

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

STATE OF NEW MEXICO

DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION

APPLICATION OF BLACK HILLS GAS RESOURCES, INC.
FOR A NONSTANDARD PRORATION UNIT, RIO
ARRIBA COUNTY, NEW MEXICO

CASE NO. 14057

JANUARY 24, 2008

1220 South St. Francis
Santa Fe, New Mexico

EXAMINER: DAVID BROOKS

ATTORNEY FOR APPLICANT:

OCEAN MUNDS-DRY, Esq.
HOLLAND & HART
Santa Fe, New Mexico 87501

WITNESS: CARLETON EKBERG

EXHIBITS: 1 - 4

REPORTED BY: Jan Gibson, CCR-RPR-CRR
Paul Baca Court Reporters
500 Fourth Street, NW - Suite 105
Albuquerque, New Mexico 87102

RECEIVED
2008 FEB 1 PM 1 45

1 EXAMINER BROOKS: At this time we will
2 call Case No. 14057, Application of Black Hills Gas
3 Resources, Inc. for a Nonstandard Proration Unit,
4 Rio Arriba County, New Mexico. Call for
5 appearances.

6 MS. MUNDS-DRY: Ocean Munds-Dry with the
7 law firm of Holland & Hart in Santa Fe representing
8 the applicant black hills gas resources and I have
9 one witness.

10 THE WITNESS: Carleton Ekberg.

11 EXAMINER BROOKS: Would you spell that for
12 the record.

13 THE WITNESS: C-A-R-L-E-T-O-N,
14 E-K-B-E-R-G.

15 CARLETON EKBERG

16 (being duly sworn, testified as follows:)

17 DIRECT EXAMINATION

18 BY MS. MUNDS-DRY

19 Q. Would you please state your full name for
20 the record?

21 A. Carleton Lee Ekberg, and Lee is L-E-E.

22 Q. Where do you reside?

23 A. Golden, Colorado.

24 Q. By whom are you employed?

25 A. Black Hills Exploration and Production,

1 Inc., which is the parent company of Black Hills Gas
2 Resources, Inc.

3 Q. How are you employed with Black Hills?

4 A. I am senior counsel and the director of
5 the land department.

6 Q. Have you previously testified before the
7 Oil Conservation Division?

8 A. I have not testified before this division.
9 I have testified before the Colorado Conservation
10 Commission.

11 Q. Could you please briefly review your
12 education and work history for the examiner.

13 A. I have a bachelor's degree and a master's
14 degree in mathematics from the University of Denver
15 and I got my JD in 1977 from the University of
16 Denver. Upon graduation, I went to work for Poulson
17 Odell & and Peterson, which is a 10 to 15 person law
18 firm, depending on the year, in Denver primarily
19 representing oil and gas clients. I was made a
20 partner in 1981 and remained at Poulson Odell &
21 Peterson until November of 2005.

22 During that time I represented oil and gas
23 clients and title opinions, transactional matters,
24 financing, acquisitions and divestitures, oil and
25 gas hearings, commission hearings, and before the

1 various federal and state and local agencies.

2 Q. How long have you been with Black Hills?

3 A. I started with Black Hills in November of
4 2005 as the senior counsel and director.

5 Q. As a part of your position there, what are
6 some of your duties?

7 A. My responsibilities include supervision of
8 the land department, which includes maintenance of
9 ownership and working with the regulatory divisions
10 with respect to filing of regulatory matters.

11 Q. Are you familiar with the application
12 that's been filed in this case?

13 A. I am.

14 Q. Are you familiar with the status of the
15 lands that are the subject of the application?

16 A. Yes, I am.

17 MS. MUNDS-DRY: Mr. Brooks, we would
18 tender Mr. Ekberg as a expert in petroleum and land
19 matters and probably legal matters as well.

