CASE 5054: Appli. of HANNIFIN &
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS, etc.

Case 5054

CASE No.
5054

Application,
Transcripts,
Small Exhibts
ETC.

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BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
MORGAN HALL, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO
August 28, 1973

SPECIAL HEARING

IN THE MATTER OF: Application of D. L. Hannifin and Joe Don Cook for a determination of reasonable well costs and for an order terminating operator's withholding period, Eddy County, New Mexico.	Case No. 5054

TRANSCRIPT OF HEARING

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MR. PORTER: The hearing of the Oil Conservation Commission will come to order, please. Let the record show that present for the Commission are chairman, Mr. I. R. Trujillo, secretary director, Mr. A. L. Porter, Jr., that the commissioner Armijo is unable to be here because of a funeral, I believe.

This is a special hearing that was set by a quorum of the Commission, and in the 17 years that I have been the director of the Oil Conservation Commission, and I believe that I signed the first forced pooling order that was ever issued by this Commission. We have had some 245 forced pooling cases. Although the law does establish that the Commission can determine the reasonable well costs, this is the first time the Commission has ever been called upon to do so by any of the parties who have been involved in forced pooling cases before.

At the outset, the Commission issued certain subpoenas for individuals and records. Now, I'm going to suggest at this time that if the individuals have come forward with themselves and with the records that have been subpoenaed, that we would like to take a recess after it has been established that the records are here and have the parties get together in our conference room upstairs and see if they cannot work out

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a reasonable well cost.

I really see no point in this hearing at all. I do see a point under the circumstances, but I feel that this is something that could be worked out. Reasonable men should be able to sit down across the table with the record and come to an agreement on what something costs.

So first, I guess that we should establish whether or not the individuals have come forward and with the information that has been subpoenaed.

MR. HOWDEN: F. B. Howden, appearing for Michael P. Grace and Corinne Grace. We have the response to the subpoena. Mr. Grace is present. The documents and records have been brought and at the moment Mr. Grace's accountants and the petitioners' accountants have come.

So I on behalf of my clients certainly would have no objection to proceeding. I think there are some, we might call, collateral matters, that we would need to ask the Commission to consider; but perhaps such a recess as suggested would be appropriate.

MR. PORTER: Mr. Hunker?

MR. HUNKER: May I ask counsel if they brought the drilling contract and the insurance policy with regard to blowouts.

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MR. HOWDEN: I'm sure we have the drilling contract; and, let's see, I believe everybody has gone out of the room.

MR. GRACE: Mrs. Grace has them. She is upstairs. I'll go get them.

MR. HOWDEN: She has the blowout insurance. She has that, also, the documentation to it. That's a self-insured situation on the contract. Is that correct, Mr. Grace?

MR. GRACE: Yes, that's right. I'll go get it.

MR. HUNKER: If the Commission please, I have concurred with what you have said and our accountant is here, and I have already asked him if he would go with the accountants for the Graces and see if they could review the third-party invoices and arrive at a list of costs; and at that point I think it's up to me to get together with my client and determine whether or not he wants to make any objection to these costs.

It's up to the Commission to make a determination as to reasonable well costs. It isn't up to the applicants to make that determination, but I think they should be entitled to have their day in court, so to speak, so as to object to any items that they felt were out of line; but we don't know whether the costs are reasonable or not.

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MR. PORTER: In other words, both parties should be satisfied as to what the reasonable well costs are?

MR. HUNKER: As to what the actual costs have been.

MR. PORTER: And what the actual costs have been, and I feel that the parties can settle this thing themselves. I see no reason why they cannot. Now, one reason I'm suggesting this is whatever Commission action may come out of this, of course, is subject to a Court's challenge; and we could experience numerous delays if we go that route; and I think what I suggested here is reasonable.

MR. HOWDEN: Mr. Chairman, I certainly agree; and I'm sure my client agrees it's reasonable. As I say, I would not want to waive any rights to raise whatever other questions might be appropriate, but certainly this approach is a reasonable approach.

MR. PORTER: It's understood that you are not waiving any rights. All we are trying to do here is to allow the parties time if their records now are available to go over those records and see if they can arrive at what a reasonable cost is. So I would like to recess the hearing and then come back together. We will give you a reasonable time, an hour, two hours,

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whatever is necessary.

Mr. Trujillo and I will be available all morning. I would like for you to get on it as expeditiously as possible and try to come back as soon as possible.

MR. HUNKER: Could we recess until 11:00 o'clock, sir?

MR. PORTER: That would be fine. So with no further objections, this hearing will recess until 11:00 o'clock and we will reconvene then in this room. Thank you very much.

(Whereupon, at 9:24 A.M. the hearing was recessed until 11:32 A.M.)

MR. PORTER: This hearing will come to order, please. At the request of the attorneys for the interested parties, we are going to recess the hearing until 1:30 this afternoon. We will reconvene here.

(Whereupon, at 11:34 A.M. the hearing was recessed until 2:07 P.M.)

MR. PORTER: The hearing will come to order, please. The Commission at this time will resume consideration of 5054. Mr. Carr, would you read a description of the case?

(Whereupon, Commissioner Armijo is now present.)

MR. CARR: Case 5054, Application of D. L. Hannifin and Joe Don Cook for a determination of reasonable well

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costs and for an order terminating operator's withholding period, Eddy County, New Mexico.

MR. PORTER: This morning in my eagerness to turn this formal hearing into an informal hearing, I didn't ask for appearances. So at this time I would like to ask for appearances.

MR. HOWDEN: Mr. Chairman, I'm Frederick B. Howden; and this is also Mr. Robert W. Ryan.

MR. PORTER: R-y-a-n?

MR. HOWDEN: R-y-a-n, and Mr. William S. Downard, D-o-w-n-a-r-d, appearing for Michael P. Grace.

MR. PORTER: All right.

MR. HUNKER: George H. Hunker, Jr., of the firm of Hunker, Fedric & Higginbotham, Roswell, New Mexico, representing D. L. Hannifin and Joe Don Cook.

MR. PORTER: Gentlemen, you will recall that we recessed the hearing this morning until 11:00 o'clock and reconvened and recessed it until 1:30. We come back together at this time, and I'd like to find out from the attorneys representing the parties here what you have accomplished and if you have reached an agreement.

MR. HOWDEN: Mr. Chairman, on behalf of Michael P. Grace, I would like to report to the Commission that all matters under the accounting aspect of this hearing were reviewed. All documentary questions were delivered to the

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petitioner. The matter was gone into and discussed at some great length, and five minutes ago I thought all matters regarding accounting were resolved and reduced to writing and prepared to be put in stipulation, and the matter has now been turned down, as I understand it, on the basis of a provision that has nothing to do with the accounting, per se, so we are where we started as it stands.

MR. PORTER: Mr. Hunker?

MR. HUNKER: If the Commission pleases, Mr. Howden has reported the matter correctly to you. We have disagreed upon one very essential legal element that is involved in connection with this particular controversy, and that lies in the matter of the ownership of the gas that's produced from the pooled area.

It was our position that we were entitled to 50 percent of the Grace production from after July 1,1973, because that was the latest date at which the withholding period could possibly have terminated. We still have strong objections to the costs that were incurred by the operator in connection with this well, but as a matter of give and take we resolved many of the issues with regard to the accounting, and we found many of the items, a great majority of the items acceptable, 95 percent of the items acceptable on the accounting; but we cannot

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approve the accounting as being reasonable if we cannot obtain some quid pro quo for the position which we have been willing to take with regard to those costs.

At this time, we would like to proceed on the basis of the information that has been furnished to us by Mr. Grace or by his representative and make a showing to the Commission as to what the costs were as furnished to us and let the Commission make its judgment as to whether or not the charges are reasonable or not, and make such other determinations as are necessary in connection with the legal problems that may be resolved.

I have two witnesses to call. He may respond, if he cares to.

MR. HOWDEN: I'd like to respond in the form of a motion. This was one we had hoped could have been avoided; but I think it must now be brought before the Commission. I don't think that the request for determination by the Commission on reasonableness of these costs is timely brought before the Commission; and therefore, we would move that that aspect of this hearing be stricken and avoided by the Commission; and I will state to the Commission that I base my motion and my statement on the order, the forced pool order of the Commission particularly Paragraph 5 of the order portion in which it is stated that the operator shall furnish the

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Commission and each non-working interest owner in the subject unit an itemized schedule of actual well costs within 60 days following completion of the well, that if no objection to the actual well costs are received by the Commission and the Commission has not objected within 60 days following completion of the well, the actual well costs shall be the reasonable well costs.

Now, what the chronology will show and the record will show is that the accounting was filed in the Commission. Let me back up one step. The well was completed on March 15. The accounting was filed on May 8. No objection was taken to the accounting until this action was brought and filed on either July 30 or August 1. I'm not quite certain as to which of those dates, but in any event clearly well beyond 60 days after the well completion date.

Under the terms of the order, therefore, it would be beyond the scope of the order, beyond the power and authority here to go into an accounting at all because by the failure of the applicant here to timely object, the well costs as submitted are determined the reasonable costs; and therefore, that is now a moot question and that if the Commission pleases that is the gist of my motion.

MR. HUNKER: May I respond, if the Commission please?

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MR. PORTER: Sure.

MR. HUNKER: The applicants will stipulate that the costs incurred as shown by the statement which was filed on May 8, 1973, are the reasonable well costs in connection with this well. The $439,986.35 figure is acceptable to the applicants and is representing --

MR. PORTER: What was that figure?

MR. HUNKER: $439,986.35. We will stipulate that those are the reasonable well costs.

MR. PORTER: That was the one that was submitted on May 8?

MR. HUNKER: Yes, sir.

MR. PORTER: Well, Mr. Hunker, what then are you objecting to, whether supplemental costs were submitted?

MR. HUNKER: They have submitted from time to time additional statements as to what their costs have been, and the last statement which is unsigned says, "I hereby certify this amended accounting to be an accurate account of the expenditures made in drilling and completing the well but not excluding other valid expenses that may prove the grand total figure to be higher." The total on that amended statement which was furnished to the applicants is $465,681.10.

MR. PORTER: $465,681. --

MR. HUNKER: 10 cents, yes, sir.

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MR. PORTER: This is the latest cost? Does that represent the total cost?

MR. HUNKER: We are hoping that it represents the total costs. If I may interject here, if the Commission please --

MR. PORTER: That this is indicating there may be additional costs?

MR. HUNKER: I don't know what that statement means, but not excluding other valid expenses.

MR. PORTER: When was this submitted?

MR. HUNKER: This was submitted, the Commission received it I believe, August 21.

MR. PORTER: Well, Mr. Hunker, in connection with this, is it the applicants' contention that the final figure of $465,681.10 was not submitted within the 60 days?

MR. HUNKER: I think the record will show that it was not filed timely.

MR. PORTER: The $439,000 figure was submitted timely?

MR. HUNKER: Appears to have been timely filed, yes, sir.

MR. ARMIJO: Were you able to reconcile the difference in that $25,000.00?

MR. HUNKER: The Commissioner of Public Lands asked whether we were able to reconcile the difference, and I

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think you should answer that, Mr. Howden.

MR. HOWDEN: I think, Mr. Chairman or Mr. Commissioner, that we did reconcile in effect that $25,000 in the settlement that I thought we had reached until ten minutes ago.

MR. HUNKER: As Mr. Howden says, it becomes a moot point as to actual well costs being submitted within the 60 day period. Our objection would be that we don't want to pay the 25 percent penalty on the difference between 435,000 and 465,000.

MR. PORTER: Mr. Howden, the Commission overruled your objection and we will file it with the testimony in the case.

MR. HUNKER: I'd like to have Mr. D. L. Hannifin and Mr. P. L. Duncan in and be sworn.

(Whereupon, the witnesses were sworn.)

MR. HOWDEN: Mr. Chairman, before proceeding with this witness I would like to ask the Commission to permit us to take a witness out of order on our part of the case. We have a witness here from Washington, D.C. We would like to have leave of the Commission to be able to have him testify. He was here available this morning and we are trying to save some time; and in effect, too, his time has been lost in waiting. We would like to ask the Commission leave to take him out of order so that

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he may be excused.

MR. PORTER: Mr. Hunker, do you have a response to this request?

MR. HUNKER: We object to taking the witness out of order, but I realize that planes have to be caught and the like, and I don't want to terribly inconvenience this gentleman who has come out from Washington. I object to it because we have been waiting around for some time, too.

MR. PORTER: Mr. Howden, the Commission will allow your witness to come on at this time.

MR. HOWDEN: Thank you, Mr. Chairman.

LEE C. WHITE,

a witness, having been first duly sworn, according to law upon his oath, testified as follows:

DIRECT TESTIMONY

MR. PORTER: Mr. White, would you take the chair at the end of the table, please?

MR. WHITE: Thank you, Mr. Chairman. My name is Lee C. White. I'm a practicing attorney in Washington, D.C., and I'm here at the request of the Grace interest to testify before the Commission on a matter that I counseled them about perhaps mid June. The matter that I discussed with them was the contingent liability that I

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believe that they had at that time and have now as a result of a challenge to the Federal Power Commission's small producer exemption.

The Federal Power Commission adopted a rule in 1970, saying that small producers were exempt from the regulation of wellhead gas rates. This has been challenged. A case was brought in the Court of Appeals for the District of Columbia Circuit, and on December 12, 1972, subsequent to this Commission's order in this particular proceeding, the Court of Appeals by a 2 to 1 decision in a case styled, Texaco v. Federal Power Commission, held that the Federal Power Commission did not have the authority under the natural gas act to exclude small producers from rate regulation. The citation of that case is 474 F. 2d, 416.

The docket number in the Court of Appeals is Docket No. 71-1560, and there are two related cases, but I think that the citation should be adequate for the purposes of the Commission and its staff.

That was a split decision. Two of the judges believed clearly and unmistakably that the Federal Power Commission did not have that authority. The descending judge, Judge Fahy, felt otherwise and so stated; and yet I think it is clear in a reading of even the descent that there is a contingent liability to refund to the interstate

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pipe line from a small producer the excess over the proper area rate fixed by the Federal Power Commission.

At the time that that decision was rendered, December 12, 1972, the Permian Basin area rate was roughly in the order of 16 cents per 1000 cubic feet. Subsequent to that time on August 7, 1973, just a few weeks ago the Federal Power Commission issued a new area rate for the Permian Basin. I should note in discussing the Court of Appeals' decision that on May 3, a petition for certiorari to the U.S. Supreme Court was filed. That particular petition has not yet been acted upon. It is assumed that the Court, when it convenes for its October term, the Supreme Court will make a determination as to whether or not the case will be heard by the Supreme Court.

My own advice to the Graces at the time was that since there is an excellent chance that they will be required by the Court's decision either if it is not taken by the Supreme Court or if it is affirmed by the Supreme Court should it decide to hear argument of it will result in a liability on the part of small producers, including the Graces, to make a refund to interstate pipe lines that have purchased gas from them.

At this moment in time, I don't think that I could even make a guess as to whether that will be 16 cents or

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whether it will be the new area rate of 35 cents. I think it could be argued that it will be 35 cents. I think it could be argued that it will be 16 cents. I think it is also possible just to lay out the spectrum of possibilities that the Federal Power Commission may undertake to say despite the ruling that it did not have authority, that for whatever reasons it does not believe that refunds should be paid by the small producers who acted in good faith believing that the Commission's order was valid.

I believe and so state that should that be the case and should the Commission attempt to waive refunds that the parties who brought the proceeding in the first instance will protest and contest that and undertake to require that there be refunds. In that state of event, I suggested to the Graces that it made a great deal of sense for them to protect against any liability through whatever devices were open to them; and, of course, the most obvious is the escrowing of the funds so that when the judicial and commission process has run its course the situation will have been preserved so that they will not have paid to their royalty owners and to any other interest owners monies that they then have to try to recover.

I am informed by Mr. Grace that that information was communicated to the various royalty owners and other

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interest owners and that all of them indicated an understanding of the situation and have agreed to go along with the concept of placing these funds in escrow. When I had expressed these thoughts and views to Mr. Grace, I believe we thought that it was appropriate that that information be brought to the attention of both Mr. Hannifin and El Paso; and as a consequence, on June 27, 1973, I called the parties. I talked directly with Mr. Hannifin and with a Mr. Rick Johnson of El Paso Natural Gas Company in El Paso, Texas; and the following day I sent a registered letter confirming this advice that I had given to the Graces.

It seems to me that this has some bearing not on the part of the proceeding that has to do with whether the accounting is reasonable and whether the expenses were reasonable, but what happens after an agreement on that, because quite clearly one of the requests of the petitioner of this Commission is to find that the well costs have now been realized by the operator, Mr. Grace, under your order and that as a consequence whatever interest Mr. Hannifin, Mr. Cook, and others may have will then invest. My advice to them is that if they are using the 52 cent per 1000 cubic feet price to determine when that pay out has been accomplished, they may instead be deluding themselves, because it is not only conceivable, I think it is quite

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likely that there will be some refund requirement.

This is one of the points that when I indicated that Mr. Grace suggested that it would make sense to present it to this Commission, and this is one of the principal points that I want to make to you. I think that the Commission has it within its power to examine the situation insofar as the prospects for any refund liability and through escrow or perhaps some other arrangement that the parties can reach an agreement to protect against the undesirable situation where perhaps 8 months, a year from now, the matter will have been finally adjudicated. And then the money will have been spent and there is a big scramble to get the money back in order to refund to El Paso. So far as El Paso is concerned, the interstate pipe line, I don't think that it will be a free agent who will be able to say, "Well, we don't want to press our rights to refund," because if they don't, the commerce of the pipe line can be expected. The very same people or the classes of people who challenged the Federal Power Commission's authority to issue this ruling will certainly be before the Commission and perhaps before the Court saying that just and reasonable rates which is in quotes, the language of the natural gas act, prohibit the charging of more than just and reasonable rates; and as a consequence, they want

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their refunds.

So that in terms of how this Commission handles the matter assuming agreement on what are the reasonable costs of the well, I think it is more that you have this in your mind and that is one of the reasons I wanted to come here. I believe that this is well worth the Commission undertaking either through its continuing supervision under the original order or perhaps through agreement by the parties to make certain that the situation is taken into account and provided for.

I think that concludes that part of the point I would like to make. There is a further point I think has been eluded to, and that is the interest that Mr. Hannifin may have as a result of the Commission's forced pooling order. I must at the outset, and it will be no surprise to you, I am not familiar with the New Mexico law on the subject. I am advised that oddly enough this particular matter may not have been previously litigated here in New Mexico; but under Section 7B of the Natural Gas Act I think it is evident there can be no abandonment of a dedication of natural gas to the interstate market once it has been made.

When El Paso's contract with the Grace interest in this particular well, dated March 1, 1973, was executed, El Paso as is their custom gathered together with a cluster

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of others and forwarded it to the Federal Power Commission for its review. The Federal Power Commission has accepted it and I am satisfied that if there is to be any change, any taking away of that gas either from the interstate market or from that particular contract, it will require the Federal Power Commission's approval.

As I read your order, you designated, you had a choice of two applicants seeking to be designated the operator of the well. You made a choice. The choice was Michael P. Grace II. Mr. Grace then went about his responsibilities which were to provide for the sale of the gas and entered into a contract with El Paso Natural Gas Company for this purpose. I think there was no reason that El Paso shouldn't have accepted his authority to bind or commit all of the gas from that well.

It would be my view, therefore, that 100 percent of the gas is committed under that March 1, 1973 contract and that any change therefrom would require approval by the Federal Power Commission. That I think perhaps too briefly, but nevertheless is as I can put it, is what I regard the situation insofar as the application of the Natural Gas Act to this matter before you.

CROSS-EXAMINATION

BY MR. PORTER:

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Q In referring, Mr. White, to the small producer, you are using the Federal Power Commission's definition I believe which is a small producer is 10 billion cubic feet of gas per year or less than 10 billion?

A Yes, sir.

Q Do you know for a fact that the Graces would qualify under the definition of a small producer?

A I do not know for a fact. I have assumed because they made the application under that provision.

Q In other words, that would have no particular bearing on the case anyway?

A I would think not, because if they are not by definition a small producer, why, then obviously they could not have availed themselves regardless of what a court subsequently says about the statutory authority to issue such an order by the FPC.

Q That's right. Now, your testimony is pertinent here only insofar as pay out, when the pay out of the well is achieved or accomplished?

A Well, yes, sir, although I think I'd like to go just a little bit further to suggest that that is one of the issues; but I would believe that since the Commission has some continuing interest in the matter that it may want to afford your good offices to see to it that with this prospect facing the parties and, instead, this

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Commission, that proper steps be taken to preserve the interests of all and protect against it since we are aware of it. It is not something that will come in out of the blue. It is now a matter of judicial record, and I think a reading of the case will confirm what I have said about it, and I think armed with that information that the Commission here would probably want to encourage the parties to work out some arrangement so that nobody gets hurt ultimately depending upon how the Courts resolve the dispute about refunds.

Q As a former member of the Federal Power Commission, would you like to hazard a guess as to whether this price would be rolled back in the event that it is, to 16 cents or 35 cents?

A Mr. Chairman --

Q I realize in dealing with the Federal Power Commission you are shooting at a moving target because philosophies change every time membership changes.

A The answer really comes in two parts. One of them is what is the Commission likely to do, and secondly, what is the Court likely to say that it can do. And frequently those aren't the same.

Q Right.

A I could make a guess. I don't know how useful it would be. My guess is that the Supreme Court will grant this, sir, in

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part, because this dispute over the FPC's authority to issue the small producer exemption order is, in many ways, almost always identical to an even larger dispute that has gone on. And this is the so-called optional pricing procedure that the Commission adopted in 1971. That has been challenged. In fact, argument will be heard before the Court of Appeals for the District of Columbia Circuit on September 25, and I know there is a rate against the Federal Power Commission of very significant interest. The Public Service Commission for one. 20 or 21 members of Congress for another.

And I know that the argument will be made to this same Court that reached the 2 to 1 decision in the small producer case. Its language is that the majority of the language almost disposes of the optional pricing case. Well, that's very important, and I have a hunch that the Supreme Court will either want to consolidate those cases or take the one as a comparison of how it feels about the authority of the Federal Power Commission to promulgate rules and regulations under the Natural Gas Act.

Q From your testimony here, you might expect some considerable period of time to elapse before it's actually determined what the final --

A It could be as much as two years.

Q Time for all of the appeals?

A Yes, sir, and it's big enough and important enough, there is enough money involved, there is enough interest involved to make me believe it's going to go the full course which could be somewhere between a year, at the outside, two years.

MR. PORTER: Mr. Hunker?

MR. HUNKER: If the Commission please, I have no questions for Mr. White. I thank him very much for his opinion. I'd like to call attention to the Commission of the fact that he has testified about a number of things where there has been no foundation laid. For example, the Grace-El Paso contract. It is not in evidence. It hasn't been produced, and we will reserve our objections with regard to those matters to another time.

MR. PORTER: Does anyone else have a question?

CROSS-EXAMINATION

BY MR. NUTTER:

Q Mr. White, you testified you had advised the Graces to escrow the funds because of this possible roll back in the price. Now, what percentage of the funds did you advise them to escrow?

A My advice was a little more general than that, sir. It was that there is this contingent liability and that I

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think being aware of it they ought to take whatever steps are appropriate to guard against it. And I suggested that one of the standard and orthodox approaches is the escrow approach.

Now, I did not specify one. My advice to them was prior to the FPC's issuance of its August 7, 1973, new area rate for the Permian; and may I say that, too, may well be challenged. So I don't know that that 35 cent rate is going to mean a thing. And in absolute safety now, I'm now telling you I did not advise the Graces this specifically. Absolute safety would seem to me to require a 16 cent test.

Someone else may feel that a reading of the August 7, 1973 order makes it clear that it is going to go higher than 16 cents and that somewhere either at 35 or somewhere between 16 and 35. The escrowing is simply a device to attempt to keep the parties in a fluid situation, and there may be other devices that can be arranged, bonding or assurances of another sort.

So that the parties, it strikes me when they are aware of this problem, ought to be able to work out a satisfactory means suitable to themselves and suitable to this Commission that will do what you want it to do which is to protect against a fairly clear and obvious liability.

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Q Now, do the Permian Basin rates make a distinction between old gas and new gas?
A Yes, sir.
Q And what is the cutoff date for new gas?
A Well, I think that's after, I have the order with me. It's after January 1975, I believe; but the 35 cents rate applies not only to new gas but also to old gas that was contracted for after 1968. I think this contract obviously came after 1968 so that it would, as I read the FPC August 7 order, be entitled to a 35 cent rate; but I want to, if I may, put a footnote on that.
There are some exceptions, and it would take a more careful reading than I have given to it, and I would hope that the parties themselves would take a very good careful look at that. And you also I think should take into account the possibility that there will be a challenge particularly with respect to old gas. There are a lot of parties that are watching this; and when the Commission, Federal Power Commission, now takes an old rate promulgated initially in 1965 at about 16 cents and says that rate at least after 1968, and I think the reason for that is because of the moratorium that was built into the original Permian Basin area rate decision, there will be, I think, possibly predictable, there will be judicial dispute over its authority to raise those rates after January 1968, and

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prior to the August order.

Q But you feel that it would be perfectly safe to spend your 16 cents and possibly escrow any difference between 16 cents and what you are getting?

A I don't see how it could be lower than that; and in the August 7 order, the Commission itself now fixes a minimum rate at 16 cents for any gas in the Permian Basin. I would think that 16 cents, certainly nobody could conceivably get hurt under that.

Q Would you go so far as to say it would be reasonable to spend up to 35 cents and escrow the amount above 35 cents?

A I haven't thought about it previously, but just responding I would think that that would be a reasonable way to proceed if that were accompanied by some other type of arrangement protecting the parties. In other words, a bonding company or through some contractual arrangements that made it clear. I don't know precisely how many parties have an interest in this well, but I don't think the number is in the hundreds or tens.

I think it is manageable and that the parties being apprised of this probably should be able to work out a satisfactory arrangement, but I don't think that alone the escrowing between 35 and 32 would be quite adequate.

Q That's not quite safe enough?

A No.

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MR. NUTTER: No further questions.

REDIRECT EXAMINATION

BY MR. [illegible]EN:

Q Mr. White, I'm not sure that you went into this question; and I would like to make certain that we do get into it, and that has to do with the proposition of taking gas that is in interstate commerce and contracting it or reselling it into intrastate commerce. I'd like to ask your opinion for the benefit of the Commission as to whether or not this can be done. If so, under what conditions?

A Well, Section 7B of the Natural Gas Act says that once facilities have been approved and gas itself has been sold into the interstate markets, that is a dedication that can be abandoned only with FPC approval. In a period of shortage especially in the intrastate market, I would say that the Federal Power Commission today and tomorrow and the day after would be extraordinarily reluctant to commit any gas once dedicated to the interstate market to be withdrawn to that market and sold in the intrastate market.

And I suggest, I believe, that in this particular instance, the Commission would believe that it has, the FPC would believe it has already ascertained jurisdiction over the contract and that that gas is committed to the

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interstate market.

Q Another point, Mr. White, at the risk of being repetitious. In this situation faced with the contingencies of this pending litigation, do you have an opinion as to whether or not ultimately once it's resolved it would have a retroactive effect, that is, a requirement of paying back in this instance to El Paso funds already received from El Paso over the amount that is finally arrived upon?

A I think the answer to that question is that in all likelihood it would be required under this situation even [illegible] so than in earlier Federal Power Commission cases where the difference between the in-line rate and what was actually determined to be the just and reasonable rate was required because here in the Court of Appeals the challenge to the small producer order is not that it was unwise, but there was simply no authority to have done that.

As a consequence, I think that the just and reasonable area rate is what will have to be the case and therefore the chances are excellent, if not 100 percent, that there will be a decision by the Court and carried out by the FPC to refund the difference between what was received under a program that has proven to be without statutory authority and what was the area rate.

I suggested there could be two different area rates,

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the one that was promulgated in 1965 and that that came out earlier this month. It may well be, though, as I did suggest, that the Federal Power Commission may undertake to relieve any of the small producers of responsibility for refunds on the grounds that they acted in good faith and the Commission did, too, believing it had the authority; But this will not be short of an empty economic question in a vacuum.

There are parties in interest who will say that regardless of the Federal Power Commission's desire to be understanding of the problems that such a decision would put on small producers that there is no option. They will have to do that. Now, sometimes refunds have been waived; but I don't think it would be possible in this case. It may have some way of working it out over a period of time, but I would think ultimately the chances are quite strong that refunds will have to be made.

This, of course, rests on an assumption that the Courts will find as did the D.C. Circuit. They may say there was a descending judge; and for all I know his decision may be accepted by the Courts and prove to be the case, that not only could they do it; but the fact that they did it was all right. In which case, I would assume then that the 52 cent per 1000 cubic feet rate would

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be upheld and that the money that was held in escrow or otherwise protected could then be distributed to the parties in interest.

Q One more question, Mr. White. Do you have an opinion as to what consequences could be predicted in the natural gas industry if non-operators are permitted to sell their gas separately after an operator has contracted to sell it?

A This is an area that I am only slightly familiar with, but I don't think it takes an enormous imagination to see the havoc that could be represented by that. We are in a period where there are differing attempts by the FPC to find ways to permit a change in the prices paid for gas and to, in effect, encourage that would be contrary to the public interest.

As to whether it is illegal, whether the New Mexico law or the Federal law prohibits that, I simply do not know; but if you are asking my view as a matter of public policy, I can tell you that it makes a great deal of sense to have any well operated by a single operator so that people who deal with that operator are not dealing with him at their peril.

I believe that it would serve the public interest to use that option, and I gather that was what the New Mexico Commission had in mind when it adopted its order here on November 8, 1972.

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MR. HOWDEN: Thank you, Mr. Chairman.

MR. HUNKER: I have a question now.

MR. PORTER: Mr. Hunker?

CROSS-EXAMINATION

BY MR. HUNKER:

Q Is it possible that the Supreme Court's decision could be prospective in its effect so that it would be applicable from the date of that decision assuming that it affirms the position of the Court of Appeals?

A I'd say, Mr. Hunker, it would be possible but most unlikely, because the theory of the majority in the Court of Appeals is that the Natural Gas Act simply doesn't authorize the FPC to have done it. So whatever they did do was without statutory authority, and I don't see how they could say that they didn't do it prospectively, but --

Q At what point in time then would the order be effective as far as the roll back was concerned?

A I would say from the very promulgation of the small producer exemption order.

Q And how many instances has there been a roll back in prices where there is a rebate required? Are you familiar with that?

A Well, I can't give you a number; but I can tell you it is not uncommon and it is not rare and unusual. While the Federal Power Commission was undertaking to determine the

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just and reasonable rates, it did establish an arrangement known as the in-line rates which took the contract prices generally in an area and said that will be the in-line rate subject, of course, to an understanding by all who paid that rate that if the area rate turned out to be something different, then if it were left, the area rate that was authorized as a just and reasonable rate became effective as of the time that those contracts were entered into.

So it is not unprecedented to have that roll back in refunds to interstate pipe lines which were passed on to distribution companies and ran into the hundreds of millions of dollars in the 1960s.

Q One other question. Are you aware of the fact that the usual oil and gas lease provides for the payment to the lessor of the market value at the well of the gas as produced? Are you aware of that customary provision in an oil and gas lease?

A Yes, in a general sense I am, counsel.

Q Would you care to comment as to what amount the lessee should be required to pay to a lessor when there is this differential where an interstate carrier would pay, say, 35 cents where an intrastate would pay 52 cents for that particular gas? Would you comment on that situation for us?

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A I really don't have that good enough of feel for that to be able to give you a response, but I would believe that the Natural Gas Act adopted by Congress is preeminent and that if gas moves into interstate commerce, and that's the type of gas we're talking about at the moment, then whatever the Commission fixes as a just and reasonable rate is all that can be paid by the pipe lines And insofar as any division between the operator and his partners or between the operator and the lessor, I think that is between them; and I really don't have any expertise or any feel for that or, instead, any opinion. I simply don't know.

MR. HUNKER: That's all. Thank you very much.

MR. PORTER: Does anyone else have a question?

MR. HOWDEN: Thank you very much, Mr. Chairman. We ask leave of the Commission that the witness be excused.

MR. HUNKER: It's agreeable with me.

MR. PORTER: If there are no further questions, the witness may be excused. Call your next witness.

THE WITNESS: May I say, Mr. Chairman, that I do appreciate your decision for allowing me to go out of order.

MR. DOWNARD: Mr. Chairman, I am the Graces' attorney and I would like to present a motion at this time and move that the Commission dismiss this proceeding

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on these grounds: The applicant's counsel has stated quite candidly that during the recess this morning all the costs that were questions and were verified, that there is no real dispute between these parties about the accounting matter. He says, however, that they would otherwise approve those costs except that they want a quid pro quo for approving the accounting.

So it seems to me clear that what the applicants are doing is abusing this Commission by taking its time for a protracted hearing of accounting matters in an effort to use that as a quid pro quo, a threat to the respondent that if we won't agree to non-escrow, these payments that they will take up this Commission's time with a long and detailed accounting proceeding going into excruciating details. Really, nobody is being abused by this except the Commission. Of course, it's running up expenses for the parties. It's abusing the parties, too, by having them keep witnesses on hand and pay expenses to go into several days of protracted accounting that is wholly unnecessary except to use it as a quid pro quo to try to get to force an agreement on something that is not even before the Commission and is not involved in this accounting.

There is no legitimate accounting proceeding; and therefore, I move that this proceeding be dismissed.

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MR. PORTER: Mr. Hunker, would you like to respond to the motion?

MR. HUNKER: Yes, Mr. Porter, I would like to respond.

MR. PORTER: By the way, before I get into it, I'd like to relate a little story and relate it to this about a certain health speaker one time who had made a remark, made some comment about corpuscles; and he said, "I'm sure that all of you know what the inside of a corpuscle looks like." The M.C. said, "Well, I'm sure most of them do, but you might explain it for the ones that never have been inside of one."

So I'd like to know what quid pro quo means.

MR. HUNKER: It means that for which. It represents the consideration for entering into an agreement.

MR. PORTER: I see. The consideration for entering into an agreement?

MR. HUNKER: That's correct, sir.

MR. PORTER: You may proceed.

MR. HUNKER: We would like to put on our case to show the Commission, as I indicated earlier, that we were willing to stipulate as to the amount of the costs that were incurred in connection with the drilling of the initial test well. Mr. Howden's indicated that they timely furnished the Commission with a $439,000 list of

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costs representing them to be the actual well costs; and we are perfectly willing to accept that item; and if Mr. Hannifin would get on the stand he would be more that happy to accept the well costs as they have announced with certain specified objections which we discussed in the process of our negotiations today.

MR. HOWDEN: Mr. Chairman, on behalf of my client, Mr. Grace, I'm prepared to accept that stipulation.

MR. HUNKER: The original $439,986.35? We are in agreement on that as representing the reasonable well costs in connection with the drilling of the Grace well.

MR. HOWDEN: That's correct, Mr. Chairman. Mr. Chairman, at the risk of taking two more minutes of the Commission's time, I'd like to ask respectfully that I confer with my client with regard to this stipulation and make certain that there is no misunderstanding as to its implications. Two minutes ought to cover it.

MR. PORTER: Now, just one moment. As I understand it, this stipulation as agreed upon takes care of Points 1, 2, and 3 in the application.

MR. HOWDEN: That's the reason I've asked for this time, Mr. Chairman, because I had a hurried word with my client; and I'm not sure we understood each other as to the breadth and scope of this stipulation. I'd like to make certain, if the Commission please.

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MR. PORTER: All right. We will have a five minute recess.

(Whereupon, a five minute recess was held.)

MR. PORTER: The hearing will come to order again, and at this time I will hear from Mr. Howden.

MR. HOWDEN: Mr. Chairman, I want to make sure I understand the proposed stipulation. In that light, the Chairman asked me for example, if the effective stipulation was to do away with Paragraph 1 of the docket is one question, I think. That is the one requiring Mr. Grace to furnish itemized schedules, et cetera. That I think is moot, his having done it already this morning. So that really isn't effected by the stipulation, as I understand it. If I understand correctly what Mr. Hunker was saying was that the $439,000 that was timely filed would be subject to the 25 percent penalty factor and the balance beyond the $439,000 would not be subject to the 25 percent.

Now, my client in an effort to save a lot of this accounting that Mr. Downard was talking about a while ago, suggested that we attempt to find a stipulation that can work and then move on with it. We need some verification in that respect. So what I'm saying is that if I understand it correctly we can stipulate, but the $439,000 is subject to the penalty factor, and the difference, from

$25,000, would not be.

MR. HUNKER: Mr. Porter, timely submitted was a list of costs. Under Mr. Howden's contention, those actual costs will be regarded as the reasonable well costs if under the Commission's order as it was written no objection is made by the Commission within a period of 60 days. We are willing to stipulate that the $439,986.35 constitutes the actual well costs under the Commission's order and that we are willing to pay the 25 percent risk factor allocation as regards those items.

With respect to other wellhead equipment that has been placed on the lease since that time, we are aware of an item for subsurface equipment of $22,403.36 which we have been able to verify as being a proper expense in connection with the well. There was no risk involved, however, because this well did not have to be purchased until after the well was found to be capable of producing oil and gas.

As a matter of fact, they borrowed equipment and used it on the well prior to the acquisition of that item. There are three additional items that were not on the original statement of actual expenses, $1763.21.

MR. PORTER: $1762 --

MR. HUNKER: --63.21. $1775.32 for a high-low pressure valve and $12,718.18 representing wellhead equipment.

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MR. PORTER: $12,718.18?

MR. HUNKER: $12,718.18, yes, sir.

MR. PORTER: That was the wellhead equipment?

MR. HUNKER: For what they referred to as wellhead equipment. The costs of those items were not timely filed. It appears to us that they were items which were purchased after the well was proven to be productive and that, therefore, they would not be entitled to, or they would not be considered in determining whether or not a 25 percent risk factor should be added to them. We had certain other objections at the time we were conversing with regard to a proposed settlement, and I would call these items to your attention for it's up to the Commission to make a determination as to the reasonable well costs. We objected to the $5600 item for company supervision. We objected to $12,000 for contingent fees representing blowout insurance.

We objected to Burr & Cooley's bill for $566.80 representing services in connection with the forced pooling hearing. As to those items, we are not willing to stipulate those last three, but will leave that in a matter of discretion of the Commission; but on the other items, we will stipulate that the $439,000 represents the actual well costs upon which we are chargeable with the 25 percent penalty.

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MR. PORTER: Mr. Hunker, as I understand it, these last three items you have mentioned, the $5600, the $12,000 and the $566.80 are a part of the $439,986.35?

MR. HUNKER: That's correct. We are, nevertheless, willing to stipulate that the $439,000 figure is acceptable to us notwithstanding the fact that those items are in there and we object to them.

MR. PORTER: All right.

MR. HUNKER: I just want the record to show that we are not satisfied with those three items on that list.

MR. PORTER: But you are willing to stipulate to the $439,986.35 as being the amount that you would be charged a 25 percent risk factor?

MR. HUNKER: Yes, sir.

MR. PORTER: And you are willing to pay your half to them of the other items mentioned without a risk factor --

MR. HUNKER: Yes, sir.

MR. PORTER: Which would be the $1,763.21, the $1,775.32, the $12,018.18, and $22,034.06?

MR. HUNKER: That's correct.

MR. PORTER: Mr. Howden?

