

CASE 7199: OCD ON ITS OWN MOTION TO CON-
SIDER AMENDMENTS TO SPECIAL RULES FOR
APPLICATIONS FOR WELLHEAD PRICE CEILING
CATEGORY DETERMINATIONS

Case No.

7199

Application

Transcripts

Small Exhibits

ETC

R-5878-B as amended
Kull 17 Deep High-Pressure Natural Gas and Light Tar. Gas.

Section 4. PRODUCTION ENHANCEMENT GAS

BEFORE EXAMINER NUTTER	
OIL CONSERVATION DIVISION	
OCD	EXHIBIT NO. 2
CASE NO.	7199

- a. FERC Form No. 121;
- b. Division Form C-132 and the required attachments;
- c. A detailed statement describing the production enhancement work that has been performed on the well, including the dates such work was commenced and completed, or that will be performed on the well;
- d. An itemized statement of costs incurred in performing the production enhancement work described in 18 CFR § 271.704(d), including copies of invoices and bills for such work or, if the work has not yet been completed, estimates of such cost;
- e. An statement estimating, for the five year period beginning from the month in which the application is filed, the units of gas production (MMBtu's) that:
 - (1) would be produced from the well if the production enhancement work had been completed on the day that the application is filed; and
 - (2) would be produced from the well if the production enhancement work if not performed or had not been performed;
- f. The calculation, based on the estimates required by subparagraph (e) above, that is required by 18 CFR § 271.704(c)(1)(v);
- g. The renegotiated price and a copy of that portion of the sales contract that authorizes collections of such price;
- h. A statement by the applicant, under oath, that:
 - (1) The production enhancement work is necessary, and can be reasonably expected, to enhance production;
 - (2) The maximum lawful price that would be applicable but for qualification of the gas under 18 CFR § 271.704, does not, or will not,

provide adequate incentive for the performance of the production enhancement work;

(3) But for the availability of a price at least as high as the renegotiated price specified in subparagraph (f), the production enhancement work would not have been or will not be performed;

(4) The production enhancement work was not commenced before May 29, 1980;

(5) To the best of the applicant's knowledge and belief, the estimates required by subparagraph (e) above are reasonable; and

(6) The applicant has no knowledge of any other information not described in the application which is inconsistent with these statements and estimates;

i. A statement by the purchaser, under oath, that to the best of the purchaser's knowledge or belief:

(1) There is a reasonable basis for the statements and estimates made by the applicant; and

(2) The purchaser has no knowledge of any information not described in the application which is inconsistent with such statements and estimates:

SANTA FE, NEW MEXICO 87501
APPLICATION FOR WELLHEAD
PRICE CEILING CATEGORY DETERMINATION

1. FOR DIVISION USE ONLY: DATE COMPLETE APPLICATION FILED _____ DATE DETERMINATION MADE _____ WAS APPLICATION CONTESTED? YES _____ NO _____ NAME(S) OF INTERVENOR(S), IF ANY: _____		5A. Indicate Type of Lease STATE <input type="checkbox"/> FEDERAL <input type="checkbox"/> 5. State Oil & Gas Lease No. _____ 7. Unit Agreement Name _____ 8. Farm or Lease Name _____ 9. Well No. _____ 10. Field and Pool, or Wildcat _____ 12. County _____
2. Name of Operator _____		
3. Address of Operator _____		
4. Location of Well UNIT LETTER _____ LOCATED _____ FEET FROM THE _____ Line AND _____ FEET FROM THE _____ LINE OF SEC. _____ TWP. _____ SEC. _____ RMPM _____		
11. Name and Address of Purchaser(s) _____		

WELL CATEGORY INFORMATION

Check appropriate box for category sought and information submitted.

1. Category(ies) Sought (By NGPA Section No.) _____

2. All Applications must contain:

- ☐ a. C-101 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK
☐ b. C-105 WELL COMPLETION OR RECOMPLETION REPORT
☐ c. DIRECTIONAL DRILLING SURVEY, IF REQUIRED UNDER RULE 111
☐ d. AFFIDAVITS OF MAILING OR DELIVERY

3. In addition to the above, all applications must contain the items required by the applicable rule of the Division's "Special Rules for Applications For Wellhead Price Ceiling Category Determinations" as follows:

A. NEW NATURAL GAS UNDER SEC. 102(c)(1)(B) (using 2.5 Mile or 1000 Feet Deeper Test)

☐ All items required by Rule 14(1) and/or Rule 14(2)

B. NEW NATURAL GAS UNDER SEC. 102(c)(1)(C) (new onshore reservoir)

☐ All items required by Rule 15

C. NEW ONSHORE PRODUCTION WELL

☐ All items required by Rule 16A or Rule 16B

D. DEEP, HIGH-COST NATURAL GAS; and TIGHT FORMATION NATURAL GAS and PRODUCTION ENHANCEMENT GAS

☐ All items required by Rule 17(1), Rule 17(2), or Rule 17(3), or Rule 17(4).

E. STRIPPER WELL NATURAL GAS

☐ All items required by Rule 18

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED
HEREIN IS TRUE AND COMPLETE TO THE BEST OF MY
KNOWLEDGE AND BELIEF.

NAME OF APPLICANT (Type or Print) _____

SIGNATURE OF APPLICANT _____

Title _____

Date _____

FOR DIVISION USE ONLY

- ☐ Approved
☐ Disapproved

The information contained herein includes all
of the information required to be filed by the
applicant under Subpart B of Part 274 of the
FERC regulations.

EXAMINER _____

BEFORE EXAMINER NUTTER

OIL CONSERVATION DIVISION

EXHIBIT NO. 3

CASE NO. _____

SANTA FE, NEW MEXICO 87501
APPLICATION FOR WELLHEAD
PRICE CEILING CATEGORY DETERMINATION

1. FOR DIVISION USE ONLY: DATE COMPLETE APPLICATION FILED _____ DATE DETERMINATION MADE _____ WAS APPLICATION CONTESTED? YES _____ NO _____ NAME(S) OF INTERVENOR(S), IF ANY: _____		3A. Indicate Type of Lease STATE <input type="checkbox"/> FEDERAL <input type="checkbox"/> 3. State Oil & Gas Lease No. _____ <div style="background-color: black; width: 100px; height: 20px; margin: 5px 0;"></div> 7. Unit Agreement Name _____ 8. Farm or Lease Name _____ 9. Well No. _____ 10. Field and Pool, or Wildcat _____ 12. County _____
2. Name of Operator _____		
3. Address of Operator _____		
4. Location of Well UNIT LETTER _____ LOCATED _____ FEET FROM THE _____ LINE AND _____ FEET FROM THE _____ LINE OF SEC. _____ TWP. _____ REC. _____ RMPM _____		
11. Name and Address of Purchaser(s) _____		

WELL CATEGORY INFORMATION

Check appropriate box for category sought and information submitted.

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2. All Applications must contain:

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☐ b. C-105 WELL COMPLETION OR RECOMPLETION REPORT
☐ c. DIRECTIONAL DRILLING SURVEY, IF REQUIRED UNDER RULE 111
☐ d. AFFIDAVITS OF MAILING OR DELIVERY

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A. NEW NATURAL GAS UNDER SEC. 102(c)(1)(B) (using 2.5 Mile or 1000 Feet Deeper Test)

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D. DEEP, HIGH-COST NATURAL GAS; and TIGHT FORMATION NATURAL GAS and PRODUCTION ENHANCEMENT GAS

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SIGNATURE OF APPLICANT _____

Title _____

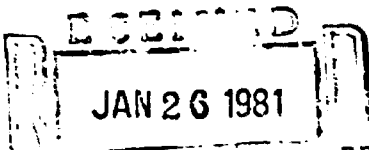
Date _____

FOR DIVISION USE ONLY

- ☐ Approved
☐ Disapproved

The information contained herein includes all
of the information required to be filed by the
applicant under Subpart B of Part 274 of the
FERC regulations.

EXAMINER _____



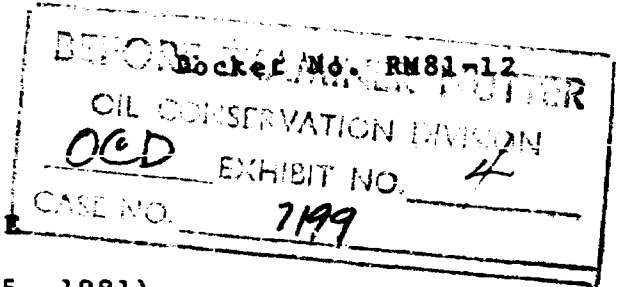
OIL CONSERVATION DIVISION

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Before ^{SANTA FE} Commissioners: Georgiana Sheldon, Acting Chairman;
Matthew Holden, Jr., George R. Hall
and J. David Hughes.

Interim Rule Under)
Section 108 of the NGPA)
Concerning Temporary)
Pressure Buildup in)
Qualifying Stripper Wells)



INTERIM RULE

(Issued January 15, 1981)

I. INTRODUCTION

In Subpart H of its regulations, the Federal Energy Regulatory Commission (Commission) has established rules implementing section 108 of the Natural Gas Policy Act of 1973 (NGPA), which sets a maximum lawful price for natural gas from stripper wells. Generally, the NGPA defines a stripper well as one that produces no more than an average of 60 Mcf of natural gas per production day in the preceding 90-day production period. The Commission is adopting herein an interim rule amending §§ 271.804, 271.805, 271.806, and 274.206 of its regulations to provide a special rule governing temporary over-production from wells which have previously been determined to qualify as stripper wells.

II. DISCUSSION

Section 108 of the NGPA provides that in order for a well to qualify as a stripper well it must produce an average of 60 Mcf or less of natural gas per production day during the preceding 90-day production period. A well which exceeds the 60 Mcf limit

DC-C-31

during any 90-day production period loses its stripper well status unless the increased production is shown to be the result of "recognized enhanced recovery techniques." See section 108(b)(2).

The Commission has also recognized another situation in which a well may exceed the 60 Mcf per production day limit without losing its stripper well status. Section 271.804(d) of the regulations provides that once a well qualifies as a stripper well, it may retain that status so long as production does not exceed 60 Mcf per production day on a yearly basis, if the well is determined to be "seasonally affected." This "seasonally affected" rule was promulgated in order to allow for cyclical variations in production which result from seasonal pressure differentials on a pipeline system. Without this rule, many stripper wells would have to go through disqualification and requalification procedures each year.

The Commission now finds that there exists another situation that is causing temporary disqualification and subsequent requalification of legitimate stripper wells, placing an undue administrative burden on producers, states, and the Commission. This situation arises when a well is required to be temporarily shut-in to permit, for example, pipeline or wellhead maintenance or repair. During the shut-in days, pressure builds up in the well bore. When the well is reopened to the line, gas is produced at a higher rate of production than that at which the well normally

produces, and the shut-in days do not qualify as "production days" for purposes of determining the well's rate of production. (See § 271.803(d).) In such situations the well's average rate of production may exceed the 60 Mcf per production day limit for the relevant 90-day production period, and the well may be disqualified as a stripper. As soon as the pressure buildup is dissipated and the well returns to its normal rate of production, the producer must submit a new application for a determination that the well is a stripper well, file a Form 121, fulfill the interim collection filing requirements 1/ and comply with all of the other requirements necessary to receive a well category determination and collect the maximum lawful price under that category.

The Commission believes that once a well has been determined to be a stripper well, short-term over-production resulting from temporary pressure buildups such as those described above should not cause the well to lose its legitimate stripper status. The Commission further believes that it is within the spirit and intent of section 108 to encourage continued production from marginal wells by removing undue administrative burdens which may

1/ Recently adopted modifications to the interim collection filing requirements applicable for stripper wells are set out fully in the Final Rule in Docket No. RM80-54, Amendment to Part 273 Regulations Under the Natural Gas Policy Act.

result when a stripper well is disqualified as a result of temporary pressure buildup. Accordingly, the Commission is acting under its administrative and rulemaking authority set forth in section 501(a) of the NGPA to promulgate a rule that will provide for continuing qualification of stripper wells that experience temporary pressure buildups.

III. SUMMARY OF REGULATIONS

Section 271.804 (Special rules) is being amended to add a rule which provides that a previously qualifying stripper well that produces gas in excess of an average of 60 Mcf per production day during any 90-day production period shall not be disqualified from stripper status if the jurisdictional agency finds that:

(A) the rate of production in excess of 60 Mcf per production day resulted solely from pressure buildup when the well was temporarily closed to the line;

(B) total production for the relevant 90-day production period did not exceed 5400 Mcf; 2/ and

2/ The 5400 Mcf figure has been selected because it represents the maximum amount of gas that can be produced from a well during a 90-day production period if that well is to maintain its stripper well status, i.e., 60 Mcf per day X 90 days = 5400 Mcf.

(C) the well would have produced at a rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during that period.

Section 271.805 is amended to provide that if a well's production exceeds the 60 Mcf limit for any 90-day production period, the well operator may file with the jurisdictional agency a petition for a determination that the increased production is the result of temporary pressure buildup. The jurisdictional agency shall then make an affirmative or negative finding on the petition and forward such finding to the Commission for review. Sections 271.806 and 274.206 are amended to conform to this procedure.

IV. EFFECTIVE DATE

This interim rule relieves restrictions previously placed on applicants under the Commission's regulations. Accordingly, it is being made effective immediately. This rule shall not become final, however, until the Commission has had an opportunity to receive oral and written presentation of relevant data, views and arguments.

V. PUBLIC PROCEDUREA. Written Comments

Interested persons are invited to submit comments, data, views, or arguments with respect to this interim regulation. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, and should refer to Docket No. RM81-12. An original and 14 copies should be filed. All comments received prior to 4:30 p.m., February 20, 1981, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the public file that has been established in this docket. This file is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D. C., during regular business hours.

B. Public Hearing

Interested persons may request the opportunity for an oral presentation of their views at a public hearing. Requests for a hearing should be submitted no later than January 30, 1981, to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM81-12. If a public hearing is held in this docket, the time and place will be announced by February 5, 1981.

[Natural Gas Policy Act of 1978, 15 U.S.C. § 3301-3432; Department of Energy Organization Act, 42 U.S.C. § 7101, et seq.; E.O. 12009, 42 Fed. Reg. 46267.]

In consideration of the foregoing, the Commission amends Subpart H, Chapter I, Title 18, Code of Federal Regulations, on an interim basis, as set forth below, effective immediately.

By the Commission.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Acting Secretary.

1. Section 271.804 is amended by adding new paragraph (e), to read as follows:

§ 271.804 Special rules.

* * * * *

(e) Temporary pressure buildup in previously qualifying stripper wells.

(1) A previously qualifying stripper well which produces natural gas at a rate in excess of an average of 60 Mcf per production day during any 90-day production period shall not be disqualified if the jurisdictional agency finds pursuant to a petition filed under §271.805 that:

(i) the rate of production in excess of 60 Mcf per production day is the result of pressure buildup which occurred when the well was temporarily shut-in;

(ii) total production for the relevant 90-day production period did not exceed 5400 Mcf; and

(iii) based on the well's production history and any other available data, the well could reasonably have been expected to produce at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period.

(2) A previously qualifying stripper well is a well which

(i) has been determined by a jurisdictional agency to qualify as a stripper well pursuant to this subpart, and

(ii) has not been disqualified prior to the 90-day production period in which the temporary pressure buildup occurs.

2. Section 271.805(b) is amended to read as follows:

§ 271.805 Continuing qualification.

* * * * *

(b) Petition under § 271.806. (1) The operator may file with the jurisdictional agency:

(i) a motion contesting a notice filed by a purchaser under paragraph (a);

(ii) a petition for a determination under § 271.806 that the increased production of natural gas is:

(A) the result of the application of an enhanced recovery technique;

(B) if the well has not been designated as seasonally affected, the result of seasonal fluctuations; or

(C) the result of pressure buildup which occurred when the well was temporarily shut-in.

(2) A petition or motion filed under subparagraph (1) may be filed at any time after notice is given under paragraph (a). A copy of the petition or motion and of the notice required under paragraph (a)(1) of this section shall be provided to the Commission and to the purchaser.

3. Section 271.806 is amended by revising paragraph (a), to read as follows:

§ 271.806 Jurisdictional agency determination and Commission review.

(a) Petition under §§ 271.804(d) and (e) and 271.803(a).

The jurisdictional agency shall treat the following petitions as if they were applications for initial determinations and shall comply with the applicable provisions of Subpart A of Part 274:

(1) petitions to designate a well as seasonally affected pursuant to § 271.804(d);

(2) petitions to determine that production in excess of an average of 60 Mcf per production day was due to

(i) use of recognized enhanced recovery techniques defined in § 271.803(a), or

(ii) temporary pressure buildup pursuant to § 271.804(e).

4. Section 274.206 is amended by adding a new paragraph (e), to read as follows:

§ 274.206 Stripper well natural gas.