20 EXAMINER BROOKS: So qualified.

21 Q. Would you, Mr. Ekberg, please state what
22 Black Hills seeks with the application?

23 A. We seek a nonstandard proration unit in
24 which two existing vertical wells that are drilled
25 to and producing from the Picture Cliff Formations

1 and one horizontal well drilled to and producing
2 from the Picture Cliff Formation are dedicated to a
3 nonstandard proration.

4 Q. Mr. Brooks, I am glad you are the examiner
5 today since you are familiar with some of the
6 history of what brought us here, but just for the
7 record, I will ask Mr. Ekberg to briefly give us
8 some of the history of why Black Hills is seeking
9 application at a hearing today.

10 A. We proposed this well or filed an APD for
11 this particular well as a vertical well in May of
12 2006. Subsequent to proposing that well, we came in
13 and got an order which allowed increased density,
14 and contemplated drawing horizontal wells. We
15 determined that horizontal wells were the more
16 appropriate way to develop the Picture Cliff
17 Formation. We filed sundry with the Bureau of Land
18 Management in 2007 to change this to a horizontal
19 well. At the same time we filed the C-102 showing
20 the well to traverse four different spacing units,
21 and we completed this well in December.

22 The well didn't really go to the length
23 that we thought it would for technical reasons, so
24 we filed our amended C-102 or as drilled C-102 to
25 show the well traversing three units. The district

1 office and this office were uncomfortable without a
2 hearing to do that, so we are responding to the
3 request for a hearing on the matter.

4 EXAMINER BROOKS: Those three spacing
5 units being the northeast of Section 8, the
6 northwest of Section 8 and the northeast of Section
7 7.

8 THE WITNESS: Correct, sir.

9 EXAMINER BROOKS: Continue.

10 Q. (By Ms. Munds-Dry) Thank you. If you
11 please, give us then some background as to what
12 rules govern the development of the area.

13 A. 8774 established nonstandard proration
14 units for the units running down the west side of
15 Township 30 north 3 west where this area is located.
16 That included Section 6 and Section 7 and then the
17 ones to the south. So that established Lot 10 of
18 Section 6 and Lots 3 and 4 of Section 7 as a
19 nonstandard proration unit.

20 Then there was NSL 4355 which was
21 initially issued September 7, 1999 and then was
22 amended in 2002. It's called the Mallon Jicarilla
23 Consolidated Contract Area. Basically it provides
24 for 160-acre spacing with 660 acres set back from
25 the outer boundaries and from the quarter sections.

1 Then as I mentioned, last November we came
2 before this OCD requesting an increased density in
3 Order 12707 and that is called the Jicarilla Apache
4 Tribe Production Area. We asked to increase density
5 from one well per 160 acres to two well per 160
6 acres. That applies to both the Picture Cliffs
7 Formation and the tertiary formations. We asked for
8 two horizontal wells. And that order approves
9 unorthodox well locations which provide for 660 feet
10 from the outer boundaries of the Jicarilla Apache
11 Tribe Production Area, and then ten feet from any
12 section lying within that Jicarilla Apache Tribe
13 Production Area.

14 Q. That order essentially incorporated the
15 previous NSL 4355 into this hearing order?

16 A. Yes.

17 Q. Also established increased density, as I
18 believe you said?

19 A. Correct.

20 MS. MUNDS-DRY: We would ask you take
21 administrative notice of Orders 8774, corrected
22 Administrative Order NSL 4355 and Division Order R
23 12707.

24 EXAMINER BROOKS: So noticed.

25 Q. If you then would please turn to Exhibit

1 No. 1, and we have sort of reviewed this previously,
2 but if you will give a few more details of what is
3 on the map.

4 A. Okay. This map shows the area that was
5 originally dedicated to this well on the first C-102
6 that was filed, and also shows the as drilled area.
7 Starting in the right side, we have the unit
8 consisting of Lots 1, 2 and the south of northeast
9 quarter of Section 8. Moving west we have the unit
10 consisting of Lot 3 and 4 in the south half of the
11 northwest corner of Section 8. Continuing westerly
12 we have the unit consisting of of Lot 1 and 2 and
13 the south half northeast corner of Section 7, and
14 finally on the very western side the unit consisting
15 of Lot 10, Section 6 and Lot 3 and Lot 4 of Section
16 7.