MR. HOWDEN: We will stipulate to that, then, as I now understand the matter. I thank the Commission for your forebearance.

MR. PORTER: Thank you for working pretty hard on

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the problem. I believe we had a motion to dismiss which we would overrule at this time. Now, what about the remaining item Point 4 in the application?

MR. HUNKER: We would like to present testimony from an accountant at this time to show the Commission that the withholding period has terminated.

MR. PORTER: You may call your first witness. Let the record show that this witness has been previously sworn.

LEE DUNCAN,

a witness, having been previously sworn according to law, upon his oath, testified as follows:

DIRECT EXAMINATION

BY MR. HUNKER:

Q Will you tell the Commission your name and your firm association?

A My name is Lee Duncan, and I'm a certified public accountant with the firm of Bandy, Duncan, Davis and Company, in Roswell, New Mexico.

MR. PORTER: Lee Duncan?

THE WITNESS: Yes, sir.

Q How long have you been practicing your profession in Roswell, New Mexico, Mr. Duncan.

A 14 years.

Q And how long have you been a CPA?

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A 30 some odd years. I've forgotten how many, just 30 years to be exact.

Q Do you do the accounting work for Mr. D. L. Hannifin and Mr. Joe Don Cook?

A Yes, sir, I do.

Q Did they submit to you a letter from El Paso Natural Gas Company dated July 9, 1973 which contains certification with regard to production from the Grace-Atlantic well No. 1 located in the south half of Section 24, Township 22 South, Range 26 East?

A Yes, sir.

Q Did they ask you to make some computations with regard to the time payout would occur in connection with that particular well?

A Yes, sir.

Q Will you review the materials that you have before you and tell the Commission in your own language what you examined and what your conclusions were, based on a cost of $439,986.35?

A Yes, sir. I received from Mr. Hannifin a list of expenses that were turned in to the Commission of $439,986.35. At the same time, I received a letter from El Paso Natural Gas Company giving the production of the Grace Atlantic well No. 1 from April, 1973 through June 30, 1973.

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MR. PORTER: What was that date in April?

THE WITNESS: The letter, Mr. Porter, first delivery was April 16, 1973.

MR. PORTER: I see.

A This letter gives the amount, the number of MCFs produced in April and the amount El Paso Natural Gas paid for the gas. They also gave the MCF produced in May and paid for by El Paso Natural Gas.

Q How much was paid to the Graces for the gas during the months of April and May?

A In April, $128,292.31. In the month of May, 1973, $313,433.17, for a total for those two months of $441,725.48.

Q Was there attached to that letter from El Paso the daily take from this particular well?

A There was for the month of June.

Q All right. Continue with your testimony as to what you did, Mr. Duncan.

A I took the El Paso Natural Gas's figures for the months of April and May, and then I computed the purchase price of the gasoline by day through the 30 days of May.

Q June?

A Excuse me, through June. Then I made my computations this way. I took the well cost of $439,986.35. To that, I added three months' supervision at $135 per month, a

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total of $405.00, which meant the total well cost was $440,391.35.

The penalty clause, as I understand it, is 25 percent of the amount that was, let me state it this way. The penalty clause is 25 percent of 50 percent of the total well costs. 50 percent of the total well cost was $220,195.68. 25 percent of $220,195.68 is $55,048.92. Adding that to the total well cost of $440,391.35 results in a total cost to be recovered by the operator of $495,440.27.

Using the information received on the purchasing of the gas with El Paso, the payout date is computed as follows: The production from April 16, 1973, through June 17, 1973, the gross production was 1,054,582 MCF at a purchase price of 62.036 cents per MCF for a gross total of $654,220.51.

MR. PORTER: $654,220?

THE WITNESS: .51, yes, sir. $654,220.51.

A From that I subtracted the royalty payments due the royalty owners which, as I was informed, was 3/16ths. That figure totaled $122,666.35, leaving a net after royalty payments of $531,554.16. Then the production taxes to the State of New Mexico which were assessed against that figure at the rate of 6.419 percent totaled $34,120.46.

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MR. PORTER: 46 cents?

THE WITNESS: Yes, sir.

A The net after royalty payments and production taxes is $497,433.70.

To go back to the operator's well costs of the total cost which he was entitled to recover $495,440.27. Subtract that from the $497,433.70 that have been paid as of June 17, left an excess of net production over operator-well costs of June 17, 1973, of $1,993.43.

Q Mr. Duncan, this afternoon we have stipulated --

MR. PORTER: Excuse me, Mr. Hunker. Let me get one point here. That figure you are talking about is through what date in June?

THE WITNESS: June 17, sir.

MR. PORTER: June 17? Thank you.

Q (By Mr. Hunker) This afternoon, Mr. Duncan, we have stipulated to certain additional costs being added to the amount of the well costs in connection with this particular well without penalty.

A Yes, sir.

Q And those additional well costs, I don't know whether you have totaled them or not; but I'd like for you to total those costs and make a computation similar to the computation you have already made and advise the Commission when payout will occur if those amounts are

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cranked into your formula.
A I have that computed with the exception that I did compute the 25 percent penalty clause on those figures.
Q You have that figure?
A With the exception of a 25 percent penalty clause. I can arrive at that by subtracting one from the other.
Q What is your conclusion then with regard to when payout would have occurred, taking into consideration those additional well costs, but without regard to the penalty factor being attributed to them?
A The payout would have occurred on June 20, 1973. The total cost to be recovered by the operator with the new costs including the 25 percent penalty was $524,346.86. On June 20, 1973, the net sales of gas after royalty payments and production taxes was $526,620.14.
Q $620 what?
A $620.14.
Q Which would mean that there would be roughly a $2300.00 excess paid to the operator if he received all of the production through that day; is that correct?
A No, sir. By subtracting the 25 percent penalty from those last figures, the amount due the other working interest owners at that date would be $5500.00 in round figures. That is the net excess.
MR. PORTER: That's a net excess on June 20?

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THE WITNESS: June 20, yes, sir.

MR. HUNKER: I have no further questions for Mr. Duncan.

MR. PORTER: Mr. Howden, do you have any questions of Mr. Duncan?

MR. HOWDEN: Yes, sir, if the Commission please.

CROSS-EXAMINATION

BY MR. HOWDEN:

Q Mr. Duncan, were you in the hearing room at the time of Mr. White's testimony?
A Yes, sir.
Q And do you recall his testimony that we could be facing a situation where we would have to go back to 16 cents rather than 52 cents per unit payment?
A Yes, sir.
Q Now, let me ask you this: Have you done any computation assuming that the payment is 16 cents per unit instead of 52 cents per unit?
A No, sir. I have not. I was not aware of that regulation, of the suit --
Q Well --
A --that Mr. White mentioned.
Q You have reached an effective date of June 20, as I understand it?
A Yes, sir.

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Q Based on 52 cents?
A Based on the figures supplied by El Paso Natural Gas, yes, sir.
Q Now, can you or will you please compute for us or for the Commission the payout rate using the 16 cents instead of the 52 cents per unit income?

MR. HUNKER: If the Commission please, I'm sure it would take Mr. Duncan a little time to prove his figures if he has to make this computation. I think it's within the competency of the accountants for the opposition to furnish this type of testimony. I don't have any objection to their using Mr. Duncan's services, but I think that's calling for a --

THE WITNESS: May I just say we don't have that. That would run the payout date beyond the figures we have at the present time.

Q (By Mr. Howden) It wouldn't reach it yet. Would that be a fair statement?
A As of June 30, that's the last figures I have.
Q Now, Mr. Duncan, so that we can understand the analysis you have made in answer to Mr. Hunker's question, you started with a figure of $439,986.35?
A Yes, sir.
Q Now, on that item you computed the risk factor?
A To that item I added $405.00 which is for supervision of

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the well for three months. I computed the risk factor on $440,391.35.

Q Now, Mr. Duncan, I asked you to take into consideration additional cost items stipulated here today, but not subject to the risk factor.

A Yes, sir.

Q So that we understand, am I correct in understanding that was the following four items: $22,403.36, $1,763.21, $1,775.32, and $12,718.18? Were those the four figures?

A I used, the first figure I used, Mr. Howden, was the $439,986.35, and then the supplemental figure I was furnished with this computation was $465,681.10. I had no breakdown of those four figures you mentioned.

Q Let me ask you then, Mr. Duncan, and I believe I am merely reciting the stipulation that was made here today, and that is those four cost items which I have recited. I don't know if you picked up those figures or not as I read them off. Let me ask you if you will go ahead and pick them up as I read them to you.

A Okay.

Q $22,403.36.

A $22,403.36.

Q Right. $1763.21.

A $1700 --

Q $63.21.

A Okay.
Q $1775.32, and $12,718.18. Now, if our computation is correct, that is a total of $38,660.07.
A That's correct. That's what I come up with. That added to the original $439,986.35 would be in excess of the other figure I used. So that would be $439,986.35.
MR. PORTER: I believe to arrive at a correct total you would take your risk factor on the $440,391.35 and then add the $38,660.07.
THE WITNESS: Yes, sir.
MR. PORTER: If you are trying to arrive at a total cost.
Q Well, according to our computation, we get with the risk factor on the original, we get as I'm recalling our testimony, a figure of $495,440.27.
A What's that figure again?
Q $495,440.27.
A For the cost factor?
Q I'm sorry?
A For the cost factor?
Q I still didn't understand you, sir.
A A cost factor, is that a --
Q As I understand your testimony on direct examination, you reached a figure of $495,440.27.
A That's right, under the original figure, original computation.

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Q Now, I believe we are in accord on these additional factors. There would be an additional $38,660.07.
A That's right.
Q Then we would have a total of $534,100.34 if I'm not mistaken.
A What did you come up with?
Q $534,100.34.

MR. HUNKER: Mr. Howden, may I interrupt to possibly correct an item for the Commission? I'd like to correct my stipulation due to a slight oversight on my part. $12,000 had been included in the initial submitted actual well costs. The amended statement comes out $12,718.18. So that actually all that I can stipulate to is what was added on by reason of the amended statement. That is to say, not $12,718.18, but $718.18. May I demonstrate to counsel?

MR. PORTER: In other words, you are indicating here there is a duplication of $12,000?

MR. HUNKER: That's correct.

MR. HOWDEN: I believe I understand what counsel is saying here. So there would be a $12,000 correction in the stipulation.

MR. PORTER: If that is agreeable, then, that would reduce your amounts of the total cost to $522,100.34.

MR. HUNKER: Mr. Howden, as a concession for your

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letting me have my $12,000 back, I'm willing to confess that there are four or five other little items totaling approximately $1500 which we will stipulate to as being a part of those additional costs that were shown on that added list, but as a matter of fairness entirely.

MR. DOWNARD: Is that a quid pro quo?

MR. HUNKER: I made a miscalculation, and I regret having done so, but in the anxiety of the day I --

MR. PORTER: I'd just be happy if somebody gave me a firm total figure that you agree on as a reasonable well cost.

THE WITNESS: The figure I've come up with is $521,135.02. $521,135.02.

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MR. TRUJILLO: What was the last figure you subtracted that George is willing to add to that?

THE WITNESS: I didn't have that, sir.

MR. TRUJILLO: That would change that.

THE WITNESS: It sure would.

MR. DOWNARD: Your Honor, I believe we are able to make a corrected stipulation that will clear up a lot of the confusion that has resulted from previous stipulations, and I think Mr. Hunker was to dictate that new stipulation.

MR. PORTER: All right.

MR. HUNKER: The parties appear to be willing to stipulate that the figure of $439,986.35 is subject to the 25 percent penalty factor.

MR. PORTER: That's $439,986.35?

MR. HUNKER: Yes, sir. And the difference between that figure and $465,681.10 or a sum of $25,694.75 is not subject to the penalty factor. What else do I need to say?

MR. DOWNARD: But is payable.

MR. HUNKER: That is payable by the applicants.

MR. DOWNARD: We agree to that stipulation.

MR. PORTER: All right. Now, that represents a total pay-out figure of how much? I hate to start this all over again, gentlemen; but I want a firm figure. Gentlemen, Mr. Nutter for the Commission feels that we should get a firm pay-out figure for each party into the record.

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MR. TRUJILLO: Who gets what portion of the proceeds, I guess.

MR. PORTER: Mr. Duncan, could you make that calculation from the information that has been given you?

MR. DOWNARD: If the Court please, I believe that we have seen Mr. Nutter's calculations; and they are correct; and if those can just be made of record, we will be willing to agree to them.

MR. KUNKER: Let's let Mr. Duncan see them and testify to them, though.

MR. PORTER: That would be fine. Mr. Duncan, have you calculated the cost to each party?

THE WITNESS: Yes, sir.

MR. PORTER: Would you give those figures please?

THE WITNESS: The cost to Mr. Michael P. Grace is $232,840.56.

MR. PORTER: All right.

THE WITNESS: The cost to Mr. Hannifin and Mr. Cook is $287,838.84, for a total cost of $520,679.40.

MR. PORTER: Is that cost agreeable to both parties?

MR. DOWNARD: Mr. Chairman, we do agree with those figures except that it omits a calculation of the $135 monthly overhead charge which was authorized by the Commission's order I believe; is that correct?

THE WITNESS: That's correct.

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MR. DOWNARD: So if that is taken into account, we agree with these basic figures.

MR. HUNKER: If the Commission please, we agree to pay our pro rata part of the $135 per month charge along with the operating costs when they are billed. I have no further questions from Mr. Duncan, and we agree on the figures that he presented and so stipulate. I have one other item to bring up before the Commission, one other item as regards pay-out, explanatory of Mr. Lee White's position.

MR. PORTER: Well, I believe before you get to that I have a question or two.

MR. HUNKER: Yes, sir.

CROSS-EXAMINATION

BY MR. PORTER:

Q Mr. Duncan, on the basis of these new figures, could you make a calculation of a pay-out date?

A Yes, sir.

Q Using the figures that you have used as far as the price of the gas is concerned?

A Mr. Porter, on June 20, 1973, from the figures I received from the El Paso Natural Gas Company, it shows that the gas purchased as of the end of that date had been $526,624.10.

Q What is the amount received?

A That was the price of the gasoline as of that date, so we

would have approximately $6,000 excess at that time.
Q On June 20th using these figures?
A Yes, sir.
Q Now, I want to ask you one other question. You used a price of $.62.036?
A Yes, sir.
Q How do you calculate that when I understand that the contract price for the gas was $.52?
A This is from the letter I received from El Paso Natural Gas, Mr. Porter, with the BTU at 1193 based on a contract price of $.52. That meant the actual purchase price was $.62.036 per Mcf.
Q It was $.52 plus what?
A Plus it would be 10036 premium because of the BTU.
Q I see. So that totals $.62.036?
A Yes, sir.
Q As the unit price. Thank you very much.

MR. PORTER: Does anyone else have a question? Now, Mr. Hunker, you can go back to yours.

MR. HUNKER: I have no further questions of Mr. Duncan, and I would like to put Mr. Hannifin on the stand.

MR. PORTER: Do you have any further questions of the witness?

MR. HOWDEN: As I understand, this is all based on the $.52 contract price; and if we were to use the $.16

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price that was testified to by Mr. White, we would not yet have reached pay-out.

THE WITNESS: No, sir.

MR. PORTER: All right. Mr. Hunker, would you call Mr. Hannifin? Let the record show that this witness has been sworn.

MR. D. L. HANNIFIN

a witness, having been previously sworn according to law, upon his oath, testified as follows:

DIRECT-EXAMINATION

BY MR. HUNKER:

Q Mr. Hannifin, did you direct your Attorneys to make inquiry of El Paso Natural Gas Company with regards to the escrowing of funds in connection with your Contract for the sale of gas from the Grace-Atlantic No. 1 Well?

A Yes, sir.

Q Do you have a copy of that letter?

A Yes, sir. I do.

Q Will you read the letter to the Commission, please?

A This is directed to Mr. R. E. Johnson.

MR. PORTER: R. E. Johnson?

THE WITNESS: Johnson, El Paso Natural Gas Company. You want the full address?

MR. PORTER: I don't need it.

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MR. HUNKER: We are going to go over it in evidence.

MR. PORTER: All right, sir.

A You want me to read the whole thing, Mr. Hunker?

MR. HOWDEN: Would it not be appropriate for us to see a copy of it if he is going to go over it?

MR. PORTER: Yes.

A Post Office Box 1492, El Paso, Texas, 79978 dated August 9, 1973, reference, Atlantic Well No. 1, Township 22 South, Range 26 East, Section 24, the south half, Eddy County, New Mexico. NMOCC Order No. R-4432.

(Whereupon, the letter was read into the record.)

MR. HOWDEN: Excuse me, Mr. Hannifin. I feel compelled to object to this method of presenting this type of evidence. I would have come up sooner. We have only now read the letter. It is, as I view it, self-serving not to mention rank hearsay; and therefore, we would respectfully object to its being read into the record and to its being offered into evidence.

MR. PORTER: May we see a copy of the letter, please?

MR. DOWNARD: This letter is written by Mr. Hunker who is counsel for the applicant and is only his opinion. It isn't evidence.

MR. PORTER: Mr. Hunker, would you like to respond to the objection?

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MR. HUNKER: Yes, sir, I would. The Oil Conservation Commission is not high bound to the rules of evidence, and I ask that this letter be considered in the light of the letter that I received in reply to this letter. I thought I should lay a proper foundation for the letter to El Paso Natural Gas Company, and you are not bound by any high bound rules of evidence in this proceeding as you are well aware from Mr. White's testimony earlier this afternoon. He alluded to Contracts that had been made between Mr. Grace and El Paso Natural Gas Company. Proper foundations were not laid for that kind of testimony. So, too, although this matter may represent hearsay, I ask that consideration be given to this particular matter for what it's worth. I'm not claiming to prove anything particularly by it. I am introducing a letter in evidence that was received in reply, and I want to lay the proper foundation for the introduction of the second letter.

I can help the Commission if you care for me to help you. I will let the matter stand at this particular point and I'll not offer the letter in evidence. I'll merely ask Mr. Hannifin a question or two with regard to his direction to our Law Firm to write the letter.

MR. PORTER: We are going to sustain the objection as far as admission of the letter is concerned.

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Q (Mr. Hunker) Mr. Hannifin, what did you direct your Attorneys to do as far as El Paso Natural Gas Company was concerned?
A I requested them to write El Paso and asked them to furnish us with an indemnification or escrow that they were requiring the Graces to furnish them on paying the unit amount.
Q Was a reply received to that letter?
A Yes, sir.
Q And do you have a copy of it?
A Yes, sir, I do.
Q I'd like for the reporter to mark it Applicant's Exhibit 1, and I'd like for you to tell the Commission whether or not the letter that you have from Mr. R. E. Johnson is in truth and is in fact the reply to the letter that you directed your Attorneys to send to him.
A Yes, sir, it is. It refers to the same date of the letter I directed you to write them. It refers to the dated letter that I requested you to send El Paso and is a reply to that letter.
Q Will you read that letter to the Commission, please, Mr. Hannifin?
A Yes, sir. It's from El Paso Natural Gas Company to Hunker, Fedric & Higginbotham, Roswell, New Mexico, directed to

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the attention of Mr. George H. Hunker, Jr., and refers to the Grace-Atlantic Well No. 1, Township 22 South, Range 26 East, Section 24, South half.

MR. HOWDEN: Excuse me, Mr. Chairman, I respectfully interrupt the proceedings. As I understand it, Counsel has shown us a copy of this letter. As I understand it, it is directed to a question whether or not there is escrow or indemnification between my client and El Paso. Now, I don't understand that to be an issue here at all. The question that has been raised in light of Mr. White's testimony is whether or not there should be proper protection established, proper safeguards made to protect against the contingency against price roll-back, and I don't think that this letter in any way is relevent or directed to this point whatsoever. It deals to a matter that is wholly immaterial to the issues raised here today.

MR. HUNKER: If the Commission please, Mr. White testified that the FPC could require the pipeline pur=chaser to demand a refund of prices paid for gass in excess of the amount that the FPC had approved. Our contention is that Mr. Hannifin and Mr. Cook stand in no different shoes than Mr. Michael P. Grace II, the operator of this particular property.

Mr. Hannifin and Mr. Cook are the owners of the Leasehold Estate covering the Tract of land upon which the well

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was drilled; and as such, they are entitled to the production from that particular well. In as much as the

pooled

Commission has communitized or pulled the Tract under its regulations, the Hannifin and Cook interest is reduced by 50 percent; and Mr. Grace's interest is 50 per cent.

We feel that what is fair for Mr. Grace is fair for Mr. Hannifin and Mr. Cook because they stand in not different legal position as far as the Leasehold is concerned, and this letter is material in that it says that their, well, I don't want to say what it says if the Commission is not going to hear it, but it is a material item as far as Mr. Lee White's testimony is concerned.

MR. HOWDEN: I respectfully submit again the problem here as it was raised by Mr. White's testimony is eventuality or contingency that that price roll-back may force my client, the operator, to actually come up with money from his pocket to reimburse El Paso and then hope that he can recover from other ownership interests in the well.

These are strictly paper transactions that he is now raising, because we have the Hannifin Cook interest dealing with El Paso. We have the Grace interest dealing with El Paso. So the whole point of this thing of Mr.

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White's testimony is, if the Commission please, talking about dealing with originals. And now, Counsel is bringing in amendments, and they don't mix.

It's entirely a separate proposition which has no relevance whatsoever to any issue that has been raised before this Commission. That's the thrust of our objection. To suggest that there should be some security here is not raised anywhere in the evidence and petition of the Commission. Nowhere is it raised.

MR. PORTER: Mr. Hunker, what are you attempting to show by this letter?

MR. HUNKER: I'm attempting to show that the price differential does not make any difference to the pipeline purchaser between the Contract price and FPC approval price. I would call the Commission's attention to the fact that we have been aware for twenty-five years of differentials in prices that are being paid for gas in this country.

We are aware of Phillips Petroleum Company and any number of other companies who have held money up pending the approval of FPC of a price, and it's the pipeline purchaser who usually envokes the escrow provision or some kind of provision with regard to the payment of proceeds for production.

This is what occasioned the letter to El Paso Natural Gas Company, and this is what occasioned their reply. We are trying to establish that your Commission order did not say that a rebate factor was to be taken into consideration in as far as Mr. Grace's pay-out was concerned. His withholding was not extended over a period of time to include some possible FPC action that might be taken with regard to it.

It's not within a scope of the Commission's order to compel Mr. Hannifin to put up some kind of an escrow fund, and we are just countering Mr. Lee White has testified to with this information.

MR. DOWNARD: Mr. Chairman, may I respond to Mr. Hunker's argumentation by seeking to clarify what really is involved here on this issue No. 4 which is what presumably is being testified about. The applicant seeks to establish a pay-out date at which he says the proceeds would be recovered if the price is $.62 per MCF. He claims the right from that time on to say, "I don't care what contract the operator has made for the sale of this gas. I claim the right to sell my share of the gas to anybody I want to." So he has entered into a contract with the same pipeline company, we understand, to sell his share of the gas at a different price.

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Now, this involves the basic principle as to whether a non-operator can sell the gas contrary to a contract that the operator has made for the sale of the gas. If he were allowed to do that, he would recap on the whole gas industry as Mr. white has testified. He couldn't even envision it that Mr. Grace as operator had made a contract with El Paso.

It's been approved by the FPC. It's subject to possible revision by FPC if these eventualities occur; but in any event, that contract is the contract that had been made for the sale of gas from this unit, this forced pool unit. Now, the Commission's order states that the operator is authorized to withhold the amount necessary to recover his cost in the risk factor from the proceeds of production. There is no way he could withhold from the proceeds of production unless it was contemplated that he could sell the production and get the proceeds withholding from the proceeds and turn over what is left. Therefore, the basic issue really here is whether a non-operator can sell the gas that has already been sold by the operator; and we submit that the whole idea of the forced pooling and the appointment of an operator has constituted the operator as, in effect, the agent for the non-consenting owner, that the non-consenting owner has already sold his gas to El Paso once through the

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operator who is his sole agent that he cannot go out and sell that gas again at a different price either to El Paso or to some other pipe line; and if you conceive of the thought that he can sell it to some other pipe line and you have two different pipe lines, in fact, if you have a half dozen non-consenting owners, you might have half a dozen different pipe lines to whom the various non-consenting owners are selling fractions of gas.

This it seems is in violation of the whole principle of a forced pooling unit that does have an operator that can contract for the sale of gas. It could receive the proceeds and withhold from the proceeds to reimburse himself for the costs, pay the other people what they are entitled to. That's the basic principle that is involved here, to establish a date and say after that point the operator is out and this essentially is what the applicant here is trying to establish, that after the operator has recovered all the costs he's put into the well plus a twenty-five per cent risk factor on the non-consenting owner's share only of that cost that after he has recovered that, he's out; and the whole thing reverts back to a situation where there was no pool.

There is only a separate 150 acre lease that Hannifin and Cook owned on which there is a producing well that Mr. Grace has drilled.

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And all that Mr. Grace has is an adjacent 160 acre Tract on which there is no well. Now, that's basically their position, that the unitization or pooling is at an end when they have reached pay out; and we contend that is not so, that this Commission by its order has pooled these two Tracts so that by that order they have become one 360 acre pool and that from time to time the operator is the operator of that 320 acre unit and owner of a half interest in it; and Hannifin and Cook own an undivided interest in the pool working interest on the whole 320 acres and not on their separate 160 acre parcel they started out with.

And since it is an undivided interest, it is a unit itself, and pool. It has one operator. It sells its gas one time under one contract, and that's all there is to it. Now, this is the essential controversy here on this point 4, and it's a new concept that I don't believe has been ever thought of before by anyone except this applicant.

MR. PORTER: The Commission is going to go ahead and allow the letter to be admitted, but only for the purpose of contradicting or refuting Mr. White's testimony. Mr. Hunker?

Q Will you proceed to read the letter, Mr. Hannifin?

A You want me to start over again? I think I'd better. I'm not sure where I was.

Q You might as well start over again.
A Letters from El Paso Natural Gas Company dated August 13, 1973 directed to Hunker, Fedric & Higginbotham, Roswell, New Mexico. Attention, Mr. George H. Hunker, Jr. Reference is the Grace-Atlantic Well No. 1, 22 South, 26 East, Section 24, South Half, Eddy County, New Mexico, NMOCC Order No. R-4432.

"Gentlemen: With respect to your letter of August 9, 1973, our Gas Purchase Contract with the Graces is, of course, subject to all present and future valid laws and valid orders, rules, and regulations of the United States, the State of New Mexico, or any duly constituted Agency thereof.

At the present time, we are abiding by the Federal Power Commission's Order No. 428 - 428A dealing with Small Producer sales, under which Order the Graces are currently making sales of gas to El Paso.

Our contract with the Graces was entered into in face of and with the knowledge of the decision of the U.S. Court of Appeals for the District of Columbia Circuit rendered on December 12, 1972 in TEXACO Inc., et al. v. the Federal Power Commission Nos. 71-1560, et al., and the consequences that could flow from that decision.

There is no basis for El Paso at this time to suspend

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or escrow any amounts due the Graces under our contract, and we will continue to honor our contract prices unless subsequent Orders and procedures are issued by the Federal Power Commission as a result of the Supreme Court upholding the District of Columbia Circuit decision. Should you have further inquiries, please advise. Very truly yours, R. E. Johnson."

Q Mr. Hannifin, have you and Mr. Cook entered into a contract with El Paso Natural Gas Company?

A Yes, sir.

Q What does it involve? What does your contract with El Paso involve?

A You mean the price?

Q I mean what plans are involved?

A This involves our interest under the south half of Section 24.

Q Represented to be a 50 per cent interest?

A That's correct, sir.

Q What is the contract price with regard to that gas?

A $.55 per MCF and adjusted upward from BTU increment.

Q What would the gross figure be with the BTU approximately?

A I think it was 65.615.

Q At the time you negotiated this contract, was there any discussion with regard to the nature of the contract that El Paso had entered into with the Graces?

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A Just El Paso informed me that the Graces had entered a long-term contract under the Small Producers Certificate and expecting El Paso to pay them off upon completion, which they did.

Q Is it your understanding then from what they said that El Paso had advanced the cost for the drilling of the well?

A No. That's not advanced. Upon completion he told me that they paid them the exact amount of first accounting that was submitted to the Commission that 439, whatever the figure was, that they paid that figure exactly.

Q Have you seen a copy of the contract between the Graces and the El Paso Natural Gas Company?

A No, I have not.

MR. HUNKER: If the Commission please, before responding to counsel's statement, I'd like for him to produce for the Commission the El Paso Natural Gas Company contract with the Graces for the production from this particular well. I have no further questions of Mr. Hannifin. I offer in evidence the last letter. I have the original of the letter and I'd like to withdraw the original and substitute a Xeroxed copy of the original, if I may.

MR. PORTER: The letter will be made part of the record. Mr. Howden, is a copy of the contract to which Mr. Hunker referred available at this time?

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MR. DOWNARD: Yes. We have a copy. It is, however, the only copy I believe that we have to refer; and if Mr. Hunker has an extra copy, I would prefer to --
MR. HUNKER: I don't have one or I wouldn't have asked for it, sir. I'd just like to see Exhibit A.
MR. DOWNARD: Exhibit A of the contract?
MR. PORTER: Well, Mr. Hunker, were you asking for this contract or were you going to ask for this contract to be entered in the record, or did you just want to refer to some part of the contract?
MR. HUNKER: We would like to have that contract made a part of the record if the counsel for the Graces has no objection.
MR. DOWNARD: Your Honor, we will submit it at this time as part of the record with the understanding that we will have the right to withdraw it and make a copy for our own files.
MR. PORTER: The contract will be made a part of the record with the understanding that they may withdraw it and make a copy.
MR. HUNKER: We might as well make it Applicants Exhibit No. 2. I'm not quite through with Mr. Hannifin. I think I'll ask him another question.
Q Has the American Bank of Carlsbad been designated by you or your attorney as an escrow agent for you to hold

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funds?
A I did agree to their being the escrow agent.
Q Are you aware that the American Bank of Commerce has received -
A Of Carlsbad.
Q American Bank of Carlsbad has received a check from El Paso Natural Gas Company?
A Yes. They mailed me a Xeroxed copy of their deposit slip into the escrow account.
Q Can you give the Commission the approximate amount of the funds that is in escrow with that Bank?
A It was $84,900 something. I don't know the exact amount, in excess of $84,900.
Q Mr. Hannifin, I have handed you what has been marked Applicant's Exhibit No. 3. Is that the contract that you and Mr. Cook entered into with El Paso Natural Gas Company?
A Yes, sir. It is.
Q What's the date of that contract?
A June 9, 1973.
MR. HUNKER: I'd like to offer it into evidence as a part of the record, Mr. Commissioner.
MR. PORTER: That's the contract of El Paso?
MR. HUNKER: Between Mr. Hannifin and Mr. Cook and El Paso.

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MR. PORTER: With out objection, the exhibit will be admitted.

MR. DOWNARD: Your Honor, we don't have any objection to it except that we do not have a copy to refer to, and we do want to be able to read it and digest it and refer to it in cross-examination of Mr. Hannifin, and we are told that we can't have a copy today so -

MR. PORTER: You have any further questions of Mr. Hannifin?

MR. HUNKER: Let me look at my notes just a minute, sir. I have no further questions.

CROSS-EXAMINATION

BY MR. PORTER

Q I have one question, Mr. Hannifin. Now, you say that your contract with El Paso is $55.00 plus a BTU adjustment which would make that total 65.615?

A I believe that's correct, sir.

Q In other words, about $.10 BTU adjustment?

A Yes, sir.

MR. PORTER: Mr. Howden, do you have any questions of Mr. Hannifin at this point?

MR. HOWDEN: We do have some questions, of Mr. Hannifin. We need to have the contract.

MR. PORTER: You need to question about the contract?

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MR. HOWDEN: Well, there may be one or two questions that we could ask him.

MR. PORTER: Why don't you proceed with your other questions and, then, well, Mr. Carr has gone to make a copy of the contract and you can use that copy for questioning.

CROSS-EXAMINATION

BY MR. HOWDEN:

Q Mr. Hannifin, you made reference, if I understand your testimony correctly, to payment by El Paso of the $439,000 to Grace?

A Yes.

Q Now, it is correct, is it not, that that was in fact an advance, a loan and not a payment?

A I don't know. Just what El Paso told me, Mr. Johnson with El Paso told me when I asked him if they had paid the well off, he told me that they paid the exact figure that was in the first accounting. So I didn't question him any further, Mr. Howden.

Q Now, it is correct, is it not, that with regard to your contract this is a so-called what, 45-day emergency contract?

A 60-day emergency, one year pregranted.

Q So that in some point in the reasonably near future you will have to go before FPC for determination as to

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whether or not that negotiated price and the terms would be continued or not?

A That's correct, sir.

MR. HOWDEN: At this point, Mr. Chairman, we'd like to have short amount of time to read the contract. We have now been handed a copy of it.

MR. HUNKER: I found an extra copy of it, and they have a copy of it.

MR. DOWNARD: May we have a five minute recess while we study this?

MR. PORTER: We will take a five minute recess.

(Whereupon, a five minute recess was held.)

MR. PORTER: The hearing will come to order. Mr. Hunker, the Commission doesn't feel that you have properly established the relevance of the Hannifin-El Paso Contract since the remaining issue before this Commission is determining a pay-out date on the Well. So unless you can establish the relevance between that contract and the pay-out date on the Well, I would like to ask you to withdraw the contract; and also, I'd like to go on record saying this Commission is not here to determine the question that Mr. Downard was addressing himself to a while ago as to whether a non-consenting interest owner can enter into a separate contract in a Well that has been forced pooled.

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So up to this time, I fail to see the relevance of a contract between Mr. Hannifin and El Paso. I think that up to this time all the contracts we could consider in determining the pay-out on the Well would be one with El Paso.

MR. HUNKER: Under those circumstances, we will withdraw our exhibit No. 3 and not ask that it be admitted.

MR. PORTER: Let the record show that the applicants Exhibit No. 3 which is the contract between Mr. Hannifin and El Paso will be withdrawn from the record.

MR. HOWDEN: That being the case, Mr. Chairman, the balance of their cross-examination was directed at that contract.

MR. PORTER: Do you have another witness, Mr. Hunker?

MR. HUNKER: Not on direct, no, sir.

MR. PORTER: I see. Mr. Hannifin may be excused. Mr. Howden, do you have any witnesses? Do you have any testimony to present in the case?

MR. HOWDEN: Mr. Chairman, it would be our position that we should have an opportunity to present accounting testimony, the applicant having presented such testimony.

MR. PORTER: This relates to the time of pay-out?

MR. HOWDEN: Dealing with pay-out and the related questions. I'm trying quickly to answer the Chairman's

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question as to additional testimony.

MR. PORTER: Sure.

MR. HOWDEN: Of course, in that connection, we would like to develop our position that we introduced through Mr. White that we must ask the Commission to consider the impact of a $.16 rate and what that does to us in determining the date of pay-out. So this would be the line of evidence that we would like to offer. I would like to --

MR. PORTER: You may proceed.

MR. HOWDEN: May I ask of the Commission what sort of a schedule we would be operating under at this point?

MR. PORTER: Well, I don't know. My patients kind of wanes as the day wanes. How much time to you think you would need to put on testimony concerning a pay-out date? I would like to conclude the hearing today if at all possible.

MR. DOWNARD: Mr. Chairman, may I ask this in an effort to possibly give a solution to this as to whether the Commission plans to make a decision today or will take the matter under advisement, because if it is going to be taken under advisement, we could offer to simply submit as our exhibit on the record a worksheet calculation by a Certified Public Account to be admitted in evidence for your consideration showing how the date

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of pay-out would be calculated. There is no need for us to put a live witness on the stand to testify what's on a worksheet. It's there and those are the figures, and we can submit those as an exhibit without a live witness if that pleases the Chairman.

MR. NUTTER: Would that be the different rates of sales or different prices of sales?

MR. DOWNARD: We could show the pay-out at $.16 or $.35 which are possible figures that Mr. White testified to, and we could also show why we contend that the date of pay-out testified to by Mr. Duncan and the accounting witness for the applicant is not correct. It would be a later date, we believe, even on his sale price figures; but that can be shown on a worksheet and the figures are there. They can be checked. They can be questioned. If they are not correct, well, certainly the Commission will know that.

MR. PORTER: Well, Mr. Downard --

MR. TRUJILLO: Mr. Downard, did you state that you thought that perhaps Mr. Duncan's figures might not be correct? Is this what you said?

MR. DOWNARD: Yes, Your Honor. I feel sure they are not correct.

MR. TRUJILLO: Then if you would submit just a schedule then, that schedule would not be subject to

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cross-examination, would it, as Mr. Duncan was? Is this correct?

MR. DOWNARD: That would be true, your Honor. It would, however, be subject to be checked Mr. Nutter and the experts that the Commission has available.

MR. PORTER: Mr. Hunker, would you agree to the submission of a cost sheet with the understanding, of course, you know that the people that prepared the cost sheet would not be available for cross-examination but could be checked by Commission personnel, of course?

MR. HUNKER: If the Commission please, Mr. Lee White's testimony was so indefinite as to the amount of the differential that I don't believe that the Commission can give any accountant a directive that would be sufficient for him to make the computations. We object to the testimony that Mr. Lee White adduced here today. We feel that a proper foundation was not laid for it, that the Commission should disregard his testimony; and I call your attention to the fact that the Commission order did not require any provision for escrowing of funds in this particular connection as it pertains to differentials in approved prices and to contract prices. The order was entirely silent. Mr. Grace saw the order and had an opportunity to read it. If he didn't like it or became aware of something he felt should have been

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taken care of in that order, he could have asked for a hearing on that particular matter. I think it's water under the bridge at this point, and I think that this entire matter is irrelevant at this point.

MR. HOWDEN: I'd like to address myself to those statements of counsel. First of all, I think his objection comes rather late in the day.

MR. PORTER: The testimony is already in the record and will be considered.

MR. HOWDEN: I would like to point out that the order to which allusion is made has the general provision in it permitting the Commission or advising the Commission to take whatever action it may deem necessary from time to time with regard to the management control of this particular forced pool. So I think that the statement that the order doesn't cover the situation is incorrect. It does have that general catch-all provision which would open this up.

I think that whether or not Mr. White's testimony is clear and to the point is in the final analyses and in your hands. I strongly disagree with counsel for what it's worth. My opinion is it was rather direct and to the point. Now, I would like to, just as long as I am being heard at this moment, state also that I think it might well be appropriate for the parties here to

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explore with each other and with El Paso the feasibility, the means and manner under which satisfactory escrow arrangements can be made to cover this problem which we feel is a very real and very serious problem that is right around the corner for us. So I think this is another point. I realize I'm going somewhat afield from the original question as to what evidence, but I think that the suggestion we have made here we can live with as far as presentation of evidence is concerned.

MR. PORTER: Well, the question I asked is, of course, if we allowed you to submit a cost statement or testimony in the form of a cost statement, would Mr. Hunker object to that in view of the fact that the person who prepares it won't be present for cross-examination.

MR. HUNKER: I would object to it. I think that the Commission has on its staff capable people; and based on whatever evidence is before this Commission today, I think that you could make your own computations with regard to when the pay-out has actually occurred. I don't think that you need our help or the help of counsel here and their accountants.

MR. HOWDEN: Were that the case, I'm certain we wouldn't have needed their witnesses. We wouldn't have needed this hearing. I think that we are talking

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about strictly a question of computation, and it is not the kind of thing that lends itself much to cross-examination. I understand counsel's objection. It really goes to whether or not Mr. White's testimony should be included in the computation.