* * * * *

(e) Determination of increased production resulting from temporary pressure buildup. For purposes of a determination under § 271.806(a) that excess production resulted from

temporary pressure buildup in the well bore, the applicant shall file:

(1) The name and addresses of the applicant and purchaser(s);

(2) An identification of the well and accurate reference to,

(i) the original determination qualifying the well as a stripper well, and

(ii) the notice, if any, filed by a purchaser pursuant to § 271.805(a);

(3) The monthly production reports, tax records or billing statements for the 90-day production period in question or, if permitted by the jurisdictional agency's filing requirements, summaries of such records or billing statements;

(4) A statement of the total production for the period in question, and the average production per production day; ✓

(5) A statement of the number of days the well was shut-in and a description of the reason for the shut-in. ✓

(6) Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in. ✓

(7) A statement, under oath, that to the best of his information, knowledge and belief, ✓

(i) the well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period, ✓

(ii) the information supplied is true, and ✓

(iii) the petition for this determination has been served on the jurisdictional agency, the Commission, and any purchaser. ✓

(8) If the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

Rule 21. An application for determination for increased production resulting temporary pressure buildup shall include:

1. Division Form C-132-A and an approved copy of Form C-132 qualifying the well as a stripper well, *if applicable*.
2. A copy of the purchaser's notice, if any, that the average daily production of the well for the relevant 90-day production period has exceeded 60 Mcf.
3. A summary or tabulation of production records for the 90-day production period during which the well's average daily production period exceeded 60 Mcf.
4. A statement of the total production for the period in question, and the average production per production day.
5. A statement of the number of days the well was shut-in and a description of the reason for the shut-in.
6. Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in.
7. A statement, under oath, that to the best of his information, knowledge and belief,
 - a. the well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period,
 - b. the information supplied is true, and
 - c. the ^{Division} petition for this determination has been served on the ~~jurisdictional~~ agency, the ^{FERC} ~~Commission~~, and any purchaser.

DEPT. OF THE INTERIOR	
OIL CONSERVATION DIVISION	
<u>CCD</u>	EXHIBIT NO. <u>5</u>
CASE NO.	<u>7199</u>

APPLICATION FOR CONTINUED STRIPPER CLASSIFICATION

FOR DIVISION USE ONLY:

DATE COMPLETE APPLICATION FILED _____

DATE DETERMINATION MADE _____

WAS APPLICATION CONTESTED? YES _____ NO _____

NAME(S) OF INTERVENOR(S), IF ANY: _____

Name of Operator _____

Address of Operator _____

Location of well _____

ONLY LETTER _____

LOCATED _____

FEET FROM THE _____

LINE _____

FEET FROM THE _____

LINE OF SEC. _____

TWP. _____

REC. _____

SEPM _____

Name and Address of Purchaser(s) _____

3A. Indicate Type of Lease

STATE ☐

REC ☐

3. State Oil & Gas Lease No. _____

7. Unit Agreement Name _____

8. Form or Lease Name _____

9. Well No. _____

10. Field and Pool, or Wildcat _____

12. County _____

CLASSIFICATION

1. Check appropriate box for category sought and information submitted.
2. All applications must contain the items required by the applicable rule of the Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" as follows:

A. Increased production resulting from recognized enhanced recovery techniques

☐ All items required by Rule 19

B. Well is seasonally affected

☐ All items required by Rule 20

✓ C. Increased Production Resulting from Temporary Pressure Buildup

☐ All items required by Rule 21

HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF APPLICANT (Type or Print) _____

SIGNATURE OF APPLICANT _____

Title _____

Address _____

BEFORE EXAMINER MUTTER

OIL CONSERVATION DIVISION

OCD EXHIBIT NO. 6

CASE NO. 7199

FOR DIVISION USE ONLY

☐ Approved

☐ Disapproved

The information contained herein includes all of the information required to be filed by the applicant under Subpart B of Part 274 of the FERC regulations.

EXAMINER _____

APPLICATION FOR CONTINUED STRIPPER CLASSIFICATION

FOR DIVISION USE ONLY:

DATE COMPLETE APPLICATION FILED _____

DATE DETERMINATION MADE _____

WAS APPLICATION CONTESTED? YES _____ NO _____

NAME(S) OF INTERVENOR(S), IF ANY: _____

Name of Operator _____

Address of Operator _____

Location of well _____

UNIT LETTER _____

LOCATED _____

FEET FROM THE _____

LINE _____

FEET FROM THE _____

LINE OF SEC. _____

TWP. _____

SEC. _____

UNSW. _____

Name and Address of Purchaser(s) _____

3A. Indicate Type of Lease

STATE ☐

FEED ☐

3. State Oil & Gas Lease No. _____

7. Unit Agreement Name _____

8. Farm or Lease Name _____

9. Well No. _____

10. Field and Pool, or Wildcat _____

12. County _____

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☒ C. Increased Production Resulting from Temporary Pressure Buildup

☐ All items required by Rule 21

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NAME OF APPLICANT (Type or Print) _____

SIGNATURE OF APPLICANT _____

Title _____

Date _____

FOR DIVISION USE ONLY

☐ Approved

☐ Disapproved

The information contained herein includes all of the information required to be filed by the applicant under Subpart 6 of Part 274 of the FERC regulations.

EXAMINER _____

BEFORE EXAMINER NUTTER
OIL CONSERVATION DIVISION
EXHIBIT NO. 6

APPLICATION FOR CONTINUED STRIPPER CLASSIFICATION

-FOR DIVISION USE ONLY:

DATE COMPLETE APPLICATION FILED _____

DATE DETERMINATION MADE _____

WAS APPLICATION CONTESTED? YES _____ NO _____

NAME(S) OF INTERVENOR(S), IF ANY: _____

Name of Operator

Address of Operator

Location of Well

CORT LETTER LOCATED FEET FROM THE LINE

FEET FROM THE LINE OF SEC. TWO. SEC. SEPM

Name and Address of Purchaser(s)

1A. Indicate Type of Lease

STATE ☐ REC ☐

3. State Oil & Gas Lease No. _____

7. Unit Agreement Name _____

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9. Well No. _____

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NAME OF APPLICANT (Type or Print)

SIGNATURE OF APPLICANT

Title

Date

FOR DIVISION USE ONLY

☐ Approved

☐ Disapproved

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of the information required to be filed by the
applicant under Subpart B of Part 274 of the
FERC regulations.

EXAMINER

BEFORE EXAMINER NUTTER

OIL CONSERVATION DIVISION

EXHIBIT NO. 6

CASE NO. _____

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;
Georgiana Sheldon, Matthew Holden, Jr.,
and George R. Hall.

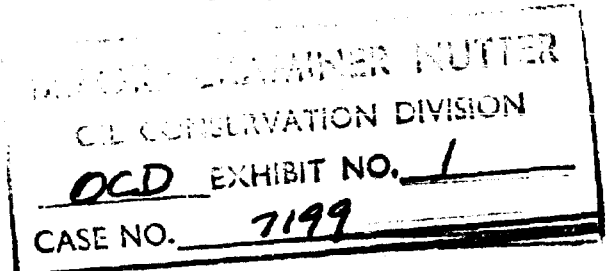
High-Cost Natural Gas:)
Production Enhancement)
Procedures)

Docket No. RM80-50

ORDER NO. 107

FINAL RULE

(Issued November 13, 1980)



On July 25, 1980, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (45 Fed. Reg. 51219, August 1, 1980) to establish an incentive maximum lawful price under section 107 of the Natural Gas Policy Act of 1978 (NGPA) for certain intrastate gas produced from wells on which production enhancement work has been performed. The proposed incentive price was the lesser of the section 109 maximum lawful price or the negotiated contract price. The Commission proposed this incentive price in order to prevent loss of production from wells for which the existing intrastate contract prices permitted under section 105 of the NGPA are insufficient to encourage production enhancement work necessary to maximize or continue production.

We are now promulgating a final rule. During the course of this rulemaking we have reaffirmed our original, general purpose

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to encourage production of gas reserves that would not otherwise be produced. However, the Commission's lack of sufficient information respecting the economic impact of the proposed rule on the natural gas industry and consumers and our inability to elicit enough information during the comment period to permit us to predict the exact nature and extent of that impact dictate that we proceed with caution. 1/ Therefore, we have not extended the scope of the rule to include gas subject to sections 104 and 106(a), 2/ i.e. gas committed or dedicated to interstate commerce; or gas subject to section 106(b), i.e., intrastate rollover contract

1/ Commission action in this regard commenced on June 13, 1979 with the issuance of a "Notice of Inquiry Regarding the Implementation of Section 107(b) and (c) of the Natural Gas Policy Act of 1978" to identify categories of high-cost natural gas and correlative incentive prices. Docket No. RM79-44 (44 Fed. Reg. 34511, June 18, 1979). In response to a petition by the Sun Gas Company (Docket No. RM80-41, filed February 27, 1980), the Commission initiated Docket No. RM80-50 and in that docket, approved in principle on May 29, 1980, proposed a rule classifying natural gas resulting from production enhancement procedures as high-cost natural gas and specifying an incentive price. See Notice of Availability of the Staff Draft, Docket No. RM80-50 June 12, 1980 (45 Fed. Reg. 41449, June 19, 1980); and Memorandum to Public File: Informal Conferences with the Public to Discuss the Staff Draft, Docket No. RM80-50. A Notice of Proposed Rulemaking was issued in RM80-50 on July 25, 1980, and thirty day comment period was announced. Two public hearings were held following the comment period to receive oral comment.

2/ There are additional reasons for excluding section 104 and section 106(a) gas from the scope of this rule. See discussion infra at page 6.

gas. Nor have we increased the incentive price ceiling above the section 109 maximum lawful price, i.e., the price applicable to gas not subject to any other section of Title I. We have also decided to retain those requirements in the rule that are essential to insure that the incentive price provided in this rule is available only when necessary to provide a reasonable incentive for production. 3/ However, based on comments received during this rulemaking, we have extended the scope of this rule to add five production enhancement techniques to the five originally proposed.

I. BACKGROUND

A. The Problem

Section 105 of the NGPA establishes maximum lawful prices for first sales of natural gas that was not committed or dedicated to interstate commerce on November 8, 1978, and that is sold under a contract that was in effect on November 8, 1978. Section 105 also covers sales of gas under successor contracts to such existing

3/ Under section 107 the Commission is empowered to designate certain natural gas as "high cost natural gas" if it is produced under conditions that present extraordinary risks or costs and to establish prices higher than the otherwise applicable maximum lawful price to the extent necessary to provide reasonable incentives for the production of such gas.

contracts. Maximum lawful prices in section 105 are referenced to the price or price terms of the contract on November 9, 1978.

Under section 105(b)(2), a producer whose contract price on date of enactment was above the maximum lawful price for "new" natural gas, i.e. the section 102 price, is entitled to receive the higher of the section 102 price or his contract price, adjusted for inflation. If and when the section 102 price exceeds the contract price (adjusted for inflation), as a result of the effect of the additional section 102 growth factor, 4/ the producer and purchaser can renegotiate the contract price up to the section 102 price.

Under section 105(b)(1), however, the producer whose contract price on November 9, 1978, was less than the section 102 price is only entitled to the lower of the section 102 price or the price under the terms of the contract as of November 9. Therefore, not only is the producer making sales subject to section 105(b)(1) denied the section 102 price, he is also prohibited from renegotiating the contract to obtain a price higher than that determined under the contract's terms on date of enactment. If the producer encounters production problems, he will be unlikely to correct those

4/ In addition to being adjusted by the monthly inflation factor the section 102 maximum lawful price is also escalated monthly by a growth factor.

problems if the section 105(b)(1) price is insufficient to cover the costs of production enhancement work and also return a reasonable profit. Under such circumstances production will probably diminish and, at the point out-of-pocket expenses exceed revenues, the producer will be likely to abandon the well. The result of either abandonment or a decrease in the rate of production may be permanent loss of the unrecovered gas.

The origins of this pricing problem are unique to section 105 5/ and derive from the imposition of federal regulation on contractual relationships that responded to and were created in a very different regulatory environment. The only previous limitations on renegotiation of intrastate contract prices were state law and any restrictions contained in the contract itself. Contracts frequently contained no pricing provision to account for production problems that might develop during the course of producing a well but that were unforeseen at the time the contract was entered into. However, if a purchaser deemed it in his best interests to compensate a producer for correcting such problems in order to obtain additional gas supplies he was free to renegotiate the contract. Thus, prior to the NGPA, a purchaser could assume that he would be able to protect his interests by using renegotiation as a safety valve in such situations.

The advent of the NGPA vitiated that assumption. In section 105(b)(1) Congress "froze" intrastate contract prices in order

5/ See discussion of section 106(b) infra at page 9.

to protect purchasers of very low-priced intrastate gas from the increase in bargaining power accruing to intrastate producers under the NGPA as a result of their ability to sell in the interstate, as well as the intrastate, market free of prior regulatory restraint. 6/ However, prohibiting intrastate producers from charging increased prices also restricts their intrastate purchasers. A purchaser willing to increase the price he pays for gas by providing revenues for production enhancement work in order to insure an increase in gas supply is prevented from agreeing to pay that higher price unless the contract provides, by its terms, a mechanism for increasing the price above that in effect on date of enactment.

This legal restriction confronting producers of gas subject to section 105 does not apply to producers of interstate gas, i.e., gas that is subject to sections 104 and 106(a). 7/ The maximum

6/ Section 601(a)(1)(A), denies Natural Gas Act jurisdiction to any natural gas not committed or dedicated to interstate commerce as of November 8, 1978.

7/ Section 104 of the NGPA provides maximum lawful prices for natural gas that was committed or dedicated to interstate commerce on November 8, 1978 and for which a just and reasonable rate under the Natural Gas Act was in effect on November 8, 1978 for the first sale of such gas.

Section 106(a) provides maximum lawful prices for natural gas that was committed or dedicated to interstate commerce on November 8, 1978 and that is sold under any "rollover contract." A rollover contract is any contract entered into on or after November 9, 1980 for the first sale of gas that was previously subject to a contract that expired at the end of a fixed term.

lawful prices for those sections are based on the just and reasonable rates under section 4 of the Natural Gas Act as of April 1, 1977, adjusted for inflation. If the revenues produced by such prices are inadequate, the problem is attributable to the rate-making methods used under the Natural Gas Act. Buyers and sellers who contracted in that regulatory environment are assumed to have taken these price restrictions into account when deciding to proceed with a transaction. Because any inadequacies in the maximum lawful prices for section 104 or section 106(a) derive from a different regulatory context than those in the section 105 price, we will not deal with them under this rule. 8/

B. The Commission's Solution

The Congress has authorized this Commission to permit higher maximum lawful prices if necessary to provide reasonable incentives to encourage production of gas that is produced at extraordinary risk or cost. 9/ The Commission has decided that an incentive is necessary in order to induce a producer of section 105 gas to perform production enhancement work. We have determined to permit

8/ We note that Congress has provided special repricing mechanisms for such gas in sections 104(b)(2) and 106(c). See note 10, infra.

9/ Section 503, entitled "DETERMINATIONS FOR QUALIFYING UNDER CATEGORIES OF NATURAL GAS," sets out procedural rules

(Footnote continued on next page).

an incentive equal to the lesser of the price under section 109, (a price category reserved by the Congress as a kind of residual or catch-all) or the renegotiated price. The section 109 price as of November 1980 is \$1.929.

Production enhancement work is performed in order to maintain or to increase production from a marginal well or to return an abandoned well to production. 10/ Typical production enhancement operations such as re-entries, recompletions, or the addition of compression are not commonly regarded as presenting extraordinary risks or costs. In certain circumstances, however, cost becomes

9/ Footnote (Cont'd)

regarding category determinations under the NGPA. That section discusses jurisdictional agency authority to make category determinations, the effect of such determinations, and review of such determinations by the Commission and the courts. Section 107(c) specifically provides for determinations to be made in accordance with section 503. Section 503(a)(1)(D) mirrors this provision. On the basis of this authority, the Commission provides in this rule for use of jurisdictional agency determinations to identify qualified production enhancement gas.

10/ The final rule is intended to encourage production of natural gas from wells that require production enhancement work in order to maintain or to enhance production. Production enhancement, as we use the term, must be understood in the context of declining production rates. Production enhancement would include operations calculated to maintain the current rate of decline in production if that rate would otherwise accelerate. Enhancement operations are those intended to improve, i.e., to retard, a declining production rate. A successful enhancement operation will increase the amount of gas reserves ultimately produced but need not brake completely the decline in production rate.

extraordinary because it cannot be recouped at the otherwise applicable section 105 price or because it is so high in relation to the price under the contract that the producer simply will not undertake the production enhancement operation in the absence of an incentive price. Nevertheless, the price necessary to induce a producer to perform these types of operations will prove, in almost every case, to be lower than the price that pipeline purchasers would pay for new supplies or that end users would pay for alternative fuels.

For all the above reasons, the Commission has decided to encourage such production enhancement work by providing an incentive price for gas subject to section 105, if such work is performed. As in the proposed rule, the incentive price provided in the final rule is the lesser of the section 109 price or the renegotiated price.

As a general matter the Commission will not at this time extend the incentive price for production enhancement gas to section 106(b) gas. We note that the Congress has provided other repricing mechanisms for such gas in section 106(c). ^{11/} However, in order to avoid

^{11/} Section 106(c) authorizes the Commission to establish a maximum lawful price in excess of that prescribed in section 106 for rollover contract gas. Such a price must be just and reasonable within the meaning of the Natural Gas

(Footnote continued on next page).

the anomalous result that would occur if the contract for production enhancement gas rolled over and resulted in a maximum lawful price lower than the incentive price available under this rule, 12/ the Commission is amending its regulations in Subpart F of Part 271, concerning intrastate rollover contracts, to permit the producer to

11/ Footnote (Cont'd)

Act. The Commission has issued proposed rules prescribing substantive and procedural guidelines for granting "special relief" under this section (as well as sections 104(b) and 109(b)) and will coordinate the final rule on special relief with the final rule for production enhancement gas. See Procedures Governing Applications for Special Relief under Sections 104, 106 and 109 of the Natural Gas Policy Act of 1978, Docket No. RM79-67, Notice of Proposed Rulemaking, issued August 14, 1979, (44 Fed. Reg. 49468, August 23, 1979); Notice of Request for Public Comment . . ., issued January 16, 1980, (45 Fed. Reg. 5321, January 23, 1980); Notice of Proposed Rulemaking, issued May 9, 1980, (45 Fed. Reg. 31744, May 14, 1980).

