23,000/24,000. At least that what it appears to us to
24 be. As we had projected and was evident at the end of
25 the year, the income is now beginning to out distance the

1 fees we're charging and the totals are going to be
2 widening. In that regard, we had put off the last time I
3 was here a decision on reinvesting. Currently we're
4 still all in money market. As a matter of fact, for the
5 first four months of the year we're better off having
6 been there as opposed to going into bonds because of the
7 rising interest rates. I'm not saying that we're getting
8 more interest. I'm saying that values in the bond market
9 have declined and the averages of even short term bond
10 funds have -- short US Government bond funds have
11 declined. In the first quarterly you a little over one
12 percent and most others are much more than that. So
13 actually what - we still feel it's necessary in some low
14 risk way to reinvest perhaps up to 60 percent of the
15 portfolio in some other type of investments. We talked
16 about funds and there was some feeling that the fund
17 management fees plus our fees would be too much. So we
18 have looked at a means of using individual treasury
19 notes. The problem has been allocating that interest.
20 It's much easier to do with a mutual fund where you have
21 a daily factor. But feel like we can and have solved
22 that problem. So what our intention is is to buy one,
23 two and three year treasury notes, not extending any
24 longer than three years. This is a very conservative
25 approach but yet -- well, for example, right now a one

1 year treasury is from 5.3 to 5.4 percent and a two year
2 is about 6 percent and a three year is 6.4 percent. So
3 hopefully the portion that we would invest in this manner
4 would practically almost double the interest we'd have
5 and still not take a lot of risk. We'll have money
6 coming due every year that will be rolled through another
7 three year and when there begins to be or seems to be a
8 resolution that the escrow monies -- if this gets into
9 the court system where we -- we would still have some
10 time and we would begin to go back to cash. I feel like
11 that would be our best strategy. As I mentioned, still
12 leaving roughly 30 to 40 percent in cash, anything that
13 would come up that would need to be paid out I would
14 think that would certainly cover it. So far we've had
15 only one that was an un-locatable and a minor amount.
16 That's what we recommend. And I don't know that it's
17 necessary for the Board to approve that. It's up to you
18 all. I mean, this would be within the guidelines of the
19 escrow document.

20 MR. CHAIRMAN: Any questions?

21 MS. RIGGS: I have one question. What is the largest sum of
22 any one deposit per unit? Do you know, maybe an average
23 in the largest?

24 MR. KING: I don't really know. I don't have that with me.
25 The latest type of participant report, you wouldn't have

1 that here. I can tell from that.

2 MS. RIGGS: I know that there was one well where there was a

3 participant that paid in 200 and some odd thousand

4 dollars. Now, I don't know whether that money is in

5 escrow or pursuant to the agreement is privately escrow-

6 ed.

7 MR. KING: I don't believe we have any kind of money like

8 that --

9 MR. SWARTZ: It's privately escrowed.

10 MS. RIGGS: If that were resolved somehow that wouldn't be

11 impacted by the decision on the investments that he's

12 making today?

13 MR. SWARTZ: Correct. It's a payment to Ashland.

14 MR. KING: I really believe that we don't have anything

15 anywhere near that, even 50,000. The average is probably

16 a few thousand. I'm saying probably. I don't really

17 know but --

18 MS. RIGGS: It was that one that I was aware of that I was a

19 bit concerned about.

20 MR. KING: Okay. Any other questions about investments or the

21 balances or anything else? The only other thing I

22 thought I would bring up and I really don't know the

23 status and that is the -- we talked a while back about

24 setting an amount as a limitation on the deposits.

25 Instead of remitting every month for every unit any

1 amount, to set those at \$35, \$100, whatever. I don't
2 know that we've actually resolved that. The only reason
3 I bring it up is we still have some very small checks
4 coming in which is okay but we had offered as far as the
5 per unit per month accounting fee to charge a receipt
6 fee. In other words, if we got a check every month it's
7 going to be \$10 a month. If we get a check once a
8 quarter technically under the escrow agreement for our
9 fee we're entitled to charge \$10 per. But if a deposit
10 is only \$10 or less in a lot of cases we're deferring
11 that and, like I said, we'll even take one fee for one
12 check even though it might be covering several months.
13 So to make this more efficient for all of us I think it's
14 a good idea if that can be approved across the Board for
15 all the companies. Some companies are doing that and I
16 think maybe the others are working on it.

17 MS. RIGGS: I can't recall. It seems like it was \$25. Is
18 that what we discussed?

19 MR. CHAIRMAN: Yeah. I remember the discussion but I don't
20 know that we as a Board have done anything beyond that.
21 One of the things I remember in the discussion is I think
22 the companies were going to look at whether or not that
23 was possible, but I don't know if there was any official
24 word from us to alert the companies to look for that --
25 to do that.

1 MR. KING: We've talked with some and I would just invite any
2 of them to contact us about that. We actually have a
3 meeting scheduled next week with one to go over the
4 accounting procedure and probably this question of the
5 minimum amount. So I think that's working itself out.
6 But any others that haven't done anything or would like
7 to talk to us about it we would be happy to do that.

8 MR. CHAIRMAN: Can we do something to encourage that or should
9 we do something to encourage it?

10 MS. RIGGS: Why don't we research what the transcript was from
11 our prior discussion and perhaps send out a letter to the
12 operators. Tom, could we do that -- asking them to
13 consult with the bank with respect to consolidating some
14 of these deposits in order to minimize the fee?

15 MR. FULMER: Yeah, we can do that. I had previously drafted a
16 letter regarding -- the Board never ruled on the minimum
17 amount. Of course, they heard discussion but they never
18 ruled on it.

19 MS. RIGGS: Maybe we need to schedule it for the next Board
20 hearing then and bring it up officially when we have the
21 transcript of everything that's transcribed previously.

22 MR. FULMER: If I remember correctly I think the discussion
23 centered around the minimum amount being at least \$25
24 because it costs more to cut the check than the amount.

25 MR. CHAIRMAN: Well, I keep thinking that -- I don't know if

1 we ever made a ruling. I think the problem was that not
2 all of the companies had an accounting system that would
3 allow that.

4 MR. FULMER: Right.

5 MR. CHAIRMAN: And I think what we were doing was trying to
6 encourage those that could to do that and those that
7 couldn't maybe to work out some type of an arrangement.
8 But that's been a while back and I don't know --

9 MS. RIGGS: That's what it was.

10 MR. CHAIRMAN: I don't know where that leaves us, though.

11 MR. FULMER: Whatever the Board's pleasure is.

12 MS. RIGGS: Why don't we poll the operators and find out those
13 that can and can't and then report back month and decide
14 what we're going to do.

15 MR. CHAIRMAN: Place that on the agenda for next month then?

16 MR. FULMER: I'll work with you, Sandra, and get the wording
17 right on the agenda item.

18 MR. CHAIRMAN: What we'll then is call the operators and see
19 if we can -- the Board will address that at the next
20 meeting and see if there is something that can be done to
21 encourage greater participation. I'm not sure how much
22 we're getting now, but that would be good. And, again,
23 I remember one of the problems was the accounting systems
24 in use there.

25 MR. KING: Right. That's all I have unless there are any

1

other questions.

2

MR. CHAIRMAN: Are there other questions? Okay. Mr. King,

3

thank you.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ITEM II

1
2
3 MR. CHAIRMAN: The next item is a petition from Ashland
4 Exploration, Inc. for force pooling of a drilling unit
5 under Section 45.1-361.21 for PKG-18 located in the
6 Pilgrim's Knob Gas Field on the Patterson Quadrangle,
7 North Grundy District of Buchanan County. The docket
8 number is VGOB-94/04/19-0438. This was continued from
9 April. Would all persons wishing to speak to this item
10 please come forward.

11 MR. MCGUIRE: Grant McGuire, attorney for Ashland Exploration
12 With me is Bernard Ulincy with Ashland Exploration and
13 Richard Finucane with Ashland Exploration.

14 MS. McCLANNAHAN: Elizabeth McClannahan for Jewell Smokeless.

15 MR. CHAIRMAN: Anyone else? You may proceed.

16 MR. MCGUIRE: My name is Grant McGuire and I represent Ashland
17 in this matter. Ashland is seeking to force pool the
18 conventional gas interest in a Pilgrim's Knob unit
19 designated as PKG-18. As you can see by the map attached
20 to the application, Ashland has two leases in this area.
21 One is a Rogers lease and the other is a Day heir's
22 lease. Approximately 90 percent of the area is under
23 lease by Ashland. It is an heirship situation. The Day
24 heirs -- there are many heirs and Ashland has spent many
25 months trying to contact all of the heirs and obtain

1 leases. We're here today to force pool essentially those
2 heirs that were either unwilling or for some reason were
3 unlocated. The proposed drilling will occur on the
4 northern boundary of the Day heir's lease almost on the
5 Rogers lease tract, as you can see, on the map. At this
6 time I would like to swear in Bernard Ulincoy.

7 COURT REPORTER: (Swears witness.)
8

9 BERNARD ULINCOY

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

13 DIRECT EXAMINATION
14

15 BY MR. MCGUIRE:

16 Q. Mr. Ulincoy, what are your job duties at Ashland Explor-
17 ation?

18 A. My primary responsibilities are to insure that the oil
19 and gas leasing is taken care of in the central and
20 southern part of West Virginia and the Commonwealth of
21 Virginia. Those duties entail not only leasing the
22 properties but clearing the mineral titles so development
23 can take place, negotiating joint development contracts
24 with other companies, farm-out contracts, settling of
25 damage claims as they relate to the properties that we're

1 developing, the negotiating of right of ways both for
2 roadways and ~~for~~ pipelines.

3 Q. And you, for all intents and purposes, are the person
4 overseeing this area as far as management for this
5 particular unit, is that correct?

6 A. Yes, I am.

7 Q. You've overseen the title work as well, is that correct?

8 A. That's correct.

9 Q. You have testified before and have been accepted as an
10 expert before this Board?

11 A. Yes, I have.

12 MR. MCGUIRE: At this time, so I won't have to go through his
13 work history, I would like to enter his resume as Exhibit
14 A and ask that he be allowed to testify as an expert.

15 MR. CHAIRMAN: Questions? He's accepted.

16 Q. (Mr. McGuire continues.) Are you familiar with the
17 application in this matter?

18 A. Yes.

19 Q. Does Ashland intend to force pool the drilling rights to
20 the unit and the interest of every person in the gas
21 underlying the tract?

22 A. Yes.

23 Q. Does Ashland have under lease the tract being drilling in
24 this unit?

25 A. Yes.

1 Q. Will Ashland be the operator?
2 A. Yes.
3 Q. Were efforts made to determine the addresses of the
4 interested parties?
5 A. Yes.
6 Q. Are the addresses correct to the best of your knowledge?
7 A. To the best of my knowledge the addresses are correct.
8 We did send all notices out to all the parties. A number
9 of those notices came back with address unknown.
10 Q. I believe that you caused the notices to be sent out in
11 this matter, did you not?
12 A. Yes.
13 Q. Not only to all the parties who were unleased but also
14 to the leased and also to the people with an interest in
15 the surface and the oil and gas and the coal, is that
16 right?
17 A. Yes.
18 Q. Were there four parties who had notices returned?
19 A. Yes, there were four parties.
20 Q. Was one party Carol C. Nelson and Clyde A. Nelson?
21 A. That's correct.
22 Q. That notice was returned unclaimed, is that right?
23 A. Yes.
24 Q. They have not leased their oil and gas interest to
25 anyone, have they?

1 A. They have not.

2 Q. Was there another notice returned that was sent to
3 Parnell A. Day?

4 A. Yes.

5 Q. And that notice was unclaimed, wasn't it?

6 A. That's correct.

7 Q. Parnell A. Day has leased his gas interest to OXY, isn't
8 that correct?

9 A. That is correct.

10 Q. Was there a fourth notice that was returned to Glen A.
11 Day?

12 A. Yes.

13 Q. And the reason was that he had moved and left no address,
14 is that right?

15 A. Yes.

16 Q. Glen Day had leased his interest to OXY, is that correct?

17 A. Yes.

18 Q. Was there a fourth notice that was returned to an
19 unleased owner by the name of Allie S. Gillespie?

20 A. Yes.

21 Q. And that notice was returned because it was undeliverable
22 as addressed and forwardly order had expired, is that
23 correct?

24 A. That's correct also.

25 Q. Ms. Gillespie has leased her oil and gas interest to OXY,

1 is that correct?

2 A. Yes.

3 Q. Do you have the green cards with you to show notice?

4 A. Yes, I do.

5 Q. Would you hand those to Mr. Fulmer?

6 A. Yes.

7 Q. Prior to the first hearing on this matter which was last

8 month did you cause notice of this hearing to be publish-

9 ed in a paper of general circulation in Buchanan County?

10 A. Yes, I have.

11 Q. Do you wish to amend the list of interested parties?

12 A. I believe there is one party that we were able to lease

13 in the interim period. I think it was Bernice Nelson.

14 Q. You believe that she has been leased, is that right?

15 A. She has been leased. There was just one extra party.

16 Q. And Ms. Nelson may be dropped from the list, is that

17 right?

18 A. That's correct.

19 Q. Prior to the hearing were efforts made to contact parties

20 to work out agreements?

21 A. Yes. We did make efforts to lease.

22 Q. What efforts do you make as general policy?

23 A. What we try to do is, first of all, call people to set up

24 meetings. We attempt to meet them face to face and offer

25 a lease to them. If there is no ability to meet them in

1 person we try to speak with them over the phone if
2 they're not from the area. And we send certified return
3 receipt mailings to everybody whether we talk to them on
4 the phone or whether we see them in person.

5 Q. What is in that mailing that you send to them?

6 A. That mailing is an explanatory letter letting them know
7 that we're interested in leasing their property, explain-
8 ing who we are. That mailing also includes a copy of an
9 oil and gas lease and a bank draft for the consideration
10 for the leasing of the property.

11 Q. You have also talked with OXY and Buchanan Production,
12 have you not, about taking an assignment of their leases?

13 A. Yes, we have.

14 Q. And that's still in the discussion stage?

15 A. That's still in the discussion stage and we're making
16 good progress on that.

17 Q. Do you recommend that the order provide that any election
18 be sent to Ashland at its address in Section 1.1 of the
19 application?

20 A. Yes.

21 Q. Should this be the address for all communications with
22 Ashland concerning the pooling matters?

23 A. Yes.

24 Q. How much time from the date that the order is recorded
25 should these persons have to file a written election?

- 1 A. 30 days.
- 2 Q. If any person elects to participate how much time from
3 the date of the recording of the order should a person
4 have to pay Ashland his or her share of the well costs?
- 5 A. 45 days.
- 6 Q. Does Ashland expect to the electing party who participat
7 es to pay in advance that party's share of the drilling
8 and completion costs?
- 9 A. Yes.
- 10 Q. Does Ashland have available today a copy of the drilling
11 well estimate attached to the application in this matter?
- 12 A. Yes.
- 13 Q. Do you recommend that the force pooling order provide
14 that if any person elects to participate but fails to pay
15 or furnish security satisfactory to Ashland for the
16 payment of well costs then such person's election to
17 participate shall be treated as having been withdrawn and
18 such person should be treated as if no initial election
19 had been made?
- 20 A. Yes.
- 21 Q. Do you recommend that the force pooling order provide
22 that where a person elects to participate but is more
23 than 30 days in default with regard to payment of well
24 costs then any cash sum becoming payable to such person
25 or entity be paid instead toward such person's pro rata

1 cost of such well costs?

2 A. Yes.

3 Q. Does Ashland seek to have any person who does not make an
4 election under force pooling order to have been deemed to
5 have leased his interest in gas to Ashland as the escrow
6 operator?

7 A. Yes.

8 Q. Do you recommend that the order provide for deemed
9 lessees to receive a \$5 per acre one time cash bonus and
10 a one-eighth royalty?

11 A. Yes.

12 Q. Do you recommend that the force pooling order provide
13 that if any person elects to lease his interest but
14 refuses to accept the cash bonus or the bonus cannot be
15 paid to the party for any reason or there is a title
16 defect with such person's interest that the operator
17 create an escrow account under the appropriate provisions
18 of the Virginia Code or otherwise hold the money in an
19 account for the owner's benefit until the money can be
20 paid to the party or until the title defect is cured to
21 the operator's satisfaction?

22 A. Yes.

23 Q. How large an area do you propose to pool?

24 A. A 180 acre square.

25 MR. MCGUIRE: I have no further questions of Mr. Ulinicy.

1 MR. CHAIRMAN: Board members?

2 MR. EVANS: Real quick. What's the percentage of the 180
3 acres that you have under lease?

4 MR. MCGUIRE: Over 90 percent.

5 MR. CHAIRMAN: Any other questions?

6 (Witness stands aside.)