MR. PORTER: Well, this is beside the point, I believe, at this time. However, you are certainly entitled to put on testimony as to when you think pay-out occurred or whether it has occurred. The question is when. How much preparation would you need?

MR. DOWNARD: I think we cannot at this time submit a recalculation which would involve some substantial calculation work, because only in the testimony this afternoon we established new figures as to the cost amounts that are agreed to, the amounts that need to be recovered. Those need to be calculated on a different basis.

MR. PORTER: Well, the cost has been agreed upon as far as the actual cost of the well to each party is concerned. Now, I think the difference here in opinion is to the revenues and how much of that revenue should go toward the pay-out.

MR. DOWNARD: That is correct, your Honor, and if I may say so, I believe that there was a fundamental error in the testimony of Mr. Duncan and in his calculation

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of the pay-out date in that the Commission established a new, at the Chairman's suggestion, established a new basis for this that as to separately specifying the amount payable out of each party's share of the proceeds whereas I believe Mr. Duncan must have calculated when the total costs that he had figured would be paid out out of total production.

Now, those would be different times because out of Mr. Hannifin's and Mr. Cook's share of this total production attributable to their working interest, there must be paid overriding royalty and the things that, their share of the costs and so forth so that the time that their shares of the costs which is more than the Graces' share of the costs is paid out would be much later.

MR. PORTER: Gentlemen, can you make these calculations and be here at 8:30 in the morning to present your testimony concerning when you think pay-out occurred?

MR. DOWNARD: We could do that and subject this Commission to another day of these hearings; but I believe that the real issue here doesn't involve the question so much as when pay-out occurs because the Commission has established the dollar amount that must be paid out and that's just a known fact. When it's paid out, it's paid out.

This Commission doesn't need to bother itself with

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establishing a date on which that dollar amount has been paid. It's been established what the dollar amount is. When it's been paid, it has been paid. Now, the real question here is what's the significance of that pay-out, because Mr. Hannifin has testified that he has purported to execute another contract whereby he would sell --

MR. PORTER: Mr. Downard, I believe the application in this case goes to when, if I read the language correctly, making a determination as to when Michael P. Grace, II has been fully compensated for all reasonable well costs and charges and for the risk charge of 25 percent of the pro rata share of reasonable well costs attributable to applicants.

MR. DOWNARD: All right, your Honor. If it's necessary to establish a date, we would like to take until 8:30 in the morning to establish that date; but we would also like to point out that this basic idea that Hannifin and Cook are trying to put over in this hearing is to have this Commission establish that he can sell a share of the gas that has already been sold.

MR. PORTER: That's not in question. That's already been withdrawn from the record, that exhibit between Mr. Hannifin and El Paso. That question is not at issue at all before the Commission as to whether he can separately contract as a non-consenting working

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interest owner.

MR. DOWNARD: Well, let me ask this: If there are continuing operating expenses that the operator is entitled to incur, entitled to be reimbursed for out of the proceeds, and if they should have an expensive re-working job on the well that the operator is entitled to do the work, incur the costs, withhold it from the proceeds, and pay it to the non-consenting owner, when would you ever reach a final pay-out? There is no final pay-out as long as there are continuing costs being generated.

MR. PORTER: I doubt seriously if this Commission would be reasonably called upon to take into account all the contingencies that could occur. We are going to recess the hearing until 8:30 in the morning. At that time we will come back and we will hear testimony that may be relevant to a time when this well would be paid-out, which is one of the things that the Commission is called upon to determine. There is no need to continue a discussion of something that is not relevant to the case.

MR. DOWNARD: Thank you Mr. Chairman.

MR. PORTER: So the hearing will be recessed until 8:30 tomorrow morning. We will reconvene in this room.

(Whereupon at 6:15 PM, the hearing was recessed until 8:15 the following morning.)

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STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, JANET RUSSELL, A Certified Shorthand Reporter, do hereby certify that the foregoing and attached Transcript of Hearing before the New Mexico Oil Conservation Commission was reported by me; and that the same is a true and correct record of the said proceedings, to the best of my knowledge, skill and ability.

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BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
CONFERENCE ROOM, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

August 29, 1973

OIL CONSERVATION COMMISSION HEARING

IN THE MATTER OF:	
Application of D. L. Hannifin and Joe Don Cook for a determination of reasonable well costs and for an order terminating operator's withholding period, Eddy County, New Mexico.	Case No. 5054 VOLUME II

BEFORE: State Geologist, A. L. Porter, Jr., Secretary-Director

Ralph Trujillo, Member

TRANSCRIPT OF HEARING

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(Whereupon the hearing in Case 5054 reconvened at 8:45 A.M., Wednesday, August 29th, 1973.)

MR. PORTER: The hearing will come to order, please. Yesterday evening, or afternoon, I have forgotten now whether it was before or after six o'clock, we recessed the hearing until 8:30 this morning. At that time, I said we would reconvene in this room. We found out since that time that the room is to be used beginning at nine o'clock by an environmental group. So we are going to recess this hearing and reconvene upstairs in the Oil Conservation Commission Conference Room.

So at this time, we will recess until we move up there.

(Whereupon a recess was taken at 8:47 A.M.)

(Whereupon the hearing in Case 5054 was reconvened at 9:40 A.M.)

MR. PORTER: The hearing will come to order, please. The hearing will resume with Case 5054. Let the record show that Commissioners Trujillo and Porter are present.

Before we open the hearing, I thought I would remind you just as I did yesterday morning that whatever order the Commission enters, it will be subject to challenge in the Courts. Now, it took most of yesterday to arrive at an agreement on a cost figure for the well. I just

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wonder if you gentlemen think there is any possibility that you could in the same manner arrive at a pay-out date.

MR. GRACE: I would think so.

MR. HOWDEN: Yes.

MR. PORTER: If you don't feel there is, I would like to get on with this and get the information in the record. But I felt a compulsion to remind you this morning that there could be much further delay in settlement if an order is issued by the Commission, because it is subject to review in the Courts.

Now, this is entirely up to you fellows. I would hate to waste all morning trying to get together on it and spend the afternoon with testimony going into the record because we all have our work to perform.

MR. HUNKER: If the Commission please, I am going to move that any testimony that the Graces would offer which testimony cranks into a formula for pay-out at a lesser amount than Mr. Grace is actually receiving for his gas, then it is not relevant to the hearing. It is not within the scope of the call, and it is immaterial, and should not be considered. This matter, I think, calls for the Commission to amend its Order Number 4423, and the matter I just previously mentioned is not the subject matter of this particular hearing.

I feel that any testimony regarding a roll-back

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of price is entirely irrelevant, and it is a matter that should be relegated to the Courts.

It is similar in many respects to the matter of who has the right to dispose of the gas from this particular property.

So with that in mind, we will talk about a settlement based on the calculations which our accountant has made, and based on the calculations which Mr. Howden's accountant has made, which may vary from what our accountant's figures were based on the assumption that the price is not going to be changed.

MR. PORTER: So that the only basis on which you would be willing to arbitrate would be on the actual price that has been paid thus far?

MR. HUNKER: That's correct.

MR. HOWDEN: Mr. Chairman, first in response to the question of the chair. We are perfectly happy to, and we think it might be productive, to discuss with Mr. Hunker and his accountant and our people this situation to see if we can't arrive at a date.

Now, on the other hand, Mr. Hunker seems to be telling us that he will talk with us if we will concede our entire case, and of course, we will not do that. So I think it would be beneficial, I think it would be worthwhile if we did discuss this, in order to see if there was not

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someplace where we could agree. But I am certainly not prepared to waive or concede the evidence which is already in the record on Mr. White's testimony as to the impact of a price roll-back. I would want to make it clear that I do certainly not think that would be appropriate at all, and I am not prepared to do that. But I do think it would be worthwhile if we attempted to see if we can't agree on a date.

It is entirely possible that I misunderstood Mr. Hunker's remarks.

MR. HUNKER: I think it will take me five minutes to find out from you what you are cranking into the formula, and I think I can tell you within that period of time whether or not we can get together.

MR. HOWDEN: I think that's fair.

MR. PORTER: Why don't we recess the hearing until ten o'clock. That's fifteen minutes, and see what it looks like at that point. If we have to come back and go ahead with the testimony, we will. Why don't we just get out of here and let you have the room for those fifteen minutes?

(Whereupon a recess was taken at 9:46 A.M.)

(Whereupon the hearing resumed at 11:25 A.M.)

MR. PORTER: The hearing will come to order, please. Gentlemen, earlier we recessed the hearing for the purpose

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of trying to work out some of the problems in arriving at agreement to a pay-out date. Who would like to report at this time?

MR. HOWDEN: Mr. Chairman, we have certain items on which we can agree, and by doing so, I think spare the Commission a lot of accounting.

MR. PORTER: All right, sir.

MR. HOWDEN: First, Mr. Hunker will agree, reserving his objections on the grounds of relevancy and materiality, that if the sixteen and a fraction cent price is the price to be used in determining the pay-out date,or the end of the withholding term, then his petition is premature.

MR. PORTER: Is that correct, Mr. Hunker?

MR. HUNKER: Correct. We did talk about that 3.2 cent BTU factor being cranked into the sixteen cents in either event.

MR. HOWDEN: That's correct.

Next, Mr. White testified as to a thirty-five cent figure, that being the figure under the latest FTC ruling. On our calculations, using the thirty-five cent figure plus the seven cent BTU factor for forty-two cents per unit, it is agreed that as of July 31st, there would be an excess of $24,949.78. Is that correct, Mr. Hunker?

MR. HUNKER: That is correct, except for the fact that the royalty was computed on the basis of 21.875 percent

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in arriving at that figure, and we do not agree that the 21.375 percent figure is the correct figure, it being our contention that 18.75 percent is the correct figure to crank into the calculations.

MR. NUTTER: The first figure was 21.875 percent?

MR. HUNKER: It was upon that figure that the accountants disagreed.

MR. NUTTER: And the other figure was what?

MR. HUNKER: Eighteen point seven five.

MR. HOWDEN: There is a dispute as to the royalty, and as to which figure is to be used. Is that correct, Mr. Hunker?

MR. HUNKER: That's correct.

MR. HOWDEN: But as I understand the stipulation based on our figures, the forty-two cent figure would pay with excess at the end of July what I have stated.

MR. HUNKER: That's correct.

MR. NUTTER: In excess of what?

MR. HOWDEN: In excess of the pay-out figure.

MR. NUTTER: That would be the excess of Hannifin's share of the total well costs plus the operating costs?

MR. HUNKER: Of the figure we agreed on, of the $520,679.40.

MR. NUTTER: The excess of the total well cost then attributable to both parties?

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MR. HUNKER: That's correct.

MR. HOWDEN: One further thing, Mr. Chairman. The testimony of Mr. Duncan yesterday established a pay-out date of June 20th, if I recall correctly. Mr. Hunker, as I understand it, will stipulate with us that on our accountant's computation, again given the dispute over the royalty, the pay-out would be as of-- would be as follows: that on the 23rd of June, there would be an excess beyond the pay-out figure of $4,559.44.

MR. HUNKER: That's correct. It means production up to seven a.m. on the 23rd of July.

MR. HOWDEN: That's correct, production as of that date and hour would be in excess of the figure I stated.

MR. HUNKER: That's correct.

MR. HOWDEN: Now, I think that in summary, it is our stipulation at this point--

MR. PORTER: That would be using the fifty-two cent figure plus the BTU?

MR. HUNKER: That's correct. The price presently being paid.

MR. HOWDEN: Yes.

MR. HUNKER: He correctly stated my position, we, of course, reserve all rights with regard to the issue of relevancy and with regard to these roll-back figures, thinking, as I pointed out earlier, that this is not

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relevant to this Commission hearing, and it is not within the scope of the call, and it is not relevant at this particular time.

MR. NUTTER: Do you say anything other than sixty-two cents is irrelevant?

MR. HUNKER: Is irrelevant, yes.

MR. NUTTER: May I ask how the royalties are being computed and why the difference between the 21.875 and the 18.75 percent?

MR. HUNKER: I will respond. The Messrs. Hannifin and Cook acquired an oil and gas lease covering the Southeast quarter of Section 24 in the appropriate township and range, Township 22 South, Range 26 East, from Merland, Inc., and that lease provided for a royalty to the lessor of 3/16ths, which is the equivalent of 18.75 percent, and our calculations were based on that figure as if both leaseholdings, or all of the leaseholdings, in the 320-acre tract carried that royalty.

We did this for the reason that we had no control whatsoever over the royalty under the other tract. Mr. Grace could have agreed to pay somebody fifty percent, thereby penalizing our position, so we calculated it on a basis of 18.75, and I will let Mr. Howden explain why.

MR. RYAN: We calculated it at a higher figure because it is our theory and position here that we were

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operators, and that we were entitled under the contract with El Paso to sell this gas.

We had the responsibility for the royalty, and there is no manner for which Mr. Hunker had any responsibility for the royalty. Therefore, we had the responsibility, and we paid it based on that high royalty figure.

Now, apropos at this point, Mr. Hunker attempted to introduce into the record the contract between his client and El Paso. The Commission, on its own motion, withdrew that proffered exhibit. We submit that the exhibit should be-- that that contract should be a part of this record for the limited purpose of showing, pursuant to paragraph 13 of that contract, that El Paso realized that Mr. Hunker's client, Mr. Hannifin, had no right to sell the gas, except as this Commission may order otherwise.

We ask that that contract between Mr. Hannifin and El Paso be made a part of this record solely for the limited purpose of showing, pursuant to paragraph 13 of the contract, what El Paso itself recognized here.

MR. PORTER: I don't believe you identified yourself.

MR. RYAN: Robert W. Ryan, Jr., one of the counsel for the Graces.

MR. NUTTER: In other words, Mr. Ryan, Mr. Hunker has taken the 18.75 percent royalty off of the Southeast

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quarter and arrived at a working interest ownership there, and you have taken the working interest ownership of Hannifin and Cook's interests and the working interest ownership of the Grace's interests, added those together, subtracted them from one hundred percent, and arrived at your figure of 21.875; is that correct?

MR. RYAN: Yes.

MR. NUTTER: You are making the royalty uniform throughout the unit?

MR. RYAN: Yes, and that's our position. We were the operator, and entered into the contract to sell the gas, and that's the only way it could be.

MR. NUTTER: I understand your position.

MR. PORTER: Mr. Hunker, would you like to respond to the motion for the inclusion of the contract into the record, or do you have any objection to its inclusion into the record?

MR. HUNKER: If you will give me about two minutes, I want my client to re-read paragraph 13.

MR. PORTER: Sure.

(Whereupon an off the record discussion was held.)

(Hearing continues.)

MR. HUNKER: We have no objection, Mr. Porter, to the admission of this purchase contract of June 9th, 1973 as part of the record.

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MR. RYAN: We are offering it, Your Honor, for the limited purpose I stated.

MR. PORTER: I understand that it is for the limited purpose of considering the royalty in question.

MR. RYAN: Yes, sir.

MR. PORTER: It will be admitted to the record for that purpose only.

MR. NUTTER: Would you repeat the figure you gave us a while ago as to the total cost of the well that was stipulated yesterday, Mr. Hunker, to make sure I have the right number on that?

MR. HUNKER: The total figure was $520,679.40.

MR. NUTTER: Is that correct, Mr. Howden?

MR. HOWDEN: Would you repeat it again?

MR. HUNKER: Five hundred twenty thousand six hundred seventy-nine dollars forty cents.

MR. HOWDEN: That was the figure before the Commission as of yesterday.

MR. PORTER: Where is a copy of that contract that we can mark as an official exhibit? This is your exhibit, Mr. Howden, a Grace exhibit?

MR. HOWDEN: Yes.

MR. PORTER: Is this the only exhibit you have had thus far?

MR. HOWDEN: Yes.

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MR. HOWDEN: Okay, let the contract between Hannafin and El Paso be identified as Grace Exhibit Number One for the record.

(Whereupon Grace Exhibit Number One was admitted in evidence.)

MR. NUTTER: We would like to have the division order in the record also.

MR. PORTER: Would someone like to offer the division order as an exhibit in this case?

MR. HOWDEN: Yes, we have a copy to submit for the record, Mr. Chairman.

MR. PORTER: Let the record show that the division order dated April 16th, 1973 as being entered into the record as Grace Exhibit Number Two.

(Whereupon Grace Exhibit Number Two was admitted in evidence.)

MR. PORTER: Now, Mr. Howden, do you have any further testimony to put on in this case?

MR. HOWDEN: Mr. Chairman, the stipulation takes care of the testimony of the accountant. There are matters that I think need to be brought to the attention of the Commission, and we will ask the Commission at an appropriate time to consider these, but insofar as the introduction of evidence--

MR. CARR: In other words, you are talking about

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a closing statement?

MR. HOWDEN: Mr. Chairman, there is a matter which we have discussed generally, but there is no stipulation on it, and it does have an evidenciary aspect to it, and that would be the question of the fact that there is presently an escrow fund held by a bank in Carlsbad, and it is going to be necessary for the Commission to be asked to consider this in this matter.

Now, that could develop evidenciary questions as well as argument.

MR. PORTER: Do you plan to put on a witness to develop this testimony?

MR. HUNKER: We will stipulate as to the amount in escrow down there, and to the name of the bank.

MR. PORTER: Mr. Howden, is the escrow money relevant to determining a pay-out date? This seems to me to be the question.

MR. HOWDEN: Mr. Chairman, if I may give the Commission some background on the escrow, I think that will clarify the issue.

The dispute first arose as to the termination date, at which time Mr. Hannifin made demand on El Paso for payment. El Paso took the position that they would not arbitrate this question, and ultimately an agreement was reached under which funds were escrowed. These payments

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were escrowed pending a determination of the termination date and requiring, in effect, the escrow to be established.

The escrow was established, and it will remain until such time as there is an order of termination-- Excuse me. May I just have one minute?

MR. PORTER: Yes.

MR. HOWDEN: The important part here is that the escrow was established because of the forced pooling order of this Commission-- I mean, it is there for that reason. Therefore, it is our position that it does come before the Commission at this time, and if the Commission is looking for a provision in the docket under which it can be raised, then it can be raised under paragraph five, where the general provisions provide for such other relief as may be appropriate.

So, in essence, this is the status of the escrow agreement, and I don't know if we have dispute as to what I have stated.

MR. HUNKER: There has been an understanding that the American Bank of Carlsbad would serve as escrow agent, there are no written agreements or written instructions pertaining to that account. It was by agreement between counsel and El Paso that the account was established.

MR. HOWDEN: Mr. Chairman, I think Mr. Hunker has seen a copy of this letter. (indicating) This is a

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letter from the bank attorney.

MR. PORTER: Do you feel that a Commission function in this would have to do with the release of the escrow funds?

MR. HOWDEN: I think that inevitably flows from the proceedings here.

Mr. Chairman, there are two items of correspondence, one from the American Bank of Carlsbad, and one from their attorney which we would like to enter as evidence in this case.

MR. HUNKER: May I see those, please?

MR. PORTER: Mr. Hunker, do you have any objection to their admission?

MR. HUNKER: There is an additional letter which would make the series complete, and without objection, I think counsel is willing to offer it as part of this series of instruments. Two of these letters have come out of my file, and I would like to have copies of them made.

MR. HOWDEN: Yes.

MR. HUNKER: We have no objection to all three being admitted.

MR. HOWDEN: The third one being a letter from El Paso pertaining to the same subject.

MR. PORTER: Let the record show that Grace Exhibit Number Three is a letter-- a copy of a letter from

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El Paso Natural Gas Company to the American Bank of Carlsbad dated August 8th, 1973.

Grace Exhibit Number Four is a letter from Matkins and Martin, to Mr. George Hunker under date of August 10th, 1973.

Grace Exhibit Number Five is a letter from the American Bank of Carlsbad to Mr. John Otto, attorney, dated August 16th, 1973.

(Whereupon Grace Exhibits Three, Four, and Five were admitted in evidence.)

MR. PORTER: Let me ask you, Mr. Howden, do you feel that since this matter of escrow has been brought up here that it will be necessary for you to put testimony into the record relevant to this?

MR. HOWDEN: I have shown Mr. Hunker our calculations on this, and I don't know whether we can agree on that or whether it will be necessary to have testimony.

MR. HUNKER: Off the record.

(Whereupon an off the record discussion was held.)

(Hearing continues.)

MR. HOWDEN: Mr. Chairman, we have calculations showing the distribution of this escrow money, assuming our date of June 22nd plus part of June 23rd is the one that is adopted. If so, then our testimony would show this calculation (indicating), this distribution of those funds

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that are in escrow. As I understand it, Mr. Hunker will agree to this calculation (indicating).

MR. HUNKER: Assuming that the Commission finds that the 22nd-- or the 23rd is the proper date for the termination of the pay-out period.

MR. PORTER: Let the record show that the calculation just referred to by Mr. Howden in relation to the escrow funds will be admitted as Grace Exhibit Number Six.

(Whereupon Grace Exhibit Number Six was admitted in evidence.)

MR. HOWDEN: Mr. Chairman, by way of clarification, to make sure that we have made the matter clear to the Commission, the escrow was established on one half of all of the funds accruing after the 17th of June, which means that there is now another sum that has been paid into the escrow.

Mr. Hunker has given me a figure, which I understand to be the amount paid in, and my client would like to have the opportunity to verify that figure, and I think we can then agree on that figure.

MR. PORTER: How do you plan to verify the figure?

MR. HOWDEN: I think it is just a question of telephone verification.

MR. NUTTER: Do you know if the bank has received that yet, Mr. Hannafin?

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MR. HANNIFIN: El Paso had mailed it the first part of the week. I didn't talk to the bank, I talked to the El Paso company and got the figure.

MR. HUNKER: Whatever the amount is, it has been put in escrow, and it represents fifty percent of the funds for the month of July.

MR. HOWDEN: We just want to make sure of the amount, that's all.

MR. PORTER: Do you feel it is necessary to hold the record open for verification of the amount if you agree that it is half of the figure?

MR. HOWDEN: The only problem, Mr. Chairman, is until we have actually seen the figure, we don't know whether it has been half or what. This is what we would like to clarify.

MR. PORTER: I was trying to get the hearing over with.

MR. HUNKER: I could be making my closing statement, Mr. Commissioner.

MR. PORTER: You may proceed, Mr. Hunker.

MR. HUNKER: If the Commission please, I have a very, very brief statement that I would like to present. By stipulation, the parties have agreed that the well costs for the purpose of this hearing are $439,986.35, upon which the twenty-five percent risk factor is applicable,

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and $25,694.75, upon which the risk factor is not applicable.

It has been shown, and the parties have agreed, that these costs are attributable in the amount of $232,840.56 to Michael P. Grace II, the designated operator. And for $287,838.84 to D. L. Hannifin and Joe Don Cook. The total amount of these costs is $520,679.40.

D. L. Hannifin and Joe Don Cook have shown that, as of production through June 20th, 1973, based on a royalty calculation of 18.75 percent, that the gross proceeds of the well were $692,611.46, from which this percentage of royalty was deducted, the amount of royalty being deducted being equal to $129,864.65 from a figure 36,122.71 of $562,746.81. Taxes were in the amount of $33,122.71, and these were deducted, leaving $526,624.10, with an excess of $5,944.70.

At this time, I would like to ask the Commission to take administrative notice of its own Order R-4432, and of the non-consent that was filed by D. L. Hannifin.

I would like to point out that we feel that the calculations of royalty on the basis of burden on the Hannifin lease is appropriate, and to calculate it otherwise would be to be calculating in a figure that was not embodied in the basic Commission order.

MR. PORTER: Excuse me for a moment. Mr. Grace, I believe you are interfering with the reporter.

MR. GRACE: Excuse me. He didn't tell me. and I didn't realize it, Your Honor.

MR. HUNKER: -- The Applicants Hannifin and Cook contend that for the purpose of this hearing, it is not appropriate for the Commission to consider as being relevant matters of rebate that may be required by the Federal Power Commission at some future date, which is entirely speculative.

We do not feel that roll-back is an appropriate matter for the Commission to consider, and in this connection we ask your indulgence in considering this in the light that a considerable amount of delay has been suffered by Hannifin and Cook.

They have been deprived of funds which they have a right to use, they have tried with some diligence to get this matter settled without too much avail.

We have accomplished a great deal with the Commission's help in the last two days, and we are entirely grateful for the Commission's assistance. Thank you very much.

MR. PORTER: Mr. Howden, have you at this time confirmed the matter with the bank in Carlsbad?

MS. JONES: Yes, sir. The amount of the check was $139,084.71.

MR. PORTER: Will you identify yourself?

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MS. JONES: Juanita L. Jones.

MR. PORTER: Mr. Howden?

MR. HOWDEN: Mr. Chairman, Members of the Commission, I think it has been demonstrated that there is a dispute. It is our position that the appropriate date, assuming the fifty-two cent contract price is operable and appropriate, the date is June 23rd for an excess. But I think, and we certainly urge upon the Commission, that there are more important and much greater needs for attention by the Commission.

There is the problem which we have raised through Mr. White's testimony, and that is the roll-back question. We say first that it does come within the docket order, and it also comes under the forced pooling order. It was pointed out by Mr. White in his testimony that there is a real chance that not only would the price be rolled back to a much lower figure as a result of this pending litigation, it could be rolled back as far as sixteen cents, as he pointed out. But also that in rolling it back, there would have to be a refund or a rebate from sums already received. The result of that would be to cause the operator under this Commission's forced pooling order to make the rebate from his pocket, unless this Commission makes an appropriate provision for that contingency.

We feel that that provision must be made in order

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not to impose such a burden on the operator that he would have to pay it, and then seek to recover such rebate as he might be able to from the interests in the forced pool.

So I must say that I disagree most strenuously with Mr. Hunker in his statement that this does not come within the scope of this hearing. More important, it not only comes within the scope of this hearing, but we are asking this Commission to address itself to this very real and far-reaching problem at this time. It is something that the Commission has not had to deal with in the past.

Now, with regard to the computations, I think it is correct that we have over the past few days succeeded in working out problems. We have resolved a number of things without having to ask the Commission to hear all of it. I think it might be-- However, it is unfair of Mr. Hunker to suggest that there has been delay occasioned by my client. I don't even think that is a matter of evidence here as to who occasioned what delay. So I think in passing I would like to say that that is not a fair statement of fact, nor is it a fair representation from the record.

So what we are asking the Commission to address itself to is this whole roll-back question at this time, because we feel it does come under the docket order under the question of when the termination period in fact arrives.

dearnley, meier & associates
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I think it is very definitely within the scope of this Commission's authority and within the scope of this hearing that that question be addressed and be dealt with.

We have also asked the Commission to address itself to the bank escrow problem. You see, Mr. Chairman, and Mr. Commissioner, I don't think it is correct to say that this is not within the scope of these proceedings.

If that were the case then, this paragraph 5, providing such other relief as may be appropriate, would be meaningless. I think that that is there for a purpose, and its purpose is to address to questions that may be brought up in the course of the proceedings. So I think it is very definitely within the scope of that provision, not to mention, as I have said, within the scope of paragraph 4 under the determination period.

I would like, I don't want to delay these hearings unduly, however, I would like to ask the Commission if we could have perhaps one minute so that I could consult with co-counsel with regard to any other matters which we might want to state in final argument, recognizing that there are of course questions that haven't been dealt with in these hearings.

For example, where do we stand on the question of the continuation of this forced pooling order once we reach a termination date? That question has not been

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dealt with, and there are others. So I think it has been a selective hearing, and I would like to ask the Commission's leave to confer with counsel for a moment before closing my argument, if the Commission please.

MR. PORTER: You can have a moment, but I fail to see how the last point you raised is relevant. You might want to include all of those under Section 5.

MR. HOWDEN: I understand that, Mr. Chairman, the point of what I am saying is that there are matters we have not registered. It is not as if we have come in here and asked the Commission to settle this well on all future problems. We have been specific with regard to certain problems we believe are very real.

MR. PORTER: And we feel it should be left there.

MR. HOWDEN: May we confer for one moment?

MR. PORTER: Yes, go ahead.

MR. HOWDEN: May I leave and confer with my client for two minutes?

MR. PORTER: Yes. Be back in five minutes, please, sir.

(Whereupon a recess was taken.)

(Hearing continues.)

MR. PORTER: The hearing will come to order, please. Mr. Howden, will you proceed?

MR. HOWDEN: Mr. Chairman, Commissioners, the

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other point that has been raised here before the Commission is the question of a reserve fund, the need for which is occasioned by the fact that we do not have an operating agreement, we do not have a division order signed.

We have a situation where my client must continuously operate without any protection in this area, and therefore, we are also asking the Commission to act under paragraph 5, and provide for an appropriate reserve fund to cover such things as operating costs, to cover such things as may arise, such as re-working of the well. Such things as this must be covered inasmuch as there is no operating agreement, inasmuch as there is no division order signed, inasmuch as the whole situation between these parties is obviously one of unwillingness or inability on the part of the non-operator to cooperate with the operator in running the well and in selling the gas.

I think it was pointed out, for example, there is an effort pending to sell the gas on the part of the non-operator. All of these many things, I think, point out and underline the fact that if ever there was a situation that required some kind of reserve, some kind of means of protecting against these contingent costs that can arise, this is such a case.

So that also, Mr. Chairman, we say to the Commission, should be addressed by this Commission in this proceeding,

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and we ask the Commission to do so.

I think, this being an administrative body, Mr. Chairman, that it would be most appropriate for the Commission to use its position to see if the parties cannot reach a point at which there is an operating agreement so that such problems do not in the future arise.

So we feel, Mr. Chairman, that roll-back must be dealt with, we feel the reserve question must be dealt with, and we feel that the bank escrow question must be dealt with. These are all, perhaps, collateral in a sense, but they are very definitely under paragraph 5, they are very definitely before the Commission in the forced pooling order, they are very definitely before the Commission in view of the evidence presented here at this hearing.

So we ask the Commission to address itself to these very real problems, and exercise its administrative authority in resolving them.

Obviously, Mr. Chairman, I suppose we could argue this at great length. We could argue these points for days, but we have tried to highlight for the Commission the various points we believe the Commission should address itself to along with the questions initially identified in the Applicant's petition.

MR. PORTER: Does anyone else have anything to offer in this case?

dearnley, meier & associates
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(No response)

MR. PORTER: The Commission will take the case under advisement.

(Whereupon Case 5054 was concluded at 12:45 P.M., Wednesday, August 29th, 1973.)

* * * *

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

I, RICHARD E. McCORMICK, a Certified Shorthand Reporter, in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached Transcript of Hearing before the New Mexico Oil Conservation Commission was reported by me; and that the same is a true and correct record of the said proceedings to the best of my knowledge, skill and ability.

Richard E. McCormick
CERTIFIED SHORTHAND REPORTER

dearnley, meier & associates
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E X H I B I T S

El Paso Natural Gas Company

El Paso, Texas 79999

OIL CONSERVATION COMM
Santa Fe

August 27, 1973

Mr. D. L. Hannifin
General Delivery
Santa Fe, New Mexico

Re: Atlantic Grace Morrow Well
Eddy County, New Mexico

Dear Mr. Hannifin:

Attached is a tabulation of July, 1973 daily volumes from the subject well.

Very truly yours,

R. E. Johnson

R. E. Johnson

Attachment

REJ:ck

cc: (w/Attach.) Mr. and Mrs. Michael P. Grace II
P. O. Box 1418
Carlsbad, New Mexico 88220

" Mr. Dan Nutter
New Mexico Oil Conservation Commission
State of New Mexico
P. O. Box 2088
Santa Fe, New Mexico 87501

COPY

61-333-01 Grace Atlantic #1

July 1973 vols mcf @ 14.65

7/1	14,999	7/16	19125
2	0	17	19140
3	10684	18	19347
4	10171	19	19089
5	12379	20	18986
6	15102	21	19502
7	15205	22	19140
8	15461	23	19140
9	15912	24	18721
10	16170	25	12278
11	16534	26	9234
12	16534	27	9285
13	16223	28	9538
14	16119	29	9538
15	16274	30	9589
		31	8981

Total 448400

RECEIVED
AUG 20 [illegible]
OIL CONSERVATION COMM
Santa Fe

Rick:

Volumes on Grace Atlantic #1 as per your request.

[illegible]

Case 5054

Calculation of Hannifin & Cook Payout

Original cost of well (subj. to penalty)	439,986.35
Addl costs (not subj. to penalty)	25,694.75
Total	465,681.10

Grace's share:

$$\frac{439{,}986.35}{2} + \frac{25{,}694.75}{2} = 232{,}840.56$$

Hannifin's share

$$1.25\left(\frac{439{,}986.35}{2}\right) + \frac{25{,}694.75}{2} = 287{,}838.84$$

Assume payout in June and charge overhead for 3 mos, Apr, May, & June

3(135) = $405.00 Grace's share 202.50
Hannifin's 202.50

Total Grace share 232,840.56 + 202.50 = 233,043.06
Total Hannifin share 287,838.84 + 202.50 = 288,041.34

Apr. prod	206,803 MCF	@ $0.62036	= 128,292.31
May prod	505,244 MCF	@ $0.62036	= 313,433.17
thru June 26	531,766 MCF	@ $0.62036	= 329,886.36
VALUE of TOTAL PROD to 7am 6/26			771,611.84

Grace share 385,805.92
Hannifin share 385,805.92

Hannifin's taxes = 6.4 9 % of 385,805.92 = 24,764.88
Hannifins royalty = 18.75 % of 385,805.92 = 72,338.61
TOTAL TAXES & ROYALTY (SE/4 only) 97,103.49

HANNIFINS GROSS SHARE OF PROD	385,805.92
LESS TAXES & ROYALTY	97,103.49
HANNIFINS NET	288,702.43
HANNIFINS TOTAL COSTS	288,041.34
HANNIFIN'S OVER PAYMENT 7am 6/26	661.09

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

I. R. TRUJILLO
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

October 1, 1973

Re: CASE NO. 5054
ORDER NO. R-4432-A
Applicant:
Hannifin & Cook

Mr. Frederick B. Howden
Attorney at Law
400 7th Street NW
Albuquerque, New Mexico 87103

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. Porter, Jr.

A. L. PORTER, Jr.
Secretary-Director

ALP/ir

Copy of order also sent to:

Hobbs OCC x
Artesia OCC x
Aztec OCC

Other Mr. George Hunker

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D. L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
WITHHOLDING PERIOD.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 28 and 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 28th day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R-4432 created a standard communitized unit comprising 320 acres, named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest, and authorized the drilling of a well for the subject unit to be drilled at a standard location for the South Carlsbad-Morrow Gas Pool.

(4) That the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, is subject to a royalty payment of 18.75 percent, and the working interest ownership of said SE/4 of Section 24 is 81.25 percent; that the SW/4 of said Section 24 is subject to a royalty and overriding royalty payment of 25.0 percent, and the working interest ownership of said SW/4 of Section 24 is 75.0 percent.

(5) That subsequent to the issuance of Order No. R-4432, D. L. Hannifin, as Non-Consenting Working Interest Owner, and Barbara E. Hannifin, his wife, filed with the Commission a "Statement of Non-Consent" executed January 4, 1973, wherein D. L. Hannifin and Barbara E. Hannifin, his wife, stipulated that D. L. Hannifin is the working interest owner under an Oil and Gas Lease covering the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, which said tract, together with the SW/4 of said Section 24, has been dedicated to a 320-acre standard location for the drilling of a test well in the Morrow formation underlying the S/2 of said Section 24; and that Michael P. Grace II has been designated by the New Mexico Oil Conservation Commission as the operator of the proposed well and unit. The Statement of Non-Consent stipulated further:

> "The undersigned, D. L. Hannifin, non-consenting working interest owner, joined herein by his wife, Barbara E. Hannifin, hereby expressly elects not to pay his share of estimated well costs to Operator and in lieu thereof, hereby elects to pay his share of reasonable well costs out of production. The undersigned further certifies and agrees that $135.00 per month should be fixed as a reasonable charge for the supervision (combined fixed rates) for the subject well; agrees to the 25% prorata risk share charge described in finding (7)(B); and agrees that Operator is authorized to withhold from production the proportionate share of such supervision charge attributable to the undersigned non-consenting working interest owner's interest, and Operator is authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to non-consenting working interest owner, all as more particularly defined in Order R-4432."

(6) That on January 28, 1973, Michael P. Grace II as Operator of the S/2 of Section 24, Township 22 South, Range 26 East, caused to be commenced the drilling of a well designated the Grace-Atlantic Well No. 1, located 1980 feet from the South line and 1980 feet from the East line of said Section 24, to a proposed depth of 12,100 feet to test the Morrow formation, the S/2 of said Section 24 being dedicated to the well.

(7) That on March 1, 1973, Michael P. Grace II and Corinne Grace, as "Seller," entered into a contract with El Paso Natural Gas Company, as "Buyer," for the sale of gas produced from those formations between the surface of the ground and the base of the Morrow formation underlying Seller's properties comprising certain lands, including the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico; that said

contract provides that Buyer shall pay Seller for gas purchased thereunder at the rate of $0.52 per MCF commencing on the date of first deliveries and continuing through the month of December, 1973, subject to adjustment for the heating value of the gas produced, either more or less than 1,000 BTU's per MCF; and subject to certain escalations after December, 1973.

(8) That on March 15, 1973, the above-described Grace-Atlantic Well No. 1 was completed and ready to produce; that on March 29, 1973, said well was tested and found to have a calculated absolute open flow potential of 65,737 MCF per day from perforations in the Morrow formation from 11,424 feet to 11,444 feet.

(9) That said Grace-Atlantic Well No. 1 was actually connected to the El Paso Natural Gas Company pipeline system April 16, 1973, and that gas production since that date has yielded, including the BTU adjustment described in Finding No. (7) above, $0.62036 per MCF.

(10) That on July 30, 1973, D. L. Hannifin and Joe Don Cook, through their attorney, made application to the Commission seeking a determination of the reasonable well costs of the Grace-Atlantic well, and a determination of when Michael P. Grace II had been fully compensated for all reasonable well costs and the 25 percent risk charges and the pro rata share of reasonable well costs attributable to Hannifin and Cook on the well.

(11) That at the hearing the parties stipulated to the following facts:

(a) That the original cost of the well is $439,986.35, one-half of which is subject to the 25 percent risk factor provided in Order No. R-4432.

(b) That additional charges have been incurred by the operator in the amount of $25,694.75 and should be divided equally between the parties.

(c) That the Grace share of these costs (50 percent of the original costs and 50 percent of the additional costs) is $232,840.56.

(d) That the Hannifin and Cook share of these costs (50 percent of the original costs, a 25 percent penalty thereon and 50 percent of the additional costs) is $287,838.84.

(e) That the total well costs are $520,679.40.

(f) That each party should pay 50 percent of the reasonable charge for supervision (combined fixed rates).

(g) That the reasonable charge for supervision pursuant to Commission Order No. R-4432, is $135 per month which totals $405 for the months of April, May and June, 1973, $202.50 of which should be paid by each of the two parties.

(h) That the Grace total share of all costs is $233,043.06.

(i) That the Hannifin and Cook share of all costs is $288,041.34.

(12) That each of the 160-acre tracts communitized by Commission Order No. R-4432 should stand on its own insofar as royalty and overriding royalty payments are concerned; that accordingly, the working interest attributable to the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Lea County, New Mexico, is 40.625 percent of the pooled unit interests as a whole; that the royalty interest underlying said SE/4 of Section 24 is 9.375 percent of the pooled unit interests as a whole; that the working interest attributable to the SW/4 of said Section 24 is 37.5 percent of the pooled unit interests as a whole; and the combined royalty interests and overriding royalty interests underlying said SW/4 of Section 24 total 12.5 percent of the pooled unit interests as a whole.