12/ Under our current regulations for section 106(b), the maximum lawful price for qualified production enhancement gas in the month of rollover would be the higher of the otherwise applicable section 105 price or \$ 1.121, as of December, 1978, adjusted for inflation to the month of rollover. It is conceivable that an escalation clause in the original contract triggered sometime after the gas qualifies under the production enhancement rule could increase the section 105 price above the incentive price, in which case no decrease in the maximum lawful price would occur when the renegotiated "successor contract" rolled over. However, for the majority of gas subject to this rule, the original contract will contain no such provision, and, absent an amendment to our rules for section 106(b), the gas will be remanded at the time of rollover to a price under the original contract terms that will, in many cases, be substantially lower than the incentive price provided under this rule. See discussion of price impact, infra at page 31.

price his gas under section 106(b) at time of rollover by reference to the incentive price provided in this rule. 13/

C. How the Incentive Works

By the terms of the rule and for the reasons previously discussed, only gas sold under an existing intrastate contract or a successor contract can qualify for the incentive price. In addition, the production enhancement work to be encouraged must be commenced on or after May 29, 1980, the date the incentive price was first proposed in an open Commission meeting. We must assume that an incentive price was not necessary to induce a producer to engage in any production enhancement work commenced prior to the announcement of that price.

The producer must obtain an eligibility determination from the jurisdictional agency in order to receive the incentive price.

He may obtain that determination before or after completing the production enhancement work but will be prohibited from charging and collecting the incentive price, on either an interim or a retro-
active basis, until the work has been completed.

13/ Technically, this amendment modifies our regulations for section 106(b). However, the amendment is being prescribed under our section 107 authority; it constitutes neither an interpretation of the term "expired contract" in section 106(b)(1)(A)(i) nor an exercise of our authority under section 106(c) to prescribe a higher maximum lawful price within the just and reasonable standard of the Natural Gas Act.

The Commission has crafted the eligibility requirements to insure that an incentive price is necessary for undertaking the production enhancement work and that the price itself is reasonable, and not an excessive incentive. The Commission wishes to be assured that the incentive price is available only for wells for which the section 105 maximum lawful price is insufficient to encourage application of production enhancement techniques now or in the near future, and for which the potential increase in gas production is large enough to insure that the increased cost to the pipeline purchasers and end users will not exceed the price they would have to pay for new supplies or alternative fuels. At the same time, the Commission has precluded from qualification, gas that is produced as a result of production enhancement work that would have been performed absent the availability of the incentive price or that is performed only for the purpose of repricing the gas.

As the first of its safeguards the Commission has required parties to amend the contract in existence on November 9, 1978, prior to filing an application with the jurisdictional agency. The amendment must permit collection of an incentive price stated in the application, which cannot be greater than the section 109 price. 14/ This renegotiation requirement will provide the

14/ If the fixed price is lower than the section 109 price, the contract price is the incentive price.

purchaser with an opportunity to resist paying the higher price if he is not reasonably assured that the production enhancement work will produce sufficient additional volumes to make the increase in cost economic. ^{15/} Although the assumption may not be valid in all cases, the Commission also believes that most purchasers will not agree to pay a higher price unless they are sure that the additional gas would not otherwise be produced because the cost of the production enhancement work is prohibitive at the existing price. Thus the renegotiated price is a test both of the necessity for an incentive and of the reasonableness of the incentive price.

Purchasers commonly make such assessments when they negotiate contracts. We do not believe that an intrastate purchaser will accede to the intrastate producer's attempts to renegotiate the contract for flowing gas merely because the producer wishes to receive the incentive price. It is significant to note that, prior to passage of the NGPA, producers and purchasers in unregulated intrastate markets were free to renegotiate their contracts. Experience shows that many of those contracts were not renegotiated, even in circumstances where the prices under new contracts were rapidly escalating.

In addition to filing a copy of the relevant portion of the amended contract with the jurisdictional agency, the producer must

^{15/} We note that the unit cost cap establishes the upper limit on what the Commission considers economic.

also secure an oath from the purchaser that he has a reasonable basis to believe the producer's statement that the production work is necessary, that it would not be performed absent the incentive price because of the inadequacy of the section 105 price and that the reserve and production estimates are reasonable.

The Commission views this purchaser oath as essential to the integrity of the incentive pricing scheme because willingness to renegotiate a contract is not always coincident with a belief that the new price is necessary as a reasonable incentive. There may be a number of other reasons why a purchaser would be willing to pay a higher price for natural gas. (Our intent in requiring the purchaser oath is to eliminate the possibility that gas will be repriced simply because of the producer's bargaining power.)

In most cases purchasers are sufficiently familiar with the necessary information regarding a well's production capability and the costs or risks of enhancement work to know if a higher price is necessary for increasing gas production. If the purchaser has any hesitancy in making the statement, it is doubtful that we could determine that the incentive price sought by the applicant is necessary as a reasonable incentive under section 107.

The producer must file an oath statement that the section 105 price is inadequate, that the production enhancement work can reasonably be expected to enhance production and that the work would not be performed absent an incentive price. He must also estimate

the well's current and enhanced rate of production as well as the increase in revenues to be expected from application of the incentive price and must use those estimates to determine whether the projected increase in revenues that is attributable solely to the projected increase in units of gas production exceeds a price per MMBtu equal to 200 percent of the maximum lawful price allowed for conventional, onshore development, i.e., the section 103 price.^{16/} We are requiring this calculation because we have determined that, if the effective cost for any increases in production appears, prospectively, to exceed the commodity value of that incremental production, the higher maximum lawful price cannot be considered

^{16/} The proposed rule would have set the unit cost cap at the price for imported crude oil. The Commission received a wide variety of comments concerning the proposed cap on the unit cost of incremental production. Many commenters supported this proposal by arguing that the cap would prevent economic waste, producer windfalls and unnecessary consumer costs. (These commenters endorsed the unit cost cap as support for their argument that the incentive price ceiling should be set higher than the section 109 price.) On the other hand, at least one commenter argued that the unit cost cap is shortsighted and should be deleted. This commenter stated that, even if the price of incremental volumes rises above the cost of foreign crude from time to time, the goal of displacing more expensive foreign oil over the long term is still advanced. According to the same argument we could allow the price of the incremental volumes to rise to a price many times that of foreign crude. We believe it appropriate, within the mandate of section 107, to establish a unit cost cap that allows as much foreign crude to be displaced as is possible while limiting the price of the gas to a level that is reasonable in the context of the NGPA.

a reasonable incentive, even though the higher price is necessary to induce production enhancement efforts. (However, because the unit cost cap is a function of the difference between the existing section 105 price and the incentive price, a producer who would otherwise be disqualified may be able to satisfy the cost cap requirement by lowering his renegotiated price sufficiently below the section 109 price.)

In the recently issued final rule relating to tight formation gas, ^{17/} the Commission discussed the commodity value of natural gas and identified two benchmarks for determining that value. First, the Commission referenced the commodity value of such gas to the most recently available Btu-equivalent price for No. 2 fuel oil deliveries to electric utility facilities, which was \$5.78. Based on this Btu-equivalent price, the imputed commodity value of natural gas was obtained by subtracting the average cost of transporting gas from the wellhead to the user. The average transportation and distribution costs for natural gas were determined to be approximately \$1.00 per MMBtu; thus the commodity value of natural gas in relation to No. 2 fuel oil was estimated to be about \$4.78 per MMBtu. The Commission also noted that, as an alternative, the commodity value of natural gas could be established by reference to the price of imported Canadian or Mexican natural gas. The

^{17/} Docket No. RM79-76, issued August 15, 1980, (45 Fed. Reg. 56034, August 22, 1980).

Commission determined that 200 percent of the section 103 price closely approximates the price of such imported gas. 18/

Based on the same reasoning, the Commission has decided to set the unit cost cap for incremental production at a price per MMBtu equal to 200 percent of the section 103 price. This cap does not represent the actual value of the incremental production. It merely establishes a ceiling above which any incentive price for incremental production can no longer be considered reasonable.

We have permitted a calculation based on a series of estimates, and have not required completion of the production enhancement work prior to application, in order to accelerate the qualification process while allowing the applicant to be certain that he may continue to qualify for the incentive price even if a project falls short of production estimates that were reasonable when filed. We acknowledge that obtaining accurate estimates may be a problem. Nevertheless, we have decided to rely on the good faith of the parties in this regard. Should experience demonstrate that our reliance has been misplaced, the Commission will feel compelled to terminate the program. 19/

18/ The price for imported Canadian or Mexican natural gas was \$4.47 as of November 1980. Two hundred percent of the section 103 price was \$4.658 as of November 1980.

19/ Moreover, the Commission may find an adequate basis in specific instances to reopen a favorable determination under §275.205 and vacate the determination if information is disclosed which indicates that the estimates were not filed in good faith.

In order for a producer to qualify for the incentive price
the jurisdictional agency must determine that there is a reason-
able basis to conclude that the particular production enhancement
work is necessary and that it can be expected to maintain or en-
hance production. We are relying on the jurisdictional agencies' knowledge regarding the production characteristics of the wells or zones in question and their technical expertise regarding the purpose and efficacy of the production enhancement techniques in enhancing production from those wells.

The jurisdictional agency must also examine the producer's
production estimates in light of other information in the record
in order to assure itself that those estimates are reasonable and
that the effective cost of the incentive price does not exceed the
price for new gas supplies or alternative fuels.

The Commission is comfortable at this time with its choice of an incentive price no higher than the section 109 price. Therefore, as a general matter, it is willing to accept the parties' judgments and oaths regarding the necessity for such an incentive in particular situations. / The Commission will not, and the jurisdictional agency need not, inquire further concerning price, unless information or discrepancies in the record give cause for doubt as to the veracity of the producer's or purchaser's oaths.

D. Jurisdictional Agency Findings and Discretion

As a practical matter, the success of this rule in effecting

the purpose for which it is intended rests with the jurisdictional agencies. We have provided latitude to the jurisdictional agencies in order to permit them to exercise their judgment in determining whether the incentive price is necessary as a reasonable incentive for the producer to undertake production enhancement work.

As we have indicated, what constitutes a reasonable incentive for production enhancement work, within the meaning of section 107, depends on several variables: the applicable contract terms upon which the section 105 price is based, the increment in production to be expected from application of the production enhancement technique, and the cost or risk associated with use of that technique. The flexibility we have afforded the jurisdictional agencies reflects our belief that in the face of so many variables, a reliable basis for affirming the necessity and reasonableness of an incentive price cannot be established by rigid regulatory guidelines.

For example, we intend that this flexibility permit a jurisdictional agency to find that no incentive price is necessary for gas produced from a horizon above other producing horizons, if it determines that the producer would have produced the upper horizon anyway in the normal course of production. It might make a similar finding if a downhole pump were installed to lift liquid hydrocarbons, e.g., condensate, in order to increase

gas production but the value of the condensate would, by itself, provide an incentive to installation of lift equipment. Similarly, if production enhancement work were performed on an oil well, ostensibly to increase production of associated gas, the gas might be denied the incentive price provided under this rule if the work would have been performed in any event to increase oil production.

A jurisdictional agency might also make a negative determination if it found that the filed estimates concerning incremental production were disproportionate to previously recorded production; or that the work performed was not within a defined category of production enhancement work; or that the stated or estimated cost of the production enhancement work is sufficiently low in relation to the section 105 price that it could not accept the producer's oath statement that the work would not have been performed in the absence of the incentive price.

E. The Production Enhancement Techniques

The production enhancement techniques specifically included in the final rule have been broadly defined in order to permit the jurisdictional agencies to be flexible in determining what types of projects should qualify under the final rule. Any attempt on our part to define these projects more narrowly could result in the exclusion of many deserving projects. In allowing this degree of flexibility we are relying on the technical expertise of the jurisdictional agencies.

The proposed rule included, and requested comment on, five categories of production enhancement techniques. All have been included in the final rule. In addition, and in response to comments, we have added five other categories of production enhancement techniques. Should techniques that we have not considered in this rulemaking be brought to the attention of the Commission, the rule may be amended. 20/

The first category of production enhancement work is re-entry into a well that has been plugged and abandoned.

The second category covers work performed in re-entering a well to drill deeper, or to sidetrack, to a different completion location. This category will usually apply whenever a well that was drilled in the past, and from which the drilling equipment has been removed, is re-entered for further drilling.

The third category is recompletion by reperforation of a zone from which natural gas has been produced or by perforation of a different zone. 21/ This category will apply whenever a

20/ In this regard, the Commission will entertain properly filed petitions by interested parties for amendments to include additional production enhancement techniques in the rule. See § 1.7(b) and (e) of the Commission's Regulations.

21/ At least two commenters requested a clarification with respect to the second and third categories. They asked
(Footnote continued on next page).

well is perforated other than in the original completion location. The Commission is aware that a producer may perforate a new zone higher up the wellbore than the zone he is currently producing and then produce from both zones. Accordingly, if a well qualifies under this rule as a result of a "perforation of a different zone," only the gas produced from the new completion location will receive the incentive price. The producer will be responsible for separately identifying the gas from each completion location. We realize that, in most cases, the gas from separate completion locations will be produced through separate "stringers" and metered separately. However, if the gas is commonly metered, a reasonable allocation of production among the producing intervals or completions will be required.

The fourth category is the repair or replacement of faulty or damaged casing, tubing or related downhole equipment. It should be emphasized that this category is intended to include

21/ Footnote (Cont'd)

that the Commission clarify the proposed rule to provide that re-entry for deeper drilling, or sidetracking, to a different completion location (as opposed to a new completion location as provided in the proposed rule) and a recompletion by perforation of a different (as opposed to a new) zone would constitute production enhancement work. The Commission believes that this suggestion is consistent with the intent of the proposed rule. Accordingly, for clarification only, the words "new" in the second and third categories will be changed to read "different."

major repair work only; routine maintenance, however costly, is not production enhancement work. 22/

The fifth category is fracturing, acidizing or installing compression equipment. The Commission recognizes that production enhancement work involving compression will often affect more than one well. Activities that affect several wells would constitute production enhancement work with respect to each well sufficiently affected to meet the other requirements of this rule. We also note that leasing of compression equipment will be treated in the same manner as purchasing of such equipment, and that upgrading compression or adding further stages of compression will be considered to be installation of compression equipment.

Commenters requested the inclusion of a variety of other production enhancement techniques. In response, we have included the following additional categories.

The first is installation of equipment necessary for removal of excessive water, brine, or condensate from the wellbore in order to establish, continue or increase production from the well. The category would apply, for example, if any one of a variety of pumping

22/ One commenter asked the Commission to consider inclusion of costly well maintenance projects as a category of production enhancement work. The scope of this rulemaking is limited to incentives for work that is included in the definition of production enhancement work. Operations that the Commission considers to be normal well maintenance have been excluded from that definition.

techniques were used to remove large volumes of water in conjunction with the production of natural gas, including use of electrically powered submersible pumps and sucker rod surface pumps or plunger lifts. Other procedures would include installation of smaller than normal tubing to increase the velocity of the gas in order to enable it to "blow" the water out of the well, or the injection of foaming agents to change the water into a foam, reducing the fluid pressure and enabling the gas to "blow" the foam out of the well.

The second addition covers workover operations designed to reduce production of excessive water or brine in order to establish, continue or increase production of gas from the well. For example, the perforations that are "watered-out" can be plugged with cement, and gas can then be produced from other perforations or from new perforations.

The third addition concerns operations for disposing of water or brine, the presence of which prohibits or severely limits gas production from the well.

The fourth addition covers workover operations to control sand production in the wellbore, or to remove sand from the wellbore and downhole equipment in order to continue to produce gas from the well. This category can include the use of gravel packing and filtered tubing liners to keep the sand out of the tubing, or the pumping of an epoxy resin or other stabilizer

into the wellbore to consolidate the sand around the wellbore. This category can also include replacement of a gravel packer or a tubing liner or the cleaning of a wellbore and application of epoxy resin.

The last technique included in the rule is "inert" gas injection, such as nitrogen injection. 23/ The nitrogen can be compressed or liquified and injected into the reservoir to displace the hydrocarbon gas. Once injected into the reservoir, the nitrogen expands, either forcing hydrocarbon gas from the reservoir or removing obstructions that prevented the flow of gas into the wellbore. The Commission realizes that this last category, like compression, will often apply to more than one well. To the extent that a producer can demonstrate that a well is sufficiently affected by the inert gas injection to meet the other requirements of the rule, that well will qualify for the incentive price. 24/

23/ In common industry parlance "inert" gas means gas that is noncombustible. Several commenters indicated that the section 109 price (or even a price as high as the section 102 price) would induce no work of this nature because of the extraordinary costs associated with the technique. The incentive price may be inadequate to encourage inert gas injection. However, we do not have an adequate basis in the comments to deal with this problem at this time. We will, therefore, leave its resolution to future proceedings.

24/ The technique of gas cycling was also suggested for inclusion as a production enhancement technique. Gas cycling is (Footnote continued on next page).

Although many comments recommended that the jurisdictional agencies be permitted to qualify for eligibility other, unlisted techniques, few supplied any guidelines regarding the nature of this determination or the extent of jurisdictional agency discretion. The Commission wishes to avoid the complexities attendant in qualifying production enhancement techniques on a case-by-case basis. As we have stated, however, we will remain receptive to appropriate petitions for addition by amendment, made under §1.7 of our regulations.

F. The Incentive Maximum Lawful Price

The incentive maximum lawful price will frequently be the same as the renegotiated price agreed to by the parties. However, that price cannot be greater than the section 109 price.