7 MR. MCGUIRE: At this time I would like to offer Richard
8 Finucane and have his sworn in.

9 COURT REPORTER: (Swears witness.)

10

11

RICHARD FINUCANE

12

13

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

14

15

DIRECT EXAMINATION

16

17

BY MR. MCGUIRE:

18

Q. Mr. Finucane, what is your job at Ashland Exploration?

19

A. I'm a production and reservoir engineer.

20

Q. Have you testified previously before this Board and been
21 accepted as an expert?

22

A. I have.

23

MR. MCGUIRE: I'd like at this time to short circuit going
24 through his work history and provide the Board with his
25 resume which I'd like to be identified as Exhibit B. And

1 I would ask this Board to accept Mr. Finucane as an
2 expert reservoir engineer.

3 MR. CHAIRMAN: Accepted.

4 Q. (Mr. McGuire continues.) What is the objective forma-
5 tion?

6 A. The objective formation involves the Burea sandstone.

7 Q. And it would also be any other formations where incident-
8 al gas might be recovered, is that correct?

9 A. That's correct.

10 Q. What formations might you find incidental gas?

11 A. Primarily in this area the Big Lime is what we might call
12 an incidental formation. That is -- probably 10 or 15
13 percent of the wells in this field were also completed in
14 the Big Lime as well as the Burea. There are other
15 horizons that there is a remote possibility of gas being
16 encountered. Anywhere from the Raven Cliff formation,
17 the Maxon Sands, the Weir formation are all possible but
18 not very likely. The Big Lime has probably about 10 to
19 15 percent chance of occurring.

20 Q. Since the filing of the application has a well permit
21 been issued?

22 A. Yes, it has.

23 Q. What is its number?

24 A. Number 2648.

25 Q. Has the permit been stayed pending the appeal of the coal

1 lessee, Jewell Smokeless?

2 A. Yes, it has.

3 Q. What are the estimates for production?

4 A. We estimate there will 335 million cubic feet recovered
5 from this well.

6 Q. What are the estimated reserves for the unit?

7 A. Those are the estimated reserves for the unit.

8 Q. How much are the total estimated costs for the well?

9 A. \$370,000.

10 Q. And those costs are reflected on Exhibit G, is that
11 right, to the application?

12 A. That's correct.

13 Q. Does Ashland have a blanket bond on file to cover
14 reclamation costs?

15 A. They do.

16 MR. MCGUIRE: I have no further questions.

17 MR. CHAIRMAN: Board members?

18 MR. EVANS: For clarification that this is a conventional well
19 and that coal measures aren't included in what you would
20 consider an incidental formation --

21 THE WITNESS: That's right. I named the formations we're
22 talking about. We're talking about the sandstones from
23 the base of the coal.

24 MR. EVANS: That's fine. The first part of that testimony was
25 any incidental formation that produced gas which typical-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ly is coalbed methane.

MR. CHAIRMAN: Other questions?

(Witness stands aside.)

MR. MCGUIRE: I would like to bring back Mr. Ulincy to make a correction on one item in his testimony.

MR. ULINCY: I think I gave you the name Bernice Nelson as the one party that had leased. That was incorrect and I would like to correct that to read Janice A. Humphrey. That's the party who had leased in the interim period between last month's hearing and this month's.

MR. CHAIRMAN: Is that on Page 14 of the application?

MR. MCGUIRE: It would be Exhibit D and it would be Page 20, the fourth person down from the top, Janice A. Humphrey.

MR. ULINCY: She has now leased her interest. I apologize.

MR. CHAIRMAN: Other questions from the Board?

MR. EVANS: How deep is this well?

MR. FINUCANE: Approximately between 5,200 and 5,300 feet. 5,247 is our estimated TD.

MR. MCGUIRE: I believe my witness also said he would like to clarify an answer.

MR. FINUCANE: On the question that you raised about the prospective formations and I listed off a number of them. Those are not necessarily all of the prospective formations that could possibly occur. But we certainly were not trying to include coal seam gas as a respective

1 formation.

2 MS. RIGGS: How would you define the formations being pooled
3 for purposes of the pooling order?

4 MR. FINUCANE: Any sandstone or limestone reservoirs contain-
5 ing conventional gas.

6 MR. RIGGS: Is that to total depth drilled?

7 MR. FINUCANE: Right, to total depth.

8 MR. FULMER: Below the base of the Lee formation?

9 MR. FINUCANE: That will work.

10 MR. FULMER: That will work. Okay.

11 MR. EVANS: There is a marker bed somewhere for the coal
12 versus anything else.

13 MR. FULMER: Below the base of the Lee.

14 MR. CHAIRMAN: There were some others here to speak to this
15 also. Are there any questions or cross?

16 MR. JOHNSON: Donald R. Johnson representing Lon B. Rogers/
17 Bradshaw Trust II which owns coal reserves nearby the
18 drilling location and within the pooled area and Lon B.
19 Rogers/Bradshaw Trust I which owns oil and gas nearby and
20 within the pooled area. My client wants this well
21 drilled and asks the Board to approve this unit. Having
22 said that I just want to point out to the Board, my
23 client has in the past actively objected to the order of
24 the Board which established these field rules. I just
25 wanted to point out to the Board that what the Board is

1 doing with this particular field rule in establishing the
2 field is to set up large units, 100 acre units, and to
3 establish off sets of 300 feet, to allow that the wells
4 be drilled within 1,700 feet of each other which is set
5 forth in the order that the Board entered, I believe, in
6 1991. My client's first objection when all this came up
7 was why are you doing this to begin with because this
8 area had been substantially drilled and there were a lot
9 of wells already in the area. The applicant for the
10 drilling was Cabot Oil & Gas Corporation and Cabot Oil &
11 Gas Corporation pretty much -- I don't want to speak for
12 them but they have pretty much pulled out of the Common-
13 wealth. So what we end up with is a situation where
14 you've got rather large units and someone can drill
15 within 300 feet of the edge of any of those units and
16 then the people with the whole unit share in the well.
17 The drainage assumption by the units that you've estab-
18 lished is 2,850 feet which is over 200 feet farther away
19 than the statewide rule. Then by so doing that -- the
20 first thing the Board does is say hey, the drainage here
21 is really big and let's make big units. So you make
22 these big units and then the next thing you do is you say
23 well, that really doesn't count because you can drill
24 anywhere within 200 feet of the edge of a unit and you
25 can space the wells as close as 1,700 feet. I think the

1 Board needs to look at this particular field rule and
2 consider whether or not the field rule ought to be
3 changed. I'm tired of coming up here and telling you
4 what I don't like about things and then walking away, but
5 I don't know what else to do. This thing has been
6 sitting here. You've created some problems, I believe.
7 I believe that the idea is that everybody ought to get
8 their gas drained. What you've done by this field rule
9 is allowed for wells to be drilled several -- you can
10 have people drilling wells too close together and you can
11 have people drilling wells and leaving big voids where they
12 can't drill wells by putting this field rule in an area
13 that was already full of wells. I just think that the
14 Board ought to take another look at this particular
15 area. I think Ashland is doing what they're suppose to
16 be doing. They're complying with the rules the Board set
17 up. I don't have any gripe about that, but I think if
18 you sit down and look at the possibilities of how you're
19 creating voids where gas is not being drained and you're
20 also leaving the possibility that wells could be drilled
21 too close together and people that may be as far away --
22 when you think that the unit lines themselves are 2,850
23 feet across and that you can drill with 300 feet of the
24 edge of one of those lines the possibility is that the
25 field is not going to be adequately developed as a result

1 of these field rules. Having said that I will be quite
2 and I appreciate you all listening to me about this.
3 I've already argued this stuff to you all before and
4 would want to point it out to the Board any time I see
5 that these units are set up this way. And I would point
6 out to you that this particular well is very close to
7 that 300 foot set up.

8 MR. CHAIRMAN: Questions or comments?

9 MR. KELLY: Just as a follow-up to Mr. Johnson's statement I
10 might just ask Ashland what's the reason for the well
11 being located within the unit as it is as opposed to
12 closer to the center? Is there a topographic reason
13 or --

14 MR. MCGUIRE: It was really difficult to find a location and I
15 believe in the next item on the agenda we will talk about
16 the difficulty of trying to find that location.

17 MR. KELLY: Coal problem?

18 MR. MCGUIRE: As I understand, it was access to the well.

19 MR. ULINCY: I think access was part of the problem. I think
20 also with the surface owner -- working with the surface
21 owner and the topography and coal imbalance, all those
22 features together.

23 MR. JOHNSON: Mr. Kelly, just one more thing. I think if you
24 have an area like this you're really almost better off
25 with no field rules than you are having a field rule that

1 confines people and shoves people around particularly
2 when everybody says it's so difficult to locate wells.
3 In this area there was a multitude of wells already out
4 there. And to overlay the field rules and then in order
5 to say -- well, gosh, we know you're going to have all
6 kinds of trouble locating within any of these squares and
7 then given a tremendous offset where you've only got an
8 offset from the edge of the boundary of the unit of 300
9 feet. That may be what is really practical and Ashland
10 is saying, yeah, in this situation we thought that was
11 practical. Then you've got statewide rules of 2,630 if
12 my memory is correct and you've got 2,500 coal objection
13 and you've got -- the length of this thing is 2,850. I
14 just see a lot of problems with it. Then the particular
15 operator that come to the Board and says let's set this
16 up, they walk off. They're drilling wells. I just -- I
17 think you should be asking the operators, why aren't you
18 drilling near the centers of these units? I think you
19 should be asking that question and I appreciate it. I'm
20 not trying to hurt these guys because they're trying to
21 get some gas drilled and I appreciate that, too. I just
22 hope the Board will take another look at this particular
23 unit. This is the only conventional field established --
24 I guess there are some of these like Scott, Lee, Washing-
25 ton County -- this is the only one in the Buchanan

1 County area. There's none in Dickenson, I don't believe,
2 and there's none in Russell. You've got this area. I
3 don't understand it. I thought you would have been
4 better off to have left it alone to begin with.

5 MR. MCGUIRE: I do have a follow-up here. I understand that
6 there was also an additional important consideration.

7 MR. FINUCANE: The spacing of this well has been determined --
8 the location of this well is determined primarily from
9 spacing from existing wells which is really as it should
10 be for orderly development of the reservoir. As Mr.
11 Johnson pointed out, this grid has been arbitrarily laid
12 over an already existing gas field and a grid that is not
13 going to wind up with the grid locks centered around the
14 undeveloped locations. Undeveloped locations are defined
15 by spacing from the existing wells. That's the primary
16 consideration for where the well is located. It also
17 reflects the 2,500 foot rule which is once again origin-
18 ally based in prudent spacing. But we can't drill a well
19 within 2,500 feet of an existing well and you cannot --
20 if you're located in the center of this block you will be
21 within 2,500 feet of an existing well. So this is the
22 best -- that with the topographic features pretty well
23 dictates where this well -- we had three different spots
24 this well could have been, but they're all fairly
25 asymmetrical to the unit and in this general area. So

1 we're pretty well dictated by spacing from the existing
2 wells, the off sets from the unit block and the topo-
3 graphy.

4 MR. KELLY: So preexisting well locations were a primary
5 consideration here?

6 MR. FINUCANE: Certainly. We're not going to go out and drill
7 1,000 feet from an existing well. It makes no sense.

8 MR. JOHNSON: I've made copies of the page -- what I call the
9 bad page of order and let you all have that. I just feel
10 like that's where we're at and I -- I would just like to
11 see you all reconsider even if you need these field
12 rules. I think that you can have field rules that hurt
13 people more than they help them and I think that's what
14 you've done here with the field already developed like it
15 is. It might be better that you look at individual areas
16 within this field to see what needs to be done to protect
17 people, but I don't know that you're protecting people.
18 Some people are probably getting paid that shouldn't be
19 getting paid at all and other people are not getting
20 anything and their gas is being drained because you're
21 assuming a drainage area of 2,850 by establishing this
22 field. If you put the wells in the center you're
23 establishing a drainage pattern of 2,850 and -- that's
24 Don Johnson using a ruler and I could be off a foot or
25 two. But that's what you're establishing and then you're

1 telling people they don't really have to drill very close
2 to that center in order to get a well in that unit,
3 without even coming to the Board and asking you to answer
4 questions. Mr. Kelly asked the question but I think the
5 field rule allows for it. I just hope that the Board
6 will reconsider whether or not they've done the right
7 thing for the mineral owners. Certainly the oil and gas
8 operators just want to get working interest money off the
9 well and they're going to get that and the coal owners
10 just want to keep the well spaced and they're going to
11 get that, too. So I think -- I just ask the Board to
12 reconsider this entire field and what should happen. I
13 do think it is significant that the one company that came
14 in and asked you for it isn't drilling wells anymore.

15 MR. CHAIRMAN: Does the Board want to take any action on that
16 request?

17 MR. McCLANNAHAN: Excuse me. May I make one point?

18 MR. CHAIRMAN: Yes, Ms. McClannahan.

19 MS. McCLANNAHAN: Elizabeth McClannahan representing Jewell
20 Smokeless. It's interesting that this question of well
21 location has come up during this particular force pooling
22 hearing. I think the Board does need to consider in
23 granting some sort of relief under this force pooling
24 application the fact that the permit application is
25 pending and has been appealed. The Inspector normally

1 has the jurisdiction to approve a location or disapprove
2 a location of the well under the permit application.
3 Ashland during the pending permit application appeal has
4 filed a force pooling application. So the Board, I
5 think, ought to consider whether it in approving a force
6 pooling application can -- I'm certain that the Board
7 cannot approve the location of the well as it's been
8 applied for. So this is the question that -- I think the
9 Board needs to make certain that it doesn't approve the
10 location of the well when, in fact, the location of the
11 well is pending. The permit has been applied for.
12 There's a stay as Mr. Finucane indicated on the permit.

13 MR. MCGUIRE: The permit's been granted.

14 MS. McCLANNAHAN: But there is a stay on drilling.

15 MR. MCGUIRE: I just wanted to clarify that.

16 MS. McCLANNAHAN: And there is a long appeal process even past
17 this particular Board.

18 MR. EVANS: As to that, if Ashland would like to go ahead with
19 this force pooling that in no way has any bearing on the
20 position of this well. Obviously they are going to force
21 pool it for this position. If that location is no longer
22 valid this force pooling is no longer valid because it's
23 not there anymore.

24 MS. McCLANNAHAN: Right. That's exactly what I wanted to
25 confirm.

1 MR. EVANS: That's Ashland's risk. If they wish to do this
2 that's fine. That's Ashland's risk.

3 MR. JOHNSON: I am not suggesting that this Board change
4 anything with regard to what is going on here. I'm
5 asking the Board to reconsider the field rules to begin
6 with, not with regard to Ashland's application because
7 Ashland has done what they're suppose to do. I mean, if
8 you allow the force pooling to occur the well could be
9 moved within that unit. You're just force pooling the
10 unit and not force pooling the well. You're force
11 pooling the unit. So after you allow for you it -- and
12 they've gone through a lot of trouble and expense to
13 notify all these people, etcetera, etcetera. I'm not
14 asking the Board on behalf of Rogers to deny this force
15 pooling. I'm asking the Board to reconsider at a future
16 time whether or not this field rule ought to stay in
17 effect with regard to future well locations.

18 MR. EVANS: In this case or any case if you want to put in a
19 petition for changing field rules or put on testimony and
20 bring in the information that's required to do that
21 that's perfectly fine. You're --

22 MR. JOHNSON: With all due respect, Mr. Evans, that costs a
23 lot of money and my client does not want to spend any
24 more money. My client has already spent a lot of money
25 This Board on its own volition can investigate its own

1 rules and regulations and determine whether or not they
2 need to be changed. I'm just pointing out to the Board
3 that I believe this Board should investigate its own
4 field rule. The Board has experts on its staff. It can
5 employ experts. This Board is not without that kind of
6 expertise and has an oil and gas professional sitting on
7 the Board and a coal professional sitting on the Board.
8 It certainly can look at its own field rules. I'm
9 suggesting to you that you should. Yes, I could come in
10 here and I could hire experts for Mr. Rogers trustee and
11 we could spend time and money doing that. But I don't
12 believe that it's worth the time and money to do that but
13 I think it's worth the Board's attention. I appreciate
14 what you're saying, Mr. Evans. Yes, we could do that but
15 no, we do not wish to do that.

16 MR. CHAIRMAN: All right. Let's move on. Other questions or
17 comments? Do I hear a motion concerning this item, the
18 force pooling application?