(13) That the current sales price for gas produced from the subject well is $0.52 per MCF plus $0.10036 per MCF BTU adjustment for a total of $0.62036 per MCF. That the royalty under the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, is 18.75 percent of the production attributable to said tract. That the current rate of taxation on the production from the subject well is 6.419 percent of the value received for said production. That these are the proper factors to be used in determining the date on which production, less royalty and taxes, attributable to the subject SE/4 of Section 24 has paid out the stipulated costs chargeable to Hannifin and Cook through June, 1973, which total $288,041.34.

(14) That from April 16, 1973, through 7 o'clock a.m. on June 26, 1973, the subject Grace-Atlantic Well No. 1 produced a total of 1,243,813 MCF of gas. That applying the factors described in Finding No. (13) above to this production indicates that at 7 o'clock a.m. on June 26, 1973, the portion of production attributable to the subject SE/4 of Section 24, less royalty and taxes, had paid out the costs attributable to Hannifin and Cook plus an additional $661.09, or a total of $288,702.43.

(15) That according to the evidence, gas is currently being sold from the subject well under a contract signed pursuant to the Federal Power Commission's Order No. 428-428 A dealing with Small Producer sales; that the sale of gas under such contracts is currently in litigation; that depending upon the outcome of such litigation, the sales price for gas from the subject well could be changed.

(16) That the Commission is in no position to determine what the final sales price for gas from the subject well will be, and can only rely upon the current price.

(17) That certain monies derived from the sale of gas from the subject well have been placed in escrow with the American Bank of Carlsbad, Carlsbad, New Mexico, pending the determination of payout of the well.

(18) That inasmuch as it has been determined that the Hannifin and Cook portion of total well costs was paid out at 7 o'clock a.m. June 26, 1973, plus $661.09, it would appear that monies held in escrow from production after that date should be released to the applicants, Hannifin and Cook.

(19) That it should be up to the working interest owners in the subject well to arrive at a suitable arrangement regarding payment of funds derived from sale of gas from the subject well which may be excessive should the sales price of gas be adjusted retroactively and be subject to refund.

<u>IT IS THEREFORE ORDERED</u>:

(1) That the 18.75 percent royalty of the Hannifin portion of the subject unit, being the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, and the 25.0 percent royalty for the Grace portion of the subject unit being the SW/4 of said Section 24, are independent and separate from each other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the payout date of the Michael P. Grace II Grace-Atlantic Well No. 1, located 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(2) That the 18.75 percent royalty applicable to the SE/4 of said Section 24 shall be applied to one-half of the total production from the well, and the 25 percent royalty and overriding royalty applicable to the SW/4 of said Section 24 shall be applied to the other half of the total production from the well.

(3) That a tax rate of 6.419 percent of the production attributable to the SE/4 of said Section 24 shall be used in determining date of payout for the total share of well costs attributable to Hannifin and Cook through June, 1973.

(4) That the gas price to be used in determining the date of payout for the subject well shall be $0.52 per MCF plus $0.10036 per MCF BTU adjustment, for a total of $0.62036 per MCF of gas.

(5) That the original well costs for the subject well are $439,986.35, one-half of which, or $219,993.18, are to be borne by Michael P. Grace II and one-half of which plus a 25 percent charge for risk, or $274,991.47, are to be borne by D. L. Hannifin and Joe Don Cook.

(6) That additional costs incurred, totalling $25,694.75, are not subject to any charge for risk, and shall be shared equally by the two parties to this hearing, Michael P. Grace II, and Hannifin and Cook.

(7) That Michael P. Grace II's total share of original well costs and additional costs incurred shall be $232,840.56.

(8) That Hannifin and Cook's share of original well costs plus the 25 percent charge for risk, and their share of additional costs incurred, shall be $287,838.84.

(9) That $135.00 per month is a reasonable charge for supervision (combined fixed rates) for the subject well and totals $405.00 for the months of April, May, and June, 1973. That this charge for supervision shall be borne equally by Michael P. Grace II and by Hannifin and Cook, thereby making each party's share $202.50.

(10) That Michael P. Grace II's total share of reasonable well costs (defined as original well costs and additional costs incurred) and charge for supervision through June, 1973, shall be $233,043.06.

(11) That Hannifin and Cook's total share of reasonable well costs (as defined above) plus a 25 percent penalty on the original well costs, and charge for supervision through June, 1973, shall be $288,041.34.

(12) That $288,041.34, being the total share of reasonable well costs (as defined above) plus a 25 percent penalty on the original well costs, and charge for supervision through June, 1973, attributable to Hannifin and Cook, is hereby determined to have been paid out by production attributable to the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, less royalty and taxes, at 7 o'clock on June 26, 1973, with an additional overpayment attributable to Hannifin and Cook of $661.09.

(13) That any funds derived from the sale of gas from the subject well after 7 o'clock a.m. June 26, 1973, attributable to D. L. Hannifin and Joe Don Cook, and held in escrow by American Bank of Carlsbad shall be released to said Hannifin and Cook subject to agreement in writing between Hannifin and Cook and Michael P. Grace II as to future arrangements, escrow, bonding or whatever may be satisfactory to the parties involved, covering the difference, if any, between the current sales price of gas from the subject well and the future sales price of gas.

(14) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

I. R. Trujillo

I. R. TRUJILLO, Chairman

ALEX J. ARMIJO, Member

A. L. Porter, Jr.

A. L. PORTER, Jr., Member & Secretary

S E A L

dr/

D. L. HANNIFIN
P. O. BOX 182
ROSWELL, NEW MEXICO 88201

DS

505-623-4618

RECEIVED
JUN 11 1973
OIL CONSERVATION COMM
Santa Fe

June 7, 1973

Michael P. & Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Re: Grace-Atlantic #1
S½ Sec. 24 T22S-R26E
Eddy County, New Mexico

Dear Sir:

Please furnish us with the itemized well costs and copies of the invoices on the above captioned well.

Our accountant shall need to have these itemized and the copies in order to be able to set up his books as to the intangibles and tangibles.

Your earliest answer will be greatly appreciated.

Sincerely,

D. L. Hannifin

D. L. Hannifin

DLH:jl
cc:Mr. Dan Nutter

D. L. HANNIFIN
P. O. BOX 182
ROSWELL, NEW MEXICO 88201

505-623-4618

June 22, 1973

El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

Attention: Mr. R. E. Johnson

Re: Emergency gas purchase contract
Grace-operated Atlantic Grace
#1 well, Sec. 24 T22S-R26E
Eddy County, New Mexico

Dear Rick:

Please be advised that at 8 A.M. on June 9, 1973 the above captioned well had produced sufficient revenue to completely compensate Mr. Michael P. Grace and Corinne Grace for all well cost plus 25% penalty as ordered by the New Mexico Oil Conservation Commission.

Therefore, as of 8 A.M. on June 9, 1973, D. L. Hannifin and Joe Don Cook shall receive 50% of the gross revenue from the above captioned well.

Sincerely yours,

D. L. Hannifin

Joe Don Cook

DLF:jl
CC: Michael P. Grace
CC: New Mexico Oil Conservation Commission

Michael P. Grace II
Corinne Grace
P. O. BOX 1418
CARLSBAD, NEW MEXICO 88220

June 29, 1973

RECEIVED
JUL 2 1973
OIL CONSERVATION COMM.
Santa Fe

Mr. Dan Nutter
New Mexico Oil Conservation Commission
State of New Mexico
PO Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Nutter:

Regarding our conversation last week, I took your advice and telephoned Mr. Hannifin. He advised me that in his computations on the above well on June 9, 1973, he had not calculated taxes and royalties. Therefore, he was definitely not paid out on June 9, 1973. We are in the process of bringing our accounting up to date, but it does not appear at the moment that he is anywhere near paid out.

We shall notify you when he is and we will send you and he an up-to-date accounting as soon as it has been completed.

Sincerely yours,

Corinne Grace

Corinne Grace

cp

Enclosures

cc: Mr. R. E. Johnson, El Paso Natural Gas Co.
cc: Mr. D. L. Hannifin

[illegible]

June 25, 1973

Mr. Rick Johnson
El Paso Natural Gas Company
El Paso, Texas 79978

Dear Mr. Johnson:

To avoid any confusion, I would like to advise you that my wife in a telephone conversation to Mr. D. L. Hannifin was advised by him that in his computation, he had failed to take out royalties and taxes; thus the New Mexico O. C. C. order Number R4432 and the nonconsent stipulation of 1/4/73 have not taken effect.

We calculate that somewhere in the first week of July the 125% recovery under the above-mentioned documents may occur. Mr. D.L. Hannifin has not signed an operating agreement with us or a division order.

Mr. Lee White, formerly with the F.P.C., will call you and advise when we think he legally comes back into the well.

Thanking you,

Michael P. Grace

Michael P. Grace

Corinne Grace

Corinne Grace

cp

Pres. [illegible]

Michael P. Grace II
Corinne Grace
P. O. BOX [illegible]
CARLSBAD, NEW MEXICO 88220

June 25, 1973

Mr. Rick Johnson
El Paso Natural Gas Company
El Paso, Texas 79978

Dear Mr. Johnson:

To avoid any confusion, I would like to advise you that my wife in a telephone conversation to Mr. D. L. Hannifin was advised by him that in his computation, he had failed to take out royalties and taxes; thus the New Mexico O. C. C. order Number R4432 and the nonconsent stipulation of 1/4/73 have not taken effect.

We calculate that somewhere in the first week of July the 125% recovery under the above-mentioned documents may occur. Mr. D.L. Hannifin has not signed an operating agreement with us or a division order.

Mr. Lee White, formerly with the F.P.C., will call you and advise when we think he legally comes back into the well.

Thanking you,

Michael P. Grace

Michael P. Grace

Corinne Grace

Corinne Grace

cp

GAS DIVISION ORDER

Effective: Date of First Runs

Grace - atlantic # 1 (well 2)
5-nm-336

TO: Michael P. Grace, and
Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Each of the undersigned warrants ownership of the interest, set opposite his name, in the proceeds derived from the sale of all gas (defined as natural gas and casinghead gas) produced from EDDY County, New Mexico, described as:

S/2 Section 24, T-22-S, R-26-E, NMPM, as to the South Carlsbad-Morrow Gas Pool,

including all substances produced with such gas. From the effective date and until further written notice, and subject to the following provisions, you, or your designated agent, are authorized to receive the proceeds derived from the sale of gas, in accordance with the division of interest shown below:

Credit To	Division of Interest	P. O. Address (Give box number or street address and zip code)
Merland, Inc.	.09375 RI	
W. E. Walling (whose wife is Odessa Walling)	.045629 RI	
James E. Smith (whose wife is Voyzie Smith)	.003895 RI	
J. N. Nelson (whose wife is Dona L. Nelson)	.001948 RI	
E. W. Douglass (whose wife is Cleo C. Douglass)	.001670 RI	
James L. Woods (whose wife is Pearl M. Woods)	.000278 RI	
Audrey M. Ingram (a widow)	.006466 RI	
Jack L. Ingram (whose wife is Sharon K. Ingram)	.000390 RI	
Millard F. Rose (whose wife is Ruby M. Rose)	.002224 RI	
Atlantic Richfield Company	.0625 ORI	P.O. Box 354 Dallas, Texas 75221
Michael P. Grace, II, and wife, Corinne Grace	.375 WI	
D. L. Hannifin (whose wife is Barbara E. Hannifin)	.40625 WI*	

*Pursuant to New Mexico Oil Conservation Commission Order No. R-4432 and to Non-Consent Stipulation executed by D. L. Hannifin and wife, Barbara E. Hannifin, on January 4, 1973, this interest is to be paid to the operator, Michael P. Grace II, until the recovery of 125% of the reasonable well costs attributable to this interest.

El Paso Natural Gas Company

El Paso, Texas 79999

July 9, 1973

RECEIVED
JUL 11 1973
OIL CONSERVATION COMM.
Santa Fe

Mr. Dan L. Hannifin
P. O. Box 182
Roswell, New Mexico 88201

Re: Grace-Atlantic Well #1
S/2 Sec. 24, T 22 S, R 26 E
Eddy County, New Mexico
(SLC No. 61-333-77367)

Dear Mr. Hannifin:

By your letter of July 2, 1973, you requested us to furnish you with the total amount of gas that has been run out of the captioned well and the price per MCF, including BTU increment, which El Paso is paying Michael P. and Corinne Grace. You also requested that El Paso furnish a copy of that information to Mr. Dan Nutter of the New Mexico Oil Conservation Commission.

In the spirit of cooperation and helpfulness to all concerned, we advise as follows (first delivery April 16, 1973):

Mo. & Yr.	Gas Price Per MCF	Settlement MCF @ 14.65 SPB	Total Amount
April, 1973	52¢ (.620360¢ with BTU at 1193)	206,803	$128,292.31
May, 1973	52¢ (.620360¢ with BTU at 1193)	505,244	313,433.17
	Total	712,047	$441,725.48

We are attaching a schedule showing the daily volumes of gas from the well for the month of June, 1973. The gas price shown above will be applicable to each of the daily volumes listed.

Very truly yours,

R. E. Johnson

Attachment
REJ:ck
cc: (w/Attach.) Mr. Michael P. Grace II
and Mrs. Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

" Mr. Dan Nutter
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

COPY

Atlantic-Grace Well
June, 1973

Day	MCF-14.65 SPB
1	18,659
2	18,970
3	18,814
4	19,073
5	20,213
6	20,162
7	20,265
8	20,369
9	19,482
10	20,469
11	20,937
12	20,469
13	20,522
14	21,352
15	20,885
16	21,093
17	20,801
18	20,698
19	20,697
20	20,490
21	20,697
22	20,905
23	20,911
24	20,398
25	21,833
26	22,602
27	21,577
28	21,577
29	21,372
30	20,194
	616,486

LAW OFFICES OF
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.
210 HINKLE BUILDING
POST OFFICE BOX 1837
ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

July 16, 1973

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIVED
JUL 17 1973
OIL CONSERVATION COMM.
Santa Fe

Michael P. Grace, II, "Operator"
and Mrs. Corrine Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Re: N.M.O.C.C. Order No. R-4432
Pooled Mineral Interest
South Carlsbad-Morrow Gas Pool
T. 22 S., R. 26 E., Eddy County
Section 24: S½
Grace-Atlantic Well No. 1
(SLC No. 61-333-77367)

Dear Mr. and Mrs. Grace:

Reference is made to the New Mexico Oil Conservation Commission Order dated September 27, 1972 (Exhibit "A" attached), and to the Non-Consent (Exhibit "B" attached) filed by D. L. Hannifin ("Non-Consenting Party") and wife dated January 4, 1973. Reference is also made to "Work Detail" and "Accounting" (Exhibit "C" attached), Grace-Atlantic Well No. 1, S½ Sec. 24, T. 22 S., R. 26 E., showing work commencement date of January 28, 1973, completion date of March 15, 1973, total well completion cost of $439,986.35, which said accounting was furnished to Non-Consenting Party by letter (Exhibit "D" attached) from Operator's office in Carlsbad dated July 2, 1973. Reference is also made to El Paso Natural Gas Company letter (Exhibit "E" attached) dated July 9, 1973, addressed to Non-Consenting Party, showing price being paid Operator for gas produced and sold (.620360¢ with BTU at 1193) and the amounts paid or credited to Operator's account for production from the subject well for the months of April and May, 1973, amounting to $441,725.48. Production sold to El Paso from the subject well for the month of June, 1973, on a daily basis is shown on a schedule attached to said letter.

In summary, Commission Order R-4432 provides for the pooling of the subject tract, designates Michael P. Grace, II, as Operator of the well and unit, and permits Operator to withhold (1) Non-Consenting Party's prorata share of reasonable well costs attributable to such working interest owner's interest, and (2) as a charge for the risk involved, 25% of the prorata share of such reasonable well costs attributable to Non-Consenting Party's interest, (3) a $135 per month fixed charge for supervision proportionately to be shared by non-consenting working interest owner, and in addition thereto, (4) Operator was authorized to withhold from production the proportionate share of actual expenditures required for the operating of the subject well not in excess of what are reasonable, attributable to such non-consenting working interest owner's interest. Operator has not furnished to Non-Consenting Party a bill showing Non-Consenting Party's proportionate share of actual expenditures required for operating the subject well have been since the well has been completed. It is to be noted, however, that Exhibit "C" reflects a company supervision charge of $800 per month for seven (7) months for a total of $5,600.

The accounting firm of Bandy, Duncan, Davis & Co. (P. L. Duncan, CPA) has been requested by Non-Consenting Party to analyze the foregoing information, and said accountants have reported to Non-Consenting Party that production sold by Operator to El Paso Natural Gas Company from subject well less lessor royalty (3/16) attributable to Non-Consenting Party's tract (160 acres, SE¼ Sec. 24, T. 22 S., R. 26 E.) and less taxes but after the addition of the 25% penalty or risk factor, nevertheless was adequate to reimburse Operator for the amounts required under the terms of the Commission Order if payment for production through June 17, 1973, is paid or credited to Operator. A copy of the accounting letter, marked Exhibit "E", is attached.

Non-Consenting Party has entered into a contract for the sale of his prorata share of the gas produced from said well and is obligated to deliver said gas effective as of the date of Operator's complete reimbursement. Ownership of the gas produced is to be allocated 50% to Operator's tract and 50% to Non-Consenting Party's tract.

Based on the foregoing showing made and verified by Non-Consenting Party, Operator is hereby given a period of five (5) days from the date hereof to show cause to Non-Consenting Party, the Commission and to El Paso Natural Gas Company, why El Paso should not pay for production sold from the subject well commencing at 7:00 A.M., June 18, 1973, in the amounts of 50% to Operator and 50% to Non-Consenting Party pursuant to said party's contract with El Paso dated June 9, 1973. If a controversy should ensue by reason of this demand letter, Non-Consenting Party, as the owner of 50% of the production from the subject well, orders and directs El Paso Natural Gas Company to suspend payment for runs as to Non-Consenting Party's 50% interest as to all production occurring on and after said date. This demand letter is written for and on behalf of our clients hereinabove referred to as Non-Consenting Party, D. L. Hannifin and Joe Don Cook, P. O. Box 182, Roswell, New Mexico 88201.

Respectfully submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker, Jr.

George H. Hunker, Jr.

GHH:dd
Encls.

cc: Mr. R. E. Johnson
El Paso Natural Gas Company
El Paso, Texas 79978

cc: Mr. A. L. "Pete" Porter, Jr.
Executive Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

cc: Mrs. Corrine Grace
1141 East Bethany Home Road
Phoenix, Arizona 85017

cc: Messrs. D. L. Hannifin and
J. D. Cook
P. O. Box 182
Roswell, New Mexico 88201

Michael P. Grace II
Corinne Grace
P. O. BOX 1418
CARLSBAD, NEW MEXICO 88220

June 30, 1973

RECEIVED
OIL CONSERVATION COMM.
Santa Fe

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rick Johnson
El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

RE: Grace Atlantic #1
Section 24, T22S, R26E
Eddy County, New Mexico

Dear Mr. Johnson:

After reading a copy of the letter which was mailed to you on the 22nd of June, 1973 from Mr. D. L. Hannifin in Roswell regarding the above well I have been trying to compile my figures on this and see how he could have figured this well was paid out. Undoubtedly Mr. Hannifin did not take into consideration that off the top of the gross comes the taxes, royalties, etc.

I have taken the statements for the months of April and May and after checking with your office in Jal I estimated the amount for the first 9 days of June to be $111,752.89. This would make a total of $553,478.37 received from this well from connection date through the 9th of June. The royalties on this would amount to $121,073.38 and the taxes to $35,528.33 leaving a balance of $396,876.66 to the credit of Michael P. Grace.

As you know the original accounting amounted to $439,986.35 which did not include the production equipment which amounts to $21,400.29, and also does not include the monthly operating expenses plus the 25% risk factor of $115,414.16, making this a grand total of $576,800.80 (not including monthly operating expenses), which means this well will not be paid out until we recover an amount in the neighborhood of $179,924.14 more plus operating expenses.

Of course as you know any of the above funds that may have to be refunded per the court ruling in the case of Texaco vs FPC all of the above amounts paid by pipelines are subject to refund and Mr. Grace's 125% would have to come out of the amount not subject to refund. Mr. Grace has been advised by competent legal counsel that some of the pipeline funds should be put into a bank escrow pending the outcome of the above court case.

We will advise you as soon as we have reached this payout stage, and if there are any questions please call on me.

Sincerely yours,

Juanita L. Jones

jlj
cc: Mr. D. L. Harnifin
P. O. Box 182
Roswell, New Mexico 88201

Mr. Dan Nutter
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

EXHIBIT "A"

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

RECEIVED
JUL 17 1973
OIL CONSERVATION COMM
Santa Fe

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASES NOS. 4819 AND 4836
Order No. R-4432

APPLICATION OF D. L. HANNIFIN FOR
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE II
AND CORINNE GRACE FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on September 27, 1972, at Santa Fe, New Mexico, before Examiner Elvis A. Utz.

NOW, on this 8th day of November, 1972, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That in Case No. 4819, the applicant, D. L. Hannifin, seeks an order pooling all mineral interests underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(3) That in Case No. 4836, the applicants, Michael P. Grace II and Corinne Grace, seek an order pooling all mineral interests down to and including the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled at an orthodox location for said unit.

(4) That both applicants, D. L. Hannifin and Michael P. Grace II and Corinne Grace, seek to be named operator of the unit to be pooled.

(5) That Cases Nos. 4819 and 4836 were consolidated as both cases involve the same lands.

(6) That the evidence indicates that the entire S/2 of the above-described Section 24 can reasonably be presumed productive of gas from the South Carlsbad Gas Pool.

(7) That the evidence indicates that the entire S/2 of the above-described Section 24 can be efficiently and economically drained and developed by a well located at a point 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(8) That there are interest owners in the proposed 320-acre proration unit who have not agreed to pool their interests.

(9) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in the unit the opportunity to receive without unnecessary expense his just and fair share of the gas in the pool, all mineral interests in the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, should be pooled to form a 320-acre standard unit to be dedicated to a well to be drilled at a standard location in said Section 24.

(10) That Michael P. Grace II should be designated the operator of the proposed well and unit.

(11) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(12) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 25% thereof as a reasonable charge for the risk involved in the drilling of the well.

(13) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that said actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(14) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his

share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(15) That $135.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator should be authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(16) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

IT IS THEREFORE ORDERED:

(1) That all mineral interest, whatever they may be, in the South Carlsbad-Morrow Gas Pool underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 320-acre proration unit to be dedicated to a well to be drilled at a standard location in Section 24.

(2) That Michael P. Grace II is hereby designated the operator of the subject well and unit.

(3) That the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs within 30 days following the date of this order.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of actual well costs within 60 days following completion of the well; that if no objection to the actual well

costs are received by the Commission, and the Commission has not objected within 60 days following completion of the well, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 60-day period, the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 60 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 25% of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That $135.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

dr/

EXHIBIT "B"

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

RECEIVED
JUL 17 1973
OIL CONSERVATION COMM.
Santa Fe

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASES 4819 AND 4836
Order R-4432

APPLICATION OF D. L. HANNIFIN
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE, II
AND CORINNE GRACE FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO.

NON-CONSENT

D. L. Hannifin, hereinafter referred to as "Non-Operator," is the working interest owner under an Oil and Gas Lease covering the SE¼ of Section 24, Township 22 South, Range 26 East, N.M.P.M., South Carlsbad Field, Eddy County, New Mexico, which said tract, together with the SW¼ of Section 24, Township 22 South, Range 26 East, has been dedicated to a 320-acre standard location for the drilling of a test well in the Morrow formation underlying the S½ of Section 24, Township 22 South, Range 26 East. That Michael P. Grace, II, has been designated by the New Mexico Oil Conservation Commission as the Operator of the proposed well and unit.

The undersigned, D. L. Hannifin, non-consenting working interest owner, joined herein by his wife, Barbara E. Hannifin, hereby expressly elects not to pay his share of estimated well costs to Operator and in lieu thereof, hereby elects to pay his share of reasonable well costs out of production. The undersigned further certifies and agrees that $135.00 per month should be fixed as a reasonable charge for the supervision (combined fixed rates) for the subject well; agrees to the 25% prorata risk share charge described in finding (7)(B); and agrees that Operator is authorized to withhold from production the proportionate share of such supervision charge attributable to the undersigned non-consenting working interest owner's interest, and Operator is authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to non-consenting working interest owner, all as more particularly defined in Order R-4432.

EXECUTED this 4th day of January, 1973, at Roswell, New Mexico.

D. L. Hannifin

Barbara E. Hannifin

Non-Consenting Working Interest Owner, SE¼, Section 24, T. 22 S., R. 26 E.

STATE OF NEW MEXICO)
) ss
COUNTY OF CHAVES)

The foregoing instrument was acknowledged before me this 4th day of January, 1973, by D. L. Hannifin and Barbara E. Hannifin, his wife.

My Commission expires: 7/25/76

Notary Public

LEASE	WELL NO.	SECTION	TOWNSHIP	RANGE	STATE
Grace-Atlantic	1	24	22S	26E	New Mexico

COUNTY	FIELD	PROR. OF COST	COMPLETION	DATE WORK BEGAN	DATE OF COMPLETION
EDDY CO.	SO. CARLSBAD	100%		1/28/73	3/15/73

DRILLING VENTURE TO EVALUATE PRODUCTIVE POSSIBILITIES OF (4) PENNSYLVANIA GAS ZONES

Work Detail

RECEIVED
JUL 1 1973
OIL CONSERVATION COMM.
Santa Fe

INTANGIBLES	
Location and Road: Title Exam. & Related Work	1,834.76
Survey and Permit	221.25
Road and Location Preparation	2,620.54
Surface Damages	
Fencing-Filling Pits-Cleanup	1,731.44
Drilling Turnkey	145,600.00
Day Work 100 hrs. at 61.75 per hr.W/O D.P.	6,175.00
hrs. at per hr.W/O.P.	
Rig Time for Testing	11,700.00
Rig Time for Logging	6,240.00
Casing Cementing	11,723.17
Squeeze Cementing or Plugging	
Logging - Sidewall Coring Log Suite	11,513.66
Core Analysis	
Formation Testings D.S.T.'s	3,420.00
Perforating	2,790.32
Acidizing and FRAC	
Special Rig Completing	4,004.62
Other Services - Welding, etc.	775.80
Trucking	392.08
Geology	2,624.96
Engineering	4,113.82
Labor	
Logging Unit	
Tool and Equipment Rental	2,232.46
Water and Fuel	4,759.56
Casing Supplies	4,431.67
Drilling Mud and Chemicals	14,542.15
Company Supervision ($800.00 per mo.)	5,600.00
Contingencies 5%	12,000.00
Temperature Surveys	

GRACE-ATLANTIC # 1
S½ Section 24, T22S, R26E
Eddy County, New Mexico

Michael P. & Corinne Grace

Completion TOTAL INTANGIBLES

TANGIBLES			
Casing, Conductor			135.20
Casing, Surface	356	of 13 3/8"	2,851.03
Casing, Protection	5402'	of 9 5/8"	32,594.87
Casing, Production	11708	of 7	49,616.41
Casing, Other			
Tubing, 1,000		of 4 1/2"	80,233.58
Packer			1,508.00
Flow Lines			
Well Head Equipment			12,000.00
Subsurface Equipment			
Completion TOTAL TANGIBLES			
Completion TOTAL WELL COST			$ 439,986.35

EXHIBIT "C"

ACCOUNTING

GRACE-ATLANTIC # 1
S½ Section 24, T22S, R26E
Eddy County, New Mexico

LOCATION & ROADS		
Title Exam. & Related Work		
Hinkle Bondurant Cox & Eaton	1,267.96	
Burr & Cooley (Forced Pooling)	566.80	
		1,834.76
Location & Roads: Survey, etc.		
John West Engineering	146.25	
Oil & Gas Reports	75.00	
		221.25
Road & Location Preparation		
Mid-Tex Construction Company	2,620.54	2,620.54
Fencing, Filling Pits, Cleanup		
A. C. Drilling Specialties		
Pit Liner	499.20	
Construction Enterprises		
Clean up	1,200.00	
Burton Signs	32.24	1,731.44
DRILLING		
Big West Drilling Company		
Turnkey	145,600.00	
Day Work 100 hrs. @61.75	6,175.00	
Rig Time for Testing	11,700.00	
Rig Time for Logging	6,240.00	
		169,715.00
CASING CEMENTING		
Halliburton	11,630.61	
Rose Gravel	92.56	11,723.17
LOGGING		
Dresser Atlas	11,513.66	11,513.66
FORMATION TESTING		
Halliburton	3,420.00	3,420.00
PERFORATING		
Welex	2,790.32	2,790.32
OTHER SERVICES, WELDING, ETC.		
Jim's Welding	18.72	
Jones Welding	126.36	
Lone Star Welding	31.20	
Oiltex Supply (sample bags)	388.97	
Bearing Service & Supply	210.55	
		775.80

GEOLOGISTS		
Bob Becker	2,624.96	2,624.96
ENGINEERS		
Steinhorst Operating System	3,733.56	
Cameron, Pomeroy & Smith	380.26	4,113.82
TOOL & EQUIPMENT RENTAL		
Bob's Casing Crew	806.00	
Welex	1,426.46	2,232.46
WATER & FUEL		
City of Carlsbad	177.22	
Rowland Trucking	4,293.74	
Permian Corp.	288.60	4,759.56
TRUCKING		
Shorty Hall Rig Co.	392.08	392.08
CASING SUPPLIES		
Gator Hawk	1,690.35	
Bob's Casing Crew	2,741.32	4,431.67
DRILLING MUD & CHEMICALS		
Buckeye	14,542.15	14,542.15
SPECIAL RIG COMPLETING		
Nitrogen Oilwell Service	4,004.62	4,004.62
COMPANY SUPERVISION		
$800.00 per month 7 mos. Security	5,600.00	5,600.00
CONTINGENCIES 5%		
Blow out ins. under 3%		
United Bank of Arizona	12,000.00	12,000.00
CASING		
Casing Conductor - Big West	135.20	
McDaniel Co.		
13 3/8 surface csg. 356'	2,851.03	
9 5/8 Protection 5402'	32,594.87	
7 Production 11768'	49,616.41	
4 1/2 Tubing	80,233.58	165,431.09
PACKER		
Baker	1,508.00	1,508.00
WELL HEAD EQUIPMENT		
Cameron	12,000.00	12,000.00

COMPLETION TOTAL WELL COST $ 439,986.35

EXHIBIT "D"

Michael P. Grace II
Corinne Grace
P. O. BOX 1418
CARLSBAD, NEW MEXICO 88220

July 2, 1973

RECEIVED
JUL 17 1973
OIL CONSERVATION COMM
Santa Fe

Mr. D. L. Hannifin
P. O. Box 182
Roswell, New Mexico 88201

Dear Dan:

In the event you do not have a copy of the original accounting which was sent to the Oil Conservation Commission and also to El Paso Natural Gas Company I am enclosing one for your files.

As you can see this does not include the production equipment or operating expenses.

Sincerely yours,

Juanita

Juanita L. Jones

jlj
encl.

EXHIBIT "E"

El Paso Natural Gas Company

El Paso, Texas 79978

July 9, 1973

RECEIVED
JUL 17 1973
OIL CONSERVATION COMM
Santa Fe

Mr. Dan L. Hannifin
P. O. Box 182
Roswell, New Mexico 88201

Re: Grace-Atlantic Well #1
S/2 Sec. 24, T 22 S, R 26 E
Eddy County, New Mexico
(SLC No. 61-333-77367)

Dear Mr. Hannifin:

By your letter of July 2, 1973, you requested us to furnish you with the total amount of gas that has been run out of the captioned Well and the price per MCF, including BTU increment, which El Paso is paying Michael P. and Corinne Grace. You also requested that El Paso furnish a copy of that information to Mr. Dan Nutter of the New Mexico Oil Conservation Commission.

In the spirit of cooperation and helpfulness to all concerned, we advise as follows (first delivery April 16, 1973):

Mo. & Yr.	Gas Price Per MCF	Settlement MCF @ 14.65 SPB	Total Amount
April, 1973	52¢ (.620360¢ with BTU at 1193)	206,803	$128,292.31
May, 1973	52¢ (.620360¢ with BTU at 1193)	505,244	313,433.17
	Total	712,047	$441,725.48

We are attaching a schedule showing the daily volumes of gas from the well for the month of June, 1973. The gas price shown above will be applicable to each of the daily volumes listed.

Very truly yours,

R. E. Johnson

Attachment
REJ:ck
cc: (w/Attach.) Mr. Michael P. Grace II
and Mrs. Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

" Mr. Dan Nutter
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Atlantic-Grace Well
June, 1973

Day	MCF-14.65 SPB
1	18,659
2	18,970
3	18,814
4	19,073
5	20,213
6	20,162
7	20,265
8	20,369
9	19,482
10	20,469
11	20,937
12	20,469
13	20,522
14	21,352
15	20,885
16	21,093
17	20,801
18	20,698
19	20,697
20	20,490
21	20,697
22	20,905
23	20,911
24	20,398
25	21,833
26	22,602
27	21,577
28	21,577
29	21,372
30	20,194
	616,486

EXHIBIT "F"

D. P. BANDY, C.P.A.
P. L. DUNCAN, C.P.A.
O. F. DAVIS, C.P.A.
M. J. MANNING, C.P.A.
P. J. ELLENBURG, C.P.A.
H. H. BOWIE, C.P.A.
F. S. ARMIJO, C.P.A.
M. L. THEISEN, C.P.A.

R. J. NORRIS, C.P.A.
ALBUQUERQUE MANAGER

BANDY, DUNCAN, DAVIS & CO.
CERTIFIED PUBLIC ACCOUNTANTS
625 PETROLEUM BUILDING
ROSWELL 88201

(505) 622-2330

MEMBERS
AMERICAN INSTITUTE
OF CERTIFIED PUBLIC
ACCOUNTANTS

ROSWELL, NEW MEXICO
ALBUQUERQUE, NEW MEXICO
EL PASO, TEXAS

RECEIVED
JUL 17 1973
OIL CONSERVATION COMM
Santa Fe

July 13, 1973

Messrs. Daniel L. Hannifin and Joe Don Cook
J. P. White Building
Roswell, New Mexico

Re: Atlantic Grace #1

Gentlemen:

From the information you have furnished us we have calculated the pay-out period of the subject gas well. Our computations are as follows:

Total Well Cost to be Recovered by Operator:

Well costs:		
Completion cost		$439 986 35
Supervision; 3 months @ $135.00		405 00
Total Well Costs		440 391 35
Penalty clause:		
50% of total well cost	220 195 68	
Penalty is 25% of 50% of well cost		55 048 92
Total Cost to be Recovered by Operator		$495 440 27

Using the information received from the purchaser of the gas, El Paso Natural Gas Company, the pay-out date is computed as follows:

Production from April 16, 1973 to June 17, 1973:

Gross production, 1,054,582 MCF @ .620360¢	$654 220 51
Less: royalty payment from gross production, .1875%	122 666 35
Net After Royalty Payments	$531 554 16
Less: production taxes 6.419%	34 120 46
Net After Royalty Payments and Production Taxes	$497 433 70
Less: operators well cost	495 440 27
Excess of Net Production Over Operators Well Cost at June 17, 1973	$ 1 993 43

On the basis of the above computation you would be entitled to $996.71 from the production of June 17, 1973 plus 50% of the net production after royalty payments and production taxes thereafter. There is one item of cost that we did not use in our computation and that is your pro-rata part of the operating cost of the well for the period from April 16, 1973 to June 17, 1973. It is our understanding that you have not received invoices from the operator advising you of the amounts owed.

Very truly yours,

P L Duncan

PLD/ah

LAW OFFICES OF

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

210 HINKLE BUILDING

POST OFFICE BOX 1837

ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

July 19, 1973

Rec'd July 21, 1973
AFP

Mr. R. E. Johnson
El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

Re: Emergency Gas Purchase Contract
Grace Operated Atlantic Grace #1
Morrow Formation Gas Well
T. 22 S., R. 26 E.
Sec. 24: S½
Eddy County, New Mexico
NMOCC Order R-4432
(SLC No. 61-333-77367)

Dear Mr. Johnson:

With reference to our letter of July 16, 1973, wherein a request was made by us on behalf of our clients, D. L. Hannifin and Joe Don Cook, of Roswell, for payment under your contract of June 9, 1973, please be advised that Michael P. Grace received our certified letter on July 18, 1973, and a xerox copy of the return receipt is enclosed herewith for the purpose of showing a receipt by Mr. Grace of our communication.

It appears to us that there are some modest money matters which need to be worked out with Mr. Grace's office and that we will not have any particular problem with regard to this present situation. Hannifin and Cook own the gas and have owned it since the well was completed and as such, are entitled to their 50% part thereof. The operator was entitled to withhold certain of the proceeds during a certain period of time, and this period of time has now expired. Your letter of June 29, 1973, indicated that the effective date for the emergency gas purchase contract fixed as of June 9, 1973, was imprecise. We concur in this conclusion; however, the date of June 18, 1973, is a precise date, and it is our belief, based on the materials previously furnished to you, that you can advise the Federal Power Commission that the commencement date of the emergency period under the Hannifin and Cook contract will be June 18, 1973.

If you will send us for Hannifin and Cook a 100% Division Order covering their 50% ownership in the subject tract, we will see that it is promptly executed and returned to you. You may have this Division Order made effective as of the first production on June 18, 1973, or as of 7:00 a.m., June 18, 1973, whichever best suits your situation for the handling of this matter.

Should you have any questions with regard to the contract or with regard to the other documents which have been furnished to you, please do not hesitate to call us collect.

Respectfully submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker

George H. Hunker, Jr.

GHH:dd
Encls.

cc: Michael P. Grace, II, "Operator"
and Mrs. Corrine Grace

cc: Mr. A. L. "Pete" Porter, Jr.
New Mexico Oil Conservation Commission

September 5, 1973

RECEIVED
SEP 5 1973
OIL CONSERVATION COMM
Santa Fe

Mr. Kenneth F. Plumb
Federal Power Commission
825 North Capitol Street NE
Washington, D. C. 20426

Re: Docket number CI73-940

Dear Mr. Plumb:

Please be advised that we are under administrative determination of the New Mexico Oil and Gas Conservation Commission as to the date which we commence gas sales to El Paso Natural Gas Company. Until this date has been determined by the commission, we are unable to advise you of the exact date of delivery or termination of the 60 day emergency period.

We respectfully request a 60 day extension to the original 60 day emergency period in order that the New Mexico Oil and Gas conservation Commission shall have adequate time to determine the exact date when our sales of gas commenced to El Paso Natural Gas Company.

Please advise us if you require additional information.

Respectfully yours,

D. L. Hannifin

Joe Don Cook

DLH
JDC:jl

cc: New Mexico Oil Conservation Commission
Attention: Mr. Pete Porter
cc: El Paso Natural Gas Company

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

July 24, 1973

COPY

Mr. George H. Hunker, Jr.
Hunker, Fedric & Higginbotham, P.A.
Attorneys at Law
Post Office Box 1837
Roswell, New Mexico 88201

Dear Mr. Hunker:

Replying to your letter of July 23, we have not been advised as to the name and address of an escrow agent in connection with Commission Order No. R-4432.

