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VIRGINIA OIL AND GAS BOARD

HEARING OF OCTOBER 24, 1995

9:05 A.M.

AT THE BREAKS INTERSTATE PARK
BREAKS, VIRGINIA

Appalachian Court Reporting Services, Inc.

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October 24, 1995

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2 This matter came on to be heard on the 24th day of
3 October, 1995 before the Virginia Gas and Oil Board at the
4 Breaks Interstate Park, Breaks, Virginia pursuant to Section
5 45.1-361.19.B and 45.1-361-22.B of the Code of Virginia.
6

7 MR. CHAIRMAN: Good morning. My name is Benny Wampler and
8 I'm Deputy Director for the Virginia Department of
9 Mines, Minerals and Energy and Chairman of the Gas and
10 Oil Board. I would ask our members this morning to
11 introduce themselves.

12 MR. GARVIS: My name is Dennis Garvis. I'm from Fairfax
13 County.

14 MR. KELLY: Bill Kelly, oil and gas industry representative.

15 MR. LEWIS: Max Lewis, Buchanan County, citizen member.

16 MS. RIGGS: Sandra Riggs, Office of the Attorney General
17 sitting as counsel to the Board.

18 MR. HARRIS: Bill Harris, public member from Big Stone Gap.

19 MR. EVANS: Ken Evans, coal representative.

20 MR. FULMER: Tom Fulmer, Department of Mines, Minerals and
21 Energy.
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ITEM I

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3 MR. CHAIRMAN: The first item on today's agenda is the staff
4 will present and the Board will discuss royalty
5 calculations including deductible expenses related
6 thereto. The Board decided two or three meetings ago
7 they'd like to have a discussion and briefing on
8 royalty calculations following Mr. Franks earlier
9 address to the Board. I've asked Tom Fulmer to make a
10 presentation on information that he has put together on
11 royalty. I'd like to share with the Board some
12 excerpts from a paper that was presented from Eastern
13 Mineral Law Institute. It's entitled "Chapter 14
14 Royalty and Overriding Royalty Payments and Deductible
15 Expenses" by Terrance Van Lennon. And it says, "Under
16 judicial treatment generally, although specific
17 holdings may differ" -- and I'll insert from what we
18 can discover there's a variety of court rulings on this
19 subject all across the country, none of which appear to
20 be consistent and we are not able to find any court
21 ruling in Virginia on this subject -- "the common
22 rational in the majority of jurisdictions allows an
23 affective reduction to the basis upon which royalty is
24 paid. This reduction reflects post production costs
25 incurred by the lessee in marketable otherwise un-

1 marketable productions. In all of the reported cases
2 reviewed by the author such expenses have been associ-
3 ated with treatment of natural gas. The rational
4 takes many forms, but despite the desperate factual
5 circumstances confronted by these courts there appears
6 to be a common thread that can be identified. Regard-
7 less of whether a royalty clause is a market value,
8 market price, proceeds clause or combination thereof,
9 the royalty interest is free of cost of production.
10 Production takes place at the well head. If the
11 product is physically marketable at that point then the
12 market price, market value of proceeds realized from
13 the sale at that point are all the same. But when the
14 product must be transported or processed additional
15 costs are necessarily incurred. Royalty and overriding
16 royalty interest consistently are required to bear
17 their proportionate share of transportation costs if
18 the gas has to be transported off the leased premises
19 to a distance market. Also in the majority of juris-
20 dictions courts have allowed lessees to deduct the
21 cost of compression and other processing." I'll stop
22 the intro at that point and let Tom take over. But
23 that's just something from the Eastern Mineral Law
24 Institute. This is a paper that was presented to that
25 institute.

1 MR. FULMER: Good morning, Mr. Chairman and members of the
2 Board. I've been requested this morning to present
3 information on costs associated with royalty calcu-
4 lations for gas wells. Royalty is a gas owner's share
5 of production free of expenses of that production. It
6 may be payable in kind as a share of the actual product
7 produced or it may be payable in money in an amount
8 determined by the market value or the market price of
9 the share of the produce or proceeds from the sale
10 thereof. In general, the right to produce and market
11 the gas by the lessee in an implied covenant in any
12 lease. Leases may also contain an option by which the
13 lessor may choose to take his production in kind.
14 Rarely is this option exercised by the lessor due to
15 the financial burden it would impose. Although my
16 presentation is focused primarily on leases, it may
17 useful to note that should a gas owner wish to partici-
18 pate in a well, costs for production and marketing are
19 usually negotiated in a "Joint Operating Agreement."
20 Thus, the main focal point of negotiations of leases
21 for the lessee and the lessor is the royalty clause and
22 how the royalty clause is structured. In order to
23 determine what royalty is to be paid to the lessee the
24 how, what, when and where of the royalty clause must be
25 resolved and understood between the lessee and the

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lessor. In the majority of litigation over leases the main point of dispute between the lessee and the lessor is the royalty clause provisions, where the dispute is brought before the court by the lessor. It is important to note, it is the responsibility of the lessee to prudently market the gas, and it is up to the lessor to be sure the lessee had made the most prudent choices with respect to marketing. Currently, to my knowledge in Virginia, there has been no litigation which involved a court determination of royalty clause arising from a dispute between the lessor and the lessee. There are many court cases in other states which have addressed specific issues involving interpretation of royalty clauses for purposes of royalty calculations and for allowable cost deductions. There are court rulings in two different states which have generally been recognized as principles for courts to review when ruling upon cases involving interpretation of provisions in a royalty clause. The first principle "market-value-equals-contract-price" was established in an Oklahoma case, Tara Petroleum Corporation vs Hughey. The Oklahoma Supreme Court interpreted a royalty clause requiring the lessee to "pay the lessor, as royalty for gas afrom each well where gas only is found, while the same is being sold and used off the premises, one-

1 eighth of the market price at the well of the amount so
2 sold or used." The lessee, Wilcoy Petroleum Company,
3 entered into a two year sales contract with Jarrett Oil
4 Company. The contract provided for a gas price of
5 \$0.32 per MCF the first year and \$0.33 per MCF the
6 second year. Five months after the gas contract was
7 made the Federal Power Commission raised ceiling prices
8 to \$1.30 an MCF. The lessors, the Hughey heirs,
9 asserted they were entitled to royalties calculated
10 using the higher FEC price instead of the Wilcoy/
11 Jarrett contract price. The royalty clause of the
12 lease provided: Lessee agrees to pay lessor for gas
13 produced and sold or used off the premises or used in
14 the manufacture of any products therefrom one-eighth
15 at the market price at the well for the gas sold, used
16 off the premises or in the manufacturing of products
17 thereof. The Oklahoma Supreme Court held that, when
18 the lessee enters into an arm's-length good faith gas
19 purchase contract with the best price and terms avail-
20 able to the producer at the time, that price is the
21 market price and will discharge the producer's gas
22 royalty obligation under a market price royalty clause.
23 At the time the case was litigated the terms of the
24 sales contract were dictated by the few pipeline
25 purchaser, and the lessees had no options but to enter

1 to long term contracts with the pipeline purchaser.
2 Regardless of whether current market price rose above
3 or fell below the sales contract price, royalty
4 payments were to be based on the price established in
5 the contract, not on what the prevailing current market
6 value was. In this case, since the lessee was at the
7 mercy of the pipeline purchaser and the court applies
8 an implied covenant on the lease to market and sell gas
9 at the time of the production under the lease, the
10 court ruled in favor of the lessee and rejected the
11 claims of the lessor as being "uncooperative" as a
12 partner under the lease. Under the Tara Principle, the
13 lease terms and the implied covenant to market are
14 considered binding upon the lessee and lessor. The
15 second principle, which I will refer to as the Vela
16 Principle was established in a Texas Court in Texas Oil
17 & Gas Corporation vs Vela. The lease was assigned in
18 1933. In 1936 the lessee obtained production from the
19 land and entered into a gas sales contract in which the
20 purchaser agreed to pay lessee \$0.023 MCF; the contract
21 was to continue for the life of the lease. The
22 purchaser, United, was the only commercial purchaser of
23 gas in the field and the terms were the best available
24 in the field. Although the court noted the difficult-
25 ies confronting the lessee marketing gas, it refused to

1 alter what it viewed as the unambiguous terms of the oil
2 and gas lease. The court found that the royalties to
3 which the lessors are entitled must be determined from
4 the provisions of the oil and gas lease, which was
5 executed prior to and is wholly independent of the gas
6 sales contract. The court concluded that the plain
7 terms of the oil and gas lease required the lessee to
8 pay royalty based on the prevailing market price at the
9 time of the sale or use. Therefore, the contract price
10 received by the lessee is not necessarily the market
11 price required by the royalty clause. Essentially the
12 court ruled that the lease agreement between the lessor
13 and the lessee was negotiated prior to any marketing
14 contract and therefore should be considered binding
15 between the lessor and the lessee and is not altered or
16 modified by post lease marketing contracts. Therefore,
17 gas sales contracts should not be used in determining
18 royalty payments to the lessor which are, indeed,
19 governed by the terms of the royalty clause in the
20 lease. The purpose of presenting to you these two
21 principles is to emphasis that as the oil principle of
22 market-value equals-contract-prices has given way to
23 the restructured gas market, current market values or
24 spot market prices, it has been increasingly important
25 that the terms and the conditions of the royalty clause

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are as astutely understood by both the lessor and the lessee prior to signing the lease. The terms and conditions of the royalty clause should determine how his royalty will be calculated by prescribing where the point of delivery of the gas is to be, when the royalty is to be paid, and what cost the royalty owner is to bear for the delivery of the gas to market by the lessee under the implied covenant of the lease to market the gas. The second point I would like to make is that as the gas industry has moved into the restricted gas market the movement has given rise to the separation between the implied covenant to produce and sell the produce and the implied covenant to market the gas. This leads to the creation of independent gathering systems and inclusion of the cost of transportation to market under leases. In the preceding, I have attempted in simple terms, to relate the legal basis for the types and structures of royalty clauses currently being offered. One topic which I have not discussed in depth is the implied covenant to market the gas, particularly as it applies in Virginia. Currently 100 percent of the gas being produced and sold in Virginia is located in Southwest Virginia. Until very recent times natural gas producers did not have a local market to which gas could be marketed.

1 Still today 95 to about 98 percent of the volume
2 produced is being transported great distances out of
3 the state to southern, eastern and northeastern
4 markets. The lack of local markets and the lack of
5 transportation systems has and still is a determining
6 factor in calculation of royalty to the lessor. Over
7 the past two decades several independent gas gathering
8 systems have been built in Southwest Virginia to
9 provide transportation to the point of marketing the
10 gas, such as Oakwood Gathering System, Cardinal States
11 Gathering System, Equitable System. In most instances
12 in Virginia, the gas producer is entirely dependant
13 upon the gathering system to transport the gas from the
14 field to the market. Calculations of the cost of the
15 royalty owner for the implied covenant to market the
16 gas depends upon the establishment of the point at
17 which the cost of producing the gas and the cost of
18 marketing the gas. For instance, does the cost of
19 production end (1) at the point the gas is brought to
20 surface or wellhead or at the point or (2) at the point
21 the gas is delivered to a third point (point of sale)?
22 For example, an independent gas gathering system may
23 include wellhead equipment, separators, scrubbers,
24 meter runs and pipelines between the casing at the
25 surface to a pipeline owned by the third party. In

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the first scenario the royalties are maximized because post production costs are not charged against royalties. In the second instance royalties are minimized because post production costs are charged against royalties. If the division of production versus post production occurs at the wellhead then such costs as taxes, transportation, treating and/or compression become cost factors in determination of royalty to the lessor. With the more recent development of independent gas gathering systems the Federal Energy Regulatory Commission has held proceedings to examine the relationship between the producer and the independent gas gathering system in regards to post production costs. On the outline I've given to you I present to you there are two examples of royalty clauses used in Virginia. I want to caution that these figures that I've used in here are not to be construed as being accurate or in any way, shape or form reflect any of the current cost figures today but just as an example the Board as to the different types of leases and that how you can construed or interpret the clauses in those leases. I've also calculated the cost to the royalty owner under the different clauses. The first calculation is based upon a royalty cost which includes a provision of the royalty clause in Exhibit #1. Exhibit #1, the

1 royalty clause stated, "The royalties to be paid lessor
2 are 12.5 percent of the value of coal seam gas or gas
3 produced from the lease premises and sold on or off the
4 leased premises, or used of the leased premises less a
5 proportionate part of the costs incurred by lessee in
6 heating, sweetening, gathering, transporting, dehydrat-
7 ing, compressing, extracting, processing, manufacturing
8 or any other post production cost incurred by lessee in
9 making such gas or other substance merchantable."

10 Further on in the clause it says, "Lessor shall pay a
11 proportionate part of all depletion, privilege and
12 production tax that is now or hereafter levied or
13 assessed or charged on coal seam gas or gas produced
14 from the land." I went through a typical royalty
15 calculation and just to give you a demonstration of how
16 these costs would then reflect the total amount of
17 royalty being paid to lessor. The volumes are fictiti-
18 ous. So you take twelve and a half percent of that
19 volume. The total value then of the 4,245 MCF would
20 be \$1,115.10 less taxes, less the transportation cost
21 and less the treating/compression. So you have a total
22 of \$573.67. That's then the lease called for post
23 production costs.

24 MR. HARRIS: Excuse me. I have a real quick question. The
25 transportation cost in treating/compression, is that

1 112? Is that the way that's figured?

2 MR. FULMER: No.

3 MR. HARRIS: It's actual?

4 MR. FULMER: Yeah. There's several different costs involved
5 here and that's why I warn against these figures being
6 fictitious in nature, because there may be a tax of
7 higher compression. There may be a negotiated contract
8 to transport the gas.

9 MR. HARRIS: Go ahead. I'm straight. Thank you.

10 MR. FULMER: The second royalty calculation is based upon
11 the conditions and terms of the royalty clause and
12 lease in Exhibit #2. Here the royalty clause says, as
13 a royalty, lessee agrees to deliver to the credit of
14 lessor or assigns, free of cost, into the tanks or
15 pipelines to which it may connect its well or wells,
16 the equal one-eighth part of all oil produced and saved
17 from the leased premises and the lessee agrees to pay a
18 royalty for all gas except stored gas and gas produced
19 from the storage horizon or horizons produced saved and
20 marketed from the leased premises at the rate of one-
21 eighth of the proceeds received by the lessor at the
22 well. Royalty payments shall constitute the entire
23 consideration to the lessee for such gas. Again, it
24 goes on and -- included in that royalty clause, lessee
25 shall pay a proportionate part of all exercise,

1 depletion, privilege and production taxes now or
2 hereafter levied, assessed or charged on oil or gas
3 produced from said premises. In the calculation,
4 using the same figures again that I used in the first
5 example, you'll see that the only thing then being
6 charged off would be the taxes and you wouldn't have
7 transportation under this particular terms of the lease
8 -- of this particular lease. As the examples illust-
9 rate, the royalty clause, although both stay in that
10 one-eighth or 12.5 percent of the value of the product-
11 ion to be paid to lessor, the first example includes a
12 further stipulation that the lessor shall pay a
13 proportionate share of the post production cost of
14 marketing the gas. As you may be aware, typically
15 every lease contains a pooling clause which allows a
16 lease to pool the lessor's lands covered by the lease
17 with other lands under lease by the lessee. The terms
18 and conditions of a pooling clause if exercised by the
19 lessee would affect the calculations of royalty in that
20 the proportionate share of the lease contained in the
21 unit would be much less than the lease area itself.
22 Therefore, it is important when considering a lease to
23 take into consideration both the royalty clause and the
24 pooling clause. Up to the point I've been basically
25 talking about royalty clauses in voluntary leases. I

1 think it would be appropriate to look at current Board
2 orders that impact on cost calculations for royalty
3 payments. In Exhibit # I have listed from the pro-
4 visions in the sample order the pertinent sections of
5 the order which address royalty payments. On Page 2 of
6 the order, the sample order that I've given you in the
7 package, Section 6 defines well development and/or
8 operations. Section 7 defines the unit operator or the
9 lessee or the entire unit. Proceeding to Section 9.2
10 which is on Page 5, the order then establishes how the
11 royalty is to be calculated for payment to those
12 parties who do not elect to participate. It reads as
13 follows; thereafter a royalty of one-eighth or eight-
14 eighths (12.5 percent) of the net proceeds received by
15 the unit for the sale of the coalbed methane gas from
16 the well development covered by this order multiplied
17 by that person's division of interest or proportionate
18 share of said production for purposes of this order,
19 net proceeds shall be actual proceeds received less all
20 post production costs incurred down stream of the
21 wellhead, including but not limited to all gathering,
22 compression, treating, transportation and marketing
23 costs whether performed by unit operator or a third
24 party as fair, reasonable and equitable compensation to
25 be paid to the said gas owner or claimant. When you

1 compare the examples of the sample voluntary leases
2 with the language in the current Board orders the
3 current pooling recognize the right of the unit
4 operator to produce and market the gas and allows for
5 the unit operator to deduct post production costs when
6 calculating royalty payments. An example of the
7 calculation to determine royalty would be the same as
8 in Exhibit #1. In the past, the Board has received and
9 comments from lessors regarding royalty payments and
10 pooling issues. Since the issues were brought before
11 the Board by voluntary lessors the terms of the
12 voluntary lease would prevail. However, the Board does
13 have jurisdiction to protect the correlative rights of
14 those interests which are affected by the Board order
15 involving compulsory pooling. The Board may wish to
16 examine two areas during future deliberations of a
17 pooling petition. The first is allowable cost as it
18 related to either production cost or post production
19 cost. The second is to examine the affect of a
20 proposed royalty and pooling clause on those parties
21 which elect to lease and those parties which are deemed
22 to have leased. That's all I have, Mr. Chairman. I'll
23 be glad to try to answer some of the questions if there
24 are any.

25 MR. CHAIRMAN: Any questions of Mr. Fulmer, members of the

1 Board?

2 MR. EVANS: What's the date on that Tara case? Do you know?

3 MR. FULMER: The Tara case was 1981.

4 MR. EVANS: And the Texas Oil versus Vela?

5 MR. FULMER: 1968.

6 MR. EVANS: So 1981 post dates the restructured gas market?

7 MR. FULMER: The two examples is the two ways the Court's
8 approached the same problem.

9 MR. EVANS: That's fine. I was just wondering which --
10 chronologically which one was used as president for
11 which.

12 MR. CHAIRMAN: Any other questions for Mr. Fulmer?

13 MR. GARVIS: Is it then fair to say that potentially when
14 you have a new field that's being opened up some
15 distance from the nearest pipeline that there might be
16 a little bit higher cost to offset the cost of at least
17 initially opening up the field? In other words, it
18 might be dependant -- each well may be dependant and
19 entirely different from another one that might be, per
20 chance, closer to a gathering system?

21 MR. FULMER: The proximity of the pipelines surely factor
22 into it. But, again, you have to look at the implied
23 covenant to market. So you have to market the gas and
24 whether it's a long distance way or whether it's a
25 short distance way it's the most prudent to market the

1 gas. It's not a question of where it is in relation-
2 ship -- if you have to transport it long distance to
3 market then that's what you have to do under the lease.
4 MR. LEWIS: Downstream from your well or your royalty
5 meters, if you had a leak who would absorb the cost of
6 most of that leak and loss of production?
7 MR. FULMER: Downstream?
8 MR. LEWIS: From the meter.
9 MR. FULMER: After you sold the gas?
10 MR. LEWIS: Right.
11 MR. FULMER: I assume who takes possession of the gas itself
12 would have to if it is at the point of market, yes.
13 MR. CHAIRMAN: Other questions? Thank you, Tom. Any
14 members that are here today wish to address the Board
15 in this matter? Mr. Franks.
16 MR. FRANKS: Good morning, Mr. Chairman and members of the
17 Board. I have previously presented some of the typical
18 information in my report here and I am covering more
19 than just that because there are other things involved
20 in the same vein or in the same colors. I've separated
21 them here. I have one section -- each time I have
22 appeared before the Board I've been told that the Board
23 can't act on some of my questions because it's a legal
24 question concerning private contract. The Board does
25 involve itself in private contracts through the pooling

1 and other orders they give concerning the private
2 contract of gas leases. I have a small section on
3 that. I have a another section on the reasonableness
4 of deductions which you just addressed to some extent,
5 but I want to show you our experiences from the members
6 that I represent. The last section is damage to the
7 coalbed methane owners outside of permitted pools and
8 inside permitted pools due to actions of the Board.
9 The first -- and it may not be in the correct order for
10 you but I have placed on the first two pages the
11 requests I'm making of the Board. I'm referring to
12 your Section 45.1-361.13, the membership, and this is
13 outside what I've just mentioned. In B I notice that
14 there is a requirement for one Board member who
15 represents the gas and oil industry and one Board
16 member who represents the coal industry but no member
17 to represent the private gas, oil or coal owner not
18 affiliated with these industries. Why not? It seems
19 they have a free swing on making decisions. Does the
20 Board and/or the Virginia Legislature consider that
21 this group of totally involved yet unrepresented
22 citizens to be so ignorant as to be undeserving of
23 representation in the dealings which dispose of their
24 property? It is hereby requested that the Board
25 consider adding one member to its organization to

1 represent this group.