17 This plat shows the surface location,
18 which is 1,000 feet from the north line and 2300
19 from the west line located in Lot 2 of Section 7,
20 basically the northwest quarter northwest quarter.
21 It shows the proposed bottom hole location which was
22 proposed at 200 feet from the north line and 700
23 feet from the west line, and that would have been in
24 Lot 3 of Section 7, and then it shows the actual
25 bottom hole location as surveyed.

1 We have 412 feet from the north line and
2 1117 feet from the west line. I would like to state
3 that the 412 feet is not accurate. It's actually
4 442 feet, and that is shown on the C-102 for the
5 as-drilled and I have advised Ms. Munds-Dry of that
6 and she is preparing a revised plat and we will
7 present it to the OCD.

8 That was fundamentally my assistant's
9 inability to read my writing.

10 MS. MUNDS-DRY: Mr. Brooks, we will
11 provide that to you, a corrected version of this
12 after the hearing?

13 EXAMINER BROOKS: Very good.

14 A. This plat also shows three existing
15 vertical wells that have been drilled producing from
16 the Picture Cliffs Formation, the Jicarilla 458, 08
17 No. 7 located in the south half north half of
18 Section 8, the Jicarilla 458 No. 3, which is located
19 in basically the southeast northeast of section 7,
20 and then the Jicarilla 458 No. 8, located in Lot 4
21 of Section 7.

22 Those are the existing vertical wells
23 drilled to and producing from the Picture Cliffs
24 Formation.

25 Q. In the northwest quarter of Section 8,

1 there's not a vertical well indicated on this map?

2 A. That's correct. We do have maps producing
3 for tertiary formations but not the Picture Cliffs
4 Formation. I would also like to point out one other
5 thing. This horizontal well we call the 45801113,
6 it may also be referred to as the 4580813. We
7 changed the nomenclature. The additional 1
8 designates it in our records as a horizontal well.

9 Q. Just to be clear for the examiner, what
10 are the proposed boundaries for the spacing unit
11 that we are seeking today?

12 A. We would like that spacing unit to consist
13 of the north half of Section 8 and the northwest
14 quarter of Section 7, the three different 160 units
15 that are traversed by the horizontal well.

16 EXAMINER BROOKS: You mean the northeast
17 quarter?

18 THE WITNESS: Yes, the northeast quarter
19 the Section 7. Excuse me.

20 Q. Which wells would be dedicated to the
21 nonstandard spacing prorations?

22 A. 458 No. 3, the 45808 No. 7, and the 45808
23 No. 113.

24 Q. Thank you. Would you please then turn to
25 what's marked as Black Hills Exhibit No. 2 and

1 review the packet for the examiner?

2 A. Yes, ma'am. The first page on the packet
3 is the Application for Permit to Drill that was
4 filed on May 4, 2006. As I mentioned before, at
5 that time this well was proposed as a vertical well.
6 That was approved by the BLM on August 30, 2007.

7 As I mentioned, between that time and --
8 between the time we filed the application and the
9 approval, we determined that it would be more
10 appropriate, more cost effective and more efficient
11 for producing reserves to drill this as a horizontal
12 well, so we filed a sundry notice on October 30,
13 2007 changing this to horizontal well. The surface
14 location did not change.

15 The third page of that is the original
16 C-102 that was filed October 30th showing the
17 surface location and the bottom hole location as
18 proposed and then the acreage dedication. You will
19 note that included all four of the units including
20 the one which would include Lot 10 of Section 6 and
21 Lots 3 and 4 of Section 7, and then the next page of
22 that report is the acreage dedication or C-102
23 revised to the as drilled well, and that was dated
24 December 20, 2007 filed with this division on
25 December 26, 2007.

1 You note there that the footages are 442
2 feet from the north line and 1770 feet from the west
3 line as the bottom hole location. That coincides
4 with the correction that I mentioned before. Then
5 following that is the survey for the well.