Very truly yours,

A. L. PORTER, Jr.
Secretary-Director

ALP/ir
cc: Mr. D. L. Hannifin

LAW OFFICES OF

HUNKER, FEDRIC & HIGGINBOTHAM ,P.A.

210 HINKLE BUILDING

POST OFFICE BOX 1837

ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

RECEIVED
JUL 24 1973
OIL CONSERVATION COMM.
Santa Fe

July 23, 1973

A. L. Porter, Jr., Executive Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Order No. R-4432
Cases 4819 and 4836

Dear Mr. Porter:

In connection with the above matter and the Order entered on September 27, 1972, Michael P. Grace, II, Operator, was directed to furnish your office with the name of an Eddy County escrow agent within 90 days from the date of the Order, along with the address of the agent. We are wondering if your records show that such information was ever furnished to the Commission.

Respectfully submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker, Jr.

GHH:dd

cc: Mr. D. L. Hannifin

LAW OFFICES OF
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.
210 HINKLE BUILDING
POST OFFICE BOX 1837
ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

July 27, 1973

Rec'd
7-29-73
ALP

Michael P. Grace, II
Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Re: Grace-Atlantic No. 1
T. 22 S., R. 26 E.
Sec. 24: S½
Eddy County, New Mexico
(Order No. R-4432 NMOCC)

Dear Mr. and Mrs. Grace:

We would like to renew our client's demand that there be furnished to him copies of all third-party invoices (including a copy of the blow-out insurance policy) received by you in connection with the Grace-Atlantic No. 1 well, which was drilled by Michael P. Grace, II, as Operator under an Order from the New Mexico Oil Conservation Commission. A copy of the Drilling Contract should also be furnished. We would like also for you to furnish us with an up-to-date accounting of all actual costs incurred. You are aware of the fact that as Operator under the Commission's Order, Mr. Grace was required to furnish each known working interest owner an itemized schedule of the actual well costs within 60 days following the completion of the well. A copy of the certified letter which you sent to El Paso Natural Gas Company on June 30, 1973, has today been furnished to us for Mr. Hannifin, and we are now aware of the fact that production equipment on the well was purchased in the amount of $21,400.29 and that this figure was not included in the original accounting, which showed a completion expense of $439,986.35. We have been waiting all week to hear from your new attorneys, Stubbeman, McRay, in Midland, or Lee White in Washington, and have not heard from them, as a consequence of which we are writing directly to you in response to the telegram which you had sent to us on Sunday morning, July 22.

Although he does not recall having discussed the matter with you, we have been authorized on Mr. D. L. Hannifin's behalf, to agree to the selection of the American Bank of Carlsbad, Carlsbad, New Mexico, as the Escrow Agent. You realize that the naming of this Escrow Agent by you was not timely. The escrow account representing disputed funds should be interest bearing, and we trust that you have discussed this matter with the bank officials. We would like for you to furnish us with their names so that we too can discuss the matter of the escrow and the interest rate which is to be paid on the deposited funds. We will agree to abide by an Order of the Commission, believing that the fund should be distributed by the bank when and in the manner specified by an Order of the Commission. Of course, the parties can reach an agreement with respect to this distribution absent a full-scale hearing, our attitude being fully conciliatory in connection with this matter.

Although no formal Operating Agreement has been submitted for signature, we invite your good faith by requesting that you submit such a proposed agreement to us for our recommendations and approvals.

Furthermore, as regards non-consenting parties' proportionate share of actual expenditures (reasonableness assumed) for operating the subject well since completion, and as regards the share of the cost of production equipment (reasonableness of cost assumed) purchased since completion, you are advised that the non-consenting parties will pay the prorata part of such expenditures immediately upon being furnished with supporting invoices. A formal tender of these reasonable costs as attributable to our client's interest, is hereby made. We stand ready to meet any obligation that non-consenting party may have to Mr. Grace as Operator. We might point out at this juncture that we do not feel that it is appropriate in view of Grace's failure to furnish the Commission with timely information as to completion costs, that he would be legally entitled to the risk factor as applied to the $21,400.29.

When you have had an opportunity to review this letter with counsel, you may have them contact us or, of course, you are at liberty to deal with us directly as you see fit.

With best personal regards, we remain

Sincerely yours,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker, Jr.

George H. Hunker, Jr.

GHH:dd

cc: Mr. A. L. Porter, Jr.
Executive Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

cc: Mr. R. E. Johnson
El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

cc: Messrs. D. L. Hannifin and
Joe Don Cook
P. O. Box 182
Roswell, New Mexico 88201

Case 5-054

Michael P. Grace II
Corinne Grace
P. O. Box [illegible]
Carlsbad, New Mexico [illegible]

August 21, 1973

RECEIVED
AUG 2? 1973
OIL CONSERVATION COMM
Santa Fe

Mr. D. S. Nutter
Chief Engineer
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

RE: Grace-Atlantic #1
S½ Section 24, T22S, R26E
Eddy County, New Mexico

Dear Mr. Nutter:

Enclosed you will find a copy of the Amended Accounting on the above well, which includes the surface equipment. I am sorry that the one previously submitted did not include this.

A copy of this was hand delivered to Mr. Hunker's office yesterday afternoon along with a copy of the Operating Agreement which Mr. Grace signed with Texas Oil and Gas Company. Also a copy will be hand delivered to Messrs. Hannifin and Cook.

Sincerely yours,

Juanita L. Jones

jlj
encl.

[illegible]	FIELD So.Carlsbad	[illegible] OF COST 100%		COMPLETION	1/26/73

DRILLING VENTURE TO EVALUATE PRODUCTIVE POSSIBILITIES OF (4) PENNSYLVANIAN GAS ZONES

OIL CONSERVATION

Case 5054

WORK DETAIL

GRACE-ATLANTIC #1

S½ Section 24, T22S, R26E
Eddy County, New Mexico

Michael P. & Corinne Grace

INTANGIBLES		
Location and Road: Title Exam & Related Work	1,624.26	✓
Survey & Permit	221.65	✓
Road and Location Preparation	2,620.54	✓
Surface Damages		
Fencing-Filling Pits-Cleanup	1,774.78	1224.00
Drilling Turnkey	145,600.00	✓
Day Work		
100 hrs. at 61.75 per hr. W/O D.P.	6,175.00	✓
hrs. at per hr. W/D.P.		
Rig Time for Testing	11,~~260.00~~	✓
Rig Time for Logging	~~6,260.00~~	✓
Casing Cementing	11,723.17	✓
Squeeze Cementing or Plugging		
Logging-Sidewall Coring Log Suite	13,513.66	✓
Core Analysis		
Formation Testings D.S.T.'S	3,420.00	✓
Perforating	2,795.32	✓
Acidizing and Frac		
Special Rig Completing	4,024.62	✓
Other Services - Welding, Etc.	775.60	✓
Trucking	392.08	✓
Geology	2,694.95	✓
Engineering	4,113.82	✓
Labor		
Logging Unit		
Tool & Equipment Rental	2,232.46	✓
Water & Fuel	4,759.56	✓
Casing Supplies	4,431.67	✓
Drilling Mud and Chemicals	14,507.15	✓
Company Supervision (800.00 per Mo.)	5,600.00	✓
Contingencies 5%	12,000.00	✓
Temperature Surveys		
Tool & Equipment Rental	2,232.46	✓
Water & Fuel	4,759.56	✓
Casing Supplies	4,431.67	✓
Drilling Mud and Chemicals	14,522.15	✓
Company Supervision (800.00 per Mo.)	5,600.00	
Contingencies 5%	12,000.00	✓
Temperature Surveys		
Testing	499.34	new
Completion TOTAL INTANGIBLES		
TANGIBLES		
Casing Conductor	125.20	✓
Casing Surface 350 of 13 3/8	2,851.03	✓
Casing Protection 5402 of 9 5/8	32,50[illegible]	
Casing Production 11768 of 7	49,626.41	
Casing Other		
Tubing of 4 1/2	60,232.58	
Packer	1,761.21	1508.00
Flow Lines		
Hi-Lo Pressure Valve	1,775.32	[illegible]
Well Head Equipment	12,758.38	12000.00
Subsurface Equipment	221.03.75	0.00
Completion TOTAL TANGIBLES		
Completion TOTAL WELL COST	465,681.10	

AMENDED ACCOUNTING

GRACE ATLANTIC #1
S½ Section 24, T22S, R26E
Eddy County, New Mexico

LOCATION & ROADS		
Title Exam. & Related Work		
Hinkle Bondurant Cox & Eaton	1,267.96	
Burr & Cooley (Forced Pooling)	566.80	
		1,834.76
Location & Roads: Survey, Etc.		
John West Engineering	146.25	
Oil & Gas Reports	75.00	
		221.25
Road & Location Preparation		
Mid-Tex Construction Company	2,620.54	2,620.54
Fencing, Filling Pits, Cleanup		
A. C. Drilling Specialties		
Pit Liner	499.20	
Construction Enterprises		
Clean up	1,700.00	
* Crumpacker Construction	43.34	
Burton Signs	32.24	
		1,774.78
DRILLING		
Big West Drilling Company		
Turnkey	145,600.00	
Day Work 100 hrs. @ 61.75	6,175.00	
Rig Time for Testing	11,700.00	
Rig Time for Logging	6,240.00	
		169,715.00
CASING CEMENTING		
Halliburton	11,630.61	
Rose Gravel	92.56	
		11,723.17
LOGGING		
Dresser Atlas	11,513.66	11,513.66
FORMATION TESTING		
Halliburton	3,420.00	3,420.00
*** TESTING**		
John West Engineering	308.04	
John West Engineering (60 Day 4 Pt. Back Pressure Test)	191.30	499.34
PERFORATING		
Welex	2,790.32	2,790.32
OTHER SERVICES, WELDING, ETC.		
Jim's Welding	18.72	
Jones Welding	126.36	
Lone Star Welding	31.20	
Oiltex Supply (sample bags)	388.97	
Bearing Service & Supply	210.55	
		775.80
GEOLOGISTS		
Bob Becker	2,624.96	2,624.96
ENGINEERS		
Steinhorst Operating System	3,733.56	
Cameron, Pomeroy & Smith	380.26	
		4,113.62
TOOL & EQUIPMENT RENTAL		
Bob's Casing Crew	806.00	
Welex		
wire line service to set production packer	1,426.46	
		2,232.46

WATER & FUEL		
City of Carlsbad	177.22	
Rowland Trucking	4,293.74	
Permian Corp.	288.60	
		4,759.56
TRUCKING		
Shorty Hall Rig Co.	392.08	392.08
CASING SUPPLIES		
Gator Hawk	1,690.35	
Bob's Casing Crew	2,741.32	
		4,431.67
DRILLING MUD & CHEMICALS		
Buckeye	14,542.15	14,542.15
SPECIAL RIG COMPLETING		
Nitrogen Oilwell Service	4,004.62	4,004.62
COMPANY SUPERVISION		
$800.00 per month, 7 mos. Security (includes Supervision, Night Watchman and Pumping Service)	5,600.00 ✓	5,600.00
CONTINGENCIES 5%		
Blow out ins. under 3% United Bank of Arizona and/or State Bank of Long Island	12,000.00 ✓	12,000.00
CASING		
Casing Conductor - Big West	135.20	
McDaniel Co.		
13 3/8 Surface csg. 356'	2,851.03	
9 5/8 Protection 5402'	32,594.87	
7 Production 11768'	49,616.41	
4 1/2 Tubing	80,233.58	
		165,431.09
PACKER		
Baker (Billed through Oiltex)	1,508.00	
Additional charges not on field ticket	255.21	
		1,763.21
WELL HEAD EQUIPMENT		
Cameron	12,000.00	
* Freight & Taxes - Cameron	718.18	
		12,718.18
* SURFACE EQUIPMENT		
Stevenson-Roach Tank Co.	22,403.36	22,403.36
Cameron Iron Works-		
Hi-Lo pressure valve	1,775.32	1,775.32
COMPLETION TOTAL WELL COST		$ 465,681.10

I hereby certify this Amended Accounting to be an accurate account of expenditures made in drilling and completing this well, but not excluding other valid expenses that may prove the grand total figure to be higher.

cc: Joe Don Cook
D. L. Hannifin
George Hunker

El Paso Natural Gas Company

El Paso, Texas 79999

RECEIVED
AUG 27 1973
OIL CONSERVATION COMM
Santa Fe

August 24, 1973

Mr. D. L. Hannifin
P. O. Box 182
Roswell, New Mexico 88201

Re: Atlantic Grace Morrow Well
Eddy County, New Mexico

Dear Mr. Hannifin:

Pursuant to your telephone request this date, the volume of gas delivered into El Paso's gathering system from the Atlantic Grace Well for the month of July, 1973 amounted to 448,400 MCF at 14.65 psia and 60° F. The price per MCF inclusive of BTU adjustment is 62.0360¢.

You had also asked for a daily volume during each day in July. That information will not be available until late Monday afternoon. If you care to give us a call at that time, we will be glad to give that information to you by telephone. In any event, we will drop that information in the mail to you in care of General Delivery, Santa Fe, New Mexico, and mail the same information to the other parties listed below at the same time.

Very truly yours,

R. E. Johnson

REJ:ck
cc: Mr. and Mrs. Michael P. Grace II
P. O. Box 1418
Carlsbad, New Mexico 88220

Mr. Dan Nutter
New Mexico Oil Conservation Commission
State of New Mexico
P. O. Box 2088
Santa Fe, New Mexico 87501

COPY

Michael P. Grace II
Corinne Grace
P. O. BOX 1418
CARLSBAD, NEW MEXICO 88220

May 6, 1973

RECEIVED
MAY 9 1973
OIL CONSERVATION COMM
Santa Fe

File Case 4819

Mr. D. S. Nutter,
Chief Engineer
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

RE: Grace-Atlantic # 1
$S\frac{1}{2}$ Section 24, T22S, R26E
Eddy County, New Mexico

Dear Mr. Nutter:

Enclosed you will find the accounting on the above well which we discussed this morning.

I am sorry that I did not get this mailed to you sooner.

Sincerely yours,

Juanita

Juanita L. Jones

jlj
encl.

LEASE	WELL NO.	SECTION	TOWNSHIP	RANGE	STATE
Grace-Atlantic	1	24	22S	26E	New Mexico

COUNTY	FIELD	PROR. OF COST		DATE WORK BEGAN	DATE OF COMPLETION
EDDY CO.	SO. CARLSBAD	100%	COMPLETION	1/28/73	3/15/73

DRILLING VENTURE TO EVALUATE PRODUCTIVE POSSIBILITIES OF (4) PENNSYLVANIA GAS ZONES

Work Detail

MAY 1973
OIL CONSERVATION COMM.
Santa Fe

GRACE-ATLANTIC # 1
$S\frac{1}{2}$ Section 24, T22S, R26E
Eddy County, New Mexico

Michael P. & Corinne Grace

INTANGIBLES	
Location and Road: Title Exam. & Related Work	1,834.76
Survey and Permit	221.25
Road and Location Preparation	2,620.54
Surface Damages	
Fencing-Filling Pits-Cleanup	1,731.44
Drilling Turnkey	145,600.00
Day Work	
100 hrs. at 61.75 per hr. W/O D.P.	6,175.00
hrs. at per hr. W/D.P.	
Rig Time for Testing	11,700.00
Rig Time for Logging	6,240.00
Casing Cementing	11,723.17
Squeeze Cementing or Plugging	
Logging - Sidewall Coring Log Suite	11,513.66
Core Analysis	
Formation Testings D.S.T.'s	3,420.00
Perforating	2,790.32
Acidizing and FRAC	
Special Rig Completing	4,004.62
Other Services - Welding, etc.	775.80
Trucking	392.08
Geology	2,624.96
Engineering	4,113.82
Labor	
Logging Unit	
Tool and Equipment Rental	2,232.46
Water and Fuel	4,759.56
Casing Supplies	4,431.67
Drilling Mud and Chemicals	14,542.15
Company Supervision ($800.00 per mo.)	5,600.00
Contingencies 5%	12,000.00
Temperature Surveys	
Completion TOTAL INTANGIBLES	
TANGIBLES	
Casing, Conductor	135.20
Casing, Surface 356 of 13 3/8"	2,851.03
Casing, Protection 5402' of 9 5/8"	32,594.87
Casing, Production 11768 of 7	49,616.41
Casing, Other	
Tubing, 1,000 of 4 1/2"	80,233.58
Packer	1,508.00
Flow Lines	
Well Head Equipment	12,000.00
Subsurface Equipment	
Completion TOTAL TANGIBLES	
Completion TOTAL WELL COST	$ 439,986.35

ACCOUNTING

GRACE-ATLANTIC # 1
S½ Section 24, T22S, R26E
Eddy County, New Mexico

LOCATION & ROADS		
Title Exam. & Related Work		
Hinkle Bondurant Cox & Eaton	1,267.96	
Burr & Cooley (Forced Pooling)	566.80	
		1,834.76
Location & Roads: Survey, etc.		
John West Engineering	146.25	
Oil & Gas Reports	75.00	
		221.25
Road & Location Preparation		
Mid-Tex Construction Company	2,620.54	2,620.54
Fencing, Filling Pits, Cleanup		
A. C. Drilling Specialties		
Pit Liner	499.20	
Construction Enterprises		
Clean up	1,200.00	
Burton Signs	32.24	1,731.44
DRILLING		
Big West Drilling Company		
Turnkey	145,600.00	
Day Work 100 hrs. @61.75	6,175.00	
Rig Time for Testing	11,700.00	
Rig Time for Logging	6,240.00	
		169,715.00
CASING CEMENTING		
Halliburton	11,630.61	
Rose Gravel	92.56	11,723.17
LOGGING		
Dresser Atlas	11,513.66	11,513.66
FORMATION TESTING		
Halliburton	3,420.00	3,420.00
PERFORATING		
Welex	2,790.32	2,790.32
OTHER SERVICES, WELDING, ETC.		
Jim's Welding	18.72	
Jones Welding	126.36	
Lone Star Welding	31.20	
Oiltex Supply (sample bags)	388.97	
Bearing Service & Supply	210.55	
		775.80

GEOLOGISTS		
Bob Becker	2,624.96	2,624.96
ENGINEERS		
Steinhorst Operating System	3,733.56	
Cameron, Pomeroy & Smith	380.26	4,113.82
TOOL & EQUIPMENT RENTAL		
Bob's Casing Crew	806.00	
Welex	1,426.46	2,232.46
WATER & FUEL		
City of Carlsbad	177.22	
Rowland Trucking	4,293.74	
Permian Corp.	288.60	4,759.56
TRUCKING		
Shorty Hall Rig Co.	392.08	392.08
CASING SUPPLIES		
Gator Hawk	1,690.35	
Bob's Casing Crew	2,741.32	4,431.67
DRILLING MUD & CHEMICALS		
Buckeye	14,542.15	14,542.15
SPECIAL RIG COMPLETING		
Nitrogen Oilwell Service	4,004.62	4,004.62
COMPANY SUPERVISION		
$800.00 per month 7 mos. Security	5,600.00	5,600.00
CONTINGENCIES 5%		
Blow out ins. under 3%		
United Bank of Arizona	12,000.00	12,000.00
CASING		
Casing Conductor - Big West	135.20	
McDaniel Co.		
13 3/8 surface csg. 356'	2,851.03	
9 5/8 Protection 5402'	32,594.87	
7 Production 11768'	49,616.41	
4 1/2 Tubing	80,233.58	165,431.09
PACKER		
Baker	1,508.00	1,508.00
WELL HEAD EQUIPMENT		
Cameron	12,000.00	12,000.00
COMPLETION TOTAL WELL COST		$ 439,986.35

Mar
Apr
Howden
Ryan
Downard
Grace May

Hunker Hanifin & Cook

3.211.84
412847.36

465,681.10
439,986.35
2 25,694.75
12,847.38

~~439~~

12
8
8
4
7
24
33
32
16

1970 FPC
Small producer exempt from F

Dec 12, 72 Court of Appeals Wash
2+01 Texaco vs FPC
held FPC did not have auth to exempt small prod under Nat Gas Act
~~420~~ 474 Fed 2nd 416 Docket No 71-1560

at time of ruling
Permian Basin Rate 16
new rate Permian Basin 35

May 3 Certirari U.S Supreme Court
filed — has not been acted
upon.

thinks:
excellent chance of liability to make
refund to Gas Cos
whether under old rate 16 or new rate 35

White advised Graces to escrow the funds.

June 27, '73 White called Hennifin & Dick Johnson of EP following day sent reg ltr confirming what he had told Graces.
thinks if Hennifin & Cook of using the 52 price to ascertain payout maybe deluding themselves.

White re Commission order

Sect 7B of Natl Gas Act

no abandmt of gas to interstate once it has been committed.

removal of gas from interstate mkt or from the contract subj to FPC approval.

Comm made Grace gas
White thinks
100% of gas committed under Mar 3 1973 Contract of Grace & E.P.

~~65~~ 55 + 10 Hanrifin
52 + 10 Grace

April 206,803
May 505,244
June 616,486

1,328,533
400000

1,728,533
.35

8642665
5185599

604,986.55

604,9 less taxes.

232,850
2)465,700

232850
125

1164250
465700
232850

29106250
Grace 232,850
291063

523,913

17

680398
4063

2041194
4082388
2721592

3150242774

605,000
4063

1815000
3630000
2420000

245,8115 000

1728533
.42

3457066
6914132

725,983.86

726,000
4063

726,000
.06419

6534000
726000
2904000
4256000

4560174000

726000
45602

680,398

PROD APR 206,803
MAY 505,244
JUNE 616,486
JULY 440 000 est

total 1,768,533 MCF

@ 35¢ + 7¢ BTU adj = 42¢

1,768,533 MCF
× .40625 (Hannifin's int)
718,466.5 MCF

22,403.36
1763.21
1775.32
12 718.18

718,466 M
× .42 price ~~value~~ of gas
301,755.94 value of Hannifins gas

Taxes (06419%)
301,755.94
× .06419
19,369.71

Net value of Hannifin gas: 301,755.94
− 19,369.71
282,386.23

Well cost as stipulated 439,986.35
~~Additional~~

439,986.35
26,660.07
466,646.42

Hannifins share 219,993.18

125% of his share 274,991.46

Additional costs 465,681.10
439,986.35
25,694.75

Hannifin share (50%) ~~12,847.38~~ 12,847.38

Total 287,838.84 X

4 mos operating costs
(April May June July)
4 × 135 540.00

288,378.84

232,842.32
287,838.84

ORIG COST 439,986.35

NEW COST 465,681.10

DIFF. 25,694.75

GRACE:

219,993.17
12847.38
232,840.54

HANNIFIN

219,993.18 X 125% = 274,991.47
12,847.38
287,838.85

Total well costs (All WI) ~~288~~ 520,679.39

Hunker:

As of June 20
~~Based~~ on 18.75 692,611.46 ~~less~~ rylty 129,864.65 =

escrowed 139,084.71 July

562,746.81 less taxes 36,122.71
leaving 526,624.10

XS 5,944.71

.40625
.09375
.50000

287,838.84
274 991.46
12 847.37
575.677 67

PRODUCTION		VALUE (@ 62.036)	VALUE (@ 41.755)
APR	206,803	128,292.31	86,350.59
MAY	505,244	313,433.17	210,964.63
JUNE	616,486	382,443.25	257,413.73
JULY	448,400	278,169.42	187,229.42
TOTAL	1,776,933	1,102,338.15	741,958.37

Hannifins total share of wellcosts & eqpt.

  287,838.84
+ 290.00 (four months operation chg) ½ of 540
  288,108.84

Hannifins share of Revenue

@ 62.036:

.40625 × 1,102,338.15 = 447,824.87

@ 41.755

.41755 × 741,958.37 = 309,804.72

Less taxes

@ 62.036: (447,824.87) − (.06419 × 447,824.87) = 419,078.99

@ 41.755: (309,804.72) − (.06419 × 309,804.72) = 289,918.36

through July

@ 62.036 XS above well costs + supervision 419,078.99 − 288,108.84 = 130,970.15

@ 41.755 289,918.36 − 288,108.84 = 1809.52

diff. between 62.036 and 41.755 = 20.281

Hunter reserves right as to relevancy as to anything other than 62¢

if the 16+ cent + BTU adj is the price to be used to detn payout date - then his petition is premature.

White testified as to 35+

40.625
37.500
78.125

100.000
78.125
21.875

Grace calcs 35 + 7 = 42
agreed that as of 7/31/73 there would be in XS $24,949.78 except royalty computed @ 21.875 % accts

~~Hammifin~~ contends 18.75 % royalty.

~~Hammifin's~~ of total well costs
using present price on 6-23 @ 7 am
date of payout XS 4557.43 alone

Stipulated costs:
520,679.40

H & C acquired lease SE/4 24
Merldad Inc - rylty 3/16 or 18.75

50.00
37.50
12.50

50.000
40.625
9.375

Grace calculates rylty on unit as a whole. 100% minus both WI % = rylty

figure payout on 62¢: June 20
pay Hannifin 42¢ thereafter and
escrow 20¢/MCF indef.

April thru July 1,775,000
Aug prod 450,000

2,225,000
1.65

11,125,000
13,350,000

144,625,000
22,225,000

367,125,000

450,000
.165

2250000
2700000
450000

7425000 sept.

Jay

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

I. R. TRUJILLO
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

August 23, 1973

Mr. Frederick B. Howden
Attorney at Law
400 7th N.W.
Albuquerque, New Mexico

Mr. George H. Hunker, Jr.
Attorney at Law
P. O. Box 1837
Roswell, New Mexico 88201

Gentlemen:

This letter confirms your conversations with Mr. A. L. Porter, Jr., on Monday, August 20, 1973, in which it was agreed that Oil Conservation Commission Case No. 5054 be continued from 9:00 a.m., Thursday, August 23, 1973, to 9:00 a.m., Tuesday, August 28, 1973.

It was further agreed that each of you would advise your respective clients of this continuance.

Very truly yours,

William F. Carr
General Counsel

WFC/uh

DOCKET: REGULAR HEARING - THURSDAY - AUGUST 23, 1973

OIL CONSERVATION COMMISSION - 9 A.M. - MORGAN HALL, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

CASE 5054: Application of D. L. Hannifin and Joe Don Cook for a determination of reasonable well costs and for an order terminating operator's withholding period, Eddy County, New Mexico. Applicants, in the above-styled cause, as owners of interest in the Michael P. Grace II Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, which well was drilled pursuant to the pooling provisions of Commission Order No. R-4432 entered in Cases Nos. 4819 and 4836, and to which is dedicated the S/2 of said Section 24, seek an order from the Commission:

1. Requiring Michael P. Grace II to furnish itemized schedules of all actual costs (substantiated by third-party invoices) incurred in connection with the drilling and completion of the subject well, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance.

2. Requiring Michael P. Grace II to furnish proof of payment of all third-party bills and invoices submitted in connection with the drilling and completion of said well.

3. Ascertaining the reasonableness of well costs for the subject well.

4. Making a determination as to when Michael P. Grace II has been fully compensated for all reasonable well costs and charges and for the risk charge of 25 percent of the pro rata share of reasonable well costs attributable to applicants.

5. Providing such other relief as may be appropriate.

Application of D.L. Hannifin and Joe Don Cook for a determination of reasonable well costs and for an order terminating operator's withholding period, Eddy County, New Mexico.

Applicants, in the above-styled cause, ~~[illegible]~~ as owners of ~~[illegible]~~ interest in the Michael P. Grace II Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, ~~Eddy C~~ South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, which well was drilled pursuant to the pooling provisions of Commission Order No. R-4432 entered in Case Nos. 4819 and 4836 and to which is dedicated the S/2 of said Section 24, seek an order from the Commission:

1. Requiring Michael P. Grace II to furnish itemized schedules of all actual ~~[illegible]~~ costs incurred in connection with the drilling (substantiated by third-party invoices) and completion of the subject well, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance.

2. Requiring Michael P. Grace II to furnish proof of payment of all third-party bills and invoices submitted in connection with the drilling and completion of said well.

3. Ascertaining the reasonableness of well costs for the subject well.

4. ~~Determining~~ making a determination ~~as to [illegible] Michael P. Grace II may~~ ~~[illegible]~~ as to when Michael P. Grace II has been fully compensated for all reasonable well costs and charges and ~~a risk act~~ for the risk charge of 25 percent of the prorata share of ~~the~~ reasonable well costs attributable to applicants.

5. ~~that~~ Providing such other relief as may be appropriate.

(1) figure payout date on current income.

(2) Decrease in price - 52¢ – 35¢

figure royalty on two figures.

(3)

two previous charges together -

MPG II
$233, 043.06

Hannfin.
$288, 041.34

①

(timely)
431,780.55 orig cost of WREC

(untimely)
25,694.75 addl chgs.

219,993.18
12 847.38

232,840.56 Draper share
+ 202.50
233,043 06
219,993.17
1.25

274,991.46
12 847.38

287,838.84
202.50
288,041.3[illegible]

= 520,679.40

---

②

April, May June

"OVERHEAD"
~~[illegible]~~ "

$135 per mo. operating cost

$405 — divided by two

$202.50 each

403

"reasonable charge for ... overhead for monitoring"

Tr. 58

202.50 — add to each to get cost

Stipulations — TR. — p. 108 + 109

cost of well $439,936.35
upon which 55% risk factor
is applicable.
$55,694.75 upon which
risk factor — not applicable

OK of these costs $232,840.56
is attributable to MPG II

287,838.84 to DL.
Hannifin & Joe Don Cook

Total amount of these costs = $520,479.40

Hannifin royalty = 18.75% (TR 109)
Grace royalty = 21.875% (TR 95-96)

---

① 16¢ figure + BTU — then payout
date — premature petition
(TR 95)

② 35¢ figure (White + recent FTC ruling)
+ 7¢ BTU factor — July 31 '84 =
payout w/ excess of $24,949.78
(w/ a 21.875%
royalty)

(TR. 95)

pooling

② Original compulsory pooling cases: 4819 + 4836
date: ______________ Order: R-4432

case

Three named operators

320 acre dedicated communitized unit

Three attempts drilled at standard locations

dedicated S/2 Sec 24
T 22 S
R 26 E
NMPM - 50
Undesignated Morrow Gas Pool, Eddy Co, NM.

OK

<description p.1>

risk factor — 55% — for non joining parties

Date of application 1/3/72

seeks

(1) determination of reasonable costs $439,980.38 and risk factor which would not be used to R.F.

(2) order terminating operators w/ holding period & pay out date when Grace has recovered ll's share of working interest, + 55% risk factor>

application of Hanrahan & Brooks

stipulations

351
318
33

351.51
32.77
308.74

351.51
136
215.51

318.74
32.77
351.51

351.51
32.77
318.74

El Paso Natural Gas Company

El Paso, Texas 79978

A. M. DERRICK
VICE PRESIDENT

June 9, 1973

Mr. D. L. Hannifin
Mr. Joe Don Cook
P. O. Box 182
Roswell, New Mexico 88201

Re: Emergency Gas Purchase Contract--
Grace Operated Atlantic Grace #1
Morrow Formation Gas Well, S/2
Section 24, T 22 S, R 26 E
Eddy County, New Mexico

Gentlemen:

This Letter Agreement evidences the understanding reached between D. L. Hannifin and Joe Don Cook, collectively referred to herein as "Seller," and El Paso Natural Gas Company, as "Buyer," regarding the sale and purchase of gas-well gas (as so classified by the New Mexico Oil Conservation Commission) on an emergency limited-term basis from subject well, attributable to Seller's fifty per cent (50%) working interest therein, as follows:

1.

Buyer is in need of emergency and limited-term gas supplies to aid it in assuring the maintenance of adequate natural gas service on its pipeline system and to thereby minimize curtailment of service to its customers.

2.

Seller will use its best efforts to deliver and sell and Buyer will use its best efforts to receive and purchase all gas Seller shall have available for delivery hereunder attributable to

Dean Ex 1 Ca 5054

Seller's interest in subject well, only as to the presently producing zone in the Morrow Formation which is perforated between the depths of 11,424' - 11,444'. The initial daily volume of gas available hereunder is estimated to be approximately seven thousand (7,000) MCF. Buyer represents that it shall at all times during the term hereof maintain sufficient pipeline capacity to receive volumes of gas hereunder which are at least ratable with the production of gas from wells belonging to others completed in the same reservoirs in which subject well is completed, whether such other wells be connected to Buyer's field gathering system or to a field gathering system of another purchaser. Determination of whether or not production is ratable shall be in accordance with the applicable rules and regulations established by duly constituted governmental authorities having jurisdiction thereof, or, in the absence of such rules and regulations, on the basis of gas reserves.

3.

The point of delivery of gas delivered hereunder shall be at the inlet of Buyer's gas measurement facilities located adjacent to subject well.

4.

Seller will deliver gas hereunder at a pressure sufficient to enter Buyer's gathering system against the working pressure maintained therein from time to time at the point of delivery, provided such working pressure shall not exceed five hundred fifty (550) psig, and further provided that neither Seller nor Buyer shall be obligated to install compression facilities in order to deliver gas hereunder, but either may do so at its option.

5.

The gas delivered hereunder shall be merchantable natural gas and shall have a total gross heating value of not less than one thousand (1,000) BTU per cubic foot. Such gas shall not contain more than one-quarter (1/4) grain of hydrogen sulphide nor more than five (5) grains total sulphur (mercaptans) per one hundred (100) cubic feet; two per cent (2%) by volume of carbon dioxide nor more than two-tenths (0.2) of one per cent (1%) by volume of oxygen. Seller shall install, at its sole cost and expense, all separators and/or other devices which may be found necessary to prevent hydrocarbons and water in their liquid state from entering Buyer's gathering system at the point of delivery hereunder. If any gas delivered hereunder fails to meet any one of said quality requirements, then Buyer shall have the right, at its option, to refuse to accept such gas.

6.

Buyer shall pay Seller fifty-five cents (55¢) for each one thousand (1,000) cubic feet of gas delivered hereunder from subject well, adjusted upward or downward as the total gross heating value of such gas varies from one thousand (1,000) BTU per cubic foot. On or before the tenth (10th) day of each calendar month, Buyer shall render to Seller a statement showing the total volume of gas measured in Buyer's meter station during the preceding calendar month, and on or before the twenty-fifth (25th) day of the calendar month in which such statement is rendered, shall tender its check for payment for all gas purchased hereunder during such calendar month. The statement and check shall be mailed to:

Mr. D. L. Hannifin
Mr. Joe Don Cook
P. O. Box 182
Roswell, New Mexico 88201

Each party hereto shall have the right at all reasonable times to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement or computation made under or pursuant to this Letter Agreement. Any statement shall be final as to all parties unless questioned within one (1) year after payment thereof has been made.

7.

Any expense incurred in connection with the purchase and receipt of gas shall be borne by Buyer, and any expenses incurred in making the delivery and sale shall be borne by Seller, including, without limitation, the payment of any and all taxes levied on such gas prior to the delivery thereof to Buyer.

8.

The sale and purchase of gas hereunder shall begin as soon as practicable after execution hereof as an emergency sale in accordance with Federal Power Commission Order No. 418, issued December 10, 1970, and pursuant to Section 157.29 of the Commission's Regulations Under the Natural Gas Act for a period of sixty (60) days from the date of first delivery. In order that the sale and purchase of gas hereunder may be continued for a further period of time upon conclusion of said sixty (60) day period, Seller agrees that it will promptly file and prosecute with diligence an application with the Commission for a limited-term certificate with a pre-granted abandonment provision for a limited term of twelve (12) months from the date of first delivery of gas under said certificate. Such application shall be made by Seller pursuant to the Commission's Order No. 431 and 431-A issued April 15, 1971 and July 31, 1972, respectively. Upon issuance of such certificate, sales of gas hereunder shall continue or resume, as the case may be, for the limited term authorized.

9.

Measurement of gas delivered hereunder and related activities will be performed by Buyer in facilities installed by Buyer in accordance with the American Gas Association Gas Measurement Committee Report No. 3, Revised 1969, as amended from time to time.

10.

Except for the determination of the total gross heating value, the unit of volume for purposes of measurement of gas delivered hereunder shall be one (1) cubic foot of gas at a temperature base of sixty degrees (60°) F. and at a pressure base of fourteen and sixty-five hundredths pounds (14.65#) per square inch absolute. Atmospheric pressure shall be assumed to be thirteen and two-tenths pounds (13.2#) per square inch absolute. Volumes shall be determined in accordance with American Gas Association Gas Measurement Committee Report No. 3, Revised 1969, as amended from time to time. The unit of volume for the determination of the total gross heating value of the gas delivered hereunder shall be the amount of gas, on a dry basis, which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) F. and under a pressure equivalent to thirty inches (30") of mercury at thirty-two degrees (32°) F. Gas delivered hereunder shall be sampled by Buyer and tested by appropriate laboratory analyses each six (6) months during the term hereof for purposes of determining the total gross heating value thereof.

11.

This Letter Agreement shall continue in full force and effect for a term ending upon the expiration of the twelve (12) month period referred to in paragraph 8 hereof. At the end of said term, all obligations of both Buyer and Seller hereunder shall terminate, except as to the payment for any gas delivered during the term hereof.

12.

Seller warrants title to all gas delivered hereunder and its right to sell same and warrants that such gas shall be free and clear of all liens and adverse claims, except as provided for in paragraph 13 hereof. Title to all gas delivered hereunder shall pass from Seller to Buyer at the point of delivery hereunder.

13.

Notwithstanding any provisions to the contrary contained in this Agreement, Buyer and Seller recognize that the sale of gas contemplated hereunder is subject to the provisions of that certain Compulsory Pooling Order No. R-4432 issued by the New Mexico Oil Conservation Commission on November 8, 1972 and the provisions contained in the Non-Consent Stipulations executed by Seller,

D. L. Hannifin and wife, Barabara E. Hannifin on January 4, 1972 and filed with the New Mexico Oil Conservation Commission in cases 4819 and 4836.

14.

Buyer shall be deemed to be in possession of gas sold hereunder and responsible for any loss, damages or injury caused thereby after such gas is delivered to Buyer at the point of delivery. Seller shall be deemed to be in possession of the gas sold hereunder and responsible for any loss, damages or injury caused thereby prior to delivery of same to Buyer at the points of delivery.

15.

Each party hereto shall be excused from performing under this agreement, other than to make payments for gas delivered hereunder, to the extent it is rendered unable to perform by a force majeure situation, but only for the period of time such force majeure situation continues. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockade, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells or plant operations, breakage of gathering or transmission lines, and other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

D. L. Hannifin and wife, Barabara E. Hannifin on January 4, 1972 and filed with the New Mexico Oil Conservation Commission in cases 4819 and 4836.

14.

Buyer shall be deemed to be in possession of gas sold hereunder and responsible for any loss, damages or injury caused thereby after such gas is delivered to Buyer at the point of delivery. Seller shall be deemed to be in possession of the gas sold hereunder and responsible for any loss, damages or injury caused thereby prior to delivery of same to Buyer at the points of delivery.

15.

Each party hereto shall be excused from performing under this agreement, other than to make payments for gas delivered hereunder, to the extent it is rendered unable to perform by a force majeure situation, but only for the period of time such force majeure situation continues. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockade, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells or plant operations, breakage of gathering or transmission lines, and other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

16.