2 MR. CHAIRMAN: I understand. Let me respond to that,
3 though. The membership of this Board is established
4 by the Legislature. What you're taking about would be
5 a law change. The membership of the Board, however, by
6 having citizen representation is the intent of the
7 General Assembly that all interests are represented.

8 MR. FRANKS: Well, you include two members of the industry
9 which gives a good swing to obtaining decisions
10 favorable to them and any condition -- any adverse
11 condition is not protected or not personally represent-
12 ed by the Board.

13 MR. CHAIRMAN: I'm not trying to debate it. I'm telling you
14 what the --

15 MR. FRANKS: But that's the point of my intentions here. In
16 referencing 45.1-361.15, additional duties and respons-
17 ibilities of the Board under A.2 and 3, B.1, 2 and 5
18 and especially 8, 11 and 12 and 45.1-361.20 field
19 rules. A, in order to prevent the waste of gas or oil
20 the drilling of unnecessary or to protect correlative
21 rights the Board in its own motion or on application of
22 the gas or oil owners shall have the power to establish
23 or modify drilling units. It should be of interest to
24 the Board that the industry has left vacant blocks of
25 undeveloped pool areas which are being decimated by

1 drainage from surrounding producing pools. I believe
2 that the rules listed above make it a responsibility of
3 the Board to prevent such damage. It is hereby
4 requested that the Board review the results of its
5 prior sanctions and put some of its efforts to work,
6 the 45.1-361.15.B.8 listed above with possible correct-
7 ions per the 20.A which gives them the authority. My
8 third request, 45.1-361.21, pooling of interest in
9 drilling units. B.5, establishing the sharing of all
10 reasonable costs between participating operators and G,
11 the Board shall resolve all disputes arising among gas
12 and oil operators regarding the amount of reasonable-
13 ness of well operation costs. The Board shall by
14 regulation establish allowable tax of costs which may
15 be share in pooled gas or oil operations. In Section
16 10, allowable costs which may be shared in pooled gas
17 or oil operations the share cost with participating and
18 non-participation operators. It is hereby requested
19 that the Board review the enclosed data -- and you've
20 already covered a portion of that -- submitted by this
21 writer with follow-ups from Request 2 above and require
22 that equity and honesty replace the obvious and blatant
23 short changing of the interest of the owners by the
24 operators. Note that the lessor of the gas and the
25 force pooled are not operators. They are or were to

1 receive royalties. Under 45.1-361.17, statewide
2 spacing of wells, under B.1 and B.2 "For coalbed
3 methane wells 1,000 foot between wells and 500 foot
4 minimum to the supporting pool boundary. It is my
5 personal opinion that the limiting factor for determin-
6 ing the proximity of a well to its pool boundary
7 should not be measured in feet, ie. 500 feet minimum,
8 but should be in the percentage of expected drainage
9 falling outside the supporting pool. I also believe
10 that there should be an automatic compensating require-
11 ment to be paid to the injured party whose property is
12 violated by the over extending well expected drainage.
13 It is hereby requested that the Board review the
14 enclosed data and consider its approval of violation of
15 the referenced sections with emphasis on correcting
16 damages already done and establishment of guidelines to
17 prevent future damage. I would also hope that the
18 Board would consider revisions in the limiting factor
19 for well location and for a formula to compensate
20 injured parties outside the pool. I don't know if you
21 want me to read all of this. I get hoarse pretty
22 quickly when I talk. Under the involvement of the
23 Virginia Gas and Oil Board into prior leased property
24 under Section 45.1-361-15, additional duties and
25 responsibilities of the Board, B, without limiting its

1 general authority the Board shall have the specific
2 authority to issue rules, regulations or orders
3 pursuant to the provisions of the Administrative
4 Process Act 966.14.1 in order to under 8, collect data,
5 make investigations and inspections, examine property,
6 leases, papers, books and records, and require or
7 provide for the keeping of records and the making of
8 reports. Note under there that it was the duty to
9 investigation and inspection of the leases. If the
10 Board were not involved with private leases this
11 couldn't be included. Applicability and construction,
12 A, the provisions of this article shall apply to all
13 lands in the Commonwealth whether publicly or privately
14 owned. However, no well commenced prior to July 1,
15 1990 shall be required to be plugged or abandoned
16 solely for purposes of complying with the conservation
17 provision contained in this article. 45.1-361.21,
18 pooling of interests in drilling units, A, the Board
19 upon application from any gas or oil owner shall enter
20 an order pooling all interests in the drilling unit for
21 the development and operation thereof when two or more
22 separately owned tracts are embraced in a drilling unit
23 or there are separately owned interests in all or part
24 of such drilling unit and those having interest have
25 not agreed to pool their interest, or 3, there are

1 separately owned tracts embraced within the minimum
2 statewide spacing requirements prescribed in 45.1-
3 361.17. Notice the authority in 15 above along with
4 the responsibility. Notice in 45.1-361.16 above that
5 there is no separation from prior leased lands. Notice
6 in 45.1-361.21 that the gas owner shall make the
7 application for the pooling and that there is no
8 separation of leased or unleased tracts. When was the
9 last time it was the gas owner, not the gas operator,
10 who made the application? I don't believe the Board or
11 the Virginia Legislature ever envisioned that the
12 average owner would be able to meet all the require-
13 ments and prepare all the forms necessary for this
14 purpose. The Board knew and still knows that it was
15 always be the operator who makes the applications. The
16 area being addressed herein was unitized under the
17 Oakwood Field orders by the Virginia Gas and Oil Board.
18 There was no prior involvement of the gas owners by the
19 VGOB and no input concerning the establishment of pools
20 asought from the owners of the gas. There was no
21 consultations with the gas owners prior to the VGOB
22 setting up rules and regulations for establishing,
23 governing and controlling the gas pools. When the VGOB
24 issues permits for pooling and for the location of
25 wells within the pools do they or do they not include

1 prior leased property? If the actions of the Board
2 require the itemizing of separate tracts within their
3 pools, including prior leased property, and dictate how
4 the gas production will be proportioned then they are
5 involved in creating the disputed items noted within
6 this report.

7 MR. CHAIRMAN: Let me interject here. I think you know
8 this. Of course, any action that's of this Board is
9 always pre-announced to the public, opportunity for
10 public representation including gas owners here at
11 these meetings. Any rules and regulations developed by
12 this Board have been done in open public form in
13 accordance with the Administrative Process Act. Here
14 again, not to debate but simply to respond to that
15 allegation.

16 MR. FRANKS: I understand what you mean and I have received
17 some notices, but prior to receiving the notices most
18 of the decisions have already been made and in the rule
19 books.

20 MR. CHAIRMAN: I'm not aware of any case where --

21 MR. FRANKS: I don't ever recall having prior notice of
22 where a pool or how the pool would be split. The
23 notice that you get is when there is a permit request
24 for drilling wells within a pool and you're told when
25 you show up at the meeting where that pool is and what

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it will contain.

MR. CHAIRMAN: Any of the field rules developed by the Board was developed following substantial testimony on the record at a public hearing before the Board, sometimes continuing on to two or three different meetings.

MR. FRANKS: Well, I've never been involved with any except after the fact and after the lessee was involved and had made application. Not to debate there either. Does the VGOB consider the Virginia Gas and Oil Act to be totally outside of and having no influence on the leased property? If so, let's go through the permits and line out the references which relate to leased -- of course, this won't happen because it's under the law -- and exclude all of VGOB regulations within those areas. This would leave only the task of determining the common or expected area of drainage outside the leased property boundaries and the allocation of payments to those force pooled. Then and only then can the Board claim non-involvement into leased property. Even under the existing rules as set down by the Virginia Legislature the Board does not have the authority to violate those rules over the objections of the owners and many objections were made and no legal hearings to mitigate damages. Notice the underlining of words. All I'm saying here is the capitalizations

1 and underlining of these words are my own. They didn't
2 copy out of your book. But that was just to address
3 whether the Board is involved in prior leased private
4 contracts or not and I feel certain that they are. The
5 next section, the reasonableness of deductions from
6 leased or force pooled methane gas owner portion of
7 revenue received. Pool permits issued by the Board
8 under Section 9, elections of the Board, and 9.2., the
9 option to receive a cash bonus consideration -- and I
10 don't believe there's any need to read all of that
11 except you know what it is. It's the standard one-
12 eighth interest to lessors. Then the less post
13 production costs incurred downstream -- which is well
14 down in the paragraph here -- the wellhead including
15 but not limited to gathering, compression, treating,
16 transportation and marketing costs whether performed by
17 the unit operator or a third person as fair, reasonable
18 and equitable compensation to be paid to said gas or
19 oil owner. Under Section 21, pooling of interests in
20 drilling units, the Board shall resolve all disputes
21 arising among gas or oil operators regarding the amount
22 of reasonableness of well operation costs. The Board
23 shall by regulation establish allowable tax costs which
24 may be shared in pooled gas or oil operations. As to G
25 above, why does the Board limit this action to disputes

1 among gas or oil operators? Doesn't the Board consider
2 the interest of the gas owners to be of any conse-
3 quence? Maybe the Board had overlooked one paramount
4 fact. It ain't your gas. Shortages in the basic
5 amounts due to the gas owners -- this is my data here
6 concerning what's happened to us -- as noted in the
7 reports received from Pocahontas Gas Partnership. The
8 Virginia Gas and Oil Board had required the operators
9 to calculate the acreage of each separate owner tract
10 within each pool and to note the percentages of the
11 pool percentages by these acerages. The amounts due to
12 owners for these percentages are suppose to be that
13 percentage of the total amount received by the operator
14 for the full volume of gas produced from each well or
15 wells within the pool at the price received by the
16 operator during the reporting period, less allowable
17 charges. The attached data will give the Board an
18 indication of Pocahontas Gas Partnership's lack of
19 dedication to reporting the full amounts due to each of
20 the pooled owners as represented by their own calculat-
21 ed percentages noted within the permits issued by the
22 Board. Pocahontas Gas Partnership has also refused
23 repeatedly to respond to inquiries concerning the
24 traceability of the gas on its way to market and at
25 what point and to whom the reported prices are estab-

1 lished. Reference 45.1-361.15, additional duties and
2 responsibilities of the Board -- and this is simply
3 repeating what was said before under 8 -- collect
4 data, make investigations and inspections, examine
5 property leases, books and records, and require or
6 provide for the keeping of records and the making of
7 reports. It would appear that the Board does have the
8 authority to require reports which accurately and
9 completely trace the movement of the gas from the well
10 to the final or first non-associated purchaser.
11 Certainly this is a duty of the Board as it relates to
12 the force pooled interests. The same information by
13 implication from the above reference is also required
14 for leased property as limited by the investigations,
15 inspections and examinations of the lease. During the
16 Board's deliberations for pooling and the establishment
17 of rules to govern the same consideration should be
18 given to the fact that persons holding prior agreements
19 to lease their gas interest had no knowledge of the
20 pooling procedures at the time those agreements were
21 entered into. Since no pool had at that time been
22 formed and no information as to pooling was made
23 available the sole source of information was the
24 discussion with the gas companies. Pooling was
25 described as necessary due to the proximity of gas

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deposits which were owned by others and which would of necessity be drained during the removal of gas belonging to the lessors. This was understood and it was naturally acceptable by lessors that any portion of gas removed which would be reasonably ascertained to belong to others should be subtracted from the whole and paid to others and in like manner lessors gas would be separately accountable for payment. At no time during the agreement process was there ever any mention that no concern would be given to proper accounting for the gas ownership but the Board would draw lines around the pools and divide the gas receipts among parties with little or no interest in the gas and deny title to the property owners of large areas being permitted to be drained. It was stated during one of the permit hearings that the Board had been made aware of a close approximation of the area which each coalbed methane gas well would be expected to drain. This was used as an explanation of how the Board settled upon the 80 acre pools. Now even with this prior knowledge plus maps indicating that permitted wells would of necessity cause great damage to correlative owners no formula for obtaining a corrective balance was ever considered by the Board. The general impression given by the VGOB rules and regulations is that all consideration shall

1 he given to the operating companies insuring that all
2 benefits derived from the gas production will migrate
3 in full to the operating company as if the operator by
4 virtue of either obtaining a lease agreement from the
5 actual gas owners or by having the means to drill and
6 install an operating well now has become the prime
7 owner of the gas with very minimal obligation for the
8 protection and deliverance of the interest of the
9 actual gas owners. Why not also write rules and
10 regulations which would permit anyone with a moving van
11 and a storage building to enter anyone's home and take
12 their belongs so long as they leave a token payment
13 after deductions for their loading, hauling, storing
14 and fencing expenses for disposing of their stolen
15 goods, of course. As to rights and deductions listed
16 in 9.2 above note, including but not limited to has
17 obviously been interpreted by Pocahontas Gas Partner-
18 ship to mean totally unlimited. Gathering, I had
19 assumed this to be reasonable cost for accumulation of
20 gas for several sources into a holding tank or area
21 prior to release into the long distance pipes.
22 Compression, I have understood this to be the reason-
23 able cost for maintaining the pressure necessary or
24 insuring the passage of the gas through the pipelines
25 when transfer is desired. Treating, I have understood

1 this to be the treatment of gas required by law to
2 insure detection in case of leaks along the pipeline,
3 at store tanks or at the final customer. This is not
4 to say that these are correct. This is my interpret-
5 ation. Transportation, this can only be the reasonable
6 charges for the gas to pass through the pipeline from
7 the wellhead to the first arms length paying customer.
8 I do not believe that this charge should be used to
9 recoup the in-house or costs associated with entities
10 subordinate to, controlled by or associated with the
11 operator or lessee of the gas well or the party
12 designated by the Board to administer revenues receiv-
13 ed. Salaries of the parent or associated companies
14 should excluded from any deductions due to the ease of
15 manipulation of these numbers beyond any reasonable
16 review process. When the first reports were received
17 from Pocahontas Gas Partnership I thought the trans-
18 portation charges were excessively high at 36 to 67
19 percent of the gross allocated as royalties due. But
20 there can be no doubt about any reasonableness when
21 these charges reach over 92 percent of the gross as in
22 recent receipts. Marketing costs, who knows what this
23 could mean. Without an actual breakdown or a limita-
24 tion it could be stretched to any extreme. Reference
25 the attached transportation deduction sheets plus the

1 information sheet in relation to Pocahontas Gas
2 Partnership. Certainly the parties represented by this
3 writer has ever right to expect the Board to investi-
4 gate and require corrections to the absurdly excessive
5 charges for transportation being imposed by Pocahontas
6 Gas Partnership. Examine leases and impose adherence
7 to any and all limitations contained therein. Examine
8 the books and records of Pocahontas Gas through all
9 levels of associated entities to determine the actual
10 relay steps between the wellhead and the first arms
11 length transfer of gas. I'd like to say here that
12 there should also be a check to prevent an early
13 transfer of ownership to an arms length operator with a
14 sweetheart deal to pick it up later at a reduced price
15 in order to transfer all profits down stream. So they
16 should be checked all the way through. Require that
17 Pocahontas Gas Partnership provide pertinent data and
18 full disclosure of relationships to Pocahontas Gas
19 Partnership of down stream handlers and back up for any
20 charges made. Please note on the enclosed September,
21 1995 reports from Conico that where multiple listings
22 for the same month appear the quoted price never agree.
23 This is also true when comparing prices between the
24 Franks Estate Report and the Carl F. Metcalf Report for
25 the same pools and for the same months. After all,

1 this is the same gas and is supposed to be proportioned
2 from the same volume at the same prices. With wildly
3 varying prices who knows which is the actual price
4 received by PGP or is any of those quoted prices
5 representative of the true price received? The next
6 sheet is an information sheet from Pocahontas Gas
7 Partnership. Pocahontas Gas Partnership is a general
8 partnership under the Code of Virginia and is owned 50
9 percent by Consolidation Coal Company, a Delaware
10 corporation which is known as Consol, 50 percent by
11 Conico, Incorporated, a Delaware corporation. Consol is
12 owned 51 percent by Consol, Incorporated, a Delaware
13 corporation, and 49 percent by Consol Energies.
14 Consol, Incorporated is a wholly owned subsidiary of
15 Consol Energies, Incorporated who is a joint venture 50
16 percent owned by EI Dupont and 50 percent by RWE AG, a
17 German corporation. Conico is a wholly owned subsid-
18 iary of Dupont. And during the lease negotiations the
19 address of Pocahontas Gas Partnership was PO Box 947,
20 Bluefield, Virginia with the assignment communications
21 with Mr. William Gillenwater at PO Box 578, Pocahontas,
22 Virginia. The final address during the conclusions of
23 the lease agreement was PO Box 200, Mavisdale, Virginia
24 as it is in all the Virginia Gas and Oil Board permits.
25 I also have information which was received from others

1 that the principal place of business and mailing
2 address is 1800 Washington Road, Pennsylvania, 15241
3 which is also the mailing address of Consolidation Coal
4 Company and Reserve Coal Properties. Note, Oakwood
5 Gathering is a subsidiary of OXY, USA and is also
6 associated with Consol and as Consol and also separate-
7 ly for Island Creek Coal which is now owned by Consol,
8 Georgia Pacific, Big Vien Companies and Virginia Gas
9 Company, previously Edwards and Hardin. This is just
10 to show the interconnection between all of the entities
11 handling this gas for a considerable distance past the
12 wellhead. The next sheet is simply the involvement of
13 the Franks Estate, the pools and wells involved with
14 your docket numbers. The next sheet, the Franks
15 Estate, Pocahontas Gas Partnership has reported the
16 following through September of 1995 the due amounts are
17 obtained from the PGP reported volumes for the respect-
18 ive pools at the PGP reported prices for each month of
19 production and using the PGP determined percentages due
20 to the Franks Estate for each pool as reported to the
21 VGOB during the permit hearings. Only the one-eighth
22 portion due to be paid is used in these calculations.
23 The figures in parenthesis below the reported amounts
24 denote the variations from the due amounts represented
25 by the reported figures. The percentage figures below

1 the transportation and paid columns are the percentages
2 of the reported amounts represented in each of these
3 columns. There's no need in reading all of them, but
4 you will note that they are considerably under in pool
5 040 -- \$108 dollars under on the amount they report as
6 due. They're under in all of them. They're \$96 under
7 P-35 and where there's a small amount that's neglig-
8 ible. That can be done in rounding easily enough. But
9 you'll note it's still \$63 under in Q-35, \$458 under in
10 Q-38, \$62 under in R-39 and to date they are almost
11 \$800 under in the amount they report as being due.
12 Then under transportation costs the percentages -- and
13 this includes the earlier reports which were better and
14 the later for the deductions in transportation. This
15 percentage is the percentage of their reported amount.
16 And it's, as you'll see, 47 percent, 76 percent, 57,
17 71, 49, 56, 53 and 54 with an average of 54. The
18 average paid to date overall is 40 percent at the
19 bottom -- overall average. Pocahontas Gas Partnership
20 collects eight times that amount apparently. They
21 should anyway. Therefore, the 39,973 reported --
22 total due would represented \$320,000. The amount they
23 have paid represents 4.9 percent of that amount. Also
24 reference the report given to the VGOB during the March
25 29, 1995 hearing at the 4-H Center in Abingdon. I

1 don't believe you would have brought them with you but
2 you each received a copy. The above does not address
3 the removal of great quantities of gas from the
4 deposits belonging to the Franks estate which the VGOB
5 has deemed that the producing company need not report
6 or compensate for due to the well being too close to
7 the pool boundaries as in pool Q-38 where approximately
8 40 percent of the payment goes to parties who are not
9 being drained and pools 39 and Q-39 which have large
10 areas of drainage from the Franks Estate but for which
11 no payments are made because there are no wells within
12 these pools. The Franks Estate owns a one half
13 interest in the coalbed methane gas within the tracts
14 noted in the pool permits, 100 percent of the gas
15 within a three acre tract which may touch one of the
16 pools but I doubt if there would be enough to mention.
17 That's in the edge of Q-38. The one half interest at
18 one-eighth royalty results in a net pooled interest of
19 -- as you can see it varies from 0.28 percent to 3.617
20 percent. And even for those who minuscule small
21 percentages they are reducing what they pay to a
22 disappearing point of any receipts. The next sheet is
23 just a spread sheet showing by month and by pool the
24 amount of transportation deducted from the recorded
25 amounts. A note that appear in February of 1994 when

1 the report started the deductions were 33 and 38
2 percent. I don't believe anyone would argue with the
3 fact, as the gentleman mentioned a while ago, start up
4 costs usually are much greater than standard production
5 costs. I have experienced that in a lot of work that I
6 have done. But you'll notice here that that deduction
7 continues to rise until it's reached a point now
8 there's nothing left. This is the reverse of any
9 normal operating procedure. And note by the end of
10 1994 it was up from 60 to 97 percent and that's just
11 the deductions from their reported amount for trans-
12 portation. If you go on down to the end of the year
13 the last report received was 90 percent in most of the
14 pools with 93 percent in two. This is just the
15 deductions for transportation. I just have an explan-
16 ation below showing what some of my symbols were.
17 There were no reports received for P-35 and Q-35 to the
18 Franks Estate in the first months. They were notified
19 of that. They showed up in the Carl Metcalf reports
20 which had no interest in it but they have never
21 corrected them in the Franks report. The next sheet is
22 the Franks Estate net payments from the PGP reported
23 amounts due. I highlighted a couple of neat little
24 zeros and 0.58 percents. This is the net received of
25 those very tiny percentages due to start with. There

1 again, you can note that in the beginning the reported
2 amounts due, the nets paid, were grossly above what
3 they are at present and this is during the high cost of
4 start ups. The next two sheets are copies of the last
5 reports I received from Conico and they are much
6 simplified and in far better order than a couple I have
7 previously shown the Board. I have inked in here the
8 numbers and things that I used to determine what's
9 going on. You'll note under the first item of pool R-
10 38, our percentage of the final should be 2.0765
11 percent. The 777 symbol underlined is noted at the
12 bottom as being the gross produced or the total
13 produced from that well which is 7738 MCF and the price
14 quoted is 1.6142 and the amounts over here -- the gross
15 value you'll note is very close. In fact, my calcul-
16 ations show that they were five cents above what was
17 shown. Taxes are noted. Then item two in the value
18 deductions column is 89 percent. That's transport-
19 ation. And the owner value \$11 out of \$259. That's
20 4.33 percent and that's 4.33 percent of the 2.0765
21 percent. You'll note on through there that's the
22 common. Now, in pool R-38 there are three tracts
23 within that pool and you'll notice at each one there is
24 a slightly different price for the gas. They have
25 different amounts. They separate it by volume. But I

1 still go to with total amount which is on the next page
2 at the top. The total volume is given. But using that
3 -- I have my values here at the side. But you'll note
4 there's only a slight difference in those prices quoted
5 for each section within that pool. I have had them
6 that were wildly different. This just happens to be a
7 little better report in that regard. On the second
8 page, the same parcel in Q-38 is noted and there also
9 is noted that the amount they gave -- the total as due
10 was 137.30 but the amount when you calculate by the
11 permit percentage of 3.6172492 -- what it comes out --
12 is 147. So for that one month report their ten dollars
13 short in their basic amount and still are only paying
14 four percent of what they report. Now, on the last
15 page is pool P-35 and Q-35 which are the odd balls in
16 this and they're taking 93 percent for transportation
17 and paying .59 percent. There was practically nothing
18 to start with. They start with \$27.19 but they pay
19 sixteen cents. They start with \$14.14, they paid eight
20 cents. I don't believe anyone would consider that
21 anything but totally ridiculous. The next sections go
22 faster. The next page is the Metcalf Estate. All of
23 these pertain to tract 7-A in the area of involvement.
24 The next page simply shows the wells involved and the
25 involvement of -- excuse me. I flipped two pages here.