24/ Footnote (Cont'd)

a technique for increasing the recovery of natural gas liquids and condensate from a reservoir. The technique involves the re-injection into the reservoir of natural gas, stripped of its liquids; the gas may have been produced from that zone or another zone. Sufficient reservoir pressure is thereby maintained in order to prevent natural gas liquids from condensing within the reservoir wellbore. Although this process will result in an increase in production from the reservoir, the majority of this increase will usually be composed of natural gas liquids and condensate. There may even be a net drop in natural gas production due to volume losses caused by the separation process, losses from injected volumes unrecoverable in the reservoir, or losses due to use of natural gas as fuel to power the separator and injection equipment. An additional problem results if the injected gas is from another producing zone. In this case it is difficult to determine accurately what volume of gas produced from the target reservoir is "native" to that reservoir. For these reasons, this technique will not be included as qualified production enhancement work.

In order to avoid allocation problems that would arise were the incentive price applied only to the incremental volumes produced as result of production enhancement work, the Commission has decided to apply the incentive price to all gas produced from a well on which production enhancement work has been performed. 25/ Repricing all of the gas rather than only the incremental production will also provide a measure of revenue certainty to the producer. Even if his estimates concerning the expected increment in production eventually prove to be inaccurate, or if the production enhancement work effects no increase in production at all, he can still be assured of that increase in revenues which results from repricing the current production.

The section 109 price has been chosen as the ceiling for the price incentives provided under this rule because, in the Commission's judgment, it is sufficiently high to encourage a large number of potential production enhancement projects and low enough to prevent a windfall for producers. However, many commenters requested an incentive price ceiling higher than the section 109 price. Most commenters supported their recommendation by arguing that a higher ceiling would promote production of even more volumes of gas.

25/ But note the exception in §271.704(c)(1)(i)(B) for gas from a well producing from more than one zone.

We cannot disagree that an increase in the incentive price will produce some increase in the amounts of gas produced in response to that price. We do disagree that the wording of section 107(b), which limits the price to one necessary to provide reasonable incentives, permits incentive pricing based wholly on a supply-maximization rationale.

If the purpose of section 107(b) were, without qualification, to induce the maximum production of natural gas, the Commission could attempt to create a price sufficiently high that, from the perspective of the producer, even the most costly, unpromising production enhancement ventures would appear economically attractive. However, in determining what constitutes a reasonable incentive the Commission must balance the needs of suppliers and consumers. On balance, a reasonable incentive for production enhancement work is one that will produce additional gas supplies without requiring the consumer to pay unnecessary prices to obtain those supplies.

In the Notice of Proposed Rulemaking the Commission solicited data regarding projected increases in production that could be expected in response to different incentive prices. Unfortunately, the Commission has received no information that would permit it to quantify the potential supply responses to various hypothetical

incentive prices. 26/ Absent such information, the Commission is reluctant to increase the incentive price ceiling above the section 109 price.

We have looked to the statutory pricing scheme of the NGPA in order to determine what constitutes a reasonable incentive for purposes of section 107. Under Title I of the NGPA, the section 109 maximum lawful price is applicable, inter alia, to natural gas that was not committed or dedicated to interstate commerce on November 8, 1978, and that was not subject to any contract on November 8, 1978. 27/ We view this as evidence that Congress considered the section 109 price to be an appropriate incentive to the production of any gas for which the price has not been established either under the Natural Gas Act or, if intrastate, by agreement of the purchaser and seller. The purchaser's inability to renegotiate a contract price now that he is subject to the restrictions imposed by section 105(b)(1) is tantamount to there being no contractually-established price to serve as a reference in pricing gas produced as the result of production enhancement efforts. The situations addressed under this rule and under section 109 are analogous. The section 109 price appears to be an appropriate incentive price ceiling for purposes of this rule.

26/ A few commenters labeled such projections as "inherently unquantifiable."

27/ Section 109(a)(3).

At the very least, the Commission can be assured that such a ceiling is not unreasonable when evaluated in the context of other Title I prices. Given the minimal amount of information that is available on the potential supply and price impacts of this rule, we are inclined to proceed on this rationale. Our choice of this incentive price ceiling does not preclude us from examining the actual response to that ceiling and from determining whether it continues to be appropriate.

G. The Potential Economic Impact of the Rule

In deciding whether to permit producers and purchasers of section 105 gas to renegotiate their existing contract prices in return for undertaking production enhancement efforts, the Commission has attempted to assess the economic impact of this rule in a number of important areas. First among these are the increased revenues to intrastate producers and the associated increased cost to intrastate consumers that will be generated by the incentive price. A second concern involves the potential impact of this rule on stimulation of additional supplies of natural gas. Finally, there is the question of the rule's distributional impact on the interstate and intrastate consumer markets.

The comments received by the Commission in this proceeding make it clear that the potential impact of this rule on consumer costs may be considerable. According to information provided by the Texas Independent Royalty Owners, in Texas nearly half

the gas flowing in intrastate commerce sold for less than \$1.00 per MMBtu during the fiscal year ending August 31, 1979. Assuming that the situation in Texas is fairly typical of that in other producing states, this statistic suggests that, of the more than 10 trillion feet of natural gas currently flowing in intrastate commerce, as much as 5 trillion feet could be eligible for a price increase somewhere in the range of \$1.40 per MMBtu. 28/ Therefore, in the unlikely event that all intrastate contracts now priced below \$1.00 per MMBtu were renegotiated up to the section 109 price, a gross increase of as much as 7 billion dollars could be effected in the annual payments made for gas subject to intrastate contracts. Additional costs would be imposed on intrastate consumers to the extent that contracts for intrastate gas currently selling above \$1.00 per MMBtu were also renegotiated up to the section 109 price.

Although the potential price impact of this rulemaking is very considerable, the Commission believes that the safeguards against abuse that have been included in the rule will minimize any unwarranted results. The rule permits a purchaser to avoid paying the higher price by refusing to renegotiate in the event he determines that it would not be in his economic interest to pay a higher price in order to encourage production enhancement work.

28/ The \$1.40 per MMBtu figure represents the difference between an assumed \$.50 per MMBtu price for gas priced below \$1.00 per MMBtu and a maximum lawful price under section 109 of approximately \$1.90 per MMBtu.

An example of the value of low-priced gas to an intrastate consumer may be of illustrative value. An electric utility or industrial user presently taking gas at the rate of 3,000 MMBtu's per day at a cost of \$.30 per MMBtu would pay 1.75 million dollars per year in additional costs if the price were renegotiated up to \$1.90 per MMBtu. Clearly, such a cost increase is of sufficient magnitude that the purchaser will not voluntarily submit to such higher prices unless the potential for increased supply appears substantial.

Alternatively, real costs may be imposed upon intrastate customers if they are precluded from contract renegotiations keyed to enhanced production activity. A purchaser of gas subject to a contract price may be unable to compel the producer to undertake costly production enhancement measures. Purchasers, in their discussions with producers, are in the best position to judge whether a price higher than the otherwise applicable section 105 price may be discouraging cost effective production stimulation efforts by the producer. The Commission is willing to allow purchasers to amend the price protections afforded them by section 105 where such renegotiation is in the purchaser's perceived self-interest.

The Commission's initiation of this rulemaking stems from its perception that the potential supply response to production

enhancement initiatives is substantial. Despite the many differences that exist among natural gas production projects, all producing wells reach a stage in their production life where the cost of maintaining production exceeds the revenue stream from that well. If the price of natural gas is restrained below market levels, the point in the well's production life at which a producer will be unable to recover his out-of-pocket expenses will occur earlier than it would if the gas were sold at prices closer to its market value. The economic life of many wells currently producing intrastate gas could be extended, in appropriate circumstances, if existing contract prices were permitted to increase.

The volume of additional supplies that will be elicited through production enhancement incentives provided in this rule cannot be estimated with any absolute certainty. The rule imposes no specific volumetric standard on the producer. Rather, the required oath statement and unit cost cap are designed to give guidance to both the seller and buyer on the presumed value of incremental gas supplies under current market circumstances. These provisions should insure the maximum economically practicable supply response to expenditures associated with production enhancement.

Finally, the Commission recognizes the possibility that the rule may make gas presently sold under intrastate contracts

less accessible to interstate purchasers if the current purchaser seeks to obtain an extended supply commitment in return for consenting to the higher prices authorized by this rule. However, to the extent this rule elicits gas that would not otherwise be purchased, interstate market interests would be unaffected. Most gas subject to renegotiation is produced from wells that are at or near the end of their presently useful producing life. Thus, the Commission expects the rule's distributional impact on the interstate and intrastate markets to be relatively modest.

II. SUMMARY OF THE FINAL RULE

A. Definition of Qualified Production Enhancement Gas

We have added to Subpart G of Part 271 of our regulations a new section, §271.704, which defines "qualified production enhancement gas" and establishes a maximum lawful price for such gas. Paragraph (c)(1) of § 271.704 establishes five criteria which the jurisdictional agencies are to apply in identifying qualified production enhancement gas.

First, the jurisdictional agency must find that the gas is produced from a well (or a zone, in the case of multiple completion locations) on which production enhancement work was commenced, or will be commenced, on or after May 29, 1980. In order to make this finding, the jurisdictional agency must determine that the work constitutes qualified production enhancement work as described

in paragraph(d) 29/ and that the work was commenced on or after May 29, 1980.

Second, the jurisdictional agency must find that the gas is subject to a maximum lawful price under section 105.

Third, the jurisdictional agency must find that a renegotiated price is in effect for a first sale of the gas at the time of application. A renegotiated price is defined in paragraph (b)(3) as a price (not higher than the section 109 price) which was agreed to after the enactment of the NGPA in connection with production enhancement work which is the subject of an application under this rule.

In essence, the fourth criterion in the definition requires the jurisdictional agency to find that the requisite estimates and oath statements, regarding the necessity for and reasonableness of the incentive, are not contradicted by other information in the record.

Finally, the jurisdictional agency must find that the price for the increased production does not appear, prospectively, to exceed the commodity value of that incremental production. Clause (v) of paragraph (c)(1) sets forth the formula for making this calculation. The results must indicate that the projected

29/ See discussion of production enhancement techniques beginning at page 20 supra.

increase in revenue, attributable solely to the projected increase in units of gas production, may not exceed a price per MMBtu equal to 200 percent of the maximum lawful price allowed for conventional, onshore development (i.e., the section 103 maximum lawful price) for the month in which the application is made.

The calculation will be based on production estimates filed with the application. The applicant must first estimate the total number of MMBtu's that would be produced from the well in the absence of production enhancement work over a five-year test period commencing with the month the application is made. 30/ In doing so, the applicant must consider, at the time of application, the condition of the well and the rate of production absent production enhancement work and must then estimate total production for the next five years. The applicant must then estimate the total number of MMBtu's that would be produced from the well over the same five year period, based on the assumption that the production enhancement work was completed on the date of application. 31/ Once these estimates have been made, the "projected

30/ These estimates are based only on production of gas; oil, LNG or other liquid hydrocarbons are not to be included in the calculation.

31/ These estimates may be made, and an eligibility determination received, before production enhancement work is commenced on the well. See discussion of Collection of the Incentive Price, infra at page 41.

increase in units of production" can be calculated by subtracting the first estimate from the second.

In order to calculate the "projected increase in revenue," the applicant must multiply the number of MMBtu's that would be produced absent production enhancement work by the otherwise applicable maximum lawful price under section 105 as of the date of application. The applicant must then multiply the total number of MMBtu's that will be produced from the well after production enhancement work is completed by the section 109 price at the time of application. However, if the renegotiated price is less than the section 109 price and if it is also either a fixed price or a percentage of the section 109 price, the applicant may base the calculation on the renegotiated price rather than the section 109 price. The projected increase in revenue to be derived under the rule is determined by subtracting the first product from the second product.

Finally, the applicant must divide the projected increase in revenue by the projected increase in units of production in order to determine whether the price per MMBtu for the incremental production exceeds 200 percent of the section 103 price as of the month the application is filed.

If the jurisdictional agency makes all five findings, the natural gas will qualify as production enhancement gas. If the gas receives this determination, it is subject to the maximum lawful price specified in paragraph (a) of § 271.704.

B. The Incentive Price

The incentive price set forth in § 271.704(a) is the lesser of the section 109 maximum lawful price or the renegotiated price.

The final rule adopts the requirement in the proposal that a newly negotiated price be in effect at the time the producer files for a determination. (However, the definition of that price is changed so that it simply requires renegotiation after November 9, 1978, in connection with the production enhancement work.) The determination is keyed to the particular renegotiated price, 32/ evidence of which must be included in the application. Therefore, if the contract is subsequently amended to modify that price a new application and a new jurisdictional agency determination will be required.

Under the filing requirements in §274.205(f) the producer must submit that portion of the sales contract which authorizes collection of the incentive price established in §271.704. In most instances parties to the contract will have to amend their contract before filing an application with the jurisdictional agency. In such cases the filing will consist of the contract amendment drafted in response to the availability of the incentive price under this rule.

32/ We note that this may be a single price or a set of fixed prices such as a price equivalent to a certain percentage of the section 109 price.

Section 271.704(a)(3) provides that the increase in the price paid for the natural gas by reason of this rule will not result in the elimination of price controls under section 121(a)(3) of the NGPA. The Commission does not believe that Congress intended it to deregulate natural gas subject to section 105 which, but for the effect of the final rule, would not be sold for a price in excess of \$1.00 on December 31, 1984. Elimination of price controls under that section will occur only if, and when, such elimination would have occurred based on the maximum lawful price that would have been applicable but for this rule.

Because the definition of qualified production enhancement gas requires that the gas be subject to a maximum lawful price prescribed by Subpart E of Part 271, i.e., the section 105 price, once the contract under which it is sold rolls over, the gas is outside the scope of § 271.704. In order to permit a producer to continue to collect an incentive price for gas that previously qualified under § 271.704, we have amended our regulations regarding the maximum lawful price for gas subject to section 106(h). For purposes of determining the maximum lawful for such gas under §271.602 of our regulations, the maximum lawful price paid under the expired contract, in the month in which the rollover contract becomes effective, will be deemed to include any amount paid by reason of qualification under the final rule in § 271.704.

C. Filing Requirements

The filing requirements are provided in new paragraph (f) of § 274.205. The applicant must file an FERC Form No. 121; a detailed statement describing the production enhancement work; an itemized statement of the costs incurred or to be incurred in performing the work (and invoices, where appropriate); the unit cost cap calculation and related production estimates; that portion of the contract which authorizes collection of the incentive price; and, if the jurisdictional agency requires, certified copies of records upon which the applicant has relied.

In addition, the applicant must include separate oath statements by himself and the purchaser. The applicant must file a statement, under oath, that the production enhancement work is necessary, and can be reasonably expected, to enhance production; that the section 105 maximum lawful price does not provide an adequate incentive for the performance of the production enhancement work; and that, but for the availability of a price at least as high as the renegotiated price, the production enhancement work would not have been or will not be performed.

The applicant must also state that the production enhancement work was not commenced before May 29, 1980; that to the best of his knowledge and belief, the production estimates that are included in the application are reasonable; and that he has no knowledge of any information inconsistent with the filed statements and estimates.

The purchaser must state under oath that, to the best of his knowledge and belief, there is a reasonable basis for the statements and estimates made by the applicant. The purchaser must also state that he has no knowledge of information not described in the application that is inconsistent with the statements made by the applicant.

D. Collection of the Incentive Price

A producer may choose to perform production enhancement work on a well before filing an application for an eligibility determination. Under §§ 273.202 and 273.203, such a producer may make interim collections of the incentive price for all deliveries of gas made after the date the application is filed with the jurisdictional agency. In addition, we have amended §273.204(a)(1) to permit collection of the incentive price retroactive to the date that the qualifying production enhancement work was completed.

On the other hand, if the producer so chooses, he may apply for and receive an eligibility determination before completing, or even commencing, the production enhancement work. Under such circumstances, § 271.704(a)(2) prevents the producer from charging the incentive price, on either an interim or a retroactive basis, before the production enhancement work upon which the application is based has been completed and the producer has given written notice to the purchaser stating that the production enhancement work has been completed.

III. ENVIRONMENTAL IMPACT

The Commission staff has completed an environmental assessment of this rule and has concluded that establishing an incentive price would not constitute a major federal action significantly affecting the quality of the human environment. An environmental impact statement is not required.

In the environmental assessment, the staff identified a potential for impact of fracturing operations on fresh water aquifers. In order to determine whether further limitations to qualification are necessary in order to protect such fresh water aquifers, we will monitor environmental data that we will require from applicants regarding fracturing operations. However, we emphasize that, as the rule is currently written, the five criteria for qualification do not include any environmental standards and that information on the potential environmental impact of a project will not be used to disqualify a well for the incentive price.

If an application is based to any extent on the performance of fracturing operations, the applicant will be required to file specified information regarding the environmental effects of the fracturing operations. However, the jurisdictional agency may waive this filing requirement if it determines that there exists in the state an adequate program reasonably designed to assure no damage to fresh water aquifers.

We will review any filed environmental information at the time that the jurisdictional agency forwards the notice of determination to us. We do not intend to use the information to disqualify a particular well after the production enhancement work has been performed on it. We will use this information, however, in order to determine the necessity of amending the rule.

IV. PUBLIC PROCEDURES AND EFFECTIVE DATE

These regulations were originally proposed for comment on July 25, 1980, in Docket No. RM80-50 (45 Fed. Reg. 51219, August 1, 1980). For 30 days thereafter comments were received, and on August 26, 1980 and September 4, 1980, two public hearings were held on these regulations. By this process the Commission has complied with 5 U.S.C. § 553 and with section 502(b) of the NGPA, which requires that, "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views and arguments be afforded for certain regulations under the NGPA. The regulations contained in this order rest upon consideration given to the information received during the above-described notice, comment, and hearing process. The Commission finds that further notice and public procedure with respect to these regulations are unnecessary.