This agreement shall be subject to all valid applicable state and local laws, rules and regulations. Both Buyer and Seller shall be entitled to treat all laws, orders, rules and regulations issued by any Federal or State regulatory body as valid at such time and may act in accordance therewith until such time as the same may be invalidated by final judgment in a court of competent jurisdiction.

17.

This agreement shall bind and benefit the parties hereto and their respective successors and assigns.

18.

Seller expressly reserves for itself, its successors and assigns the right to use gas reasonably required to develop the subject properties, including, but not limited to, gas for compressor and drilling rig fuel and for drilling fluid and the gas lifting of oil (limited, however, to use in a closed gas lift system).

19.

Any notice provided for or permitted in this Letter Agreement shall be deemed sufficiently given and served when and if deposited in the United States mail, postage prepaid and registered, addressed to Seller at the address referred to in paragraph 6 hereof, or to Buyer at P. O. Box 1492, El Paso, Texas 79978, as the case may be, or to such other address as either party shall respectively hereafter designate in writing. Routine communications, including monthly statements and payments, shall be considered as duly delivered when mailed by either registered mail or ordinary first class mail, postage prepaid.

If the foregoing correctly states Seller's understanding concerning the matters covered herein, it is requested that Seller indicate its acceptance hereof and agreement hereto by executing this letter in the space provided below.

Very truly yours,

EL PASO NATURAL GAS COMPANY

By A. M. Derrick
A. M. Derrick, Vice President

Accepted and Agreed to this
9 day of June, 1973:

D. L. HANNIFIN

By D. L. Hannifin

JOE DON COOK

By Joe Don Cook

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
Case No. 5054 Exhibit No. 1
Submitted by Grace
Hearing Date 8/28/73

GAS DIVISION ORDER

Effective: April 16, 1973

TO: Michael P. Grace, and
Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Each of the undersigned warrants ownership of the interest, set opposite his name, in the proceeds derived from the sale of all gas (defined as natural gas and casinghead gas) produced from Grace-Atlantic # Eddy County, New Mexico, described as:

S/2 Section 24, T-22-S, R-26-E, NMPM, as to the South Carlsbad-Morrow Gas Pool.

including all substances produced with such gas. From the effective date and until further written notice, and subject to the following provisions, you, or your designated agent, are authorized to receive the proceeds derived from the sale of gas, in accordance with the division of interest shown below:

Credit To	Division of Interest		P. O. Address (Give box number or street address and zip code)
Merland, Inc.	.09375	RI	
W. E. Walling (whose wife is Odessa Walling	.045629	RI	
James E. Smith (whose wife is Voyzie Smith)	.003895	RI	
J. W. Nelson (whose wife is Dona L. Nelson)	.001948	RI	
E. W. Douglass (whose wife is Cleo C. Douglass)	.001670	RI	
James L. Woods (whose wife is Pearl M. Woods)	.000278	RI	
Audrey M. Ingram (a widow)	.006466	RI	
Jack L. Ingram (whose wife is Sharon K. Ingram)	.000390	RI	
Millard F. Rose (whose wife is Ruby M. Rose)	.002224	RI	
Atlantic Richfield Company	.0625	ORI	
Michael P. Grace, II and wife, Corinne Grace	.375	WI	
D. L. Hannifin (whose wife is Barbara E. Hannifin)	.40625	WI*	

*Pursuant to New Mexico Oil Conservation Commission Order No. R-4432 and to Non-Consent Stipulation executed by D. L. Hannifin and wife, Barbara E. Hannifin, on January 4, 1973, this interest is to be paid to the operator, Michael P. Grace II, until the recovery of 125% of the reasonable well costs attributable to this interest.

1. Settlement for gas sold shall be based on the net proceeds realized at the well by you, after deducting any costs incurred in compressing, treating, transporting and/or dehydrating the gas for delivery. If the gas is processed in or near the field where produced, settlement shall be based on the net proceeds realized at the well, as determined by the agreement between the producer and processor, or, in the absence of such an agreement, the same basis as settlement with other producers of gas of like kind and quality processed at the same plant. For gas used off the lease, settlement shall be based on market value at the well. Where gas is sold subject to regulation by governmental authority, the price approved by order of such authority shall be used as a basis for determining net proceeds realized, or market value at the well, provided, that the portion of the proceeds not based on a permanent certificate price may be suspended, without interest, until you have been furnished indemnification satisfactory to you that any required refund shall be paid.

2. Settlements shall be made monthly by your check mailed to the undersigned parties at the addresses given hereinabove, less any taxes required by law to be deducted and paid by you. Should the proceeds accruing to any interest hereunder for any month be less than One Dollar ($1.00), you may, at your option, retain such proceeds without interest until the first regular settlement date when the proceeds accumulated total as much as Five Dollars ($5.00); provided that, regardless of the total, payment of the accumulated amounts shall be made in December of each year.

3. You are hereby relieved of any responsibility for determining when any interest hereunder shall change by increase, decrease, termination, reversion or otherwise. You are authorized to remit pursuant to the division of interest credited hereunder until written notice to the contrary is received by you at your above address, and you shall be held harmless against loss of liability due to your failure to receive such notice. Each of the undersigned agrees to notify you in writing of any change in his interest, and no transfer of interest shall be binding on you until you are furnished the original recorded instrument (or a certified copy thereof) or a transcript of proceedings which satisfactorily evidences such transfer, and a Transfer Order is fully executed and returned to you. Regardless of the effective date of the transfer, all transfers of interest shall be effective hereunder as of 7:00 A.M. on the first day of a calendar month, but not earlier than the first day of the calendar month in which such written notice is received.

4. If any reasonable claim is made which adversely affects title to any interest credited hereunder, or such title is not reasonably satisfactory to you, the parties credited with such interest severally agree to furnish abstracts or other evidence of title acceptable to you. In the event of failure to furnish such evidence of title, you are authorized to withhold payments accruing to such interest, without interest, until the claim is settled.

5. In the event the land described herein, or any part thereof, is included in one or more units now or hereafter formed or revised by order of any appropriate governmental authority, or is included in one

or more authorized voluntary or declared units now or hereafter formed or revised, it is agreed that settlement shall be made in accordance with the production allocated to said land without the execution of additional division order.

6. This Division Order may be executed in counterparts, and shall be binding upon and inure to the benefit of all signers hereof, their heirs, successors and assigns, whether or not it is signed by all parties named herein.

IMPORTANT: TO AVOID DELAY IN PAYMENT - YOUR CORRECT ADDRESS AND YOUR SOCIAL SECURITY NUMBER OR TAX ACCOUNT NUMBER MUST BE SHOWN

MERLAND, INC.	JAMES L. AND PEARL M. WOODS
By__________	By__________
By__________	By__________
Address __________	Address__________
Tax Number or S.S.#__________	S.S.#__________
W. E. AND ODESSA WALLING	AUDREY M. INGRAM & JACK L. INGRAM
By__________	By__________
By__________	By__________
Address__________	Address__________
S.S.#__________	S.S.#__________
JAMES E. AND VOYZIE SMITH	JACK L. AND SHARON K. INGRAM
By__________	By__________
By__________	By__________
Address__________	Address__________
S.S.#__________	S.S.#__________
J. N. AND DONA L. NELSON	MILLARD F. AND RUBY M. ROSE
By__________	By__________
By__________	By__________
Address__________	Address__________
S.S.#__________	S.S.#__________
E. W. AND CLEO C. DOUGLASS	D. L. AND BARBARA E. HANNIFIN
By__________	By__________
By__________	By__________
Address__________	Address__________
S.S.#__________	S.S.#__________
MICHAEL P. AND CORINNE ORACE	ATLANTIC RICHFIELD COMPANY
By__________	By__________
By__________	Address__________
Address__________	Tax Number __________
S.S.#__________	

El Paso Natural Gas Company

El Paso, Texas

August 8, 1973

American Bank of Carlsbad
Escrow Agent pursuant to New Mexico
Oil Conservation Order No. R-4432
c/o Mr. James Robertson, President
P. O. Box 1689
Carlsbad, New Mexico 88220

Attention: Mr. James Robertson

Re: Grace Atlantic #1
SLC No. 61-333-77367
Eddy County, New Mexico

Gentlemen:

Pursuant to your telephone conversation with Mr. Fred Bernard of our Gas Purchases Department, we are enclosing our Check No. 18138 in the amount of $84,974.11 covering the amount suspended for the month of June, 1973 for the captioned property.

Very truly yours,
ORIGINAL SIGNED BY
H. J. DEKKER
H. J. Dekker
Manager
Gas Accounting Division

GSB:jp
Enclosure

cc: Mr. Michael P. Grace II and Mrs. Corinne Grace
1141 E. Bethany Home Road
Phoenix, Arizona 85014

Messrs. D. L. Hannifin and Joe Don Cook
P. O. Box 182
Roswell, New Mexico 88201

COPY

Grace Ex 3
Cs 5054

MATKINS AND MARTIN
ATTORNEYS AT LAW
601 NORTH CANAL STREET
P. O. DRAWER N
CARLSBAD, NEW MEXICO 88220

JEROME D. MATKINS
W. T. MARTIN, JR.

AREA CODE 505
885-2445
885-2312

August 10, 1973

Mr. George H. Hunker, Jr.
Attorney at Law
P. O. Box 1837
Roswell, New Mexico 88201

Mr. John Otto
Attorney at Law
Suite 503, Luhrs Tower
41 West Jefferson
Phoenix, Arizona 85003

Re: New Mexico Oil Conservation Commission
Order No. 4432, Escrow with American Bank of Carlsbad

Gentlemen:

As attorney for the American Bank of Carlsbad I have been asked to review the proposed escrow of gas runs to be placed with the bank. Although several verbal conversations have taken place with Mr. Robertson, president of the bank, no joint instructions in writing have been received from the parties to the controversy. The only instructions I can find are in Order R-4432 of the N. M. OCC which provides that the escrow agent will make payments upon "demand and proof of ownership." The bank, of course, is not able to make any determination of proof of ownership, and I have recommended that they accept the escrow only upon terms whereby the parties to the controversy will agree in writing as to any withdrawals or that complete instructions as to withdrawals be furnished and signed by the parties or a more specific order of the Oil Conservation Commission.

In short, I don't believe the bank should become part of any controversy or litigation in connection with this matter. I am enclosing a photocopy of this letter to Mr. Hunker and Mr. Otto and if they agree with these procedures they may so indicate their approval on the photocopy and return it to me. If other instructions are necessary we would appreciate hearing from each of you.

Grace Ex 4
Ca 5054

if the bank cannot receive some definitive instructions whereby it can avoid controversy with any of the parties, I would recommend that the funds be returned to El Paso Natural Gas Company.

Yours very truly,

MATKINS AND MARTIN

Jerome D. Matkins

Jerome D. Matkins

ln

cc: Mr. James M. Robertson
President, American Bank
Carlsbad, New Mexico 88220

Mr. Fred Bernard
El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

APPROVED:

____

Attorney for

AMERICAN BANK OF CARLSBAD
CARLSBAD, NEW MEXICO

August 16, 1973

Mr. John Otto, Attorney
Suite 503, Luhrs Tower
41 West Jefferson
Phoenix, Arizona 85003

C O P Y

Dear John:

This is just to keep everyone informed.

Enclosed is a copy of deposit slip dated August 10, 1973, to Savings Account No. 313424 in the amount of $84,974.11. The account was opened in the name of American Bank of Carlsbad, Escrow Agent Pursuant to New Mexico Oil Conservation, Order No. R-4432.

We hope this is satisfactory to all concerned.

Cordially yours,

James M. Robertson
President

JMR/mk
Enc.

CC: Mr. H. J. Dekker, Manager
Gas Accounting Division
El Paso Natural Gas Company
El Paso, Texas 79978

Mr. Michael P. Grace II and Mrs. Corinne Grace
1141 E. Bethany Home Road
Phoenix, Arizona 85014

Messrs. D. L. Hannifin and Joe Don Cook
P. O. Box 182
Roswell, New Mexico 88201

	Initials	Date
Prepared By		
Approved By		

JUNE ESCROW FUND

	(1)	(2)	(3)	(4)

AMOUNT IN ESCROW IN JUNE

AMOUNT PRODUCED AT .62036 38244325

AMOUNT RECEIVED BY M.P. GRACE 29746914

AMOUNT IN ESCROW 8497411

64,200.00
4559.44
59640.56

$\frac{59640.56}{169,949}$ = .350932 x 84974.11

GRACE 29,820.14

HANNIFIN 5515397

Grace Ex 6
CV 2054

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico

Case No. 5382 Exhibit No. 6

Submitted by Mace

Hearing Date [illegible]

El Paso Natural Gas Company

El Paso, Texas

August 13, 1973

OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
Case No. 5054 Exhibit No. 1
Submitted by Hannifin
Hearing Date Aug. 28, 1973

Hunker, Fedric & Higginbotham, P.A.
P. O. Box 1837
Roswell, New Mexico 88201

Attention: Mr. George H. Hunker, Jr.

Re: Grace-Atlantic Well No. 1
T 22 S, R 26 E
Sec. 24: S/2
Eddy County, New Mexico
NMOCC Order No. R-4432

Gentlemen:

With respect to your letter of August 9, 1973, our Gas Purchase Contract with the Graces is, of course, subject to all present and future valid laws and valid orders, rules, and regulations of the United States, the State of New Mexico, or any duly constituted agency thereof.

At the present time, we are abiding by the Federal Power Commission's Order No. 428 - 428A dealing with Small Producer sales, under which Order the Graces are currently making sales of gas to El Paso.

Our contract with the Graces was entered into in face of and with the knowledge of the decision of the U.S. Court of Appeals for the District of Columbia Circuit rendered on December 12, 1972 in TEXACO Inc., et al. v. the Federal Power Commission Nos. 71-1560, et al., and the consequences that could flow from that decision. There is no basis for El Paso at this time to suspend or escrow any amounts due the Graces under our contract, and we will continue to honor our contract prices unless subsequent Orders and procedures are issued by the Federal Power Commission as a result of the Supreme Court upholding the District of Columbia Circuit decision.

Should you have further inquiries, please advise.

Very truly yours,

R. E. Johnson

REJ:ck

RECEIVED
AUG 14 1973
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
Case No. 5054 Exhibit No. 2
Submitted by ~~[illegible]~~ [illegible]
Hearing Date Aug. 28-1973

TABLE OF CONTENTS

GAS PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into on this the 1st day of March, 1973, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter called "Buyer," and MICHAEL P. GRACE II and CORINNE GRACE, hereinafter collectively called "Seller,"

W I T N E S S E T H:

That, in consideration of the mutual covenants and agreements herein contained the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1. The term "Seller's properties" as used in this agreement shall mean Seller's interest in the oil and gas leases or oil, gas and mineral leases and the lands covered thereby described in Exhibit "A," hereto attached and hereby made a part hereof.

Section 2. The term "pipeline facilities," as used in this agreement, shall mean gas pipeline transmission and gathering facilities sufficient to permit Buyer to receive deliveries of gas under this agreement and market the same.

Section 3. The term "gas well" or "well" as used in this agreement shall mean any well located on Seller's properties classified as a gas well by the New Mexico Oil Conservation Commission, or other governmental authority having jurisdiction.

Section 4. The term "gas" or the term "natural gas" as used in this agreement shall mean gas produced from any gas well.

Section 5. The term "day" as used in this agreement shall mean a period of twenty-four (24) consecutive hours beginning at seven (7:00) o'clock a.m.

Section 6. The term "month" as used in this agreement shall mean the period beginning at seven (7:00) o'clock a.m. on the first day of a calendar month and ending at seven (7:00) o'clock a.m. on the first day of the next succeeding calendar month.

Section 7. The term "year" as used in this agreement shall mean the period beginning at seven (7:00) o'clock a.m. on the first day of a calendar year and ending at seven (7:00) o'clock a.m. on the first day of the next succeeding calendar year; provided, however, that the period from the date of first deliveries of gas hereunder until the first day of the next succeeding calendar year shall be deemed to be a year, and the period from seven (7:00) o'clock a.m. on the first day of the last calendar year during the term of this agreement until seven (7:00) o'clock a.m. on the day next succeeding the day when this agreement terminates shall be deemed to be a year.

ARTICLE II

Governmental Authorizations and Construction of Pipeline Facilities

Section 1. Buyer represents that it holds a Certificate of Public Convenience and Necessity issued by the Federal Power Commission (or otherwise has the necessary authority) covering the construction, ownership and operation of the pipeline facilities necessary in order for Buyer to perform its obligations under the provisions of this agreement. Seller represents that it holds a Small Producer Certificate of Public Convenience and Necessity issued to it [illegible] the Federal Power Commission under the authority of which Seller will effect delivery of gas from Seller's properties covered hereby, or otherwise performs the obligations hereunder.

In the event Seller is unable to effect delivery of gas pursuant to the terms of this agreement under its Small Producer Certificate of Public Convenience and Necessity because of the action of the courts upon completion of judicial review in TEXACO Inc., et al. v. Federal Power Commission, U.S. Court of Appeals for the District of Columbia Circuit, 71-1560, or because of an order of the Federal Power Commission, then Seller shall have the right to submit this agreement under the Commission's Orders No. 455-455A, "Optional Procedure for Certificating New Producer Sales of Natural Gas," issued August 3, 1972 and September 8, 1972, respectively, and Buyer agrees to support such submittal, or under any other procedure that may lawfully be available to it, except the emergency procedures provided for by applicable Orders of the Federal Power Commission.

Section 2. Buyer agrees that it will either construct or cause to be constructed with reasonable promptness and diligence following the execution of this agreement, and thereafter as required, all those pipeline facilities which Buyer deems necessary or desirable to receive from each gas well located on Seller's properties the quantities of gas Buyer is obligated to purchase from Seller hereunder. Seller agrees that it will either construct or cause to be constructed with reasonable promptness and diligence prior to or concurrently with the construction of Buyer's pipeline facilities, such piping and/or equipment as is necessary to deliver gas from each such well into Buyer's pipeline facilities at the point of delivery for each such well hereunder. All such construction shall be prosecuted with diligence to completion. The date of first deliveries of gas hereunder shall be the earlier of (1) the date that the construction of the facilities by both parties shall have been completed and are ready to be placed in operation, or (2) May 1, 1973. Upon connection of each such well, deliveries of gas shall commence therefrom.

ARTICLE III

Quantities

Section 1. Commencing as of the date of first deliveries of gas hereunder and continuing during the term hereof, Seller shall sell and deliver to Buyer from Seller's properties, and Buyer shall purchase and receive from Seller from said properties and pay for, or pay for whether or not received, during each year, subject to the further provisions of this article, a minimum quantity of gas per day determined as hereinafter provided to be eighty per cent (80%) of the aggregate maximum delivery capacity of Seller's wells to deliver gas at the point or points of delivery hereunder against the operating pressure of Buyer's gathering system, which such pressure shall not exceed that authorized hereunder as specified in Article VII hereof. Each such well's maximum delivery capacity shall be determined by Buyer promptly after connection of each such well to Buyer's gathering system and thereafter (in absence of additional production data which might tend to modify or change a prior determination) not more often than twice during each subsequent twelve (12) month period following the month in which such well is connected, by a test to be conducted by Buyer utilizing the following procedure:

(1) Such test period shall be for a duration of four (4) consecutive gas measurement chart periods, with the first three (3) such chart periods being considered the preflow period and the fourth (4th) such chart period being the period during which the maximum delivery capacity of each such well shall be determined.

(2) During such test period, Buyer will afford Seller the opportunity of demonstrating the maximum delivery capacity of each such well, which such deliveries, insofar as practicable, shall be at the same rates of flow during the entire test period. The maximum delivery capacity of each such well shall be the result obtained by dividing the volume of gas recorded by the fourth (4th) such chart period by the number of days such well produced during such chart period.

(3) The maximum delivery capacity of each such well shall become effective as of the commencement date of the preflow period. For purposes of determining Buyer's yearly minimum purchase obligation hereunder, the results of such tests shall be appropriately averaged over each year.

(4) Buyer shall give Seller prior written notice of the time that it will commence well tests specified in this Section 1. In the event that any of such

tests once commenced are interrupted, then the non-interrupting party shall have the right to request a retest of such well, in which event Buyer shall promptly reschedule such test. The parties shall make a good faith effort to complete such testing without interruption.

Section 2. In addition to the minimum quantities of gas required to be purchased and received by Buyer hereunder, Buyer shall have the right to purchase and receive from Seller during the term of this agreement such quantities of gas produced from said properties in addition to said minimum as Buyer may desire, and Seller shall sell and deliver the same to Buyer; provided that the rate of production from Seller's properties shall not exceed the maximum rate of production established therefor by any state or federal regulatory body having jurisdiction; and provided further, that Seller shall not be required to deliver gas from Seller's properties in quantities which would, in the sole judgment of Seller, damage Seller's wells or the reservoir from which said gas is produced.

Section 3. Should Buyer fail to purchase and receive from Seller during any year the minimum quantities of gas which Buyer was required to purchase and receive from Seller during such year pursuant to the provisions of Section 1 of this article, which failure was not due to physical nonavailability of gas, causes within the control of Seller, regulation by governmental authority or force majeure intervention, then within thirty (30) days after the end of such year Buyer shall pay Seller for that quantity of gas which represents the difference between the minimum quantities of gas which Buyer was required hereunder to purchase and receive from Seller during such year and the quantities of gas actually purchased and received by Buyer from Seller's properties during such year. Payment shall be made at the average price, weighted as to volume, paid by Buyer hereunder for gas during such year. If in any year Buyer fails to purchase and receive from Seller's properties during such year the minimum quantities of gas which Buyer was required to purchase and receive from Seller's properties during such year pursuant to the provisions of Section 1 of this article, Buyer shall have the right at any time during the remaining term of this agreement to take and receive the quantity of gas which it paid for but did not receive during the year when such deficiency occurred and shall be required to pay therefor only the difference, if any, between the price in effect under this agreement at the time of delivery and the price actually paid for the deficient volumes; provided, however, that the quantity of gas so taken by Buyer shall not be treated as a part of the minimum quantities of gas which Buyer is obligated to purchase and receive hereunder during any of such succeeding years.

Section 4. During any year when the production of gas from Seller's properties is subject to allocation under the laws, orders, rules and regulations of governmental authority based on nominations made by pipeline purchasers and Buyer has nominated to such authority a volume of gas averaged over such year equal to or greater than the minimum daily quantities as determined pursuant to

Section 1 of this article, for such year, the minimum daily quantities of gas Buyer is obligated to take and pay for, or pay for though not received for such year. shall be the lesser of (1) the volumes of gas so allocated to Seller's properties by governmental authority, or (2) said minimum daily quantities of gas determined pursuant to Section 1 of this article.

In the event Buyer's nominations averaged over such year are less than the minimum daily quantities of gas as determined pursuant to Section 1 of this article, Buyer's minimum obligation to take and pay for or pay for though not received for such year, shall be that volume of gas which would have represented Buyer's obligation if Buyer's nominations had been equal to the minimum daily quantity of gas as determined pursuant to Section 1 of this article.

Section 5. As a measure of protection for Seller's leases committed hereto, Buyer agrees, subject to the provisions of Article XX hereof, to accept delivery during each month following the month during which first deliveries of gas commenced hereunder, quantities of gas from each and every one of the wells located on Seller's properties and connected to Buyer's gathering system having a value of not less than Five Hundred Dollars ($500.00) (such amount to be reduced proportionately if Seller owns less than one hundred per cent (100%) of the working interest in said properties); provided, however, that such quantities meet the pressure and quality requirements of this agreement and are available and tendered to Buyer by Seller at the delivery point or points hereunder.

Section 6. Buyer agrees that its takes of gas from Seller's wells will be at least ratable with the production of gas from wells belonging to others and completed in the same reservoir in which Seller's well are completed, whether such other wells be connected to Buyer's gathering system or to the system of another purchaser. Determination of whether or not production is ratable shall be in accordance with the applicable rules and regulations established by duly constituted governmental authorities having jurisdiction thereof, or in the absence of such rules and regulations on the basis on gas reserves.

ARTICLE IV

Dedication

Seller hereby dedicates to the performance of this agreement all recoverable gas reserves produced from wells herein defined from those designated formations underlying Seller's properties identified in Exhibit "A" hereto.

ARTICLE V

Quality

Section 1. The gas to be delivered by Seller to Buyer under the terms of this agreement shall be natural gas as produced in its natural state from Seller's wells and shall conform to the following specifications (determination as to conformity of the gas with these specifications shall be made in accordance with the generally accepted procedures of the industry):

(a) Liquids: The gas shall be free from hydrocarbons and water in their liquid state at the temperature and pressure at which delivered. Seller shall install, at its sole cost and expense, all separators and/or other devices which may be found necessary to prevent hydrocarbons and water in their liquid state from entering Buyer's gathering line at the points of delivery hereunder.

(b) Sulphur: The gas shall not contain more than one-quarter (1/4) grain of hydrogen sulphide nor more than five (5) grains total sulphur (mercaptans) per one hundred (100) cubic feet.

(c) Carbon Dioxide: The gas shall not contain more than two per cent (2%) carbon dioxide by volume.

(d) Oxygen: The gas shall not at any time have an oxygen content in excess of two-tenths (0.2) of one per cent (1%) by volume, and Seller shall make every reasonable effort to keep the gas free of oxygen.

(e) Dust, Gums, etc.: The gas shall be commercially free of dust, gums and other solid matter.

Section 2. If the gas from any well located on Seller's properties shall at any time fail to meet the quality specifications set forth in Section 1 of this article, and if at such time all of the gas being delivered to Buyer from Seller's properties, taken in the aggregate and considered as a commingled stream, shall likewise fail to meet such specifications, Buyer may, at its option, refuse to accept deliveries of gas from such well; provided, however, that Seller shall have the right, at its option, at any time within ninety (90) days after Buyer refuses to accept delivery of such gas from such well to commence the construction of treating facilities necessary to cause the gas produced from such well to meet said specifications and shall pursue the construction diligently to completion, in which event Buyer shall continue obligated to purchase gas from such well hereunder so long as the gas tendered from such well continues to meet said specifications and the other requirements of this agreement. In the event Buyer shall refuse to accept deliveries of gas from any such well and Seller shall not elect to install treating facilities as above provided, the gas thereafter produced from such well from the reservoir in which it is then completed and the gas reserves contained in said reservoir underlying the acreage attributable to said well shall be released from the provisions of this agreement if Seller shall give Buyer written notice of Seller's desire to obtain such release and Buyer shall not within thirty (30) days thereafter agree to install and operate, at its sole cost and expense, treating facilities necessary to cause the gas produced from such well to meet said specifications.

ARTICLE VI

Delivery Point

The point of delivery for all gas to be sold and delivered to Buyer hereunder shall be at the mouth of Seller's well or wells or at the outlet of Seller's separator or separators or compressor or compressors, if installed, or as otherwise provided in subparagraph (c) of Article XXI hereof. Title to and ownership of all gas so delivered hereunder shall pass to and vest in Buyer at such point or points of delivery.

ARTICLE VII

Delivery Pressure

Section 1. Buyer shall accept delivery of gas hereunder at the natural well flowing pressures at the points of delivery and shall have the right to operate its gathering system at pressures not to exceed five hundred fifty pounds (550#) per square inch gauge during the first five (5) years of the term hereof and not to exceed two hundred seventy-five pounds (275#) per square inch gauge during the second five (5) years of the term hereof.

Section 2. If at any time natural well flowing pressures shall be insufficient to permit deliveries of gas from any well into Buyer's gathering system at said point of delivery against the operating pressure maintained therein, then Seller (subject to the right granted Buyer pursuant to Article XVII hereof), at its option and own expense, may, by compression, increase the pressure of such gas to make the same deliverable hereunder; in which event, Buyer shall continue obligated to purchase gas from any such well hereunder so long as the gas so delivered continues to meet the requirements of this article and the other requirements of this agreement. As to all such gas so delivered by Seller, Seller shall, if required by Buyer to do so, install such pulsating dampening devices as may be necessary to assure accuracy of gas measurement.

Section 3. In the event Seller shall not elect to install compression facilities as provided for in Section 2 of this article, then the gas thereafter produced from such well from the reservoir in which it is then completed shall be released from the provisions of this agreement if Seller shall give Buyer written notice of Seller's desire to obtain such release and Buyer shall not within sixty (60) days thereafter agree to lower the pressure of its gathering system to make such gas deliverable into such system at the point of delivery; provided, however, that in no event shall Buyer be obligated to lower its gathering system pressure below two hundred seventy-five pounds (275#) per square inch gauge at the point of delivery.

ARTICLE VIII

Responsibility

Buyer shall not be responsible for the gas prior to its delivery hereunder and Seller shall hold Buyer harmless against any damage or injury caused thereby until same has been delivered to Buyer at the delivery point or points specified in Article VI hereof, after which delivery Buyer shall be deemed in exclusive control and possession thereof and responsible for said gas and shall hold Seller harmless against any injury or damage caused thereby.

Each of the parties shall indemnify and hold the other harmless against any claims for damages arising out of its respective operations and/or facilities installed hereunder.

ARTICLE IX

Meters

Section 1. Buyer, at its sole cost and expense, shall install, maintain and operate at each delivery point a standard type orifice meter or meters for the measuring of the quantity of gas delivered hereunder. Orifice meters shall be installed and operated in accordance with the specifications prescribed in Gas Measurement Committee Report No. 3, dated April, 1955, of the Natural Gas Department of the American Gas Association, as supplemented and modified from time to time. Buyer shall cause the charts of such meters to be changed each eight (8) days and at the end of each month, or at such other times as may be agreed upon by the parties hereto. The meters, meter readings and meter charts shall be accessible at all reasonable times to inspection and examination by Seller.

Section 2. From time to time and at least once each three (3) months, the accuracy of Buyer's measuring equipment shall be verified by and at the expense of Buyer. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure an immediate verification of the accuracy of such meter and joint observation of any adjustments. If any such test shall be requested by Seller and upon such test, the measuring equipment shall be found to be registering correctly, the cost of such test shall be charged to Seller, otherwise the cost of all such tests shall be borne by Buyer. Buyer shall give notice to Seller of the time of all tests made pursuant to this article in order that Seller may conveniently have its representative present. Calibration and adjustment of Buyer's meters and changing of charts shall be done only by Buyer.

Section 3. If, upon any test, the percentage of inaccuracy shall be two per cent (2%) or more, the registration of such meter shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration. Following any test, metering equipment found inaccurate shall be immediately restored by Buyer as closely as possible to a condition of accuracy. If, for any reason, any meter is out of service or out of repair so that the amount of gas delivered cannot be estimated or computed from the reading thereof, the amount of gas delivered through the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

a. By using the registration of Seller's check meter if installed and accurately registering.

b. By correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation.

c. By estimating the quantity of deliveries by deliveries during preceding periods under similar conditions when the meter was registering accurately.

Section 4. Seller may, at its option and expense, install and operate check meters to check Buyer's meters, but measurement of gas for the purpose of this agreement shall be by Buyer's meter, except as hereinabove specifically provided to the contrary. Such check meters and equipment shall be so installed as not to interfere with the operation of the meters to be installed and maintained by Buyer at or near the points of delivery.

ARTICLE X

Units of Volume

Section 1. The unit of volume for all purposes hereunder (except as otherwise specified in Section 2 of this article) shall be one thousand (1,000) cubic feet at an absolute pressure of fourteen and sixty-five hundredths pounds (14.65#) per square inch at a temperature of sixty (60) degrees Fahrenheit.

Section 2. The unit of volume for the determination of the gross heating value of the gas purchased hereunder shall be the amount of gas, on a dry basis, which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit and under a pressure equivalent to thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

ARTICLE XI

Gas Measurement

Section 1. The volumes of gas delivered hereunder shall be computed in accordance with the specifications prescribed in Gas Measurement Committee Report No. 3, dated April, 1955, of the Natural Gas Department of the American Gas Association, as supplemented and modified from time to time, applied in a practical and appropriate manner, and appropriate correction shall be made for deviation of the gas from Boyle's Law in accordance with said Gas Measurement Committee Report No. 3.

Section 2. For the purpose of measurement, the average absolute atmospheric (barometric) pressure shall be assumed to be thirteen and two-tenths pounds (13.2#) to the square inch, regardless of the actual elevation or location of the delivery point above sea level or of variations in such barometric pressure from time to time.

For meters of the orifice type, the following factors shall be given due consideration:

a. The temperature of the gas flowing through Buyer's meters shall be obtained by the use of a recording thermometer so installed by Buyer that it may properly record the temperature of such gas. The arithmetical average of the hourly temperature during the period gas passed shall be used to make proper computations of volume hereunder.

b. The specific gravity of the natural gas shall be determined by Buyer each six (6) months on or as near the first of each six (6) months' period as practicable, by calculation (compensated for any difference between the specific gravity in the ideal state and in the real state in accordance with published procedures adopted by the Gas Measurement Committee of the American Gas Association) utilizing the analysis of the natural gas determined in accordance with Section 3 hereof. The specific gravity so determined shall be used in computations for the measurement of gas delivered during such six (6) months' period.

Section 3. All gas delivered hereunder as to which there may be a price adjustment pursuant to Article XII hereof shall be sampled by Buyer and tested by appropriate laboratory analyses each six (6) months during the term hereof for purposes of determining the total gross heating value thereof. Copies of each such analysis shall be furnished by Buyer to Seller. Should Seller not be satisfied with the results of such analyses, it shall notify Buyer in writing. Promptly thereafter, representatives of the parties shall obtain simultaneously under normal operating conditions two (2) samples of the gas from the well in question in appropriate sampling devices of the same type. Each of the parties shall take one such sample and subject it to appropriate laboratory analyses to determine the total gross heating value thereof, reporting the results thereof in writing to the other. The average of the total gross heating value shown by such two (2) analyses shall be used for all purposes of this agreement for the period covered by the analyses made by Buyer which gave rise to the joint determination.

Section 4. Buyer shall give notice to Seller of the time of all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas, in order that Seller may conveniently have its representative present. Should Seller not be satisfied with any such tests, it shall so notify Buyer and Buyer shall perform such retests as may be necessary to assure an accurate test.

ARTICLE XII

Price

Section 1. Buyer shall pay Seller for gas purchased hereunder or for which payment is due in accordance with the following schedule:

(1) For the pricing period commencing on the date of first deliveries of gas hereunder and continuing through the month of December, 1973, fifty-two cents (52¢) per one thousand (1,000) cubic feet.

(2) For the following twelve (12) month pricing period and each succeeding twelve (12) month pricing period thereafter, the price to be paid by Buyer to Seller

for all gas delivered hereunder shall be increased one cent (1¢) per one thousand (1,000) cubic feet over the price herein provided to be paid during the preceding pricing period.

Section 2. In the event the total gross heating value of gas delivered from a well shall be either more or less than one thousand (1,000) British thermal units per cubic foot, then the price otherwise payable pursuant to this article for gas delivered from such well shall be either increased or reduced. Such reduced or increased price shall be determined by multiplying the price otherwise payable pursuant to this article by a fraction, the numerator of which is the actual total gross heating value of such gas expressed in British thermal units per cubic foot, and the denominator of which is one thousand (1,000). The total gross heating value of such gas shall be determined in accordance with Section 3 of Article XI hereof.

Section 3. If the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall at any time hereafter prescribe, for the area in which Seller's properties are situated, a higher applicable just and reasonable area ceiling rate for the gas of the quality involved herein, then the price to be paid by Buyer to Seller for gas delivered under the provisions of this agreement shall be increased, effective as of the date such higher price is prescribed, to equal such higher rate; provided, however, that Buyer shall have the right, at its option, to intervene in any area rate proceeding held to give consideration to any area rate higher than those provided for herein, to oppose any such higher area rate, to seek relief therefrom in any regulatory agency or any court having jurisdiction, but such relief, if obtained, shall not result in a price hereunder which is less than the price set out in this Article XII. Whenever the provisions of this Section 3 . . effectuate an increase in price, such increased price shall thereupon be substituted for and become the applicable contract price hereunder and shall thereafter be subject to the same future periodic increases in the contract price as provided in Section 1 of this article.

Section 4. In the event the regulation of the price at which natural gas is sold in interstate commerce ceases, then Seller shall have the right to request a redetermination of the prices at which natural gas is to be sold hereunder. Any such request shall be made to Buyer in writing and shall in the first instance be made during the six (6) month period immediately following the effective date of such deregulation and subsequently during the six (6) month period immediately preceding each third (3rd) anniversary of the effective date of such deregulation. If Seller shall make any such request, representatives of Buyer and Seller shall promptly meet and attempt to determine the fair value of the gas deliverable hereunder for the then remaining term of this agreement commencing in the first instance on the date such request is made and subsequently on each third (3rd) anniversary of the effective date of such deregulation, but in no event shall the value so determined or to be determined pursuant to the further provisions of this Section 4 result in a price which is less than the price otherwise applicable hereunder. In making such determinations, consideration shall be given to the price or prices being paid currently for gas in the various fields in the southeastern New Mexico gas producing areas but such determination shall also include a thorough economic analysis of all factors affecting such value. In the event representatives of Buyer and Seller are unable to agree upon such fair value within a period of one hundred twenty (120) days of such written request, then the matter shall be determined by arbitration in the following manner: Buyer shall appoint one arbitrator and Seller shall appoint one arbitrator and the two arbitrators so appointed shall select a third arbitrator. If either Buyer or Seller shall fail to appoint an arbitrator within ten (10) days after a request for such appointment is made by the other party in writing, or if the two arbitrators so appointed shall fail within ten (10) days after the appointment of the second of them to agree on a third arbitrator, the arbitrator or arbitrators necessary to complete a board of three arbitrators shall be appointed upon application by either party therefor by the U.S. District Judge, senior in point of service, of the federal judicial district in which the property covered by this agreement is situated. After three arbitrators are appointed pursuant to the foregoing provisions of this section, they shall meet, hear the parties with respect to the matter of said fair value, and arrive at a determination of the price at which natural gas is to be sold hereunder for the said then remaining term of this agreement. Any determination agreed to in writing by at least two of said arbitrators shall be final and binding on the parties hereto. All arbitrators appointed pursuant to this section shall be individuals experienced in the oil and gas industry and competent to pass on the matter of said fair value. The fees and expenses of the arbitrators shall be borne equally by the parties hereto.

ARTICLE XIII

Billing and Payment

Section 1. On or before the tenth (10th) day of each calendar month, Buyer shall render to Seller a statement showing the amount of gas purchased by Buyer hereunder during the preceding calendar month, and payment for such gas less all applicable taxes paid by Buyer for Seller's account (no taxes shall be paid by Buyer for Seller's account except by agreement between the parties, unless such payment shall be required by law) shall be made by Buyer to Seller on or before the twenty-fifth (25th) day of the calendar month in which such statement is rendered.

Section 2. Upon request, Buyer shall furnish Seller the measurement charts applicable to any monthly statement. Seller shall return to Buyer all charts after a thirty (30) day period.

Section 3. Any error or discrepancy in charts or statements furnished pursuant to the above shall be promptly reported to Buyer and Buyer shall make proper adjustment thereof within thirty (30) days after final determination of the correct volumes or values involved; provided, however, that if no such errors or discrepancies are reported to Buyer within two (2) years from the date of such chart or statement the same shall be conclusively deemed to be correct.

Section 4. Seller shall have access to Buyer's records and books at all reasonable hours so far as they affect measurement and settlement for gas sold hereunder.

ARTICLE XIV

Taxes

Section 1. Subject to the other provisions of this article, Seller shall pay or cause to be paid all taxes and assessments imposed on Seller with respect to the gas delivered hereunder prior to its delivery to Buyer and Buyer shall pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to gas delivered hereunder after its receipt by Buyer. Neither party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other party used for the purpose of carrying out the provisions of this agreement.