19 MR. KELLY: I would move that the application be approved as
20 submitted.

21 MS. PRESLEY: Second.

22 MR. CHAIRMAN: We have a motion that it be approved as
23 submitted and it's been properly seconded. Any further
24 discussion? All in favor of approval let it be known by
25 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) The

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

item is approved.

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

ITEM III

1
2
3 MR. CHAIRMAN: The next item is Item III, a petition from
4 Jewell Smokeless Coal Corporation appealing the Direct-
5 or's decision from the Informal Fact Finding Hearing
6 8294 issued March 4th, 1994 concerning proposed well PKG-
7 18 of Ashland Exploration. The docket number is VGOB-
8 94/04/19-0439 which was continued from April. Would all
9 persons wishing to speak to this item please identify
10 themselves.

11 MS. MCCLANNAHAN: Elizabeth McClannahan representing Jewell
12 Smokeless Coal Corporation.

13 MR. MCGUIRE: Grant McGuire representing Ashland Exploration.

14 MR. JOHNSON: Donald Johnson representing Lon B. Rogers/Brad-
15 shaw Trust and Lon B. Rogers/Bradshaw Trust II. I plan
16 only, if the Board will permit, to make a statement at
17 the end of the hearing. I don't plan to participate.

18 MR. CHAIRMAN: Others? You may proceed.

19 MS. MCCLANNAHAN: The first item of business, I presume, is
20 that Mr. Johnson representing the Rogers Trust in our
21 opinion is not a party to this proceeding and should not
22 be allowed to be a party to this proceeding. The statute
23 requires that a party who objects file a written notice
24 at the Informal Fact Finding Hearing and then that party
25 is the only party who has standing to object at any level

1 of this appeal until it reaches the Circuit Court.
2 Therefore, I would object to Mr. Johnson representing the
3 Rogers or the Rogers Trust being allowed to make any
4 statement on the record today. Secondly, just as an
5 administrative matter, the transcript and the exhibits
6 that we submitted at the Informal Fact Finding Hearing
7 are automatically made a part of this record, is that
8 correct? If not, I would like to request that those be a
9 part of this record.

10 MR. CHAIRMAN: Could you repeat that again?

11 MS. McCLANNAHAN: The transcript from the Informal Fact
12 Finding Hearing and all the exhibits that were submitted
13 with that hearing.

14 MR. FULMER: The transcript is here.

15 MS. RIGGS: This is a De Novo hearing at the Board level.

16 MS. McCLANNAHAN: No, no.

17 MR. FULMER: Yes, it is too.

18 MS. McCLANNAHAN: The Administrative Processes Act --

19 MS. RIGGS: Yeah, but we're under the Gas and Oil Act appeal
20 provisions.

21 MS. McCLANNAHAN: Right. And the Gas and Oil Act references
22 the Administrative Processes Act litigated issues hearing
23 statute. 9-6.14:12.

24 MS. RIGGS: 45.1-361.23, appeals of Director's decisions says,
25 "Upon submittal of the petition for appeal of the

1 decision of the Director of the Board the Director shall
2 forward to the Board the permit application or orders and
3 associated documents, required notices, written objec-
4 tions, proposals and claims recorded during the Informal
5 Fact Finding Hearing." I take that to mean that that's
6 the record at the appeal by the Board.

7 MS. McCLANNAHAN: Right.

8 MS. RIGGS: It doesn't incorporate testimony from the Informal
9 Hearing, but the basic documents submitted at the
10 Informal Hearing -- 1) The permit application and
11 associated documents. 2) The required notices. 3) The
12 written objections, proposals and claims recording during
13 the Informal Fact Finding Hearing.

14 MS. McCLANNAHAN: Then 361.23 also states, "The Board shall
15 conduct all hearings under this section in accordance
16 with the formal litigated issues hearing provisions in
17 the Administrative Process Act."

18 MS. RIGGS: Within the APA what are you relying on, that the
19 transcript becomes a part of the record on appeal?

20 MS. McCLANNAHAN: No. I'm asking that question. 9-6.14:12
21 indicates that at this particular level no issues that
22 have been raised at the Informal Fact Finding Hearing can
23 be raised at the Board hearing which would indicate to me
24 that the transcript must be a part of the Board record
25 for the Board to determine whether the issues that it's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

considering at the Board level have been considered at the --

MS. RIGGS: Well, clearly the written objections, proposals and claim put forth at the Informal form the basis for the appeal. Therefore, if they weren't put forward at the time of the Informal they can't be put forward at the time of the appeal.

MS. McCLANNAHAN: And those claims would be contained within the transcript.

MS. RIGGS: I would assume the written objections and documents -- it says the application, the written objections, proposals and claims recording during the Informal Fact Finding Hearing as to the extent those are incorporated within the transcript.

MS. McCLANNAHAN: Well, let me just ask this. I'm not certain that we need to argue this point because unless Mr. McGuire has a problem with it I would just request that the Board make the transcript from the Informal Fact Finding Hearing and all those exhibits that were presented at that hearing be made a part of the record for purposes of the Board hearing so we don't have to go through the introduction of each and every one of those exhibits. I certainly will be glad to do that, but I thought it would be simpler for the Board and for all of us to incorporate that. So my question at the beginning

1 of this hearing was is the Board automatically making
2 that a part of the record or do I need to request that
3 that be made a part of the record pursuant to APA section
4 and the Gas and Oil Act? I certainly will be glad to
5 make that request at this time and I assume Mr. McGuire
6 would have no objection to that.

7 MR. MCGUIRE: I just remember that the Informal Fact Finding
8 Hearing and the transcript contains unsworn testimony and
9 I would assume that the Board, if it was entered as an
10 exhibit, would give it whatever weight it was due which
11 would be less than the sworn testimony presented before
12 the Board because that's really what you're hearing and
13 what you make a decision on. If it's for the purpose of
14 getting the exhibits in I really don't really have any
15 problem with it -- if it's just a more efficient way of
16 getting the exhibits in.

17 MS. MCCLANNAHAN: I'm not certain that it was unsworn testi-
18 mony.

19 MS. RIGGS: Normally it is at the Informal Fact Finding
20 Hearing.

21 MS. MCCLANNAHAN: There was a Court Reporter -- I mean, a
22 Court Reporter's transcript.

23 MS. RIGGS: It's transcribed.

24 MS. MCCLANNAHAN: And I believe she swore the witnesses that
25 day.

1 MR. MCGUIRE: I don't know that I've ever seen them sworn in
2 in the Informal Fact Finding Hearing.

3 MS. McCLANNAHAN: Well, do you have an objection, Grant, to
4 accepting the testimony as it's been submitted?

5 MR. MCGUIRE: I haven't read it. So I don't know. I don't
6 have a copy of the transcript. As far as getting the
7 exhibits in I don't have any problem with it.

8 MS. McCLANNAHAN: The only witness I had at the Informal Fact
9 Finding Hearing was Mr. Bob Brendlinger and I think he
10 would be willing to be sworn today and testify that
11 everything he said at the Informal Fact Finding Hearing
12 was, in fact, the truth. Could we then at that point
13 make it a part of the record?

14 MS. RIGGS: It seems to me that it's up to the Board to decide
15 -- I don't know if they've had an opportunity -- they're
16 going to be called upon to make a decision today and I
17 don't know whether they have had an opportunity to
18 evaluate all the testimony as contained within the
19 transcript and therefore would be in a position to make
20 an informed decision based upon that testimony unless
21 they hear it or unless -- I mean, that's up to the Board
22 to verify --

23 MS. McCLANNAHAN: Certainly the Board can read the transcript
24 at some other time. We're not --

25 MS. RIGGS: It wouldn't matter if they'd already acted on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

today's application. They would have to have read it and know what his testimony is before making a decision.

MS. McCLANNAHAN: Right. So the Board could take it under advisement based on reading the transcript.

MR. McGUIRE: I guess I object to that because I'm looking for a resolution of the matter.

MS. RIGGS: Well, he's here and he could testify. What's the Board's pleasure? Do you want to hear the testimony or do you want to take a break and read the transcript? It seems to me that it --

(PAUSE.)

MR. CHAIRMAN: The consensus seems to be to hear the testimony. If we could, we'll proceed in that fashion. Does that answer the question -- your first one?

MS. McCLANNAHAN: It does. As a legal matter I also would state for the record that the transcript from below as well as all the exhibits that were submitted at the Informal Fact Finding Hearing should be made a part of this record.

MS. RIGGS: She's making a motion to incorporate the exhibits from below which there is no objection to.

MR. McGUIRE: I have no objection to the exhibits. The transcript can be in the record for what it's worth, but I don't believe it will be worth much because it's unsworn testimony and you all have not had an opportunity

1 to review it. Neither have I actually. I don't have a
2 copy of the transcript. I was there.

3 MR. CHAIRMAN: Board, what's your pleasure on the other
4 documents -- could I hear your motion again?

5 MS. McCLANNAHAN: That the transcript and the exhibits from
6 the Informal Fact Finding Hearing that were submitted be
7 made a part of the record.

8 MR. CHAIRMAN: That's fine. There is one other thing. You
9 voiced an objection earlier over Mr. Johnson's talking.
10 This is a public hearing and as such I believe that
11 anyone is free to come and make comments concerning items
12 on the agenda. I don't know that we could preclude
13 someone or not include someone from making a comment.

14 MS. McCLANNAHAN: Certainly if you consider a comment made in
15 a public hearing, that's different than him being a party
16 withstanding to object to this proceeding. I would
17 simply make that distinction.

18 MR. JOHNSON: Mr. Chairman, I don't come with the intention of
19 cross-examining witnesses or participating in the
20 proceedings. I would like to comment on the proceeding
21 at the end.

22 MR. CHAIRMAN: I have no problem with that. Board?

23 MR. JOHNSON: I have a comment with regard to my client's
24 position as a concerned party but not as a party as
25 defined by --

1 MR. EVANS: That's fine.

2 MR. CHAIRMAN: I think we'll allow Mr. Johnson to make comment
3 at the end. You may proceed.

4 MS. McCLANNAHAN: This is an appeal of the Director's decision
5 concerning the hearing IFFH 8294. This decision was
6 issued on March 4th of 1994 regarding Ashland's proposed
7 well PKG-18. Jewell Smokeless submitted evidence at that
8 time through it's witness, Bob Brendlinger, who is their
9 chief engineer. That evidence was that the drilling
10 location of the PKG-18 would unreasonably interfere with
11 the safe recovery of coal and with future coal mining
12 operations. It is our position that Virginia Code
13 Section 45.1-361.11.C1 specifically states that with
14 respect to the drilling unit or drilling location of a
15 new well the extent to which the proposed drilling
16 location will unreasonably interfere with present or
17 future coal mining operations should be considered. And
18 that was not done in this particular case. Jewell
19 Smokeless submitted a mine plan to the Inspector at that
20 particular time and explained it's exploration program,
21 the coreholes that it had drilled, all the prospect work
22 that it had done, and indicated that a permit is held at
23 the present time for mining on this particular property.
24 Virginia Code annotated Section 45.1-361.3, 4 and 5
25 specifically states that the purpose of the Gas and Oil

1 Act is to insure the safe recovery of coal and minerals
2 and to maximize the production and recovery of coal
3 without substantially effecting the right of a gas or oil
4 owner proposing to drill a gas or an oil well, to explore
5 for and produce gas or oil. Ashland's witnesses, Mr.
6 Whitt and Mr. Rogers, both indicated at the Informal Fact
7 Finding Hearing that coal would be lost in this particu-
8 lar area as a result of the drilling of the PKG-18.
9 Jewell Smokeless demonstrated that the permit for this
10 particular well impinges upon Jewell Smokeless' mineral
11 and royalty interests, is an unreasonable and arbitrary
12 exercise of Ashland's right to explore, for market and
13 produce gas unreasonably interferes with the safe
14 recovery of Jewell Smokeless coal reserves in the
15 location of this well and Jewell Smokeless coal interests
16 as effected by this proposed well is the dominant estate
17 under the contractual rights between the parties which
18 have previously been entered into. Jewell Smokeless
19 would request that the Board grant relief and issue an
20 order overruling the decision of the Director issued
21 pursuant to IFFH 8294 on March 4th, 1994 and deny the
22 issuance of the well permit. Also Jewell Smokeless had
23 indicated that there were three alternate locations that
24 had been proposed, all of which were agreed to by both
25 coal companies who had interests here. None of those

1 were considered by Ashland until very soon before the
2 Informal Fact Finding Hearing occurred and at that time
3 Ashland would not agree to any of these particular
4 proposed locations. The first witness that I would like
5 to call is Robert Brendlinger.

6 COURT REPORTER: (Swears witness.)
7

8 ROBERT BRENDLINGER

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

12 DIRECT EXAMINATION
13

14 BY MS. McCLANNAHAN:

15 Q. Mr. Brendlinger, could you please state your address for
16 the record?

17 A. Post Office Box 1637, Richlands, Virginia.

18 Q. By whom are you employed?

19 A. Jewell Smokeless Coal Corporation.

20 Q. And your position with Jewell?

21 A. I'm the chief engineer.

22 Q. What are your responsibilities and duties at Jewell?

23 A. I oversee all of the engineering related functions for
24 Jewell Smokeless Coal Corporation and its various sister
25 companies. Those include mine planning, the geologic

- 1 evaluation of the properties, the environmental permitt-
2 ing and problems, various other matters with property and
3 gas well issues.
- 4 Q. Could you explain your educational background to the
5 Board?
- 6 A. I have a Bachelor's in mining engineering from Pennsyl-
7 vania State University and a Masters in engineering from
8 Virginia Tech.
- 9 Q. Do you hold any licenses?
- 10 A. I'm a licensed professional engineer in the states of
11 Virginia, West Virginia and Kentucky.
- 12 Q. And your work background?
- 13 A. I've worked for Jewell Smokeless Coal Corporation for
14 almost eight years as the chief engineer. Prior to that
15 I work for Pittston Coal Company for approximately eight
16 years in the capacities of a mining engineer to a project
17 engineer to assistant chief engineer.
- 18 Q. Have you written any articles or books?
- 19 A. Yes. I have a thesis that I had wrote for my graduate
20 program at Virginia Tech which dealt with toxicity
21 evaluation of MPDS discharges and also I have co-authored
22 a paper with Miller & Associates dealing with seismic
23 evaluation of various mines in regard to sandstone
24 displacements.
- 25 Q. Have you received any awards or recognition for achieve-

1 ments in this field?

2 A. Several through the years.

3 Q. Were those some of the reclamation awards with DMME?

4 A. Yes. And then various committees that I've served on

5 with the Division of Mines, Minerals and Energy, Division

6 of Mine Reclamation.

7 Q. Have you ever been qualified as an expert witness before

8 this Board?

9 A. Yes, I have.

10 MS. McCLANNAHAN: Mr. Chairman, I submit Mr. Brendlinger as an

11 expert witness.

12 MR. CHAIRMAN: Accepted.

13 Q. (Ms. McClannahan continues.) Have you reviewed the

14 permit application for well one PKG-18, serial number

15 142771, that's been submitted by Ashland?

16 A. Yes, I have.

17 Q. Did you receive notice of the permit application as a

18 coal operator located within 500 feet of the well?

19 A. Yes, we did.

20 Q. When did you receive notice of the permit application?

21 A. November 19th, 1993.

22 Q. Did you send a letter dated November 23rd stating that if

23 certain conditions were met by Ashland Jewell Smokeless

24 would not object to that well location?

25 A. Yes, I did.

- 1 Q. And were these conditions ever agreed upon by Ashland?
- 2 A. No, they were not.
- 3 Q. Did you at that time file an objection to the well on
- 4 behalf of Jewell Smokeless?
- 5 A. Yes, I did.
- 6 Q. Do you remember when the objection was filed? Was it
- 7 December 1st, 1993?
- 8 A. Yes, it was.
- 9 Q. How did you notify the DMME of your objection?
- 10 A. By certified letter.
- 11 Q. Did you also send a letter to Ashland dated December
- 12 27th, 1993 setting forth alternate locations for this
- 13 proposed well?
- 14 A. Yes, I did.
- 15 Q. How many alternate locations did you provide to Ashland?
- 16 A. There were two alternate locations.
- 17 Q. Did you receive a response to this letter?
- 18 A. At some time later that those could not be mutually
- 19 agreed upon.
- 20 Q. Was that in February of 1994?
- 21 A. Yes, it was.
- 22 Q. Did Ashland agree to any of these proposed alternate
- 23 locations?
- 24 A. No, they did not.
- 25 Q. Did you file an appeal to the Director's decision which

1 was issued on March 4th, 1994 on March 14th, 1994?