Sections 271.602(c), 271.701(b), 271.704, 273.204(a)(1)(iii) and 274.205(f) are being issued as final regulations effective December 15, 1980.

(Department of Energy Organization Act, 42 U.S.C. §§ 7107-7352; E.O. 13009, 42 Fed. Reg. 46267; Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3422.)

In consideration of the foregoing, Subparts F and G of Part 271, Subpart B of Part 273, and Subpart B of Part 274, Subchapter H, Chapter I, Title 18 of the Code of Federal Regulations are amended as set forth below, effective December 15, 1980.

By the Commission. Commissioner Sheldon concurring.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

1. Section 271.602 is amended by adding a new paragraph (c) to read as follows:

§ 271.602 Maximum lawful price.

* * * * *

(c) Qualified production enhancement gas. For purposes of paragraph (a)(1)(i) of this section, the maximum lawful price, per MMBtu, paid under the expired contract is deemed to include any amount paid by reason of a maximum lawful price allowed under § 271.704 (relating to qualified production enhancement gas.)

2. Section 271.701 is amended by adding a new paragraph (b) to read as follows:

§ 271.701 Applicability

* * * * *

(b) Qualified production enhancement gas.

3. Part 271 is further amended in the table of contents and in the text of the regulations by adding a new § 271.704 to Subpart G to read as follows:

§ 271.704 Qualified production enhancement gas.

(a) Maximum lawful price for qualified production enhancement gas.

(1) The maximum lawful price, per MMBtu, for the first sale of qualified production enhancement gas shall be the lesser of:

- (i) The renegotiated price stated in the application; or
- (ii) The section 109 price.

(2) Requirement of completed production enhancement work.

If the production enhancement work has not been completed on or before the date the application is filed, the maximum lawful price provided in subparagraph (1) of this paragraph shall not apply until the production enhancement work is completed and the seller has given written notice to the purchaser stating that the production enhancement work upon which the application for determination of eligibility is based, has been completed. The applicant must retain a copy of this notice in his records for a period of three years after the month in which the first sales priced under this section occurred.

(3) Elimination of price controls. For purposes of determining the price paid, under section 121(a)(3) of the NGPA, any amount paid solely by reason of a maximum lawful price allowed by this section shall be disregarded.

(b) Definitions. For purposes of this subpart:

(1) "Qualified production enhancement gas" means natural gas that a jurisdictional agency has determined in accordance with Parts 274 and 275 meets the qualification requirements in paragraph (c) of this section.

(2) "Production enhancement work" means an operation or installation of equipment described in paragraph (d) of this section.

(3) "Renegotiated price" means a price (not in excess of the section 109 price) agreed to after November 9, 1978, in connection with the production enhancement work which is the subject of an application under this section.

(4) "Section 109 price" means the maximum lawful price specified for Subpart I of Part 271 in Table I of § 271.101(a).

(c) Qualified production enhancement gas. For purposes of this section:

(1) Qualified production enhancement gas is natural gas:

(i) Which is produced:

(A) From a well on which production enhancement work (other than production enhancement work described in paragraph (d)(3) of this section) was commenced on or after May 29, 1980; or

(B) From a zone that is perforated in accordance with paragraph (d)(3) of this section on or after May 29, 1980;

(ii) For which a maximum lawful price prescribed by Subpart E of Part 271 applies (but for this section);

(iii) For which a renegotiated price is applicable;

(iv) For the production of which there is a reasonable

basis, grounded in part on the amount of the investment, to conclude that:

(A) The price prescribed in paragraph (a) of this section is necessary as a reasonable incentive; and

(B) But for the availability of the price prescribed in paragraph (a) of this section, the production enhancement work would not have been performed or will not be performed; and

(v) The production of which (as calculated by the seller for a five year period beginning from the month of application ("test period"), based on estimates filed pursuant to § 274.205(f)(4)) will result in a projected increase in revenue which, when divided by the projected increase in units of production, does not exceed 200 percent of the maximum lawful price specified for Subpart C of Part 271 in Table I of § 271.101(a) for the month that the application is filed.

(2) "Projected increase in revenue" means:

(i) The product of (A) the estimated units of gas production (MMBtu's) which would be produced from the well during the test period if production enhancement work had been completed on the day that the application is filed, times (B) the section 109 price (unless subparagraph (4) of this paragraph otherwise permits) for the month that the application is filed, less

(ii) The product of (A) the estimated units of gas production (MMBtu's) which would be produced from the well during the

test period if the production enhancement work is not performed, or had not been performed, times (b) the maximum lawful price otherwise applicable to natural gas from the well as of the date the application is filed.

(3) "Projected increase in units of production" means:

(i) The estimated units of gas production (MMBtu's) which would be produced from the well during the test period if the production enhancement work had been completed on the day that the application is filed, less

(ii) The estimated units of gas production (MMBtu's) which would be produced from the well during the test period if the production enhancement work is not performed, or had not been performed.

(4) For purposes of subparagraph (2)(i)(B) of this paragraph, if the renegotiated price is a fixed price or a percentage of the section 109 price, such renegotiated price (as of the date of application) may be substituted for the section 109 price in making the determination required in subparagraph (2).

(a) Production enhancement work defined. For purposes of this section, "production enhancement work" means any work that is performed for one or more of the following purposes:

(1) Re-entry into a well which has been plugged and abandoned.

(2) Re-entry into a well for the purpose of deeper drilling, or sidetracking, to a different completion location.

(3) Recompletion by reperforation of a zone from which natural gas has been produced or by perforation of a different zone.

(4) Repair or replacement of faulty or damaged casing, tubing or related downhole equipment.

(5) Fracturing, acidizing or the installing of compression equipment.

(6) Installing equipment necessary for removal of excessive water, brine or condensate from the wellbore in order to establish, continue or increase production of gas from the well.

(7) Workover operations to reduce excessive water or brine production in order to establish, continue or increase production of gas from the well.

(8) Operations to dispose of water or brine produced from the well, the presence of which prevents or severely limits gas production from the well.

(9) Workover operations to reduce excessive sand production or operations to remove excessive sand from the wellbore in order to continue production of gas from the well.

(10) Injection of nitrogen gas or other inert gas necessary to establish, continue or increase production of gas from the reservoir.

(e) Cross reference. For the rule establishing the maximum lawful price for qualified production enhancement gas which becomes subject to an intrastate rollover contract, see § 271.602(c).

4. Section 273.204(a)(1) is amended by adding a new clause (iii) to read as follows:

§ 274.204 Retroactive collection after final determination.

(a) General Rule. * * *

(1) * * *

(iii) in the case of qualified production enhancement gas (as defined in § 271.704(c)), the amount of such excess may be computed, charged, and collected for first sales of such natural gas delivered on or after the date that the production enhancement work was completed.

5. Section 274.205 is amended by adding a new paragraph (f) to read as follows:

§ 274.205 High-cost natural gas

* * * * *

(f) Qualified production enhancement gas. A person seeking a determination for purposes of § 271.704 that natural gas is qualified production enhancement gas shall

file with the jurisdictional agency an application which contains the following items:

- ✓ (1) FERC Form No. 121;
- (2) A detailed statement describing the production enhancement work that has been performed on the well, including the dates such work was commenced and completed, or that will be performed on the well;
- (3) An itemized statement of costs incurred in performing the production enhancement work described in § 271.704(d), including copies of invoices and bills for such work or, if the work has not yet been completed, estimates of such cost;
- (4) An statement estimating, for the five year period beginning from the month in which the application is filed, the units of gas production (MMBtu's) that:
 - (i) Would be produced from the well if the production enhancement work had been completed on the day that the application is filed; and
 - (ii) Would be produced from the well if the production enhancement work is not performed or had not been performed;
- (5) The calculation, based on the estimates required by subparagraph (4) of this paragraph, that is required by § 271.704(c)(1)(v);
- (6) The renegotiated price and a copy of that portion of the sales contract that authorizes collections of such price;

(7) A statement by the applicant, under oath, that:

(i) The production enhancement work is necessary, and can be reasonably expected, to enhance production;

(ii) The maximum lawful price that would be applicable but for qualification of the gas under § 271.704, does not, or will not, provide adequate incentive for the performance of the production enhancement work;

(iii) But for the availability of a price at least as high as the renegotiated price specified in subparagraph (6), the production enhancement work would not have been or will not be performed;

(iv) The production enhancement work was not commenced before May 29, 1980;

(v) To the best of the applicant's knowledge and belief, the estimates required by subparagraph (4) of this paragraph are reasonable; and

(vi) The applicant has no knowledge of any other information not described in the application which is inconsistent with these statements and estimates;

(8) A statement by the purchaser, under oath, that to the best of the purchaser's knowledge or belief:

(i) There is a reasonable basis for the statements and estimates made by the applicant pursuant to this paragraph; and

(ii) The purchaser has no knowledge of any information not described in the application which is inconsistent with such statements and estimates; and

(9)(i) If the application is based to any extent on fracturing operations described in § 271.704(d)(5), a statement that:

(A) Describes the minimum separation between the target production zone and fresh water aquifers which are, or are expected to be, used as domestic or agricultural water supplies; and

(B) Identifies the measures that have been, or will be, taken by the applicant to protect the quality of such fresh water aquifers and to protect the integrity of the separating strata between the target production zone and the fresh water aquifers if the fracturing operations might result in fluid communication between these formations;

(ii) The jurisdictional agency may waive the requirements of clause (i) of this subparagraph if it determines that the state has a program reasonably designed to assure that no damage will result, from fracturing operations, to fresh water aquifers which are, or are expected to be, used as domestic or agricultural water supplies; and

(10) If the jurisdictional agency so requires, certified copies of records upon which the applicant relied, including copies of the jurisdictional agency's official files.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION ON
ITS OWN MOTION TO CONSIDER AMENDMENTS
TO ITS SPECIAL RULES FOR APPLICATIONS
FOR WELLHEAD PRICE CEILING CATEGORY
DETERMINATIONS AS PROMULGATED BY
DIVISION ORDER NO. R-5878, AS AMENDED.

CASE NO. 7199
Order No. R-5878-B-2

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on March 25, 1981, at Santa Fe, New Mexico, before Examiner Daniel S. Mutter.

NOW, on this 4th day of May, 1981, the Division Director, 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 Division has jurisdiction of this cause and the subject matter thereof.

(2) That by its Order No. R-5878-B, effective July 15, 1980, the New Mexico Oil Conservation Division promulgated its "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" pursuant to the Natural Gas Policy Act of 1978 and to the Federal Energy Regulatory Commission (FERC) "Final Regulations Implementing Filing Requirements of the Natural Gas Policy Act of 1978," as promulgated by FERC Order No. 65 effective February 4, 1980.

(3) That said special rules and the Division forms adopted for use pursuant thereto have from time to time been amended to keep their status up-to-date with the FERC regulations as they from time to time have been amended.

(4) That the FERC on November 13, 1980, issued its Order No. 107, a FINAL RULE relating to "High Cost Gas: Production Enhancement Procedures," and on January 15, 1981, issued its "INTERIM RULE under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells."

-2-

Case No. 7199

Order No. R-5878-B-2

(5) That the aforesaid FERC Order No. 107 created a new category of High-cost Natural Gas called "production enhancement gas," being gas produced from a well upon which certain qualified work has been done to establish, continue, or increase production from the well.

(6) That to implement procedures for qualifying wells for such production enhancement gas classification, it is necessary that the Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" as promulgated by Order No. R-5878-B, as amended, be further amended by adding a new Section 4 to Rule 17, outlining the material required to be filed with the Division (in accordance with 18 CFR 274.205(f) subparagraphs (1) through (8) inclusive) in order to obtain a production enhancement gas price category for a well.

(7) That the FERC INTERIM RULE referred to in Finding No. (4) above provides for continuing qualification of a stripper well as a stripper pursuant to Section 108 of the NGPA even though its average daily production exceeds the stripper production limit of 60 MCF because of a temporary reservoir pressure build-up resulting from temporary shut-in due, for example, to pipeline or wellhead maintenance or repair.

(8) That to implement such continued stripper well classification, it is necessary that the Division's "Special Rules For Wellhead Price Ceiling Category Determinations" as promulgated by Order No. R-5878-B, as amended, be further amended by adding a new Rule 21, outlining the material required to be filed with the Division (in accordance with 18 CFR 274.206(c) subparagraphs (1) through (7) inclusive) in order to obtain a determination of increased production resulting from temporary pressure build-up.

(9) That the revision of Division Forms C-132 and C-132-A to make said forms compatible with the above-described amendments to the Special Rules For Applications For Wellhead Price Ceiling Category Determinations is necessary, and said forms should be revised to conform to Exhibits A and B attached hereto and by reference made a part hereof.

(10) That the effective date of this order should be May 10, 1981.

IT IS THEREFORE ORDERED:

(1) That the Oil Conservation Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations," as promulgated by Order No. R-5878-B, as amended, are

-3-

Case No. 7199

Order No. R-5879-B-2

hereby further amended by the addition of a new Section 4, Production Enhancement Gas, to Rule 17, reading in its entirety as follows:

"4. PRODUCTION ENHANCEMENT GAS

- a. FERC Form No. 121;
- b. Division Form C-132 and the required attachments;
- c. A detailed statement describing the production enhancement work that has been performed on the well, including the dates such work was commenced and completed, or that will be performed on the well;
- d. An itemized statement of costs incurred in performing the production enhancement work described in 18 CFR §271.704(d), including copies of invoices and bills for such work or, if the work has not yet been completed, estimates of such cost;
- e. A statement estimating, for the five-year period beginning from the month in which the application is filed, the units of gas production (MMBtu's) that:
 - (1) would be produced from the well if the production enhancement work had been completed on the day that the application is filed; and
 - (2) would be produced from the well if the production enhancement work is not performed or had not been performed;
- f. The calculation, based on the estimates required by subparagraph (e) above, that is required by 18 CFR §271.704(c)(1)(v);
- g. The renegotiated price and a copy of that portion of the sales contract that authorizes collections of such price;
- h. A statement by the applicant, under oath, that:
 - (1) The production enhancement work is necessary, and can be reasonably expected, to enhance production;

- (2) The maximum lawful price that would be applicable but for qualification of the gas under 18 CFR §271.704, does not, or will not, provide adequate incentive for the performance of the production enhancement work;
 - (3) But for the availability of a price at least as high as the renegotiated price specified in subparagraph (g), the production enhancement work would not have been or will not be performed;
 - (4) The production enhancement work was not commenced before May 29, 1980;
 - (5) To the best of the applicant's knowledge and belief, the estimates required by subparagraph (e) above are reasonable; and
 - (6) The applicant has no knowledge of any other information not described in the application which is inconsistent with these statements and estimates;
- 1. A statement by the purchaser, under oath, that to the best of the purchaser's knowledge or belief:
 - (1) There is a reasonable basis for the statements and estimates made by the applicant; and
 - (2) The purchaser has no knowledge of any information not described in the application which is inconsistent with such statements and estimates."

(2) That the Division's "Special Rules For Application For Wellhead Price Ceiling Category Determinations," as promulgated by Order No. R-5878-B, as amended, are hereby further amended by the addition of a new Rule 21, reading in its entirety as follows:

"Rule 21. An application for determination that increased production is the result of temporary pressure buildup shall include:

- 1. Division Form C-132-A and, if applicable, an approved copy of Form C-132 qualifying the well as a stripper well.

2. A copy of the purchaser's notice, if any, that the average daily production of the well for the relevant 90-day production period has exceeded 60 Mcf.
3. A summary or tabulation of production records for the 90-day production period during which the well's average daily production period exceeded 60 Mcf.
4. A statement of the total production for the period in question, and the average production per production day.
5. A statement of the number of days the well was shut-in and a description of the reason for the shut-in.
6. Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in.
7. A statement, under oath, that to the best of his information, knowledge and belief,
 - a. the well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period,
 - b. the information supplied is true, and
 - c. the petition for this determination has been served on the Division, the FERC, and any purchaser."

(3) That Division Form C-132, "Application For Wellhead Price Ceiling Category Determination," is hereby revised to conform to Exhibit A attached hereto and by reference made a part hereof.

(4) That Division Form C-132-A, "Application For Continued Stripper Classification," is hereby revised to conform to Exhibit B attached hereto and by reference made a part hereof.

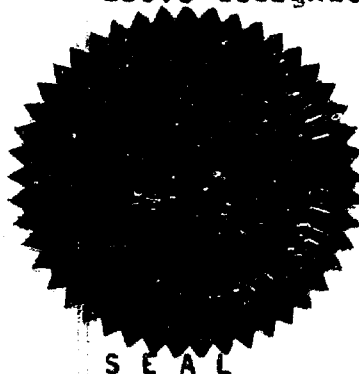
-6-

Case No. 7199
Order No. R-5878-B-2

(5) That the effective date of this order and of all of the additions, amendments, and revisions approved herein shall be May 10, 1981.

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

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



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Joe D. Ramey
JOE D. RAMEY
Director

fd/

SANTA FE, NEW MEXICO 87501
APPLICATION FOR WELLHEAD
PRICE CEILING CATEGORY DETERMINATION

1. FOR DIVISION USE ONLY:	
DATE COMPLETE APPLICATION FILED	_____
DATE DETERMINATION MADE	_____
WAS APPLICATION CONTESTED?	YES _____ NO _____
NAME(S) OF INTERVENOR(S), IF ANY:	

2. Name of Operator	5A. Indicate Type of Lease STATE <input type="checkbox"/> FEE <input type="checkbox"/>
3. Address of Operator	5. State Oil & Gas Lease No.
4. Location of Well UNIT LETTER _____ LOCATED _____ FEET FROM THE _____ LINE AND _____ FEET FROM THE _____ LINE OF SEC. _____ TWP. _____ RGE. _____ NMPM	7. Unit Agreement Name
11. Name and Address of Purchaser(s)	8. Farm or Lease Name
	9. Well No.
	10. Field and Pool, or Wildcat
	12. County

WELL CATEGORY INFORMATION

Check appropriate box for category sought and information submitted.