1 The Metcalf Estate is suppose to be involved in a
2 conflicting interest deal and there has never been a
3 report of any kind for PGP concerning these pools and
4 this property. Of course, the conflicting claims were
5 contrived in my opinion and I've informed the Board of
6 that previously. The one I have a report here from is
7 simply what I can calculate from the reports I get in
8 the Franks Estate. At the bottom is the Metcalf
9 portion. They have a one-quarter interest and that
10 comes down to -- except in one case it is less than one
11 percent and in one it's about one and a third percent.
12 But there has never been a report or an accounting of
13 any kind. My next page is the Carl Metcalf involved
14 pools and wells and then the same type of report as I
15 gave you on his. There's no real point in reading ever
16 word. It's a duplication of what I had said in the
17 Franks Estate although I did make a change. I went
18 through just before coming over -- I went through the
19 permits and, as you know, there were revisions to some
20 of the permits. The latest information I had from Mr.
21 Les Arrington concerning the permit percentages -- and
22 this was suppose to be sheets he had transferred to
23 Conico. I had been using one of his amounts there but
24 I noted there was a revision in the pool later which
25 reduced by a slight amount to Carl Metcalf in one pool.

1 You'll notice the type of changes there in Q-40 which
2 brought his amount down somewhat. So there's only a
3 small shortage but it's still a shortage. The first
4 and third being a plus is only those where he was
5 reported an amount due and he was not even involved in
6 those. That should have been in the Franks Estate.
7 His overall to date has been 54 percent deductions for
8 transportation, 40 percent paid. The next is simply a
9 breakdown as in the Franks Estate and the bottom line
10 showing the percentages that he should be due from each
11 pool. Those percentages also are the shortages that
12 show up in the other deductions. In transportation
13 costs his costs have varied. They started at 59
14 percent in those two pools but 35 and 37 in the other
15 pools -- in the pools he was actually involved in
16 -- increasing to 60 percent by the end of the first
17 year. And the latest report is just under 90 percent,
18 deductions for transportation. The next page giving
19 the net amounts paid to Carl Metcalf, you'll notice
20 they start up there in the 57/58 percent with the
21 exception of those two pools and they gradually reduce
22 until at the end of the year they're 33 and in the last
23 report as you'll note is just over four percent. I
24 repeat, how can it get any more ridiculous? Why don't
25 they send us a bill and charge us for pumping. His

1 report is a similar thing. I simply marked it up so
2 you can review it. There's no need in getting into the
3 same condition we reviewed previous, but it's the
4 copies of the report I received for his interest. The
5 next area is damage to coalbed methane gas owners
6 outside of the permitted pools. I'm using 45.1-361.15
7 again, the additional duties and responsibilities of
8 the Board; In executing it's duties under this chapter
9 the Board shall administer a method of gas and oil
10 conservation for the purpose of maximizing exploration,
11 development, production and utilization of gas and oil
12 resources. And B, without limiting its general
13 authority the Board shall have the specific authority
14 to issue rules, regulations and orders pursuant to the
15 provisions of the Administrative Process Act 9-6.14:1.
16 In order to: 1) Prevent waste through the design
17 spacing or unitization or wells, pools or fields. 2)
18 Protect correlative rights. 3) Enter spacing and
19 pooling orders. I skipped #4. It didn't apply to what
20 I was doing here. 5) Establish maximum allowable
21 production rates for the prevention of waste and for
22 the protection of correlative rights. 8) Collect data,
23 make investigations and inspections, examine property,
24 leases, papers, books and records, require or provide
25 for the keeping of records and the making of reports.

1 11) Require additional data from parties to any
2 hearings. 12) Take such actions as are reasonably
3 necessary to carry out the provisions of this chapter.
4 And under 45.1-361.20, field rules and drilling units
5 for wells, hearings and orders -- E) The Board may
6 continue a hearing to its next meeting to allow for
7 further investigations and the gathering and taking of
8 additional data and evidence. If at the time of a
9 hearing there is not sufficient evidence for the Board
10 to determine field boundaries, drilling unit size or
11 shape or allowable production the Board may enter a
12 temporary order establishing provisional drilling
13 units, field boundaries and allowable production for
14 the orderly development of the pool pending receipt of
15 the information necessary to determine the ultimate
16 pool boundaries, spacing of wells for the pooled and
17 allowable production. Upon additional finding of fact
18 the boundaries of a pool, drilling units for the pool
19 and allowable production may be modified by the Board.
20 I underlined this because that's basically what I'm
21 requesting of the Board. It is hoped that upon review
22 of the enclosed data the Board will be made more aware
23 of the reasons behind the above sections of their own
24 governing document and the extreme importance of their
25 adherence to the intended use of those rules and the

1 expectations of those whose interests are being
2 directly affected by actions of the Board. The Board
3 has permitted pools which could encroach into areas
4 which this writer has responsibilities as agent to the
5 owners as well as a personal interest, specifically the
6 pools O-35, P-35, Q-35 to the west, N-40, O-40, P-40,
7 Q-40 and R-40 to the east, Q-38, R-38 and R-39 to the
8 south. This arrangement contrary to 45.1-361.15.A.2
9 and B.2 leaves N-36 through N-39, O-36 through O-39, P-
10 36 through P-39 and Q-36, Q-37 and Q-39 in limbo and at
11 the mercy of aggressive drainage from permitted pools.
12 Even normal drainage of a very passive nature would and
13 is causing great damage to the gas owners within pools
14 P-39 and Q-39 as has been previously detailed to the
15 Board. If 45.1-361.15.A2 and B2 are not to be followed
16 by the Board it should as a minimum outline perimeters
17 for recognizing B.5; establish maximum allowable
18 production rates for the prevention of waste and for
19 protection of correlative rights. It was my impression
20 during one of the permit hearings that Pocahontas Gas
21 Partnership proposed the formation of a much larger
22 pool in closing the entire boundary for which my
23 concerns are directed in a stated attempted to dis-
24 tribute royalties with a more equitable balance. Since
25 the operators acknowledged recognition that damage

1 outside of the permitted pools would occur with their
2 permitted placement of wells the Board should either
3 require a corrective formula under 45.1-361.15.B2 or
4 reestablish pooling orders and/or drilling units under
5 B.3 and B.4 or 45.1-361.20.E. The Board cannot
6 establish the rules for pool boundaries with spacing,
7 well spacings, payment distribution and allowable
8 deductions and still claim innocence for any and all
9 damages because there was a pre-existing lease agree-
10 ment for the self same gas and the Board does not
11 interfere into private leases. That goes back to the
12 first note. The damages to coalbed methane gas owners
13 within the permitted pools; reference the rules listed
14 in the preceding two sheets plus and with special
15 emphasis on 45.1-361.15.A3. Administer procedures for
16 the recognition and the protection of the rights of gas
17 or oil owners with interests in gas or oil reserves
18 contained within a pool. The pools were established by
19 the Virginia Gas and Oil Board without any development
20 formula for determining the approximate or expected
21 drainage areas. This leaves not just the possibility
22 of damages to some owners and enhancement to others but
23 the absolute necessity of the damages and enhancements.
24 Obviously the establishments of limits by 45.1-361.17
25 for limits for the location of wells within each pool

1 and between wells whether in one pool or separate pools
2 were made to minimize these damages and enhancements.
3 However, 45.1-361.17 and 45.1-361.15.A2 seem to have
4 been ignored by the Board during permitted hearings.
5 The Board is hereby being requested to establish
6 formula for balancing the damage returned effect of
7 their violations in well locations within the pools and
8 between wells. Statewide spacing, under B; Unless
9 prior approval has been received from the Board or a
10 provision of the field order or pool rules so allow
11 wells drilled in search of coalbed methane gas shall
12 not be located closer than 1,000 feet to any other
13 coalbed methane gas well, or in the case of coalbed
14 methane gas well located in the gob such well shall not
15 be located closer than 500 feet to any other coalbed
16 methane gas wells located within the gob. I've
17 completed that because there's something I noted in
18 reading that. It seems logical to me that if you're
19 drilling into the gob you're drilling into a previously
20 mined area in which the gas can travel great distances
21 unobstructed and yet the distance to the boundary is
22 far closer. I would have supposed a reverse direction
23 of the conditions of the directions of in the gob or
24 not would have been of closer approximation of what you
25 would expect. A coalbed methane gas well shall not be

1 drilled closer than 500 feet or in the case of coalbed
2 located in the gob, not closer than 200 feet from the
3 boundary of the acreage supporting the well. I don't
4 need to go any further than that. 45.1-361.20, field
5 rules and drilling units for wells, hearings and
6 orders, the Board may continue a hearing -- and I think
7 this is a repeat of one I had in a previous section
8 here also because I've underlined the same at the
9 bottom -- upon additional findings of fact the boundar-
10 ies of a coal drilling units for the pool and allowable
11 production may be modified by the Board. During the
12 Board meetings which approved the permits issued to
13 Pocahontas Gas Partnership statements were made as to
14 the expected life and production of the gas wells in
15 question. If the Board will check those records,
16 recorded comments and compare them with the reports
17 provided by PGP to the gas owners who receive royalties
18 I believe they will find that with the same deductions
19 as declared within the reports no well would ever
20 recover more than a fraction of the costs associated
21 with its drilling, not just production but its drill-
22 ing. I think also here I'd like to inject that the
23 participating partners who put up three times those
24 costs and the non- participating who put up 100 percent
25 could only expect a huge loss and never even a break

1 even point possibility with the reports we've been
2 seeing. It is known that the pipeline operators on
3 this and adjacent property are structured of, by and
4 for the same parent organization as is Pocahontas Gas
5 Partnership. Also PGP, Conico, Consolidation Coal,
6 Dupont, and who knows how many others are under the
7 same business umbrella and may be involved in the
8 handling of the produced gas along its way to market.
9 The operator, PGP, should not be permitted to transfer
10 custodial care of the gas to other organizations
11 connected in any to PGP, their parent company or
12 corporation who then take deductions not permitted by
13 the initial operator, plus further transfer or trans-
14 fers to still other connected entitled or still more of
15 the same depleting the receipts due to the royalty
16 owners to the point of disappearance. I am enclosing
17 several copies of selected comments from court records
18 to illustrate the point that the entire gas production
19 process should and has been required to assure the
20 prime objective of being profitable, not only to the
21 operator and his associates but to the other investors
22 as well -- the investments of the royalty payees (gas
23 owners) is the gas itself which when depleted by the
24 operator is gone forever. When this resource is
25 permitted to be stolen and/or depleted with no return

1 to its rightful owner he or she is left with only
2 damage and not even a tax deduction for the loss as
3 any such break is reserved for the operator by our
4 perverted legal rules and regulations. The next
5 section is only the back-up data for what I have just
6 said and it won't take that long. The first sheet is
7 the VGOB approved violations of Section 45.1-361.17.
8 The 1,000 foot minimum spacing between wells was
9 permitted in pool R-38 between well 424 and 427, but
10 they do fall within the same pool. They don't reach
11 the 1,000 feet. They're 813. The 500 foot minimum
12 spacing to the boundary of the supporting pool is
13 violated with approval of the Board in pool N-40, O-41,
14 P-25, P-40, Q-35, Q-38, R-38, R-39 and R-40. Back on
15 the cover sheet you'll notice that those vary and in
16 pool O-41 it's less than sixteen feet from the boundary
17 of the pool. In P-40 the well 400 is 250 feet from P-
18 39 and I have a note there with an asterisk, *Drainage
19 lost to P-39 which has no well is 20.51578 acres or
20 25.6446 percent of one 80 acre pool. That's from one
21 well outside that one pool. The others -- you'll note
22 down on the bottom, Q-38 has a well 90 feet from its
23 boundary. R-38 had one 76 feet from its boundary. R-
24 39 has well 422 68 and a half feet from Q-39 and Q-39
25 which has no well -- the drainage is 9.2864 acres from

1 well 400 plus 26.3 acres from well 422 in R-39, giving
2 a total of 35.59 acres or almost 44 and a half percent
3 of one 80 acre pool. This was by a permit -- approved
4 permit. I've attached one copy of each of the above
5 noted pool well location plats as given in the VGOB
6 permit document. These maps include my dimensions and
7 notations and you're welcome to check them out if you
8 want. The next section -- I'll only read a portion of
9 it -- is the law. I obtained a listing of some of the
10 rulings of courts and they're in different areas. I
11 think most of these were from West Virginia, but some
12 from other states. But I would like to note two or
13 three items in here. On the second page of that which
14 is Page 3, the second paragraph, where a lessor leases
15 land for oil and gas purposes his remedy for failure on
16 part of the lessee to further develop the leased
17 premise or to properly protect the lines thereof from
18 drainage through wells on adjacent property is ordinari-
19 ly by an action for damages and not by way of forfeit-
20 ure of the lessee's right to bore and drill for oil.
21 This applies to gas also they mention. However, where
22 the allegations and proof show with reasonable certain-
23 ty a fraudulent drainage of gas in substantial quantit-
24 ies from the leased premises through a well operated by
25 and on adjacent property belonging to the lessee the

1 latter may be compelled to sink an offset well on the
2 leased premises or submit to a forfeiture of all except
3 acreage around the well theretofore drilled under the
4 lease. Failure or refusal while occupying the lease
5 and operating it to drill additional wells under
6 circumstances imposing a duty to do so makes the lessee
7 liable in damages to the lessor for which the remedy at
8 law is considered to be an adequate one by courts in
9 all jurisdictions, affording no ground for either
10 partial or total cancellation or rescission and this
11 rule has been repeatedly asserted (Hall versus South)
12 -- and they simply go into the legal portions. On Page
13 4, the top paragraph, while in an oil and gas lease
14 there is an implied covenant against permitted sub-
15 stantial drainage through wells on other land such
16 covenant does not apply to relatively slight drainage
17 which is incident to exploration of oil and gas and to
18 the production thereof after discovery. On principle,
19 if an action is brought for breach of the implied
20 covenant to protect the leased land from drainage by
21 drilling wells to offset those on other property near
22 enough to drain the lease hold the plaintiff ought to
23 recover what he has lost by such breach. That is the
24 value of the oil he would have received had the
25 covenant been performed by the lessee. And the same

1 rule should apply to the drainage of gas. The lessor
2 in an oil and gas lease may maintain a suit in trespass
3 on the case to recover damages for the injuries
4 sustained by him because of the failure of the lessee
5 to drill wells necessary to save the oil on his land
6 and prevent it from being drained by wells drilled on
7 adjacent lands. The last paragraph I'd like to read,
8 the practically universal interpretation of oil and gas
9 leases is that where the contract does not expressly
10 state what shall be done by the lessee there arises the
11 legal implication that if the latter find one or both
12 of these minerals on a lease operated by him or either
13 he or other operators find them on adjoining land he
14 will drill as many wells as will afford sufficient
15 protection against drainage and otherwise so develop
16 the leased premises as to serve the mutual benefit of
17 both lessor and lessee. The necessity for such
18 interpretation is readily apparent when the particular
19 and distinctive characteristic of these mineral
20 substances are considered. Hence although the judge-
21 ment of one experienced in developments under leases
22 of this character is controlling when compared with
23 that of the landowner who is without such expertise,
24 yet his judgement if fraudulently exercised are
25 exercised solely to promote the individual's selfish

1 interest thereby ignoring the interest of the lessor
2 such judgement being fraudulent will not avail. To
3 serve it must conform to the judgement generally
4 exercised by other operators under similar circum-
5 stances and conditions and in view of the real purpose
6 and intention of the parties when entering into the
7 agreement. The honest judgement of the one on whom the
8 burden and expense of operation rests will generally be
9 regarded as conclusive of the rights of the parties.
10 No one has questioned their right to have rights as we
11 seem to have been. Under the producing gas lease which
12 provided that the royalty would be one-eighth of the
13 wholesale market price of the gas at the well the
14 lessee was not entitled to deduct from the royalties
15 one-eighth of the tax imposed on producers of gas.
16 More over the 1939 act of the Legislature which
17 authorized a lessee under an oil and gas lease to
18 deduct from his royalty payments to the lessor that
19 proportion of the production tax paid by the lessee
20 which the royalty bore to the entire production did not
21 nullify this holding since such an act was invalid for
22 the reason that it impaired the obligation of contract.
23 Now, on down in the third paragraph on Page 5 Note 13
24 in the middle of that paragraph. There is always
25 implied in every oil and gas lease a covenant to drill

1 the number of wells reasonably necessary to develop the
2 property and prevent drainage by operation on adjoining
3 lands. Down in the last paragraph under Note 16 which
4 is in the middle of the paragraph, in the absence of an
5 expressed provision requiring the lessee to protect the
6 lease premises from drainage by oil or gas wells on
7 adjacent property an implied obligation will be read
8 into the lease to give such protection. On Page 6 in
9 the top paragraph down about eleven lines over at the
10 right edge it starts, and owing to the particular
11 nature of the mineral and the danger of loss to the
12 owner from drainage by surrounding wells such lessees
13 are construed most strongly in favor of the lessor --
14 such leases are rather. And the next to the last
15 paragraph on Page 6, to say the lessor intended to
16 permit the oil and gas in his land to be withdrawn
17 from it otherwise than through wells drilled on it
18 under the lease and thus to let it go to other persons
19 for nothing as an incident of the procurement of a
20 small rental value for the term of five years would be
21 inconsistent with reason and contrary to the legal
22 principles governing the relations of landlord and
23 tenant. He expected it to remain in the land until the
24 rental period ended whether it ceased by the drilling
25 of a well or the expiration of the term. Neither could

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have intended at the time of the execution of the lease that the lessee should take out the mineral through wells on other lands. The rental was for delay, not for destruction. I only read this in to show that it is covered by other angles as well. On Page 7, the top paragraph starting at Note 12, the fact that the lessor under an oil and gas lease has accepted a quarterly delay rental does not astop him from bringing a suit within the quarter covered by the rental against the lessee to require specific performance of the implied covenant to protect the estate from draining where the complaint contains allegation to the effect that the lessee is actually draining gas in large quantities from the property covered by the lease through wells owned and operated by the lessee on contiguous properties. Next to the last paragraph, a lessor of oil and gas parties with all right and control over the production of his property accept the right to insist upon protection of the leased property by reasonable development under the lease. However, where the same lessee holds under two adjoining lessors he may not fraudulently or evasively so drilled his wells as to drain the property of one to the detriment of the other. The equity has jurisdiction to protect the lessor in an oil and gas lease from the drainage of

1 such minerals from his property by the fraudulent
2 conduct of the lessee. I'll go on to the sketches from
3 there and it won't take but a minute. Now, Page 8 is
4 simply a sketch of N-40 showing the location of well
5 608 and it's proximity to the boundaries of its
6 supporting pool which goes down to 1,015 feet. The
7 circles I have drawn on these are the 80 acre equiva-
8 lent diameters of both wells. Note that well 611 is
9 almost perfectly positioned to drain that entire pool
10 without well 608. On the next page, O-40 shows the
11 location of less than sixteen feet from the boundary of
12 well 607. By the way, that outside drainage or that
13 drainage would be outside property I represent mostly
14 because the only representation is in the upper left
15 hand corner which is only peripheral to that. The next
16 page, P-35 and that is 437 which is close to but just
17 outside your 500 foot minimum requirements. The next
18 page is one of the worst ones. Page 11, pool P-40 has
19 a well in each corner which, as you can see, drains a
20 substantial portion of the pools they are in by
21 combining both wells but also really drains outside
22 into that property with no protection to correlative
23 rights whatsoever. The next page, Q-35 has a consider-
24 able amount outside. And I might say all of that is
25 outside any interest I represent but it still is

1 outside the pool.

