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VIRGINIA OIL AND GAS BOARD

HEARING OF AUGUST 16, 1994

9:15 A.M.

AT THE 4-H CENTER, HILLMAN HWY.  
ABINGDON, VIRGINIA

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Appalachian Court Reporting Services, Inc.

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This matter came on to be heard on this the 16th day of August, 1994 before the Virginia Gas and Oil Board in the Dickenson Conference Center at the Southwest Virginia 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. WAMPLER: Good morning. My name is Benny Wampler and I'm Deputy Director for the Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. I'll ask the Board members to introduce themselves at this time beginning with our newest member.

(MEMBERS INTRODUCED.)

ITEM I & II

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MR. CHAIRMAN: The first item on the agenda today is a petition from Virginia Gas Company for establishing a drilling unit and force pooling of a conventional gas drilling unit. This is docket number VGOB-94/06/21-0450. We'd ask the people that would like to address the Board to come forward at this time, please.

MR. MULLINS: Yes, sir. My name is Tom Mullins. I'm with the Street Law Firm in Grundy, Virginia and I represent Virginia Gas. On both agenda Items I and II as we advised the Board at the last meeting we are still in the process of working something out. In fact, we've reached an agreement with one party. We just haven't got it formalized into writing. We'd like to ask the Board to again continue those items over so we can have an opportunity to voluntarily work it out without having to seek force pooling.

MR. CHAIRMAN: This is for docket number VGOB-94/06/21-0450 and 0451, is that correct?

MR. MULLINS: That's correct.

MR. CHAIRMAN: Any objections? Without objection it's approved. Thank you. They are continued to the next meeting.

ITEM III & IV

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MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Exploration for the pooling of a gas well, docket number VGOB-94/07/19-0459. We would ask the parties that wish to address the Board to come forward at this time.

MR. KAISER: Mr. Chairman and members of the Board, Jim Kaiser on behalf of Equitable Resources Exploration. We would ask the Board at this time to accept our motion for a continuance on this matter. There are 69 individual tracts located within this unit and we're still trying to make sure we have all the interests properly identified before the force pooling.

MR. CHAIRMAN: Any objections, members of the Board? Anyone here having an objection? It's continued.

MR. KAISER: We'd also request, Mr. Chairman, that Item IV on the docket, which is VGOB-94/08/16-0461, be continued. This is a motion for rehearing on V-2691 to cure a 30 day procedural defect. We are attempting to -- that force pooling also has a case pending in Wise County Circuit Court that we're attempting to work out with the other party. At this time settlement negotiations are ongoing and we'd ask that that hearing be continued also.

MR. CHAIRMAN: Any objections from anyone here? Any questions

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or objections, members of the Board? It's continued.

ITEM V

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2  
3 MR. CHAIRMAN: The next item on the agenda is a petition from  
4 Virginia Gas Company for a well location exception for  
5 EH-128. This is docket number VGOB-94/08/16-0462. We'd  
6 ask the parties that wish to address the Board in this  
7 matter to come forward at this time.

8 MR. MULLINS: Mr. Chairman, again, my name is Tom Mullins.  
9 I'm with the Street Law Firm and I represent Virginia  
10 Gas. Here with me today is Al Mueller and Brad Swanson  
11 on the motion from Virginia Gas -- or the application  
12 from Virginia Gas for a location exception.

13 MR. KAISER: Jim Kaiser on behalf of Equitable Resources  
14 Exploration. We're going to object to this petition for  
15 a well location exception.

16 MR. CHAIRMAN: Any others. The record will show there are  
17 none. You may proceed.

18 MR. MULLINS: Maybe to help shorten things and point the  
19 hearing if we could get a statement as to the nature of  
20 the objection we might be able to hone in on what the  
21 objection is, sir.

22 MR. CHAIRMAN: That will be fine.

23 MR. KAISER: Mr. Chairman, our first objection to this  
24 location exception is that the application is premature.  
25 Equitable Resources owns a 21.93 percent working interest

1 in the unit. Virginia Gas and Equitable have been trying  
2 to negotiate a voluntary agreement or farm out of this  
3 interest. Negotiations to this point have been un-  
4 successful, but they are somewhat ongoing. In addition  
5 we have filed an objection to the permit with Mr.  
6 Fulmer's office and in the past I believe the practice of  
7 the Inspector's office before issuing a permit has been  
8 to require the establishment of the unit through a force  
9 pooling or a voluntary agreement. So our first objection  
10 is that the application is premature and that a unit is  
11 not established at this time for this well.

12 MR. MULLINS: If I could briefly address that. I think his  
13 first point as far as the application being premature is  
14 not relevant to a location variance hearing. That would  
15 be brought up in a force pooling application. I don't  
16 think that is properly brought before the Board at this  
17 hearing. I think that's a matter of whose interest is  
18 whose which would either be part of a voluntary agreement  
19 on the lease or farm out or it will be a subject of a  
20 force pooling hearing. So I don't think that is properly  
21 brought before the Board at this hearing. Secondly, the  
22 permit is separate and apart and a separate proceeding  
23 from this location variance. And again I don't think  
24 it's properly brought before the Board at this point in  
25 time at this hearing.

1 MR. CHAIRMAN: Any questions, members of the Board, at this  
2 time? We're going to go ahead, unless the Board has any  
3 objection, and hear the case.

4 MR. KAISER: Mr. Chairman, we have another objection. Do you  
5 wish for us to present that now?

6 MR. CHAIRMAN: Sure. That will be good.

7 MR. KAISER: I call Mr. Don Hall as a witness.

8 COURT REPORTER: (Swears witness.)

9 MR. KAISER: Mr. Chairman, our second objection to this  
10 location exception in addition to the fact that we feel  
11 the application is premature is we also feel it is  
12 unnecessary. There's actually a legal location for this  
13 well. If it were to be moved approximately 220 feet to  
14 the southeast you'd have a legal location. I call Mr.  
15 Hall to testify to that fact at this point.

16

17 DON HALL

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

20

21 DIRECT EXAMINATION

22

23 BY MR. KAISER:

24 Q. Mr. Hall, have you testified before the Virginia Gas and  
25 Oil Board on previous occasions?

1 A. Yes, sir.

2 Q. And have your qualifications as an expert witness been  
3 accepted?

4 A. Yes, sir.

5 MR. KAISER: Mr. Chairman, we move Mr. Hall as an expert  
6 witness.

7 MR. CHAIRMAN: Without objection.

8 MR. MULLINS: I'd like to voir dire.

9

10 VOIR DIRE

11

12 BY MR. MULLINS:

13 Q. Sir, what are your qualifications as a geologist?

14 A. I'm not testifying as a geologist.

15 Q. Can you testify as to the drainage patterns of any  
16 proposed well?

17 A. No.

18 MR. MULLINS: That's it.

19 MR. KAISER: Mr. Hall, have you --

20 MR. MULLINS: I think they have to make a ruling on whether or  
21 not --

22 MR. KAISER: We're not asking Mr. Hall to testify as a  
23 geologist. We're asking him to testify as a land  
24 operations person and whether or not he's been out to  
25 that site and whether or not he has reviewed the maps

1 that we have to determine whether or not there is a legal  
2 location and whether or not the location is buildable.  
3 Mr. Hall has testified in these matters for us probably  
4 50 to 100 times in the past, as you well know.

5 MR. CHAIRMAN: Any objection to that representation? You may  
6 proceed.

7  
8 DIRECT EXAMINATION

9  
10 BY MR. KAISER:

11 Q. Mr. Hall, have you physically visited both the current  
12 location of EH-128 and that location which would give  
13 them a legal location?

14 A. No, I haven't.

15 Q. You have not personally visited it?

16 A. I haven't personally visited it.

17 MR. MULLINS: I object if he hasn't personally visited it. He  
18 doesn't have any first hand knowledge as to any topo-  
19 graphical features and he has no first hand knowledge as  
20 to what's possible and impossible. I object to his  
21 testimony because he clearly doesn't have the necessary  
22 information and the experience on these particular sites  
23 to be able to give us testimony as to whether a "legal  
24 site" is available.

25 MR. KAISER: Mr. Chairman, I apologize. I was misinformed as

1 to Mr. Hall's visit. I will rephrase the question.

2 Q. (Mr. Kaiser continues.) Mr. Hall, as one of your  
3 employees has Mr. Wayne Main personally visited this  
4 site and the legal location site?

5 A. Yes, he has.

6 MR. MULLINS: Objection. That's hearsay. If he wants to  
7 present the other gentleman.

8 MR. CHAIRMAN: Sustained.

9 Q. (Mr. Kaiser continues.) Mr. Hall, in your experience as  
10 a land operations specialist is it your opinion in  
11 looking at these maps that we have prepared that EH-128  
12 can be moved approximately 220 feet to the south east to  
13 give Virginia Gas a legal location for this well?

14 A. Yes.

15 MR. MULLINS: Objection. Again, he's already testified he's  
16 not familiar with the site. If he's not familiar with  
17 the actual site and been on the site how can he testify  
18 as to whether it can be moved or not be moved?

19 MR. KAISER: Mr. Chairman, I asked him as to the maps that  
20 have been prepared.

21 MR. CHAIRMAN: If you'd just state the basis in which you are  
22 making your opinion we will allow you to state your  
23 opinion.

24 A. (The witness continues.) By reviewing the maps there is  
25 a legal location that would 2,460 feet from the other

1 wells.

2 MR. MULLINS: I've already made my objection.

3 MR. CHAIRMAN: I understand. Go ahead.

4 Q. (Mr. Kaiser continues.) Mr. Hall, have you reviewed the  
5 permit application for EH-128?

6 MR. MULLINS: I object to anything on the permit application.  
7 We're here on a location variance. I think that's  
8 irrelevant to the pending proceeding.

9 MR. CHAIRMAN: Sustained.

10 Q. (Mr. Kaiser continues.) Mr. Hall, have you reviewed the  
11 topographical maps connected to EH-128?

12 A. Yes, sir.

13 Q. And what did you find from those?

14 A. The location exception they're asking for was north east  
15 of an existing well that in reviewing these maps can be  
16 moved approximately to the south east for a legal  
17 location. By looking at the topo maps it doesn't appear  
18 that there's any difference in the terrain on one side of  
19 the hollow there or the other.

20 MR. MULLINS: I restate my objection as to him being able to  
21 testify since he doesn't have any first hand knowledge.  
22 I won't continue to interrupt. I'll just make that a  
23 continuing objection.

24 MR. CHAIRMAN: Okay.

25 Q. (Mr. Kaiser continues.) So based upon your review of the

1 maps that we've prepared and your review of the topo-  
2 graphical map is it your opinion that there is a legal  
3 location 220 feet approximately to the south east of the  
4 present location for EH-128?

5 A. Yes.

6 MR. KAISER: I have nothing further, Mr. Chairman.

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

8 Hall? Do you have any other objections?

9 MR. KAISER: That's all, just those two.

10 MR. MULLINS: May I cross-examine him?

11 MR. CHAIRMAN: Yes.

12  
13 CROSS-EXAMINATION  
14

15 BY MR. MULLINS:

16 Q. Who prepared this map that you're testifying from here  
17 today?

18 A. It was prepared by our engineering --

19 Q. Do you know of your own first hand knowledge who prepared  
20 the map?

21 A. Gary Moody initialled it.

22 Q. Are you familiar with all the information that's on the  
23 map?

24 A. I'm familiar with --

25 Q. And this is a copy. Both of these are the same maps, is

1           that correct?

2   A.    Yes.

3   Q.    Are you familiar with them?

4   A.    I'm familiar with these wells in this particular area

5           here.

6   Q.    Have you ever been on the site of EH-24 or EH-128?

7   A.    No, I haven't.

8   Q.    Do you know any of the particular topographical features

9           of that area?

10  A.    Not personally.

11  Q.    Do you know how difficult it would be to build a site in

12           a legal location, how expensive it would be?

13  A.    No, not personally.

14  Q.    If this well is not drilled in the proposed location what

15           happens to the interest of the royalty owners in this

16           area? Will they get paid for anything?

17  A.    If it's not drilled at all.

18  Q.    If it's not drilled at all?

19  A.    If the legal location is drilled they would.

20  Q.    These people over here would be paid?

21  A.    Over where?

22  Q.    These people over here. See where that blue line is?

23  A.    Uh-huh.

24  Q.    The people between here and the other dark circle, would

25           they be paid?

1 A. If you move the location to intersect these two circles  
2 --  
3 Q. What about these people right here?  
4 A. There are some people in there that's not going to be  
5 paid anyway.  
6 Q. But you're wanting to cut all the rest of them out?  
7 A. Not necessarily.  
8 Q. Well, will these people be paid?  
9 A. No.  
10 Q. Would these people up here be paid on the top of this  
11 arch?  
12 A. No.  
13 Q. And if you drilled a well right here would that complete  
14 the circle as close as possible?  
15 A. Possibly.  
16 Q. And would that, in fact, protect more of the correlative  
17 rights of all the people in this area?  
18 A. Possibly.  
19 MR. MULLINS: I don't think I have any other questions.  
20 MR. KAISER: I have redirect, Mr. Chairman.  
21 MR. CHAIRMAN: Do you feel he brought up something that you --  
22 MR. KAISER: I just want to make a point.  
23 MR. CHAIRMAN: We'll allow you to make a point.  
24  
25

REDIRECT EXAMINATION

1  
2 BY MR. KAISER:

3 Q. Mr. Hall, if the well is drilled where it's presently  
4 located will the people here be paid?

5 A. No.  
6

7 RE-CROSS-EXAMINATION

8  
9 BY MR. MULLINS:

10 Q. Mr. Hall, if it's drilled as proposed in the other well  
11 that I talked about will more people be paid than are  
12 being paid by just moving the well out here away from  
13 everybody?

14 A. We're not moving it way out here. We're talking about  
15 moving just across the creek here.

16 Q. It's there a well right here that you would have to seek  
17 a variance from?

18 A. Uh --

19 Q. Isn't there a well right here that you'd have to seek a  
20 variance from?

21 A. If you moved it here?

22 Q. Where would you move it, at the same site of the existing  
23 EH-124?

24 A. No. You'd move it this way.  
25

1 Q. Don't you propose to drill a well right here that you'd  
2 have to seek a variance from in the future?  
3 A. I'm not sure.  
4 Q. You don't know whether your company is proposing to drill  
5 another well that you'd have to seek a variance from?  
6 A. No. If I knew the number I might be able to tell you.  
7 Q. I can give you the number. V-3399.  
8 A. Yes.  
9 Q. And you'd have to seek a variance for that well, wouldn't  
10 you?  
11 A. I'm not sure.  
12 Q. You don't know. How about V-2266?  
13 A. V-2266?  
14 Q. Yes, sir.  
15 A. V-2266 is here.  
16 Q. So you wouldn't have to seek a variance for that well, is  
17 that what you're testifying to?  
18 A. It depends on where this well was put.  
19 Q. But you don't know whether or not you'd have to seek a  
20 variance from V-3399, the well that's not on that map?  
21 A. No. I'm not sure.  
22 MR. MULLINS: I don't have any other questions.  
23  
24  
25

REDIRECT EXAMINATION

1  
2 BY MR. KAISER:

3 Q. Mr. Hall, has a permit been applied for on V-3399?

4 A. No.

5 MR. KAISER: Thank you.  
6

7  
8 REXCROSS-EXAMINATION

9 BY MR. MULLINS:

10 Q. Do you plan on applying for a permit?

11 A. Yes.

12 MR. MULLINS: Thank you.

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

14 (Witness stands aside.)

15 MR. KELLY: I'd just like to know where V-3399 is, which one  
16 you're talking about here.

17 MR. MULLINS: It's proposed right here.

18 MR. CHAIRMAN: Any other questions?

19 MR. KELLY: Are the other circles shown on this map all  
20 Virginia Gas locations?

21 MR. MULLINS: No, sir.

22 MR. KELLY: Which ones are Virginia Gas'?

23 MR. MULLINS: This is EH-20 which is Virginia Gas. EH-23,  
24 EH-24 and the 128 that we're here on today, the P-481  
25

1 which is an Equitable well, V-1942 which is also an  
2 Equitable well, V-2266 -- these are Virginia Gas wells.  
3 The 120, 129 and 118 and here is V-2460/EH-41.

4 MR. KELLY: So the wells just east and south of your subject  
5 location that we're dealing with now are all Equitable  
6 wells?

7 MR. MULLINS: This is Equitable, this is Equitable and I  
8 believe this is.

9 MR. KELLY: Those are existing wells?

10 MR. MULLINS: Existing wells, yes, sir. The stars indicate  
11 existing wells. I have a map which I plan to give copies  
12 to the Board to assist the Board in locating all these  
13 points.