1. Category(ies) Sought (By NGPA Section No.) _____
2. All Applications must contain:
 - ☐ a. C-101 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK
 - ☐ b. C-105 WELL COMPLETION OR RECOMPLETION REPORT
 - ☐ c. DIRECTIONAL DRILLING SURVEY, IF REQUIRED UNDER RULE 111
 - ☐ d. AFFIDAVITS OF MAILING OR DELIVERY
3. In addition to the above, all applications must contain the items required by the applicable rule of the Division's "Special Rules for Applications For Wellhead Price Ceiling Category Determinations" as follows:
 - A. NEW NATURAL GAS UNDER SEC. 102(c)(1)(B) (using 2.5 Mile or 1000 Feet Deeper Test)
☐ All items required by Rule 14(1) and/or Rule 14(2)
 - B. NEW NATURAL GAS UNDER SEC. 102(c)(1)(C) (new onshore reservoir)
☐ All items required by Rule 15
 - C. NEW ONSHORE PRODUCTION WELL
☐ All items required by Rule 16A or Rule 16B
 - D. DEEP, HIGH-COST NATURAL GAS, TIGHT FORMATION NATURAL GAS, AND PRODUCTION ENHANCEMENT NATURAL GAS
☐ All items required by Rule 17(1), Rule 17(2) or Rule 17(3), or Rule 17(4)
 - E. STRIPPER WELL NATURAL GAS
☐ All items required by Rule 18

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED
HEREIN IS TRUE AND COMPLETE TO THE BEST OF MY
KNOWLEDGE AND BELIEF.

NAME OF APPLICANT (Type or Print)

SIGNATURE OF APPLICANT

Title _____

Date _____

FOR DIVISION USE ONLY	
<input type="checkbox"/> Approved	The information contained herein includes all of the information required to be filed by the applicant under Subpart B of Part 274 of the FERC regulations.
<input type="checkbox"/> Disapproved	
EXAMINER _____	

APPLICATION FOR CONTINUED
STRIPPER CLASSIFICATION

1. FOR DIVISION USE ONLY:

DATE COMPLETE APPLICATION FILED _____

DATE DETERMINATION MADE _____

WAS APPLICATION CONTESTED? YES _____ NO _____

NAME(S) OF INTERVENOR(S), IF ANY: _____

3A. Indicate Type of Lease

STATE ☐

FEE ☐

3. State Oil & Gas Lease No. _____



7. Unit Agreement Name _____

8. Farm or Lease Name _____

9. Well No. _____

10. Field and Pool, or Wildcat _____

12. County _____

2. Name of Operator _____

3. Address of Operator _____

4. Location of Well

UNIT LETTER _____

LOCATED _____

FEET FROM THE _____

LINE _____

5. Name and Address of Purchaser(s) _____

CLASSIFICATION

1. Check appropriate box for category sought and information submitted.
2. All applications must contain the items required by the applicable rule of the Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" as follows:
 - A. Increased production resulting from recognized enhanced recovery techniques
☐ All items required by Rule 19
 - B. Well is seasonally affected
☐ All items required by Rule 20
 - C. Increased production resulting from temporary pressure buildup
☐ All items required by Rule 21

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED
HEREIN IS TRUE AND COMPLETE TO THE BEST OF MY
KNOWLEDGE AND BELIEF.

NAME OF APPLICANT (Type or Print) _____

SIGNATURE OF APPLICANT _____

Title _____

Date _____

FOR DIVISION USE ONLY

☐ Approved

☐ Disapproved

The information contained herein includes all
of the information required to be filed by the
applicant under Subpart B of Part 274 of the
FERC regulations.

EXAMINER _____

4. PRODUCTION ENHANCEMENT GAS

FORM EX-100	2
EXHIBIT	

- a. FERC Form No. 121;
- b. Division Form C-132 and the required attachments;
- c. A detailed statement describing the production enhancement work that has been performed on the well, including the dates such work was commenced and completed, or that will be performed on the well;
- d. An itemized statement of costs incurred in performing the production enhancement work described in 18 CFR § 271.704(d), including copies of invoices and bills for such work or, if the work has not yet been completed, estimates of such cost;
- e. An statement estimating, for the five year period beginning from the month in which the application is filed, the units of gas production (MMBtu's) that:
 - (1) would be produced from the well if the production enhancement work had been completed on the day that the application is filed; and
 - (2) would be produced from the well if the production enhancement work if not performed or had not been performed;
- f. The calculation, based on the estimates required by subparagraph (e) above, that is required by 18 CFR § 271.704(c)(1)(v);
- g. The renegotiated price and a copy of that portion of the sales contract that authorizes collections of such price;
- h. A statement by the applicant, under oath, that:
 - (1) The production enhancement work is necessary, and can be reasonably expected, to enhance production;
 - (2) The maximum lawful price that would be applicable but for qualification of the gas under 18 CFR § 271.704, does not, or will not,

provide adequate incentive for the performance of the production enhancement work;

(3) But for the availability of a price at least as high as the renegotiated price specified in subparagraph (f), the production enhancement work would not have been or will not be performed;

(4) The production enhancement work was not commenced before May 29, 1980;

(5) To the best of the applicant's knowledge and belief, the estimates required by subparagraph (e) above are reasonable; and

(6) The applicant has no knowledge of any other information not described in the application which is inconsistent with these statements and estimates;

i. A statement by the purchaser, under oath, that to the best of the purchaser's knowledge or belief:

(1) There is a reasonable basis for the statements and estimates made by the applicant; and

(2) The purchaser has no knowledge of any information not described in the application which is inconsistent with such statements and estimates:

Rule 21. An application for determination ^{that} ~~for~~ increased production ^{is the result of} ~~resulting~~ temporary pressure buildup shall include:

1. Division Form C-132-A and an approved copy of Form C-132 qualifying the well as a stripper well.
2. A copy of the purchaser's notice, if any, that the average daily production of the well for the relevant 90-day production period has exceeded 60 Mcf.
3. A summary or tabulation of production records for the 90-day production period during which the well's average daily production period exceeded 60 Mcf.
4. A statement of the total production for the period in question, and the average production per production day.
5. A statement of the number of days the well was shut-in and a description of the reason for the shut-in.
6. Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in.
7. A statement, under oath, that to the best of his information, knowledge and belief,
 - a. the well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period,
 - b. the information supplied is true, and
 - c. the petition for this determination ^{Division, the} ~~has been served on the jurisdictional agency, the Commission,~~ ^{FERC,} and any purchaser.

BEFORE EXAMINER NUTTER

OIL CONSERVATION DIVISION

EXHIBIT NO. 5

CASE NO. _____

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO
25 March 1981

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Conservation
Division on its own motion to consider
amendments to its SPECIAL RULES FOR APPLI-
CATIONS FOR WELLHEAD CEILING CATEGORY DE-
TERMINATIONS as promulgated by Division
Order No. R-5878, as amended.

CASE
7199

BEFORE: Daniel S. Nutter

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation
Division:

Ernest L. Padilla, Esq.
Legal Counsel to the Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For the Applicant:

EXHIBITS

- 1
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- 4
- 5 Division Exhibit One, Order 107
- 6 Division Exhibit Two, Changes
- 7 Division Exhibit Three, C-132
- 8 Division Exhibit Four, Interim Rule
- 9 Division Exhibit Five, Proposed Rule
- 10 Division Exhibit Six, C-132A
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1
2 MR. NUTTER: The first case we'll call
3 this morning will be Case 7199, which is in the matter of
4 the hearing called by the Oil Conservation Division on its
5 own motion to consider amendments to its SPECIAL RULES FOR
6 APPLICATIONS FOR WELLHEAD PRICE CEILING CATEGORY DETERMINATIONS
7 as promulgated by Order No. R-5878, as amended.

8 Call for appearances in this case.

9 MR. PADILLA: Mr. Examiner, Ernest L.
10 Padilla on behalf of the Oil Conservation Division.

11 MR. NUTTER: Other appearances?

12 Okay, Mr. Padilla, in the -- in your
13 duties as counsel for the Oil Conservation Division you have
14 occasion to study the rules and regulations and the special
15 orders of the Commission promulgated for various purposes,
16 is that correct?

17 MR. PADILLA: That's correct, yes, sir.

18 MR. NUTTER: And in the course of these
19 duties you are acquainted with and feel the need for certain
20 amendments to the orders that the Division has promulgated
21 relating to wellhead price ceiling category determinations,
22 is that it?

23 MR. PADILLA: That's correct, yes, sir.

24 MR. NUTTER: And today are you prepared
25 to make some recommendations regarding Order No. R-5878, as

1
2 amended, which is the price ceiling category determinations
3 procedure?

4 MR. PADILLA: Yes, sir.

5 MR. NUTTALL: Would you proceed with that
6 Mr. Padilla?

7 MR. PADILLA: Mr. Examiner, on November
8 13th, 1980, the Federal Energy Regulatory Commission, under
9 Order No. 107 issued a final regulation pertaining to high
10 cost natural gas, under Section 107 of the Natural Gas Policy
11 Act, allowing a special category for what it calls production
12 enhancement gas.

13 Production enhancement gas under 105.
14 which is certain type of intrastate natural gas, and it allows
15 an incentive price of not higher than the Section 109 price
16 or a renegotiated price of lesser of either of those two
17 prices.

18 I have marked for identification Ex-
19 hibit Number One, which is Order No. 107 of the Federal
20 Energy Regulatory Commission.

21 I have also marked as Exhibit Number
22 Two the proposed changes in our regulations for filing re-
23 quirements under Section 107 for production enhancement gas.

24 This third exhibit is a revised -- or
25 a copy of a C-132 with the changes that are necessary to

1

2

include production enhancement gas.

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6

I'll not say anything about the Section 100 stripper applications, which is the second part of this hearing until I've finished with the production enhancement gas.

7

8

9

10

Essentially, the changes that the Division is now proposing is to include as a new category under Section 107, which is the -- falls under our Rule 17, a paragraph 4.

11

12

MR. NUTTER: That would be Rule 17 of R-5878.

13

14

15

16

MR. PADILLA: That's correct. Paragraph 1 being the high cost natural gas. Paragraph 2 is new tight formation gas, and paragraph 3 applies to recompletion type gas.

17

18

19

20

The fourth paragraph before us now will include or be applicable to production enhancement gas.

21

22

23

24

I think the proposed changes are very straightforward as those in Order No. 107 of the FERC.

25

The only changes that have been made are those changes that are applicable to the Division, which I think should be changed in order to conform to our regulations.

I would say that the material change

1
2 from those things, from the rules apply to the requirement
3 under the rules at the option of the jurisdictional agency,
4 which is the Division in this case, to waive the requirements
5 of requiring an applicant to state whether fresh water aquifers
6 may be impaired by fracturing practices or techniques in re
7 working a well or in doing one of the enhancement -- some of
8 the production enhancement work in order to qualify a well
9 under these rules.

10 After reviewing with some of the staff
11 members of the Division and the Director of the Division the
12 jurisdictional -- the Division feels that we should at this
13 time waive the requirements to require an applicant to state
14 how he proposes to protect the quality of the fresh water
15 aquifers.

16 Basically the grounds for this are --
17 or the grounds for the waiver are to -- are simply the casing
18 requirements and cementing requirements the Division has,
19 basically that you go through the -- generally in all cases
20 you go through the fresh water aquifer with a casing and
21 cementing program that would adequately protect the fresh
22 water aquifers.

23 And that's basically all I have on --
24 on this proposed change, and I would stand for questions on
25 this one at this time, or if you'd like, I would proceed on

1
2 to the Section 108 orders.

3 MR. NUTTER: This waiver you're talking
4 about, Mr. Padilla, would be the waiver that's contained on
5 page 754 of Order No. 107, Section, or Subsection ii?

6 MR. PADILLA: That's correct. And I
7 believe it starts, the statement starts at Subsection 2(i).

8 MR. NUTTER: Uh-huh.

9 MR. PADILLA: And it requires the ap-
10 plicant to make the -- if fracturing operations are being
11 conducted, to describe the minimum separation between the
12 target production zone and the fresh water aquifers, and then
13 it goes on to also identify, require him to identify what
14 procedures he would take to protect the fresh water aquifers.

15 MR. NUTTER: Do you think it would be
16 preferable to answer any questions people might have regarding
17 this section before you go on to the stripper section, Mr.
18 Padilla?

19 It might be kind of confusing. Are
20 there any questions of Mr. Padilla regarding the production
21 enhancement gas portion of his recommendation here today?

22 If there's no question, go on to the
23 next section, then, Mr. Padilla.

24 MR. PADILLA: Mr. Nutter the second
25 part of these proposed changes involve Section 108 of the

1
2 Natural Gas Policy Act, the stripper qualifications. The
3 FERC has issued an interim rule on January 15th, 1981 to
4 allow a well that has qualified as a stripper well to continue
5 qualification by -- through what it calls temporary pressure
6 build-ups. In other words, if a well exceeds an average
7 daily production of 60 Mcf per day because of temporary pres-
8 sure build-ups, then the Commission feels -- or the FERC
9 feels under these regulations, or the interim rule, that the
10 well should continue to qualify as a stripper well.

11 The proposed changes that --

12 MR. NUTTER: Now do you have that interim
13 rule that was issued by the FERC as one of your exhibits, Mr.
14 Padilla?

15 MR. PADILLA: Yes, that has been labeled
16 as Exhibit Four.

17 MR. NUTTER: Okay.

18 MR. PADILLA: The proposed change has
19 been labeled as a new Rule 21 of our regulations, and that
20 has been marked for identification as Exhibit Number Five,
21 and Exhibit Number Six is the C-132-A, which shows the re-
22 vised changes necessary to include temporary pressure build-
23 ups. C-132-A would, of course, be used for filing with the
24 Division when a temporary pressure build-up has occurred and
25 an applicant or a producer wants to continue having his well

1
2 qualify as a stripper well.

3 Again, Rule 21, or proposed Rule 21, is
4 very similar or almost straightforward from that proposed by
5 the FERC as far as the filing requirements are concerned.

6 The only changes that are made in there
7 are the changes that we feel should be made in order to allow
8 the well to -- or to correspond to our regulations.

9 After reviewing this proposed Rule 21
10 this morning I felt that right at the bottom of the page, the
11 last paragraph of Subsection (c) there should read, where
12 it says jurisdictional agency it should say Division, and
13 where it says the Commission it should say the FERC, in order
14 to make it properly worded.

15 MR. NUTTER: So you're amending your
16 exhibit there and in paragraph -- Section 7 (c) you would
17 strike "jurisdictional agency" and substitute the word
18 "Division".

19 MR. PADILLA: That's correct.

20 MR. NUTTER: And also in the same
21 Section 7 (c) you would strike the word "Commission" and
22 substitute the word "FERC", or the initials "FERC".

23 A. MR. PADILLA: Yes, sir.

24 MR. NUTTER: Okay. This is a proposed
25 Rule 21 of the procedures as outlined in Order No. R-5878.

1
2 MR. PADILLA: That's correct.

3 MR. NUTTER: And it's a new section ---
4 rule altogether.

5 MR. PADILLA: It's a new rule altogether.

6 MR. NUTTER: Okay now Form 132-A is
7 the form which is entitled Application for Continued Stripper
8 Classification so there would be a necessity to add Section
9 C, Increased Production Resulting from Temporary Pressure
10 Buildup to that form, and that's what you proposed here in
11 Exhibit Six?

12 MR. PADILLA: Yes, sir.

13 MR. NUTTER: Okay. Now, the Form C-132,
14 which is the application for determination, did it have to
15 have any amendments to bring in your production enhancement
16 gas?

17 MR. PADILLA: Yes. What I'm proposing
18 here is to amend Section 3-D, towards about three-quarters
19 of the page down, where it says deep high cost gas and I
20 would delete the word "and", well, I'd insert in there ";"
21 delete the word "and" and then continue on to the end and
22 add "and production enhancement gas".

23 MR. NUTTER: Whereas the form used to
24 say "deep, high-cost natural gas and tight formation natural
25 gas," it will now say "deep, high-cost natural gas; tight

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formation natural gas, and production enhancement gas".

MR. PADILLA: Yes. Also, on the following line I have added "or Rule 17(4)".

MR. NUTTER: Whereas now it states "All items required by Rule 17(1), Rule 17(2), or Rule 17(3)", you have changed that to read "All items required by Rule 17(1), Rule 17(2), Rule 17(3), or Rule 17(4)".

MR. PADILLA: Correct.

MR. NUTTER: Okay. Are there any questions of Mr. Padilla regarding the amendments to the section on the tight formation gas -- I mean on the temporary pressure buildup gas?

Yes, sir?

MR. ANDERSON: My name is Donald L. Anderson, El Paso Natural Gas Company.

I have a question on what you want on Rule 21.

The rule that the FERC has come out with is an interim rule; it's not a final rule. Comments have been made to the FERC that the temporary pressure buildup rule apply to an application that is pending before a jurisdictional agency, rather than one that has been approved by the jurisdictional agency.

I'm wondering if part 1 could be

1
2 reworded not to require an approved copy of Form C-132 to
3 take care of the situation if FERC changes the final rule to
4 provide for temporary pressure buildup to a pending applica-
5 tion?