2 MR. CHAIRMAN: Just for the record, most of these if not all
3 of them are Oakwood II orders that you're talking about
4 here.

5 MR. FRANKS: Well, except for P-35 and Q-35. I think p-35
6 and Q-35 was in one order and the addition was in the
7 east side. Except for those two this is in the II
8 order. Now, on Page 13 which is Q-38 my circle is the
9 80 acres and this is the one I'm noting in the upper
10 portion. Tract 5 which is noted on here as 41.31
11 percent which is correct if you use their's. But the
12 only reason for my notes on here, this pool was a
13 little over 80 and a quarter acres, as most of them
14 were, and the acreage given in here relates to that and
15 the percentage is in relation to the full pool, not
16 just 80 acres. But you'll note that the drainage clips
17 two corners of that Tract 5. Tract 5 receives 41
18 percent of the payment. The drainage -- and this
19 drainage does represent parties I represent in the
20 lower portion. Almost all of that outside the pool is
21 property represented by my parties. They are being
22 heavily drained but lightly paid. And then even more
23 lightly paid with all the deductions. On Page 14, R-
24 38, there are two wells and you'll note one of them is
25 just barely within the limits and one is only 76 feet

1 from its boundary. I have some calculations a little
2 later. Page 15, R-39, this well is only draining a
3 little over one-third of its pool. The rest of its
4 drainage is outside of its supporting pool yet no
5 payment goes outside. R-40 has two wells. Well 419,
6 of course, is only slightly outside of its allowed
7 boundaries but the bottom is well out. Then I have
8 Page 17 and 18. The Board already has copies of this
9 but it's a good point to slip back in, the pools I
10 spoke of before which have no well. The highlighted
11 portion has no payment and as you can see, that's a
12 pretty good portion just from that well. On Page 18,
13 pool Q-39 has no well and no payments and it's being
14 drained from three different sides. A hugh portion of
15 its area is being drained with no payment. On the next
16 page I simply put in three items her and these next
17 pages I didn't use your pools or boundaries because
18 most of your pools are more -- they're not quite
19 square. They're close but they're not quite square and
20 they're not exactly the same on each side. What I did
21 here is draw a pool with equal sides equaling 80 acres.
22 The first page, if a well were drilled directly in the
23 center which no one could have any problem with. But
24 if it were exactly in the center it would drain nine
25 percent outside that pool and, of course, the corners

1 wouldn't be. And everyone understands you have to
2 cover all properties. So you have to square a pool.
3 The next page, Page 20, is that same acreage if you
4 move that permitted well to its exact 500 foot spacing.
5 You're draining two sides slightly and outside consid-
6 erably. Now the outside drainage reaches 25 and a half
7 percent outside its supporting pool.

8 MR. CHAIRMAN: You're trying to overlay statewide spacing
9 over top of a court ordered field rules.

10 MR. FRANKS: Right. Well, this is an 80 acre pool with the
11 well precisely to the order's allowances.

12 MR. CHAIRMAN: I understand. I'm just clarifying for the
13 record what you're doing, that you're overlaying
14 statewide spacing over top of Board field rules which
15 is comparing apples and oranges.

16 MR. FRANKS: Well, if you permit a well within 500 feet
17 you're within the rules and you would still be draining
18 25 and a half percent outside here.

19 MR. CHAIRMAN: I'm not trying to debate what you're trying
20 to show. I'm simply clarifying for the record what
21 you've done by doing this.

22 MR. FRANKS: Okay. Now, Page 21, this is the worst scenario
23 you can get from the field rules -- or from the rules
24 applicable within the permits and no violations. If
25 you're 500 feet in two directions from a corner of a

1 square 80 acre pool and drill a well which drains 80
2 acres you're draining over 38 percent outside that pool
3 and this is permissible. That's why I stated in one of
4 the earlier ones I would like for the Board to ask the
5 Legislature or whoever -- find out. I think that's too
6 great a percent to ignore and to ignore compensation
7 outside when you reach that percentage. 25 in my
8 opinion would be a little iffy but this is not my
9 decision to make. But I think there should be somebody
10 looking at this to consider that. On Page 21, this is
11 still a perfectly non-violation permitted well. It's
12 still 38.78 percent outside the pool. Now, the
13 remainder is this 80 acre pool with the location of the
14 wells per your agreement and these are violations of
15 the rules that were permitted. Under N-40 well 608
16 will drain -- 61 percent of its drainage would be
17 outside its supporting pool.

18 MR. CHAIRMAN: This is where you're saying that in your
19 opinion violating statewide spacing rules?

20 MR. FRANKS: Yes, sir.

21 MR. CHAIRMAN: Not taking into consideration the Board has
22 the authority to promulgate field rules separate and
23 apart from those. And that's what the Board has done.

24 MR. FRANKS: Right. I'm simply using the manual's regul-
25 ations. That's what I'm doing here. But this is a

1 permitted 61 percent drainage outside with no formula
2 for compensating the damaged parties. And my objection
3 is not with the placement of the pools or the permitt-
4 ing of the pools but in the non-use of a formula to
5 compensate damaged parties. On Page 23, well 607 which
6 I noted before is outside our area. There's 44 acres
7 and 55 percent outside the pooling of the one well. On
8 Page 24, P-35 would be almost 30 acres and 37 percent
9 of its drainage is outside the pool. Then we get to P-
10 40 which is the really biggy with the two wells in
11 opposing corners. There is well 400, almost 58 percent
12 of its drainage is outside its supporting pool. Well
13 602, 65 and three-quarters percent of its drainage is
14 outside its supporting pool which amounts to 123.72
15 percent of a full 80 acre pool being drained outside
16 the supporting pool. That is the biggy here. Now, Q-
17 35 still has almost 60 percent outside its supporting
18 pool. That wouldn't benefit me if it were either way,
19 but that's -- I just happened to have the data on that.
20 The next one, Q-38, a little over 47 and a half percent
21 of its drainage is outside its supporting pool. R-38
22 has two wells and, of course, they would overlap but
23 what I'm showing here is the area outside R-38's pool
24 for well 424 is 52 percent. And in just the one
25 overlapped area of 427 would be another 21 percent and

1 that's just what I note. In R-39 there's over 61 and a
2 half percent of its drainage outside its supporting
3 pool. In my last page on R-40 there is a combination.
4 There's 27 percent on top, 42 in the bottom, which
5 would amount to 70 percent of an 80 acres pooling being
6 drained outside its supporting area. Now, as I say, we
7 all realize the location of wells in this area have to
8 be placed where it's possible, not where you'd like to.
9 And we do know that consideration was given to the
10 proposed mining area below which altered some locat-
11 ions. This is entirely agreeable. I had no argument
12 with that then or now. But what my argument is is that
13 there is no automatic compensation for extreme damages
14 outside the supporting pool and I believe there should
15 be.

16 MR. CHAIRMAN: Thank you, Mr. Franks. I would remind the
17 Board, of course, we announced our discussion on
18 royalty calculations including deductible expenses and
19 should confine our discussions to that. If Mr. Franks
20 wishes to petition the Board for a change in the field
21 rules I'm not trying to limit discussion but I'm trying
22 to make sure that we stay on our announced agenda.

23 MR. FRANKS: As to the adverse drainage I agree, that's in
24 there, but the Board already has their rules and they
25 can modify them as they see fit for allowable deduct-

1 ions. But you also have the report here showing that
2 there's no justification for "transportation". I
3 suspect they're throwing in capital equipment and
4 salaries and depreciation and everything else. I do
5 know that these deductions sky rocketed when Conico
6 transferred their personnel from the Oklahoma area to
7 Virginia. And I suppose it was simply to load it up
8 and drain all they could out of it for salaries they
9 automatically had to pay anyway. That's a personal
10 opinion.

11 MR. CHAIRMAN: Any questions, members of the Board, of Mr.
12 Franks? Comments? Thank you.

13 MR. FRANKS: Thank you.

14 MR. CHAIRMAN: Does anyone else wish to address the Board in
15 this matter? (Pause.) I take that as a no. Any
16 comment or action from the Board? Okay. We'll take a
17 ten minute recess.

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

20 MR. CHAIRMAN: Do any of the Board members have anything
21 further on agenda Item I regarding royalty calculations
22 that you want to observe or say for the record? Any
23 other comments from those in attendance? The record
24 will show there are none.
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3 ITEM II

4 MR. CHAIRMAN: The next item on today's agenda is a petition
5 from Equitable Resources Exploration for a well
6 location exception for well V-2534. This is docket
7 number VGOB-95/10/24-0525. We'd ask the parties that
8 wish to address the Board in this matter to come
9 forward at this time.

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

14 MR. CHAIRMAN: Any others? The record will show there are
15 none. You may proceed.

16 COURT REPORTER: (Swears witnesses.)

17 DON HALL

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

20
21 DIRECT EXAMINATION

22
23 BY MR. KAISER:

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

1 A. I'm Don Hall. I work for Equitable Resources as
2 district land man.
3 Q. Have your qualifications as an expert witness previous-
4 ly been accepted by this Board?
5 A. Yes.
6 MR. KAISER: Mr. Chairman, we'd like to offer Mr. Hall as an
7 expert witness in this matter.
8 MR. CHAIRMAN: Go ahead.
9 Q. (Mr. Kaiser continues.) Mr. Hall, do your respons-
10 abilities include the lands involved here and in the
11 surrounding area?
12 A. Yes, they do.
13 Q. Was a permit application for well V-2534 submitted to
14 the DMME on 9/29/95?
15 A. Yes, it was.
16 Q. And are you familiar with our application for the
17 location exception for well V-2534 and the relief
18 requested?
19 A. Yes.
20 Q. Have all interested parties been notified as required
21 by Section 4.B of the Virginia Gas and Oil Board
22 Regulations?
23 A. Yes, they have.
24 Q. Would you indicate for the Board the ownership of the
25 oil and gas underlying the unit for well V-2534?

- 1 A. Penn-Virginia Resources owns 97.94 percent of the units
2 and Greater Wise owns 2.06 percent.
- 3 Q. Does EREX have an oil and gas lease covering all these
4 tracts?
- 5 A. Yes, we do.
- 6 Q. Does EREX have the right to operate the reciprocal
7 wells?
- 8 A. Yes, sir.
- 9 Q. Mr. Hall, while I hand these exhibits out to the Board
10 would you please identify them?
- 11 A. Exhibit #A is a map showing 2534 and the two wells that
12 we're asking an exception from. The area colored in
13 red is the area that would be a legal location from
14 those wells in addition to the other wells that you see
15 on the map around there. The other exhibit that you're
16 passing out is a letter from Penn-Virginia Coal Company
17 signed by Keith Horton. We have been attempting to
18 find a legal location for this well for quite some time
19 and all the area colored in the red has been coal
20 denied by Penn-Virginia. We finally found this one
21 particular spot that would not interfere with their
22 mining operations. Mr. Horton's letter addresses that
23 matter.
- 24 Q. So in conjunction with Exhibit #A, the map that you've
25 provided and the letter from Mr. Horton just to recap

1 the well work permit submitted on 9.29.95?
2 A. That's correct.
3 Q. Will this be sufficient to penetrate and test the
4 common sources of supply in the subject formations?
5 A. Yes, it will.
6 Q. Mr. Dahlin, in your opinion will the granting of this
7 location exception be in the best interest of prevent-
8 ing waste, protecting correlative rights and maximizing
9 the recovery of gas reserves underlying the unit for V-
10 2534?
11 A. Yes, sir.
12 MR. KAISER: I have nothing further of this witness at this
13 time, Mr. Chairman.
14 MR. CHAIRMAN: Questions, members of the Board.
15 MR. EVANS: The offset wells, are there any correlative
16 rights issues that are of concern?
17 THE WITNESS: We have all that surrounding area leased with
18 the wells that we're getting an exception from.
19 MR. CHAIRMAN: Other questions?
20 (Witness stands aside.)
21 MR. CHAIRMAN: Do you have anything further?
22 MR. KAISER: Nothing further, Mr. Chairman.
23 MR. EVANS: Mr. Chairman, I move we grant the petition.
24 MR. KELLY: Second.
25 MR. CHAIRMAN: A motion to grant and second. Further

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discussion? All in favor signify by saying yes. (ALL
AFFIRM. Opposed say no. (NONE.) Unanimous approval.
Thank you.

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ITEM III

MR. CHAIRMAN: The next item on today's agenda is a petition from Buchanan Production Company for the pooling of a coalbed methane unit identified as R-25 located in the Oakwood Coalbed Methane Gas Field I. This is docket number VGOB-95/10/24-0523. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. SWARTZ: Mr. Chairman, Mark Swartz and Les Arrington on behalf of the applicant.

MR. CHAIRMAN: Any others? The record will show there are no others. You may proceed.

MR. SWARTZ: We've got a booklet of exhibits that we probably should distribute before we get going.
(Pause.)

MR. SWARTZ: Mr. Arrington, you want to raise your hand to be sworn here.

COURT REPORTER: (Swears witness.)

LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

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BY MR. SWARTZ:

Q. State your name for the record, please.

A. Leslie K. Arrington.

Q. And who are you employed by?

A. Consol.

Q. Are you here on behalf of the applicant?

A. Yes, I am.

Q. Did you prepare both the notice of hearing and the application that's been filed in this matter?

A. Yes, I have.

Q. Have you passed or circulated some exhibits to the Board today?

A. Yes, I have.

Q. Is one of them a revised Exhibit #A?

A. Yes, it is.

Q. Would you tell the Board members what has changed on the revised Exhibit #A that they have?

A. Yes. Revised Exhibit #A is a revised plat. What had happened on the plat, the topography was not exactly right but the property was right and we revised it to show the proper location of the topography.

Q. Essentially the things on the surface -- the topography -- have moved to the east a couple hundred feet?

1 A. Yes.

2 Q. And the well has stayed where it was on the original
3 plat?

4 A. That's correct.

5 Q. Is that the only difference?

6 A. That's the only difference. Yes.

7 Q. The applicant here is Buchanan Production Company?

8 A. Yes, it is.

9 Q. And Buchanan Production Company is a Virginia general
10 partnership that has two partners, correct?

11 A. That's correct.

12 Q. Are both of those parties wholly owned indirect
13 subsidiaries of Consol, Inc.?

14 A. Yes, they are.

15 Q. Is Buchanan Production Company authorized to do
16 business in Virginia?

17 A. Yes, it is.

18 Q. With regard to the issue of designated operator is the
19 applicant requesting that Consol be designated the unit
20 operator?

21 A. Yes, we are.

22 Q. Has Buchanan Production Company essentially delegated
23 the management of its affairs to Consol?

24 A. Yes, it has.

25 Q. Are certain exhibits with regard to that delegation in

1 the packet that you gave to the Board today?

2 A. Yes, they are as Exhibits #2, #3 and #4.

3 Q. Are there certain specific people in Consol that have
4 been delegated responsibilities to act for Buchanan
5 Production Company?

6 A. Yes, there is.

7 Q. And those exhibits show who those folks are?

8 A. Yes, they do.

9 Q. There's only one respondent, is that correct?

10 A. That's correct.

11 Q. It's the Keen Mountain Free Pentecostal Holiness
12 Church, correct?

13 A. That's correct.

14 Q. And they are fee owner of a small tract?

15 A. That's correct.

16 Q. Is this unit to be pooled as a fracked gas unit under
17 Oakwood I only?

18 A. Yes.

19 Q. Is it actually on the edge of some proposed mining and
20 is it anticipated that it will not be mined through?

21 A. That's correct.

22 Q. And that's why you're simply requesting that it be
23 pooled under Oakwood I?

24 A. That's correct.

25 Q. Did you mail to the respondent as required?

1 A. Yes, we did on September 25th, 1995.

2 Q. Does the proof of publication that was filed in the
3 bound volume of exhibits show that that mail was signed
4 for?

5 A. Yes, it does.

6 Q. So the only respondent signed for the mail?

7 A. That's correct.

8 Q. Was there also publication here?

9 A. That's also correct. In the Bluefield Daily Telegraph
10 on October 4th, 1995 with the certification of public-
11 ation also along with the return receipts.

12 Q. And that certification is behind Tab 1 as well?

13 A. That's correct.

14 Q. And the notice was published in the exhibit showing the
15 location of the unit in the field?

16 A. That's correct.

17 Q. With regard to standing here, if you go to Exhibit #A,
18 Page 2 of the application, would you tell the Board
19 what interests the applicant has acquired and what
20 interests are sought to be pooled by this application?

21 A. The interest that we control is 99.7625 percent and the
22 pooled interest will be 0.2375 percent.

23 Q. That's both coal and oil and gas that's to be pooled in
24 that percentage?

25 A. That's correct.

- 1 Q. Have people contacted church representatives on behalf
2 of the applicant to either try and lease or try and
3 purchase the interests here?
- 4 A. Yes, we have.
- 5 Q. Was there, in fact, discussions with regard to purchas-
6 ing the interests?
- 7 A. Yes, there was.
- 8 Q. Did the church at least at that point in time decide
9 not to go through with the purchase and sale?
- 10 A. That's correct.
- 11 Q. Is that offer still on the table, however?
- 12 A. Yes.
- 13 Q. With regard to other leases and the terms of other
14 leases that you have acquired in this unit and in
15 adjoining units would you tell the Board what the
16 typical or standard lease terms are in the event a
17 lease was to be obtained here?
- 18 A. It's a dollar per acre per year with a ten year term
19 and one-eighth royalty.
- 20 Q. The rental, is that payable only until production
21 commences?
- 22 A. That's correct.
- 23 Q. In the event that the Board would pool this unit would
24 you recommend that those terms be incorporated in any
25 order to govern the deemed to have leased relationship?

- 1 A. Yes, we would.
- 2 Q. This R-25 unit is an 80 acre unit, correct?
- 3 A. That's correct.
- 4 Q. It's in the Oakwood Coalbed Gas Field I?
- 5 A. That's correct.
- 6 Q. And it's intending that it will be a frack unit?
- 7 A. That's correct.
- 8 Q. Is the well's location dictated by or at least in part
- 9 by the Buchanan #1 mine plan?
- 10 A. Yes, it was.
- 11 Q. And it is adjacent to some entries in that mine?
- 12 A. Yes, it is.
- 13 Q. In terms of the pool is the well intended to develop
- 14 all seams below the Tiller?
- 15 A. Yes, it is.
- 16 Q. Have you provided the Board with an estimated cost of
- 17 this well?
- 18 A. Yes, we did.
- 19 Q. Would that be in Exhibit #C?
- 20 A. Yes.
- 21 Q. Did you prepare that?
- 22 A. Yes, I did.
- 23 Q. When?
- 24 A. On September 22nd, 1995.
- 25 Q. What is the estimated completed cost of that well?

1 A. \$241,623.24.

2 Q. Is that a reasonable estimate in your judgement?

3 A. Yes, it is.

4 Q. Does that include the cost of stimulation?

5 A. Yes, it does.

6 Q. Is that anticipated cost or estimated cost to stimulate
7 more than one seam?

8 A. That's correct. It is.

9 Q. Roughly what interval?

10 A. Approximately 600 feet.

11 Q. The projected depth of the well is what?

12 A. 1,676 feet.

13 Q. Now, there is an Exhibit #B-3 attached to the applic-
14 ation and that shows the undivided interests of the
15 respondents in the unit, correct?

16 A. Yes.

17 Q. In terms of calculating either royalty interests or
18 participation interests or carried interests that
19 interest in unit percentage would be the percentage
20 that would be used?

21 A. That's correct. It would.

22 Q. Is it your opinion that the plan of development for
23 this frack well for this unit is a reasonable plan to
24 develop the coalbed methane within and under this unit
25 for the benefit of the owners?