14 MR. EVANS: That would be helpful.

15 MR. MULLINS: So they'll have it their hands instead of trying  
16 to look back here.

17 MR. KELLY: Could we have that now?

18 MR. MULLINS: Yes, sir. I actually have two documents. The  
19 first without any topographic features shows the various  
20 wells in this area, shows spacing overlaps by both EREX  
21 and Virginia Gas.

22 MR. FULMER: That will be Exhibit A.

23 MR. EVANS: Mr. Mullins, are these scale or just --

24 MR. MULLINS: I believe they are to scale?

25 MR. SWANSON: 1 inch equals 2,000.

1 MR. MULLINS: Here's one with the topographic features. It  
2 doesn't show all the wells that the other map shows. And  
3 the double circles on the EH-23 and EH-20 are the pay  
4 zones because they were drilled under prior statutory  
5 law.

6 MR. CHAIRMAN: Is this Exhibit B?

7 MR. MULLINS: That will be Exhibit B.

8 MR. EVANS: I assume these are over layable?

9 MR. MULLINS: Yes.

10 MR. KELLY: Could you explain, though, the EH-24 situation?

11 MR. MULLINS: It's a twin well. Basically what happened is it  
12 went to the Raven Cliff and blew out and couldn't be  
13 drilled any further.

14 MR. CHAIRMAN: You may proceed with your testimony.

15 MR. MULLINS: As our first witness I'd like to call Mr. Bread  
16 Swanson.

17 COURT REPORTER: (Swears witness.)

18

19

BRAD SWANSON

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

22

23

DIRECT EXAMINATION

24

25 BY MR. MULLINS:

1 Q. Sir, would you please state your name?  
2 A. My name is Brad Swanson.  
3 Q. What do you do for a living?  
4 A. I'm a land agent for Virginia Gas Company.  
5 Q. How long have you been a land agent for Virginia Gas  
6 Company?  
7 A. Since 1987.  
8 Q. Are you familiar with the application and the situation  
9 involving EH-128 and EH-24 -- that situation?  
10 A. I am.  
11 Q. Has your testimony been accepted as expert testimony  
12 before this Board on prior occasions?  
13 A. It has.  
14 Q. I'd like to ask you some questions about EH-24 and EH-  
15 128 if I could. We're here today on a location variance  
16 for EH-128. Have you provided notice to all interested  
17 parties concerning this hearing?  
18 A. We have.  
19 Q. Did you send it by certified mail, return receipt  
20 requested?  
21 A. We did.  
22 Q. Did you receive the green cards back indicating receipt?  
23 A. We have.  
24 Q. Did you file copies of those with the Board?  
25 A. We did.

1 Q. Now, have you also contacted the owners of the location  
2 proposed for EH-128?

3 A. We have.

4 Q. Did you, in fact, obtain affidavits from them concerning  
5 their desires for the place of location for EH-128?

6 A. That is correct. The Colleys and Wallins and Owens who  
7 own this property would like to minimize any additional  
8 disturbance to their land and have indicated so in the  
9 affidavits.

10 Q. I'm going to hand you all of these affidavits and ask you  
11 if these are the affidavits signed by those people?

12 A. These are.

13 MR. MULLINS: I'd like to submit copies of these to the Board  
14 as Exhibit C collectively. There are five affidavits --  
15 I'm sorry. Four affidavits. (Pause.) And this is only  
16 the location. This is not the entire tract. I don't  
17 want to mislead the Board to think this is the entire  
18 tract.

19 Q. (Mr. Mullins continues.) Mr. Swanson, have you actually  
20 been on the site of EH-24 and proposed EH-128?

21 A. Yes, I have.

22 Q. Is there any residents around these areas?

23 A. There's a residence near the road and there's other  
24 buildings on Mr. Colley's property -- adjacent to his  
25 property.

1 Q. Are you familiar with the topographical features?

2 A. It's a ravine on either side. I'm not saying that  
3 correctly. The well is located in the bottom of the  
4 hollow.

5 Q. There's mountains going up each side?

6 A. That's correct.

7 Q. Without going to a lot of expense in developing a site  
8 could a site as economically be placed anywhere else  
9 besides the proposed location and still protect and  
10 retrieve the gas from these people through here?

11 A. Not as economically, no.

12 Q. Have you spoken with the landowners personally?

13 A. Yes, I have.

14 Q. Have they requested that the location be placed there?

15 A. They have.

16 MR. MULLINS: Did I give the Board members a copy of Allen  
17 Deel's affidavit?

18 MR. EVANS: No.

19 MR. MULLINS: Good.

20 Q. (Mr. Mullins continues.) Is there a road already built  
21 to that site?

22 A. There is.

23 Q. Would you have to build additional roads if you were to  
24 move the site to another location off to the east or  
25 south with additional location costs? What I understood

1 from your testimony is that they were going to move it  
2 south and east. If I'm incorrect I'd ask them to correct  
3 me at this time. But I understand it was to the south  
4 and to the east over in this direction down in here.  
5 A. You would have to build additional road which probably it  
6 not possible --  
7 Q. Due to the terrain?  
8 A. Due to the terrain.  
9 MR. MULLINS: That's all I have of this witness. I have Mr.  
10 Mueller who will testify to other factors.  
11 MR. CHAIRMAN: Any questions, members of the Board, of this  
12 witness.  
13 MR. FULMER: Mr. Chairman, I have a question. Did he intend  
14 to submit an affidavit --  
15 MR. SWANSON: From Mr. Deel?  
16 MR. FULMER: Yes.  
17 MR. SWANSON: No. That's pertinent to the next application.  
18 MR. CHAIRMAN: Okay. Any questions, members of the Board?  
19 MR. EVANS: I notice there is a road that goes up that hollow.  
20 MR. MULLINS: You're talking about this road right here?  
21 MR. EVANS: Yeah, that's the one I'm talking about. If that  
22 well were moved basically up that road how much differ-  
23 ence is it -- I guess what I'm asking is in difference in  
24 costs how much difference is it going to be to prepare a  
25 site a little bit further up there than not since it's

1 right on the road?

2 THE WITNESS: Mr. Mueller is prepared to testified to that.

3 MR. MULLINS: I'll try to cover that.

4 MR. EVANS: Okay.

5 MR. CHAIRMAN: Other questions, members of the Board? Any  
6 cross-examination?

7 MR. KAISER: This is probably for Mr. Mueller, too. But I'll  
8 ask you, Mr. Swanson since you're the witness right now.

9

10 CROSS-EXAMINATION

11

12 BY MR. KAISER:

13 Q. Do you have any idea how much extra expense would be  
14 incurred in building a location at the legal location?

15 A. I do not.

16 MR. EVANS: We've talked about 220 feet one way or the other  
17 and a legal location. Can somebody please show me on  
18 that map -- put a dot where that "legal location" is  
19 going to be?

20 MR. MULLINS: I can't since you're -- I have a red pen,  
21 though.

22 MR. KAISER: I can show you on our map. We have a smaller map  
23 and we're going to give you copies of. We've made a  
24 cross section of this map and I'll show on that and  
25 submit copies to the Board.

1 MR. EVANS: Either way I'd like to know where it is.

2 MR. KAISER: Okay. That would probably be the easiest way to  
3 depict it.

4 MR. EVANS: That's fine.

5 (PAUSE.)

6 MR. CHAIRMAN: All right. Do you have anything further?

7 MR. KAISER: Yes. Mr. Chairman, we'll submit the exhibit to  
8 the Board showing the legal location.

9 MR. MULLINS: I object to the term "legal location". It's not  
10 an illegal location. That's why we're here today.

11 MR. KAISER: Well, I'm sorry. A location that will fit within  
12 the statewide spacing requirements.

13 MR. FULMER: Mr. Chairman, that will be Exhibit A for EREX.

14 MR. CHAIRMAN: Do you have any further questions?

15 MR. KAISER: Not of Mr. Swanson.

16 (Witness stands aside.)

17 MR. MULLINS: If I could I'd like to call Mr. Mueller.

18 COURT REPORTER: (Swears witness.)

19

20 ALLEN MUELLER

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

23

24

25

1 DIRECT EXAMINATION

2  
3 BY MR. MULLINS:

4 Q. Sir, would you please state your name?

5 A. My name is Allen Mueller. I'm general manager of the  
6 exploration division of Virginia Gas Company.

7 Q. How long have you been in the gas business?

8 A. I've been continuously employed in the gas business since  
9 1977.

10 Q. Who were you employed by immediately preceding your  
11 employment by Virginia Gas?

12 A. I worked about nineteen months as an oil and gas inspect-  
13 or for the State of Virginia.

14 Q. And you've been with Virginia Gas Company since?

15 A. Yes, four years.

16 Q. Have you testified before this Board on prior occasions  
17 as an expert witness?

18 A. Yes, I have.

19 Q. I'd like to ask you some questions if I could about the  
20 EH-128/EH-24.

21 A. Okay.

22 Q. Are you familiar with the proposed location of EH-128?

23 A. Yes, I am.

24 Q. Have you actually been to the site?

25 A. Yes, I have.

- 1 Q. First, I'd like to break this up into three parts, if I  
2 could to try and organize it. I'd like to first talk  
3 about the site preparation. You've been on the present  
4 site of EH-24, is that correct?
- 5 A. Yes.
- 6 Q. And you have been to the site where it is proposed to  
7 drill EH-128?
- 8 A. Yes, I have.
- 9 Q. What are the topographic features around this area?
- 10 A. As Mr. Swanson indicated earlier, it is in a small valley  
11 with steep slopes on both sides. I'm talking probably 40  
12 to 50 percent slopes or greater. Bear with me. I've got  
13 a head cold, too. But it's real steep on both sides of  
14 this little, narrow valley.
- 15 Q. If you would, hand me the map that's marked as EREX  
16 Exhibit A. Does that show any topographic features or  
17 contours?
- 18 A. No.
- 19 Q. I know these are two different scales, but looking at  
20 this can you tell what location on the surface they're  
21 talking about placing the well? Can you even tell from  
22 looking at that map?
- 23 A. No.
- 24 Q. What is in the area surrounding that?
- 25 A. South east of that?

1 Q. Yes.

2 A. South east of the present location which we have staked  
3 is a small stream, the Duty Branch, which is a preanal  
4 stream and then immediately to the south of that is -- it  
5 rises up about -- I want to say 150 feet and there's  
6 probably a 50 to 60 percent slope with rock outcrops.  
7 Then above that it probably goes back to about a 40  
8 percent slope with some rocky outcrops, but it is  
9 extremely rugged. It would be very expensive to even get  
10 a site in there at all.

11 Q. Is there some question about even getting a site in?

12 A. Well, you can always get a site in. The question is the  
13 stability of the site. I mean, how much money do you  
14 want to spend and how much long term costs do you want to  
15 associate with the site and how safe is it. There are  
16 sites like that that are continuously -- you have slope  
17 problems.

18 Q. Stabilizing?

19 A. Stabilization of the slope, yes.

20 Q. Correct me if I'm wrong, but anytime you cut out from a  
21 mountain side you'll have slides and rock falls and  
22 things like that, correct?

23 A. In this particular case you'd have a steep field slope  
24 right above a creek which if you had any slope in-  
25 stability at all you'd have problems with sediment

1 getting in the creek, damming up the creek causing other  
2 problems on down below.

3 Q. How far would you have to move it, if you know, to get it  
4 over here to a site where you wouldn't have those kind of  
5 problems?

6 A. Several hundred feet.

7 Q. Would that put you in a problem with spacing either on  
8 this well or this --

9 A. Yes, it would.

10 Q. How much in your opinion would it cost to move the site  
11 south and east and build a location there?

12 A. We've had similar sites where the cost has been in excess  
13 of \$50,000 or greater.

14 Q. How long would there be a maintenance problem if you were  
15 to move the site south and east? Would it be for the  
16 duration of the site location?

17 A. You have most of your problems immediately the first year  
18 or two or three after you build the site until you get  
19 the site stabilized. But you're still talking -- you'd  
20 probably would have stability problems for the first five  
21 years anyway and then beyond that.

22 Q. So something could happen at any time during the life of  
23 the well?

24 A. Sure.

25 Q. But more than likely during the first five years?

1 A. Yes.

2 Q. Is there any safety concerns with that site location?

3 A. There's always a safety concern. You've got the EH-24  
4 well down below it. You've got a stream down below it.  
5 You've got -- down below that you've Mr. and Mrs.  
6 Colley's residence and these out buildings. So during  
7 the construction of the site if you had any rocks at all  
8 that would come down from the site you would have some  
9 difficulties.

10 Q. Are you familiar with the EH-24 well?

11 A. Yes.

12 Q. I'd like to talk about that well for a minute. How did  
13 you come to be familiar with that well?

14 A. That well was actually drilled a month before I started  
15 employment with this company. But I'm very familiar with  
16 the files and the history of the well.

17 Q. That well was proposed to be drilled down to the --

18 A. To the Devonian Shell.

19 Q. -- formations that we're asking a location exception for  
20 today, is that correct?

21 A. That is correct.

22 Q. Who drilled the well?

23 A. Union Drilling Company.

24 Q. Who are they a subsidiary of?

25 A. Equitable Resources.

- 1 Q. So Equitable Resources' subsidiary is the one who drilled  
2 this well?
- 3 A. Yes, basically.
- 4 Q. How come it didn't go down to the target formations?
- 5 A. While drilling through the Raven Cliff formation a high  
6 volume of gas flowed and at that time 5.7 million cubic  
7 feet of gas was encountered and drilling operations were  
8 suspended for safety reasons.
- 9 Q. Was that on the recommendation of Union Drilling?
- 10 A. Yes.
- 11 Q. And does Virginia Gas concur with that?
- 12 A. Yes.
- 13 Q. Well, haven't you haven't sought to deepen that well?
- 14 A. Because that well is still producing at a high volume of  
15 gas.
- 16 Q. Would it be safe to try and deepen that well at this  
17 time?
- 18 A. Not at this time, no.
- 19 Q. Could it actually damage the well and reduce the produc-  
20 tion of the well there by impacting the correlative  
21 rights of the people who are receiving pay and royalty  
22 from this well?
- 23 A. Yes, it could.
- 24 Q. When do you feel like you could actually safely deepen  
25 this well, the EH-24?

- 1 A. At the present decline -- the well is not declining a  
2 whole lot since it's been in production. We figure eight  
3 to ten years.
- 4 Q. So it will be eight to ten years before you feel you  
5 could safely deepen this well?
- 6 A. Correct.
- 7 Q. How much would it cost to deepen this well?
- 8 A. The cost would probably be close or similar to \$180,000  
9 to \$200,000.
- 10 Q. Just to rework and deepen this well, the EH-24?
- 11 A. Yes, to go back in.
- 12 Q. I'd like to talk about EH-128 right now. What areas are  
13 you seeking to produce from the proposed 128?
- 14 A. The formations themselves are the Devonian Shell, the  
15 Burea, the Weir, the Big Lime and the Maxons.
- 16 Q. I've already distributed the maps that you've looked at  
17 and reviewed. If I could, what wells are you seeking a  
18 variance from?
- 19 A. Our EH-23 and our EH-20 wells.
- 20 Q. And when you say "ours", those are Virginia Gas Comp-  
21 any's?
- 22 A. Virginia Gas Company's.
- 23 Q. Now, they were drilled under the prior statutory law  
24 which required a radius of 1,250?
- 25 A. 1,250.

- 1 Q. So actually the inner circle represents the pay zone of  
2 these two wells, is that correct?
- 3 A. Yes.
- 4 Q. The yellow outer line represents the present spacing  
5 requirements, is that correct?
- 6 A. Yes.
- 7 Q. This over lap area is the area where there is an over lap  
8 between the two pay areas, is that correct?
- 9 A. Yes.
- 10 Q. We've already gone over the reasons why you can't move  
11 this down. If you moved it down south would you be  
12 running into this well?
- 13 A. Yes, you would.
- 14 Q. If you moved it over a sufficient space to the east to  
15 make yourself legal on this map would you be up against  
16 or actually crossing the V-1942?
- 17 A. Yes, you would if you put the location where you would  
18 not have any site problems.
- 19 Q. So, in other words, to accommodate topographical features  
20 by the time you got this well moved over you'd be  
21 impacting this well, V-1492?
- 22 A. Yes.
- 23 Q. And you're familiar that this is the proposed location of  
24 V-3399?
- 25 A. Yes.