2 A. Yes.

3 MS. McCLANNAHAN: Mr. Fulmer, did you bring the exhibits from

4 the Informal Fact Finding Hearing?

5 MR. FULMER: No. I don't have them with me. I do have them

6 at the office in the file.

7 Q. (Ms. McClannahan continues.) Do you have a mine plan

8 with you today for the jawbone seam of coal for this

9 area that's on file with the Division of Mine Reclama-

10 tion?

11 A. Yes.

12 Q. Could you explain this particular mine plan to the Board?

13 You have extra copies, right?

14 A. Yes. This is the general mine plan of our jawbone

15 development for the respective area and the location of

16 the proposed well is here. This is the same map that was

17 given to Mr. Fulmer in the Informal Fact Finding Hearing.

18 Q. Explain where the location of PKG-18 is on this map so

19 that everyone can see.

20 A. (Witness indicates.) This is basically the same map that

21 was presented in a previous hearing. We had a hearing in

22 September on another well in this same geographic area.

23 Q. Have any changes been made to the mine plan between the

24 date of the Informal Fact Finding Hearing earlier this

25 year and this particular map?

1 A. This is the same map that was submitted to the Board.
2 Q. You mean to Mr. Fulmer?
3 A. Yes. Excuse me.
4 Q. Could you please explain to the Board how the location of
5 this particular well interferes with the safe recovery of
6 coal reserves in this particular area?
7 A. On our projected development we have a panel which is
8 driven off from the mains and the well location adversely
9 affects the panel development for that respective panel.
10 MR. EVANS: Right in the center of the panel.
11 THE WITNESS: Right.
12 A. (The witness continues.) And it effects the development
13 and safety of our people working underground.
14 Q. What method of mining is Jewell Smokeless employing in
15 this area of the proposed well?
16 A. (Inaudible.) pillar.
17 Q. Okay. How long has this mine plan been on file with the
18 Division?
19 A. For the initial PNU area which is all highlighted by the
20 darker blue dash lines was on file since June of 1990
21 with a few minor amendments to the plan.
22 MR. EVANS: Is this mine being permitted DMR?
23 THE WITNESS: Yes. Since June of 1990 we did have the -- it
24 was a joint application for both the Jawbone and Red Ash
25 seam development from our mine #16.

1 MR. EVANS: And do you mean is operating?
2 THE WITNESS: Yes. It currently is operating in the Red Ash
3 seam on the left fork of Spruce Pine Creek.
4 MR. EVANS: When you say it was a joint effort, do you plan to
5 ramp up, ramp down or --
6 THE WITNESS: We plans of sloping, shafting on down from the
7 Spruce Pine area. Then we have plans for Slate Creek and
8 drift valuabilty from the lower most area over here on
9 Lynn Kemp. So our initial plans are this fall to start
10 construction and to be into the seam more or less on this
11 lower most southeastern portion to access it by drifting
12 methodology. That permit is presently being worked on
13 and will be submitted this month to DMLR for approval.
14 MR. EVANS: Does plan drifts going to be somewhere around
15 (Inaudible.) Gap?
16 THE WITNESS: Yes. The permit application on that has been
17 submitted to DEP in West Virginia.
18 MR. EVANS: So you're going to access it from the West
19 Virginia side?
20 THE WITNESS: But basically on this lower side -- we don't
21 have projections shown in here. This is something
22 we're making a new permit application for just to the
23 south of the (Inaudible.) Gap. On Lynn Kemp we have
24 proposals on that left fork area to put in our Dominion
25 Mines 36-A and 36-B.

- 1 Q. (Ms. McClannahan continues.) Mr. Brendlinger, could you
2 also explain to the Board what prospecting and explora-
3 tion activities have occurred on this particular proper-
4 ty?
- 5 A. We have been in a massive exploration program for the
6 last four to five years which encompassed a large portion
7 of the property here to more or less insure the viability
8 of us going in and splitting the crops to put in a new
9 mine portal facility to access the reserves. Just in the
10 last twelve months we've put down in excess of twenty
11 holes just to verify the seam thicknesses in the Jawbone
12 seam. Basically it's the plan to see where the best
13 location is to access the reserves more or less for us to
14 make an economic evaluation to get into the reserves.
15 These reserves are very important to Jewell Smokeless in
16 that they are the livelihood for the continuation of both
17 our coke ovens and our coal production for Jewell Coal &
18 Coke which is a sister company and for coal production
19 which is Jewell Smokeless Coal Corporation.
- 20 Q. Does the position of the proposed well location affect
21 mine ventilation?
- 22 A. Yes, it does.
- 23 Q. Can you explain how it affects mine ventilation?
- 24 A. It's in the belt heading and it would affect us. We
25 would have to stop the panel short and probably try to

1 develop this around the well if the permit application
2 was granted and it was drilled.

3 Q. Is the drilling location also in close proximity to a
4 holage way?

5 A. Yes, it is.

6 MR. EVANS: How close?

7 THE WITNESS: It would be within just twenty to thirty feet.

8 MR. EVANS: And that's not one of your mains, that's just a
9 panel off --

10 THE WITNESS: Just the panel coming off.

11 MR. EVANS: Entry in the panel?

12 THE WITNESS: Correct.

13 Q. (Ms. McClannahan continues.) Will there be any loss of
14 coal reserves as a result of the well location in this
15 particular mine?

16 A. Yes. There would lost coal reserves in that particular
17 area if the well was drilled.

18 Q. Have you calculated those lost coal reserves?

19 A. Yes, I have.

20 Q. Can you explain that calculation to the Board?

21 A. We basically take the thickness of the coal in that area
22 and then multiply it times -- the laws that are present
23 -- we're looking at a 10,000 square foot area to the left
24 in that area. And we just multiply that out times a
25 density factor of 145 tons per acre inch and get the

1 tonnage. Then with some of the current law, the way it
2 is, it's subject to change which we don't know what the
3 law will be at the time that we mine that area there.

4 MR. EVANS: I assume you're talking about the Mine Health and
5 Safety Administration's regulations concerning distance
6 from gas wells?

7 THE WITNESS: Yes. That was something that was brought up in
8 the last Informal Fact Finding Hearing which I have not
9 received any notice from IMSHA as to their position. But
10 it was brought up the last time that they had made a
11 visit to our office and they had threatened to write us
12 violations in regard to some of the coalbed methane wells
13 that had penetrated some of our mines. We stated we had
14 agreements -- OXY was the well operator -- to put the
15 wells down and we had a process with OXY basically which
16 was they would drill the well after we had mined the
17 area. What IMSHA was looking for was to leave a barrier
18 more so than what the State has around the well. So I
19 don't know where they're going now with regulations as
20 far as the Federal Government in regulating gas wells.

21 Q. (Ms. McClannahan continues.) Did you approximate the
22 lost tonnage at about 4,800 tons at the Informal Fact
23 Finding Hearing?

24 A. Yes.

25 Q. Could you explain that calculation?

1 A. That would just be the block that's required to be left
2 around the well which is approximately 40,000 square
3 feet and we multiply that times the thickness of the
4 coal which is three feet and then we use an 80 pounds per
5 cubic foot density factor and then it's divided by 2,000
6 and then we come up with 4,800 from that.

7 MR. KELLY: As far as your pillar configuration, are you
8 talking about a 100 foot central pillar and then a number
9 of other pillars around for a total of 40,000 square feet
10 total bearing or --

11 THE WITNESS: We would be required to, yeah. With the depth
12 to cover the way the current law is that's what we would
13 be required to leave in place with the additional area.
14 The 10,000 square feet requires a solid barrier plus
15 approximately 30,000 square feet for the additional area
16 around the well.

17 MR. KELLY: And the central pillar is larger than the standard
18 pillar that you would normally leave in your --

19 THE WITNESS: Yes, it is. We usually have a 50 by 50 solid
20 block. We usually drive our mains on a 70 by 70 center
21 which our entry width is anywhere from eighteen to twenty
22 feet. So that leaves us with virtually a 50 by 50 block.

23 MR. KELLY: And because of that larger size that's what
24 affects your ventilation?

25 THE WITNESS: It affects your ventilation and your

1 development --

2 MR. KELLY: And your holage possibly?

3 THE WITNESS: And your holage, yes. It's just more or less
4 like a straight road and you're driving straight and you
5 have to make a right turn to get on the other side of an
6 obstacle that may be there in the center of the road.

7 MR. KELLY: The three alternate locations, where were they in
8 this area?

9 THE WITNESS: They were to the south and to the north --
10 within the general area there.

11 MR. KELLY: I guess what I'm getting at is how are they
12 located within this development plan compared to the
13 subject location?

14 THE WITNESS: They would be more in an area that would allow
15 us to safely recover the coal and more or less economic-
16 ally recover the coal in that particular location.

17 MS. McCLANNAHAN: Those specific alternate locations were
18 submitted at the Informal Fact Finding Hearing as
19 exhibits to some letters that we did. I'm sure we
20 probably have a copy of that if you want to see the
21 precise locations.

22 MR. KELLY: I'm just curious how they might have affected
23 development in a particular panel as opposed to how this
24 might affect it and how they might compare.

25 MS. McCLANNAHAN: Okay. I'm sure we've got that. (Pause.)

1 That was Exhibit G at the Informal Fact Finding Hearing.
2 I have a letter here with the coordinates listed on it.
3 The letter is dated December 27th, 1993. This was
4 Exhibit G at the Informal Fact Finding hearing. My copy
5 of the map, however, doesn't show the alternate locations
6 very well. But this map -- this map is dated December
7 27th, 1993 and the legend is 18-A mine and Dominion mine
8 16.

9 Q. (Ms. McClannahan continues.) The three alternate
10 locations are the three locations that are dotted with
11 red, is that correct?

12 A. Yes.

13 MS. McCLANNAHAN: I suppose we should start numbering these
14 exhibits. The first exhibit would be Exhibit A and this
15 map that I just explained the legend on would be Exhibit
16 B.

17 MR. MCGUIRE: Let me object to this exhibit and also clarify.
18 We're not talking -- this is not the Jawbone seam. This
19 is the Raven seam that Jewell Ridge is mining and Jewell
20 Ridge has not objected to this. They've withdrawn the
21 objection.

22 MS. McCLANNAHAN: The map here shows it in the Red Ash seam
23 because this map was prepared -- the locations of them
24 are the exact same, but we are certainly only talking
25 about the Jawbone seam of coal. We don't contest that at

1 all. But this is the map that shows those three locat-
2 ions.

3 MS. RIGGS: Is there a map that projects those to the Jawbone
4 seam -- to the mine plan in the Jawbone seam?

5 MR. EVANS: Do you have a scale?

6 MR. KELLY: If it's going to be that much trouble maybe I'll
7 just withdraw my question on that until at least later in
8 the hearing till we see how this develops.

9 MS. McCLANNAHAN: Well, so that everyone understands, the
10 reason this was done on the Red Ash seam originally was
11 because Jewell Ridge did file an objection initially with
12 Jewell Smokeless. So one map was prepared for both
13 companies to make this objection and then Jewell Ridge
14 withdrew it's objection prior to the Informal Fact
15 Finding Hearing.

16 (PAUSE.)

17 MR. McGUIRE: Let me also just for clarification put an
18 objection on the record. These have been characterized as
19 alternate locations that Ashland wouldn't agree to and my
20 testimony will show that they couldn't agree to them, that all
21 of them violate the 2,500 foot rule, and that we had to work
22 with Island Creek and promise to find a location that was
23 outside the 2,500 foot rule. These were not viable alterna-
24 tives.

25 MS. McCLANNAHAN: These alternate locations were all agreed to

1 by Jewell Ridge and Jewell Smokeless prior to the time
2 that these were submitted. That's why, as you see from
3 the letter that's been submitted to you, that both Jewell
4 Smokeless and Jewell Ridge are parties to that letter.

5 MR. KELLY: I can be satisfied at this point until we move
6 further into the hearing and see how the testimony
7 develops, if it's even necessary to pursue that.

8 MR. CHAIRMAN: Other questions while we have the map before
9 us?

10 Q. (Ms. McClannahan continues.) Mr. Brendlinger, in your
11 opinion does the loss of coal reserves as you've calcu-
12 lated them constitute material interference?

13 A. Yes, it does.

14 Q. And will it prevent the safe recovery of the coal in this
15 particular area of the proposed Jawbone mine?

16 A. Yes, it will.

17 MS. McCLANNAHAN: Those are all the questions I have for Mr.
18 Brendlinger.

19 MR. CHAIRMAN: Questions from the Board members?
20

21 CROSS-EXAMINATION

22
23 BY MR. MCGUIRE:

24 Q. Mr. Brendlinger, you are not mining this Jawbone seam
25 now, is that correct?

- 1 A. We are not at the present time. We do have permits to
2 mine the area.
- 3 Q. At your present rate of advance when do you anticipate
4 arriving at this location?
- 5 A. In approximately five years.
- 6 Q. Approximately five years, is that correct?
- 7 A. Yes.
- 8 Q. How far do you advance in a given year?
- 9 A. It depends on your production. Let's say the unit
10 section, if you run all three production shifts or if you
11 run just one production shift. It also depends on your
12 development headings, if you have seven headings or if
13 you have nine or ten depending on what you have. We
14 usually at most of our operations -- well, with this
15 particular one we'd be advancing probably three breaks
16 which is approximately 200 -- well, let's just say 200
17 feet per week.
- 18 Q. You are mining to the west I'd say approximately five
19 inches. I'm not sure of the scale. But you're mining
20 the Red Ash seam in that area, is that correct?
- 21 A. Well, it's probably to the east of that.
- 22 Q. As I was looking to the left I thought it was --
- 23 A. To the west. Okay. To the west.
- 24 Q. I believe that you were here before this Board involving
25 an Inspector's decision which granted you a six month

1 stay on the permit to allow mining of the Red Ash, is
2 that correct?

3 A. In that particular area.

4 Q. And you also had Jawbone plans covering that area, too,
5 is that correct?

6 A. Yes, we do.

7 Q. The same plans we're looking at today?

8 A. Yes.

9 Q. And, in fact, that proposed well is in the middle of a
10 proposed panel too, is it not?

11 A. Are you talking about the PKJ well?

12 Q. PKJ.

13 A. That one, yes.

14 Q. And mine plans by their nature change, do they not?

15 A. Depending upon what adverse conditions you do hit
16 underground sometimes you do have to change your mine
17 plans accordingly.

18 Q. I guess corporate policy might also cause them to change
19 as well, is that right?

20 A. Depending on economic conditions at the time and the cost
21 of mining your coal.

22 Q. Am I correct in looking at this map that there are a
23 number of existing wells in this area?

24 A. Yes. There are several wells scattered all over the
25 property.

1 Q. And they penetrate your coal seam, is that correct?
2 A. Yes. They were put in probably several years back.
3 Q. Your estimates on recovery I believe you testified was a
4 100 by 100 block?
5 A. Yes.
6 Q. And you testified it was 4,800 tons that would be lost by
7 not being able to mine that block based upon the size, is
8 that correct?
9 A. That's with the 30,000 tons with the additional barrier
10 required around the 100 by 100 foot block.
11 Q. But that's based on 100 percent recovery of that coal, is
12 that correct -- the mathematical calculations?
13 A. Yes. Right.
14 MR. MCGUIRE: No further questions.
15 MR. CHAIRMAN: Anyone else?
16 (Witness stands aside.)
17 MR. MCGUIRE: I'd like to put on Steve Parks for Ashland
18 Exploration as a witness.
19 COURT REPORTER: (Swears witness.)

20
21 STEVE PARKS
22 a witness who, after having been duly sworn, was examined and
23 testified as follows:
24
25

DIRECT EXAMINATION

1

2

3 BY MR. MCGUIRE:

4 Q. Mr. Parks, what is your position at Ashland Exploration?

5 A. Engineering advisor.

6 Q. Are you generally in charge of this permit application
7 process at Ashland?

8 A. Yes, I am.

9 Q. And you are an engineer by profession, is that correct?

10 A. Yes. I have a Bachelor of science and civil engineering
11 from the University of Cincinnati.

12 Q. Briefly give me your job history, please.

13 A. I've worked basically in the civil engineering field
14 since I have graduated. I held a job with a consulting
15 firm in Lexington for about five years. And for the past
16 thirteen years I've been in with Ashland Exploration
17 permitting well locations in Virginia, Kentucky and West
18 Virginia.

19 Q. You've been accepted as an expert witness in testifying
20 about this Jawbone seam and this general area in earlier
21 hearings, is that right?