6 MR. PADILLA: I don't seen any problem
7 with that, but I think the -- the interim rule does require
8 that, as part of the filing requirements. in page 11 of those
9 rules, it indicates that the original determination shall
10 find the well is a stripper well, and so that's the reason
11 I included a copy of the C-132, but I wouldn't have any ob-
12 jection to deleting that once the FERC changed that require-
13 ment, or to put something to the effect that the Division
14 Form C-132-A and an approved copy of the C 132 qualifying the
15 well as a stripper well, if applicable.

16 I think it would be inapplicable if the
17 FERC changes its rule.

18 MR. NUTTER: But under the present
19 interim rules it would be necessary to write it as it is,
20 isn't it -- wouldn't it?

21 MR. PADILLA: It seems to me that it
22 would be.

23 MR. ANDERSON: That's true. The com-
24 ments have been filed with the FERC to allow the temporary
25 pressure buildup rule to apply to any application for the

1
2 reason that deferred applications would not be covered by the
3 general rules, and if the jurisdictional agency is late in
4 approving the application --

5 MR. NUTTER: Yes, sir.

6 MR. ANDERSON: The FERC has indicated
7 informally that they intended the rule to apply to pending
8 applications. That is an informal indication only.

9 MR. NUTTER: Well, we have found that
10 it's kind of useless to even under the FERC's permanent rules,
11 to engrave any of our regulations in stone, because they are
12 quite subject to change.

13 I think when we're going to issue an
14 order under one of FERC's interim rules we'd better carve
15 them in Jello so we can -- they'll be flexible enough to
16 amend them later.

17 So at this time we probably ought to
18 leave that in there, and then maybe subject to amendment.

19 MR. PADILLA: Well, every -- every
20 interim rule that has been issued, we've had to change in
21 some respect our regulations to conform to the final rule
22 that the FERC finally enacts, so I anticipate that in some
23 form or another we will be changing this Rule 21 to conform
24 with the final regulations.

25 MR. NUTTER: Are there any further

1
2 questions?

3 Did you have anything further?

4 MR. ANDERSON: Well, if -- to provide
5 the opportunity for pending applications to -- for an appli-
6 cation under the temporary pressure buildup to be made timely,
7 if FERC does issue the rules, is there some way that this
8 could be rewritten to avoid any delay?

9 MR. PADILLA: Well, I could -- we could
10 add at this point, probably "if applicable" at the end of
11 that sentence, and that would work and we may never have to
12 change this again.

13 MR. ANDERSON: Yes.

14 MR. PADILLA: So I have no quarrel with
15 that.

16 MR. NUTTER: So what you're suggesting,
17 then, Mr. Padilla, would be under Rule 21, Section 1 where
18 it requires the filing of Division Form C-132A and an approved
19 copy of Form C-132, qualifying the well as a stripper well.
20 if applicable?

21 MR. PADILLA: Yes. If the FERC deletes
22 that requirement then it would no longer be applicable.

23 MR. NUTTER: Are there any other ques-
24 tions of Mr. Padilla? He may be excused.

25 Did you have any statement or anything

1
2 to make. Mr. Padilla, regarding this case?

3 MR. PADILLA: No, sir.

4 MR. NUTTER: Does anyone have any state-
5 ments or comments to make in Case Number 7199?

6 We'll take the case under advisement.
7

8 (Hearing concluded.)
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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREPY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the hearing held on
the 3/25/81 at 7:19 PM
hearing held on 3/25/81 at 7:19 PM

[Signature] Examiner
Oil Conservation Division

SALLY W. BOYD, C.S.R.

Rt. 1 Box 193-B
Santa Fe, New Mexico 87501
Phone (505) 455-7409

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO
25 March 1981

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Conservation
Division on its own motion to consider
amendments to its SPECIAL RULES FOR APPLI-
CATIONS FOR WELLHEAD CEILING CATEGORY DE-
TERMINATIONS as promulgated by Division
Order No. R-5878, as amended.

CASE
7199

BEFORE: Daniel S. Nutter

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation
Division:

Ernest L. Padilla, Esq.
Legal Counsel to the Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For the Applicant:

*Hearing in this
Register in the
Transcript*

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date MARCH 25, 1981 Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
A. J. Kendrick	El Paso Natural Gas Co	El Paso
Joe E. Johnson, Jr.	Layton Enter., Inc.	Lubbock, Texas
William L. Carr	Campbell, Boyd and Black	Santa Fe
John H. Drenth	Flag Redfern Oil Co	Midland
Ronald L. Scott	" " " "	"
E. Chang	OCD	Albuquerque
L. E. Smith	"	"
James D. Offord	Humble Oil Co. Refining	Midland, Texas
Jack B. Decker	Baker Enterprises	"
MAX E. CURRY	Estoril Produ. Corp	Midland
A. L. Anderson	El Paso Natural Gas Co.	El Paso
J. P. Wilbanks	ESTORIL PROD. CORP.	Midland
J. R. LAMAR	AMCO PRODUCTION CO.	HOUSTON TX
Bruce C. Moore	ESTORIL PROD. CORP.	Midland, TX
S. H. Roeland	BASS ENTERPRISES	Midland, TX
DON LAYTON	LAYTON ENTERPRISES, Inc.	Lubbock, Texas
George H. Hendrick	Hunker, Jodie, P.A.	Roswell, N.M.

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date

MARCH 25, 1981

Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
Bob McCrary	Southern Union Co.	Dallas
Robert Higgs	U.S.G.S. Albuquerque	Albuquerque
C. D. Kallinger	Gulf Oil	Midland
Joe & Son		Houston
K. McElton	Gulf Oil	Hobbs, NM
James D. McElton	Trinity Resources	Houston
Robert F. Casavant	Gulf Oil	Midland
Geoff + Bemburg	Trinity Resources	Houston
Jeffrey P. Osterman	Gulf Oil	Hobbs, NM
Russell Cate	Gulf Oil Corp.	Midland, TX
Gene L. Lee	Sutton Energy Corp.	DALLAS TX
Ray V. Thompson	Southern Union Expl.	Dallas, TX
Wendell H. Hester		
C. M. Parlin	Kocit Exploration Co.	Wichita, KS
David D. Fitch	Friend Consulting	Wichita KS.
Nester Maldonado	E.P.N.C.	EL PASO
Roy Shannock	Southern Union	DALLAS
Charles E. Luperfay	SEECO INC.	Fayetteville, AR
R. Craig Nibbel	SOUTHERN UNION	DALLAS

J. E. Sperling

Marshall

Low Firm

all.

Al J. Hay Heaven

Mobile Producing

Texas & New Mexico
INC.

Houston

Marty Bloodworth

" (MPTM)

Hobbs, N.M.

Tommy Burnett

" " "

Hobbs N.M.

R L Bayless

Merrion - Bayless Farrier

Robert L Bayless, Jr.

Farington

Kevin McCord

Farminston

Richard M Luce

Koch Expl.

Denver

E X H I B I T S

Division Exhibit One, Order 107

Division Exhibit Two, Changes

Division Exhibit Three, C-132

Division Exhibit Four, Interim Rule

Division Exhibit Five, Proposed Rule

Division Exhibit Six, C-132A

1
2 MR. NUTTER: The first case we'll call
3 this morning will be Case 7199, which is in the matter of
4 the hearing called by the Oil Conservation Division on its
5 own motion to consider amendments to its SPECIAL RULES FOR
6 APPLICATIONS FOR WELLHEAD PRICE CEILING CATEGORY DETERMINATIONS
7 as promulgated by Order No. R-5878, as amended.

8 Call for appearances in this case.

9 MR. PADILLA: Mr. Examiner, Ernest L.
10 Padilla on behalf of the Oil Conservation Division.

11 MR. NUTTER: Other appearances?

12 Okay, Mr. Padilla, in the -- in your
13 duties as counsel for the Oil Conservation Division you have
14 occasion to study the rules and regulations and the special
15 orders of the Commission promulgated for various purposes,
16 is that correct?

17 MR. PADILLA: That's correct, yes, sir.

18 MR. NUTTER: And in the course of these
19 duties you are acquainted with and feel the need for certain
20 amendments to the orders that the Division has promulgated
21 relating to wellhead price ceiling category determinations,
22 is that it?

23 MR. PADILLA: That's correct, yes, sir.

24 MR. NUTTER: And today are you prepared
25 to make some recommendations regarding Order No. R-5878, as

1
2 amended, which is the price ceiling category determinations
3 procedure?

4 MR. PADILLA: Yes, sir.

5 MR. NUTTER: Would you proceed with that
6 Mr. Padilla?

7 MR. PADILLA: Mr. Examiner, on November
8 13th, 1980, the Federal Energy Regulatory Commission, under
9 Order No. 107 issued a final regulation pertaining to high
10 cost natural gas, under Section 107 of the Natural Gas Policy
11 Act, allowing a special category for what it calls production
12 enhancement gas.

13 Production enhancement gas under 105,
14 which is certain type of intrastate natural gas, and it allows
15 an incentive price of not higher than the Section 109 price
16 or a renegotiated price of lesser of either of those two
17 prices.

18 I have marked for identification Ex-
19 hibit Number One, which is Order No. 107 of the Federal
20 Energy Regulatory Commission.

21 I have also marked as Exhibit Number
22 Two the proposed changes in our regulations for filing re-
23 quirements under Section 107 for production enhancement gas.

24 This third exhibit is a revised -- or
25 a copy of a C-132 with the changes that are necessary to

1
2 include production enhancement gas.

3 I'll not say anything about the Section
4 108 stripper applications, which is the second part of this
5 hearing until I've finished with the production enhancement
6 gas.

7 Essentially, the changes that the Divi-
8 sion is now proposing is to include as a new category under
9 Section 107, which is the -- falls under our Rule 17, a para-
10 graph 4.

11 MR. NUTTER: That would be Rule 17 of
12 R-5878.

13 MR. PADILLA: That's correct. Paragraph
14 1 being the high cost natural gas. Paragraph 2 is new tight
15 formation gas, and paragraph 3 applies to recompletion type
16 gas.

17 The fourth paragraph before us now will
18 include or be applicable to production enhancement gas.

19 I think the proposed changes are very
20 straightforward as those in Order No. 107 of the FERC.

21 The only changes that have been made
22 are those changes that are applicable to the Division, which
23 I think should be changed in order to conform to our regula-
24 tions.

25 I would say that the material change

1
2 from those things, from the rules apply to the requirement
3 under the rules at the option of the jurisdictional agency,
4 which is the Division in this case, to waive the requirements
5 of requiring an applicant to state whether fresh water aquifers
6 may be impaired by fracturing practices or techniques in re-
7 working a well or in doing one of the enhancement -- some of
8 the production enhancement work in order to qualify a well
9 under these rules.

10 After reviewing with some of the staff
11 members of the Division and the Director of the Division, the
12 jurisdictional -- the Division feels that we should at this
13 time waive the requirements to require an applicant to state
14 how he proposes to protect the quality of the fresh water
15 aquifers.

16 Basically, the grounds for this are --
17 or the grounds for the waiver are to -- are simply the casing
18 requirements and cementing requirements the Division has,
19 basically that you go through the -- generally in all cases
20 you go through the fresh water aquifer with a casing and
21 cementing program that would adequately protect the fresh
22 water aquifers.

23 And that's basically all I have on --
24 on this proposed change, and I would stand for questions on
25 this one at this time, or if you'd like, I would proceed on

1
2 to the Section 108 orders.

3 MR. NUTTER: This waiver you're talking
4 about, Mr. Padilla, would be the waiver that's contained on
5 page 754 of Order No. 107, Section, or Subsection ii?

6 MR. PADILLA: That's correct. And I
7 believe it starts, the statement starts at Subsection 9(i).

8 MR. NUTTER: Uh-huh.

9 MR. PADILLA: And it requires the ap-
10 plicant to make the -- if fracturing operations are being
11 conducted, to describe the minimum separation between the
12 target production zone and the fresh water aquifers, and then
13 it goes on to also identify, require him to identify what
14 procedures he would take to protect the fresh water aquifers.

15 MR. NUTTER: Do you think it would be
16 preferable to answer any questions people might have regarding
17 this section before you go on to the stripper section, Mr.
18 Padilla?

19 It might be kind of confusing. Are
20 there any questions of Mr. Padilla regarding the production
21 enhancement gas portion of his recommendation here today?

22 If there's no question, go on to the
23 next section, then, Mr. Padilla.

24 MR. PADILLA: Mr. Nutter, the second
25 part of these proposed changes involve Section 108 of the

1
2 Natural Gas Policy Act, the stripper qualifications. The
3 FERC has issued an interim rule on January 15th, 1981, to
4 allow a well that has qualified as a stripper well to continue
5 qualification by -- through what it calls temporary pressure
6 build-ups. In other words, if a well exceeds an average
7 daily production of 60 Mcf per day because of temporary pres-
8 sure build-ups, then the Commission feels -- or the FERC
9 feels under these regulations, or the interim rule, that the
10 well should continue to qualify as a stripper well.

11 The proposed changes that --

12 MR. NUTTER: Now do you have that interim
13 rule that was issued by the FERC as one of your exhibits, Mr.
14 Padilla?

15 MR. PADILLA: Yes, that has been labeled
16 as Exhibit Four.

17 MR. NUTTER: Okay.

18 MR. PADILLA: The proposed change has
19 been labeled as a new Rule 21 of our regulations, and that
20 has been marked for identification as Exhibit Number Five,
21 and Exhibit Number Six is the C-132-A, which shows the re-
22 vised changes necessary to include temporary pressure build-
23 ups. C-132-A would, of course, be used for filing with the
24 Division when a temporary pressure build-up has occurred and
25 an applicant or a producer wants to continue having his well

1
2 qualify as a stripper well.

3 Again, Rule 21, or proposed Rule 21, is
4 very similar or almost straightforward from that proposed by
5 the FERC as far as the filing requirements are concerned.

6 The only changes that are made in there
7 are the changes that we feel should be made in order to allow
8 the well to -- or to correspond to our regulations.

9 After reviewing this proposed Rule 21
10 this morning I felt that right at the bottom of the page, the
11 last paragraph of Subsection (c) there should read, where
12 it says jurisdictional agency it should say Division, and
13 where it says the Commission it should say the FERC, in order
14 to make it properly worded.

15 MR. NUTTER: So you're amending your
16 exhibit there and in paragraph -- Section 7 (c) you would
17 strike "jurisdictional agency" and substitute the word
18 "Division".

19 MR. PADILLA: That's correct.

20 MR. NUTTER: And also in the same
21 Section 7 (c) you would strike the word "Commission" and
22 substitute the word "FERC", or the initials "FERC".

23 MR. PADILLA: Yes, sir.

24 MR. NUTTER: Okay. This is a proposed
25 Rule 21 of the procedures as outlined in Order No. R-5878.

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MR. PADILLA: That's correct.

MR. NUTTER: And it's a new section --
rule altogether.

MR. PADILLA: It's a new rule altogether.

MR. NUTTER: Okay, now Form 132-A is
the form which is entitled Application for Continued Stripper
Classification, so there would be a necessity to add Section
C, Increased Production Resulting from Temporary Pressure
Buildup to that form, and that's what you proposed here in
Exhibit Six?

MR. PADILLA: Yes, sir.

MR. NUTTER: Okay. Now, the Form C-132,
which is the application for determination, did it have to
have any amendments to bring in your production enhancement
gas?

MR. PADILLA: Yes. What I'm proposing
here is to amend Section 3-D, towards about three-quarters
of the page down, where it says deep, high cost gas, and I
would delete the word "and", well, I'd insert in there ";
delete the word "and" and then continue on to the end and
add "and production enhancement gas".

MR. NUTTER: Whereas the form used to
say "deep, high-cost natural gas and tight formation natural
gas," it will now say "deep, high-cost natural gas; tight

1
2 formation natural gas, and production enhancement gas".

3 MR. PADILLA: Yes. Also, on the following
4 line I have added "or Rule 17(4)".

5 MR. NUTTER: Whereas now it states "All
6 items required by Rule 17(1), Rule 17(2), or Rule 17(3)", you
7 have changed that to read "All items required by Rule 17(1),
8 Rule 17(2), Rule 17(3), or Rule 17(4)".

9 MR. PADILLA: Correct.

10 MR. NUTTER: Okay. Are there any ques-
11 tions of Mr. Padilla regarding the amendments to the section
12 on the tight formation gas -- I mean on the temporary pressure
13 buildup gas?

14 Yes, sir?

15 MR. ANDERSON: My name is Donald L.
16 Anderson, El Paso Natural Gas Company.

17 I have a question on what you want on
18 Rule 21.

19 The rule that the FERC has come out with
20 is an interim rule; it's not a final rule. Comments have
21 been made to the FERC that the temporary pressure buildup
22 rule apply to an application that is pending before a juris-
23 dictional agency, rather than one that has been approved by
24 the jurisdictional agency.

25 I'm wondering if part 1 could be

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reworded not to require an approved copy of Form C-132 to take care of the situation if FERC changes the final rule to provide for temporary pressure buildup to a pending application?

MR. PADILLA: I don't seen any problem with that, but I think the -- the interim rule does require that, as part of the filing requirements, in page 11 of those rules, it indicates that the original determination shall find the well is a stripper well, and so that's the reason I included a copy of the C-132, but I wouldn't have any objection to deleting that once the FERC changed that requirement, or to put something to the effect that the Division Form C-132-A and an approved copy of the C-132 qualifying the well as a stripper well, if applicable.

I think it would be inapplicable if the FERC changes its rule.

MR. NUTTER: But under the present interim rules it would be necessary to write it as it is, isn't it -- wouldn't it?

MR. PADILLA: It seems to me that it would be.