1 Q. And that's an EREX well?

2 A. Yes.

3 Q. What will it cost to drill this well?

4 A. The EH-128 I believe is \$242,000.

5 Q. Has an AFE been prepared?

6 A. Yes, it has.

7 Q. Is this the AFE?

8 A. Yes, it is.

9 MR. MULLINS: I'd like to distribute copies of this to the  
10 Board. (Pause.)

11 MR. FULMER: That is Exhibit D.

12 Q. (Mr. Mullins continues.) What does this represent --  
13 this AFE?

14 A. This represents the costs and drilling costs it would  
15 cost to drill this well.

16 Q. Your earlier testimony was that it would cost between  
17 about \$180,000 and \$200,000 to rework the EH-24?

18 A. Yes.

19 Q. And that it couldn't be done for eight to ten years in  
20 the future, is that correct?

21 A. That's correct.

22 Q. And that today's cost for EH-128 are projected at  
23 \$231,820?

24 A. Yes.

25 Q. What makes you think it is worthwhile to drill the EH-

- 1 128?
- 2 A. Because if you don't drill the EH-128 there will be a  
3 large area of un-drained gas in these formations we're  
4 speaking of.
- 5 Q. Now, you realize that Equitable Resources is taking the  
6 position that you can move it to the south and to the  
7 east -- of course, they haven't addressed the topo-  
8 graphical concerns, but they're saying you can move it  
9 over and then still drain this area. Of course, you'd  
10 leave pockets here and probably more pockets down here,  
11 but that you could move it over and drain this area. Is  
12 that feasible given your knowledge of the topographical  
13 location?
- 14 A. No.
- 15 Q. What happens if the well's not drilled? Will any of  
16 these wells impact the gas in this area? In other words,  
17 will there be draining from the off-set wells?
- 18 A. Yes.
- 19 Q. Will the people be paid for the draining of these off-set  
20 wells?
- 21 A. No.
- 22 Q. So the royalty owners won't get any pay for their gas  
23 being pumped out of the ground?
- 24 A. That is correct.
- 25 Q. It may take a long period of time to do it, but will it

1           happen?

2 A.    It will happen.

3 Q.    What makes you think that this will be a productive  
4           well?

5 A.    Because all the other off-set wells in that area that  
6           have produced from the Burea and the formations -- the  
7           Big Lime and Burea -- all have been very good for  
8           producing wells.

9 Q.    And that's based on your experience of all these other  
10           wells in this area?

11 A.    Yes.

12 Q.    I'd like to show you a document and ask you if you can  
13           identify it, please?

14 A.    Yes.  It's the cash flow analysis projected for EH-128.

15 Q.    And this is for what formations again?

16 A.    For the Burea, Devonian Shell, Maxon, Weir, Big Lime.

17 MR. MULLINS:  I'd like to introduce this as Exhibit E.  If I  
18           haven't formally done so I'd like to move all the  
19           exhibits into evidence.  I don't know if that's necessary  
20           before the Board or not.

21 MR. CHAIRMAN:  Without objection they are put into evidence.

22 Q.    (Mr. Mullins continues.)  Based upon this chart -- have  
23           you reviewed this chart?

24 A.    Yes.

25 Q.    Do you feel it's accurate and indicates the production of

1           this well?

2   A.   Yes, it does.

3   Q.   Do you feel like based upon your experience in the gas  
4       industry that it is economically worthwhile to drill and  
5       locate this well?

6   A.   Yes, it is.

7   Q.   Would it be less desirable if you incurred additional  
8       costs for a new location?

9   A.   No, it would not.

10  Q.   I don't think you understood my question.  If you move  
11       this and have to incur a new location would the well be  
12       as desirable to drill?  If it would cost you an extra  
13       \$50,000 to do it would you be as anxious to do it  
14       basically?

15  A.   Not as anxious to do it, no.

16  Q.   And, in fact, would that \$50,000 not be ultimately taken  
17       out of the pocket of the royalty owners?

18  A.   Yes, it would.

19  Q.   What's the projected life of this well?

20  A.   The projected life is 25 years.

21  Q.   If EREX drills this well as it's projected and as they  
22       indicated they're going to apply for a permit for would  
23       they not cover this area right in here that we have been  
24       so worried about?

25  A.   Yes, they would.

1 MR. MULLINS: I don't believe I have any other questions.

2 MR. CHAIRMAN: Questions, members of the Board? Cross-  
3 examination?

4

5

CROSS-EXAMINATION

6

7 BY MR. KAISER:

8 Q. Mr. Mueller, I believe you testified that to drill the  
9 well at the what we'll once again call the location we've  
10 depicted as a legal location would be less desirable but  
11 you'd still drill the well. That was your testimony,  
12 correct?

13 A. That's correct.

14 Q. And then Mr. Mullins asked you a question regarding -- or  
15 saying that the extra \$50,000 that you allege it would  
16 cost to drill the well once again at the location we've  
17 depicted as a legal location would be -- that that money  
18 would be taken out of the royalty interest owner's  
19 pocket. Would you explain how that would happen?

20 A. No. I don't believe it would come out of the royalty  
21 interest owner's pocket.

22 Q. Once again, you've testified that it's undesirable to  
23 drill the location at the depicted legal location but  
24 it's possible? You all have drilled wells on hillsides  
25 before?

1 A. We've drilled wells on hillsides before. However, you  
2 having continuing problems. You have site problems. You  
3 have stability problems. And with this particular site  
4 with the Duty Branch right below it you would have a lot  
5 of sediment and rocks and debris come down and getting  
6 into the Duty Branch.

7 Q. But the primary problem with drilling it there would be  
8 the added expense?

9 A. That is a primary problem. There are other problems  
10 associated with this also such as safety.

11 MR. KAISER: No further questions of this witness, Mr.  
12 Chairman.

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

14 MR. EVANS: Mr. Chairman, if it would be all right I'd like to  
15 go up there and take a look at the topo. The copy of the  
16 topo is not all that great.

17 MR. MULLINS: I understand.

18 MR. EVANS: I'd just like to go up there and look at it.

19 MR. CHAIRMAN: Sure.

20 (Witness stands aside.)

21 MR. MULLINS: I'd like to call Don Hall as an adverse witness  
22 to ask him a few questions, too.

23 MR. LEWIS: Are there any objections to any people or any land  
24 owners -- private land owners around in that area?

25 MR. MULLINS: Not that I'm aware of.

1 MR. LEWIS: Surface owners?

2 MR. MULLINS: The only information that I have -- and maybe  
3 Mr. Swanson could testify to that -- is that the people  
4 who actually own the surface desire that it be drilled  
5 there.

6 MR. SWANSON: Max, if I might add to that, I think if we  
7 propose a different location on Mr. Colley's property  
8 other than the one that is already in the bottom and has  
9 already been disturbed I feel like he would object.

10 MR. EVANS: I've got one other question. You stated that the  
11 reason the initial EH-24 wasn't deepened was because of a  
12 high rate of gas flow?

13 MR. MULLINS: Right.

14 MR. EVANS: Does somebody want to explain to me why you don't  
15 expect the same problems to occur in the same formation  
16 when you drill this well?

17 MR. MULLINS: I think Mr. Mueller can address that.

18 MR. MUELLER: You can set surface casing now. Instead of  
19 setting the surface casing above the Raven Cliff below  
20 your deepest coals you can now -- the Raven Cliff is  
21 approximately 300 to 400 feet below your deepest coal.  
22 You could go ahead and hold off setting your surface  
23 casing until you go through the Raven Cliff and at that  
24 point set your surface casing -- or your intermediate  
25 string I should call it.

1 MR. EVANS: My question would be why wasn't that done on the  
2 initial well or didn't you expect it?

3 MR. MUELLER: It was not expected, not that high a gas flow.  
4 Their casing was already set.

5 MR. EVANS: The casing was already set. They set it below  
6 the lowest coal seam and when they hit the formation it  
7 blew them out. Okay.

8 MR. CHAIRMAN: Anything further? Any other questions, members  
9 of the Board?

10 MR. MULLINS: I have a couple, like I said, as an adverse  
11 witness for Mr. Don Hall.

12 MR. CHAIRMAN: Sure. I was just checking with the Board to  
13 see if they had anything further.

14 MR. KELLY: I have a question. I can wait.  
15

16 DON HALL

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

20 DIRECT EXAMINATION

21  
22 BY MR. MULLINS:

23 Q. Mr. Hall, if I could, I'd like to ask you to step up to  
24 the map. This is a copy of the exhibit and I've forgot-  
25 ten what number it was that I've already handed out.

1 MR. FULMER: Exhibit A.  
2 Q. (Mr. Mullins continues.) Exhibit A. Sir, P-481 is an  
3 EREX well, is that correct?  
4 A. Yes.  
5 Q. And the P-257 is an EREX well?  
6 A. Yes, sir.  
7 Q. And the P-303?  
8 A. Yes.  
9 Q. And the P-240?  
10 A. Yes, sir.  
11 Q. Now, if you moved the P-257 out you wouldn't have  
12 overlapped these wells, would you?  
13 A. You wouldn't have, but these wells were drilled during  
14 the 500 foot radius --  
15 MR. CHAIRMAN: I'm sorry. I can't hear you.  
16 A. (The witness continues.) These wells were not drilled  
17 under the current spacing.  
18 Q. So what you're saying is since it falls under a different  
19 pay zone that you shouldn't really look at these wells  
20 even though by today you'd have to be paying these people  
21 royalty and you're not paying them royalty because just a  
22 change in the statutory law?  
23 A. We're paying, I think, all these wells maybe with the  
24 exception of one.  
25 Q. Do you know when these wells were drilled?

1 A. Based on the numbers they were probably drilled in the  
2 mid or late eighties.

3 Q. Do you know?

4 A. No, not specifically.

5 Q. Well, if you don't know you don't know. My question is  
6 under your same theory assuming that they're under  
7 today's standard could these wells have been moved out to  
8 take in "legal locations"?

9 A. Probably.

10 Q. But you don't know when they were drilled?

11 A. Not specifically, no.

12 MR. MULLINS: I don't have any other questions.

13

14 CROSS-EXAMINATION

15

16 BY MR. KAISER:

17 Q. Mr. Hall, what are the spacing requirements that EH-128  
18 are being drilled under?

19 MR. MULLINS: That's a matter of law. We'll stipulate that  
20 the current law is what the law is unless we get a  
21 variance from this Board for the location exception. I  
22 believe that's a legal question.

23 A. (The witness continues.) 2,640 feet.

24 MR. KAISER: Thank you.

25 MR. CHAIRMAN: You've got it on record. Mr. Kelly, you had a

1 question.

2 MR. KELLY: Yes. I have just a couple of questions. On the  
3 AFE I know there are two or three different items that  
4 probably add up the total cost. But you have the  
5 location at \$6,000?

6 MR. MUELLER: Yes.

7 MR. KELLY: And then stone and roadway -- you have some  
8 additional costs there that may end up being about double  
9 that amount if you add them all together. But you're  
10 saying at the requested location that's going to be your  
11 expected cost which I would assume means that it's in a  
12 flat area already?

13 MR. MUELLER: Yes, it is in a flat area already. There will  
14 probably be about three or four feet of grading elevation  
15 change from one end of the location to the other.

16 MR. KELLY: If you moved it somewhere to the east or south  
17 east you've got to cross the creek and go up on the hill?

18 MR. MUELLER: Yes.

19 MR. KELLY: And you speculate it could be as much \$50,000?

20 MR. MUELLER: At minimum.

21 MR. MUELLER: Your sole reason for requesting this exception  
22 is purely topographic surface location costs?

23 MR. SWANSON: I think the land owner's preference is also a  
24 consideration.

25 MR. CHAIRMAN: I'm sorry?

1 MR. SWANSON: I said I think also the land owner's -- the  
2 surface owner's preference is also a valid consideration  
3 in this issue.

4 MR. KELLY: That's a surface question and a cost question as  
5 far as where the location is?

6 MR. SWANSON: Yes.

7 MR. KELLY: The fact that it's closer to some of the wells on  
8 the west side and it closes up the gap between the  
9 circles and that it pays a few more people a little more  
10 royalty is a secondary consideration?

11 MR. SWANSON: Yes.

12 MR. MULLINS: I'm not sure I understood the question.

13 MR. KELLY: I guess I'm trying to draw a line between the  
14 surface consideration and the correlative rights consid-  
15 eration as far as royalty interests and lease interests  
16 are concerned.

17 MR. MULLINS: I believe the only thing that's relevant to that  
18 is the fact that EREX has testified to as proposing to  
19 drill another well which -- I don't have a scale --  
20 appears to encompass a lot of this area that they are so  
21 concerned about. One other thing, one other point to the  
22 Board, this inner circle is a pay zone. So all these  
23 people out here in this outer circle will never be paid.  
24 They will be paid in this area. Of course, we're not  
25 representing they'll be paid on the circle because they

1 won't.

2 MR. EVANS: I'm not clear as to what you --

3 MR. MULLINS: The pay zone?

4 MR. EVANS: Is that green line the 1,320 foot radius?

5 MR. MULLINS: 1,250 under the old rule. The yellow line is  
6 the new rule. So these people out here in this boarder  
7 area don't get any pay.

8 MR. EVANS: That's as a matter of the statute at the time?

9 MR. MULLINS: Correct.

10 MR. KELLY: Then I might ask the same question of EREX.

11 What's the basis for your objection?

12 MR. KAISER: Well, we have essentially two basis. The first  
13 one, as you've heard, that the application is premature.  
14 Second, we feel that by moving this well to the south  
15 east and picking up a legal location that actually the  
16 correlative rights of the owners out there are better  
17 served because one, you won't have any double pay on  
18 either EH-23 or EH-20 -- which by the way, EH-23 was  
19 represented as a Virginia Gas well where Equitable  
20 actually has a 32 percent interest in that well. And you  
21 would pick up -- as you look at EREX's Exhibit A, you'll  
22 pick up the unpaid royalty owners that are directly to  
23 the south east of their proposed well that aren't  
24 currently being picked up. So we feel, number one, that  
25 would better serve the correlative rights issue. Number

1 two, they keep talking about the drainage patterns to the  
2 west and EREX's proposed well 3399 -- part of the pre-  
3 hearing negotiations on this whole package of wells was  
4 based upon the fact that we would locate 3399 depending  
5 upon where 128 is finally located. It's not  
6 permitted --

7 MR. MULLINS: So that's flexible is what you're saying. So  
8 you could move it around in there to accomplish and  
9 protect the correlative rights as I understand it?

10 MR. KAISER: Once again, I'd just reiterate the point that  
11 it's part of negotiations on this package of wells and  
12 once again one of the reasons we think this application  
13 is premature.

14 MR. MULLINS: That's negotiation. That's not relevant to a  
15 location exception. I think that's -- just because  
16 negotiations haven't gone the way they wanted them is not  
17 a point to raise that is relevant to the location  
18 exception.

19 MR. KAISER: Well, then we would point out that neither is the  
20 proposed location of 3399.

21 MR. MULLINS: But there's been testimony and evidence on  
22 that.

23 MR. KELLY: I guess what I'm really trying to get at is it  
24 seems based on their answer there what's important to  
25 Virginia Gas is the surface location and the cost of

1 moving it to an alternate site. And your objection as  
2 stated concerns correlative rights and being able to pay  
3 more people if it was moved and not have these overlaps.  
4 But what does that mean to EREX is my question? It has  
5 some bearing on a proportion of lease interest that's in  
6 the unit or working interest in the unit? It must have  
7 some meaning to EREX rather than just the general  
8 public's benefit as far as additional royalty being paid.

9 MR. KAISER: Well, it protects our correlative rights on EH-23  
10 in which we have a 32 percent interest.

11 MR. KELLY: Which is the well directly to the west?

12 MR. KAISER: To the north west.

13 MR. KELLY: North west. Okay. And in the overlap area what  
14 would be the proposed way to handle the payment of  
15 royalties?

16 MR. MULLINS: I think the Board has given location exceptions  
17 many times in the past and I think maybe one of these  
18 gentlemen can testify as to how that's handled as far as  
19 the pay-out. But it would be my position it's paid out  
20 the same way it's always been in all the other location  
21 variances that overlap both Virginia Gas and EREX.  
22 Because EREX has overlapped wells. This is not something  
23 that just Virginia Gas is in here trying to do for the  
24 first time and some out landish plan. It's something  
25 that all gas operators do, EREX included.

1 MR. KAISER: I object to that. That's not before the Board at  
2 this time.

3 MR. MULLINS: It's argument.

4 MR. CHAIRMAN: Overruled.

5 MR. MULLINS: It's our position we have given valid reasons  
6 for the variance that we've requested. Their position is  
7 that because of ongoing negotiations they don't want this  
8 matter resolved. And I can maybe understand their  
9 position if I were trying to negotiation. I may not want  
10 it resolved if I were them. But I think we're entitled  
11 to the relief based upon the evidence presented and we've  
12 presented factual information. They've presented only  
13 argument. The gentleman who testified as to whether you  
14 could draw a dot here that would meet all the lines is  
15 not creditable evidence because he can't give all the  
16 relevant information needed by the Board to make a  
17 determination, ie. costs and topographic features. He's  
18 not in a position. All they have done is come here today  
19 and said you can put a dot out here somewhere that you  
20 could draw lines and they'd be far enough apart. That's  
21 really the essence of their objection. They've not taken  
22 into account surface owners, surface topography or the  
23 costs which I think are all relevant to this Board to  
24 take into consideration in a location variance request.