22 A. Yes.

23 MR. MCGUIRE: I'd ask that the Board accept Mr. Parks as an
24 expert and be allowed to testify.

25 MR. CHAIRMAN: Accepted.

1 Q. (Mr. McGuire continues.) You've heard some testimony
2 about the alternate locations offered to Ashland Explora-
3 tion. Is it not true that all of those alternate
4 locations which I believe were shown to the Board
5 violated the 2,500 foot rule -- being 2,500 feet from an
6 existing well?

7 A. That is correct.

8 Q. Had you also had talks with Island Creek who said that
9 they must object if it was within 2,500 feet of an
10 existing well?

11 A. Yes.

12 Q. And you determined that if you were going to drill a well
13 it needed to be further away than 2,500 feet from that
14 well, is that correct?

15 A. That is right.

16 MR. MCGUIRE: I have no further questions of Mr. Parks.

17 MR. CHAIRMAN: Board members, questions?

18 MR. EVANS: At this particular site -- the permit site's not
19 within 2,500 feet of an existing well, is it?

20 MR. MCGUIRE: It is not. On the map that you saw the one
21 that is in the very center of the grid is within 2,500
22 feet -- the one that's within the very center of the
23 unit and also these two down on the borders were also
24 within 2,500 feet of this existing well which is ident-
25 ified as the #7 gas well.

1 MR. EVANS: Thank you.

2 (Witness stands aside.)

3 MR. CHAIRMAN: You may continue.

4 MR. MCGUIRE: I'd like to offer Mr. Ertal Whitt to testify.

5 COURT REPORTER: (Swears witness.)

6

7 ERTAL WHITT

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

10

11 DIRECT EXAMINATION

12

13 BY MR. MCGUIRE:

14 Q. Mr. Whitt, what is your occupation?

15 A. I'm a professional engineer.

16 Q. Who do you currently work for or who do you represent?

17 A. I'm the Chief Executive Officer of my own consulting firm
18 in Pikeville, Kentucky. I've work for a number of coal
19 companies. I also work in this situation for the two
20 Rogers trusts, Lon B. Rogers/Bradshaw Trust I who is the
21 gas owner in the vicinity of this well and Lon B.
22 Rogers/Bradshaw Trust II which is the majority coal owner
23 in the grid of this particular gas well.

24 Q. Briefly give me your work history.

25 A. I'm a graduate of the University of Kentucky in mechanic-

1 al engineering. My initial work history was in that
2 position as a mechanical engineer for Armco Steel and a
3 train company, both located in Kentucky. My initial
4 registration as a registered professional engineer was in
5 mechanical engineering. In 1972 I returned back to the
6 coal fields and joined my father in a consulting engin-
7 eering business as well as a mining business at which
8 point shortly after returning I went back to the Board
9 and was re-examined as a mining engineer and I now hold
10 that license as well. Since that time I've also been
11 licensed as a registered land surveyor in the State of
12 Kentucky.

13 Q. You have testified before this Board as an expert in
14 mining engineering, have you not?

15 A. Yes, I have.

16 Q. And before the Inspector?

17 A. Yes.

18 Q. And before other courts of the Commonwealth of Virginia?

19 A. Yes, I have.

20 MR. MCGUIRE: I'd like to submit Mr. Whitt as an expert in
21 mining engineering and can testify.

22 MR. McCLANAHAN: I have a question and possibly a question.
23 Mr. Whitt, you indicated you're a professional engineer,
24 but are you licensed in the Commonwealth of Virginia?

25 THE WITNESS: No, I'm not.

1 MS. McCLANNAHAN: I would object to him testifying as to any
2 engineering matters in Virginia as a professional
3 engineer because he's not licensed in Virginia.
4 MR. MCGUIRE: Let me follow-up on that.
5 Q. (Mr. McGuire continues.) Have you informed this Board
6 and the Inspector and other courts previously that you
7 are not licensed in Virginia?
8 A. Yes, I have.
9 Q. And you have been accepted as an expert in mining
10 engineering to testify about matters in Virginia, is that
11 correct?
12 A. That is correct.
13 MR. MCGUIRE: I would ask the Board to overrule the objection
14 and allow Mr. Whitt to testify.
15 MR. CHAIRMAN: We'll allow that.
16 Q. (Mr. McGuire continues.) You've heard Mr. Brendlinger
17 testify that his calculations for lost coal were based
18 upon a 100 percent recovery of this pillar which would be
19 100 by 100 and I believe he testified it was 4,800 tons
20 approximately that might be lost based upon a 100 percent
21 calculation. In your experience what percentage of coal
22 is recovered in mining, both in advance and in pillar?
23 A. Let me correct one issue. I think that he may have said
24 a 100 foot square but I think he meant 100 feet from the
25 well in each direction which makes a 40,000 square foot

1 well. But that does still calculate to be 4,800 tons
2 within the block using the assumption of 36 inches of
3 coal. Mr. Brendlinger, I think, mentioned that it was on
4 a Roman pillar panel with this proposal on 70 foot
5 centers and if that is correct on advance he would
6 recover 51 percent of that coal in place assuming a 20
7 foot entry width which it will be that or less as a rule.
8 If the pillar plan is implemented perhaps as much as 70
9 to 75 percent of the coal would be recovered. So maximum
10 recovery I would estimate to be about 3,600 tons from the
11 block.

12 Q. As a representative of the Rogers -- and I believe you
13 testified that you advised them and consulted with them
14 -- is it your opinion that the Rogers would suffer this
15 loss of coal to allow drilling to occur on coal reserves
16 and coal properties that it owns?

17 A. Yes, most definitely.

18 Q. In fact, Rogers may lose some coal in this, is that
19 correct?

20 A. Yes. The location of this well will cause some lost coal
21 to the Rogers tract.

22 Q. Where will that lost coal be?

23 A. Along the northern edge of the well location. The gas
24 well proposed location is very near the property line
25 between the Rogers tract #68 and the Day Heirs tract.

1 Actually we're within 25 feet of the property line by Mr.
2 Parks' surveying firm's latest location which I had
3 challenged earlier and they did field locate to determine
4 the exact location. We, in fact, thought it was on
5 Rogers initially as Mr. Brendlinger's maps indicate that
6 it is on Rogers. In fact, the survey indicates that it
7 is slightly off. But approximately 40 percent of the
8 coal lost in the block would be on Mr. Rogers.

9 Q. Had Jewell Smokeless not been involved in this or anyone
10 else, had this just been on Rogers property you would
11 have felt that this would have been a reasonable loss to
12 have to suffer, is that correct, on behalf of the Rogers?

13 A. Yes. If the well was solely on Rogers tract 68 I would
14 testify that we would not mine the lost coal.

15 Q. How far is this proposed location from the nearest portal
16 for the Jawbone?

17 A. On the projections that Mr. Brendlinger presented here
18 today it's about 19,000 feet by the mains and then still
19 probably 1,500 feet off of the mains.

20 Q. Would you agree with Mr. Brendlinger's testimony that it
21 would be at least five years before they were able to
22 mine coal, if any?

23 A. That would be the earliest possible time I can see that
24 they could get there.

25 Q. You have been before this Board, I believe, in the matter

1 concerning PKJ-18 and we discussed the Jawbone mining at
2 that time, is that correct?
3 A. Yes. That's correct.
4 Q. And we also discussed the Red Ash, too?
5 A. Right.
6 Q. And the Red Ash as I recall was one that we heard
7 testimony that it was being mined and the Inspector put a
8 stay on that?
9 A. That's --
10 Q. They did not stay any mining as related to the Jawbone --
11 not stay any drilling as to the Jawbone?
12 A. That's correct.
13 MR. MCGUIRE: I have no further questions.
14 MR. CHAIRMAN: Questions, members of the Board? Any cross by
15 Ms. McClannahan?
16 MS. McCLANNAHAN: No, I have none. Thank you.
17 (Witness stands aside.)
18 MR. MCGUIRE: I have no more witnesses. I'd like to make a
19 closing statement. As Ms. McClannahan said, the duties
20 of the Board is to promote maximum recovery of the coal
21 without substantially affecting the right of the gas and
22 oil owner to produce gas. I believe that this would
23 substantially affect that right. The gas owner -- in
24 this case the gas operator Ashland Exploration is trying
25 to develop this. It is trying hard to find a location

1 that doesn't violate a 2,500 foot rule and has been
2 forced to seek this north east corner of this square.
3 We've heard testimony that this Jawbone seam will be
4 mined, if at all, in five years and that mining plans
5 change and policy changes. Ashland is wanting to drill
6 this well as soon as possible and recover gas from it for
7 the benefit of the royalty owners. I do believe this
8 Board has decided this issue before because we were back
9 before the Board a number of hearings ago involving PKJ-
10 18 and the issue of the Jawbone was brought to the
11 attention of the Board and it upheld the Inspector's
12 decision which allowed the drilling to occur with a six
13 month moratorium to allow for Red Ash mining which is not
14 involved today. But I do believe this Board has looked
15 at these issues before and I would hope and ask the Board
16 to come back with the same decision allowing the permit
17 to be granted and to allow the drilling to take place and
18 to affirm the Inspector's decision.

19 MR. CHAIRMAN: Thank you, Mr. McGuire. Ms. McClannahan.

20 MS. McCLANNAHAN: I would submit that each of these situations
21 should be reviewed on a factual basis concerning the well
22 in this particular situation and the mine plan in this
23 particular situation. Certainly no precedent is set by
24 the fact that the Board looked at a different seam of
25 coal and a different well location and approved it some

1 months ago. There is some precedent before this Board,
2 however, that certainly if there's no mine plan that's
3 been submitted for a particular coal seam that the Board
4 would approve the location considering that the proposed
5 well location probably does not interfere with a mine
6 plan. However, that's not the case here. In fact, we've
7 submitted a mine plan for this particular location. We
8 even have a permit for this particular coal seam and will
9 be starting mining in this particular area within less
10 than a year and will be at this particular location is
11 less than five years. With all this testimony I would
12 submit that Jewell Smokeless has met its burden of proof
13 that there is material and substantial interference with
14 the coal reserve in this area in accordance with the Gas
15 and Oil Act. We would request that the Board deny this
16 permit application.

17 MR. CHAIRMAN: I have a question. You all indicated that you
18 have a mine permit. What about a mine license with the
19 Department of Mines for the area?

20 MR. BRENDLINGER: We have a mine -- we do have a license on
21 36-A and 36-B which they're coming in from this side.
22 Our license for 16 which is in Red Ash pertains to the
23 Red Ash seam, but as far as Jawbone seam development we
24 have 36-A and 36-B. We have our plans submitted to them
25 as far as your initial ground control plan as far as

1 your outside surface facilities with the Federal Govern-
2 ment on those which would access it from the Lynn Kemp
3 locality.

4 MR. CHAIRMAN: Other questions? Mr. Johnson wants to make a
5 statement.

6 MR. JOHNSON: I just wanted to inform the Board, I represent
7 Lon B. Rogers/Bradshaw Trust I and Lon B. Rogers/Bradshaw
8 Trust II. Mr. Whitt's already told you how those trusts
9 are involved in the ownership of coal, oil and gas in the
10 area. Mr. Lon Rogers who is the trustee of both those
11 trusts appeared at the Informal Hearing on this well and
12 testified quite profoundly that he was in favor of it and
13 wished the Inspector to approve the well location. I
14 appear for him and make the same statement to the Board.
15 Mr. Rogers wants his oil and gas developed and he wants
16 his coal developed. He's willing to accommodate both and
17 wants to see that both get the job done. We're looking
18 now at a well that is going to be drilling in the very
19 near future and we're looking at a coal mine which may or
20 may not reach this well location in some distant time
21 and distant circumstances. This Board is very much aware
22 of the 2,500 foot rule. That's what the coal industry
23 got from the Legislature in order to protect its reserv-
24 es. In using the 2,500 foot rule Ashland has been
25 forced to limit where it can drill the well and it's

1 picked a location that complies with that rule. The
2 purpose of the rule was to space the gas wells and to
3 assure that the coal operators can mine between them.
4 This coal operator can't mine between the wells. If you
5 look at the mine plan itself you'll note that there are
6 several wells, some of which are already drilled.
7 They're in the mains of these coal projections. The coal
8 projections can be altered to accommodate wells or they
9 can be altered to run over and run through wells that are
10 being proposed. I would submit that the Board should
11 allow this location. And particularly the fact that
12 there is no coal mine that is presently in operation that
13 presently desires to mine the coal in the subject area.

14 MR. CHAIRMAN: Thank you. Other questions? Let me ask a
15 question. We talked about this earlier. Mr. Brend-
16 linger, earlier you said that you sent a letter to
17 Ashland indicating that there were certain conditions
18 that needed to be met and then they did not agree to
19 those conditions. We haven't really talked about those
20 conditions. Can you state what those conditions were?

21 MR. BRENDLINGER: The conditions are basically -- at the time
22 that we would need plugging of the wells to facilitate
23 our mining in the particular area to insure basically the
24 safety of our people and the recovery of the coal that
25 Ashland would be willing to plug the well at such time.

1 We put on a date of -- I think it was 1989 on that as far
2 as that would be the earliest that they would be respons-
3 ible for plugging. We have other stipulations also in
4 the agreement that basically state that they would be
5 responsible for the drilling of the well, all the
6 associated environmental problems with the well drilling
7 and then we'd also like to have a copy of the driller's
8 log as it penetrates the coal seam more or less to give
9 us some additional data. Then we have a few other minor
10 things in there also in the stipulation letter agreement
11 that we did request Ashland to look at and consider.

12 MR. CHAIRMAN: Is this normal for a well that's been drilled
13 in this type situation -- I mean, the plugging of the
14 well and information on drilling. I don't know. That's
15 why I'm asking.

16 MR. BRENDLINGER: I guess we as Jewell Smokeless customarily
17 deal with other companies such as Consol and other
18 conventional gas companies and they do give us stipula-
19 tion letter agreements. I think Mr. Fulmer has several
20 on file with the Division of Oil and Gas.

21 MS. McCLANAHAN: These letters containing the stipulation
22 agreements were submitted also at the Informal Fact
23 Finding Hearing as Exhibits E and F, I believe. But in
24 any event they are contained within either one of
25 Exhibits A through I.

1 MR. MCGUIRE: As Steve could testify, the letter contains -- I
2 don't have it in front of me, but it has nine to ten
3 different stipulations. It's not Ashland's practice to
4 enter into these, but frankly about seven or eight of
5 those Ashland would do ordinarily in its normal course of
6 business or would be required to do by law. The two that
7 it doesn't ordinarily do is agree in advance to un-
8 quantify plugging costs and costs for moving the gas
9 lines. I think that's where the parties hung up in
10 negotiations. Frankly the other stipulations didn't
11 amount to any more than Ashland would have done anyway.
12 It came down to dollars at the end.

13 MR. BRENDLINGER: Would you want to see a copy of the letter?

14 MR. CHAIRMAN: No. I just --

15 MR. MCGUIRE: I think if you look at the letter it wasn't so
16 much the location as ultimately what would happen if it
17 was mined through.

18 MR. CHAIRMAN: That's why I asked the question. This whole
19 discussion started about a letter stipulating certain
20 items that were not agreed upon and the objection was
21 filed as a result of that. We just never talked about
22 that letter and the contents of that letter.

23 MS. McCLANNAHAN: It is Exhibit F. Seven letters were
24 submitted as Exhibit F at the Informal Fact Finding
25 Hearing and all of those were labeled Exhibit F.

1 MR. CHAIRMAN: Other questions? Does anybody entertain a
2 motion concerning this item?

3 MR. KELLY: I would move that we approve the application as
4 submitted -- this isn't an application. Approve the item
5 as submitted.

6 MR. CHAIRMAN: The motion, I would imagine, is to uphold the
7 Inspector's decision, is that --

8 MR. KELLY: Yes.

9 MS. McCLANNAHAN: The item as submitted is my appeal.

10 MS. RIGGS: That's why it needs to be clarified.

11 MR. CHAIRMAN: We need to clarify the motion then.

12 MR. KELLY: The Inspector's decision in favor of Ashland,
13 that we approve that and uphold the permit as issued.

14 MR. CHAIRMAN: There is a motion to uphold the Inspector's
15 decision in approving the permit. Is there a second to
16 the motion?

17 MS. PRESLEY: I second it.

18 MR. CHAIRMAN: The motion has been seconded. Any further
19 discussion or any further questions? All in favor
20 signify by saying yes. (SOME AFFIRM.) Opposed say no.
21 (ONE OPPOSES.) The ayes are in favor of the motion. So
22 the decision is to uphold the Inspector's decision.