Section 2. Any sales, transaction, occupation, service, production, severance, gathering, transmission, export or excise tax, assessment or fee levied, assessed or fixed by the United States, the State of New Mexico, or other governmental authority and taxes of a similar nature or equivalent in effect (not including income, excess profits, capital stock, franchise or general property taxes) in respect of or applicable to the gas delivered hereunder to Buyer in addition to or greater than those, if any, being levied, assessed or fixed on the date of this agreement in respect of or applicable to such gas and which Seller may be liable for, either directly or indirectly, or through any obligation to reimburse others, are hereinafter collectively referred to as an "additional tax." It is expressly understood and agreed between the parties hereto that Buyer shall, subject to the conditions hereinafter set forth, pay to Seller ninety per cent (90%) of any such additional tax. Should Seller so become liable for any such additional tax, Seller shall notify Buyer immediately. Within ninety (90) days after the end of each calendar month, Seller shall prepare and submit to Buyer a statement setting forth the amount of any such additional tax that Seller has paid during such calendar month, and within thirty (30) days after submission of such statement, adjustment between the parties hereto shall be made by Buyer reimbursing Seller to the extent of ninety per cent (90%) of the amount of any such additional tax which Seller shall have so paid. The tax reimbursement herein provided for shall apply to the total amount of money Seller is required to pay by virtue of any such additional tax but shall not apply to any delinquent interest or penalty payments that may be applicable to any such additional tax. Taxes applicable to any royalty, overriding royalty, production payment or similar interest shall be considered to be covered by the provisions of this Section 2 only if the reimbursement made by Buyer to Seller with respect thereto is passed on by Seller to the owner of such royalty, overriding royalty, production payment or similar interest.

ARTICLE XV

Term

This agreement shall be effective from the date hereof and shall remain in force for a term of ten (10) years from the date of actual first deliveries of gas hereunder.

ARTICLE XVI

Connection of Wells

In accordance with the provisions hereof, Buyer shall proceed diligently to connect to its gathering system all gas wells then situated on Seller's properties. Thereafter, as each additional gas well is completed or recompleted on Seller's properties, Seller shall notify Buyer in writing of the completion or recompletion thereof, and Buyer shall, within sixty (60) days after receipt of such notice, connect such well to its gathering system.

ARTICLE XVII

Regulation of Flow

Buyer, at its sole risk, shall have the right at any and all times to regulate the flow of gas at the delivery points hereunder to meet its fluctuating demands, subject, however, to Seller's control to the extent necessary to prevent such excessive rates of withdrawal as in Seller's opinion may result in well or reservoir damage. Buyer shall, as to any marginal well requiring continuous production because of water and/or liquid hydrocarbon accumulations in the well bore, cooperate with Seller in regulating the flow of gas from such well to the end that required production rates are maintained.

ARTICLE XVIII

Rights-of-Way

Seller hereby grants and assigns to Buyer, insofar as Seller has the right so to do, under the terms of its oil and gas leases covered hereby, all requisite easements and rights-of-way over, across and under properties covered hereby owned by or under lease to Seller with full right of ingress and egress for the purpose of constructing and operating gas pipelines, meter stations and other equipment necessary or convenient for carrying out the terms of this agreement and Buyer's obligations hereunder. If Buyer shall deliver to Seller field notes describing any such easement or right-of-way, Seller will execute and deliver to Buyer an appropriate written instrument confirming such easement or right-of-way as so described. Buyer shall have the right to remove, repair and replace all or any part of Buyer's pipelines, meter stations, and other equipment and facilities, at any time during, and within a reasonable time after the expiration of the term of this agreement.

ARTICLE XIX

Title

Seller hereby warrants title to the gas sold by it hereunder and its right to sell the same and warrants that all such gas is owned by Seller free from all liens, encumbrances and adverse claims, including, but not limited to, liens to secure payment of production taxes, severance taxes and other taxes. As between Buyer and Seller, Seller shall at all times have the obligation to make settlement for all royalties, overriding royalties and other payments due to the owners of the mineral, royalty, and other interests under Seller's leases, as modified by such assignments, unitization agreements and other documents as may appear of record or otherwise be binding upon Seller, and to make settlements with all other persons having any interest in the gas (or the proceeds of the sale thereof) sold by Seller hereunder. Seller shall save and hold Buyer free and harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to the gas sold by it hereunder or to royalties, overriding royalties or other payments with respect thereto, or to taxes, licenses, fees or charges thereon which are applicable before the title to the gas passes to Buyer or which may be levied and assessed upon the sale thereof to Buyer, subject, however, to the other provisions of this agreement. In case of any adverse claim to the title of any gas bought and sold hereunder, Buyer may, without otherwise affecting this agreement, retain the purchase price thereof up to the amount of such claim, without interest, until such claim is finally determined or until Seller shall furnish Buyer a bond, in form and with sureties acceptable to Buyer, conditione to save Buyer harmless.

ARTICLE XX

Force Majeure

Except for Buyer's obligations to make payment for gas delivered hereunder, neither party hereto shall be liable for any failure to perform the terms of this agreement when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this agreement shall mean acts of God, strikes, lockouts, or industrial disputes or disturbances, civil disturbances, arrests and restraint from rulers or people, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure labor or inability to secure materials, including inability to secure materials by reason of allocations promulgated by authorized governmental agencies, epidemics, landslides, lightning, earthquakes, fire, storm, floods, washouts, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming "force majeure." Upon the occurrence of an event constituting "force majeure," the same shall, so far as possible, be remedied with all reasonable dispatch. The settlement of strikes or lockouts or industrial disputes or disturbances shall be entirely within the discretion of the party having the difficulty, and the above requirement that any "force majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or industrial disputes or disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE XXI

Rights of Seller

Seller expressly reserves for itself, its successors and assigns, the following prior rights with respect to the gas subject hereto:

(a) The right to deliver to lessors under any of the leases subject hereto, gas required in kind to meet the requirements of lessee's obligations under such leases to furnish gas to such lessors.

(b) The right to use gas reasonably required to develop and operate Seller's properties, including, but not limited to, gas for compressor fuel, and for drilling fluid, and the gas lifting of oil (limited, however, to use in a closed gas lift system).

(c) The right to process or cause to be processed all gas from Seller's properties committed hereunder prior to delivery thereof to Buyer for the extraction of liquefiable hydrocarbons other than methane and the right to remove such methane as is necessarily removed from the gas in the process of removing such hydrocarbons. Such right of Seller to process its gas shall be exercised by Seller upstream of Buyer's metering facilities at each well site or, in the alternative, at one central point on Seller's properties near one of the well sites.

(d) Subject to the other provisions of this agreement, the control, management and operation of the properties subject to this agreement shall be and remain the exclusive right of Seller. Seller may, in its sole uncontrolled discretion and as it deems advisable, drill new wells, repair or rework old wells, renew or extend in whole or in part any lease or unit, and abandon any well or surrender, terminate or release all or any part of any lease which in Seller's sole opinion is incapable under normal production methods of producing gas in paying or commercial quantities.

(e) The right to pool, consolidate or unitize any of Seller's properties with other properties of Seller and of others and to alter such consolidated areas or units, in any of which events this contract insofar as it pertains to such pooled, consolidated or unitized properties shall cover only Seller's allocated interest in such pool or unit and the gas-well gas production attributable thereto to the extent that such interest relates to Seller's properties.

All gas taken by Seller pursuant to subparagraphs (a), (b), and (c) above shall be taken upstream from Buyer's metering facilities.

ARTICLE XXII

Rules and Regulations

This agreement is subject to all present and future valid laws and valid orders, rules and regulations of the United States, the State of New Mexico, or any duly constituted agency thereof.

ARTICLE XXIII

Notices

Notices to be given hereunder shall be deemed sufficiently given and served when and if deposited in the United States mail, postage prepaid and registered, addressed to Seller at P. O. Box 1418, Carlsbad, New Mexico 88220, or to Buyer at P. O. Box 1492, El Paso, Texas 79978, as the case may be, or to such other address as either party shall respectively hereafter designate in writing.

Routine communications, including monthly statements and payments shall be considered as duly delivered when mailed by either registered mail or ordinary first class mail, postage prepaid.

ARTICLE XXIV

Successors and Assigns

This agreement shall bind and benefit the parties hereto and their respective successors and assigns, provided that no conveyance or transfer of any interest of either party shall be binding upon the other party until such other party has been furnished with written notice and true copy of such conveyance or transfer; provided, further, that either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this agreement, including any and all extensions, renewals, amendments and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor, and if any such trustee be a corporation, without its being required by the parties hereto to qualify to do business in the State of New Mexico, but no such assignment shall serve to relieve the assigning party of its obligations hereunder.

ARTICLE XXV

Topical Headings

The topical headings used herein are inserted for convenience only and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this agreement relating to any particular topic are to be found in any particular article.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate originals on this day and year first above written.

ATTEST:

Assistant Secretary

WITNESS:

WITNESS:

"BUYER"

EL PASO NATURAL GAS COMPANY

By

A. M. Derrick, Vice President

"SELLER"

MICHAEL P. GRACE II

By

CORINNE GRACE

By

EXHIBIT "A"

This Exhibit "A" is attached to and made a part of Agreement between EL PASO NATURAL GAS COMPANY and MICHAEL P. GRACE II and CORINNE GRACE, dated March 1, 1973:

SELLER'S PROPERTIES:

Description	Gross Acres
All of Section 36	640
South Half (S/2) of Section 24	320

All in Township 22 South, Range 26 East, Eddy County, New Mexico; limited, however, to those formations between the surface of the ground and the base of the Morrow formation.

LAW OFFICES OF
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.
210 HINKLE BUILDING
POST OFFICE BOX 1837
ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

5054
Case 5053

July 30, 1973

RECEIVED
JUL 31 1973
OIL CONSERVATION COMM.
Santa Fe

A. L. Porter, Jr., Executive Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Grace-Atlantic No. 1
T. 22 S., R. 26 E.
Sec. 24: S½
Eddy County, New Mexico
Order No. R-4432 NMOCC

Dear Mr. Porter:

Reference is made to Order R-4432 entered in Cases Nos. 4819 and 4836 before the Oil Conservation Commission of the State of New Mexico. In regard to this matter, we hand you herewith the original and a service copy of an Application of D. L. Hannifin and Joe Don Cook for a Determination of Reasonable Well Costs and for an Order Terminating Operator's Withholding Period.

We would like to have this matter set down for hearing before the full Commission at an early date, calendars permitting.

We are serving a copy of our Application upon Michael P. Grace, II, by certified mail, return receipt requested, and when service has been had on Mr. Grace, we will send you proof of service. In the event you choose to make additional service upon him, the service copy of the Application is enclosed.

Your early consideration of the Application will be appreciated.

Sincerely yours,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker

George H. Hunker, Jr

GHH:dd
Encls.
cc: Messrs. D. L. Hannifin & Joe Don Cook w/enc.
cc: Mr. R. E. Johnson, El Paso Natural Gas Co. w/enc.
cc: Michael P. Grace, II, & Corinne Grace, w/enc.
(certified mail, return receipt requested)

DOCKET MAILED
Date 8-9-73

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

OIL CONSERVATION COMM
Santa Fe

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION OF NEW MEXICO FOR THE PURPOSE OF CONSIDERING:

Case 5053
5054

CASES NOS. 4819 AND 4836
Order No. R-4432

APPLICATION OF D. L. HANNIFIN AND JOE DON COOK FOR A DETERMINATION OF REASONABLE WELL COSTS AND FOR AN ORDER TERMINATING OPERATOR'S WITHHOLDING PERIOD.

Applicants D. L. Hannifin and Joe Don Cook would respectfully show the Commission as follows:

1. That they are the owners of an oil and gas leasehold estate covering all of the mineral interest in and under the SE¼ of Section 24, Township 22 South, Range 26 East, N.M.P.M., Eddy County, New Mexico (South Carlsbad-Morrow Gas Pool), and as such (subject to the payment of taxes and a 3/16 royalty interest prescribed in the lease), are the owners of 50% of all of the gas produced from the S½ of Section 24, Township 22 South, Range 26 East, from the Grace-Atlantic Well No. 1.

2. That a schedule of estimated well costs was furnished to Applicants, and Applicants (exercising the options allowed by Commission order) filed a non-consent and declined to advance or pay Applicants' 50% share of the cost of drilling said well.

3. That Operator (Michael P. Grace, II) was authorized to withhold the following costs and charges from production pursuant to Commission Order R-4432 dated September 27, 1972, in the captioned cases:

> "(7) That the operator is hereby authorized to withhold the following costs and charges from production:
>
> > (A) The prorata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 60 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 25% of the prorata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That $135.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) * * * *

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests."

4. Although Operator was required to furnish each known working interest owner with an itemized schedule of actual well costs within 60 days following the completion of the well, Operator has failed to furnish such itemized list to Applicants within the time required, and Applicants have not had an opportunity to justify third-party invoices as to reasonableness.

5. Applicants are reliably informed and believe that the period of time during which Operator was authorized to withhold costs terminated at 7:00 A.M., June 18, 1973, and that from and after said date and time the Applicants are entitled to receive their 50% ownership share of the oil and gas produced from said well at the price Applicants have agreed upon with the pipeline company, subject nevertheless to the payment of the royalty due to Applicants' lessor and subject further, however, to the payment of 50% of all applicable taxes (which obligations Applicants assume).

6. Applicants tender to the Commission for Operator all sums deemed to be reasonable well costs, and operating charges found to be due by the Commission.

WHEREFORE, Applicants pray that the Commission set a time and place for a hearing on the above matter to determine the following:

1. That Michael P. Grace, II, Operator, should be required to furnish to the Commission and Applicants itemized schedules of all actual well costs (substantiated by third-party invoices) incurred in connection with the drilling of the Grace-Atlantic No. 1 Well located on the S½ of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and including a copy of the insurance contract pertaining to blow-out insurance.

2. That Operator, Michael P. Grace, II, be required to furnish proof of payment of all of the third-party bills and invoices submitted, to the end that Applicants' leasehold estate will not be subject to any claims of lien by materialmen or by persons who have performed services in connection with the drilling of said well.

3. That Applicants be given an opportunity to object to the itemized schedule of actual well costs in the event costs should be determined to be unreasonable.

4. That the Commission examine the itemized schedule of actual well costs and that the Commission ascertain (after notice and hearing) the reasonableness of the well costs submitted by Operator.

5. That the Commission find that the authorization to Operator to withhold costs and charges from production be terminated in that Operator has been fully compensated for all reasonable well costs, a risk charge of 25% of the prorata share of reasonable well costs attributable to the non-consenting

working interest owners' part of said costs, and for such other and further relief as in the premises that the Commission finds to be appropriate.

Respectfully submitted,

D. L. Hannifin and
Joe Don Cook
"Non-Consenting Parties"

By George H. Hunker, Jr.
Hunker, Fedric & Higginbotham, P.A.
P. O. Box 1837
Roswell, New Mexico 88201
Attorneys for Applicants

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To JUANITA L. JONES

Greeting:

We command you to be and appear August 23, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 14th day of August A. D. 1973

A. L. Porter, Jr.

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, ______________________________ Sheriff of

Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

______________________________ Sheriff

Dated:

____

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, ________________________________ Sheriff of ____Eddy________ County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to __________Juanita L. Jones__________________________

________________________________, Sheriff

Dated:

____

C O P Y

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

August 20, 1973

Mr. Frederick B. Howden
Attorney at Law
P. O. Box 718
Los Lunas, New Mexico 87031

Dear Mr. Howden:

Enclosed is a copy of the Subpoena Duce Tecum which I have had served on Juanita Jones, Secretary to Michael P. Grace II, and hoped to have served on Michael P. Grace II this week.

I expect Mr. Grace to have the information set out in the subpoena with him on August 28 so that we may resolve this matter once and for all.

I look forward to meeting you next week.

Yours very truly,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr
enclosure

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

August 20, 1973

C
O
P
Y

~~Sheriff of Eddy County~~
Court House
Carlsbad, New Mexico

Dear Sir:

As per our telephone conversation of August 20, I have enclosed copies of Subpoena Duce Tecum to be served on Juanita Jones and, if possible, on Michael P. Grace II.

Enclosed is my check for $6.00 to cover the charges for serving the subpoenas on Mrs. Jones ($3.00 for subpoena served August 16th and $3.00 for the enclosed subpoena). I will transmit $3.00 for serving Mr. Grace if he is served.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, ______________________________ Sheriff of

___Eddy___________ County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to __________Juanita L. Jones____________________

______________________________, Sheriff

Dated:

____

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To JUANITA L. JONES

Greeting:

We command you to be and appear August 28, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 20th day of August A. D. 1973

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, Tom Granger Sheriff of Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Juanita L. Jones

Tom Granger, Sheriff
By J.R. Means Deputy

Dated:

8-16-73

Fee $3.00

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, ______________________ Sheriff of

Eddy __________ County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

______________________ Sheriff

Dated:

____

No. 5054

SUBPOENA DUCE TECUM

Santa Fe

THE STATE OF NEW MEXICO

To MICHAEL P. GRACE II

Greeting:

We command you to be and appear August 23, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of the Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant

and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

8-28-73

Unable to Locate

Tom Granger Sheriff

By J R Means Deputy

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 14th day of August A. D. 1973

A. L. Porter, Jr.

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To MICHAEL P. GRACE II

Greeting:

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And this do you under penalty of the law

8-28-73

Unable to Locate

Tom Granger Sheriff
By J. R. Means Deputy

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 14th day of August A. D. 1973

A. L. Porter, Jr.

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

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And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 20th day of August A. D. 1973

A. L. Porter Jr.

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO

CASE 5054

I, Tom Granger Sheriff of Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

Tom Granger Sheriff
By J. R. Means Deputy

Dated:

8-28-73

Unable to Locate

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To MICHAEL P. GRACE II

Greeting:

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And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 20th day of August A. D. 1973

A. L. Porter Jr.

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, Tom Granger Sheriff of Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

Tom Granger Sheriff
by J. P. Miami Deputy

Dated:
8-28-73

unable to locate

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To MICHAEL P. GRACE II

Greeting:

We command you to be and appear August 28, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 20th day of August A. D. 1973

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, Tom Granger Sheriff of Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

Tom Granger Sheriff
By J.R. Means Deputy

Dated:
8-28-73

unable to Locate.

LAW OFFICES OF
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.
210 HINKLE BUILDING
POST OFFICE BOX 1837
ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

August 14, 1973

A. L. Porter, Jr., Executive Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: No. 5054
Hannifin - Grace

Dear Mr. Porter:

For and on behalf of Michael P. Grace, II, and Corinne Grace, Juanita L. Jones has furnished to D. L. Hannifin and Joe Don Cook certain information pertaining to the Grace-Atlantic No. 1 well, and we believe that she has the custody of the costs and expenses incurred by the Graces in connection with the drilling of this well. As a consequence of the foregoing and pursuant to Commission Rule 1211, we would like for the Commission to subpoena Juanita L. Jones to appear before the hearing of the Commission on August 23, 1973, at 9:00 A.M., and to produce itemized schedules of all actual well costs substantiated by third-party invoices incurred in connection with the drilling and completion of the subject well, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance.

Your help and cooperation in connection with this matter will be greatly appreciated.

Sincerely yours,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker, Jr.

GHH:dd

cc: Messrs. D. L. Hannifin & Joe Don Cook

RECEIVED
AUG 15 1973
OIL CONSERVATION COMM
Santa Fe

LAW OFFICES OF
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.
210 HINKLE BUILDING
POST OFFICE BOX 1837
ROSWELL, NEW MEXICO 88201

GEORGE H. HUNKER, JR.
DON M. FEDRIC
RONALD M. HIGGINBOTHAM

TELEPHONE 622-2700
AREA CODE 505

August 1, 1973

RECEIVED
AUG - 2 1973
OIL CONSERVATION COMM
Santa Fe

A. L. Porter, Jr., Executive Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Case 5054

Re: Grace-Atlantic No. 1
T. 22 S., R. 26 E.
Sec. 24: S½
Eddy County, New Mexico
Order No. R-4432 NMOCC

Dear Mr. Porter:

Michael P. Grace has received a copy of the Application filed with your office by D. L. Hannifin and Joe Don Cook for a Determination of Reasonable Well Costs and for an Order Terminating Operator's Withholding Period. A copy of the return receipt is enclosed herewith for filing in connection with the above described Order. It would be appreciated if you would place this showing in the case file.

Respectfully submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

George H. Hunker, Jr.

George H. Hunker, Jr.

GHH:dd
Enc.

cc: Michael P. Grace, II, & Corinne Grace, w/enc.
cc: Mr. R. E. Johnson, El Paso Natural Gas Co., w/enc.
cc: Messrs. D. L. Hannifin & Joe Don Cook, w/enc.

No. 251619

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Michael P. Grace, II, and Corinne Grace

POSTMARK OR DATE

STREET AND NO.
P. O. Box 1418

P.O., STATE AND ZIP CODE
Carlsbad, N.M. 88220

RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	10¢
	With delivery to addressee only	60¢
	2. Shows to whom, date and where delivered	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (2 pounds or less)		30¢

POD Form 3800
Sep. 1968

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

RECEIVED
AUG - 9 1973
OIL CONSERVATION COMM
Santa Fe

(Hannifin-Grace)

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S).
REQUIRED FEE(S) PAID.

☐ Show to whom, date and address where delivered ☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)
Michael P. Grace

CERTIFIED NO.
251619

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
[illegible]

INSURED NO.

DATE DELIVERED
7/31/73

SHOW WHERE DELIVERED (*only if requested*)

c55—16—71040-11 347-198 GPO

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

August 16, 1973

COPY

Sheriff of Eddy County
Eddy County Court House
Carlsbad, New Mexico

Dear Sir:

Enclosed herewith are Affidavits of Service for the Subpoena Duce Tecum which I hand delivered to your office this date. I would appreciate your filling them out and returning them with copies of the Subpoena Duce Tecum.

We realize it may be difficult to serve Mr. Grace as he may be out of town. If it is impossible to find him by Friday, August 24th, please disregard the subpoena.

Yours very truly,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr
enclosures

No. 5054

SUBPOENA DUCE TECUM

RECEIVED
AUG 2? 1973
OIL CONSERVATION COMM.
Santa Fe

THE STATE OF NEW MEXICO

To JUANITA L. JONES

Greeting:

We command you to be and appear August 23, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 14th day of August A. D. 1973

Served 8-16-73-10:45 a.m.
Tom Granger Sheriff
By J R Means Deputy

Fee $3.00

A. L. Porter, Jr.

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, Tom Granger Sheriff of Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Juanita L. Jones

Tom Granger, Sheriff
By J.R. Meane Deputy

Dated:

8-16-73

Fee $3.00

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To MICHAEL P. GRACE II

Greeting:

We command you to be and appear August 28, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of the Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 14th day of August A. D. 1973

A. L. Porter, Jr.

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, Art Garcia Sheriff of Santa Fe County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

Art Garcia Sheriff

Deputy

Dated:

Aug 22/73

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

August 20, 1973

COPY

Mr. Frederick B. Howden
Attorney at Law
P. O. Box 718
Los Lunas, New Mexico 87031

Dear Mr. Howden:

Enclosed is a copy of the Subpoena Duce Tecum which I have had served on Juanita Jones, Secretary to Michael P. Grace II, and hoped to have served on Michael P. Grace II this week.

I expect Mr. Grace to have the information set out in the subpoena with him on August 28 so that we may resolve this matter once and for all.

I look forward to meeting you next week.

Yours very truly,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr
enclosure

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

August 20, 1973

COPY

Sheriff of Eddy County
Court House
Carlsbad, New Mexico

Dear Sir:

As per our telephone conversation of August 20, I have enclosed copies of Subpoena Duce Tecum to be served on Juanita Jones and, if possible, on Michael P. Grace II.

Enclosed is my check for $6.00 to cover the charges for serving the subpoenas on Mrs. Jones ($3.00 for subpoena served August 16th and $3.00 for the enclosed subpoena). I will transmit $3.00 for serving Mr. Grace if he is served.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

RECEIVED
AUG 22 1973
OIL CONSERVATION COMM
Santa Fe

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To JUANITA L. JONES

Greeting:

We command you to be and appear August 28, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 20th day of August A. D. 1973

A. L. Porter, Jr.

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE 5054

I, Tom Granger Sheriff of Eddy County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Juanita L. Jones

Tom Granger, Sheriff
By J.R. Mecom Deputy

Dated:

8-21-73

Fee $3.00 Paid 8.21.73 -

No. 5054

SUBPOENA DUCE TECUM

THE STATE OF NEW MEXICO

To MICHAEL P. GRACE II

Greeting:

We command you to be and appear August 28, 1973 at 9:00 a.m. before the Oil Conservation Commission of the State of New Mexico, at Morgan Hall, in the Land Office Building, in the City of Santa Fe, then and there to testify in the case of Application of D. L. Hannifin and Joe Don Cook for determination of reasonable well costs and for an order terminating operator's withholding period, on behalf of the applicant and also that you bring with you and produce at the time and place aforesaid itemized schedules of all actual costs (substantiated by third party invoices) incurred in connection with the drilling and completion of the Grace-Atlantic Well No. 1, located 1980 feet from the South and East lines of Section 24, Township 22 South, Range 26 East, together with a copy of the contract for the drilling of said well and a copy of the insurance contract pertaining to blow-out insurance on said well.

And this do you under penalty of the law

WITNESS A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of the State of New Mexico, and the seal of said Commission, this 20th day of August A. D. 1973

AFFIDAVIT OF SERVICE

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO

CASE 5054

I, Art Garcia Sheriff of Santa Fe County, State of New Mexico, do hereby certify, that I served the within Subpoena Duce Tecum by delivering a copy thereof in the county aforesaid, in person to Michael P. Grace II

Art Garcia Sheriff

Deputy Max L. Vigil

Dated:

Aug 22 /73

RECEIVED
SEP 19 1973
OIL CONSERVATION COMM.
Santa Fe

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
CONFERENCE ROOM, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO
August 28 & 29, 1973

COMMISSION HEARING

IN THE MATTER OF: Application of D. L. Hannifin and Joe Don Cook for a determination of reasonable well costs and for an order terminating operator's withholding period, Eddy County, New Mexico	Case 5054

RESPONDENT'S MEMORANDUM BRIEF

This brief is submitted following a hearing before the Oil Conservation Commission of New Mexico. The hearing came on petition of D. L. Hannifin and Joe Don Cook. The petition sought to create various questions concerning the operation of the Grace Atlantic Well by its designated operator, Michael P. Grace II, who was named operator by Order No. R 4432 of the aforesaid Oil Conservation Commission. His nomination followed a hearing before the Commission contested by the above parties. By his being named operator he was empowered to proceed with the development of the so-called Grace Atlantic Well, located in the South One-Half of Section Twenty-Four, Township 22 South, Range 26 East, N.M.P.M., South Carlsbad Morrow Gas Pool, Eddy County, New Mexico, a 320-acre standard communitized unit. It was dedicated to a well drilled at a standard location in the aforesaid Section 24, the North one-half of the same section having been already pooled and successfully drilled by the Graces.

GRACE OPERATOR

DRILLED

In being named operator, Grace was empowered to proceed with the development of a well and sale of its production. At the same time, Hannifin and Cook were given an option. They could either pay their pro-rata share of the estimated cost of the well, as the same was submitted by Grace, and share in the above development and sales, or, in the alternative, they could pay nothing in advance on the cost of the well but leave Grace to recover from the sale he made of the proceeds of the well the pro-rata share of the Hannifin-Cook interests, plus an additional 25% as a reasonable charge for the risk involved in the drilling of the well. Hannifin and Cook elected the second of the two alternatives and, thereby, advanced nothing to the cost of the well, leaving it to Grace to undertake the risk and recover for his risk by the 25% in addition to the cost through his gas sales.

JOIN

Hannifin and Cook have asked the Commission basically to

seek.

do two things: 1 determine the reasonable cost of the well, and 2 determine that date on which Michael P. Grace II recovered his cost plus the 25% risk factor as applied to their half of the total working interest on the well.

In brief, by stipulation, the first two requests in the Hannifin and Cook application to the New Mexico Oil Conservation Commission were settled, e.q., production of invoices (third party included), contracts (insurance included), and checks or other proofs of payment, so we need not further belabor the Commission on these matters from the docket, paragraphs 1 and 2.

The fundamental point is that if Grace is to repay their "loan" from proceeds of sale, necessarily he must have had the exclusive right to sell the gas and secondly to do so at the true market value of the gas. By reason of their petition, other matters are also raised before the Commission by standard practice because paragraph 5 of the docket order is at issue which asks or directs that the Commission dispose of such other matters as may reasonably come before it.

The history is as follows: Mr. Grace, in January of 1973, proceeded to develop the well in question. Thereafter, in March, the well was completed, specifically on March 15, 1973. By contract with El Paso Natural Gas Company, Grace sold the production of this well to El Paso Natural Gas. The base price for the sale was 52 cents per mcf (-BTU adjustment).

The well went on line on April 15, 1973, and since that time has been producing gas being collected by El Paso Natural Gas Company in amounts shown and demonstrated to the Oil Conservation Commission. In passing, we refer again to the contract between Grace and El Paso Natural Gas. That contract is in evidence before this Commission, having been submitted and being reflected as evidence on page 74 of the transcript of proceedings before the Commission. However, for the convenience of the

Commission a copy of that contract is attached hereto as Exhibit A. (On March 16, 1972 said contract was accepted by FPC in interstate commerce, FPC Docket #CS72628).

Under the terms of the Commissions' Forced Pool Order, Grace was required to submit to the Oil Conservation Commission and, in effect, to Hannifin and Cook, a report of the actual cost of the well. Pursuant to the Order this report was submitted within sixty days of the completion of the well. Likewise, Hannifin and Cook were under an obligation under the same Order to file any protests they might have to the costs within sixty days of the completion of the well. See paragraph 5 of the Commission's Order. On May 8, a date within the sixty-day period after completion of the well, Grace submitted the required actual cost report to the Commission. That is a matter of record with the Oil Conservation Commission. Likewise, at the same time, Grace employees handed to Hannifin a copy of the report. That report, in round figures, reflected a cost of $439,000. Hannifin and Cook neither filed nor made any protest nor raised any question about the reasonableness of the cost within the sixty-day period following completion of the well. Subsequently, on July 30, 1973, Hannifin and Cook did bring this petition which belatedly sought to question the reasonableness of the cost. In July Grace submitted an amended cost sheet showing costs in the approximate figures of $465,000.

It should be pointed out to the Commission that at the beginning of the hearing on this matter, Grace, through his attorneys, moved the Commission to dismiss proceedings on the grounds that objections to the reasonableness of the cost were not timely filed. That motion was denied. On the recommendation of the Commission, the parties retired from the hearing, and through their accountants worked out and ultimately reached a stipulation on an agreed cost of the well. However, in this regard, there remained a question to which we will allude below concerning the deduction of certain pooled royalty interests. That question bears directly on the question of the payout date. In the above-mentioned stipulation the motion was for all purposes conceded, the $439,000 figure (more or less) being exposed into the 25% risk factor, and Grace in turn conceded a loss of the risk factor on his amendment to the accounting (e.g., in expediting the sale of gas and the above-mentioned payout date, he loaned surface equipment and its replacement costs were accepted as the well's reasonable costs but not made subject to the 25% risk factor) (something of a penalty for expedition but a "quid pro quo" for a belated beginning of cooperation).

Now we go to Item No. 4 of the Hannifin and Cook application: the determination of the payout date. The payout date to which we refer is the date on which Grace has recovered Hannifin's share of the working interest cost, plus the 25% risk factor. Our accountants, as indicated above, based on figures submitted through stipulation to the Commission show that date to be June 22. Hannifin's and Cook's figuring show that date to be June 20. Past the question here involved of pooled royalty expense, it becomes now a question of how much money Grace has really received, no longer a question of how much he expended, if his receipts are based on the 52-cent per mcf price. Mr. Grace, in the course of the hearing introduced testimony through Lee White, an expert witness, whose testimony was accepted as such by the Commission. Mr. White being qualified, as Mr. Porter noted, as a former Chairman of the Federal Power Commission, showing that the proceeds from this well might well be set back as far as 16 cents per mcf instead of 52 cents. (It is, of course, understood that in referring to various cost figures, the BTU adjustment would be added).

payout date
Q royalty payments

Now, the situation, in summary, in regard to costs is as follows: Grace's contract calls for 52 cents per mcf. This contract was made with El Paso Natural Gas through a small producer's certificate from the Federal Power Commission. However, subsequent to its issue the Circuit Court of Appeals of the District of Columbia determined that the Federal Power Commission did not have power or authority to grant such special small producers permits, and all gas sold should be sold on the regular basin rate (Texas v. FPC, 474 F2d 416). The basin rate as established by the Federal Power Commission for the Permián Basin in 1965 was 16 cents per mcf. In August of 1973 that basin rate was raised to 35 cents per mcf. For purpose of reference, the Texaco case, infra, should be regarded by the New Mexico Oil Conservation Commission as a contingent lien on all production from the well that could act as bar against anyone defining the refundable character of payments as anything else but a repayable loan with interest offered by the gas transmission companies as a fiscal inducement to contract.

That case is presently on certiorari to the Supreme Court of the United States. It is anticipated that in the October term the Supreme Court will either grant certiorari and take the case under advisement or deny certiorari. If denied, then the Circuit Court ruling will stand and the small producer's certificate and sales thereunder will be void. If the case is heard by the Supreme Court, the Supreme Court might well uphold the Circuit Court, reaching the same result. If such a result is reached, the Federal Power Commission presumably would then be compelled to adjust all prices under a price rollback so that various sales under small producers' certificates in excess of 16 or at best in excess of 35 cents per unit would be rolled back to the general basin price. Not only would they be rolled back, but a rebate to the purchaser would be required. Not only would a rebate be required, but possible interest on that rebate would be required.

Now, what does this mean in terms of the case here before the Commission? It can be summarized as follows: Grace could be called upon to repay El Paso all sums received by him from El Paso Natural Gas under the unreal 52 cent per unit rebateable, refundable, contract, in excess of the basin rate of 16 or 35 cents. (A call for interest on that money has been contemplated by the Courts.)

Now, if Grace is called upon to do this, he as the operator would be rebating not only monies he himself received and kept, but also monies that he might have received and disbursed and/or credited as herein, e. g., 1/2 non-consent interest (+ 25% risk factor to payout) and to owners of other interests as well in this well, including royalty holders, and non-operating interest holders, etc. If he is called upon to do this without compensation for the risk factor herein involved, he is responsible as operator to first pay the money out of his own pocket, and then turn to the other interest holders asking them to reimburse him. In short, he could be left in a completely unsecured position in regard to the variable differential in "market value" named in the contract and leases. Any tolling of the risk factor must take this into consideration. For example, at the basin rate of 16¢ the risk factor is effectively reduced to less than 6% (well below present-day interest ~~rates).~~ ? what In the alternative, at a basin rate of 35¢ the risk factor rate is reduced by more than one-third to 16 1/2%, which was not what the Commission Order contemplated! ?

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Thus having taken the risk as operator; he has developed a superlative well; yet he will now be called upon once again alone to take the total risk factor as operator in having to make rebates to El Paso Natural Gas Company. Now, what we point out to the Commission is this basic, fundamental and most important point--the Commission, given this state of affairs, cannot determine the payout date without reaching legal conclusions beyond its authority or altering the substance of its Order.

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Why is this so? It cannot determine the payout date because it does not know what the real sums receivable are or will be for any given length of time. Since it cannot at this moment be determined what the real price of gas is, it follows necessarily that it cannot be determined what the payout date is. We simply do not know when Mr. Grace will receive real unrefundable funds sufficient to reimburse him for Mr. Hannifin's costs. This being the case, the petition before the Commission for determination of payout date must for the present either be deferred or dismissed until such time as there is a final determination by the Federal Power Commission following litiagation in the Supreme Court of the United States as to what the price for this gas is authorized to be.

During that interim period, the only logical solution is to continue the present appropriate escrow, as is well established throughout the law and throughout the business community of this country, and as is being now used under a present stipulation established by El Paso Natural Gas and by correspondence between the attorneys for the parties herein as to monies in the American Bank of Carlsbad under the jurisdiction of NMOCC by mutual stipulation of all the parties involved not only as to a finding of time but fiscal substance in payout possibly pertaining to Hannifin and Cook. Now, we have pointed to the very basic error in the entire proceedings. We have pointed out to the commission that it cannot possibly determine the one without the other. The question which Hanaffin and Cook have thrust before it, which is the date of the payout, cannot possibly be decided because the OCC does not know what the true price of the gas is, and cannot know what that price is until there is a final determination by the Federal Power Commission and/or the Courts.

Let us now come to the minor 48-hour difference between the parties here involved. As we have shown heretofore this difference, given different basin prices and market value, will still exist as it derives from a failure at arriving at a communitized or pooled working interest and accounting out the pro-

Royalty

rata acreage thereunder. However, the difference between June 20 and June 22 leaves the temporary certificate of Hannifin and Cook probably invalidated for their having failed to file with the Federal Power Commission timely within the 60-day period being only on the October 4 docket as docketed June 9, 1973 FPC Docket #CT73940.

Next we move to another collateral question. Assume for the moment that the payout date and price could be determined. We know what the cost is, but it cannot be determined what the price is. But let us assume for the moment that we did know what the price is. Let us assume that the price is 55 cents plus BTU adjustment (under the Hannifin and Cook contract). On this basis we could not demonstrate to the Commission that Mr. Hannifin and Mr. Cook would be forced to ever credit their royalty interest holders or anyone else with that figure of 55¢ under the temporary certificate, since temporary certificates to date over the past year have averaged less than 50¢ per unit on rollbacks made by the F.P.C.

Frequently acknowledged in confrontations between the courts and the Commission is the sanctity of the prerogatives of each. The OCC has wisely avoided questions of abstracts, ownership, consequent rights thereupon, etc. Can it now, by ignoring the courts and FPC jurisdictions over interstate gas, effectively legislate and decide contrary to these very jurisdictions? Will not due process as to true market value under the state and federal constitutions become involved if the OCC refuses to update its findings of November 8, 1972 under authority of the pending application paragraph 5 of the docket call, and to take into consideration events that have transpired since its findings in this matter in November that clearly relate to true "market value" under both communitized leases.

Jurisdiction Q.

We note for purposes of outline only, at this point, another question which has been brought to the attention of the OCC in this hearing, which the OCC has apparently decided not to undertake or address itself to, and that is to make provision to secure the operator against future other well maintenance costs. This alone under paragraph 5 of the docket invites deferment of any finding pending further stipulations or hearings.

Communitization deals with the very essence of a forced pool order because it has the effect of communitizing in the absence of the specifics of an operating agreement. An analysis of the language of the statute and of the language of the forced pool order, not to mention the authorities cited in this brief, makes quite clear that this was necessarily the intent of the legislature and of the commission. Needless to say, the commission does not have the authority to force upon the parties an operating agreement as such and has so stated. What the legislature has done in its wisdom is to provide the commission with the power to impose a forced pooling in the absence of a voluntary farmout. Since one of the purposes of the forced pooling order is to create energy for the community and simultaneously afford to the owner of each interest in the unit pooled the opportunity to receive without unnecessary expense his just and fair share of the gas produced in the pool, it follows that the pooling order takes the place of a voluntary communitization.