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

1           questions?

2 MR. KELLY: One final question and I'm looking back at the  
3           plat again here. I'm looking at the tracts represented  
4           on the plats. The Colley heirs is a Virginia Gas lease?

5 MR. SWANSON: That's correct.

6 MR. KELLY: What about the A.J. Edwards and Victor Mullins?

7 MR. SWANSON: That's Equitable.

8 MR. KELLY: So those are the principal tracts?

9 MR. SWANSON: Those are the principals. There's another tract  
10          at the very top that's impacted just barely.

11 MR. KELLY: Sandra Owens Boyd?

12 MR. SWANSON: She's leased to us.

13 MR. MULLINS: This is the other point they were talking about.  
14          The tip of this.

15 MR. KELLY: So again, if the well was moved back to the south  
16          or south east it's going to increase the percentage of  
17          Equitable's interest in the unit. So that is of interest  
18          to EREX?

19 MR. KAISER: That's of interest also. We have a direct  
20          economic interest in what we call the depicted legal  
21          location, not only in our share of EH-23 but in picking  
22          up additional royalty on EH-24. We still feel -- if I  
23          may close if this is the proper time, we still feel that  
24          the application is premature. We feel like our depicted  
25          legal location better serves correlative rights not only

1 of EREX but of all royalty interest owners and would  
2 submit that economic considerations and additional costs  
3 are not a proper factor on which the Board should base a  
4 location exception.

5 MR. MULLINS: In rebuttal I guess the only think I would like  
6 to say is I think costs and topographic features clearly  
7 -- if it costs more to put a location in than the well is  
8 worth clearly that's a proper consideration for the Board  
9 to take into account. I think costs are clearly cognis-  
10 able by the Board in determining a location exception  
11 request as well as topographic features.

12 MR. KAISER: I think Mr. Mueller testified that the well would  
13 still be drilled at the location that we propose. So I  
14 don't know how -- I don't think they would drill a well  
15 that would cost more than it's worth.

16 MR. MULLINS: I didn't say that the well wouldn't be drilled.  
17 I said it was a factor the Board could take into consid-  
18 eration.

19 MR. KAISER: I think you did say that if the well was drilled  
20 there it would cost more than it was worth.

21 MR. MULLINS: My argument was -- I didn't say that if the well  
22 was -- and we can have the Court Reporter play it back.  
23 I said if there was a well that was drilled that would  
24 cost more than the well was worth for the location then  
25 clearly that's something the Board can take into account.

1 In this case we've got evidence of record showing that  
2 there will be an increase in costs. Your argument was  
3 that's something the Board should not take into consid-  
4 eration. It's my position that the Board should take  
5 that into consideration because it is relevant to  
6 protect the correlative rights of all the parties here.  
7 I just think it's a proper issue to place before the  
8 Board and that's why we've done it.

9 MR. KAISER: I didn't say that the Board shouldn't it into  
10 consideration. I said it shouldn't be the sole determin-  
11 ation.

12 MR. CHAIRMAN: Okay. I'm going to cut this off. Any further  
13 questions, members of the Board? Do you have anything  
14 further?

15 MR. MULLINS: No, sir.

16 MR. CHAIRMAN: What's your pleasure?

17 MR. LEWIS: I'd like to make a motion that we allow this  
18 variance.

19 MR. CHAIRMAN: All right. We have a motion to approve the  
20 variance exception request. Is there a second to the  
21 motion to approve? The motion dies. Any other motion?

22 MR. EVANS: Mr. Chairman, I move that we deny the request  
23 based on the issues of correlative rights.

24 MR. CHAIRMAN: A motion to deny based on correlative rights.  
25 Is there a second? Failing to obtain a second that

1 motion dies. Is there any other motion?  
2 MR. LEWIS: I would make the motion to poll the Board.  
3 MR. CHAIRMAN: Any other motion? Okay. We have a suggestion  
4 to poll the Board for approval or denial. We'll start  
5 with Mr. Evans.  
6 MR. EVANS: Deny.  
7 MR. KELLY: Abstain.  
8 MR. LEWIS: Approve.  
9 MR. GARVIS: I'd like to abstain.  
10 MR. CHAIRMAN: Mr. Wampler approve. The petition is approved.  
11 The Board will take a ten minute recess.  
12 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

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ITEM VI

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MR. CHAIRMAN: The next item on the agenda is a petition from Virginia Gas Company for a well location exception for EH-129. This is docket number VGOB-94/08/16-0463. We'd ask the parties that wish to address the Board in this matter to come forward and identify yourselves, please.

MR. MULLINS: On behalf of Virginia Gas Company my name is Tom Mullins. I'm from the Street Law Firm in Grundy, Virginia. With me today is Al Mueller and Brad Swanson also with Virginia Gas Company.

MR. KAISER: On behalf of Equitable Resources Exploration I'm Jim Kaiser.

MR. CHAIRMAN: Any others that wish to address the Board in this matter? The record will show there are none. You may proceed, Mr. Mullins.

MR. MULLINS: I guess referencing back to the prior hearing, I don't want to anticipate, Mr. Kaiser -- if there any objections if we could get them stated up we could hone in like we did on the last hearing prior to this.

MR. CHAIRMAN: Mr. Kaiser, would you like to state your objection?

MR. KAISER: Mr. Chairman, our lone objection to this location exception for EH-129 is a reiteration of our first objection to EH-128 and that is that the application is

1 premature. EREX owns 46.49 percent interest in this  
2 proposed unit -- or this proposed well. No unit has been  
3 established. Negotiations are ongoing to work out a  
4 voluntary agreement or a farm-out and our only objection  
5 to this application is once again that it's premature.

6 MR. CHAIRMAN: Questions, members of the Board? You may  
7 proceed, Mr. Mullins.

8 MR. MULLINS: I guess just to go back to my opening remark  
9 it's our view that the matter that is premature based  
10 upon the same reasons -- and I'm assuming it's the  
11 identical exception that were stated EH-128 -- that our  
12 response is that that is not a valid consideration. As  
13 my first witness I'd like to call Mr. Brad Swanson.

14 MR. CHAIRMAN: I'll just remind the witness he has been sworn  
15 previously and he is still under oath.

16 MR. MULLINS: Would the Board like me to go through his  
17 credentials as we did last time or just dispense of that?

18 MR. CHAIRMAN: I don't think the Board has any problems  
19 dispensing of that.

20 MR. MULLINS: Okay.

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22

BRAD SWANSON

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

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DIRECT EXAMINATION

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BY MR. MULLINS:

Q. Mr. Swanson, you've testified previously and you've already indicated who you are and what you do. Tell us, are you familiar with well EH-129?

A. I am.

Q. How did you come to be familiar with well EH-129?

A. I negotiated the leases with Mr. Deel and the neighboring owners there and have reviewed this permit application.

Q. Have notices as required by statute been sent to the persons affected by this application?

A. They have.

Q. Were they sent by certified mail, return receipt requested?

A. That's correct.

Q. Have you received the green cards back?

A. Yes, we have.

Q. Have copies been filed?

A. Yes, they have.

Q. I have here in my hand a document which I'd like to ask you to identify.

A. I've seen that document.

Q. What is it?

A. It's an affidavit signed by Mr. Allen Walter Deel, the

1 surface owner of the 129 location.

2 Q. In essence, what does that affidavit state?

3 A. It states that Mr. Deel would ask us to drill this well  
4 in a place that has already been basically prepared for  
5 the drilling of a gas well.

6 Q. Have you been to the site of the proposed location of EH-  
7 129 and the present location EH-118?

8 A. I have.

9 Q. Are you familiar with the topographic features in that  
10 area?

11 A. I am.

12 Q. What are the topographic features?

13 MR. MULLINS: I guess before we get into that, we submitted  
14 some exhibits in the EH-128 application prior. We have  
15 the identical exhibits to submit to the Board so they can  
16 be associated with both files. I'll go ahead and hand  
17 those out. That should have been done before. (Pause.)

18 MR. FULMER: This is Exhibit C.

19 Q. (Mr. Mullins continues.) You're familiar, I believe  
20 you've testified, to the topography of the area surround-  
21 ing the EH-118 and the proposed EH-129, is that correct?

22 A. That's correct.

23 Q. What is the topography of this area?

24 A. It's very rugged. What we did when we built the site for  
25 the 118 is we went up an existing farm road and upgraded

- 1 it to a point where we could get up toward the head of  
2 the hollow to our location on the 118.
- 3 Q. Did the land owner agree and consent to that?
- 4 A. That was about the only place on the property that he  
5 would agree to consent.
- 6 Q. And is the same true for the EH-129?
- 7 A. That's correct.
- 8 Q. What happens if we move this location south of the  
9 present EH-118?
- 10 A. It's very, very steep.
- 11 Q. Do you know what this indicates here, P-308?
- 12 A. That is a proposed location.
- 13 Q. That's not final. Do you have any information as to  
14 whether a permit's been filed or anything like that?
- 15 A. I don't know.
- 16 Q. That's just a proposed location?
- 17 A. Yes.
- 18 Q. If you drill the proposed EH-129 in the position indicat-  
19 ed would you be able to use the same access road?
- 20 A. We would.
- 21 Q. Would it disturb less surface as opposed to moving it to  
22 the south?
- 23 A. Absolutely. The site is prepared up to there. That's  
24 part of the 118.
- 25 Q. And I believe you testified this is very rugged country.

1 Is it mountainous with rocky outcroppings?

2 A. That's correct.

3 MR. MULLINS: I don't have anymore questions of Mr. Swanson.

4 Mr. Mueller will be testifying as to some of the particu-  
5 lars.

6 MR. CHAIRMAN: Questions of Mr. Swanson, members of the Board?

7 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING  
8 CONTINUED AS FOLLOWS:)

9 Q. (Mr. Mullins continues.) One thing I failed to ask you,  
10 are there any people that live around this area?

11 A. Yes. At the base of the hollow.

12 Q. What do you mean by the base? Could you show us where  
13 the base of the hollow is?

14 A. Right here. Down in here there is a relatively new home  
15 and two mobile homes and also another house site that  
16 has been completed that the people haven't built on yet.

17 MR. EVANS: So that one to 400 is taken off an old topo and  
18 hasn't been further revised or anything like that?

19 MR. SWANSON: That would be my assumption because I don't see  
20 the properties I'm talking about.

21 MR. KELLY: And this is all just down the hollow from the 118?

22 MR. SWANSON: Yes. Do you have a plat? I can show you on the  
23 plat where the construction has taken place.

24 MR. CHAIRMAN: Mr. Swanson, I'm going to give you an opportun-  
25 ity to do that for the entire Board where we can see.

1 MR. SWANSON: Okay. (Pause.) Not shown on our plats are  
2 homes -- there's a mobile home sitting in this location.  
3 There's a mobile home that's been placed on the Christ-  
4 opher Davis property. There's a home site that's been  
5 graded out up high on the Christopher Davis property.  
6 Billy Owens' house sits right in here.

7 MR. LEWIS: Would they be affected by that?

8 MR. SWANSON: Well, if we were to try to build the site  
9 further down the hollow it would really cause them  
10 problems with their present dwellings and things.

11 MR. LEWIS: There's a trailer site where?

12 MR. SWANSON: There is a mobile home here, a mobile home here  
13 and a trailer spot has been graded out here.

14 MR. MULLINS: Pass this down so everybody can look at it.

15 Q. (Mr. Mullins continues.) What would happen if you move  
16 the proposed unit 129 down the hollow south from it's  
17 present location as far as those homes and trailers that  
18 you've just testified to?

19 A. It would impact them. To what degree I'm not sure. When  
20 we put the 118 in there it impacted them. It was a  
21 constant going to them saying this road is going to be  
22 upgraded -- there was just a constant contact with the  
23 land owners there.

24 Q. Getting permission to do certain activities such as road  
25 improvement and site preparation, things like that?

1 A. That's correct.

2 Q. And if you moved it on down the hollow would you have to  
3 do more of that than you would in the proposed location  
4 of the EH-129?

5 A. I don't think you can move it down the hollow, but there  
6 would be more impact, definitely.

7 MR. MULLINS: I don't have any other questions.

8 MR. CHAIRMAN: Anything further, members of the Board? Cross-  
9 examination?

10 MR. KAISER: No cross-examination.

11 (Witness stands aside.)

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

13 MR. MULLINS: Mr. Al Mueller.

14  
15 ALLEN MUELLER

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

18  
19 DIRECT EXAMINATION

20  
21 BY MR. MULLINS:

22 Q. Mr. Mueller, you've already told us who you are and what  
23 you do for a living. I'd like to ask you are you  
24 familiar with the EH-129 and the EH-118?

25 A. Yes, I am.

1 Q. How are you familiar? Have you been on the site?  
2 A. I've been on the site several times when it was surveyed.  
3 Q. I'll sort of do this and handle it in the same way that  
4 we did the 128 to keep things less confusing. First, I'd  
5 like to talk about the site itself. You've actually been  
6 on the present location of EH-118?  
7 A. Yes.  
8 Q. How far in relation to the EH-118 taking into account  
9 surface topographical conditions is the EH-129? Is it in  
10 a bottom? Is it on a hillside? How far away is it?  
11 A. It's about 158 feet to the north of the present well 118.  
12 Elevation wise it's probably maybe five or six feet  
13 difference in elevation. It's pretty much on the same  
14 plain or same level, same site.  
15 Q. If you move it to the south or to the south east -- and  
16 this is the EH-120, is that correct?  
17 A. Yes.  
18 Q. Have you been to this site?  
19 A. Yes.  
20 Q. If you moved it to the south and probably a little to the  
21 east, not much to the east, what kind of terrain do you  
22 encounter?  
23 A. Well, from the EH-118 south about 50 or 60 feet it's flat  
24 and there is a small high wall to the south of that and  
25 then it goes up into a fairly steep slope. Again, I'm

- 1 going to estimate it at about a 40 percent slope and it's  
2 fairly rocky.
- 3 Q. You say there's a flat area about 50 feet?
- 4 A. Yes, at the present of the 118.
- 5 Q. Could you drill the well in that area?
- 6 A. No.
- 7 Q. Why not?
- 8 A. Because it would be too close to the present well.
- 9 Q. How much would it cost to move the well in a distance  
10 that would put it within the statewide spacing limita-  
11 tion? How much would it cost to move that well if you  
12 had to move it south and east? What would the new  
13 location costs be basically?
- 14 A. Well, again you get into well costs that are easily in  
15 excess of \$50,000.
- 16 Q. Location costs?
- 17 A. Location costs. And I use that as a ball park figure  
18 based on some of the other wells we have done in the  
19 past. That is one primary -- of course, that's a  
20 concern. But the primary concern of mine is site  
21 stability which it's an ongoing problem whenever you make  
22 a site out of a hillside that steep.
- 23 Q. In other words, you're talking about slides and rock  
24 falls?
- 25 A. Slides, correct. There is a lot of water that comes out

1 of that hollow which -- it's not always depicted on a  
2 topo map. But in that particular hollow there is a lot a  
3 water.

4 Q. Are you talking about coming down this hollow here?

5 A. Yes. And anything that you put on the sides of that  
6 drainage basin will affect the drainage of that whole  
7 area.

8 Q. What about safety? Would there be any safety concerns in  
9 putting the location on that hillside that would move it  
10 away from the EH-120?

11 A. Well, there's always safety concerns as far as boulders  
12 coming down --

13 Q. What about dangers to the men constructing the site? I  
14 mean, you'd have to move more heavy equipment in. There  
15 would be some dangers just in actually constructing the  
16 site?

17 A. Sure. That's always a danger. Yes.

18 Q. Would there also be dangers due to slides or whatever, to  
19 the gathering lines or whatever?

20 A. Right. There's always the possibility of that. You  
21 would have to be real careful with the gathering lines on  
22 a site like that.