1 A. Yes, it is.

2 Q. Will this well contribute to the protection of cor-
3 relative rights of the owners of the methane within
4 and under the unit in question and lessen the likeli-
5 hood of physical and economic waste?

6 A. Yes.

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

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

(Witness stands aside.)

9
10 MR. EVANS: Mr. Chairman, I make the motion that we grant
11 the petition.

12 MR. KELLY: Second.

13 MR. CHAIRMAN: A motion to grant and a second. Further
14 discussion? All in favor signify by saying yes. (ALL
15 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.
16 Thank you.

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3 ITEM IV

4 MR. CHAIRMAN: The next item on today's agenda is a petition
5 from Buchanan Production Company for the creation of a
6 sealed gob drilling unit and force pooling for the unit
7 identified as VP8-SGU1. This is docket number VGOB-
8 95/10/24-0526. We'd ask the parties that wish to
9 address the Board in this matter to come forward at
10 this time.

11 MR. SWARTZ: Mark Swartz and Les Arrington. Once again
12 we've got some exhibits we'd like to pass out.

13 (Pause.)

14 MR. CHAIRMAN: The record will show there are no others.
15 You may proceed.

16 LESLIE K. ARRINGTON

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

19
20 DIRECT EXAMINATION

21
22 BY MR. SWARTZ:

23 Q. State your name for the record, please.

24 A. Leslie K. Arrington.

25 Q. Who do you work for?

1 A. Consol.

2 Q. Are you here on behalf of the applicant?

3 A. Yes, I am.

4 Q. Did you prepare both the notice of hearing and the
5 application concerning this sealed gob unit?

6 A. Yes, I did.

7 MR. SWARTZ: By way of introduction and explanation, this is
8 a sealed gob unit and if you turn to the last page of
9 the exhibits you've got today there should be a map.
10 Just to give you an idea of what we're going to be
11 talking about, there's a solid line which contains or
12 outlines the sealed gob unit that's proposed.

13 Q. (Mr. Swartz continues.) Les, how many acres are in
14 this proposed unit?

15 A. 634.139.

16 Q. And the dark dots on the last page of the exhibit in
17 the bound volume, are those existing CBM wells or VVHs?

18 A. Yes, they are.

19 Q. These have already been drilled prior to today?

20 A. That's correct. They have.

21 Q. With regard to the number of these CBM wells or VVHs
22 how many does the applicant and its operator anticipate
23 that they will be using to produce from this sealed gob
24 unit?

25 A. Eight.

1 Q. And there are depicted on this Exhibit AA 22 holes,
2 right?

3 A. Approximately, yes.

4 Q. So you're anticipating that you will be using eight of
5 22?

6 A. Uh-huh.

7 Q. Do the cost estimates which are in the application
8 reflect the use of eight units?

9 A. Yes, it does.

10 Q. You'll notice that this unit -- this proposed seal gob
11 unit follows some of the 80 acre boundary lines, does
12 it not?

13 A. That's correct. It does.

14 Q. And it actually affects a number of -- well, it looks
15 about twelve units in part or in whole?

16 A. That's correct. It does.

17 Q. How many of these twelve units that would be wholly or
18 partially contained within this sealed gob unit are
19 already subject to Board orders?

20 A. Eleven.

21 Q. Eleven out of the twelve?

22 A. Yes.

23 Q. Which unit is not subject to a prior Board order?

24 A. X-21.

25 Q. So it would down in the corner here, this little piece?

1 A. Yes.

2 Q. The last time we were here on a sealed gob unit we
3 needed the order to be retroactive, do you remember
4 that?

5 A. That's correct. Yes.

6 Q. In this situation we do not need a retroactive order?

7 A. That's correct.

8 Q. In fact, this has not been sealed as of today?

9 A. That's correct.

10 Q. And you're not sure when it's going to be sealed?

11 A. That's correct.

12 Q. Is it your expectation -- can you tell the Board that
13 when it is sealed there will be a conversion in terms
14 of accounting?

15 A. Yes, it will.

16 Q. From the accounting that occurs under the existing
17 orders with regard to individual wells to an accounting
18 under the order that we're seeking to obtain here?

19 A. That's correct.

20 Q. We are required under the Oakwood Rules to file mine
21 plans with Mr. Fulmer's office before we pay royalties.
22 So when we change the way we're paying we would be
23 filing a new mine plan showing the seals here to enable
24 us to change the way we pay, correct?

25 A. That's correct.

1 Q. So in the ordinary course Mr. Fulmer's office would be
2 notified when this is sealed and the royalty calcul-
3 ations change?
4 A. That's correct. It would.
5 Q. Another thing that is different when we seek to pool a
6 sealed gob unit of any size. In the list of respond-
7 ents which is pretty lengthy -- if you look at the
8 notice of hearing there's 77 respondents. Have we
9 included people that we normally would not include at a
10 pooling?
11 A. That's correct. We have.
12 Q. And those people are our lessors?
13 A. They are.
14 Q. You'll notice the relief sought section. What relief
15 are we seeking?
16 A. To be able to form this unit.
17 Q. So we're actually seeking to create a unit and then
18 pool it?
19 A. That's correct.
20 Q. The reason the lessors were noticed of this hearing is,
21 in essence, because although their leases generally
22 would contain pooling provisions that would allow you
23 to pool --
24 A. That's correct.
25 Q. -- that the leases as a general proposition do not

1 contemplate units this large?

2 A. That's correct. They do not.

3 Q. So for purposes of creation of this unit we've given

4 notice to all the lessors?

5 A. That's correct. We did.

6 Q. Are we asking, however, that the Board not give our

7 lessors election options when the order is entered?

8 A. That's correct. We are.

9 Q. And in order to facilitate that have you kind of done

10 some exhibits that indicate who we're really pooling?

11 A. Yes.

12 Q. And who it is that needs to have an election?

13 A. That's correct. We did.

14 Q. If you find Exhibit #B-3, Les, is that exhibit intended

15 to list the respondents who are unleased?

16 A. That's correct. It does. We've leased all those

17 respondents.

18 Q. Would it be your request that the Board in entering a

19 pooling order afford the people listed in Exhibit #B-3

20 election options?

21 A. That's correct. We are.

22 Q. Are you also requesting that the people listed in

23 Exhibit #D, which are the leased or owned interests,

24 that those people not be given an election option?

25 A. That is correct. Yes.

- 1 Q. Now, in this instance again the applicant is Buchanan
2 Production?
- 3 A. That's correct..
- 4 Q. Buchanan Production is a Virginia general partnership
5 wit two corporate partners?
- 6 A. That's correct.
- 7 Q. Are both of those corporate partners indirect subsid-
8 iaries of Consol, Inc.?
- 9 A. Yes.
- 10 Q. Is BPC authorized to do business in the Commonwealth?
- 11 A. Yes, it is.
- 12 Q. In this instance is Buchanan Production requesting that
13 Consol be designated the operator of the sealed unit?
- 14 A. Yes.
- 15 Q. Is Consol the operator of eleven out of the twelve 80
16 acre units?
- 17 A. Yes, they are.
- 18 Q. So in a way they'll continue to be the operator with
19 regard to those?
- 20 A. Yes.
- 21 Q. Is Consol a Delaware corporation that is authorized to
22 do business in the Commonwealth?
- 23 A. Yes.
- 24 Q. Has Consol registered with the Department of Mines,
25 Minerals and Energy and does it have a blanket bond on

1 file?

2 A. Yes, it does.

3 Q. Has Buchanan Production Company essentially delegated
4 responsibility for its assets and the management of
5 those assets to Consol?

6 A. Yes, it has.

7 Q. Are exhibits with regard to that delegation before the
8 Board today?

9 A. Yes, there are, at Exhibits #2, #3 and #4.

10 Q. Do those exhibits also indicate specific people within
11 Consol who have certain responsibilities?

12 A. Yes, it does.

13 Q. We've talked about this but in an indirect sense. The
14 list of respondents, the people listed in the notice of
15 hearing and then listed again in Exhibit #B, does that
16 include all owners and claimants that you've been able
17 to identify?

18 A. Yes, it does.

19 Q. And it also includes, as we've indicated, people from
20 whom you have leases?

21 A. That's correct. It does.

22 Q. Did you cause the notice and the exhibits and the
23 application to be mailed as required by statute?

24 A. Yes, we did.

25 Q. Have you filed proof of mailing with the Board?

1 A. Yes, we have.

2 Q. And where is that?

3 A. That's at Exhibit #1.

4 Q. When did the mailing occur with regard to this?

5 A. The mailing occurred on September 25th, 1995.

6 Q. Does Exhibit #1 contain kind of a chart that shows when
7 the stuff was mailed and who signed for it and who
8 didn't and when?

9 A. That's correct. It does.

10 Q. So the Board can tell who received it and what the
11 status is by looking at Exhibit #1?

12 A. That's correct.

13 Q. Was there publication of the notice and the map
14 indicating the location of this proposed unit?

15 A. Yes, it was. It was published in the Bluefield Daily
16 Telegraph on October 4th, 1995.

17 Q. Is there proof of publication submitted to the Board?

18 A. Yes. It's also at Exhibit #1.

19 Q. Do you want to dismiss any people or add any people
20 today?

21 A. No, we do not.

22 Q. In terms of the standing just to give the Board some
23 idea of what interests the applicant has leased, the
24 tract identifications which is a multi-page portion or
25 schedule that follows some of the maps, does that list

1 the owners of the minerals of each of the 36 tracts and
2 show to what extent those interests have been leased?
3 A. That is correct. It does.
4 Q. So in terms of identifying Buchanan Production Company
5 leases many of these tracts are subject to such leases?
6 A. That's correct. It is.
7 Q. In addition your standing is also shown by Exhibit #D
8 which is a twelve page exhibit that lists your lessors?
9 A. That's correct. It is.
10 Q. With regard to the many leases that have been obtained
11 here could you tell the Board what the typical terms
12 would be?
13 A. Yes. It's a dollar per acre per year, one-eighth
14 royalty, ten year term.
15 Q. That rental per acre is payable on an annual basis only
16 until production commences, correct?
17 A. That's correct.
18 Q. Would you recommend those terms to the Board to
19 incorporate in any order that might be entered with
20 regard to the deemed to have leased provision?
21 A. That's correct. We would.
22 Q. This unit is within both the Oakwood I Field and the
23 Oakwood II Field, correct?
24 A. Correct.
25 Q. But it is not subject to those orders because we're

1 talking about a sealed gob unit here?

2 A. That's correct.

3 Q. Again referring to Exhibit AA which is the last map in
4 your exhibits that you gave to the Board today, there
5 are 36 tracts shown on that exhibit?

6 A. That's correct. There is.

7 Q. And there are 22 CBM or VVH holes within this proposed
8 sealed gob unit?

9 A. That's correct.

10 Q. And of those 22 holes you're proposing to save or use
11 eight for production?

12 A. That's correct. We are.

13 Q. The acreage in the unit is?

14 A. 634.139 acres.

15 Q. What seams are we talking about?

16 A. All seams below the Tiller.

17 Q. With regard to costs here is there an Exhibit #C?

18 A. Yes, there is.

19 Q. And it shows a typical gob well cost of what amount?

20 A. \$135,841.20.

21 Q. Did you prepare that but forget to sign it?

22 A. I sure did.

23 Q. About when was it prepared?

24 A. On September 22nd, 1995.

25 Q. That was the day you signed all the paperwork?

1 A. That's correct.

2 Q. With regard to sealing costs, where is that figure
3 disclosed?

4 A. Exhibit #G, I guess.

5 Q. Which would be the last page of the application?

6 A. That's correct.

7 Q. And it's in what amount?

8 A. \$83,000.

9 Q. Pretty minimal seals here?

10 A. That's correct. Very few.

11 Q. So the total cost between the eight wells and the
12 sealing costs for this unit are estimated to be what?

13 A. \$100,169,729.60.

14 Q. In terms of calculating or predicting royalty, calcul-
15 ating participation or carried interest costs there is
16 a percentage set forth -- whether you pick Exhibit #B
17 or #B-3 or #D or #E there is a third column on each of
18 these exhibits entitled "interest in unit", correct?

19 A. That's correct.

20 Q. Is that the person or respondent's interest in the
21 royalty coming out of the unit?

22 A. That's correct. It would be.

23 Q. And that would also be their interest if they partici-
24 pated or if they elected to be carried?

25 A. Correct. It would be.

1 Q What's the projected depth of these wells on average?
2 A. The average depth is about 1,934 feet.
3 Q. It's anticipated that this sealed gob unit will produce
4 from the distressed zone created by longwall mining in
5 the Pocahontas #3 seam, correct?
6 A. That's correct. It will.
7 Q. Lastly, is it your opinion that the creation of this
8 sealed gob unit and the production from this unit is a
9 reasonable plan to develop the coalbed methane in the
10 area contained within the unit?
11 A. Yes, it is.
12 MR. SWARTZ: That's all I have.
13 MR. CHAIRMAN: Any questions, members of the Board?
14 MR. EVANS: I have one or two. In those units that are
15 split, specifically V-19, V-20, V-21 and YXWZ-21 you
16 say that in all but one you have an operating well?
17 THE WITNESS: All but one.
18 MR. SWARTZ: All but one are subject to a prior Board order.
19 MR. EVANS: How are you going to or are you going to -- let
20 me ask you this question first. Is there an operating
21 CBM well in those units? What I'm getting at is how
22 are you're going to split production from half the unit
23 if there's already a fracked well or something already
24 operating in one of those units and you seal off this?
25 MR. SWARTZ: I think if you look at the map you can see that

1 it's probably not a problem. Let me give you another
2 exhibit. (Pause.)

3 MR. CHAIRMAN: We have to ask the right questions.

4 Q. (Mr. Swartz continues.) Les, is Exhibit #AAA a map
5 that overlays the proposed unit on top of the mining in
6 the Pocahontas #3 Seam?

7 A. That's correct. It does.

8 Q. Are the wells that we're talking about in this area gob
9 wells or frack wells?

10 A. None of these are frack wells. They are all gob wells.

11 Q. So in the units to the eastern boundary there are frack
12 wells in those units?

13 A. That's correct.

14 Q. Would it be fair to say that the design of the shape of
15 this unit was to try to get in solid coal and you did a
16 pretty good job of it?

17 A. Yes.

18 Q. In terms of outlining?

19 A. That's correct.

20 Q. And it also shows obviously where the seals will be?

21 A. Yes, it does.

22 Q. And explains why the sealing costs are pretty modest?

23 A. Uh-huh.

24 MR. SWARTZ: Does this help, Mr. Evans?

25 MR. EVANS: It does. I have another quick question, too.

1 Is there mining planned to the east of this develop-
2 ment?

3 THE WITNESS: To the east of this operation is Consol
4 Buchanan #1 Mine and immediately east there is the
5 sealed gob unit BUN-1.

6 MR. EVANS: Thank you. That's all.

7 MR. CHAIRMAN: Other questions?

8 MR. FULMER: Mr. Chairman, he said he was going to use eight
9 of these wells. Do you know which eight you're going
10 to use?

11 MR. SWARTZ: I think one of the exhibits you have shows you
12 the eight that we have in mind at this point. In the
13 application it's AA.

14 MR. FULMER: That's this one here?

15 MR. SWARTZ: Right.

16 MR. FULMER: There's six there and then there's two down
17 bottom. One of those has been cancelled. In other
18 words, there's not a permit. Let me make sure.

19 Q. (Mr. Swartz continues.) Mr. Arrington, let me ask you
20 this. Is it possible that in discussions with the
21 mining company Buchanan and the operator may, in fact,
22 use more than eight wells?

23 A. That's correct. We may.

24 Q. But whether or not that happens the costs of wells that
25 you seek to allocate here are for eight?

1 A. That's correct. It is.
2 Q. So if you use twelve you're not going to try and back
3 those into this unit?
4 A. Right.
5 Q. In response to Mr. Fulmer's comment I would hope that
6 you will only use permitted wells?
7 A. That's correct. We will.
8 Q. So if you've inadvertently shown a well that the permit
9 is -- you'll either re-permit that well or you'll use
10 another well?
11 A. Right. We may use an additional well that would be
12 shown on AAA.
13 MR. CHAIRMAN: Other questions?
14 MR. EVANS: You're going to use a minimum of eight?
15 THE WITNESS: A minimum of eight.
16 MR. EVANS: You're allowed to use more but by the same
17 token. I wanted you to get on the record that you
18 wouldn't use six and still have an participation based
19 on eight?
20 THE WITNESS: I don't quite know the answer to that. We'll
21 have eight tied in. You may be using six.
22 MR. EVANS: I understand what you're saying.
23 MR. CHAIRMAN: We'll need you to update the AFE and sign it
24 for the record and put the date that you filled it out
25 and then the date you signed it, if you would, please.

1 THE WITNESS: All right.
2 MR. CHAIRMAN: Any other questions, members of the Board?
3 (Witness stands aside.)
4 MR. CHAIRMAN: Do you have anything else, Mr. Swartz?
5 MR. SWARTZ: No, I do not.
6 MR. EVANS: Mr. Chairman, I move that we grant the petition.
7 MR. LEWIS: I second it.
8 MR. CHAIRMAN: A motion and a second. Any further discuss-
9 ion? All in favor signify by saying yes. (ALL
10 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.
11 Thank you.
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ITEM V

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MR. CHAIRMAN: The next item on the agenda is a petition from Buchanan Production Company for modification and force pooling of the V-16 unit for an additional frack well. This is docket number VGOB-95/08/15-0511-1. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. SWARTZ: Mark Swartz, Les Arrington and Claude Morgan.

MR. CHAIRMAN: The record will show there are no others.

You may proceed.

MR. SWARTZ: Again we've got some exhibits that Les is going to pass around today. While he's doing that let me tell you what this application involves. It's a pretty straight forward one issue application. It's a modification. We were here in August on the V-16 unit. Our application at that time sought to have three wells in the V-16. You may remember this. There was an extensive discussion about that. During the course of the hearing it became obvious that we were headed nowhere with three wells. Two of the three wells at that pooling were drilled, were very close to going into production. The third well which was V-16B wasn't permitted yet. We haven't even applied for it. In the interest of getting the unit pooled and being able to

1 produce the two wells that we had already drilled we
2 amended our application during the course of the
3 hearing to delete the V-16B well. And we're back here
4 today so that there's no sandbagging to take head on
5 the question of whether or not we can produce from the
6 V-16B well. That's the issue. We're back here and the
7 unit has been pooled. We don't have to deal with
8 election rights. We don't have to deal with costs. I
9 will tell you up front that it was pooled with the
10 costs associated with two wells and one as a gob
11 because it was pooled as an Oakwood I and II. We're
12 not seeking, if we're successful today, to add any
13 further costs which would trigger election rights to
14 the extent it costs more to have this well. We're not
15 going to put them in the basket of costs. So we're not
16 looking for an increase in costs or election rights.
17 But we are looking for the opportunity to produce gas
18 from this well and be able to sell it as opposed to
19 venting it. With that sort of focus in mind I'll go to
20 the testimony. Mr. Arrington, you've been sworn
21 already and I'll just remind you that you're still
22 under oath.

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Q. And that was in the Bluefield Daily Telegraph again?

A. Yes, it was.

Q. The applicant here continues to be Buchanan Production?

A. That is correct.

Q. And Buchanan Production was the applicant when this unit was pooled in August?

A. That's correct.

Q. Consol was the designated operator appointed by the order that followed the August hearing?

A. That's correct.

Q. What relief are you looking for today with regard to modifying this pooling order?

A. For well locations.

Q. Are you looking for an ability to produce gas from the V-16B well?

A. Oh, yes, we are.

Q. Is the location of that well shown on the plat that was submitted with the application?

A. Yes, it was.

Q. And it's very close to the southern boundary, isn't it?

A. Yes, it is.

Q. Why is it there?

A. Topography, the major reason mine planning.

(Witness stands aside.)