Thus note in passing the frequent reference in the statute and order to the use of such terms as "unit" and "unitizing". For example, paragraph 8 of the findings in the Forced Pool Order speaks of a "proration unit". Paragraph 9 contains the following language in part: "to the owner of each interest in the unit". Paragraph 10 indicates that Michael P. Grace be designated the operator of the proposed well "and unit." For further reference turn now to that portion of the forced pooling order in which the order itself is set forth. We find reference to the fact that it is a "unit" and paragraph 2 of the Order, as well as paragraph 1, noting again the language in which it is stated "hereby pooled to form a 320-acre prorationed unit."

Now we further develop this point by drawing the attention of the Commission to the case of Sims v. Mechem, 72 N. M. 186, and in that case it is clearly established that the Commission has the power to establish a production unit. That particular case does discuss related questions as to what findings must be made and so forth, but the basic point that the Commission does have the power to establish a production unit can be found in the cited case.

Logical construction of the statute under which we are operating directs us to the language and contents of 65-3-14.5 N.M.S.A., setting forth various powers of an operator in a proration unit. Take particular note of subparagraph B of 65-3-14.5, N.M.S.A., wherein "any operator who does not have a voluntary pooling agreement must "nevertheless be liable and account to and pay each owner of minerals or leasehold interests, including owners of overriding royalty interests and other payments out of production, ... in the absence of pooling.." (and note the case of Wittaker v. Texaco, 283 F2d 169 (1960) in which it is held that royalty interests are poolable by operation of law.)

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In further support, refer to 65-3-14, N.M.S.A. In the subparagraphs therein contained repeatedly is found reference to the fact that we are dealing with "a unit".

However, before citing those various references note should be given to subparagraph A of the cited section. This section is very general and in broad terms calls upon the Commission in its rules, regulations and orders, so far as practicable to do so, to afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the gas therein and to do so as far as practicable without waste. (In this case Hannifin and Cook seem to be seeking to sell for "less" state royalty and taxes.)

weak

ok — but Hannifin's not Grace's Royalty figure.

A question of particular importance before the Commission is whether or not the operator (Grace) is entitled to deduct in arriving at the operating cost the payment of royalties to Hannifin's royalty holder. It seems clearly enough established under the law that he does have that right and in fact it is only reasonable that he should have that right. Unfortunately, that is a question of first impression in the State of New Mexico. We look, therefore, to the case authority in the State of Oklahoma, with particular reference to the leading case of Shell Oil Company v. Corporation Commission (Oklahoma) 389 P2d 951. It is probable that one cannot mix applies and oranges. On the other hand it becomes necessary under the equitable approach imposed upon conservation commissions to throw all questions together. The cost of doing business is deducted from the working interest as a whole. That, after all, is the connotation of the Shell case and is generally understood as such in the oil field practice. In that case where there was a 1/8 overriding royalty interest, cost of the lease is deducted so that the remainder is the working interest and that cost after all must come from the operator. Stated in other words, the royalties are added up, deducted, and the remainder is the net working interest. Pooling after all is an action in equity and adjusting in equity. There can be no hard and fast rule. It is contemplated in the very essence of the law that in such circumstances the commission will make new law designed to protect the rights of the people involved. After all the parties did not elect to be thrown together in this particular case. The Commission must now act fairly and equitable; fairness and equity demand that the royalty interests be deducted.

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At this point we recognize that the Commission being our administrative body should not be encumbered with lengthy formal legal situations and arguments as might be addressed to an appellate court. On the other hand, because of the novelty of this particular matter we feel compelled to provide the commission with a general summary of relevant authorization.

Note the following citations, on the question of pooling constituting a communitization of interests to parties: 16 Texas Law Review 597; Shell v. Kwen, (Oklahoma 355 P2d 997); Williams and Myers Oil and Gas Law Volume 6, Section 941; 10 Oklahoma Law Review 249 (August 1957); Youngblood v. Sweewald, 299 F2d 680; and Rex Oil Refining v. Shirvan, 443 P2d 82; Wittake v. Texaco, 283 F2d 169 (1960). Upon entry of order royalty interests are poolable by operation of law. A general discussion of the law on pooling in 37 ALR2d 434 and of particular importance note Compulsory Pooling of Oil and Gas Interests in New Mexico, Morris 3 Natural Resources J. 316. Also note Oil Conservation Commission establishing pro-ration formulae, Parnell 7, Natural Resources Journal, 425. And State Regulation of Oil and Gas Pools on State, Federal Indian and Fee Lands, 2 Natural Resources Journal, 355. And note Oil and Gas, New Mexico Oil Conservation Commission Findings of Fact, 7 Natural Resources Journal, 425.

It is established in the New Mexico Case of Continental Oil Company v. Oil Conservation Commission, 70 N. M. 310, that the Commission has the authority to change and alter pro-ration formulae although the change sought to be made in that particular case was declared invalid and void and reversed by the Supreme Court, although jurisdictional findings are not here pertinent. The basic point of the broad equity discretion of the Commission remains. New Mexico and Oklahoma being the first of the two states to adopt compulsory pooling, we look for some guidance to Oklahoma (Morris 3 Nov. O. J. supra) wrong cite.

A source to which reference is made and from which guidance can be obtained is Clyde, Problems of Regulatory Agencies in Administrating Conservation Statutes, 7 Rockly Mountain Mineral Law Institute, 165 (1962). As to general powers see El Paso Natural Gas Co. v. Oil Conservation, 76 N. M. 268, which opinion reveals a comprehensive understanding of both the nature of the administrative process and the technical complexities of the oil and gas industries and its problems. For further authorities see supplement page 15 A.

It is worthwhile noting and emphasizing that the effect of the Hannifin-Cook action is to seek to expend no money in the development of a well, let Grace take all of the risk, then if the well does pay off, come in and develop a working interest, taking the gas in kind and selling it. It is as if Hannifin and Cook wish to bet upon the winner in a horse race after the race was won. Surely this cannot be the natural result and intent of the legislature nor of the commission's order in attempting to govern the development of gas in particular, and energy in general, in the state of New Mexico.

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This is the first such hearing ever held before this Commission. It is the first time that it has ever been called upon to rule on these many varied and complex questions. Regrettably, it was thrust upon the Commission. It was seen particularly in view of the many stipulations that were reached under the Commission's guidance that these matters could have been resolved if only Hannifin and Cook had seen fit to take the time to discuss them with Grace.

wrong

The OCC therefore finds itself in the dilemma that it cannot "price the gas" against the clear dictates of the power of the Federal Power Commission to do so. Therefore, on the one hand it cannot decide the essence of this case which is outlined in paragraph 4 of the docket as we have pointed out before, and must defer determination pending federal, administrative and judicial findings. In the alternative, the Commission does have the power in equity to bond or fund against the eventuality of the action of the above-mentioned federal bodies should they find contrarily to the state of facts presented by the applicant. In other words, the alternative to indefinite recess or adjournment or outright dismissal pending uncertain decisions by federal bodies for the OCC to use its powers in equity to bond or fund the operator against any risk factor engendered by the eventuality of the aforementioned federal decisions. If for example having bonded or funded under its authority in equity the Commission arrives at one of the June payout dates, 48 hours apart, it then must account subject to protest for the differential in the escrow, not due directly to the Hannifin and Cook account as a result of its being premature. It must compute the taxes thereupon for aggrieved parties subject to protest and then oddly enough return the remainder of the funds to El Paso Natural Gas because in so determining itself in the question of the temporary certificate going into interstate commerce and thus the funds due and owing Hannifin and Cook are at a higher rate of 3¢ per MCF under said certificate and were clearly paid out under the Grace contract, Exhibit A, and if turned over to Hannifin and Cook directly will act as a ratification of the use by the latter of that contract in its entirety.

In conclusion it becomes clear that in the protracted hearings of August 28 and 29 of this year, through no fault of the Commission, very little was accomplished and what little was achieved thereby was by extravagant methods in time and effort. The reasonableness of the accounting was not altered; true a qualified amendment was permitted. The escrow fund was shown to be at least 48 hours premature and the OCC has the nasty problem of either translating this fund into a form of bonding or at least holding another hearing to extract therefrom taxes and the interests of the aggrieved party. Also, the basic problem of well maintenance, although raised by Grace, was never met, probably resulting in other hearings on this problem as well. True, the variableness of price was demonstrated and hopefully recognized by the Commission and will be acted upon accordingly. Behind it all remains the spectre of parties pioneering a situation the OCC has never before been involved in, and tempting the OCC to become a court of civil procedure. Furthermore, there is the prospect of dealing with questions which the Commission has in the record scrupulously acknowledged its desire to avoid. In no way can a forced pooling or a communitization be translated by Commission action into a forced farmout with all the implications such agreements hold in the oil patch.

Furthermore, please consider the following cited authorities:

El Paso v. O C C 76 NM 268

Jons v. Forrest Oil 44A1074 (1900) (Pa)

New Orleans Gas Co. v. Louisiana Light 115US650 (1885)

Ohio Oil Co. v. Indiana 177 US190 (1900)

Reg Agy Probs re Spacing 7 Rocry Mt. Mineral Low Inst. 165,170 (1962)

Continental Oil v. O C C 70NM310

Simms v. Mechem 72NM186

3NRJ 178 (1963)

Amazon Pet Co v. R R Comm 5FSupp 633 (1934)

Pubco v. O C C 75NM36

State v. Mechem 63NM250

2K Davis Admn Law 436 (1958)

Conservation of Oil v. Gas: A Legal History 1958, 161n43 (Sullivan ed. 1958)

RRC v. Rowan Oil Co. (Tex) 259SW2d173 (1953) 32 Tex L R 350 (1954)

Myers, The Law of Pooling and Unitization Voluntary - Compulsory S 8.01 (4) (1957Suppl961)

Patterson v. Stanolind Oil & Gas Co. Okl. 77P2d83 (1938) app dism 305US376

Superior Oil Co. v. Foote (Miss) 59So2d85 (1952) 370LR2d434 (1954)

Monsanto v. Southern Natural Gas (La) 102So2d223

Superior Oil Co. v. Corp Comms (Okl) 242P2d454

See generally pooling cases collected under Title 42 87.1 Oklahoma S Am Paragraph D as follows:

Meredith, Blanchard v. Corp. Commission, Shell Oil v. Corp. Commission

Denver Oil & Gas v. Corporation Commission

Patterson v. Stanolind

Woodall Co Cases

The relief requested by respondent has been set out at various times. In the final analysis, we submit that the payout date cannot as yet be determined. Therefore, either the request for such determination should be denied or at least deferred. In either case Grace should continue to operate and collect for sale of the production of the well. Except that an escrow of funds pertaining to all other interests should be established pending final federal determination.

Respectfully submitted,

F B Howden

F. B. Howden

Rec'd
10/19/73
OCC SF

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D.L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
WITHHOLDING PERIOD

APPLICATION FOR REHEARING

Comes now Michael P. Grace II, Respondant in the above entitled cause, and applies to the Oil Conservation Commission for a rehearing in repsect to the following matters determined by its order;

To Wit:
Findings 13 through 18 and paragraphs
4 and 12 of the Order

All in the repsect that the failure or refusal of the Commission to consider and apply the anticipated impact of FPC price rollbacks as to the date of payout is erroneous.

F B Howden

FREDERICK B. HOWDEN
Attorney for Michael P. Grace III,
Respondant
400 7th NW
Albuquerque, New Mexico 87101

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

I. R. TRUJILLO
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

October 23, 1973

CERTIFIED - RETURN
RECEIPT REQUESTED

Fredrick B. Howden, Esq.
400 7th N.W.
Albuquerque, New Mexico 87101

Re: Application for rehearing
Case 5054
Order No. R-4432-A

Dear Mr. Howden:

Subsection 65-3-22(a), NMSA, 1953, provides inter alia:

> Within twenty (20) days after entry of any order or decision of the Commission, any person affected thereby may file with the Commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous....

As you will note, Order No. R-4432-A was entered on September 28, 1973. The statutorily prescribed time period within which affected persons could make application for rehearing expired on October 18, 1973 and Order No. R-4432-A became final on that date.

The application which you had hand delivered to the Commission in the late afternoon of October 19, 1973, for Michael P. Grace, was, not timely filed and, therefore, no rehearing can be granted in this case.

Very truly yours,

OIL CONSERVATION COMMISSION

A. L. Porter, Jr.

A. L. PORTER, JR.
SECRETARY-DIRECTOR

ALP/WFC/uh
cc: Mr. Michael P. Grace
Mr. George Hunker, Esq.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

RECEIVED
SEP
OIL CONSERVATION COMM
Santa Fe

In the Matter of	)	
	)	
D. L. Hannifin	)	Docket No. CI73-940
	)	
Joe Don Cook	)	

PETITION OF
MICHAEL P. GRACE II AND CORINNE GRACE
FOR LEAVE TO INTERVENE
AND
REQUEST FOR PERMISSION TO FILE LATE

Michael P. Grace II and Corinne Grace (Petitioners), pursuant to Section 15(a) of the Natural Gas Act and Section 1.8 of the Commission's Rules of Practice and Procedure, hereby respectfully petition the Commission for leave to intervene in the above-captioned proceeding. In support hereof, Petitioners respectfully show as follows:

1. The names and addresses of the persons to whom all communications concerning this petition should be addressed are:

Michael P. Grace II
Corinne Grace
1141 E. Bethany Home Rd.
Phoenix, Arizona 85914

Albert J. Feigen, Esq.
1101 - 17th St., N.W.
Washington, D.C. 20036

2. Petitioners are individuals engaged in the exploration for and production of natural gas on leaseholds in Eddy County, New Mexico. Sales of the natural gas produced from said leaseholds are being made to El Paso Natural Gas Company (El Paso) pursuant to a Gas Purchase Agreement dated March 1, 1973, between Petitioners and El Paso and under authorization of the Commission by order issued on March 16, 1972, in Docket No. CS72-628 granting Petitioners a small producer certificate of public convenience and necessity. The deliveries and sales of gas being made by Petitioners in Eddy County, New Mexico, are of production from the Grace-Atlantic No. 1 Well in the South Carlsbad Morrow Field.

3. On June 29, 1973, D. L. Hannifin and Joe Don Cook (Hannifin and Cook) filed an application in Docket No. CI73-940 for a limited term certificate of public convenience and necessity with pre-granted abandonment authority pursuant to Section 7(c) of the Natural Gas Act, for the sale of gas to El Paso from the Grace-Atlantic No. 1 Well in the South Carlsbad Morrow Field, Eddy County, New Mexico. Hannifin and Cook, owners of 50% interest in the Grace-Atlantic No. 1 Well, propose to sell to El Paso approximately 210,000 Mcf of gas per month for a period of twelve months following the expiration of the initial 60-day delivery period

which is alleged to have commenced on June 9, 1973, pursuant to a letter agreement dated June 9, 1973. The proposed rate is 55 cents per Mcf, subject to upward and downward Btu adjustment.

By order issued on September 13, 1973, the Commission set this matter for hearing on October 4, 1973, and directed that Hannifin and Cook and any supporting party shall file and serve their testimony and exhibits in support of their position.

4. In a consolidated proceeding before the Oil Conservation Commission of New Mexico (New Mexico Commission) which proceedings resulted from the separate applications of Hannifin and Cook (Case No. 4819) and Petitioners (Case No. 4836) for compulsory pooling of all mineral interests underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled at an orthodox location for said unit, the New Mexico Commission, after hearing held on September 27, 1972, entered an order on November 8, 1972, establishing said entire S/2 of Section 24, as a proration unit, directing that a well be drilled at a standard location in said Section 24, and designating your Petitioners as operators of the proposed well and unit. A conformed copy of said order is attached hereto and made a part hereof.

In light of the compulsory unitization of the leaseholds herein involved and the designation of your Petitioners as operators by the New Mexico Commission, the effect is the establishment of an operating agreement under compulsion. It is submitted, therefore, that the proposed sale by Hannifin and Cook is in contravention of the Order of the New Mexico Commission as well as Section 154.91(b) of the Commission's Regulations under the Natural Gas Act and that Hannifin and Cook are without right and authority to make the sales of gas proposed to El Paso.

5. On the basis of the foregoing, Petitioners submit that they have a direct and substantial interest in the subject matter of this proceeding; that their rights and interests may be adversely affected by the outcome of these proceedings; that such interests are not adequately represented by other parties; and that it is in the public interest that Petitioners be permitted to intervene herein.

6. Petitioners submit that their late intervention herein will not cause delay since Petitioners would participate in these proceedings as now ordered to be heard on October 4, 1973. Petitioners have only very recently become cognizant of the filing of the application herein and have retained counsel in this matter only in the past several days.

Petitioners submit that they have shown good cause for this late intervention and, accordingly, respectfully request that they be permitted to file this petition for leave to intervene.

WHEREFORE, Petitioners respectfully pray that they be permitted to intervene in and become a party to these proceedings with the right to have notice of and appear at all hearings; to produce witnesses and present evidence; to be heard by counsel or other representatives; to submit briefs; to argue orally if oral argument is held.

Respectfully submitted,

MICHAEL P. GRACE II
CORINNE GRACE

(signed) Albert J. Feigen

Albert J. Feigen
Their Attorney

1101 - 17th Street, N.W.
Washington, D.C. 20036

Dated: September 20, 1973

DISTRICT OF COLUMBIA: ss

Albert J. Feigen, being first duly sworn, deposes and says that he is attorney for Michael P. Grace II and Corinne Grace; that he has read the foregoing Petition for Leave to Intervene and knows the contents thereof; that he has authority to execute the same for and on behalf of said Petitioners and has so done; that the statements and matters set forth therein are true and correct to the best of his knowledge, information and belief.

(signed) Albert J. Feigen

Albert J. Feigen

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 20th day of September, 1973.

Anita J. Catterton

Anita J. Catterton

My Commission expires November 15, 1974

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASES NOS. 4819 AND 4836
Order No. R-4432

APPLICATION OF D. L. HANNIFIN FOR
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE II
AND CORINNE GRACE FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on September 27, 1972, at Santa Fe, New Mexico, before Examiner Elvis A. Utz.

NOW, on this 8th day of November, 1972, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That in Case No. 4819, the applicant, D. L. Hannifin, seeks an order pooling all mineral interests underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(3) That in Case No. 4836, the applicants, Michael P. Grace II and Corinne Grace, seek an order pooling all mineral interests down to and including the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled at an orthodox location for said unit.

(4) That both applicants, D. L. Hannifin and Michael P. Grace II and Corinne Grace, seek to be named operator of the unit to be pooled.

(5) That Cases Nos. 4819 and 4836 were consolidated as both cases involve the same lands.

(6) That the evidence indicates that the entire S/2 of the above-described Section 24 can reasonably be presumed productive of gas from the South Carlsbad Gas Pool.

(7) That the evidence indicates that the entire S/2 of the above-described Section 24 can be efficiently and economically drained and developed by a well located at a point 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(8) That there are interest owners in the proposed 320-acre proration unit who have not agreed to pool their interests.

(9) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in the unit the opportunity to receive without unnecessary expense his just and fair share of the gas in the pool, all mineral interests in the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, should be pooled to form a 320-acre standard unit to be dedicated to a well to be drilled at a standard location in said Section 24.

(10) That Michael P. Grace II should be designated the operator of the proposed well and unit.

(11) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(12) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 25% thereof as a reasonable charge for the risk involved in the drilling of the well.

(13) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that said actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(14) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his

share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(15) That $135.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator should be authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(16) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

IT IS THEREFORE ORDERED:

(1) That all mineral interest, whatever they may be, in the South Carlsbad-Morrow Gas Pool underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 320-acre proration unit to be dedicated to a well to be drilled at a standard location in Section 24.

(2) That Michael P. Grace II is hereby designated the operator of the subject well and unit.

(3) That the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs within 30 days following the date of this order.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of actual well costs within 60 days following completion of the well; that if no objection to the actual well

costs are received by the Commission, and the Commission has not objected within 60 days following completion of the well, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 60-day period, the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhol the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 60 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 25% of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That $135.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

dr/

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of foregoing document upon the following persons in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

D. L. Hannifin
P.O. Box 182
Roswell, New Mexico 88201

Joe Don Cook
P.O. Box 159
Roswell, New Mexico 88201

Walter G. Henderson, Esq.
El Paso Natural Gas Company
P.O. Box 1492
El Paso, Texas 79978

Robert N. Harbor
El Paso Natural Gas Company
310 Suffridge Building
1715 K Street, N.W.
Washington, D.C. 20006

Oil Conservation Commission of
New Mexico
Santa Fe, New Mexico 87501

Dated at Washington, D.C. this 20th day of September, 1973.

(signed) Albert J. Feigen

Albert J. Feigen

El Paso Natural Gas Company

El Paso, Texas 79978

September 7, 1973

Michael P. Grace II and Corrine Grace
1141 East Bethany Home Road
Phoenix, Arizona 85017

Dear Mr. and Mrs. Grace:

Grace Atlantic #1 Well
South Carlsbad-Morrow Pool

Reference is made to our July 19, 1973 letter concerning the subject well.

This well reflects a 851,242 MCF overproduced status as of July 31, 1973 in the September, 1973 NMOCC Gas Proration Schedule and is marked as being more than six times overproduced. During August, 1973, the well produced more than twice its current allowable, and at the end of August is approximately 1,080,000 MCF overproduced.

The well will be marked as being more than six times overproduced in the October, 1973 Gas Proration Schedule, and it is our understanding that the mandatory shut-in provisions by the NMOCC will commence on September 30, 1973 in this field.

In the meantime, we recommend your shutting-in the well now. This is essential when considering the level of current allowables if we are to be able to rely upon production from your well during the upcoming winter season.

Should you have any questions or desire to discuss this matter, please contact us at your earliest convenience.

Very truly yours,

John B. Magruder

JOHN B. MAGRUDER, Director
Gas Proration Department

JBM:bjs

Permian distribution
made 9-7-73.

DRAFT

WFC/dr

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D. L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
WITHHOLDING PERIOD.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on AUGUST 28 AND 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this ______ day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R=4432 created a standard communitized unit comprised of 320 acres; named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest and authorized the drilling of the Grace Atlantic well which was drilled at a standard location to which was dedicated the above-described acreage.

(4) On July 30, 1973, D. L. Hannifin and Joe Don Cook, through their attorney, made application to the Commission seeking a determination of the reasonable well costs of the Grace Atlantic well, and a determination of when Michael P. Grace II had been fully compensated for all reasonable well costs and the 25 percent risk charges and the pro rata share of reasonable well costs attributable to Hannifin and Cook on the well.

(5) That the parties stipulated to the following facts:

(a) That the original cost of the well is $439,986.35 as was timely filed by the operator and is therefore subject to the 25 percent risk factor provided in Order No. R-4432.

(b) That additional charges have been incurred by the operator in the amount of $25,694.75 and should be divided equally between the parties.

(c) That the Grace share of these costs (50 percent of the original costs and 50 percent of the additional costs) is $232,840.56.

(d) That the Hannifin and Cook share of these costs (50 percent of the original costs, a 25 percent penalty thereon and 50 percent of the additional costs) is $287,838.84.

(e) Thatthe total well costs are $520,679.40.

(f) That each party should pay 50 percent of the reasonable charge for supervision (combined fixed rates).

(g) That the reasonable charge for supervision pursuant to Commission Order No. R-4432, is $135 per month which totals $405 for the months of April, May and June, 1973; $202.50 of which should be paid by each of the two parties.

(h) That the Grace total share of all costs is $233,043.06.

(i) That the Hannifin and Cook share of all costs is $288,041.34.

(j) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date including taxes would be June 20, 1973 if a royalty figure of 18.75 percent is applied to the portion of the unit leased by Hannifin and Cook.

(k) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date, including taxes, would be June 22, 1973, if the Grace royalty of 21.85 percent on their portion of the unit is averaged with the Hannifin and Cook royalty of 18.75 percent on their portion of the unit for determining the cost of the well.

(6) That the royalty for the Hannifin portion of this unit is 18.75 percent and the royalty for the Grace portion 21.875 percent and each of these is independent and separate from the other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the pay out date of the Grace Atlantic well.

(7) That there is a possibility of a rollback in the price that is being paid for the gas from the Grace Atlantic well as a result in a possible change in Federal policy.

xv for support in transcript

(8) That such a rollback should not exceed the present area rate for the Permian Basin which is 35¢ per MCF plus BTU adjustment.

(9) That pursuant to the stipulation of the parties, the Grace Atlantic well was paid out on June 20, 1973.

(10) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between the 35¢ per MCF plus BTU adjustment figure and the 52¢ per MCF plus BTU adjustment figure should be paid into escrow with an escrow agent agreed upon among the parties.

(11) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he had had to make as for Hannifin and Cook's interest a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

IT ISTHEREFORE ORDERED:

(1) That the 18.75 percent royalty of the Hannifin portion of the subject unit and the 21.875 percent royalty for the Grace portion of the subject unit are independent and separate from each other and cannot be pooled or averaged at the discretion of the opeaator into a uniform royalty percentage for the purpose of determining the payout date of the Grace-Atlantic well.

(2) That the gas price to be used in determining the payout date of the Grace-Atlantic well is 52¢ per MCF plus BTU adjustment.

(3) That pursuant to the stipulation of the parties, the Grace Atlantic well paid out on June 20, 1972.

(4) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between 35¢ per MCF plus BTU adjustment and 52¢ per MCF plus BTU adjustment shall be paid into escrow with an escrow agent agreed upon among the parties.

(5) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he has had to make for Hannifin and Cook's interest as a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

(6) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

DRAFT

WFC/dr

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D. L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
WITHHOLDING PERIOD.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on AUGUST 28 AND 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this ______ day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R=4432 created a standard communitized unit comprised of 320 acres; named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest and authorized the drilling of the Grace Atlantic well which was drilled at a standard location to which was dedicated the above-described acreage.

(4) On July 30, 1973, D. L. Hannifin and Joe Don Cook, through their attorney, made application to the Commission seeking a determination of the reasonable well costs of the Grace Atlantic well, and a determination of when Michael P. Grace II had been fully compensated for all reasonable well costs and the 25 percent risk charges and the pro rata share of reasonable well costs attributable to Hannifin and Cook on the well.

(5) That the parties stipulated to the following facts:

(a) That the original cost of the well is $439,986.35 as was timely filed by the operator and is therefore subject to the 25 percent risk factor provided in Order No. R-4432.

(b) That additional charges have been incurred by the operator in the amount of $25,694.75 and should be divided equally between the parties.

(c) That the Grace share of these costs (50 percent of the original costs and 50 percent of the additional costs) is $232,840.56.

(d) That the Hannifin and Cook share of these costs (50 percent of the original costs, a 25 percent penalty thereon and 50 percent of the additional costs) is $287,838.84.

(e) Thatthe total well costs are $520,679.40.

(f) That each party should pay 50 percent of the reasonable charge for supervision (combined fixed rates).

(g) That the reasonable charge for supervision pursuant to Commission Order No. R-4432, is $135 per month which totals $405 for the months of April, May and June, 1973; $202.50 of which should be paid by each of the two parties.

(h) That the Grace total share of all costs is $233,043.06.

(i) That the Hannifin and Cook share of all costs is $288,041.34.

(j) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date including taxes would be June 20, 1973 if a royalty figure of 18.75 percent is applied to the portion of the unit leased by Hannifin and Cook.

(k) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date, including taxes, would be June 22, 1973, if the Grace royalty of 21.85 percent on their portion of the unit is averaged with the Hannifin and Cook royalty of 18.75 percent on their portion of the unit for determining the cost of the well.

(6) That the royalty for the Hannifin portion of this unit is 18.75 percent and the royalty for the Grace portion 21.875 percent and each of these is independent and separate from the other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the pay out date of the Grace Atlantic well.

(7) That there is a possibility of a rollback in the price that is being paid for the gas from the Grace Atlantic well as a result in a possible change in Federal policy.

X✓ for support in transcript

(8) That such a rollback should not exceed the present area rate for the Permian Basin which is 35¢ per MCF plus BTU adjustment.

(9) That pursuant to the stipulation of the parties, the Grace Atlantic well was paid out on June 20, 1973.

(10) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between the 35¢ per MCF plus BTU adjustment figure and the 52¢ per MCF plus BTU adjustment figure should be paid into escrow with an escrow agent agreed upon among the parties.

(11) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he had had to make as for Hannifin and Cook's interest a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

IT ISTHEREFORE ORDERED:

(1) That the 18.75 percent royalty of the Hannifin portion of the subject unit and the 21.875 percent royalty for the Grace portion of the subject unit are independent and separate from each other and cannot be pooled or averaged at the discretion of the opeaator into a uniform royalty percentage for the purpose of determining the payout date of the Grace-Atlantic well.

(2) That the gas price to be used in determining the payout date of the Grace-Atlantic well is 52¢ per MCF plus BTU adjustment.

(3) That pursuant to the stipulation of the parties, the Grace Atlantic well paid out on June 20, 1972.

(4) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between 35¢ per MCF plus BTU adjustment and 52¢ per MCF plus BTU adjustment shall be paid into escrow with an escrow agent agreed upon among the parties.

(5) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to ~~reimburse~~ compensate him for any reimbursements he has had to make for Hannifin and Cook's interest as a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

(6) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

DRAFT

WFC/dr

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D. L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
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ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on AUGUST 28 AND 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this ______ day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

[payout at 35¢ figure - then recover the balance]

re: payout

what if both parties k and sell gas

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R=4432 created a standard communitized unit comprised of 320 acres; named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest and authorized the drilling of the Grace Atlantic well which was drilled at a standard location to which was dedicated the above-described acreage. Q1's statute - provides for Commission review etc.

(4) On July 30, 1973, D. L. Hannifin and Joe Don Cook, through their attorney, made application to the Commission seeking a determination of the reasonable well costs of the Grace Atlantic well, and a determination of when Michael P. Grace II had been fully compensated for all reasonable well costs and the 25 percent risk charges and the pro rata share of reasonable well costs attributable to Hannifin and Cook on the well.

(5) That the parties stipulated to the following facts:

(a) That the original cost of the well is $439,986.35 as was timely filed by the operator and is therefore subject to the 25 percent risk factor provided in Order No. R-4432.

(b) That additional charges have been incurred by the operator in the amount of $25,694.75 and should be divided equally between the parties.

(c) That the Grace share of these costs (50 percent of the original costs and 50 percent of the additional costs) is $232,840.56.

(d) That the Hannifin and Cook share of these costs (50 percent of the original costs, a 25 percent penalty thereon and 50 percent of the additional costs) is $287,838.84.

(e) Thatthe total well costs are $520,679.40.

(f) That each party should pay 50 percent of the reasonable charge for supervision (combined fixed rates).

(g) That the reasonable charge for supervision pursuant to Commission Order No. R-4432, is $135 per month which totals $405 for the months of April, May and June, 1973; $202.50 of which should be paid by each of the two parties.

(h) That the Grace total share of all costs is $233,043.06.

(i) That the Hannifin and Cook share of all costs is $288,041.34.

(j) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date including taxes would be June 20, 1973 if a royalty figure of 18.75 percent is applied to the portion of the unit leased by Hannifin and Cook.

(k) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date, including taxes, would be June 22, 1973, if the Grace royalty of 21.85 percent on their portion of the unit is averaged with the Hannifin and Cook royalty of 18.75 percent on their portion of the unit for determining the cost of the well.

(6) That the royalty for the Hannifin portion of this unit is 18.75 percent and the royalty for the Grace portion 21.875 percent and each of these is independent and separate from the other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the pay out date and diversion of monies of the Grace Atlantic well.

(7) That there is a possibility of a rollback in the price that is being paid for the gas from the Grace Atlantic well as a result in a possible change in Federal policy.

(8) That such a rollback should not exceed the present area rate for the Permian Basin which is 35¢ per MCF plus BTU adjustment.

XV for support in transcript P. 18

(9) That pursuant to the stipulation of the parties, the Grace Atlantic well was paid out on June 20, 1973.

(10) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between the 35¢ per MCF plus BTU adjustment figure and the 52¢ per MCF plus BTU adjustment figure should be paid into escrow with an escrow agent agreed upon among the parties.

(11) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he had had to make as for Hannifin and Cook's interest a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

IT IS THEREFORE ORDERED:

(1) That the 18.75 percent royalty of the Hannifin portion of the subject unit and the 21.875 percent royalty for the Grace portion of the subject unit are independent and separate from each other and cannot be pooled or averaged at the discretion of the opeaator into a uniform royalty percentage for the purpose of determining the payout date of the Grace-Atlantic well.

(2) That the gas price to be used in determining the payout date of the Grace-Atlantic well is 52¢ per MCF plus BTU adjustment.

(3) That pursuant to the stipulation of the parties, the Grace Atlantic well paid out on June 20, 1972.

(4) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between 35¢ per MCF plus BTU adjustment and 52¢ per MCF plus BTU adjustment shall be paid into escrow with an escrow agent agreed upon among the parties.

(5) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he has had to make for Hannifin and Cook's interest as a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

(6) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

DRAFT

WFC/dr

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D. L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
WITHHOLDING PERIOD.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on AUGUST 28 AND 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this _______ day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R=4432 created a standard communitized unit comprised of 320 acres; named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest and authorized the drilling of the Grace Atlantic well which was drilled at a standard location to which was dedicated the above-described acreage. GT's statute - provides for Commission review etc.

(4) On July 30, 1973, D. L. Hannifin and Joe Don Cook, through their attorney, made application to the Commission seeking a determination of the reasonable well costs of the Grace Atlantic well, and a determination of when Michael P. Grace II had been fully compensated for all reasonable well costs and the 25 percent risk charges and the pro rata share of reasonable well costs attributable to Hannifin and Cook on the well.

(5) That the parties stipulated to the following facts:

(a) That the original cost of the well is $439,986.35 as was timely filed by the operator and is therefore subject to the 25 percent risk factor provided in Order No. R-4432.

(b) That additional charges have been incurred by the operator in the amount of $25,694.75 and should be divided equally between the parties.

(c) That the Grace share of these costs (50 percent of the original costs and 50 percent of the additional costs) is $232,840.56.

(d) That the Hannifin and Cook share of these costs (50 percent of the original costs, a 25 percent penalty thereon and 50 percent of the additional costs) is $287,838.84.

(e) Thatthe total well costs are $520,679.40.

(f) That each party should pay 50 percent of the reasonable charge for supervision (combined fixed rates).

(g) That the reasonable charge for supervision pursuant to Commission Order No. R-4432, is $135 per month which totals $405 for the months of April, May and June, 1973; $202.50 of which should be paid by each of the two parties.

(h) That the Grace total share of all costs is $233,043.06.

(i) That the Hannifin and Cook share of all costs is $288,041.34.

(j) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date including taxes would be June 20, 1973 if a royalty figure of 18.75 percent is applied to the portion of the unit leased by Hannifin and Cook.

(k) That if a price of 52¢ per MCF plus BTU adjustment is used, the pay out date, including taxes, would be June 22, 1973, if the Grace royalty of 21.85 percent on their portion of the unit is averaged with the Hannifin and Cook royalty of 18.75 percent on their portion of the unit for determining the cost of the well.

(6) That the royalty for the Hannifin portion of this unit is 18.75 percent and the royalty for the Grace portion 21.875 percent and each of these is independent and separate from the other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the pay out date of the Grace Atlantic well.

(7) That there is a possibility of a rollback in the price that is being paid for the gas from the Grace Atlantic well as a result in a possible change in Federal policy.

XV for support in transcript

(8) That such a rollback should not exceed the present area rate for the Permian Basin which is 35¢ per MCF plus BTU adjustment.

(9) That pursuant to the stipulation of the parties, the Grace Atlantic well was paid out on June 20, 1973.

(10) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between the 35¢ per MCF plus BTU adjustment figure and the 52¢ per MCF plus BTU adjustment figure should be paid into escrow with an escrow agent agreed upon among the parties.

(11) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he had had to make as for Hannifin and Cook's interest a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

IT ISTHEREFORE ORDERED:

(1) That the 18.75 percent royalty of the Hannifin portion of the subject unit and the 21.875 percent royalty for the Grace portion of the subject unit are independent and separate from each other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the payout date of the Grace-Atlantic well.

(2) That the gas price to be used in determining the payout date of the Grace-Atlantic well is 52¢ per MCF plus BTU adjustment.

(3) That pursuant to the stipulation of the parties, the Grace Atlantic well paid out on June 20, 1972.

(4) That to protect the operator from potential damage which might result from a rollback in the price of natural gas at the wellhead, the difference between 35¢ per MCF plus BTU adjustment and 52¢ per MCF plus BTU adjustment shall be paid into escrow with an escrow agent agreed upon among the parties.

(5) That all funds shall remain in escrow until so ordered by the Commission, pursuant to hearing on its own motion or motion of either party, at which time all funds, or a proportion thereof, shall be paid to Michael P. Grace II, the operator, to compensate ~~reimburse~~ him for any reimbursements he has had to make for Hannifin and Cook's interest as a result of a change in Federal policy as to the price of natural gas at the wellhead, the remainder of which shall be paid to Hannifin and Cook.

(6) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

DRAFT

WFC/dr

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION OF NEW MEXICO FOR THE PURPOSE OF CONSIDERING:

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D. L. HANNIFIN AND JOE DON COOK FOR DETERMINATION OF REASONABLE WELL COSTS AND FOR AN ORDER TERMINATING OPERATOR'S WITHHOLDING PERIOD.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on AUGUST 28 AND 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this ______ day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R-4432 created a standard communitized unit comprising ~~of~~ 320 acres, named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest and authorized the drilling of a ~~the Grace Atlantic~~ well ~~which was~~ for the subject unit to be drilled at a standard location ~~to which was dedicated the above described acreage~~ for the South Carlsbad-Morrow Gas Pool.

applied to the other half of the total production ~~attributable~~ from the well.

(3) That a tax rate of 6.419 percent of the production attributable to the SE/4 of said Section 24 shall be used in determining ~~the~~ date of pay out for the total share of well costs attributable to Hannifin and Cook through June, 1973.

(4) That the gas price to be used in determining the date of payout for the subject well shall be $0.52 per MCF plus $0.10036 per MCF BTU adjustment, for a total of $0.62036 per MCF of gas.

(5) That the original ~~estimated~~ well costs for the subject well are $439,986.35, one-half of which, or $219,993.18, are to be borne by Michael P. Grace II and one-half of which plus a 25 percent charge for risk, or $274,991.47, are to be borne by D. L. Hannifin and Joe Don Cook.

(6) That additional ~~charges~~ costs incurred, ~~totalling~~ $25,694.75, are ~~to be~~ not subject to any charge for risk, and shall be shared equally by the two parties to this hearing, Michael P. Grace II, and Hannifin and Cook.

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(13) That any funds derived from the sale of gas from the subject well after 7 o'clock am June 26, 1973, attributable to D.L. Hannifin and Joe Don Cook, and held in escrow by American Bank of Carlsbad shall be released to said Hannifin and Cook subject to agreement in writing between Hannifin and Cook and Michael P. Grace II as to future arrangements, escrow, bonding or whatever ~~may be satisfactory to the parties~~ involved, covering the difference if any between the current sale price of gas from the subject well and the future sale price of gas.

(14) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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(4) That ~~according~~ the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, is subject to a royalty payment of 18.75 percent; and the working interest ownership of said SE/4 of Section 24 is 81.25 percent; that the SW/4 of said Section 24 is subject to a royalty and overriding royalty payment of 25.0 persent, and the working interest ownership of said SW/4 of Section 24 is 75.0 persent.