23 Q. And I'm not saying that that is impossible, but that's  
24 just an added factor?

25 A. Sure.

1 Q. You're seeking an exception from the EH-120 for the EH-  
2 129, is that right?  
3 A. Yes.  
4 Q. I forgot to ask you that.  
5 A. That is correct.  
6 Q. If I could, I'd like to now ask you about the EH-120.  
7 Are you familiar with that well?  
8 A. Yes, I am.  
9 Q. How did you come to be familiar with it?  
10 A. I've also been on that site several times when it was  
11 drilled and completed.  
12 Q. Have you reviewed that file with Virginia Gas?  
13 A. Yes.  
14 Q. Who drilled the well?  
15 A. The EH-120 was drilled by Union Drilling.  
16 Q. Who is that a subsidiary of?  
17 A. That's a subsidiary of Equitable Resources.  
18 Q. What happened in the drilling of that well that prevented  
19 you from reaching the formations -- excuse me. I'm  
20 talking about the 118. I'm sorry. I said 120. I meant  
21 the EH-118. I apologize. When you drilled that well  
22 what prevented you from going to the formations you're  
23 seeking to get a location exception for today?  
24 A. Again, the 118 was also drilled was Union Drilling, a  
25 subsidiary of Equitable. What happened was it was very

1 similar to the EH-24. The well bore as it was drilled  
2 through the Raven Cliff encountered large flows of  
3 natural gas and basically the operation was terminated at  
4 that point due to safety reasons.

5 Q. Upon the recommendation of Union and Virginia Gas?

6 A. Yes.

7 Q. Did you expect such high volumes of gas?

8 A. No.

9 Q. If you had of expected such high volumes of gas could  
10 preparations have been made to deepen the well?

11 A. Yes. You could have --

12 Q. To keep drilling, in other words?

13 A. Right.

14 Q. And that's what you're proposing to do with the EH-129,  
15 is to take those extra precautions?

16 A. Yes.

17 Q. How come you just don't go ahead and deepen the EH-118  
18 now?

19 A. It's the same thing. When you'd get in there you would  
20 have to kill the well, if you could. Basically you would  
21 get into the chance that you would not recover your gas  
22 back.

23 Q. In other words -- and correct me if I am wrong -- you're  
24 producing from the Raven Cliff?

25 A. Yes.

- 1 Q. And when you say "kill the well" that means you will have  
2 to stop the flow some way?
- 3 A. Stop the flow surface.
- 4 Q. And there is a risk that that flow couldn't be estab-  
5 lished or if so it may not be to the same volume?
- 6 A. Quantity, right.
- 7 Q. What other reasons how come you can't go ahead and deepen  
8 the well?
- 9 A. That's the primary concern, that and safety.
- 10 Q. Well, is there still a lot of gas there?
- 11 A. There's a lot of gas there.
- 12 Q. Could you even do it safely at this point in time, deepen  
13 this EH-118?
- 14 A. Safely? If you kill the well basically you could do it.
- 15 Q. Without damaging the well that's in place, when do you  
16 project that you will be able to deepen the well?
- 17 A. Well, that would be some years down the road because that  
18 well is also a very strong producer.
- 19 Q. Is that based upon production and -- I call it the DK-  
20 curve or the production and decline of the volumes being  
21 produced from it?
- 22 A. Yes. Basically it's fairly a flat decline curve right  
23 now. It would be eight to ten years before we could go  
24 back into that well.
- 25 Q. How much would you estimate it would cost to deepen that

1 well?

2 A. Again, we're probably looking at around \$180,000 to  
3 \$200,000.

4 Q. Have you prepared or reviewed the AFE in connection with  
5 EH-129?

6 A. Yes.

7 Q. Have you also prepared a -- well, let me ask you if you  
8 can identify this document?

9 A. Yes. That's a cash flow analysis.

10 Q. Have you also cause to be prepared a cash flow analysis  
11 concerning projections of well EH-129?

12 A. Yes.

13 MR. MULLINS: I'd like to hand these out to the Board at this  
14 time. (Pause.) What exhibit number are we on now?

15 MR. FULMER: Exhibit D.

16 MR. MULLINS: And this next one will be Exhibit E.

17 Q. (Mr. Mullins continues.) How much is it going to cost  
18 based on your AFE which is Exhibit D to drill well EH-  
19 129?

20 A. \$243,000.

21 Q. How does that compare with the projected cost of deepening  
22 well EH-118?

23 A. It's slightly more.

24 Q. How far in the future would you have to wait before you  
25 could deepen it? I think you said eight to ten years.

1 A. Eight to ten years.

2 Q. Now, this cash flow analysis, what does that indicate,  
3 Exhibit E?

4 A. It's economically feasible to drill the well.

5 Q. That indicates what you expect the well to do and pay out  
6 on the well?

7 A. Yes.

8 MR. MULLINS: If I failed to do so, I'd like to move that all  
9 of these exhibits be admitted into evidence.

10 MR. CHAIRMAN: Without objection they're admitted into  
11 evidence.

12 Q. (Mr. Mullins continues.) How do you know that it is  
13 desirable to drill well EH-129 to these lower formations?  
14 I mean, why do you think that it's going to be a benefic-  
15 ial well? By history what are you relying on to justify  
16 this?

17 A. Off-set production.

18 Q. When you say off-set production you're talking about the  
19 surrounding wells?

20 A. Yes.

21 MR. CHAIRMAN: Would you repeat that? I'm sorry.

22 MR. MULLINS: I asked him what justified or what did he base  
23 his opinion on that it was justifiable to drill the well  
24 EH-129 to these lower zones and his testimony -- he can  
25 correct me if I'm wrong -- was based on the other off-set

1 wells around the area.

2 Q. (Mr. Mullins continues.) What are your projections for  
3 this well -- for the 129?

4 A. Projected production for EH-129 is about 750 million.

5 Q. What is the life of the well?

6 A. That's projected over 25 years.

7 MR. MULLINS: I don't believe I have any other questions at  
8 this point in time.

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

10 MR. EVANS: I've got one question and this is off the wall on  
11 EH-24 and EH-118. When was EH-24 drilled?

12 MR. MUELLER: In August of 1990.

13 MR. EVANS: And when was 118 drilled?

14 MR. MUELLER: I'm going to say in 1991. In the fall of 1991.

15 MR. EVANS: A year later?

16 MR. MUELLER: Yes.

17 MR. CHAIRMAN: Anything further? Cross-examination?

18 MR. KAISER: No cross-examination, but I'd like to make a  
19 closing statement.

20 MR. CHAIRMAN: Have you concluded your witnesses?  
21 (Witness stands aside.)

22 MR. MULLINS: Yes, sir.

23 MR. CHAIRMAN: Go ahead.

24 MR. KAISER: To further clarify and sort of reiterate and  
25 support our objection that the request for this location

1 exception is premature I'd like to point out that in the  
2 exhibit that Virginia Gas presented to you all they do  
3 show two proposed EREX wells, 3399 and P308. They've  
4 stated time and time again that negotiations aren't  
5 relevant and aren't before the Board at this time, but  
6 negotiations really form the basis of our premature  
7 objection. Our purpose in entering into these negotiat-  
8 ions for these locations with Virginia Gas is to maximize  
9 the recovery of reserves and to protect the correlative  
10 rights of the maximum number of people.

11 MR. MULLINS: I would object since there is no evidence as to  
12 this. It's not proper argument before the Board. There  
13 has to evidence presented before you can argue points.  
14 He's not arguing the evidence. He's arguing things that  
15 are outside of what this Board has before it. It's not  
16 had any evidence presented to it. So I object to the  
17 argument on that point. There's been no evidence as to  
18 any negotiations in this hearing at all. So there's no  
19 evidence before the Board to hear argument about.

20 MR. CHAIRMAN: I'll sustain on the basis of what you said  
21 about the negotiations. You can testify about the  
22 exhibits, though, or make your further remarks about  
23 them.

24 MR. KAISER: Okay. At this time we'll call Mr. Tim Lewis as a  
25 witness then, please.

1 MR. MULLINS: Just a procedural point, it's my understanding  
2 that we've rested and that everybody was making closing  
3 arguments. I now make an objection that he's already  
4 rested the case and started his closing argument and now  
5 he's wanting to bring in more evidence. I don't know  
6 what the Board's procedure is on that, but usually once  
7 you've closed your case and started making closing  
8 arguments you're not allowed to bring out new witnesses  
9 and start testifying.

10 MR. CHAIRMAN: We're pretty liberal really on those kinds of  
11 things. We'll overrule the objection and hear him.

12 COURT REPORTER: (Swears witness.)  
13

14 RICHARD TIMOTHY LEWIS

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

18 DIRECT EXAMINATION  
19

20 BY MR. KAISER:

21 Q. Mr. Lewis, could you state your name for the record,  
22 please?

23 A. My name is Richard Timothy Lewis.

24 Q. And who are you employed by?

25 A. Equitable Resources out of Kingsport, Tennessee.

1 Q. And in what capacity?

2 A. I'm a geologist.

3 Q. And as I submit your resume to the Board as EREX Exhibit  
4 A in this matter could you please elaborate on your  
5 educational background and work experience?

6 A. I received a Bachelor's of Science from Moorehead State  
7 University in Moorehead, Kentucky in 1980. I received my  
8 Masters in Science from Wright State University in Dayton,  
9 Ohio in 1986. I've done two years work on my Phd at the  
10 University of Texas in Dallas. I've been employed full-  
11 time in the oil and gas industry as a exploration,  
12 development and well site geologist since about mid 1982.  
13 For over the last three years I've been employed by  
14 Equitable Resources putting about 100 percent of my  
15 effort into the Virginia gas play.

16 MR. KAISER: Mr. Chairman, we'd submit Mr. Lewis as an expert  
17 in the field of geology at this time.

18 MR. CHAIRMAN: Any objections?

19 MR. MULLINS: No, sir, subject to cross-examination.

20 Q. (Mr. Kaiser continues.) Mr. Lewis, are you familiar with  
21 the negotiations between Equitable Resources and Virginia  
22 Gas concerning the wells that are the subject of these  
23 location exceptions today?

24 A. Yes, I am.

25 Q. Is the purpose of those negotiations to maximize the

1 recovery of reserves and to protect the correlative  
2 rights of the maximum number of individuals?  
3 A. Yes, it is.  
4 Q. In light of that, are these applications premature in  
5 that once these locations have been granted it impacts  
6 future locations?  
7 A. Yes, it does.  
8 Q. How does it impact those future locations?  
9 A. I'd have to reposition my proposed location if we have a  
10 fixed location to maximize reserves and also to protect  
11 correlative rights.  
12 Q. Are the wells that are depicted on Virginia Gas' Exhibit  
13 B V-3399 and P-308 proposed EREX wells?  
14 A. They are proposed wells. They have not been formalized.  
15 Q. Would the granting of these location exceptions impact  
16 the location of those wells and therefore the maximum  
17 recovery of reserves and the protection of correlative  
18 rights?  
19 A. Yes. I would be forced to look again at those locations  
20 and see where they can be positioned.  
21 Q. Do you feel it's in the best interest of both parties and  
22 in the Board's purview and duty under the statute to --  
23 MR. MULLINS: Objection. That's a legal conclusion.  
24 Q. (Mr. Kaiser continues.) Is it in the best interest of  
25 all parties including both operators and individual land

1 owners to continue this matter to allow for further  
2 negotiation --

3 MR. MULLINS: Objection. He's calling for speculation on the  
4 land owners -- whose best interest it is. He can testify  
5 and give an opinion from the geological standpoint. He's  
6 a geologist. But he can't give expert opinions or give  
7 hearsay as to what's going to serve a land owner best.

8 Q. (Mr. Kaiser continues.) From a geological standpoint and  
9 the maximum recovery of reserves is it in the best  
10 interest of both operators to continue this matter and to  
11 reenter into good faith negotiations to try to work these  
12 locations out?

13 A. Yes. I believe it is.

14 MR. KAISER: No further questions, Mr. Chairman.

15

16 CROSS-EXAMINATION

17

18 BY MR. MULLINS:

19 Q. Do you have this document which is Exhibit B in front of  
20 you?

21 A. It's not labeled but it's the same.

22 Q. Could you step over to the plat on the easel, please?

23 A. Yes.

24 Q. Now, we have indicated on this larger map V-3399, is that  
25 correct?

1 A. That's where you have it, yes.

2 Q. The proposed location of EH-129, does that impact V-3399?

3 A. Where I had it originally positioned I think it didn't.

4 Q. So this well itself does not impact the proposed location  
5 of that?

6 A. Not if I remember correctly.

7 Q. Now, to conform with statewide spacing you'd have to move  
8 this well south and a little bit east to get it away from  
9 this well, would that be correct?

10 A. That would be correct.

11 MR. CHAIRMAN: Would you identify when you say "this well"?

12 MR. MULLINS: Yes, sir.

13 Q. (Mr. Mullins continues.) If you relocate well EH-129  
14 south and east that's what would be required to comply  
15 with statewide spacing, correct? Would that not, in  
16 fact, create more of an impact upon you in locating a  
17 proposed 308 than leaving it where it is?

18 A. It could.

19 Q. In fact, it would take up more of this area down here,  
20 wouldn't it?

21 A. It would take up more of the area.

22 Q. And force you and reduce the areas within you could  
23 locate this proposed site?

24 A. That's possible.

25 Q. It's not only possible, it's a fact, isn't it? If you

1           move this down this is going to move this down, isn't it?

2 A.    Yes.

3 Q.    And that is going to impact the amount of area you'll

4           have for P-308?

5 A.    Correct.

6 MR. MULLINS: I don't have any other questions.

7 MR. KAISER: The point we're trying to make is that these

8           ongoing negotiations affect future locations and that

9           everyone is better served if this can be worked out in a

10          voluntary agreement and that no unit has been established

11          and we feel it's in the best interest to continue those

12          negotiations.

13 MR. MULLINS: In response, any time that you put a well

14          anywhere it always is going to limit locations in the

15          future. When you put the first well down it's going to

16          limit areas that you can put subsequent wells down in.

17          So that is a constant in every well that's drilled.

18          We've presented evidence today as to why the proposed

19          location variance should be granted and we feel like it;s

20          a valid reason. In fact, the testimony from EREX's own

21          geologist indicates that if we moved it down that we

22          would, in fact, be doing them a disservice because it's

23          going to limit the areas within which they could place

24          their proposed well. For the same reasons and arguments

25          and not to reiterate everything that I said in connection

1 with the EH-128 I'd just like to adopt those arguments in  
2 this pending application and ask that the Board consider  
3 it and do it's will.

4 MR. CHAIRMAN: Did any of the Board members have any ques-  
5 tions? Mr. Lewis, did you have any further questions?

6 MR. LEWIS: Do you think that maybe if you negotiate more that  
7 you could come to an agreement on that between you all?

8 MR. MULLINS: I don't know that we're in a position to answer  
9 that. I think if we could have come to an agreement we  
10 would come in here and ask for a continuance. If we  
11 thought there was a possibility of an agreement we  
12 wouldn't have proceeded -- just like the EH-130 which is  
13 next on the docket, we're going to ask to continue that  
14 because we do have reasonable expectations of coming to  
15 an agreement. On this one the reason we're proceeding is  
16 because we don't think that we're going to be able to  
17 reach an agreement.

18 MR. CHAIRMAN: Any other questions, members of the Board? Do  
19 I have a motion?

20 MR. EVANS: Mr. Chairman, I move that we grant the petition.

21 MR. CHAIRMAN: A motion by Mr. Evans to grant the petition.

22 MR. LEWIS: Second.

23 MR. CHAIRMAN: A motion and a second. Any further dis-  
24 cussion? If not, all in favor signify by saying yes.  
25 (ALL AFFIRM.) Opposed say no. (NONE.) It's approved.

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3 ITEM VII

4 MR. CHAIRMAN: The next item on the agenda is a petition from  
5 Virginia Gas Company for a well location exception. This  
6 is docket number VGOB-94/08/16-0464. We'd ask the  
7 parties that wish to address the Board in this matter to  
8 come forward at this time.

9 MR. MULLINS: On behalf of Virginia Gas Company my name is Tom  
10 Mullins with the Street Law Firm in Grundy.

11 MR. CHAIRMAN: Are there any others that wish to address the  
12 Board in this matter?

13 MR. KAISER: Jim Kaiser on behalf of Equitable Resources.

14 MR. MULLINS: At this point in time, sir, we'd like to ask for  
15 a continuance. We are trying to work this matter out and  
16 see if we can't get a voluntary agreement.

17 MR. CHAIRMAN: Any objections, Board? The matter will be  
18 continued. We're going to break for lunch and be back at  
19 12:30.

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

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3 ITEM VIII

4 MR. CHAIRMAN: The next item on the agenda is a petition from  
5 Equitable Resources Exploration for a well location  
6 exception for P-499. This is docket number VGOB-94/08/-  
7 16-0465. We'd ask the parties that wish to address the  
8 Board in this matter to come forward at this time and  
9 identify yourselves, please.

10 MR. KAISER: Mr. Chairman and members of the Board, Jim Kaiser  
11 on behalf of Equitable Resources Exploration. Our  
12 witnesses in this matter will be Mr. Don Hall and Mr. Bob  
13 Dahlin.