1 MR. SWARTZ: Mr. Morgan, could you raise your right hand and
2 be sworn.

3 COURT REPORTER: (Swears witness.)
4

5 CLAUDE MORGAN

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

9 DIRECT EXAMINATION
10

11 BY MR. SWARTZ:

12 Q. State your name for the record, please.

13 A. Claude B. Morgan.

14 Q. And who do you work for?

15 A. Consol, Inc.

16 Q. What's your title?

17 A. Manger of gas projects.

18 Q. In your capacity as manager of gas projects are you
19 familiar with the mine plan underlying CBM unit V-16?

20 A. Yes, I am.

21 Q. Is it a longwall mining plan?

22 A. Yes, it is

23 Q. Does that longwall mining plan contemplate certain
24 spacing with regard to fracked wells in the longwall?

25 A. Yes, it does.

1 Q. Is Exhibit #G which is attached to the application here
2 a copy of a portion of the mine plan affecting the V-16
3 unit and units around it?
4 A. Yes, it is.
5 Q. Does it show all of the wells in these panels as
6 dictated by the applicable mine plan?
7 A. Yes, it does -- all of the frack wells.
8 Q. All the frack wells, correct. Is the operator -- the
9 mining company requesting that V-16B be located where
10 it is as shown on the well plat and on Exhibit #G?
11 A. Yes.
12 Q. What is the reason? Why is the coal operator making
13 that request?
14 A. These wells are positioned along this panel so as to
15 remove the gas from the seams prior to the mining by
16 the longwall panel. Obviously we would like to locate
17 these wells near the center as possible. This is in a
18 area with houses. It is in steep terrain and we can't
19 always get it here at the center. If the wells are
20 located in the center we would space them on 1,200 foot
21 centers to achieve the degasification and removal of
22 the methane prior to the mining.
23 Q. Mr. Morgan, I'd like to review a couple of Code
24 provisions and field rule provisions with you. First
25 of all, are you requesting -- or is the coal operator

1 requesting that the V-16B well be located where it is
2 and be authorized pursuant to 45.1-361.20, Sub-part C?
3 A. Yes, we are.
4 Q. And that provides in part that the Board shall require
5 that drilling units conform to the mine development
6 plan, if any, and if requested by the coal operator
7 well spacing shall correspond with mine operations.
8 Have I read that correctly?
9 A. That's correct.
10 Q. And you're making the request under that statute?
11 A. This is right.
12 Q. When we looked at the language in the Oakwood orders
13 was the question of additional wells and their location
14 something that was addressed during the hearings and in
15 the orders?
16 A. Yes, it was.
17 Q. Is there a definition in the Oakwood II order that
18 still survives the amendments to that order with regard
19 to gas from additional wells?
20 A. Yes, there is.
21 Q. And in what paragraph or sub-part can we find that in?
22 A. Paragraph 7.A3.
23 Q. What is the definition in the Oakwood II order of gas
24 from additional wells?
25 A. Gas produced from any additional well allowed under

1 Section 45.1-361.20.C, Code of Virginia, 1950 as
2 amended, an established drilling unit which contains an
3 existing well.

4 Q. So the gas from additional wells definition requires
5 that there be more than one well in a unit before
6 whatever come to play?

7 A. That is correct.

8 Q. Initially in the Oakwood II order was there a provision
9 that dealt with whether or not the Gas and Oil Inspect-
10 or could grant location exceptions and allow additional
11 wells in the Oakwood II order?

12 A. Yes, there was.

13 Q. And it was at Paragraph F?

14 A. Yes.

15 Q. Was that eventually amended when we revisited the
16 orders?

17 A. Yes, it was.

18 Q. And Paragraph 7.F was replaced by what language? Why
19 don't you just read it slowly into the record?

20 A. Paragraph 7.F of the Oakwood II order is deleted in
21 toto and replaced with the following; Provides that the
22 Virginia Gas and Oil Inspector is specifically author-
23 ized by the Board to in his discretion authorize the
24 drilling of more than one well per unit pursuant to the
25 provisions of 45.1-361.2.C of the Code of Virginia.

1 However, the cost of drilling and operating such wells
2 as are authorized by the Inspector hereunder in units
3 which are force pooled by order of the Board shall not
4 be allocated to participants or carried interest owners
5 unless and until such allocation is approved by Board
6 order.

7 Q. Were you present as a participant when these orders
8 were implemented and amended?

9 A. Yes, I was.

10 Q. Was there a trade-off here with regard to the language
11 in 7, at least as you understood it, and was that
12 trade-off between the requirement of the statute that
13 wells be located where the coal operator wants them and
14 the concerns of the Board and others that mining costs
15 -- too many wells -- that the cost of those wells not
16 be loaded onto the unit? I mean, is that the trade-off
17 that we ultimately had?

18 A. That is right.

19 Q. That the Inspector could authorize additional wells but
20 those costs could not be put in stew or in the mix
21 unless and until the Board specifically approved them?

22 A. That is correct.

23 Q. Here do we have a situation where the mining operator
24 wants the well in the location that we have indicated?

25 A. Yes.

1 O. Do we also have a situation where we are not talking
2 about or requesting that the Board increase any costs?

3 A. That is correct.

4 (Witness stands aside.)

5 MR. SWARTZ: Les, has the permit package been submitted with
6 regard to V-16B?

7 MR. ARRINGTON: Yes, it has. On August 28th, 1995.

8 MR. SWARTZ: And we were here the first time on the 15th?

9 MR. ARRINGTON: That's correct.

10 MR. SWARTZ: And at that point the other two wells were
11 already permitted and drilled, I think?

12 MR. ARRINGTON: Yes.

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

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

15 MR. EVANS: I've got one. This is within the 300 window,
16 right?

17 MR. SWARTZ: Uh --

18 MR. EVANS: Offset window?

19 MR. SWARTZ: It's outside -- it's clearly not within the 300
20 feet.

21 MR. EVANS: It's not inside that. It's in that 300 foot
22 (Inaudible.) correct?

23 MR. SWARTZ: Now, that one under Oakwood I, if that's where
24 you're headed, I have that. The Oakwood I order give
25 the Inspector total discretion. Well, I can't find it

1 here.

2 MR. EVANS: Let me tell you where I'm going first. Since it
3 is right there on the line what kind of a -- I'm
4 assuming that W-16 is pooled also -- unit W-16 is
5 pooled also?

6 MR. ARRINGTON: I don't think we've pooled it yet. I don't
7 believe. I just can't remember.

8 MR. MORGAN: That unit is being developed but you have not
9 had an application before the Board for it yet.

10 MR. EVANS: My question is going to be what are the con-
11 flicts or potential for conflicts for drainage when
12 you're right on the line like that since you're outside
13 the drilling window and you're in the --

14 MR. MORGAN: Obviously there is a potential for drainage, I
15 think, that is offset by -- if you look at the map --
16 the unit to the south of there which would be W-16.
17 There's also three wells projected in that unit. So
18 you can always get into argument, "Is this cubic foot
19 of gas coming from this point in the unit or this point
20 in the unit" but there's still three wells in each unit
21 producing and quality falls out.

22 MR. EVANS: So you'll make no attempt to do anything special
23 with W-16 and V-16 as far as royalty accounting or --

24 MR. SWARTZ: Except when you mine through V-16B what
25 happens?

1 MR. EVANS: Yeah. I'm just --
2 MR. SWARTZ: But prior to that there is not.
3 MR. EVANS: Prior to mine through before it converts over,
4 as it stands as a frack well, that's what I'm concerned
5 with because once it's mined through it becomes a whole
6 different animal.
7 MR. CHAIRMAN: What's the projected time frame for mine
8 through?
9 MR. MORGAN: I think that one is about three years.
10 MR. SWARTZ: This is something that we've been through on
11 kind of a global basis with you all years ago and we
12 kind of picked a resolution as a group of people. And
13 we don't have a stake in this. We're going to pay one-
14 eighth to somebody. So it's not like it's going to
15 save us or cost us how we resolve this, but the current
16 scenario -- I mean there needs to be -- I think
17 everyone has a vested interest in a rational predict-
18 able methodology that's field wide and I think we have
19 -- and what happens and we see this every now and then
20 is when you take a grid and you overlay it on any given
21 mine or any given set of development there's going to
22 be situations where when you're falling on the line --
23 I mean, we're going to have the same problem as you
24 move to the west here a little bit and sometimes it
25 just works out great. I mean, if you look at the panel

1 below this one, at the bottom, that's pretty nice.
2 It's better anyway. You're asking a good question and
3 we're giving you kind of a hard answer because the way
4 this scenario or plan that we have come with -- all of
5 us collectively apply to this situation -- you're
6 right. It is not the fairest looking thing when you're
7 looking at the unit to the south. If you're looking at
8 the global development here in this situation I'm not
9 sure that the people in W have any real reason to
10 complain if all this mining occurs. But looking at it
11 in isolation it's a good question, it's a problem, and
12 I don't know that we have an answer to IT.

13 MR. EVANS: Had it been inside the drilling window -- that's
14 the only thing that I'm concerned with, is when you're
15 on a line. I'm trying to get some kind of a -- if you
16 can come up with a resolution that's fine. I was
17 hoping for some sort of a --

18 MR. SWARTZ: Well, part of the problem is -- Les, if we were
19 going to move this to the west and alter the line are
20 there some houses?

21 MR. ARRINGTON: To the west there is.

22 MR. MORGAN: And south.

23 MR. EVANS: I realize why you don't want to move it up into
24 your mains or down into your mains either one.

25 MR. MORGAN: It doesn't work too well as a gob well when

1 your mining comes through if you do that.

2 MR. CHAIRMAN: But you don't believe you can locate it

3 inside the drilling window?

4 MR. MORGAN: We've really struggled and struggled with that

5 one and there was no way to get that well outside --

6 inside the envelope created by that window because of

7 the house locations and the mine plan.

8 MR. SWARTZ: I don't know what the scale is but you're going

9 to be very close to that entry if you move it north to

10 get it in --

11 MR. EVANS: I know. I understand why you haven't got a lot

12 of wiggle room right there.

13 MR. MORGAN: And if you recall -- some of you are new

14 members of the Board so you can't recall. But some of

15 you were around when the discussions were taking place

16 at some time. And this was the biggest struggle we had

17 as PGP at that time, working within the Oakwood rules.

18 This change that was promulgated to the Oakwood II

19 rules which allowed for location exception, which

20 allowed for the additional wells was a change to

21 supposedly to address this situation.

22 MR. EVANS: You're going to mine through after -- once the

23 Oakwood II applies, yeah, it does come to that on a

24 frack but it doesn't under Oakwood I and that's the

25 problem that we're having right now. Three years from

1 after that well is mined through it's not going to
2 matter.

3 MR. MORGAN: But Oakwood II applies to this well as a frack
4 well as an additional well. The Oakwood II Field Rules
5 apply to this well as an additional well under 45.1-
6 361.2.C.

7 MR. SWARTZ: I guess to really tell you where we're coming
8 from I read the Code as saying if the coal operator
9 comes before you and says I want a well here and it's
10 consistent with my mining plan, the coal lobby was
11 sufficiently strong, that the way that provision is
12 drafted you really don't have any discretion. If you
13 get a request it's got to be there. You can address
14 the issue that you're raising by allocation of allow-
15 able -- No. I mean that's -- unless you amend the
16 statute to put it bluntly if the coal operator comes in
17 and makes the request I think the statute was worded by
18 the coal lobby in such a way that that's where we're
19 headed.

20 MR. EVANS: I don't disagree.

21 MR. SWARTZ: But the real problem that you're raising, which
22 is a real problem, is only going to be solved by alloc-
23 ation or amending the statute.

24 MR. HARRIS: This is really, as I see it, one of the same
25 problems Mr. Franks addressed earlier when we had a

1 100% percentage of that, in this case a circle in
2 another unit. I'm not sure what --

3 MR. MORGAN: The only perfect unit is one with the well
4 drilled right in the middle of it and the only reason
5 units work is that there are in squares. You've got
6 all the acres covered and there is some sort of planned
7 development. So, yeah, there's a well here and there's
8 a well here and the cubic foot of gas to this well may
9 not be coming completely from in this 80 acre unit but
10 the people in this 80 acre unit don't suffer because
11 they've also got a well feeding them. And that's what
12 we're showing here. There will be one well already
13 permitted and the other two are in next year's drilling
14 program for the southern portion of that.

15 MR. HARRIS: You're talking about W-16?

16 MR. MORGAN: W-16.

17 MR. SWARTZ: I think in argument that we made in the past --
18 and this is all kind of coming back to me like a bad
19 dream or a nightmare. I mean, remember the fits that
20 we had when we devised these rules. A way of looking
21 at this is the long -- the big picture. To the extent
22 that the contemplating mining actually occurs which is
23 never a guarantee -- but to the extent that it does,
24 this works out fairly well. What really causes
25 problems -- I mean, what if the mining stopped. That

1 isn't likely to happen here. It looks like in this
2 particular situation it's continuing. And then you get
3 to a point where Claude's point is well taken, that
4 ultimately when the dust clears regardless of where the
5 gas may have actually come from the accounts kind of
6 balance and there's some equality with regard to what
7 the people have realized. I mean, I think ultimately
8 that ought to be the rough justice goal. I think at
9 least in this particular situation that looks like it's
10 duel. I'm not suggesting that it's not a legitimate
11 problem. There are ways to solve it but not under the
12 scenario that we're currently working under.

13 MR. MORGAN: Not under the existing field rules.

14 MR. SWARTZ: Right. To remind you, the problem -- I fought
15 their proposal big time. Their longwall units drained
16 everything on either side of them because of the frack
17 lengths. I mean, this is not an easy -- mining
18 operations are not easy to devise an overall system
19 that is always fair or always right. Hopefully we've
20 got something that in general approximates rough
21 justice and I think in general this does.

22 MR. CHAIRMAN: How much difference are you seeing by
23 drilling it, say, three years in advance of the gas
24 that's in the coal seam at the time of mine through?

25 MR. MORGAN: There's a significant difference in the coal

1 seam. Three years is about the oldest well we've had
2 so far in our mine through. We're trying to move the
3 programs out farther ahead than that.

4 MR. CHAIRMAN: Greater than three years ago?

5 MR. MORGAN: Yes.

6 MR. CHAIRMAN: Do you have any idea what percentage of
7 dropping in gas that's in the coal seam? Have you done
8 any calculations to that effect?

9 MR. MORGAN: We've attempted at it. I think there's
10 probably a 40 to 50 percent reduction in a three seam
11 gas.

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

13 MR. HARRIS: I'm just trying to imagine myself as a surface
14 owner just below that dotted line in that area and just
15 what my opinion of that would be or what my feelings
16 would be if W-16 were not -- you said there was one
17 well operating in W-16 now?

18 MR. MORGAN: One well is permitted and the other two are in
19 next year's drilling program for the last column.

20 MR. SWARTZ: Is the W-16 permitted?

21 MR. MORGAN: W-16 is actually being built right now.

22 MR. HARRIS: That's in the lower right corner just above
23 coordinates?

24 MR. MORGAN: Yes.

25 MR. EVANS: The closest one.

1 MR. SWARTZ: Well, it's the closest one to V-16.

2 MR. MORGAN: That well site is actually being built right
3 now. It's close to being drilled. But if you try to
4 stick it with the 300 foot window this one jumps out at
5 you because it's very close. But look at the rest of
6 those units up through there that you've already gone
7 over and how many wells are outside of that 300 foot
8 window because of the way the Oakwood Rules actually
9 hit on this series of panels.

10 MR. CHAIRMAN: Any other questions? Do you have anything
11 further?

12 MR. SWARTZ: No.

13 (Witness stands aside.)

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

15 MR. KELLY: Second.

16 MR. CHAIRMAN: Further discussion? All in favor signify
17 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
18 The motion carries. What's your pleasure, Board? I've
19 got about 12:17. Do you want lunch? All right. We'll
20 break for lunch and reconvene at 1:15.

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

23

24

25

ITEM IV

1
2
3 MR. CHAIRMAN: We're going to recall VGOB-95/10/24-0526 for
4 some corrections to the identification of the location
5 of the unit as I understand it.

6 MR. SWARTZ: Right. This is the seal gob unit. This
7 mistake is probably repeated, but at the relief
8 sought, Paragraph 4A there's the calls of the bound-
9 aries of the unit and there is one mistake. If you go
10 to the top of Page 3 of the application and come down
11 to the fourth line which starts 07-15 W that W should
12 be an E for east. And with that correction the calls
13 all work. I believe, Les, it's correct on the map,
14 right?

15 MR. ARRINGTON: It has the correct coordinates on the map.
16 The coordinates are correct there.

17 MR. SWARTZ: So that's the only change, but the order should
18 reflect that.

19 MR. CHAIRMAN: Is that it?

20 MR. SWARTZ: That's it.

21 MR. CHAIRMAN: We'll make those corrections in the order.

22 MR. SWARTZ: Thank you.
23
24
25

ITEM VI

1
2
3 MR. CHAIRMAN: The next item on today's agenda is a petition
4 from Pocahontas Gas Partnership for the pooling of a
5 coalbed methane unit identified as Y-33. This is
6 docket number VGOB-95/10/24-0524. And we'd ask the
7 parties that wish to address the Board in this matter
8 to come forward at this time.

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

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

13 MS. McCLANNAHAN: This is for the Y-33 unit -- is that the
14 one?

15 MR. ARRINGTON: W-29.

16 MS. McCLANNAHAN: Correction. It's for the W-29 unit. This
17 particular unit is one that the Board has already heard
18 evidence on in April with regard to the Oakwood II
19 Field Rules and the Board approved a pooling of that
20 particular unit. It's one that was originally in
21 longwall panel units. What we're requesting today is
22 that the Board also pool this unit under the Oakwood I
23 Field Rules.

24 MR. CHAIRMAN: I called the Y-33.

25 MS. McCLANNAHAN: I was right to begin with.

1 MR. ARRINGTON: I'm sorry. I gave you the wrong one.
2 MR. CHAIRMAN: Right. That's what I was just checking up
3 here.
4 MR. ARRINGTON: Sorry.
5 MR. CHAIRMAN: That's all right.
6 MS. McCLANNAHAN: I thought I had mine in order of the
7 docket. Back to the Y-33. This is a unit that we
8 want to pool under the Oakwood I and Oakwood II Field
9 Rules. PGP controls 100 percent of the Pocahontas #3
10 Seam, almost 67 percent of the oil and gas, and 100
11 percent of the coalbed methane gas estate. There's
12 only one oil and gas owner who has declined to lease or
13 assign her interest in this unit, Ms. Loya Davis, and
14 that's listed on Exhibit #D. The first and only
15 witness I have is Mr. Les Arrington who's been pre-
16 viously sworn.

17
18 LESLIE K. ARRINGTON

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

21
22 BY MS. McCLANNAHAN:

23 Q. Les, will you please state your full name for the
24 record?
25 A. Leslie K. Arrington.

1 Q. Can you identify the exhibit marked for identification
2 as Exhibit #1?
3 A. Yes. That's my work history and educational back-
4 ground.
5 Q. Have you been previously qualified as an expert witness
6 before the Gas and Oil Board?
7 A. Yes, I have.
8 MS. McCLANNAHAN: Mr. Chairman, I would submit Mr. Arrington
9 as an expert witness and also move the introduction of
10 Exhibit #1.
11 MR. CHAIRMAN: He's accepted and it's entered.
12 Q. (Ms. McClannahan continues.) Have you given notice of
13 this application as required by Section 45.1-361.19?
14 A. Yes, I have.
15 Q. This notice was sent by certified mail, return receipt
16 requested?
17 A. Yes, it was.
18 Q. Is a list of those returned receipts at Exhibit #2
19 submitted to the Board today?
20 A. Yes, it is.
21 MS. McCLANNAHAN: I would move the introduction of Exhibit
22 #2
23 MR. CHAIRMAN: All right.
24 Q. (Ms. McClannahan continues.) Did you publish the
25 notice of hearing also?

1 A. Yes, we did. It was published in the Bluefield Daily
2 Telegraph on October 4th.

3 Q. And copies of the proof of publication have previously
4 been submitted to the Board?

5 A. Yes.

6 Q. Under this application you have filed for a joint
7 forced pooling under the Oakwood I and Oakwood II Field
8 Rules, is that correct?

9 A. That's correct.

10 Q. What is the time frame that you anticipate between
11 completion as a fracked unit and when mining begins?

12 A. Approximately four to five years.

13 Q. In this application are you requesting a pooling order
14 under both Oakwood I for frack well production and
15 Oakwood II for short hole gas, unsealed gob and gas
16 from any additional wells authorized by the Code?

17 A. Yes, we are.

18 Q. What would trigger the change from Oakwood I to Oakwood
19 II production?

20 A. Isolation of the longwall panel by the driving of
21 entries.

22 Q. How do you propose to allocate production between
23 Oakwood I and the Oakwood II?

24 A. Oakwood I is just the 80 acre percentage, surface
25 acreage within that unit. Oakwood II would be by the

- 1 amount of surface acreage of the longwall panel within
2 each individual 80 acre unit.
- 3 Q. Do you have any amendments or additions to the applic-
4 ation as previously filed?
- 5 A. Yes, we do.
- 6 Q. Could you identify the exhibit marked as Exhibit #4?
- 7 A. Exhibit #4 is a revised application. Exhibit #C has a
8 correction on it.
- 9 Q. Can you explain that correction?
- 10 A. Yes. It was a correction to Tract 6 of which we had
11 Consolidation Coal Company shown as the oil and gas
12 owner and actually it was Coal Mountain Mining which we
13 just had a typographical error there.
- 14 Q. But the Coal Mountain Mining tract interest is actually
15 leased to PGP, is that correct?
- 16 A. Yes, it is.
- 17 Q. Can you identify the exhibit that's marked as Exhibit
18 #5?
- 19 A. Yes. Exhibit #5 is our unleased owner exhibit. We had
20 Exhibit #D listed on the top of the exhibit and it was
21 showing as leased owners and it should have been
22 unleased owners.
- 23 Q. And the same Coal Mountain Mining change also needs to
24 be made to that exhibit, is that correct?
- 25 A. Not on Exhibit #D.