23 MS. McCLANNAHAN: Is Mr. Harris voting?

24 MR. CHAIRMAN: I abstained, yes.

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

1
2
3 ITEM IV

4 MR. CHAIRMAN: The next item is Item IV, a petition from
5 Columbia Natural Resources, Inc. for creation of a
6 drilling unit and pooling under Section 45.1-361.21 for
7 unit 821611 located in the Rock Lick District of Buchanan
8 County, Virginia. This is docket number VGOB-94/05/17-
9 0443. Would all persons wishing to speak to this item
please introduce themselves.

10 MR. SWARTZ: I'm Mark Swartz and I'm appearing here on behalf
11 of Columbia Natural Resources who's the applicant.

12 MR. CHAIRMAN: Thank you. Others?

13 MR. OWENS: Terry Owens, Columbia Natural Resources.

14 MR. HYDE: Paul Hyde, Columbia Natural Resources.

15 MR. MOFFETT: My name is Keith Moffett, also from Columbia
16 Natural Resources.

17 MR. CHAIRMAN: Thank you. You may proceed.

18 MR. SWARTZ: I'd like to have Paul sworn so we can start with
19 him.

20 COURT REPORTER: (Swears witness.)

21 MR. SWARTZ: Just to set the ground work to give you some idea
22 of why we're here before we start, there are two reasons
23 for this hearing. One is to create a drilling unit for a
24 deep well that would produce from two formations, the
25 Burea and the Devonian. The second reason for being here

1 in addition to creating this drilling unit would be to
2 pool a small outstanding interest in the unit. The
3 application represents, and you can tell from the
4 exhibits that have been submitted, what portion of the
5 proposed unit that Columbia has under lease. Columbia
6 has leased 94.33 percent of the interest in the unit.
7 The outstanding interest in the unit, if you would make
8 reference -- I can just show you -- Exhibit A which is
9 the well plat, these three tracts down here in the lower
10 right hand corner that just catch the circle unit are the
11 tracts that have outstanding interest that would be
12 pooled in the event this application were granted. And
13 roughly five percent in change is in those three tracts
14 down in the lower right hand corner. I'd like to start
15 with Paul Hyde's testimony.

16
17 PAUL HYDE

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

20
21 DIRECT EXAMINATION

22
23 BY MR. SWARTZ:

24 Q. If you would state your full name for the record, Paul.

25 A. My full name is Paul Verlin Hyde.

- 1 Q. Who do you work for?
- 2 A. I'm employed by Columbia Natural Resources.
- 3 Q. In what office?
- 4 A. I'm director of reservoir engineering located in Charles-
- 5 ton, West Virginia.
- 6 Q. How long have you been employed in that capacity?
- 7 A. I've been director of reservoir engineering since 1986.
- 8 Prior to that time I've worked for predecessor companies
- 9 of Columbia Natural Resources as production engineer,
- 10 drilling engineer and reservoir engineer.
- 11 Q. How long have you been working in the oil and gas
- 12 business?
- 13 A. I've been employed by Columbia in the oil and gas
- 14 business for 25 years.
- 15 Q. Just in summary, what is your educational background?
- 16 A. I hold a BS in civil engineering from Ohio University in
- 17 Athens, Ohio. I'm a registered professional engineer,
- 18 petroleum option in the states of West Virginia, Virgin-
- 19 ia, Ohio and Kentucky?
- 20 A. Have you testified before other administrative boards
- 21 regarding gas and oil matters in the past?
- 22 A. Yes, with the Kentucky board.
- 23 Q. And this is your first visit here?
- 24 A. That's correct.
- 25 Q. Did you participate in the preparation of the application

1 and the looking at the size of this unit?

2 A. Yes, I did.

3 Q. With regard to the basic application covering some of the
4 preliminary matters I would ask you if Columbia Natural
5 Resources is a corporation that was organized and exists
6 under the laws of the state of Texas?

7 A. That is correct.

8 Q. Is Columbia Natural Resources authorized to do business
9 in the Commonwealth?

10 A. Yes.

11 Q. Are you requesting in this application that if it is
12 approved the applicant, CNR, be designated unit operator
13 of the proposed unit?

14 A. Yes.

15 Q. Has Columbia Natural Resources registered itself with the
16 Department of Mines, Minerals and Energy and does it have
17 a blanket bond on file with the Commonwealth as required
18 by law?

19 A. Yes.

20 Q. Does Columbia Natural Resources have a number of wells in
21 the Commonwealth already?

22 A. Yes, we do.

23 Q. Roughly?

24 A. We operate around approximately 117 wells in this field
25 and have an interest in other wells in the Roaring Fork

1 Field.

2 Q. With EREX?

3 A. That's correct.

4 Q. The notice of hearing that was filed here lists certain
5 individuals and there are seven of them. Are those the
6 people that are respondents and the people whose inter-
7 ests are sought to be pooled by this application?

8 A. Yes.

9 Q. And the addresses for these people -- these respondents
10 have been listed in Exhibit B, is that correct?

11 A. That's correct.

12 MR. SWARTZ: I filed with the Board this morning amended
13 portions of Exhibit B. You should have three pages
14 stapled together, Exhibit B, Pages 2, 3 and 4 so that you
15 don't have to compare things. The changes are on Page 2
16 about midway down with regard to tract six that we have a
17 new address for, Basil Looney and Geneva Looney, and
18 that's the only change on Page 2 -- the new updated
19 address for those folks. On Exhibit B, Page 3, there was
20 an error in the Exhibit B that was filed with the
21 application. You'll notice that at tract eight on the
22 right hand side toward the margin there is 1.64 percent
23 interest in the unit that should have been repeated with
24 regard to tract eight in the summary list under roman
25 numeral two. For some reason or another it was reported

1 as 1.56 in the original and it needs to be 1.64. That's
2 the only change on Exhibit B, Page 3. With regard to
3 Exhibit B, Page 4, the only changes at item six -- it's
4 just a new address for one of the respondents who we're
5 seeking to force pool. Those are the three changes that
6 were captured on that amended exhibit, those pages with
7 regard to that amended exhibit.

8 Q. (Mr. Swartz continues.) Does Columbia wish at this time
9 amend to add any respondents to the pooling?

10 A. No.

11 Q. Do you wish to dismiss any?

12 A. No.

13 Q. And as we've just indicated, we want to correct and
14 update the address with regard to Basil and Geneva Looney
15 as indicated on the amended exhibits?

16 A. That is correct.

17 Q. In the process of preparing to develop this unit and
18 preparing the application and the notice did Columbia
19 Natural Resources undertake to identify and locate people
20 who have record title to oil, gas and/or coal and then
21 exercise further diligence to try and locate those
22 people?

23 A. Yes, we did.

24 MR. SWARTZ: With regard to notice issues there is an affi-
25 davit of mailing that you have been provided with that

1 was filed with Mr. Fulmer's office indicating that
2 certified mail, the application and notice of hearing
3 were sent to all of the respondents. Also filed with the
4 Board are the return receipt cards which were filed with
5 Mr. Fulmer's office and you should have them. All
6 respondents signed for the mail. There was no unclaimed
7 mail that came back. Copies of the green cards have
8 been filed with you all.

9 Q. (Mr. Swartz continues.) Was there a notice of hearing
10 published with regard to this hearing?

11 A. Yes. It was published in the Bluefield Daily Telescope
12 on March 26th and May 3rd.

13 Q. Not the telescope but the telegraph?

14 A. Excuse me. Let me put my glasses on so I can read what
15 I'm suppose to say.

16 MR. SWARTZ: We have also filed with the Board the certificate
17 of publication that we got from the newspaper indicating
18 the two dates that it was filed and there's a copy of the
19 notice attached that has also been filed with you all.

20 Q. (Mr. Swartz continues.) What percentage of the unit does
21 CNR currently have under lease?

22 A. We currently have under lease 94.33 percent of the unit.

23 Q. What percentage of the interest in the unit are sought to
24 be pooled by this application?

25 A. 5.67 percent.

- 1 Q. So collectively that would be the interest of the
2 respondents?
- 3 A. That is correct.
- 4 Q. Now, with regard to Exhibit A, Exhibit A is a map of the
5 proposed unit, is it not?
- 6 A. That is correct.
- 7 Q. And it identifies the tracts that would fall within the
8 unit?
- 9 A. Yes.
- 10 Q. Exhibit B and A both show the acerages with various
11 tracts to the extent they're within this unit and show
12 the percent of interest that each tract has?
- 13 A. That is correct.
- 14 Q. This well location is also tied to the State plan
15 coordinates, correct?
- 16 A. Yes.
- 17 Q. How many acres are in the proposed unit?
- 18 A. 125.664 acres.
- 19 Q. This is a circular unit with a radius of how many feet?
- 20 A. 1,320 feet.
- 21 Q. Are nearby wells plated or at least the location noted on
22 Exhibit A?
- 23 A. Yes, they are.
- 24 Q. And does the location of the proposed well here meet the
25 requirements of statewide spacing?

1 A. Yes. There are no exceptions requested.

2 Q. With regard to Exhibit C which is the AFE, who prepared
3 Exhibit C?

4 A. Exhibit C was prepared by Larry Friend who is director of
5 drilling for Columbia Natural Resources.

6 Q. And who signed it?

7 A. It's signed by Steven Eades who is senior vice-president
8 of operations for Columbia Natural Resources.

9 Q. Is he your boss?

10 A. That is correct.

11 Q. When was it signed?

12 A. April 14th, 1994.

13 Q. And that's within the last 60 days?

14 A. That's correct.

15 Q. There are two columns here and the numbers vary slightly.
16 What is the estimated cost to drill and complete this
17 proposed well?

18 A. The estimated cost is \$261,638.

19 Q. So the number at the bottom of the first column should be
20 used?

21 A. That's correct.

22 Q. Actually it's the third column that should be used. What
23 is the purpose of the last column?

24 A. The last column is a -- we call them a RFE where we would
25 bill another partner for their and that's just their net

1 interest. Apparently in the computer program there's a
2 rounding that goes on in that system.

3 Q. And that's the difference between the two numbers?

4 A. That's correct.

5 Q. What is the projected depth of the deepest target
6 formation?

7 A. Slightly over 5,200 feet to a depth of 5,205 feet.

8 Q. With regard to Exhibit B, does that exhibit set forth --
9 turn to Page 4 of the amendment, does that set forth the
10 division of interest of each of the people or groups of
11 people that are sought to be pooled?

12 A. Yes, it does.

13 Q. In terms of using Exhibit B to calculate a participation
14 interest -- in other words, what amount of the proposed
15 cost would a participant have to come up with -- is the
16 number in the right hand column under percent in units.
17 Is that percentage the percentage that is relevant to
18 calculating a participation interest or a royalty
19 interest for that matter in the unit?

20 A. Yes, it is.

21 Q. With regard to the size of the unit and drainage issues
22 could you give the Board some indication as to the
23 available data that you considered in sizing this unit
24 and what that data indicated in terms of whether or not
25 this proposed unit size is appropriate and reasonable?

1 A. Production from what we call the Hayside Field was
2 initiated in late 1972 and has been continuous since
3 then. Columbia operates or has an interest in around 117
4 wells in the field, 95 of which produce from the Burea
5 sandstone. Ultimate projected recovery reserves of those
6 wells averages around 780,000 MCF per well. However, the
7 Hayside Field is noted by the length of production as a
8 mature field. Pressure has declined in the field.
9 Initial pressure was in the range of 900 pounds surface.
10 Current pressure ranges from 400 to 60 pounds depending
11 upon the quality of the reservoir. We're projecting
12 300,000 MCF to be recovered from this well, approximately
13 225,000 from the Burea, and an additional 75,000 from the
14 Devonian shell. The Devonian shell is not as extensively
15 developed. We only have eight wells that produce from
16 the shell in this area. So we're still very low on the
17 learning curve as far as what its potential will be.
18 Additionally we've conducted some studies with other
19 companies on the stimulations that have been performed on
20 the Burea sandstone. We're doing history matching based
21 from the production. And that data indicates that
22 depending upon the fluid medium used to fracture the
23 wells we've experienced half fracture lengths of 500 to
24 1,000 feet. Using a foam fracture on this well will give
25 us a half fracture length in the neighborhood of 800 to

1 1,000 feet which should adequately drain the reservoir on
2 this unit when you couple that with the natural fractur-
3 ing that occurs in the Burea in this area. Part of my
4 responsibilities are to prepare economic evaluations on
5 the wells that we drill. That has been done on this
6 well. We're projecting a pay back in approximately six
7 years with an economic internal rate of return of a
8 little over twelve percent which meets our threshold rate
9 to drill and develop this well.

10 Q. In assessing drainage with regard to this well you've
11 indicated that you're going to use a foam fracture which
12 would generate, based on some studies that have been
13 done, half fracked lengths on the order of 800 to 1,000
14 feet. Could you explain your comment that this Burea
15 sandstone has a natural fracture system and the impact
16 of that on drainage?

17 A. The drainage area for that 1,000 half fracture length is
18 roughly 70/72 acres. So you can see that on 125 acre
19 unit there is an area that is not penetrated by the
20 fracture. Unfortunately, economics also indicate that
21 you can't pump a frack job big enough to achieve that
22 drainage area. The Burea sandstone is naturally fractur-
23 ed in this area. It has been a source of production from
24 the wells that exist. So that will allow us to effect-
25 ively drain this 125 acre unit.

1 Q. What is the anticipated economic life of the well at
2 least that you've used in terms of your projections?

3 A. Our cut off for economic purposes is 30 years.

4 Q. Is the .3 BCF or the 300,000 MCF estimate that's in the
5 application that you've just testified to based on a 30
6 year life?

7 A. That is correct.

8 Q. Do you essentially ignore any production after 30 years
9 from a discounted value point?

10 A. Yes. After 30 years its relative value today is very
11 minor when looking at the early time production.

12 Q. Is it your view and opinion that the plan to create this
13 125 acre unit and develop the Devonian and Burea by the
14 proposed well -- is this in your judgement a reasonable
15 plan to develop these two formations as they underlay the
16 unit in question?

17 A. That's correct.

18 Q. Is it your opinion that the proposed well and the
19 proposed unit will contribute to the protection of
20 correlative rights of the owners of the oil and gas in
21 these formations, lessen the likelihood of both physical
22 and economic waste?

23 A. Yes.

24 Q. You've made some comments with regard to economics, but I
25 would ask you whether or not it is your opinion that the

1 proposed unit is, in fact, an economic unit in the sense
2 that it is anticipated that it will repay its development
3 costs together with a reasonable rate of return over its
4 anticipated life?
5 A. Yes, I do.
6 Q. Is the proposed unit of a size that will permit its
7 estimated recoverable reserves to be drained by the
8 proposed well over the 30 year life?
9 A. Yes.
10 Q. So you would anticipate recovering .3 BCF?
11 A. That is correct.
12 MR. SWARTZ: That's all I have of this witness.
13 MR. CHAIRMAN: Members of the Board?
14 MR. EVANS: As far as Devonian development, that's not full
15 penetration in the Devonian, is it?
16 THE WITNESS: We'll probably just touch the top of the
17 conifers for logging purposes, but whether or not that
18 be all gas bearings is hard to say at this time.
19 MR. EVANS: Also I have a question on Exhibit A. I don't know
20 who to ask this of. I notice in the upper left hand
21 corner it says part of unit 21495. If you're going to
22 get to that with somebody else that's fine.
23 MR. SWARTZ: There's a voluntary unit as I understand it.
24 MR. OWENS: Correct.
25 MR. SWARTZ: Terry, why don't you raise your hand and be

1 SWORN.

2 MR. EVANS: That's fine. If somebody else is going to
3 testify --

4 MR. SWARTZ: Well, he's going to be next. So we can just move
5 on.

6 MR. EVANS: I'll hold that question until the testimony.

7 MR. SWARTZ: Is there anything else of Paul?

8 (Witness stands aside.)

9 COURT REPORTER: (Swears witness.)

10

11

TERRY W. OWENS

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 full name for us?

19 A. Terry W. Owens.

20 Q. Who do you work for, Terry?

21 A. Columbia Natural Resources, Inc.

22 Q. What is your title and what do you do for Columbia?

23 A. I am senior abstractor in the land department and the
24 majority of my job is doing title research in the various
25 courthouses.