14 MR. CHAIRMAN: Are there any others that wish to address the  
15 Board in this matter? The record will show there are  
16 none. You may proceed.

17 DON HALL

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

20  
21 DIRECT EXAMINATION

22  
23 BY MR. KAISER:

24 Q. Mr. Hall, state your name for the record and who you're  
25 employed by and in what capacity?

1 A. Don Hall. I'm employed by Equitable Resources as  
2 district landman.  
3 Q. Have your qualifications as an expert witness previously  
4 been accepted by the Board?  
5 A. Yes.  
6 MR. KAISER: Mr. Chairman, at this time we'd like to offer Mr.  
7 Hall as an expert witness in this matter.  
8 MR. CHAIRMAN: Without objection accepted.  
9 Q. (Mr. Kaiser continues.) Do your responsibilities include  
10 the lands involved here and in the surrounding area?  
11 A. Yes, sir.  
12 Q. Are you familiar with the application for the location  
13 exception for well P-499 and the relief requested?  
14 A. Yes.  
15 Q. Have all interested parties been notified as required by  
16 Section 4.B of the Virginia Gas and Oil Board regula-  
17 tions?  
18 A. They have.  
19 Q. Is this well located on a USA surface tract?  
20 A. Yes, it is.  
21 Q. And on a USA surface tract is it necessary to obtain the  
22 approval of the US Army Corp of Engineers?  
23 A. Yes, it is.  
24 Q. Has EREX previously drilled wells in Virginia requiring  
25 approval by the Corp of Engineers?

1 A. Several.

2 Q. Did you attempt to secure approval of the location of  
3 well P-499 from the Corp of Engineers at this location?

4 A. Yes. It's been approved by the Corp at this location.

5 MR. KAISER: At this time I'm going to offer the Board Exhibit  
6 A in this matter. (Pause.)

7 Q. (Mr. Kaiser continues.) Mr. Hall, would you indicate for  
8 the Board the ownership of the oil and gas underlying the  
9 unit surrounding P-499?

10 A. We have leased from Pine Mountain Oil and Gas 81.60  
11 percent and from Albert C. Atkins 18.4 percent.

12 Q. So EREX has an oil and gas lease covering 100 percent of  
13 the unit?

14 A. Yes, we do.

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

16 A. Yes.

17 Q. Are there any correlative rights issued involved with  
18 this location exception?

19 A. We have under lease all the oil and gas tracts surround-  
20 ing this well and the reciprocal wells.

21 Q. Mr. Hall, in conjunction with your previous testimony  
22 here today and in this matter and in conjunction with the  
23 exhibit prepared for the hearing would you please state  
24 for the Board in your own words why a location exception  
25 is needed to prevent loss of reserves?

1 A. There's two reasons actually. One, that this location  
2 has been approved where it is by the Corp of Engineers  
3 and the second reason is that there's not a place within  
4 -- if you look at the exhibit, there's not a place within  
5 the interior of those surrounding wells that we can get a  
6 legal location.

7 Q. In other words, any location would require a variance?

8 A. Yes. As a matter of fact, on V-1829 an exception has  
9 been granted for it from P-499.

10 MR. KAISER: I have no further questions of this witness at  
11 this time, Mr. Chairman.

12 MR. CHAIRMAN: Any questions, members of the Board? There's  
13 been one other location exception to this well?

14 MR. KAISER: Yes. On 1829 an exception was granted from 499  
15 for 1829. 499 was previously permitted and expired and  
16 we've reapplied for the permit and at the time that the  
17 exception was granted for the one it was a permitted  
18 well.

19 MR. CHAIRMAN: Thank you. Any other questions?

20 (Witness stands aside.)

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

22 COURT REPORTER: (Swears witness.)  
23  
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1 million cubic feet of gas.

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

4 A. 4,150 feet.

5 Q. Will this include formations consistent with the well  
6 work permit now pending before the DMME?

7 A. Yes, sir.

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

10 A. Yes, it would.

11 Q. Is the applicant requesting the location exception of  
12 conventional gas reserves not only to include the  
13 designated formations but any other formations which may  
14 be between the formations designated from surface to the  
15 total depth drilled

16 A. Yes, we are.

17 Q. In your opinion will the granting of this location  
18 exception be in the best interest of preventing waste,  
19 protecting correlative rights and maximizing the recovery  
20 of gas reserves underlying P-499?

21 A. Yes, sir.

22 MR. KAISER: I have no further questions of this witness at  
23 this time, Mr. Chairman.

24 MR. CHAIRMAN: Questions, members of the Board?  
25 (Witness stands aside.)

1 MR. CHAIRMAN: Do you have anything further?  
2 MR. KAISER: Nothing further.  
3 MR. EVANS: Mr. Chairman, I move that we grant the petition.  
4 MR. CHAIRMAN: A motion to grant the petition.  
5 MR. KELLY: Second.  
6 MR. LEWIS: Second.  
7 MR. CHAIRMAN: A motion and a second. Further discussion?  
8 All in favor signify by saying yes. (ALL AFFIRM.)  
9 Opposed say no. (NONE.) It's unanimously approved.

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ITEM XI

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3 MR. CHAIRMAN: Mr. Kaiser, you all have the next three items  
4 on the agenda. These folks that are here today have been  
5 patiently waiting. Do you have any objection if we go to  
6 Item XI?

7 MR. KAISER: I don't have any objection whatsoever. Actually,  
8 Mr. Chairman, at this time I would make a motion to  
9 withdraw Item XI. That's the motion for supplemental  
10 proceeding. They are also here for Item X which I would  
11 go ahead and hear before we hear Item IX. I don't have  
12 any objection to that.

13 MR. CHAIRMAN: Any objection --

14 MR. KAISER: And they've been informed that we were going to  
15 withdraw Item XI.

16 MR. CHAIRMAN: Any objection to the withdrawal of -- the  
17 docket number we're speaking of is VGOB-94/08/16-0468.  
18 Could you tell us more about the withdrawal? Is it  
19 pursuant to any agreement?

20 MR. KAISER: Yes. Pursuant to some ongoing discussions with  
21 Leonard and Trula Powers and the Powers heirs and  
22 pursuant to a letter we received from them dated July  
23 23rd prior to the beginning of the election period, but  
24 they had initially sent us a letter electing to sell  
25 their interest in the gas underlying this unit. Sub-

1           sequently after some discussion and recalculations and  
2           some matters of that nature they sent us a letter that I  
3           think the Board also has a copy of and I believe it was  
4           dated July 23rd withdrawing that offer to sell their  
5           interest. Therefore, in conjunction with that we have  
6           decided to withdraw our motion for supplemental proceed-  
7           ings the purpose of which would have been to present  
8           evaluation testimony on the gas underlying that unit. In  
9           conjunction with Item X in which we're seeking a modifi-  
10          cation of the already entered force pooling order  
11          they've also been notified that we are going to through  
12          testimony modify the order to include the sell option for  
13          the Powers and the Powers heirs as they have requested.  
14          That will take place when we hear Item X. They are also  
15          aware of that.

16 MR. CHAIRMAN: And your proposal is specifically to withdraw  
17          Item XI?

18 MR. KAISER: Yes. We wish to withdraw it.

19 MR. CHAIRMAN: Any objection to the withdrawal, members of the  
20          Board? Item XI is withdrawn. For the record, the item  
21          referred to as Item XI was docket number VGOB-94/08/16-  
22          0468 and that has been withdrawn.

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3 ITEM X

4 MR. CHAIRMAN: The next item on the agenda is a petition from  
5 Equitable Resources Exploration requesting the Board to  
6 enter an order modifying its prior order to pool all  
7 unleased interests. This is docket number VGOB-94/08/16-  
8 0467. We'd ask the parties that wish to address the  
9 Board in this matter to come forward at this time.

10 MR. KAISER: Mr. Chairman, Jim Kaiser on behalf of Equitable  
11 Resources Exploration. Our witnesses in this matter will  
12 be Mr. Dennis Baker and Mr. Bob Dahlin.

13 MR. EDWARDS: Rick Edwards on behalf of Leonard Powers and  
14 Bonnie Powers Kiser.

15 MS. KISER: I'm Bonnie Powers Kiser.

16 MR. CHAIRMAN: Any others that wish to address the Board in  
17 this matter? You may proceed, Mr. Kaiser.

18 COURT REPORTER: (Swears witness.)

19 DENNIS BAKER

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

22  
23 DIRECT EXAMINATION

24  
25 BY MR. KAISER:

- 1 Q. Mr. Baker, could you state your name for the record, who  
2 you are employed by and in what capacity?
- 3 A. Dennis Baker employed by Equitable Resources Exploration  
4 as a leasing supervisor.
- 5 Q. Do your responsibilities include the lands involved here  
6 and in the surrounding area?
- 7 A. Yes, they do.
- 8 Q. Are you familiar with Equitable's application for the  
9 modification of the drilling unit and pooling order for  
10 EREX well number VC-2966 dated July 15th, 1994?
- 11 A. Yes, I am.
- 12 Q. Has EREX applied for a permit and is that permit now  
13 pending before the DMME?
- 14 A. Yes. I believe it is dated April 28th, 1994.
- 15 Q. Is Equitable seeking to force pool the drilling rights  
16 underlying the drilling and spacing unit as depicted at  
17 Exhibit A of the application?
- 18 A. Yes, sir.
- 19 Q. Does Equitable own drilling rights in the units involved  
20 here?
- 21 A. Yes, we do.
- 22 Q. Does the location proposed for well VC-2966 fall within  
23 the Board's order for the Nora Coalbed Field Rules dated  
24 March 20th, 1989?
- 25 A. Yes, they do.

1 Q. What is the current interest of Equitable in the unit?  
2 A. Currently Equitable has leased in the gas estate 44.58  
3 percent and 100 percent of the coal estate.  
4 Q. Are you familiar the ownership of drilling rights of  
5 parties other than Equitable underlying this unit?  
6 A. Yes, I am.  
7 Q. What is that interest?  
8 A. Currently there is approximately 55.42 percent being  
9 unleased.  
10 Q. Are all unleased parties set out at your amended Exhibit  
11 B?  
12 A. Yes, they are.  
13 MR. KAISER: I will distribute that at this time. (Pause.)  
14 Q. (Mr. Kaiser continues.) Mr. Baker, subsequent to the  
15 hearing held before the Board on July 17th, 1994 did  
16 Equitable's continuing due diligence discover that a  
17 tract had been mislocated on a Dickenson County tax map?  
18 A. Yes. That's correct.  
19 Q. Would you elaborate on that for the Board?  
20 A. Basically when the well spot was proposed our maps  
21 indicated a void area in which we did not have any  
22 information. Normally when this goes to the field the  
23 first thing the field agent does is he'll go to the tax  
24 accessor's office and try to identify the people who  
25 supposedly own surface tracts within that area so we can

1 begin our title search.

2 Q. And as a result of the incorrect location have new  
3 interest owners been identified for tract three as  
4 depicted in amended Exhibit B?

5 A. Yes. That's correct.

6 Q. Would you please explain how those owners were identifi-  
7 ed?

8 A. Yes. As I stated earlier, the tax accessor's office had  
9 this area identified as being owned by the J.H. Powers  
10 heirs with a question mark. We had talked with some of  
11 the Powers people who were J.H. Powers heirs being  
12 respondents -- part of that were listed on the original  
13 application.

14 MR. EDWARDS: I object to that. We feel that the unpaid taxes  
15 on the property that they are speaking of is a different  
16 tract than this. And I have here a quick claim deed to  
17 the Missouri I. Powers tract stating that -- Leonard  
18 Powers and Bonnie Powers Kiser are stating that they own  
19 ownership in that tract of land.

20 MR. CHAIRMAN: Let's let him go ahead with the testimony and  
21 then we'll let you put on the record and make part of the  
22 record whatever you have there. Mr. Fulmer, you might  
23 want to get a copy of that. Go ahead.

24 A. (The witness continues.) We had identified some of the  
25 people that own property within this area, being specif-

1 ically tract two, and in speaking with Leonard Powers and  
2 some of the other people they had indicated that they own  
3 the tract identified as tract three on well plat as being  
4 owned by the Leonard Powers, et al people. We could not  
5 find anything in the tax office that would indicate  
6 otherwise, any other ownership. So at that point in time  
7 we proceeded to identify who the Leonard Powers people  
8 were and who owned this particular tract, that being  
9 tract three, and proceeded to negotiate oil and gas  
10 leases for that interest.

11 Q. As a result of these efforts -- were continuing efforts  
12 made to work out an agreement with these new owners?

13 A. Yes, they were. Upon establishing who we thought owned  
14 the property at that time and proceeded to negotiate an  
15 oil and gas lease a pre-drilling title opinion was  
16 ordered through the legal department for all of the  
17 tracts within the unit. When this particular tract came  
18 back it showed the owners of the oil and gas rights being  
19 owned by Missouri Kiser. We were unaware of who Missouri  
20 Kiser was at that time and through some research we  
21 identified that she was, in fact, the daughter of J.H.  
22 Powers. In checking the tax office records we did locate  
23 a tract owned by Missouri Kiser. However, the tract that  
24 the tax map indicated she owned was about a mile to two  
25 miles south of where this tract that we were locating --

1 or we were working on. So we proceeded to try and  
2 identify who the Missouri Kiser people were. In speaking  
3 with Leonard Kiser and some of the other people -- the  
4 J.H. Powers heirs -- they did, in fact, know who Missouri  
5 Kiser was and knew that she did own some property  
6 although I don't know if they knew where the property was  
7 or what. I mean, all of the deeds into the Powers heirs  
8 basically talked about a water shed. So it was very  
9 difficult to place where the properties were located. So  
10 we finally identified who the Missouri Kiser heirs were  
11 by talking with -- by first of all obtaining a copy of  
12 the death certificate from the State. The death certifi-  
13 cate listed an informant which was a Utah Kiser. Utah  
14 Kiser as it turns out was one of the children of James  
15 Harvey Powers. We proceeded to talk with some of the  
16 people that we knew to find out who Utah Kiser was and  
17 where we might find him. As it turns out we found his  
18 widow who gave us some names and addresses of Missouri  
19 Kiser's heirs.

20 Q. Have you attempted to acquire a lease from any of the  
21 Missouri Kiser heirs?

22 A. Yes, we have. On the exhibits that we have submitted we  
23 have listed in tract three a number of heirs who are  
24 Missouri Kiser heirs. On Page 2 of the revised exhibit  
25 the first name on the list being Fred Kiser has leased

1 with EREX as of yesterday. We have spoke with the  
2 majority or all the rest of the heirs who are basically  
3 hinging on one individual who is listed on Page 1 as  
4 being Jackie Kiser who is a district Judge, I believe.  
5 MR. KAISER: General District Court Judge.  
6 A. (The witness continues.) But anyway, the family is kind  
7 of relying on him to indicate which way the family needs  
8 to go. We do have some leases signed and he has basical-  
9 ly told the rest of the family that everything is okay  
10 and they are going to be signing leases. So we have  
11 some more coming in.  
12 Q. Mr. Baker, in your professional opinion was due diligence  
13 exercised to locate each of the respondents named in  
14 revised Exhibit B?  
15 A. Yes, sir.  
16 Q. Are the addresses set out in revised Exhibit B to the  
17 application the last known addresses for the respondents?  
18 A. Yes, they are.  
19 Q. With the exception of those parties which you are hereby  
20 dismissing from this proceeding are you requesting this  
21 Board to force pool all other unleased interests listed  
22 at revised Exhibit B?  
23 A. Yes, I am.  
24 Q. Does Equitable seek to force pool the drilling rights of  
25 each individual respondent if living and if deceased the

1 unknown successor or successors to any deceased in-  
2 dividual respondent?

3 A. Yes.

4 Q. Is Equitable seeking to force pool the drilling rights of  
5 the person designated as trustee if acting in capacity of  
6 trustee and if not acting in such capacity is Equitable  
7 seeking to force pool the drilling rights of the success-  
8 or of such trustee?

9 A. That's correct.

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

13 A. Yes, I am.

14 Q. Could you advise the Board as to what those are?

15 A. A \$5 per acre consideration, five year term with a one-  
16 eight royalty.

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

21 A. Yes, sir.

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

1 A. That's correct.

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

23 A. That's correct.

24 MR. KAISER: Mr. Chairman and members of the Board and to the  
25 Powers and the Powers heirs, at this time we're going to

1 include testimony to include a fourth option in this  
2 order which will be the sell option.

3 Q. (Mr. Kaiser continues.) Mr. Baker, did Leonard Powers  
4 and Trula Powers and the Powers heirs offer to sell their  
5 interest in the gas underlying VC-2966?