1 Q. On Exhibit #5. What percent of the coal, oil and gas
2 and coalbed methane rights in the tracts that comprise
3 the Y-33 does PGP control?
4 A. PGP controls 100 percent of the Pocahontas #3 Seam and
5 66.85 percent of the oil and gas and 100 percent of the
6 coalbed methane estate.
7 Q. Are these the same ownership control percentages that
8 you listed on the application as filed?
9 A. Yes, on Exhibit #4.
10 Q. Do the plat and acreage totals on Exhibit #C of the
11 application and the revised Exhibit #C submitted as
12 Exhibit #5 reflect the relative contribution that each
13 tract is expected to make to the Y-33 unit?
14 A. Yes, it does.
15 Q. Do Exhibit #C of the application and Exhibit #5
16 submitted herein also reflect the percentages relative
17 to the panel contribution that each tract is expected
18 to make?
19 A. Yes, it does.
20 MS. McCLANNAHAN: Mr. Chairman, I submit the introduction of
21 Exhibit #5.
22 MR. CHAIRMAN: It's accepted.
23 Q. (Ms. McClannahan continues.) With regard to the
24 unleased owners has PGP attempted to contact them to
25 lease or assign their interests?

- 1 A. Yes, they have.
- 2 Q. And how were these parties contacted?
- 3 A. They were contacted personally.
- 4 Q. Generally what are the primary terms and the delay
5 rental payments for the oil and gas and coalbed methane
6 leases that PGP has acquired in this particular area?
- 7 A. It's a dollar per acre, ten year term for coalbed
8 methane only and for a coalbed methane oil and gas
9 lease it's five dollars an acre.
- 10 Q. Are you requesting that the Board pool the interests of
11 the parties listed on revised Exhibit #C of this
12 application?
- 13 A. Yes, we are.
- 14 Q. Have any well work permits been issued toward this
15 unit?
- 16 A. Yes, they have. It would have been for well Y-33A, Y-
17 33B and Y-33C.
- 18 Q. Were these for coalbed methane gas wells?
- 19 A. Yes, they were.
- 20 Q. Does the plat attached to the force pooling application
21 filed by PGP indicate the acreage and the shape of the
22 acreage to be embraced within the Y-33 unit?
- 23 A. Yes.
- 24 Q. And does the unit also follow the boundary lines of the
25 Oakwood I and II 80 acre unit designation for Y-33?

- 1 A. Yes, it does.
- 2 Q. Does the plat attached to the force pooling application
3 filed by FGP indicate the area within which the wells
4 were or are to be drilled on the Y-33 unit?
- 5 A. Yes, it does.
- 6 Q. Does the drilling unit embrace two or more separately
7 owned tracts?
- 8 A. Yes, it does.
- 9 Q. Does Exhibit #G of the application show the longwall
10 panels that will affect the Y-33 unit?
- 11 A. Yes, it does.
- 12 Q. What are the numbers of these longwall panels?
- 13 A. 10-East and 11-East.
- 14 Q. Does Exhibit #G show the percentage of panel allocation
15 to this unit?
- 16 A. Yes, it does.
- 17 Q. Are the costs and expenses for the wells allocable to
18 the Y-33 unit set forth on detailed well estimates
19 shown on Exhibits #G and #H?
- 20 A. Yes, it is.
- 21 Q. Do these exhibits reflect the estimated costs of
22 drilling the wells to total depth and completed for
23 production costs?
- 24 A. Yes, it does.
- 25 Q. Will you explain generally how you calculated the costs

1 that are listed on these DWES?

2 A. Yes. These are estimated costs from our experience in
3 and around the field.

4 Q. How do you propose to allocate the costs among the
5 owners in the unit?

6 A. That's going to be by the percentage of longwall panel
7 within their 80 acre unit.

8 Q. According to the Oakwood II Field Rules, is that
9 correct?

10 A. Yes, according to the Oakwood II Field Rules.

11 Q. Have there been changes to the DWES and the cost
12 allocation charts submitted as Exhibits #G and #H of
13 the application since you submitted it?

14 A. No.

15 Q. Are you requesting that PGP be designated as the well
16 operator for this particular unit?

17 A. Yes, we are.

18 Q. Are you requesting the relief sought as it's listed in
19 Paragraph 4?

20 A. Yes, we are.

21 MS. McCLANNAHAN: Those are all the questions I have.

22 MR. CHAIRMAN: In your handout that you gave us today under
23 Item 3 where you gave us the tract identifications was
24 there any change on that from the application? Did you
25 talk about that?

1 THE WITNESS: Yes. I think that's where Elizabeth and I
2 might have got a little confused there. The tract
3 identifications, yes, there was a small change on Tract
4 6 again.

5 MR. CHAIRMAN: Again there. That's what you thought was in
6 Exhibit #5?

7 MS. McCLANNAHAN: Uh-huh.

8 MR. CHAIRMAN: So it was in Exhibit #3. That's what I
9 thought. I just wanted to make sure. Other questions,
10 members of the Board?

11 MR. HARRIS: Mr. Chairman, I just have a little -- actually
12 this is probably typographical. Exhibit #G, I have two
13 Exhibit #Gs in the application. One is the Buchanan #1
14 Mine which shows the panels. The next one is a
15 allowable cost estimate. Are those both Exhibit #G?
16 This is in the original application.

17 THE WITNESS: You have one that's a map exhibit. That's
18 Exhibit #G itself. And then the other one is Exhibit
19 #G, Page 1, the next page.

20 MR. HARRIS: Oh, okay.

21 MR. CHAIRMAN: Other questions, members of the Board?
22 (Witness stands aside.)

23 MR. CHAIRMAN: Do you have anything further?

24 MS. McCLANNAHAN: No.

25 MR. LEWIS: I make a motion we grant the application.

1 MR. KELLY: Second.

2 MR. CHAIRMAN: Further discussion? All in favor signify by
3 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
4 Unanimous approval. Thank you.

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3 ITEM VII

4 MR. CHAIRMAN: The next item on the agenda is a petition
5 from Pocahontas Gas Partnership for modification of
6 force pooling of the W-29 unit to include Oakwood I
7 coalbed methane production. This is docket number
8 VGOB-95/04/18-0499-01. We'd ask the parties that wish
9 to address the Board in this matter to come forward at
10 this time.

11 MS. McCLANNAHAN: The next five items on the docket includ-
12 ing this W-29 are all units that you approved Oakwood
13 II forced poolings in April and we're now requesting
14 that you approve Oakwood I forced poolings for these
15 same units. With that said I would like to call Les
16 Arrington. You have the exhibits for W-29, right?

17 MR. CHAIRMAN: Yes.

18 MS. McCLANNAHAN: I assume we don't need to go through the
19 qualifications for this but to state for the record
20 that he's been accepted as an expert witness and his
21 qualifications are at Exhibit #1 and accepted?

22 MR. CHAIRMAN: Right.

23 LESLIE K. ARRINGTON

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

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2 DIRECT EXAMINATION
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4 BY MS. McCLANNAHAN:

5 Q. Les, have you given notice as required by Virginia
6 Code, annotated, Section 45.1-361.19?

7 A. Yes, we have by certified mail, return receipt request-
8 ed. A list of the return receipts are at Exhibit #2.

9 MS. McCLANNAHAN: I would introduce Exhibit #2.

10 MR. CHAIRMAN: Okay.

11 Q. (Ms. McClannahan continues.) Is this application filed
12 in conjunction with docket number 95/04/18-0499 which
13 was heard by the Board in April force pooling this
14 particular unit under the Oakwood II Field Rules?

15 A. Yes, it was.

16 Q. Did you publish the notice of hearing as well?

17 A. Yes, I did on October 4th, 1995 in the Bluefield Daily
18 Telegraph.

19 Q. What percentage of the coal, oil and gas and coalbed
20 methane rights in the tracts that comprise the W-29
21 unit does PGP control?

22 A. We control 100 percent of the Pocahontas #3 Seam and
23 88.4419 percent of the oil and gas interest, 100
24 percent of the coalbed methane estate.

25 Q. And these are the same ownership controlled percentages

- 1 that you listed on the current application and as
2 stated at the April hearing, is that correct?
- 3 A. That's correct. It is.
- 4 Q. Do the plat and acreage totals on Exhibit #C reflect
5 the relative contribution that each tract is expected
6 to make to the W-29 unit?
- 7 A. Yes, it is.
- 8 Q. Are the unleased owners and their interests and the
9 conflicting claimants and their interests to be
10 escrowed listed on the exhibits filed with the applic-
11 ation?
- 12 A. Yes.
- 13 Q. The information on these exhibits has also not changed
14 since the April presentation, is that correct?
- 15 A. That's correct.
- 16 Q. Can you please identify the exhibit marked as Exhibit
17 #3?
- 18 A. Yes. That was in Exhibit #A which is the location of
19 the unit within the Oakwood Field. We have inadvert-
20 ently omitted that from the application. It was
21 included with the notice.
- 22 Q. With regard to the unleased owners that are listed has
23 PGP attempted to contact them to lease or assign their
24 interests?
- 25 A. Yes, we have.

1 MS. McCLANNAHAN: Mr. Chairman, I would move the introduct-
2 ion of Exhibit #3.

3 MR. CHAIRMAN: It's accepted.

4 Q. (Ms. McClannahan continues.) How were the parties
5 contacted who were listed as unleased owners?

6 A. Either by certified mail, phone or personal visit.

7 Q. Generally could you please explain to the Board what
8 the terms of the oil, gas and coalbed methane leases
9 that PGP has acquired in this particular area?

10 A. Yes. It's a dollar per acre with a ten year term and
11 one-eighth royalty for a coalbed methane lease. For
12 coalbed methane oil and gas it's five dollars an acre,
13 ten year with one-eighth royalty.

14 Q. Are you requesting that the Board pool the interest of
15 the parties that are listed on Exhibit #C of the W-29
16 application?

17 A. Yes, we are.

18 Q. Pursuant to the Oakwood I Field Rules, is that correct?

19 A. That's correct.

20 Q. Are you requesting that the order for the W-29 unit
21 pursuant to the April hearing and this hearing be
22 issued as one joint order?

23 A. Yes, we are.

24 Q. Have any well work permits been issued for this
25 particular unit?

1 A. Yes. Well CBM-PGP-124D. It was issued on December
2 3rd, 1992 as permit number 2253.

3 Q. And this was for a coalbed methane gas well?

4 A. Yes, it was.

5 Q. Are you also requesting a location exception for this
6 well 124D under the Oakwood I Field Rules?

7 A. Yes.

8 Q. Can you explain the necessity for this location
9 exception?

10 A. This well is located near the unit boundary but is
11 located according to a mine plan.

12 Q. And this was drilled when these units were panel units,
13 is that correct?

14 A. That's correct. It was.

15 Q. Does the plat attached to the force pooling application
16 filed by PGP indicate the acreage and the shape of the
17 acreage to be embraced within the W-29 unit?

18 A. Yes, it does.

19 Q. Does the unit follow the boundary lines of the Oakwood
20 I field 80 acre unit designated as W-29 and shown on
21 Exhibit #B?

22 A. Yes, it does.

23 Q. Does the plat also indicate the area within which the
24 well was drilled on the W-29 unit?

25 A. Yes, it does.

1 Q. Does the unit embrace two or more separately owned
2 tracts?
3 A. Yes, it does.
4 Q. The exhibits that were submitted at the April force
5 pooling application as Exhibits #G and #H contained the
6 detailed well estimates, is that correct?
7 A. That's correct. It did.
8 Q. And you're seeking no additional costs in this applic-
9 ation?
10 A. That's correct.
11 Q. The costs have been approved by the Board at the April
12 hearing, is that correct?
13 A. Correct.
14 Q. Are you requesting that PGP be designated as the well
15 operator authorized to operate the W-29 unit?
16 A. Yes, we are.
17 Q. And you're requesting the relief sought in Paragraph 4
18 of the application?
19 A. Yes, we are.
20 MS. McCLANNAHAN: Those are all the questions I have.
21 MR. CHAIRMAN: Any questions, members of the Board?
22 MR. HARRIS: I just noticed one thing on the relief sought.
23 #C says granting of a location exception pursuant to
24 the Code, whatever. The well is located within 300
25 feet of the unit boundary. Did you all address that or

1 did I miss that?

2 MS. McCLANNAHAN: We did.

3 MR. CHAIRMAN: Under Exhibit #B did you intend to locate the
4 well? If you did, where is it?

5 THE WITNESS: Exhibit #B, no, not on Exhibit #B. It's on
6 Exhibit #B1.

7 MR. CHAIRMAN: I was making sure. So it's not inside the --
8 it is inside the window, right -- the 300 foot window?

9 MS. McCLANNAHAN: Right and that's why we requested a
10 location exception.

11 MR. CHAIRMAN: Right. On Exhibit #B1 where your legend is
12 showing existing coalbed methane well, is there an
13 existing coalbed methane well in that unit?

14 THE WITNESS: Yes. It should be on there. That's correct.

15 MR. CHAIRMAN: So there's not an existing coalbed methane
16 well in that unit?

17 THE WITNESS: Look at Exhibit #B1.

18 MR. CHAIRMAN: That's where I am.

19 THE WITNESS: Exhibit #B1, that's the one that's showing the
20 well location. Exhibit #B --

21 MR. CHAIRMAN: Proposed well location, right?

22 THE WITNESS: No, no. Existing.

23 MS. McCLANNAHAN: It's existing. There's no proposed well
24 location.

25 MR. CHAIRMAN: All right. Other questions, members of the

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Board?

(Witness stands aside.)

MR. CHAIRMAN: Do you have anything further?

MS. McCLANNAHAN: No, sir.

MR. CHAIRMAN: Do we have a motion?

MR. KELLY: Mr. Chairman, I move we approve the applic-
ation.

MR. CHAIRMAN: A motion to approve.

MR. EVANS: Second.

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

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3 ITEM VIII

4 MR. CHAIRMAN: The next item on the agenda is a petition
5 from Pocahontas Gas Partnership for modification of
6 force pooling of the X-29 unit to include Oakwood I
7 coalbed methane production. This is docket number
8 VGOB-95/04/18-0500-01. We'd ask the parties that wish
9 to address the Board in this matter to come forward at
10 this time.

11 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
12 Partnership. I would like to call Les Arrington.

13 LESLIE K. ARRINGTON

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

16
17 DIRECT EXAMINATION

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19 BY MS. McCLANNAHAN:

20 Q. Les, would you please state your full name and address
21 for the record?

22 A. Yes. Leslie K. Arrington. My address is Post Office
23 Box 947, Bluefield, Virginia.

24 MS. McCLANNAHAN: For the record, the Board has approved Mr.
25 Les Arrington as an expert witness and also accepted

1 his qualifications at Exhibit #1 and accepted the
2 introduction of Exhibit #1.

3 MR. CHAIRMAN: That's correct.

4 Q. (Ms. McClannahan continues.) Les, is this application
5 filed in conjunction with VGOB-95/04/18-0500 which was
6 previously heard by the Board in April whereby the
7 Board force pooled the unsealed gob gas, short hole
8 gas, and gas from any well authorized by the Code under
9 the Oakwood II Field Rules?

10 A. Yes, it is.

11 Q. Have you given notice as required by Section 45.1-
12 361.19 of the Code?

13 A. Yes, we did by certified mail, return receipt request-
14 ed.

15 Q. And that list of returned receipts is shown in Exhibit
16 #2?

17 A. Yes, it is.

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

20 MR. CHAIRMAN: It's accepted.

21 Q. (Ms. McClannahan continues.) Did you publish the
22 notice of hearing also?

23 A. Yes, we did on October 4th, 1995 in the Bluefield Daily
24 Telegraph.

25 Q. What percentage of the coal, oil and gas and coalbed

- 1 methane rights in the tracts that comprise the X-29
2 unit does PGP control?
- 3 A. 100 percent of the Pocahontas #3 Seam, 91.7446 percent
4 of the oil and gas interest and 100 percent of the
5 coalbed methane gas estate.
- 6 Q. Are these the same ownership control percentages that
7 were listed on the application and stated at the April
8 hearing?
- 9 A. Yes.
- 10 Q. Do the plat and acreage totals on Exhibit #C to the
11 application reflect the relative contribution that each
12 tract is expected to make to the X-29 unit?
- 13 A. Yes.
- 14 Q. Are the unleased owners and their interests and the
15 conflicting claimants and their interests to be
16 escrowed listed on the exhibits filed with the applic-
17 ation?
- 18 A. Yes, it is.
- 19 Q. Is the information on these exhibits still correct?
- 20 A. Yes.
- 21 Q. Do you have any amendments or additions to the applic-
22 ation at this time since the date of filing?
- 23 A. Yes, we do. It's listed at Exhibit #3. It's the unit
24 location within the Oakwood field map. It was included
25 with the notice of hearing but it was not included with

1 the application.

2 Q. With regard to the unleased owners has PGP attempted to
3 contact them to lease or assign their interests?

4 A. Yes, we have.

5 Q. How did you contact the parties?

6 A. By certified mail, phone or in person.

7 Q. Generally what are the primary terms and the delay
8 rental payments for the oil, gas and coalbed methane
9 leases that PGP has acquired in this particular area?

10 A. For coalbed methane only it's a dollar per acre, ten
11 year term with a one-eighth royalty. For coalbed
12 methane oil and gas it's five dollars an acre, ten year
13 term, one-eighth royalty.

14 Q. Are you requesting that the Board pool the interest of
15 the parties listed on Exhibit #C of the X-29 applic-
16 ation pursuant to the Oakwood I Field Rules?

17 A. Yes, we are.

18 Q. Are you requesting that the order for the X-29 unit
19 pursuant to the April hearing and this hearing be
20 issued as a joint order?

21 A. Yes, we are.

22 Q. Have any well work permits been issued for this
23 particular unit?

24 A. Yes, they have. Well CBM-PGP-124C which was permit
25 number 2066 issued on August 19th, 1992, 124B which was

1 permit number 2562 issued on October 20th, 1993, well
2 127B which was permit number 2587 issued on November
3 29th, 1993 and 127C which was permit number 2257 issued
4 on December 7th, 1992.

5 Q. And all of those permits were issued when these units
6 were panel units, is that correct?

7 A. That is correct. They were.

8 Q. And previously approved by the Board?

9 A. That's correct.

10 Q. For what type of wells were the permits issued?

11 A. Coalbed methane wells.

12 Q. Have you received any written responses from the owners
13 of the tracts within this unit to the force pooling
14 application?

15 A. No, we have not.

16 Q. Does the plat attached to the force pooling application
17 filed by PGP indicate the acreage and the shape of the
18 acreage to be embraced within the X-29 unit?

19 A. Yes, it does.

20 Q. Does the unit follow the boundary lines of the Oakwood
21 I field 80 acre unit designated as X-29?

22 A. Yes, it does.

23 Q. Does the plat attached to the force pooling application
24 filed by PGP indicate the area within which the wells
25 were drilled on the X-29 unit?

1 A. Yes, it does.

2 Q. Does the drilling unit embrace two or more separately
3 owned tracts?

4 A. Yes, it does.

5 Q. The costs and expenses for the wells allocable to the
6 X-29 unit were previously submitted at the April force
7 pooling application hearing, is that correct?

8 A. That's correct.

9 Q. And no changes have been made since that date?

10 A. That's correct.

11 Q. And you're not seeking any additional costs in this
12 application?

13 A. No, we are not.

14 Q. Are you requesting that PGP be designated as the well
15 operator authorized to operate the X-29 unit?

16 A. Yes, we are.

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

19 A. Yes, we are.

20 MS. McCLANNAHAN: Those are all the questions I have.

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

22 MR. EVANS: Exhibit #G shows five holes in this unit whereas
23 your plat shows four unless I've miscounted.

24 THE WITNESS: That was a proposed well. That is no longer
25 there.

1 MS. McCLANNAHAN: Claude, for the record will you say that
2 so she can get this for sure? This is Claude Morgan
3 who's previously been sworn today.

4 MR. MORGAN: The plat does need to be revised. During the
5 April hearing there was a proposed 124E that had not
6 been drilled and is not shown on the plat here as an
7 existing well and it has since been drilled. There
8 would be a fifth well on there, 124E as it's showing on
9 the map that you have.

10 MR. CHAIRMAN: And that would be an updated Exhibit #B1, is
11 that what we're talking about?

12 MS. McCLANNAHAN: Right.

13 MR. MORGAN: And that is a gob well that was drilled for
14 that active panel.

15 MR. CHAIRMAN: Other questions?

16 MR. HARRIS: This is probably not -- actually it's not
17 really relevant -- well, it is in a sense. I notice
18 there are two Exhibits #B, #B and #B1. Is the only
19 difference the location of the well?

20 MR. ARRINGTON: Yes.

21 MR. HARRIS: And I do this about every six months. I am
22 always concerned about the amount of paper we use. Was
23 it necessary to do an Exhibit #B and #B1 separately?

24 MR. ARRINGTON: No. We can start leaving that out.

25 MR. HARRIS: I know one sheet probably doesn't matter but

1 over the long run it makes a difference.

2 MS. McCLANNAHAN: It does.

3 MR. CHAIRMAN: Other questions?

4 (Witness stands aside.)