1 Q. Were you the fellow who did title on this unit?
2 A. Yes.
3 Q. And came up with the names of the folks that we're
4 seeking to force pool today?
5 A. Yes.
6 Q. Were you also in charge of leasing unleased interests?
7 A. Yes.
8 Q. Have you, in fact, entered into leases that you've
9 negotiated with regard to portions of this unit?
10 A. Yes.
11 Q. This reference on Exhibit A, part of unit 21495, is that
12 a reference to a voluntary unit?
13 A. Yes. 21495 was drilled approximately in 1985/1985 under
14 the 503 foot regulations that were in place at that time
15 here in the Commonwealth.
16 Q. And that well is 2,745.66 feet from this proposed well?
17 A. That's correct.
18 Q. In effect is Columbia Natural Resources going to be
19 paying royalty twice on that portion that's shown here,
20 once under the voluntary unit?
21 A. We will probably -- what you reference as the Thomas F.
22 Link tract to the northeast of this location we will
23 probably subtract the royalty from 21495 and make it --
24 2821611.
25 Q. Would it be safe to say, though, that it royalty or the

- 1 division of interest in the royalty with regard to tract
2 one with regard to well 21611 which is the subject of
3 this application will be paid to that tract?
- 4 A. Yes.
- 5 Q. And you do not apparently know how the overlapping unit
6 issue will be handled with regard to the other well?
- 7 A. That's correct.
- 8 Q. It's either going to be subtracted or it's going to be
9 paid twice, correct?
- 10 A. I would assume so.
- 11 Q. And you don't know which?
- 12 A. I don't know which.
- 13 Q. Terry, with regard to your efforts to lease outstanding
14 interests here, were you the fellow who was in charged or
15 charged with contacting people who owned unleased
16 interests?
- 17 A. That's correct.
- 18 Q. Did you contact some of the family members who we are
19 seeking to force pool today?
- 20 A. Yes.
- 21 Q. Did you attempt to obtain leases from them?
- 22 A. That's correct.
- 23 Q. Have you been told that they are unwilling to lease?
- 24 A. Yes.
- 25 Q. And that's why we're here?

1 A. Yes.

2 Q. In leasing other folks in this unit could you tell the
3 Board what terms Columbia has agreed to with regard to
4 leases that you have obtained from other mineral owners
5 that are within this unit?

6 A. Once the well was staked and we definitely knew we were
7 going to drill a well we went onto the ground, approached
8 the individual with a \$2 per acre rental amount, a
9 standard one-eighth royalty for a term of one year.

10 Q. And there was no bonus?

11 A. There was no bonus.

12 Q. Would you recommend that in its order with regard to
13 election options and the deemed to have elect provisions
14 that the Board incorporate those terms?

15 A. Yes.

16 MR. SWARTZ: That's all I have of Terry.

17 MR. CHAIRMAN: Board members?

18 MR. EVANS: Just a point of clarification. \$2 per acre was
19 what?

20 THE WITNESS: Rental.

21 MR. EVANS: Per year?

22 THE WITNESS: Uh-huh.

23 MR. SWARTZ: Effectively under the Board orders that we see
24 the order is in effect for a year. There can be a period
25 of time after that first year -- the well might be

1 drilled and there might be some period of time where it
2 might not be producing. So in theory under a Board order
3 you could pay rental twice.

4 MR. CHAIRMAN: Other questions?

5 MR. CHAIRMAN: You may continue.

6 MR. SWARTZ: That's it.

7 MR. EVANS: So no one from Thomas Epling objects to splitting
8 off part of the voluntary unit and making --

9 MR. SWARTZ: Well, we have a lease with them and obviously the
10 lease terms are going to govern. I don't think any of us
11 have that -- Terry, do we have a lease with the Epling?

12 MR. OWENS: Yes, we do. And they all contain pooling or
13 unitization clauses.

14 MR. SWARTZ: So whatever that provides is what we're going to
15 wind up doing.

16 MR. OWENS: Uh-huh.

17 (Witness stands aside.)

18 MR. CHAIRMAN: Do I hear a motion?

19 MR. EVANS: Mr. Chairman, I move that we create the unit
20 and approve the force pooling application.

21 MR. CHAIRMAN: Do I hear a second to the motion?

22 MR. KELLY: Second.

23 MR. CHAIRMAN: Any further discussion or questions? All in
24 favor of approving the pooling request and the unit say
25 yes. (ALL AFFIRM.) Opposed? (NONE.) Thank you.

1 MR. SWARTZ: Thank you all.

2 MR. CHAIRMAN: We have two other items and it's right at lunch
3 time. Mr. Tweed, we're trying to decide if we should
4 just break for lunch and come back or if we should go
5 ahead with your two items.

6 MR. TWEED: My recommendation would be that this probably take
7 a short enough time where you might to defer and then
8 break completely for lunch. We have two poolings. One
9 is a conventional well where to my knowledge there will
10 be no one here other than EREX. And then we have one
11 pooling which is Item VIII and Mr. Barton is here to
12 speak briefly as to that. But I don't believe you'll
13 find that it will take the form of any lengthy contested
14 matter because we have talked with Mr. Barton and we are
15 aware of there area that he wants to discuss. So I think
16 we're talking about a maximum in the range of 25 or 30
17 minutes to do both.

18 MR. CHAIRMAN: Board? Let's go ahead with it then.

19 MR. TWEED: We're ready to go.
20
21
22
23
24
25

1
2
3 ITEM V

4 MR. CHAIRMAN: The next item is Item V, a petition from
5 Equitable Resources Exploration for pooling of a drilling
6 unit under Section 45.1-361.21 for V-2367 located in the
7 Gladeville District, Wise Quadrangle, Wise County,
8 Virginia. The docket number is VGOB-94/05/17-0444.
9 Would all persons wishing to address the Board in this
10 matter please identify yourselves.

11 MR. TWEED: Mr. Chairman, my name is Doug Tweed and I'm here
12 on behalf of EREX, the petitioner, and I have present
13 with me Mr. Bob Dahlin and Mr. Dennis Baker both of who
14 will be witnesses on this matter and on docket Item XIII.
15 I also have as co-counsel Ms. Sandy Able, co-counsel for
16 EREX. We request that at the appropriate time that the
17 witnesses be sworn and they be previously sworn for both
18 Items V and VIII.

19 COURT REPORTER: (Swears witnesses.)
20

21 DENNIS BAKER

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

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. TWEED:

Q. Mr. Baker, state your name for the record, please.

A. Dennis Baker.

Q. By whom are you employed and in what capacity?

A. Equitable Resources Exploration, leasing supervisor.

Q. Approximately how many years have you been involved in that type of work for EREX?

A. In total probably about eight years.

Q. Do your responsibilities include the lands involved with this pooling petition or application and the surrounding area?

A. Yes, it does.

Q. Are you familiar with this application for establishment of a drilling unit and pooling order for EREX well V-2367?

A. Yes, I am.

Q. I believe that a permit has been applied for with respect to this well as of April 13th, 1994, is that correct?

A. That is correct.

Q. EREX is seeking to force pool the drilling rights underlying the drilling and spacing unit as depicted at Exhibit A of the application?

A. Yes.

1 Q. Does Equitable own drilling rights in the units involved
2 here?
3 A. Yes, we do.
4 Q. Does the proposed unit depicted at Exhibit A include all
5 acreage within 2,640 feet, that is a 1,320 foot radius of
6 the proposed well?
7 A. Yes. That's correct.
8 Q. I believe that we have filed an Exhibit B, the reflected
9 interest of Equitable and others but that there is an
10 amended Exhibit B to submit to the Board at this time, is
11 that correct?
12 A. That's correct.
13 MR. TWEED: Let me do that at this time. We have copies to
14 provide to all the members of the Board. (Pause.)
15 Q. (Mr. Tweed continues.) At the time that we submitted the
16 original Exhibit B, Mr. Baker, I believe Equitable's
17 interest was 92.99 percent, is that correct?
18 A. That is correct.
19 Q. And the unleased ownership of drilling rights applicable
20 to this application was approximately 7.01 percent, is
21 that correct?
22 A. That is correct.
23 Q. At this time I believe the amendment in Exhibit B is
24 because of the additional leasing efforts by EREX
25 resulted in additional voluntary leases?

1 A. That is correct.

2 Q. What is the present ownership of Equitable in the unit?

3 A. At the time of the hearing we have currently 94.31
4 percent being a leased interest.

5 Q. And the unleased percentage?

6 A. Corrected it would be 5.69 percent.

7 Q. Would you identify for the members of the Board the
8 changes or change as it may be that are reflected in the
9 amended Exhibit B that they now have before them?

10 A. Yes. On the Exhibit B submitted with the application on
11 Page 2 being designated as tract nine, Robert Bays is now
12 leased to Equitable.

13 Q. Are there any other changes?

14 A. No. That's the only change we have.

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

16 A. Yes. That's correct.

17 MR. TWEED: We would move for the admission and consideration
18 of Exhibit B by the Board at this time, Mr. Chairman.

19 MR. CHAIRMAN: Fine. It's accepted.

20 Q. (Mr. Tweed continues.) Prior to filing the application
21 were efforts made to contact each of the respondents in
22 an attempt to work out an agreement regarding the
23 development of the units involved?

24 A. Yes, they were.

25 Q. And, of course, as reflected are the activities and

1 success with amended Exhibit B have you continued to
2 attempt to reach agreements with respondents since the
3 filing of the application?

4 A. Yes.

5 Q. Were efforts made to determine if individual respondents
6 were living or deceased or their whereabouts and if
7 deceased, were efforts made to determine the names and
8 addresses and whereabouts of successors?

9 A. Yes.

10 Q. Were reasonable and diligent efforts made and sources
11 checked to identify and locate any unknown heirs to
12 include primary sources such as deed records, probate
13 records, accessors records, treasurers records and
14 secondary sources such as telephone directories, city
15 directories, family and friends?

16 A. That is correct.

17 Q. In your opinion was due diligence exercised to locate
18 each of the respondents named herein?

19 A. Yes.

20 Q. Are the addresses set out in amended Exhibit B the last
21 known addresses for respondents?

22 A. That is correct.

23 Q. With the exception of the parties which are listed --
24 well, we have identified people in amended Exhibit B as
25 leased including a change by amended Exhibit B where we

- 1 are dismissing any request for relief because we're
2 voluntarily leased now. As to the other parties who are
3 still unleased are you requesting the Board to force pool
4 their unleased interest?
- 5 A. Yes.
- 6 Q. Does Equitable seek to force pool the drilling rights of
7 each individual respondent if living and if deceased the
8 unknown successor or successors to any deceased individu-
9 al respondent?
- 10 A. Yes.
- 11 Q. Is Equitable seeking to force pool the drilling rights of
12 the person designated as trustee if acting in the
13 capacity of trustee and if not acting in such capacity is
14 Equitable seeking to force pool the drilling rights of
15 the successor of trustees?
- 16 A. That's correct.
- 17 Q. Are you familiar with the fair market value of drilling
18 rights for units in this area?
- 19 A. Yes, I am.
- 20 Q. What are those?
- 21 A. A \$5 per acre consideration, five year term and a one-
22 eighth royalty.
- 23 Q. Did you gain your familiarity by acquiring oil and gas
24 leases and other agreements involving the transfer of
25 drilling rights in units in this area?

1 A. Yes, sir.

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

6 A. Yes.

7 Q. Based upon that and as to respondents who have not
8 voluntarily agreed to pool do you recommend that the
9 respondents listed in the amended Exhibit B who remain
10 unleased be allowed the following options with respect to
11 their ownership interest within the unit. 1) Participa-
12 tion. 2) A cash bonus of \$5 per net mineral acre plus
13 one-eighth of eight-eighths royalty. 3) In lieu of cash
14 bonus and one-eighth of eight-eighths royalty a share in
15 the operation of the well on a carried basis as a carried
16 operator under the following conditions; A carried
17 operator would be entitled to a share of production from
18 the tracts pooled accruing to his interest exclusive of
19 any royalty -- ORR reserved in any leases, assignments
20 thereof or agreements relating thereto of such tracts but
21 only after proceeds allocable to each share equal either
22 A) 300 percent of the share of such cost allocable to the
23 interest of the carried operator of a leased tract or
24 portion thereof or B) 200 percent of the share of such
25 cost allocable to the interest of the carried operator of

- 1 an unleased tract or portion thereof?
- 2 A. Yes. That's correct.
- 3 Q. Do you recommend that the order provide that the elect-
4 ions by the respondents be in writing and sent to your
5 attention at Equitable Resource at the address set forth
6 in the application?
- 7 A. That is correct.
- 8 Q. Should this be the address for all communications with
9 applicant concerning this force pooling order?
- 10 A. Yes.
- 11 Q. Do you recommend that the force pooling order provide
12 that if no written election is properly made by a
13 respondent then such respondent should be deemed to have
14 elected the cash royalty option in lieu of participation?
- 15 A. Yes.
- 16 Q. Should the unleased respondents be given 30 days from the
17 date of the order to file written elections?
- 18 A. Yes.
- 19 Q. If an unleased respondent elects to participate should
20 that respondent be given 45 days to pay applicant for
21 respondent's proportionate share of well costs?
- 22 A. That's correct.
- 23 Q. Does the applicant except the parties electing to
24 participate pay in advance that party's share of complet-
25 ed well costs?

- 1 A. Yes.
- 2 Q. Should the applicant be allowed 60 days following the
3 recordation date of the order and thereafter annually on
4 that date until production is achieved to pay or tender
5 any cash bonus becoming due under the force pooling
6 order?
- 7 A. Yes.
- 8 Q. Do you recommend that the force pooling order provide
9 that if the respondent elects to participate but fails to
10 pay respondent's proportionate share of well costs
11 satisfactory to applicant for payment of well costs then
12 respondent's election to participate would be treated as
13 having been withdrawn and void and such respondent should
14 be treated just as if no initial election had been filed
15 under the force pooling order?
- 16 A. That's correct.
- 17 Q. Do you recommend that the force pooling order provide
18 that where a respondent elects to participate but
19 defaults in regard to the payment of well costs any cash
20 sum becoming payable to such respondent be paid within 60
21 days after the last date on which such respondent could
22 have paid or made satisfactory arrangements for the
23 payment of well costs?
- 24 A. Yes.
- 25 Q. Do you recommend that the force pooling order provide

1 that if respondent refuses to accept any payment due
2 including any payment due under said order or any payment
3 of royalty or cash bonus or if said payment cannot be
4 paid to a party because of a title defect in the respond-
5 ent's interest that the operator create an escrow
6 account for the respondent's benefit until the money can
7 be paid to the party or the title defect can be cured to
8 the operator's satisfaction?

9 A. That is correct.

10 Q. Is EREX requesting that Equitable Resources Exploration
11 be named the operator under the force pooling order?

12 A. Yes, I am.

13 MR. TWEED: I have no further questions for this witness. Mr.
14 Dahlin will testify as to reserves, AFE, etcetera.

15 MR. CHAIRMAN: Questions from the Board?

16 (Witness stands aside.)

17
18 ROBERT A. DAHLIN, II

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

21
22 DIRECT EXAMINATION

23
24 BY MR. TWEED:

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

1 A. Robert A. Dahlin, II.
2 Q. And your employer and job position?
3 A. I'm employed as an operations specialist by EREX.
4 Q. For approximately how many years have you had that type
5 of experience?
6 A. That type of experience for the past nineteen years.
7 Q. Both you and Mr. Baker have been qualified and admitted
8 as expert witnesses before the Board on many occasions?
9 A. Yes, sir.
10 Q. Do your responsibilities include the lands involved in
11 this area?
12 A. They do.
13 Q. And I believe you are familiar with the proposed explora-
14 tion and development of units in this area under appli-
15 cant's proposed plan of development?
16 A. Yes, sir, I am.
17 Q. I understand that the total depth of the proposed well
18 under this application and the plan of development is
19 4,800 feet, is that correct?
20 A. That is correct.
21 Q. And is to include formations consistent with the well
22 work permit that's pending before the DMME and that
23 includes the following formations; Devonian shells,
24 Burea, Weir, Big Lime, Raven Cliff, Maxon, Cleveland
25 shell and Sunberry shells, is that correct?

1 A. That is correct.

2 Q. In your opinion will that be sufficient to penetrate and
3 test the common sources of supply in the formations?

4 A. Yes, sir.

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

10 A. Yes, sir, we are.

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

12 A. It is a legal location.

13 Q. And what are the estimated reserves for the unit?

14 A. We have assigned 500 million cubic foot of gas to this
15 drilling unit.

16 Q. Are you familiar with the well costs for this unit under
17 the plan of development?

18 A. I am.

19 Q. Has an AFE been reviewed, signed and submitted to the
20 Board as part of the application process?

21 A. Yes, sir.

22 Q. Was the AFE prepared by the engineering department of
23 EREX and people knowledgeable in the preparation of AFEs
24 and knowledgeable in regard to well costs in this area?