MR. ANDERSON: That's true. The comments have been filed with the FERC to allow the temporary pressure buildup rule to apply to any application for the

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2 reason that deferred applications would not be covered by the
3 general rules, and if the jurisdictional agency is late in
4 approving the application --

5 MR. NUTTER: Yes, sir.

6 MR. ANDERSON: The FERC has indicated
7 informally that they intended the rule to apply to pending
8 applications. That is an informal indication only.

9 MR. NUTTER: Well, we have found that
10 it's kind of useless to even under the FERC's permanent rules,
11 to engrave any of our regulations in stone, because they are
12 quite subject to change.

13 I think when we're going to issue an
14 order under one of FERC's interim rules we'd better carve
15 them in Jello so we can -- they'll be flexible enough to
16 amend them later.

17 So at this time we probably ought to
18 leave that in there, and then maybe subject to amendment.

19 MR. PADILLA: Well, every -- every
20 interim rule that has been issued, we've had to change in
21 some respect our regulations to conform to the final rule
22 that the FERC finally enacts, so I anticipate that in some
23 form or another we will be changing this Rule 21 to conform
24 with the final regulations.

25 MR. NUTTER: Are there any further

1
2 questions?

3 Did you have anything further?

4 MR. ANDERSON: Well, if -- to provide
5 the opportunity for pending applications to -- for an appli-
6 cation under the temporary pressure buildup to be made timely,
7 if FERC does issue the rules, is there some way that this
8 could be rewritten to avoid any delay?

9 MR. PADILLA: Well, I could -- we could
10 add at this point, probably, "if applicable" at the end of
11 that sentence, and that would work and we may never have to
12 change this again.

13 MR. ANDERSON: Yes.

14 MR. PADILLA: So I have no quarrel with
15 that.

16 MR. NUTTER: So what you're suggesting,
17 then, Mr. Padilla, would be under Rule 21, Section 1 where
18 it requires the filing of Division Form C-132A and an approved
19 copy of Form C-132, qualifying the well as a stripper well,
20 if applicable?

21 MR. PADILLA: Yes. If the FERC deletes
22 that requirement then it would no longer be applicable.

23 MR. NUTTER: Are there any other ques-
24 tions of Mr. Padilla? He may be excused.

25 Did you have any statement or anything

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to make, Mr. Padilla, regarding this case?

MR. PADILLA: No, sir.

MR. NUTTER: Does anyone have any statements or comments to make in Case Number 7199?

We'll take the case under advisement.

(Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREPY CERTIFY that
the foregoing Transcript of Hearing before the Oil Conserva-
tion Division was reported by me; that the said transcript
is a full, true, and correct record of the hearing, prepared
by me to the best of my ability.

Sally W. Boyd CSR

SALLY W. BOYD, C.S.R.
Rt. 1 Box 193-B
Santa Fe, New Mexico 87501
Phone (505) 455-7499

I do hereby certify that the foregoing is
a complete and correct record of the
hearing held on 3/25 1972
8
Examined
Oil Conservation Division

Dockets Nos. 12-81 and 13-81 are tentatively set for April 8 and 22, 1981. Applications for hearing must be filed at least 22 days in advance of hearing date.

DOCKET: COMMISSION HEARING - MONDAY - MARCH 16, 1981

OIL CONSERVATION COMMISSION - 9 A.M. - ROOM 205
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

The following cases are continued from the February 18, 1981, Commission Hearing:

CASE 7155: Application of Southland Royalty Company for compulsory pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Pennsylvanian formation underlying the E/2 of Section 35, Township 18 South, Range 29 East, to be dedicated to a well to be drilled at a standard location thereon. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of applicant as operator of the well, and a charge for risk involved in drilling said well.

CASE 7057: (DE NOVO)

Application of Doyle Hartman for the extension of the vertical limits of the Langlie Mattix Pool, Lea County, New Mexico. Applicant, in the above-styled cause, seeks the contraction of the vertical limits of the Jalmat Pool and the upward extension of the vertical limits of the Langlie Mattix Pool to the following depths underlying the following 40-acre tracts in Township 24 South, Range 37 East: SE/4 SE/4 of Section 30: 3364 feet; NE/4 SE/4 of Section 30: 3389 feet; and SE/4 SW/4 of Section 20: 3390 feet.

Upon application of ARCO Oil and Gas Company this case will be heard De Novo pursuant to the provisions of Rule 1220.

Docket No. 10-81

DOCKET: COMMISSION HEARING - WEDNESDAY - MARCH 18, 1981

OIL CONSERVATION COMMISSION - 9 A.M. - MORGAN HALL
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

CASE 7198: Application of Amoco Production Company for temporary special rules, Union, Harding, and Quay Counties, New Mexico. Applicant, in the above-styled cause, seeks the promulgation of temporary special area rules for the Bravo Dome carbon dioxide gas area, including provision for 640-acre spacing units, specified well locations, casing and cementing rules, and authority to inject carbon dioxide gas for test purposes only.

Docket No. 11-81

DOCKET: EXAMINER HEARING - WEDNESDAY - MARCH 25, 1981

9 A.M. - OIL CONSERVATION DIVISION CONFERENCE ROOM,
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

The following cases will be heard before Daniel S. Nutter, Examiner, or Richard L. Stamets, Alternate Examiner:

CASE 7199: In the matter of the hearing called by the Oil Conservation Division on its own motion to consider amendments to its SPECIAL RULES FOR APPLICATIONS FOR WELLHEAD PRICE CEILING CATEGORY DETERMINATIONS as promulgated by Division Order No. R-5878, as amended. The proposed amendments relate to individual well filing requirements for price category determinations for the following categories:

- (1) High cost production enhancement gas under Section 107 of the NGPA;
- (2) Continued stripper qualification resulting from temporary pressure buildups under Section 108 of the NGPA.

In the matter of the hearing called by the Oil Conservation Division on its own motion to consider amendments to its ~~special~~ SPECIAL Rules FOR APPLICATIONS FOR WELLHEAD PRICE CEILING CATEGORY DETERMINATIONS as promulgated by Division Order No. R-5878, as amended. The proposed amendments relate to individual well filing requirements for price category determinations for the following categories:

- (1) High cost production enhancement gas under Section 107 of the HOPA;
- (2) Continued stripper qualification resulting from temporary pressure buildups under Section 108 of the NOPA.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION ON
ITS OWN MOTION TO CONSIDER AMENDMENTS
TO ITS SPECIAL RULES FOR APPLICATIONS
FOR WELLHEAD PRICE CEILING CATEGORY
DETERMINATIONS AS PROMULGATED BY
DIVISION ORDER NO. R-5378, AS AMENDED.

CASE NO. 7199

Order No. R-5878-B-2

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on March 25, 1981, at Santa Fe, New Mexico, before Examiner Daniel S. Nutter.

NOW, on this _____ day of May, 1981, the Division Director, 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 Division has jurisdiction of this cause and the subject matter thereof.

(2) That by its Order No. R-5878-B, effective July 15, 1980, the New Mexico Oil Conservation Division promulgated its "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" pursuant to the Natural Gas Policy Act of 1978 and to the Federal Energy Regulatory Commission (FERC) "Final Regulations Implementing Filing Requirements of the Natural Gas Policy Act of 1978," as promulgated by FERC Order No. 65 effective February 4, 1980.

(3) That said special rules and the Division forms adopted for use pursuant thereto have from time to time been amended to keep their status up-to-date with the FERC regulations as they from time to time have been amended.

(4) That the FERC on November 13, 1980, issued its Order No. 107, a FINAL RULE relating to "High Cost Gas: Production Enhancement Procedures," and on January 15, 1981, issued its "INTERIM RULE under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper wells."

(5) That the aforesaid FERC Order No. 107 created a new category of High-cost Natural Gas called "production enhancement gas," being gas produced from a well upon which certain qualified work has been done to establish, continue, or increase production from the well.

(6) That to implement procedures for qualifying wells for such production enhancement gas classification, it is necessary that the Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" as promulgated by Order No. R-5878-B, as amended, be further amended by adding a new Section 4 to Rule 17, outlining the material required to be filed with the Division (in accordance with 18 CFR 274.205(f) subparagraphs (1) through (8) inclusive) in order to obtain a production enhancement gas price category for a well.

(7) That the FERC INTERIM RULE referred to in Finding No. (4) above provides for continuing qualification of a stripper well as a stripper pursuant to Section 108 of the NGPA even though its average daily production exceeds the stripper production limit of 60 MCF because of a temporary reservoir pressure build-up resulting from temporary shut-in due, for example, to pipeline or wellhead maintenance or repair.

(8) That to implement such continued stripper well classification, it is necessary that the Division's "Special Rules For Wellhead Price Ceiling Category Determinations" as promulgated by Order No. R-5878-B, as amended, be further amended by adding a new Rule 21, outlining the material required to be filed with the Division (in accordance with 18 CFR 274.206(e) subparagraphs (1) through (7) inclusive) in order to obtain a determination of increased production resulting from temporary pressure build-up.

(9) That the revision of Division Forms C-132 and C-132-A to make said forms compatible with the above-described amendments to the Special Rules For Applications For Wellhead Price Ceiling Category Determinations is necessary, and said forms should be revised to conform to Exhibits A and B attached hereto and by reference made a part hereof.

(10) That the effective date of this order should be May 10, 1981.

IT IS THEREFORE ORDERED:

(1) That the Oil Conservation Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations," as promulgated by Order No. R-5878-B, as amended, are hereby further amended by the addition of a new Section 4, Production Enhancement Gas, to Rule 17, reading in its entirety as follows:

"4. PRODUCTION ENHANCEMENT GAS

- a. FERC Form No. 121;
- b. Division Form C-132 and the required attachments;
- c. A detailed statement describing the production enhancement work that has been performed on the well, including the dates such work was commenced and completed, or that will be performed on the well;
- d. An itemized statement of costs incurred in performing the production enhancement work described in 18 CFR §271.704(d), including copies of invoices and bills for such work or, if the work has not yet been completed, estimates of such cost;
- e. A statement estimating, for the five-year period beginning from the month in which the application is filed, the units of gas production (MMBtu's) that:

- (1) would be produced from the well if the production enhancement work had been completed on the day that the application is filed; and
 - (2) would be produced from the well if the production enhancement work is not performed or had not been performed;
- f. The calculation, based on the estimates required by subparagraph (e) above, that is required by 18 CFR §271.704(c)(1)(v);
- g. The renegotiated price and a copy of that portion of the sales contract that authorizes collections of such price;
- h. A statement by the applicant, under oath, that:
- (1) The production enhancement work is necessary, and can be reasonably expected, to enhance production;
 - (2) The maximum lawful price that would be applicable but for qualification of the gas under 18 CFR §271.704, does not, or will not, provide adequate incentive for the performance of the production enhancement work;
 - (3) But for the availability of a price at least as high as the renegotiated price specified in subparagraph (g), the production enhancement work would not have been or will not be performed;
 - (4) The production enhancement work was not commenced before May 29, 1980;
 - (5) To the best of the applicant's knowledge and belief, the estimates required by subparagraph (e) above are reasonable; and

(6) The applicant has no knowledge of any other information not described in the application which is inconsistent with these statements and estimates;

i. A statement by the purchaser, under oath, that to the best of the purchaser's knowledge or belief:

(1) There is a reasonable basis for the statements and estimates made by the applicant; and

(2) The purchaser has no knowledge of any information not described in the application which is inconsistent with such statements and estimates."

(2) That the Division's "Special Rules For Application For Wellhead Price Ceiling Category Determinations," as promulgated by Order No. R-5878-B, as amended, are hereby further amended by the addition of a new Rule 21, reading in its entirety as follows:

"Rule 21. An application for determination that increased production is the result of temporary pressure buildup shall include:

1. Division Form C-132-A and, if applicable, an approved copy of Form C-132 qualifying the well as a stripper well.
2. A copy of the purchaser's notice, if any, that the average daily production of the well for the relevant 90-day production period has exceeded 60 Mcf.
3. A summary or tabulation of production records for the 90-day production period during which the well's average daily production period exceeded 60 Mcf.

4. A statement of the total production for the period in question, and the average production per production day.
5. A statement of the number of days the well was shut-in and a description of the reason for the shut-in.
6. Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in.
7. A statement, under oath, that to the best of his information, knowledge and belief,
 - a. the well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period,
 - b. the information supplied is true, and
 - c. the petition for this determination has been served on the Division, the FERC, and any purchaser."

(3) That Division Form C-132, "Application For Wellhead Price Ceiling Category Determination," is hereby revised to conform to Exhibit A attached hereto and by reference made a part hereof.

(4) That Division Form C-132-A, "Application For Continued Stripper Classification," is hereby revised to conform to Exhibit B attached hereto and by reference made a part hereof.

(5) That the effective date of this order and of all of the additions, amendments, and revisions approved herein shall be May 10, 1981.

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

DONE at Santa Fe, New Mexico, on the day and year herein-
above designated.

APPLICATION FOR WELLHEAD
PRICE CEILING CATEGORY DETERMINATION

1. FOR DIVISION USE ONLY:	
DATE COMPLETE APPLICATION FILED _____	
DATE DETERMINATION MADE _____	
WAS APPLICATION CONTESTED? YES _____ NO _____	
NAME(S) OF INTERVENOR(S), IF ANY: _____	

2. Name of Operator _____	3A. Indicate Type of Lease STATE <input type="checkbox"/> FEE <input type="checkbox"/>
3. Address of Operator _____	5. State Oil & Gas Lease No. _____
4. Location of Well UNIT LETTER _____ LOCATED _____ FEET FROM THE _____ LINE AND _____ FEET FROM THE _____ LINE OF SEC. _____ TWP. _____ R. _____	7. Unit Agreement Name _____
11. Name and Address of Purchaser(s) _____	8. Farm or Lease Name _____
	9. Well No. _____
	10. Field and Pool, or Wildcat _____
	12. County _____

WELL CATEGORY INFORMATION

Check appropriate box for category sought and information submitted.

1. Category(ies) Sought (By NGPA Section No.) _____

2. All Applications must contain:

- ☐ a. C-101 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK
- ☐ b. C-105 WELL COMPLETION OR RECOMPLETION REPORT
- ☐ c. DIRECTIONAL DRILLING SURVEY, IF REQUIRED UNDER RULE 111
- ☐ d. AFFIDAVITS OF MAILING OR DELIVERY

3. In addition to the above, all applications must contain the items required by the applicable rule of the Division's "Special Rules for Applications For Wellhead Price Ceiling Category Determinations" as follows:

A. NEW NATURAL GAS UNDER SEC. 102(c)(1)(B) (using 2.5 Mile or 1000 Feet Deeper Test)

☐ All items required by Rule 14(1) and/or Rule 14(2)

B. NEW NATURAL GAS UNDER SEC. 102(c)(1)(C) (new onshore reservoir)

☐ All items required by Rule 15

C. NEW ONSHORE PRODUCTION WELL

☐ All items required by Rule 16A or Rule 16B

D. DEEP, HIGH-COST NATURAL GAS, TIGHT FORMATION NATURAL GAS, AND PRODUCTION ENHANCEMENT NATURAL GAS

☐ All items required by Rule 17(1), Rule 17(2) or Rule 17(3), or Rule 17(4)

E. STRIPPER WELL NATURAL GAS

☐ All items required by Rule 18

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED
HEREIN IS TRUE AND COMPLETE TO THE BEST OF MY
KNOWLEDGE AND BELIEF.

NAME OF APPLICANT (Type or Print)

SIGNATURE OF APPLICANT

Title _____

Date _____

FOR DIVISION USE ONLY

☐ Approved

☐ Disapproved

The information contained herein includes all
of the information required to be filed by the
applicant under Subpart B of Part 274 of the
FERC regulations.

EXAMINER

Exhibit A - Order No R-5878-B-2

APPLICATION FOR CONTINUED
STRIPPER CLASSIFICATION

1. FOR DIVISION USE ONLY:	
DATE COMPLETE APPLICATION FILED _____	
DATE DETERMINATION MADE _____	
WAS APPLICATION CONTESTED? YES _____ NO _____	
NAME(S) OF INTERVENOR(S), IF ANY: _____	

2. Name of Operator _____		5A. Indicate Type of Lease STATE <input type="checkbox"/> FEE <input type="checkbox"/>
3. Address of Operator _____		5. State Oil & Gas Lease No. _____
4. Location of Well UNIT LETTER _____ LOCATED _____ FEET FROM THE _____ LINE AND _____ FEET FROM THE _____ LINE OF SEC. _____ TWP. _____ RGE. _____ NMPM _____		7. Unit Agreement Name _____
11. Name and Address of Purchaser(s) _____		8. Farm or Lease Name _____
		9. Well No. _____
		10. Field and Pool, or Wildcat _____
		12. County _____

CLASSIFICATION

1. Check appropriate box for category sought and information submitted.
2. All applications must contain the items required by the applicable rule of the Division's "Special Rules For Applications For Wellhead Price Ceiling Category Determinations" as follows:
 - A. Increased production resulting from recognized enhanced recovery techniques
☐ All items required by Rule 19
 - B. Well is seasonally affected
☐ All items required by Rule 20
 - C. Increased production resulting from temporary pressure buildup
☐ All items required by Rule 21

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED
HEREIN IS TRUE AND COMPLETE TO THE BEST OF MY
KNOWLEDGE AND BELIEF.

NAME OF APPLICANT (Type or Print)

SIGNATURE OF APPLICANT

Title _____

Date _____

FOR DIVISION USE ONLY	
<input type="checkbox"/> Approved	The information contained herein includes all of the information required to be filed by the applicant under Subpart B of Part 274 of the FERC regulations.
<input type="checkbox"/> Disapproved	
EXAMINER _____	

Exhibit B-Order No. R-5878-B-2