5 MR. CHAIRMAN: Do we have a motion?

6 MR. KELLY: Mr. Chairman, I move the application be ap-
7 proved.

8 MR. EVANS: Second submit to the submission of the addition-
9 al plat.

10 MR. CHAIRMAN: Further discussion? All in favor signify by
11 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
12 Unanimous approval.

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1 ITEM IX

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3 MR. CHAIRMAN: The next item on the agenda is a petition
4 from Pocahontas Gas Partnership for modification of
5 force pooling of the W-30 unit to include the Oakwood I
6 coalbed methane production. This is docket number
7 VGOB-95/04/18-0502-01. We'd ask the parties that wish
8 to address the Board in this matter to come forward at
9 this time.

10 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
11 Partnership. I have one witness, Les Arrington who's
12 previously been sworn and his qualifications have been
13 accepted by this Board as shown on Exhibit #1 which I
14 would also at this time introduce.

15 MR. CHAIRMAN: It's accepted.

16
17 LESLIE K. ARRINGTON

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

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21 DIRECT EXAMINATION

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23 BY MS. McCLANNAHAN:

24 Q. Les, is this application filed in conjunction with
25 VGOB-95/04/18-0502 which was previously heard by the

1 Board in April whereby the Board force pooled the
2 unsealed gob gas, short hole gas, and gas from any well
3 authorized by the Code under the Oakwood II Field
4 Rules?

5 A. Yes, it is.

6 Q. Have you given notice as required by Section 45.1-
7 361.19?

8 A. Yes, we have by certified mail, return receipt request-
9 ed which is at Exhibit #2.

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

12 MR. CHAIRMAN: It's accepted.

13 Q. (Ms. McClannahan continues.) Did you publish the
14 notice of hearing?

15 A. Yes, we did on October 4th, 1995 in the Bluefield Daily
16 Telegraph.

17 Q. And copies of the proof of publication were previously
18 submitted to the Board?

19 A. Yes, it was.

20 Q. What percentage of the coal, oil and gas and coalbed
21 methane rights in the tracts that comprise this
22 particular unit does PGP control?

23 A. 100 percent of the Pocahontas #3 Seam, 94.5375 percent
24 of the oil and gas estate and 100 percent of the
25 coalbed methane estate.

1 Q. Are these the same ownership control percentages that
2 you listed at the April hearing and on the April
3 application?

4 A. Yes, it is.

5 Q. Do the plat and acreage totals on Exhibit #C of the
6 application reflect the relative contribution that each
7 tract is expected to make to the W-30 unit?

8 A. Yes, it is.

9 Q. Are the unleased owners and their interests as well as
10 the conflicting claimants and their interests to be
11 escrowed listed on the exhibits filed with the applic-
12 ation?

13 A. Yes, it is.

14 Q. Do you have any amendments or additions to the applic-
15 ation at this time?

16 A. Yes, we do. We have an Exhibit #3 which is the revised
17 application. Within the application it had the wrong
18 unit description in it. We've corrected it the
19 description and that is Exhibit #3. Exhibit #4 is the
20 location map of the unit within the Oakwood Field.
21 Again we inadvertently left out the location map from
22 the application. It was included, however, with the
23 notice of hearing.

24 MS. McCLANAHAN: Mr. Chairman, I move the introduction of
25 Exhibits #3 and #4.

1 MR. CHAIRMAN: We need him to sign this amended --

2 THE WITNESS: I didn't know quite what to do on that. I

3 didn't know whether to sign all those or --

4 MR. CHAIRMAN: I think just a notation of what you're doing

5 and sign it to show it is true and correct is -- you

6 can do that on the exhibit that we accept.

7 THE WITNESS: Okay.

8 Q. (Ms. McClannahan continues.) With regard to the
9 unleased owners has PGP attempted to contact them to
10 lease or assign their interests?

11 A. Yes, we have.

12 Q. How did you contact the parties?

13 A. By certified mail, in person or by phone.

14 Q. Generally what are the primary terms and the delay
15 rental payments for the oil, gas and coalbed methane
16 leases that PGP has acquired in this particular area?

17 A. For coalbed methane only it's a dollar per acre per
18 year with a ten year term and a one-eighth royalty.
19 For coalbed methane oil and gas it's five dollars an
20 acre per year, ten year term, one-eighth royalty.

21 Q. Are you requesting that the Board pool the interest of
22 the parties listed on Exhibit #C of the application
23 pursuant to the Oakwood I Field Rules?

24 A. Yes, we are.

25 Q. Are you requesting that the order for the W-30 unit

1 pursuant to the April hearing and this hearing be
2 issued as one joint order?
3 A. Yes, we are.
4 Q. Have any well work permits been issued for the W-30
5 unit?
6 A. Yes, there has for well CBM-PGP-131D. It was issued on
7 May 25th, 1993 as permit number 2292-01 and permit for
8 CBM-PGP-135B which was issued on May 25th, 1993 as
9 2316-01.
10 Q. Were these permits for coalbed methane gas wells?
11 A. Yes, they were.
12 Q. Have you received any written responses from the owners
13 of the tracts within this unit to the force pooling
14 application that you've filed?
15 A. No, we have not.
16 Q. Does the plat attached to the application filed by PGP
17 indicate the acreage and the shape of the acreage to be
18 embraced within the W-30 unit?
19 A. Yes, it does.
20 Q. Does the unit follow the boundary lines of the Oakwood
21 I field 80 acre unit designated as W-30 and shown on
22 Exhibit #B?
23 A. Yes.
24 Q. Does the plat attached to the force pooling application
25 indicate the area within which the wells were drilled

1 on the W-30 unit?

2 A. Yes.

3 Q. Does the drilling unit embrace two or more separately
4 owned tracts?

5 A. Yes.

6 Q. The DWEs that were submitted as Exhibits #G and #H,
7 were those previously approved at the April hearing by
8 this Board?

9 A. Yes, it was.

10 Q. Are you seeking any additional costs in this applic-
11 ation?

12 A. No, we are not.

13 Q. Are you requesting that PGP be designated as the well
14 operator authorized to operate the W-30 unit?

15 A. Yes, we are.

16 Q. Are you requesting the relief sought in Paragraph 4 of
17 the application?

18 A. Yes, we are.

19 MS. McCLANNAHAN: Those are all the questions I have, Mr.
20 Chairman.

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

22 (Witness stands aside.)

23 MR. LEWIS: I make a motion we grant the application.

24 MR. EVANS: Second.

25 MR. CHAIRMAN: A motion and a second. Any further discuss-

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

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3 ITEM X

4 MR. CHAIRMAN: The next item on the agenda is a petition
5 from Pocahontas Gas Partnership for modification and
6 force pooling of the W-31 unit to include Oakwood I
7 coalbed methane production. And this is docket number
8 VGOB-95/04/18-0503-01. We'd ask the parties that wish
9 to address the Board in this matter to come forward at
10 this time.

11 MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas
12 Partnership. I have one witness, Leslie K. Arrington
13 who has previously been sworn and his qualifications
14 have previously been accepted by this Board and they
15 are shown on Exhibit #1. I would move the introduction
16 of that exhibit at this time.

17 MR. CHAIRMAN: It's accepted.

18 LESLIE K. ARRINGTON

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

21
22 DIRECT EXAMINATION

23
24 BY MS. McCLANNAHAN:

25 Q. Les, is this application filed in conjunction with

1 VGOB-95/04/18-0503 previously heard by the Board in
2 April whereby the Board force pooled the unsealed gob
3 gas, short hole gas, and gas from any well authorized
4 by the Code under the Oakwood II Field Rules?

5 A. Yes, it wa.

6 Q. Have you given notice as required by Section 45.1-
7 361.19?

8 A. Yes, we have.

9 Q. By certified mail, return receipt requested?

10 A. Yes.

11 Q. Is a list of those returned receipts shown at Exhibit
12 #2?

13 A. Yes, it is.

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

16 MR. CHAIRMAN: It's accepted.

17 Q. (Ms. McClannahan continues.) Did you also publish the
18 notice of hearing?

19 A. Yes, we did on October 4th, 1995 in the Bluefield Daily
20 Telegraph.

21 Q. And were copies of the proof of publication previously
22 submitted to the Board?

23 A. Yes, it was.

24 Q. What percentage of the coal, oil and gas and coalbed
25 methane rights in the tracts that comprise this unit

1 does PGP control?

2 A. 100 percent of the Pocahontas #3 Seam, 73.5662 percent
3 of the oil and gas estate and 100 percent of the
4 coalbed methane gas estate.

5 Q. Are these the same ownership control percentages that
6 you listed in your April filing as well as stated at
7 the April hearing?

8 A. Yes.

9 Q. Do the plat and acreage totals on Exhibit #C of the
10 application reflect the relative contribution that each
11 tract is expected to make to the W-31 unit?

12 A. Yes.

13 Q. Are the unleased owners and their interests and the
14 conflicting claimants and their interests to be
15 escrowed also listed on the exhibits filed with the
16 application?

17 A. Yes.

18 Q. Are the unleased owners and their interests and the
19 conflicting claimants and their interests to be
20 escrowed also listed on the exhibits filed with the
21 application?

22 A. Yes.

23 Q. Is the information on these exhibits correct as of
24 today?

25 A. Yes.

- 1 O. Do you have any amendments or additions to the applic-
2 ation at this time?
- 3 A. Yes. Again it's Exhibit #A listed as Exhibit #3 to the
4 application. It was inadvertently left out of the
5 application.
- 6 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
7 Exhibit #3.
- 8 MR. CHAIRMAN: It's accepted.
- 9 Q. (Ms. McClannahan continues.) With regard to the
10 unleased owners has PGP attempted to contact them to
11 lease or assign their interests?
- 12 A. Yes, we have by certified mail, in person or by phone.
- 13 Q. Generally what are the primary terms and the delay
14 rental payments for the oil, gas and coalbed methane
15 leases that PGP has acquired in this particular area?
- 16 A. For coalbed methane it's a dollar per acre per year
17 with a ten year term and a one-eighth royalty. For
18 coalbed methane oil and gas it's five dollars an acre
19 per year, ten year term, one-eighth royalty.
- 20 Q. Are you requesting that the Board pool the interest of
21 the parties listed on Exhibit #C pursuant to the
22 Oakwood I Field Rules?
- 23 A. Yes, we are.
- 24 Q. Are you requesting that the order for the W-31 unit
25 pursuant to the April hearing and this hearing be

1 issued as one joint order?

2 A. Yes, we are.

3 Q. Have any well work permits been issued for the W-31
4 unit?

5 A. Yes, there has been. It's for well CBM-PGP-139D. It
6 was issued on -- the modification to that permit was
7 issued on May 20th, 1993 as permit number 2317-01.

8 Q. Were this for a coalbed methane gas well?

9 A. Yes, it was.

10 Q. Have you received any written responses from the owners
11 of the tracts within this unit regarding the applic-
12 ation?

13 A. No, we have not.

14 Q. Does the plat attached to the force pooling application
15 filed by PGP indicate the acreage and the shape of the
16 acreage to be embraced within the W-31 unit?

17 A. Yes, it does.

18 Q. Does the unit also follow the boundary lines of the
19 Oakwood I field 80 acre unit?

20 A. Yes, it does.

21 Q. It was previously designated as W-31, is that correct?

22 A. That's correct.

23 Q. Does the plat attached to the force pooling application
24 indicate the area within which the wells were drilled
25 on the W-31 unit?

1 A. Yes, it does.

2 Q. Does it also embrace two or more separately owned
3 tracts?

4 A. Yes, it does.

5 Q. The costs and expenses for the wells allocable to the
6 W-31 unit were set forth on DWES as at Exhibits #G and
7 #H and previously approved at the April hearing, is
8 that correct?

9 A. That's correct. It does.

10 Q. Are you seeking additional costs in this particular
11 application?

12 A. No, we are not seeking any additional costs.

13 Q. And the Board previously approved the costs submitted
14 at the April hearing, is that right?

15 A. That's correct. They did.

16 Q. Are you requesting a location exception for a well
17 under the Oakwood I Field Rules within this unit?

18 A. Yes, we are.

19 Q. For what well would that be?

20 A. 139D.

21 Q. Why is a location exception required for this particul-
22 ar well?

23 A. It's within the 300 foot drilling window. It was
24 drilled according to the old south longwall units.

25 Q. Those are the panel units that were previously approved

1 by the Board?

2 A. That's correct.

3 Q. Are you requesting that PGP be designated as the well
4 operator for this unit?

5 A. Yes, we are.

6 Q. And are you requesting the relief sought in Paragraph 4
7 of the application?

8 A. Yes, we are.

9 MS. McCLANNAHAN: Those are all the questions I have, Mr.
10 Chairman.

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

12 MR. EVANS: I do have one. PGP-145 CBM is a proposed well
13 according to your Exhibit #B1, the X-31 unit?

14 THE WITNESS: W-31.

15 MR. EVANS: W-31. Never mind. I'm one ahead of myself.

16 MR. CHAIRMAN: Other questions?

17 MR. HARRIS: I think we were looking at the same thing. In
18 Exhibit #B1 in the current application, comparing that
19 to Exhibit #G, when I look at #G which has the mine
20 plan superimposed W-31 shows two wells, one in the
21 lower left and one in the upper right and #G1 shows one
22 well in the lower left.

23 THE WITNESS: The thing that's shown up in the upper right
24 -- actually you can't read what it says there. That
25 should say vent shaft six. That's the vent shaft for

1 the Buchanan #1 Mine located there. It was just not
2 really labeled plainly what that was.

3 MR. CHAIRMAN: Other questions.

4 MR. EVANS: While we're at it, is there any significance to
5 heavy dark line on Exhibit #G? Is that just two lines
6 that just happen to go over top of each other?

7 THE WITNESS: No significance.

8 MR. EVANS: Thank you. Because previously that's the way
9 you've designated sealed units.

10 THE WITNESS: Correct. I don't know what that is.

11 MR. EVANS: I was making sure.

12 MR. CHAIRMAN: Any other questions?

13 (Witness stands aside.)

14 MR. CHAIRMAN: Do we have a motion?

15 MR. KELLY: Mr. Chairman, I move the application be approv-
16 ed.

17 MR. HARRIS: Second.

18 MR. CHAIRMAN: A motion to approve, seconded. Further
19 questions? All in favor signify by saying yes. (ALL
20 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.

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ITEM XI

MR. CHAIRMAN: The final item on today's agenda is a petition from Pocahontas Gas Partnership for modification and force pooling of the X-31 unit to include Oakwood I coalbed methane production. This is docket number VGOB-95/04/18-0504-01. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MS. McCLANNAHAN: Elizabeth McClannahan for Pocahontas Gas Partnership. I have one witness, Les Arrington who has previously been sworn. His qualifications have also previously been accepted by this Board and they are shown on Exhibit #1 for this particular hearing. I would move the introduction of that exhibit at this time.

MR. CHAIRMAN: It's accepted.

LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

1
2
3 BY MS. McCLANNAHAN:

4 Q. Les, is this particular application filed in conjunct-
5 ion with VGOB-95/04/18-0504 which was heard by the
6 Board in April and by which the Board force pooled the
7 unsealed gob gas, short hole gas, and gas from any well
8 authorized by the Code under the Oakwood II Field
9 Rules?

10 A. Yes, it is.

11 Q. Have you given notice as required by Section 45.1-
12 361.19?

13 A. Yes, we have by certified mail, return receipt request-
14 ed and it's listed at Exhibit #2.

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

17 MR. CHAIRMAN: It's accepted

18 Q. (Ms. McClannahan continues.) Did you also publish the
19 notice of hearing?

20 A. Yes, we did on October 4th, 1995 in the Bluefield Daily
21 Telegraph.

22 Q. And copies of the proof of publication were previously
23 submitted to the Board?

24 A. Yes, they have been.

25 Q. What percentage of the coal, oil and gas and coalbed

1 methane rights in the tracts that comprise the X-31
2 unit does PGP control?
3 A. 100 percent of the Pocahontas #3 Seam, 93.399 percent
4 of the oil and gas estate and 100 percent of the
5 coalbed methane estate.
6 Q. Are these the same ownership control percentages listed
7 and stated at the April hearing?
8 A. Yes, it is.
9 Q. Do the plat and acreage totals on Exhibit #C reflect
10 the relative contribution that each tract is expected
11 to make to the X-31 unit?
12 A. Yes, it does.
13 Q. Are the unleased owners and their interests and the
14 conflicting claimants and their interests to be
15 escrowed listed on the exhibits filed with the applic-
16 ation?
17 A. Yes. They are still correct.
18 Q. With regard to the unleased owners has PGP attempted to
19 contact them to lease or assign their interests?
20 A. Yes, they have.
21 Q. How were those parties contacted?
22 A. By certified mail, phone or in person.
23 Q. Generally what are the primary terms and the delay
24 rental payments for the oil, gas and coalbed methane
25 leases that PGP has acquired in this particular area?

1 For coalbed methane it's a dollar per acre per year
2 with a ten year term and a one-eighth royalty. For
3 coalbed methane oil and gas it's five dollars an acre
4 per year, ten year term, one-eighth royalty.

5 Q. Are you requesting that the Board pool the interest of
6 the parties listed on Exhibit #C of the application
7 pursuant to the Oakwood I Field Rules?

8 A. Yes, we are.

9 Q. Are you requesting that the order for this unit
10 pursuant to the April hearing and this hearing be
11 issued as one joint order?

12 A. Yes, we are.

13 Q. Have any well work permits been issued for this unit?

14 A. Yes, there has been. Well CBM-PGP-139, permit number
15 2231 issued on November 19th, 1992. Well 146, permit
16 number 2877 issued on February 2nd, 1995. Well 152,
17 permit number 2917 issued on May 2nd, 1995. Well 145,
18 permit number 2914 issued on May 2nd, 1995. Well 151,
19 permit number 2915 issued on May 2nd, 1995.

20 Q. And all of these permits were issued when the units
21 were longwall panels previously approved by the Board,
22 is that correct?

23 A. Some of them may have been issued a little later. Oh,
24 June 1st.

25 Q. June 1st is the effective date of the application?

- 1 A. That's correct.
- 2 Q. So all of the wells were issued prior to the conversion
3 of the longwall panels, is that correct?
- 4 A. That is correct.
- 5 Q. And they were all for coalbed methane gas wells?
- 6 A. That is correct. They are.
- 7 Q. Have you received any written responses from the owners
8 of the tracts within this unit to the force pooling
9 application?
- 10 A. No, we have not.
- 11 Q. Does the plat attached to this application filed by PGP
12 indicate the acreage and the shape of the acreage to be
13 embraced within the unit?
- 14 A. Yes.
- 15 Q. Does the unit also follow the boundary lines of the
16 Oakwood I field 80 acre unit that's previously been
17 designated as X-31?
- 18 A. Yes.
- 19 Q. Does the plat attached to the force pooling application
20 indicate the area within which the wells were drilled
21 on the X-31 unit?
- 22 A. Yes, it does.
- 23 Q. Does the drilling unit embrace two or more separately
24 owned tracts?
- 25 A. Yes, it does.

1 Q. Were the costs and expenses set forth on detailed well
2 estimates as Exhibits #G and #H at the April force
3 pooling hearing?
4 A. Yes. It does.
5 Q. Did these exhibits reflect the costs and have there
6 been any changes as of today?
7 A. No, there have not.
8 Q. Are you seeking additional costs in this application?
9 A. No, we are not.
10 Q. Are you requesting that PGP be designated as the well
11 operator?
12 A. Yes, we are.
13 Q. And you're also requesting the relief sought in
14 Paragraph 4 of the application?
15 A. Yes, we are.
16 Q. Were there any changes to Exhibit #3 for this particul-
17 ar application?
18 A. That's the application Exhibit #A which we originally
19 left out inadvertently. However, there was a copy of
20 the location, Exhibit #A, with the notice of hearing.
21 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
22 Exhibit #3.
23 MR. CHAIRMAN: It's accepted.
24 MS. McCLANNAHAN: No further questions.
25 MR. CHAIRMAN: Any questions, members of the Board?

1 MR. EVANS: I can get it in now. CBM-PGP-145 is shown as
2 proposed on your plat. Is it drilled or isn't it?

3 THE WITNESS: It is no longer proposed.

4 MR. EVANS: You may want to submit a revised plat showing
5 that as an existing well as opposed to a proposed
6 well.

7 THE WITNESS: Okay.

8 MR. CHAIRMAN: Other questions?

9 (Witness stands aside.)

10 MR. CHAIRMAN: If there are no further questions do I have a
11 motion?

12 MR. KELLY: Mr. Chairman, I move the application be approv-
13 ed.

14 MR. CHAIRMAN: A motion to approve.

15 MR. EVANS: Second.

16 MR. CHAIRMAN: Any further discussion. All in favor signify
17 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
18 Unanimous approval. Thank you.

19 MS. McCLANNAHAN: Thank you.

20 MR. CHAIRMAN: That concludes today's hearing.

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(End of Proceedings for
October 24, 1995.)

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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 proceedings of the Virginia Gas and Oil Board meeting held on October 24, 1995 at the Breaks Interstate Park, Breaks, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid 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 14th day of November, 1995.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.