25 A. Yes, sir, it was.

1 Q. In your opinion does this AFE represent a reasonable
2 estimate of the well costs for the proposed unit well?
3 A. It does.
4 Q. Are the dry hole costs estimated at \$137,200?
5 A. Yes, sir.
6 Q. And the completed well cost at \$253,200?
7 A. That's correct.
8 Q. Do these costs anticipate a multiple completion?
9 A. Yes, sir.
10 Q. Does the AFE include a reasonable charge for supervision?
11 A. Yes, they do.
12 Q. In your professional opinion will the granting of this
13 application be in the best interest of conservation,
14 prevention of waste and the protection of correlative
15 rights?
16 A. Yes, sir.
17 MR. TWEED: I have no further questions of this witness and no
18 further witnesses.
19 MR. CHAIRMAN: Any questions from Board members?
20 MR. EVANS: How big is this unit?
21 THE WITNESS: It should be a standard unit. 2,640 diameter.
22 MR. FULMER: 125.66.
23 MR. EVANS: The reason I asked is in looking at Exhibit A, I
24 guess it is, on the well location plat what is the scale?
25 THE WITNESS: It's a one to 400.

1 MR. EVANS: What are the numbers along the edge?
2 THE WITNESS: That's the distance from the latitude and
3 longitude at that corner.
4 MR. EVANS: Thank you. I looked and I thought wait a minute.
5 THE WITNESS: It's an odd unit, isn't it? That's at a 2,000
6 scale.
7 MR. EVANS: That's fine. That's all I needed to know.
8 MR. CHAIRMAN: Other questions?
9 (Witness stands aside.)
10 MR. CHAIRMAN: Do we have a motion concerning this applica-
11 tion?
12 MR. EVANS: You also are requesting that this unit be formed,
13 aren't you?
14 MR. TWEED: Yes. I thought I said that but if I didn't I
15 appreciate you catching it.
16 MR. EVANS: In that case, I make a motion that we approve the
17 the unit and the force pooling application.
18 MR. KELLY: Second.
19 MR. CHAIRMAN: It's been moved and seconded that we force
20 pool this and approve the unit. Any further questions or
21 discussion? All in favor say yes. (ALL AFFIRM.)
22 Opposed say no. (NONE.)
23
24
25

1
2
3 ITEM VIII

4 MR. CHAIRMAN: Item VIII is next. This is a petition also
5 from Equitable Resources Exploration for the pooling of a
6 coalbed methane drilling unit under Section 45.1-361.22
7 for VC-3174 located in the Ervington District, Duty
8 Quadrangle, Dickenson County, Virginia. The docket
9 number is VGOB-94/05/17-0447. Would all persons wishing
to speak to this item please identify yourselves, please.

10 MR. TWEED: Mr. Chairman, Doug Tweed again for EREX, the
11 applicant, along with Mr. Dahlin and Mr. Baker as
12 witnesses and Ms. Able as co-counsel. I have already met
13 and introduced to the Board Mr. Channe Barton who owns
14 approximately 23 percent of the gas estate. We are ready
15 to proceed and treat Mr. Baker as previously sworn. I
16 would ask the Board to accept based upon the presentation
17 for Item V his testimony as to qualifications and
18 knowledge in the area.
19
20

21 DENNIS BAKER

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

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. TWEED:

Q. Mr. Baker, are you familiar with this application and with the lands involved in this area?

A. Yes.

Q. And I believe the application to permit for this coalbed methane well was filed on May 13th of this year, is that correct?

A. That is correct.

Q. And EREX is seeking to force pool the drilling rights underlying the drilling and spacing unit as depicted at Exhibit A of this application?

A. That's correct.

Q. Does EREX own drilling rights in the units involved here?

A. Yes.

Q. Does the location proposed for this coalbed methane well VC-3174 fall within the Board's order for the Nora coalbed field rules dated March 20th, 1989?

A. Yes.

Q. Is there an amended Exhibit B with respect to this unit?

A. No, there is not.

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

A. At the time of application which remains unchanged as of date of hearing we have 77.37 percent of the gas estate

1 under lease at this time.

2 Q. How much of the coal estate is under lease?

3 A. We have 100 percent of the coal estate under lease.

4 Q. Does Exhibit B reflect the ownership of parties other
5 than Equitable underlying this unit?

6 A. Yes, it does.

7 Q. What is the percentage of gas interest that is unleased
8 at this time?

9 A. Under the gas estate on the Exhibit B submitted with the
10 application in tract two Mr. Channe Barton being an
11 unleased interest in the gas estate 22.63 percent of the
12 unit.

13 Q. Are all of these parties therefore set out in Exhibit B?

14 A. That's correct.

15 Q. Prior to filing the application were efforts to contact
16 all respondents in the same manner and to the same degree
17 as you described a few minutes ago with respect to Item
18 V?

19 A. Yes, sir.

20 Q. In your professional opinion was due diligence exercised
21 to locate each of the respondents named?

22 A. Yes.

23 Q. With the exception of the parties which are listed as
24 leased are you requesting the Board to force pool all
25 other unleased interests listed in Exhibit B?

- 1 A. Yes.
- 2 Q. Is Equitable seeking to force pool the drilling rights of
3 each individual respondent if living and if deceased if
4 that were applicable the unknown successor or successors
5 to any deceased individual respondent?
- 6 A. Yes. That's correct.
- 7 Q. Would you incorporate your previous testimony as to
8 Equitable's desire in force pooling with respect to any
9 trustees or successors of trustees?
- 10 A. That's correct.
- 11 Q. Are you familiar with the fair market value for drilling
12 rights in the units here and in the surrounding area?
- 13 A. Yes, I am.
- 14 Q. What are those?
- 15 A. A \$5 per acre consideration, five year term with a one-
16 eighth royalty.
- 17 Q. Did you gain your familiarity by acquiring oil and gas
18 leases and coalbed methane leases and other agreements
19 involving the transfer of drilling rights in this area?
- 20 A. Yes.
- 21 Q. In your opinion does the terms you've testified to
22 represent the fair market value of and the fair and
23 reasonable compensation to be paid for drilling rights
24 within this unit?
- 25 A. Yes.

- 1 Q. Are you recommending that any respondents listed in
2 Exhibit B who remain unleased to allowed the same options
3 that were described before with respect to Item V?
4 A. Yes.
- 5 Q. Recommending that any elections be in writing and sent to
6 applicant at your attention at the same address that was
7 earlier described?
8 A. Yes. That's correct.
- 9 Q. And that would apply to any other communications with the
10 applicant as well?
11 A. Yes.
- 12 Q. Are you recommending that the force pooling order provide
13 the same terminology with respect to when no written
14 elections are made by a respondent?
15 A. Yes.
- 16 Q. And otherwise, that the terminology with respect to the
17 time periods for elections would be in accordance with
18 the request of Item V?
19 A. Yes.
- 20 Q. Are you recommending that an escrow arrangement be set up
21 as has been the case, I guess, for quite some time in
22 these matters involving diversity between the gas
23 interests and the coal interests?
24 A. Yes. That's correct.
- 25 Q. You are requesting that Equitable Resources be named the

1 operator under the force pooling order?

2 A. Yes, I am.

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

4 Dahlin will again testify in his area of expertise.

5 MR. CHAIRMAN: Are there questions from the Board? Mr.

6 Barton, do you have questions of the witness?

7 (Witness stands aside.)

8 MR. BARTON: This probably wouldn't have been here today if

9 this matter had been carried out right, which me and you

10 agreed out there a while ago. I will ask the Board not

11 to pool the gas if it helps anything until your people

12 come to me again or you one because there's got to be a

13 stopping place somewhere. You would have already have

14 had my gas leased if the other matter had been taken care

15 of. On that order I'd ask the Board not to pool my gas.

16 MR. TWEED: It may be appropriate at this time for me to

17 explain what I understand Mr. Barton's concerns to be.

18 Mr. Baker has spoken with him as have I. Mr. Barton is

19 involved in another gas well where EREX is the operator.

20 And in that situation Mr. Barton and EREX reached a

21 private or voluntary contract for easement and surface

22 use and at that time Mr. Barton was paid compensation.

23 Mr. Barton feels that the surface damage and use exceeded

24 what he had anticipated and that he was entitled to more

25 money under that agreement at that well. He has had

1 discussions with other people at EREX about that and
2 their reaction at that time was that they felt he had
3 already been compensated sufficiently and adequately
4 under their agreement. Mr. Barton spoke with Mr. Baker
5 about that this morning and Mr. Baker and Ms. Able have
6 both indicated to Mr. Barton that they are going to go
7 back to the other parties at EREX to determine whether
8 there's any flexibility and further negotiations on that
9 dispute as to that well. We have also double checked to
10 make sure as to what the situation is with Mr. Barton on
11 this well which is presently before the Board. The
12 permit application on this well includes no request for
13 surface use or surface involvement on the property owned
14 by Mr. Barton either as to roads and access or as to pipe
15 which has also been applied for as part of the initial
16 application. So our position, as we believe Mr. Barton
17 understands, is that another matter is a matter of
18 private contract dispute to be looked at between the
19 parties and if it can't be solved then there may need to
20 be some access to course. I actually believe that
21 there's an arbitration clause in that private contract
22 that might be available for the parties if there was a
23 need. But we don't think it has any applicability of any
24 sort or relevance to the present well. I believe we are
25 providing both Mr. Barton and the Board some assurance

1 that there's no relevance when we can indicate that the
2 permit here involves no surface rights that Mr. Barton
3 owns. So that's kind of what we have.

4 MR. EVANS: So you wish to proceed with the force pooling?

5 MR. TWEED: We want to proceed and we really don't think
6 there's anything further we can do in this matter. Mr.
7 Barton certainly had a right to express his concerns.
8 And we wanted Mr. Barton and the Board to know that we
9 weren't going to ignore those concerns and not try to
10 deal with them further. We just don't believe this is
11 the proper forum to deal surface disputes on another well
12 where the surface rights are by private contract and
13 there aren't any surface rights involved at this time
14 here.

15 MR. BARTON: I don't think that there would be any back-up to
16 come and try to satisfy me if you can go ahead and get
17 anything you want on down the road. It is two different
18 items here. You have already had the second item if you
19 had took care of the first item.

20 MR. TWEED: We understand. You just can't let this well and
21 the rights of all the people involved in this well be
22 impacted by a dispute that exists on another one.

23 MR. CHAIRMAN: We have no control over the first item. We
24 understand your position. That is a private contractual
25 agreement. But they have agreed to look into that

1 matter. I understand your position about treating you
2 fairly -- what you consider to be being treated fairly.
3 But that doesn't have a bearing on the pooling here. As
4 I understand the pooling here does not include any
5 surface --

6 MR. TWEED: We've double checked and called and the permit in
7 this case includes a specific plan for surface right use
8 and also includes the application for pipeline and
9 neither involve Mr. Barton's surface rights. I did want
10 to ask questions of Mr. Dahlin at the appropriate time.

11 MR. CHAIRMAN: Yes.

12

13

ROBERT A. DAHLIN, II

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

16

17

DIRECT EXAMINATION

18

19 BY MR. TWEED:

20 Q. Mr. Dahlin, you, of course, are familiar with this
21 application and this area as you were for Item V,
22 correct?

23 A. Yes, sir. I am.

24 Q. And I believe the total depth of the proposed well here
25 is 1,855 feet, is that correct?

- 1 A. That is correct.
- 2 Q. That includes formations consistent with the permit
3 pending before the DMME including but not limited to all
4 Pennsylvanian aged coal seams from the top of the Raven,
5 including all splits to the top of the Red and Green
6 shells, including but not limited to Raven, Jawbone,
7 Upper Horsepin, Middle Horsepin, War Creek, Beckley,
8 Lower Horsepin, Pocahontas #8, Pocahontas #4, Pocahontas
9 #3, Pocahontas #1, all unnamed coal seams and all other
10 associated formations known as the Nora Coalbed Gas
11 Field, is that correct?
- 12 A. That's an accurate statement.
- 13 Q. In your opinion will that be sufficient to penetrate and
14 test the common source of supply in the subject forma-
15 tion?
- 16 A. Yes, sir.
- 17 Q. What are the estimated reserves here?
- 18 A. 350 million cubic feet of gas.
- 19 Q. Are you familiar with the estimated well costs for this
20 unit?
- 21 A. Yes, sir, I am.
- 22 Q. Has a signed AIE been reviewed and submitted to the
23 Board here?
- 24 A. Yes, sir.
- 25 Q. Was it prepared by the same experienced department that

1 we discussed with respect to Item V?

2 A. It was.

3 Q. In your opinion does this AFE represent a reasonable
4 estimate of the well costs for this unit?

5 A. Yes, sir.

6 Q. Are the dry hole costs estimated at \$63,774?

7 A. Yes, sir.

8 Q. And the completed well costs at \$188,565?

9 A. That is correct.

10 Q. Does this anticipate a multiple completion and include a
11 reasonable charge for supervision?

12 A. Yes.

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

17 A. Yes, sir.

18 MR. TWEED: I have no further questions for this witness and
19 no further evidence to present at this time. We would
20 request approval of the application with respect to the
21 creation of the drilling unit and the pooling.

22 MS. RIGGS: I have one clarification, if I could. At the last
23 Board meeting the Board instructed that the language on
24 the definition of formation should follow the statutory
25 definition of coalbed methane gas which is all natural

1 gas produced in coalbeds and rock strata associated
2 therewith. I heard definitions like splits and a lot of
3 other things. Are you still okay with this definition
4 when associated with the defined strata?

5 MR. DAHLIN: We are.

6 MR. CHAIRMAN: Questions?

7 MR. KELLY: I would like to clarify with Mr. Barton. You have
8 been approached to lease your interest?

9 MR. BARTON: Yes, sir. I told them I would go ahead and lease
10 it. I have no problem. That's why I made my statement
11 at the start. But they're the same company that I had
12 dealt with before and they like some catching up to do.
13 Like I said, I wouldn't have been here today -- I would
14 have went ahead and leased my gas to them.

15 MR. KELLY: And your reason for not leasing was related to
16 your disagreement with them on the other item?

17 MR. BARTON: Absolutely.

18 MR. EVANS: One other question. This is in the Nora Coalbed
19 Methane Field?

20 MR. DAHLIN: It is.

21 MR. EVANS: So the unit's already been created?

22 MR. DAHLIN: For a graphic representation it's basically in
23 the Priest Fork area of the Nora Coalbed Methane Field.
24 The pink indicates what drilled locations we've got. The
25 green outline is this location. It's just a step out in

1 the same field, the same unit, occurring under the Nora
2 Coalbed Methane Field.

3 MR. BARTON: I'd like to say something else. You've had that
4 first well up there for almost a year and I haven't got
5 anything out of it. It's my gas and oil. You want to
6 lease gas and oil from me and then when you drill the
7 well Clinchfield Coal Company -- it's put in as something
8 else. So I ask why come to me in the first place? I
9 give you the right to go drill and drill it out and then
10 it's their's.

11 MR. TWSEED: We've tried to discuss and explain the fact that
12 it's escrowed. And I guess we can candidly say that if I
13 were in Mr. Barton's position I might too wonder why --
14 be sitting here still curious about all that. But that's
15 the nature of the beast. The money is in escrow. So
16 your rights to it are protected until it can be defined,
17 but we understand your frustration.

18 MR. BARTON: That don't help me none.

19 MR. EVANS: The reason for that escrow is if you claim the
20 ownership that's fine. If somebody else claims it under
21 the statute we have to honor that and we don't make the
22 decision of who owns it. That's for the courts to
23 decide.

24 MR. BARTON: I understand.

25 MR. EVANS: But until that time we can't give you it to either

1 one of you. So it goes over in the bank and sits there
2 and whoever wins the court battle is the one that gets
3 the money.

4 MR. BARTON: I've got a feeling who will win that, too.

5 MR. CHAIRMAN: Do I hear a motion concerning this?

6 MR. EVANS: Mr. Chairman, I move that we approve the
7 application for force pooling.

8 MR. KELLY: Second.

9 MR. CHAIRMAN: It's been moved and seconded that we approve
10 the application for force pooling. Any further discuss-
11 ion? All in favor say yes. (ALL AFFIRM.) Opposed say
12 no. (NONE.) The motion passes.

13 MR. TWEED: Thank you.

14 MR. CHAIRMAN: Are there any further matters? Then I guess we
15 stand adjourned.

16

17

(End of Proceedings for
May 17, 1994.)

18

19

20

21

22

23

24

25

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMONWEALTH OF VIRGINIA
COUNTY OF WASHINGTON

I, Deborah J. Bise, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing is a true transcript of the proceedings had in the Virginia Gas and Oil Hearing on May 17, 1994; that all of said proceeding was electronically recorded and was reduced to writing by me and that said transcript is true and correct to the best of my ability.

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

GIVEN under my hand this 3rdh day of June, 1994.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.