6 A. That's correct.

7 Q. Subsequent to this offer did Equitable receive a letter  
8 from Leonard Powers and Trula Powers dated July 23rd,  
9 1994 withdrawing their offer to sell but reserving the  
10 right to make an offer to sell their interest in the gas  
11 in the future?

12 A. That's correct.

13 Q. In light of this do you recommend that the modified Board  
14 order provide the Powers the opportunity to elect to sell  
15 their interest in the gas underlying the modified unit  
16 during the 30 day election period?

17 A. That is correct.

18 Q. And if the Powers pursue the sale of their interest in  
19 the gas underlying VC-2966 do you request the Board order  
20 direct the parties to enter into good faith negotiations  
21 to determine an agreeable sales price?

22 A. Yes.

23 Q. And if the parties are unable to reach an agreement  
24 within 15 days following the expiration of the election  
25 period do you request that the Board order allow either

- 1 party to petition the Board for further proceedings?
- 2 A. Yes.
- 3 Q. Mr. Baker, do you recommend the order provide that
- 4 elections by a respondent be in writing and sent to the
- 5 applicant at Equitable Resources Exploration, PO Box
- 6 1983, Kingsport, Tennessee, 37662-1983, attention Dennis
- 7 R. Baker, Regulatory?
- 8 A. That's correct.
- 9 Q. Should this be the address for all communications with
- 10 applicant concerning the force pooling order?
- 11 A. Yes.
- 12 Q. Do you recommend the force pooling order provide that if
- 13 no written election is properly made by a respondent then
- 14 such respondent shall be deemed to have elected to cash
- 15 royalty option in lieu of participation?
- 16 A. Yes.
- 17 Q. Should the unleased respondent be given 30 days from the
- 18 date of the order to file written elections?
- 19 A. Yes.
- 20 Q. If an unleased respondent elects to participate should
- 21 that respondent be given 45 days from the latter of the
- 22 date of the mailing or to pay applicant respondent's
- 23 proportionate share of well costs?
- 24 A. Yes.
- 25 Q. Does the applicant expect the party electing to partici-

1           pate to pay in advance that party's share of completed  
2           well costs?

3   A.    Yes.

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

9   A.    That's correct.

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

18   A.    Yes.

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

- 1 A. That's correct.
- 2 Q. Do you recommend the force pooling order provide that if  
3 a respondent refuses to accept any payment due including  
4 any payment due under said order or any payment of  
5 royalty or cash bonus or said payment cannot be paid to a  
6 party for any reason or there is a title defect in  
7 respondent's interest or in the event of conflicting  
8 claims to the coalbed methane that the operator pay into  
9 an escrow account created by this Board into which all  
10 cots or proceeds attributable to conflicting interests  
11 shall be held for the respondent's benefit until such  
12 funds can be paid to the party by order of this Board or  
13 until the title defect or conflicting claim is resolved  
14 to the operator's satisfaction?
- 15 A. That's correct.
- 16 Q. Who should be named the operator under this force pooling  
17 order?
- 18 A. Equitable Resources Exploration.
- 19 MR. KAISER: Mr. Chairman, no further questions of this  
20 witness at this time.
- 21 MR. CHAIRMAN: Mr. Baker, is there any request before this  
22 Board in modifying this order to do anything other than  
23 to include or add the sell option or any of these other  
24 options as listed, make any change to the prior order?
- 25 MR. KAISER: Other than the modification of the interest

1 within the revised Exhibit B. The only two things we're  
2 requesting to modify are the interests in both tract two  
3 and three on revised Exhibit B and to include the sell  
4 option language.

5 MR. CHAIRMAN: No changes in the election options except to  
6 add the sell option?

7 MR. KAISER: Correct.

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

9 MR. KAISER: We've drafted some proposed language for Ms.  
10 Riggs on that, too.

11 MR. CHAIRMAN: Okay. We'll go ahead now and let you cross-  
12 examine the witness based the title if you have a quick  
13 claim deed or anything else you want to raise that he  
14 talked about.

15

16 CROSS-EXAMINATION

17

18 BY MR. EDWARDS:

19 Q. As far as any negotiations are concerned you'll have to  
20 do that through Mr. Leonard Powers. The tract of land  
21 that you're talking about that is a mile or so up the  
22 road that had the unpaid taxes, those taxes -- they are  
23 charged to a number on that map. That's in the Dickenson  
24 County Courthouse, right?

25 A. Uh-huh. I think so, yes.

1 Q. Number 2487. So are you saying that tract of land is the  
2 one that has the unpaid taxes or the tract of land which  
3 lies down in their property?

4 A. The tax office has tract 2487 being listed as the  
5 Missouri Kiser and no taxes ever being paid on it. It  
6 appears that when you take the description of the  
7 Missouri Kiser tract and you plot it up based on the  
8 description in the deed that it resembles and looks like  
9 and adjoins the property lines for tract three that we  
10 show on our well plat.

11 Q. The one up the road you're speaking of?

12 A. Yes, the one that shows on tract three. Yes.

13 Q. Well, sir, I have other plats that show that it fits down  
14 in there where our land is better.

15 A. Where the property is located, you know, is something  
16 that will have to be determined by a registered surveyor  
17 on the ground.

18 Q. Right.

19 A. We basically gave the deed descriptions to an engineer  
20 who has drawn a plat based on the descriptions and the  
21 adjoining calls and the water courses and has placed it  
22 to where we think tract three is located on our well  
23 plat.

24 Q. Have you read a deed that goes to that tract of land,  
25 2487, and has the calls for that tract of land?

1 A. Not 2487 that I am aware of.

2 MR. KAISER: Mr. Chairman, could I ask at this time that Mr.  
3 Bob Powell who is one of the landmen under the direction  
4 of Dennis Baker who performed both the title and investi-  
5 gative work on this tract and on the Missouri heirs be  
6 sworn as a witness? He may be able to address Mr.  
7 Edwards questions a little better than Mr. Baker.

8 MR. CHAIRMAN: Okay. As long as we get his questions answer-  
9 ed.

10 COURT REPORTER: (Swears witness.)

11 MR. POWELL: What was the question again?

12 MR. EDWARDS: I would like for you to show me on the map there  
13 the plot of land that's a mile or so up the road.

14 MR. POWELL: It's this plot right here.

15 MR. EDWARDS: Yes, sir. I'm aware of where it's at. But I  
16 would like for you to show me --

17 MR. POWELL: Where it lies?

18 MR. EDWARDS: No. I know where it lies. I would like for you  
19 to show me the deed to it and the calls for it.

20 MR. POWELL: Here's the deed with the calls to Missouri I.  
21 Kiser.

22 MR. EDWARDS: That's an entirely different tract of land than  
23 the tract of land down next to us, correct, that adjoins  
24 Leonard?

25 MR. POWELL: Well, when you read the deed and you get into the

1 description there's Little Spruce Pine Branch right here  
2 and it calls for Little Spruce Pine in this deed. And  
3 that is up there pretty near Bonnie Kiser's house and it  
4 calls where it goes up to that area. If you plot it up  
5 with these calls you'll get it matching up with the lines  
6 of Leonard Powers' tract.

7 MR. EDWARDS: What about the original Missouri I. Kiser calls  
8 that are in Deed Book 29, Page 410?

9 MR. POWELL: That's them.

10 MR. EDWARDS: That's it?

11 MR. POWELL: Uh-huh.

12 MR. EDWARDS: So how could that be the deed to that tract of  
13 land up the road -- the calls for that tract of land?

14 MR. POWELL: Well, they just misplaced it on the map is all I  
15 can come up with -- on the tax maps. It was just put on  
16 the wrong place on the tax maps.

17 MR. EDWARDS: I can understand that. Well, do you think that  
18 there is more than one Missouri I. Powers Kiser tract of  
19 land?

20 MR. POWELL: I've only found one.

21 MR. EDWARDS: There's more and I think you guys have got the  
22 tracts of land confused.

23 MR. POWELL: I've only found one on Deed Book 29, Page 410.

24 MR. CHAIRMAN: Could you state your name for the record?

25 MR. POWELL: My name is Bob Powell with Equitable.

1 MR. EDWARDS: That's all that I have.

2 MS. KISER: This property of Missouri Kiser's -- there's never  
3 been any taxes against it because it was never accepted  
4 from my grandpa Powers' boundary. He deeded it to her,  
5 but her husband and my grandfather didn't get along and  
6 her husband wouldn't let her pay any taxes on it. My  
7 grandfather paid taxes on it until he died. My dad paid  
8 taxes on it until he died and then my brother and the  
9 rest of us has paid taxes on it today. There's never  
10 been a tax number against that piece of property. So we  
11 feel that we own it, my brother and I, the only two  
12 that's left. So we filed a quick claim deed to have it  
13 put in our names and we've been paying taxes on it.

14 MR. CHAIRMAN: Do you all believe that all parties that are  
15 out there are before this Board now regardless of the  
16 dispute about the property is contiguous at what point?

17 MS. KISER: What do you mean that all parties --

18 MR. CHAIRMAN: That all the people that have an interest in  
19 this area that's being impacted, are they all --

20 MR. EDWARDS: We feel that all these other heirs -- the  
21 Missouri I. Kiser heirs that they are speaking of --  
22 doesn't have anything to do with this tract of land that  
23 concerns us in this gas well.

24 MS. KISER: The other tract they do, the one that has back  
25 taxes against they do. And that is their option, if they

1 want to pay the taxes up and can get it okay and if they  
2 don't okay.

3 MR. CHAIRMAN: But irrespective of that, what I've heard so  
4 far they may have noticed more people than they needed to  
5 have noticed. Is there anyone you believe that they have  
6 not noticed that's not before the Board?

7 MS. KISER: Not near this particular tract of land I don't.

8 MR. CHAIRMAN: Okay. Do you have any other questions?

9 MR. KISER: I just have one redirect of Mr. Powell.

10  
11 REDIRECT EXAMINATION

12  
13 BY MR. KAISER:

14 Q. Mr. Powell, subsequent to your title work and investiga-  
15 tion on this tract has the tax assessors for Dickenson  
16 County relocated this tract to the location that would  
17 now be consistent with where we show it as tract three on  
18 our plat on the tax maps of Dickenson County?

19 A. Yes, they have.

20 MR. KAISER: That's all.

21 MR. CHAIRMAN: Did you have any evidence to that effect or  
22 just from your discussion was --

23 MR. POWELL: Just from my discussion with them they've moved  
24 it. There is also the tract that is not on the plat.  
25 This tract here is also not on the plat either. This is

1 the Don Owens tract, tract one. It's not on the tax map  
2 either. The tract that we're drilling on is not on this  
3 map either, but we have placed it there with help from  
4 people who own the property.

5 MR. CHAIRMAN: Does that tax map have any specific reference?

6 MR. POWELL: It's just one I've written on for my own personal  
7 use.

8 MR. KAISER: We'll be glad to submit that, if you'd like.

9 MR. CHAIRMAN: I think that would be helpful. Let's make it a  
10 part of the record.

11 MR. EDWARDS: Mr. Chairman, I would like to show you something  
12 if I may.

13 MR. CHAIRMAN: Sure.

14 MR. EDWARDS: This tract of land right here is the one that  
15 has the unpaid taxes. This tract of land right here is  
16 the one that adjoins ours and he says this one fits up  
17 with ours right here. I have a map that --

18 MR. CHAIRMAN: So you're saying it's a different plat, a  
19 different piece of property?

20 MR. EDWARDS: Oh, absolutely. Absolutely. The calls are all  
21 entirely different and everything.

22 MR. POWELL: And this is the plat -- I hand drew that in there  
23 just to show my people and this is on down about two  
24 miles.

25 MR. CHAIRMAN: I'm going to get you to do me a favor. If you

1 will, just put your name on here on the back and I'll put  
2 that in as your exhibit. I'll get you, Mr. Powell, to do  
3 the same here and I'll put that in. Mr. Edwards, do you  
4 want to submit this as part of the record as well?

5 MR. EDWARDS: Yes, I do.

6 MR. CHAIRMAN: This is a copy we made. If you'll just go  
7 ahead and put your name on the back for me, please.

8 MR. EDWARDS: Okay.

9 MR. CHAIRMAN: Thank you. I'm going to share these with the  
10 Board. I'm just getting --

11 MR. EDWARDS: What about this one here? Do you want me to --

12 MR. CHAIRMAN: Do you have a copy of it?

13 MR. EDWARDS: I have another one, yes.

14 MR. CHAIRMAN: If you don't care, yes. It will all be a part  
15 of the record. Thank you.

16 (AFTER A BRIEF PAUSE OFF THE RECORD, THE HEARING  
17 CONTINUED AS FOLLOWS:)

18 MR. CHAIRMAN: Do you have another witness, Mr. Kiser?

19 MR. KAISER: Yes. And before I call Mr. Dahlin -- I hope this  
20 will help Mr. Edwards and the Powers' objection. I don't  
21 think there is any dispute of the way that the work has  
22 been done and the testimony has come out as to the  
23 description of the tract. The dispute is as to the  
24 ownership of the tract. With that being said, our next  
25 witness in this matter is Mr. Dahlin. I will remind him



1 A. Total depth is 2,300 feet.

2 Q. Will this include formations consistent with the well  
3 work permit now pending before the DMME?

4 A. Yes, sir.

5 Q. Will this be sufficient to penetrate and test the common  
6 sources of supply in the subject formations?

7 A. Yes, sir.

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

9 A. We estimate the unit to contain 350 million cubic feet of  
10 gas.

11 MR. KAISER: In reference to that, Mr. Chairman and members of  
12 the Board, the application we filed for the modification  
13 of the Board's order listed the reserves as being 300  
14 million cubic feet and that was a typographical error  
15 that we apologize for and correct through this testimony.

16 MR. CHAIRMAN: What's the new figure? I'm sorry.

17 MR. KAISER: 350 million cubic feet.

18 MR. DAHLIN: 350 million which is also the same reserves we  
19 had in the previous hearing.

20 MR. CHAIRMAN: Thank you.

21 Q. (Mr. Kaiser continues.) Are you familiar with the well  
22 costs for the proposed initial unit well under appli-  
23 cant's plan of development?

24 A. Yes, sir, I am.

25 Q. Has an AFE been reviewed and submitted to the Board?

1 A. It was.

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

5 A. Yes, sir.

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

9 A. It does.

10 Q. What are the dry hole costs for this well?

11 A. The dry hole costs are \$70,504.

12 Q. And the completed well costs?

13 A. \$197,200.

14 Q. Do these costs anticipate a multiple completion?

15 A. Yes, sir, it does.

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

17 A. It does.

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

22 A. Yes, sir.

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

25 MR. CHAIRMAN: Questions, members of the Board? Have there



1 Mrs. Powers last week and I think if I understand the  
2 objections that are being made and based on what she said  
3 in the phone conversation and what you all have presented  
4 today is that your dispute basically goes to an issue of  
5 -- you're not contesting that all the parties are before  
6 the Board but you're contesting the allocation of  
7 interest within the unit based upon title dispute as to  
8 what the ownership within the unit is. And as I explain-  
9 ed to her, this Board is without jurisdiction and power  
10 to decide title matters. That has to be done through an  
11 action in Circuit Court. And in anticipation of that the  
12 Gas and Oil Act allows production to go forward by the  
13 escrowing of funds for conflicting claimants pending that  
14 resolution. I explained to her that if all the parties  
15 are before the Board and all the interests are pooled and  
16 the money is placed into escrow and that she proceeds in  
17 the Circuit Court and this issue gets resolved that the  
18 money won't be paid out until such time as the Court says  
19 who the rightful owners of the property are.

20 MR. EDWARDS: Excuse me. But all this will take place even  
21 before there's any negotiations or anything if we have  
22 the option to sell?

23 MS. RIGGS: Now, the option to sell is a separate issue and as  
24 I heard Mr. Kaiser say, they're moving to include an  
25 option to sell -- the modify the order that's already

1           been entered to include it and he's going to present some  
2           language on how those negotiations would proceed. As I  
3           understand it the Board would order you all to negotiate  
4           in good faith and try to come to an agreement and then if  
5           you couldn't you'd come back to the Board and advise on  
6           that. So as I understand it, the two things that you're  
7           asking for is that the Board modify the order to include  
8           an option to sell notwithstanding the fact that there  
9           was an offer to sell made and withdrawn and you still  
10          want it back in and that you wish the order to clearly  
11          reflect that you're contesting the percentages or title  
12          of the units. I think that's consistent with the relief  
13          Mr. Kaiser is asking the Board to include within it's  
14          modification as well.

15 MR. CHAIRMAN: For that particular tract.

16 MS. RIGGS: And the title dispute impacts on tracts two and  
17           three?

18 MR. KAISER: Tract three.

19 MS. RIGGS: Track three only?

20 MR. CHAIRMAN: That's what I understand. Is it, in fact,  
21           tract three only?

22 MR. KAISER: Tract three only.

23 MR. EDWARDS: Yes, sir.

24 MR. CHAIRMAN: All parties that have acknowledged that it is  
25           tract three only. Anything further from anyone? Members

1 of the Board, what's your pleasure?

2 MR. EVANS: Mr. Chairman, I make a motion that we grant  
3 the petition.

4 MR. CHAIRMAN: A motion to grant the petition.

5 MR. KELLY: Second.

6 MR. CHAIRMAN: A motion and a second. Any further  
7 discussion? All in favor signify by saying yes. (ALL  
8 AFFIRM.) Opposed say no. (NONE.) The motion carries.

9 MS. RIGGS: Have you submitted the proposed language on the  
10 option to sell?

11 MR. KAISER: No. We have it with us and would like to submit  
12 it at this time.

13 MS. RIGGS: Does the Board want to look at that before you  
14 finalize this --

15 MR. LEWIS: That needs to be made clear, don't it?

16 MS. RIGGS: -- as to what they're proposing in the option to  
17 sell? They have some proposed language they would like  
18 included in the Board order.

19 MR. CHAIRMAN: Yeah. Let's look at and see --

20 MR. LEWIS: Well, you need to withdraw that motion then.

21 MR. CHAIRMAN: We've got it approved. The motion and the  
22 second to the motion was to approve the application.  
23 What they offered as part of the application was to  
24 incorporate this language with the option to sell. If  
25 Ms. Riggs would just look at it to make sure if we've got

1 anything -- so we'll just let her look at it and see if  
2 we need to make any changes. Otherwise, our Board order  
3 would reflect this language.

4 MR. LEWIS: Right.

5 MR. CHAIRMAN: That's what I'm trying to get clear. Does  
6 everyone understand that? Could you hear me? Okay. Do  
7 you folks understand?

8 MR. EDWARDS: Yes, we do.

9 MS. RIGGS: The language as presented would require that the  
10 party elect to sell and if they do make such an election  
11 that the parties enter into good faith negotiations to  
12 reach a mutually acceptable price and it gives a fifteen  
13 day period after the election is made for that to happen  
14 and if you are unable to reach an agreement then you're  
15 to come back before the Board and place it back on the  
16 docket for further proceedings. I guess the only thing  
17 that I see that's left as an open question is once you  
18 make the election to sell and you enter into negotiations  
19 if you are unable to reach an agreement and you have to  
20 come back before the Board is it understood that the  
21 Board could then extend the election period to reopen the  
22 other elections or are you locked in to the sell option  
23 at that point?

24 MR. KAISER: We wouldn't have any problem with reopening the  
25 other elections.

1 MR. CHAIRMAN: Okay.

2 MR. KAISER: And what we've tried to do there is essentially  
3 give us about -- by the time we send you a copy of the  
4 modified order and your election letter including the now  
5 four elections that you all will have as force pooled  
6 interest we've essentially going to open a 40 day period  
7 of negotiation so that hopefully we can come to some sort  
8 of agreement.

9 MS. KISER: So we'd have 40 days from the time we get your --

10 MR. KAISER: Well, roughly. The election period is 30 days  
11 and then if we don't come to any agreement there it's  
12 another fifteen days which is 45 with the mailing process  
13 -- let's say that takes five days.

14 MR. CHAIRMAN: That will be after you receive the Board order.  
15 Not starting today, but after you receive the order.

16 MR. EVANS: Don't shut them out of starting out of negotia-  
17 tions today if they want to.

18 MS. RIGGS: Oh, no. The 45 days starts --

19 MR. CHAIRMAN: No. I was just telling them when the clock  
20 started, not to delay negotiations certainly.

21 MR. KAISER: Mr. Chairman, could we in light of Ms. Riggs'  
22 well addressed point ask that should we go into a second  
23 election period that that period be shortened to maybe 15  
24 days rather than 30 so that this thing is not held up too  
25 long? All right. That's okay with all parties

1 including --

2 MS. KISER: I don't know. Would that not put a hardship on my  
3 brother that lives out in Idaho? He has to have some  
4 consideration about that because he's working right now.  
5 He will retire a little later this year.

6 MS. RIGGS: This isn't something he would have to come here to  
7 do.

8 MR. KAISER: Right. We can do that over the phone and then he  
9 can make his election through the mail.

10 MS. KISER: Okay.

11 MR. CHAIRMAN: The motion as was made and seconded and voted  
12 on is the application is approved unanimously. Thank  
13 you.

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1 ITEM IX

2  
3 MR. CHAIRMAN: The last item on today's agenda is a petition  
4 from Equitable Resources Exploration for pooling of  
5 convention well V-2715, docket number VGOB-94/08/16-0466.  
6 We'd ask the parties that wish to address the Board in  
7 this matter to come forward at this time.

8 MR. KAISER: Mr. Chairman and members of the Board, Jim Kaiser  
9 on behalf of Equitable Resources Exploration. Our  
10 witnesses in this matter will be Mr. Dennis Baker and Mr.  
11 Bob Dahlin.

12 MR. CHAIRMAN: Are there any others that wish to address the  
13 Board in this matter? The record will show there are  
14 none. You may proceed, Mr. Kaiser.

15 MR. KAISER: Mr. Baker and Mr. Dahlin, I will remind you that  
16 you have been previously sworn. Mr. Baker will be our  
17 first witness.

18  
19 DENNIS BAKER

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

22  
23 DIRECT EXAMINATION

1 BY MR. KAISER:

2 Q. Mr. Baker, please state your name and who you are  
3 employed by and in what capacity?

4 A. Dennis Baker. I'm employed by Equitable Resources  
5 Exploration as a leasing supervisor.

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

8 A. Yes, they do.

9 Q. Are you familiar with Equitable's application for the  
10 establishment of a drilling unit and pooling order for  
11 EREX well number V-2715?

12 A. Yes, I am.

13 Q. Dated July 15th, 1994?

14 A. Yes.

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

18 A. That's correct.

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

21 A. Yes, we do.

22 Q. Does the proposed unit depicted at Exhibit A include all  
23 acreage within 2,640, that is a 1,320 foot radius, of  
24 proposed well V-2715?

25 A. Yes.

1 Q. What was the interest of Equitable in the unit at the  
2 time of application?

3 A. At the time of application it was 77.76 percent leased  
4 and currently we have 92.777 percent leased.

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

7 A. Yes.

8 Q. What is that interest?

9 A. Unleased interest at the time of application was 22.24  
10 percent. At this time we have 7.223 percent being  
11 unleased.

12 Q. Are those unleased parties set out at our amended  
13 Exhibit B I am now presenting to the Board?

14 A. Yes, they are.

15 (PAUSE.)

16 Q. (Mr. Kaiser continues.) Prior to filing the applications  
17 were efforts made to contact each of the respondents and  
18 an attempt made to work out an agreement regarding the  
19 development of the units involved?

20 A. Yes.

21 Q. Subsequent to the filing of the application have you  
22 continued to attempt to reach an agreement with the  
23 respondents listed at revised Exhibit B?

24 A. Yes, we have.

25 Q. As a result of these efforts have you acquired other

1 leased from any of the respondents listed as unleased  
2 owners?

3 A. Yes.

4 Q. Would you identify those for the Board at this time?

5 A. Yes, I will. On Page 3 of Exhibit B, tract eight, the  
6 first listing was L.W. McClellan and June McClellan.  
7 They are currently leased to EREX. Continuing down the  
8 list, I believe on the exhibit that was filed with the  
9 application, at the bottom of Page 3, Roger McClellan is  
10 now leased to EREX.

11 Q. It would be the top of Page 4 now.

12 A. I'm reading off of the Exhibit B that was filed with the  
13 application and not the amended. Okay. On Page 4 of the  
14 exhibit, tract nine, Lois Gibson Richardson is now leased  
15 to Equitable. Page 6, being tract 12, Audrey Harvey is  
16 now leased to EREX. Tract 13, Leland B. McCoy is now  
17 leased to EREX. Those are the only respondents that have  
18 leased with EREX at this time -- or new leases.

19 Q. Since the time of the filing of the application?

20 A. Yes, sir.

21 Q. Were any efforts made to determine if the individual  
22 respondents were living or deceased or their whereabouts  
23 and if deceased were efforts made to determine the name  
24 and addresses and whereabouts of the successors to any  
25 deceased individual respondent?

1 A. Yes, they were.

2 Q. Were reasonable and diligent efforts made and sources  
3 checked to identify and locate these unknown heirs, to  
4 include sources such as deed records, probate records,  
5 assessors records and treasurers records?

6 A. Yes, they were.

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

9 A. Yes.

10 Q. Are the addresses set out in revised Exhibit B to the  
11 application the last known addresses for the respondents?

12 A. Yes.

13 MR. CHAIRMAN: Can I interrupt you for just one second. In  
14 going through the leased parties and the changes you  
15 mentioned Audrey Harvey, I believe. Is it Harvey and  
16 George Harvey?

17 MR. KAISER: Yes.

18 MR. BAKER: Yes. Audrey Harvey and George Harvey, tract 12.

19 MR. CHAIRMAN: Thank you.

20 Q. (Mr. Kaiser continues.) And with the exception of those  
21 parties which you are hereby dismissing from this  
22 proceeding are you requesting this Board to force pool  
23 all other unleased interests listed at revised Exhibit B?

24 A. Yes, sir.

25 Q. Does Equitable seek to force pool the drilling rights of

- 1 each individual respondent if living and if deceased the  
2 unknown successor or successors to any deceased individ-  
3 ual respondent?
- 4 A. Yes.
- 5 Q. Is Equitable seeking to force pool the drilling rights of  
6 the person designated as trustee if acting in capacity of  
7 trustee and if not acting in such capacity is Equitable  
8 seeking to force pool the drilling rights of the success-  
9 or of such trustee?
- 10 A. That's correct.
- 11 Q. Are you familiar with the fair market value of the  
12 drilling rights in the units here and in the surrounding  
13 area?
- 14 A. Yes, I am.
- 15 Q. Could you advise the Board as to what those are?
- 16 A. A \$5 per acre consideration, five year term, a one-  
17 eight royalty.
- 18 Q. Did you gain your familiarity by acquiring oil and gas  
19 leases and other agreements involving the transfer of  
20 drilling rights in the units involved here and in the  
21 surrounding area?
- 22 A. Yes, I did.
- 23 Q. In your opinion do the terms you have testified to  
24 represent the fair market value of and the fair and  
25 reasonable compensation to be paid for drilling rights

1 within this unit?

2 A. Yes, sir.

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

23 A. Yes. That's correct.

24 Q. Do you recommend the order provide that the elections by  
25 respondent be in writing and sent to the applicant at

1 Equitable Resources Exploration, PO Box 1983, Kingsport,  
2 Tennessee, 37662-1983, attention Dennis R. Baker,  
3 Regulatory?

4 A. Yes. That's correct.

5 Q. And should this be the address for all communications  
6 with the applicant concerning the force pooling order?

7 A. Yes.

8 MR. KAISER: Mr. Chairman, at this time I would request that  
9 the testimony regarding the time periods in which to make  
10 written elections and the time periods in which to pay  
11 costs if you elect to participate that was elicited in  
12 our previous hearing be incorporated in this hearing.

13 MR. CHAIRMAN: Any objection? It will be incorporated.

14 Q. (Mr. Kaiser continues.) Who should be named the operator  
15 under the force pooling order?

16 A. Equitable Resources Exploration.

17 MR. KAISER: Mr. Chairman, no further questions of this  
18 witness at this time.

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

20 (Witness stands aside.)

21 MR. CHAIRMAN: Call your next witness.  
22

23 ROBERT A. DAHLIN, II

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

1 DIRECT EXAMINATION

2

3 BY MR. KAISER:

4 Q. Mr. Dahlin, I'll remind that you've been previously  
5 sworn. Would you please once again state your name for  
6 the record, who you are employed by and in what capacity?

7 A. Robert A. Dahlin, II. I'm employed by EREX as an  
8 operations specialist.

9 Q. And your qualifications as an expert witness previously  
10 been accepted by the Board?

11 A. Yes, sir.

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

14 A. Yes, sir.

15 Q. Are you familiar with the exploration and development of  
16 the unit involved here under the applicant's proposed  
17 plan of development?

18 A. I am.

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

21 A. 6,120 feet.

22 Q. Is this consistent to include formations with the well  
23 work permit now pending before the DMME?

24 A. Yes, it is.

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

1 sources of supply in the subject formations?

2 A. Yes, it will.

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

8 A. We are.

9 Q. Will this initial well be at a legal location?

10 A. Yes, sir, it will.

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

12 A. 400 million cubic feet.

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

15 A. Yes, sir, I am.

16 Q. Has an AFE been reviewed, signed and submitted to the  
17 Board?

18 A. Yes, sir.

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

22 A. It was.

23 Q. Does this AFE represent a reasonable estimate of the well  
24 costs for the proposed unit well under applicant's plan  
25 of development?

1 A. Yes, sir.

2 Q. Could you please identify both the dry hole costs and the  
3 completed well costs for the Board?

4 A. Dry hole costs are \$158,450 and the completed well costs  
5 are \$260,750.

6 Q. Do these costs anticipate a multiple completion?

7 A. Yes, sir, it does.

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

9 A. It does.

10 Q. In your professional opinion, Mr. Dahlin, will the  
11 granting of this force pooling application be in the best  
12 interest of conservation, prevention of waste and the  
13 protection of correlative rights?

14 A. Yes, sir.

15 MR. KAISER: That's all we have for this witness at this time,  
16 Mr. Chairman.

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

18 (Witness stands aside.)

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

20 MR. KAISER: That will be all.

21 MR. LEWIS: I make a motion to grant it.

22 MR. CHAIRMAN: A motion to grant the petition.

23 MR. EVANS: Second.

24 MR. CHAIRMAN: A motion and a second. Any further  
25 discussion? All in favor signify by saying yes. (ALL

1 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.

2 Thank you. That concludes the items on today's agenda.

3 Is there anything further from anyone?

4 MR. FULMER: I just want to mention something about the next  
5 Board hearing, Mr. Chairman. At the next Board hearing  
6 on the agenda we have the five continued from today and  
7 we have one new petition that's been submitted since  
8 then, but we have the rest of the week. So we don't know  
9 how many items there will be. We will have Board  
10 orientation for Board members involving new legislation  
11 that's been passed with regards to conflict of interest,  
12 Freedom of Information Act and so forth that are pertin-  
13 ent to the Board and some other items in regard to Board  
14 orientation for the new members on the Board. We'll also  
15 have a representative out of the Department's office of  
16 policy analyst here in regards to the objective order by  
17 Governor Allen in review of regulations and he will  
18 summarize that to the Board for their information. And  
19 we also will have the escrow agent reporting his report  
20 in September.

21 MR. CHAIRMAN: Do we have any kind of time estimate on the  
22 orientations? Is that about an hour's worth?

23 MR. FULMER: It will be an hour or less. We'll try to do it  
24 in an hour. If the Board wishes to do the Board orienta-  
25 tion first --

1 MR. CHAIRMAN: That's what I was going to suggest. Why don't  
2 you in the announcement of the hearing -- I mean, it will  
3 be open if anyone wants to sit in -- go ahead and set a  
4 clear time when the cases would start so that people that  
5 don't want to come watch us do an orientation and have  
6 discussion on law and regulation might be able to more  
7 wisely use their time. Why don't we go ahead and set the  
8 cases to actually start at 10:00. That will give us time  
9 to do orientation and allow the Board free time to ask  
10 all the questions they want and then we'll be ready to  
11 go.

12 MR. FULMER: Would it be all right with the Board to have the  
13 first item be the escrow agent?

14 MR. CHAIRMAN: That's fine.

15 MR. FULMER: And then we'll deal with the continued items and  
16 then the new petitions.

17 MR. CHAIRMAN: That sounds good. Just make sure that they  
18 clearly delineate that we're having orientation and that  
19 the actual Board hearing will start at 10:00.

20 MR. FULMER: All right.

21 MR. KAISER: Mr. Chairman and Mr. Fulmer, in light of all that  
22 and for informational and planning purposes Equitable  
23 Resources anticipates probably four to five new applica-  
24 tions this week.

25 MS. RIGGS: Poolings?

1 MR. KAISER: Poolings and I think one location exception.

2 MR. CHAIRMAN: Okay. Thank you all for coming. This hearing  
3 is adjourned.

4  
5 (End of Proceedings for  
6 August 16, 1994.)  
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CERTIFICATE

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 August 16, 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 29th day of August, 1994.

Deborah J. Bise  
DEBORAH J. BISE  
NOTARY PUBLIC

My commission expires September 30, 1996.