6 Q. That does confirm the surface and more
7 importantly the bottom hole location for the well?

8 A. Yes, it does. Those are the revised or
9 as-drilled surface and bottom hole locations are
10 correct, based on the survey.

11 Q. What is the primary objective for the
12 well?

13 A. Picture Cliffs Formation.

14 Q. What pool?

15 A. The East Blanco Picture Cliffs Pool.

16 Q. Would you turn to Exhibit No. 3 and
17 identify and review this for the examiner?

18 A. Okay. This is a sequence of pages that
19 show the ownership of the various units in this
20 tract. The first one, the first page shows the
21 ownership of the unit consisting of Lots 1 and 2 in
22 the south half northeast quarter of Section 8, which
23 is the unit on which the surface hole location
24 exists. You will note we show the Jicarilla tribe
25 with a one-sixth royalty, a number of different

1 overriding royalty interest owners and the Black
2 Hills Gas Resources interest. Those are all net
3 revenue interests.

4 The next page shows the same information
5 with respect to the northwest quarter of Section 8,
6 fundamentally Lots 3 and 4 and the south half of the
7 northwest quarter. The same royalty exists and the
8 same overriding royalties exist in that area.

9 The next page is the ownership of the
10 northeast quarter of Section 7, Lots 1 and 2 in the
11 south half of the northeast quarter. You will see
12 the same parties are involved with respect for the
13 royalty, overriding royalty No. 1, 2, and 3 are the
14 same. Overriding royalty No. 4 is decreased a
15 little bit and then we have Energy Resources
16 Corporation and Black Hills Gas Resources, Inc. in
17 that particular unit.

18 Then finally, the next page is the
19 proration or the unit consisting of Lot 10 of
20 Section 6 and Lots 3 and 4 of Section 7. That
21 ownership would be common with the northeast quarter
22 of Section 7.

23 I would like to point out that the
24 minerals in here are owned by the Jicarilla tribe.
25 This is all subject to one lease. It's the

1 Jicarilla Contract No. 458.

2 The pages after that then show the
3 ownership of the plan proration unit and the last
4 page is the ownership of the drill proration unit
5 where the ownership is allocated between the various
6 tracts on an acreage basis. So the last page is the
7 drill proration unit, and that is how we will
8 perceive the allocation based on an acreage basis.

9 Q. The only other working interest here is
10 Energy Resources?

11 A. Yes, ma'am.

12 Q. Have they agreed to participate as well?

13 A. They have elected to participate.

14 Q. Let's turn back just briefly just to
15 highlight a few things that happened in what was
16 Case No. 13816 which resulted in order R 12707 just
17 to highlight for the examiner some of the testimony
18 and evidence that was presented in that case. Why
19 did Black Hills bring that case?

20 A. Well, as I mentioned, we determined along
21 the way that the formation was conducive to
22 development through horizontal wells. We also
23 determined that one well per 80 acres was not going
24 to drain -- I'm sorry, 1 acre per 160 acres was not
25 going to drain the gas in place in the Picture

1 Cliffs Formation, and actually 80 acre density was
2 the more appropriate density. So we filed the
3 application to do that.

4 Q. I'm sorry for interrupting. I believe
5 there were also a number of surface issues?

6 A. Yes, I will get to those. And the
7 testimony shows that we specifically contemplated at
8 that time a second well per unit in that horizontal
9 wells would be used to drill it. We requested
10 unorthodox well locations, first of all, to avoid
11 the numerous archaeological sites we might
12 encounter, to minimize disturbances to forest and
13 wildlife areas, and to minimize construction of well
14 pad by avoiding steep terrain.

15 These were all matters we discussed with
16 the Jicarilla tribe before we came and made this
17 application.

18 Finally, it allowed us to position our
19 surface hole locations in the bottom hole locations
20 optimally for geologic reasons.

21 At the hearing, we had a letter from the
22 BLM in support of our application, a resolution from
23 the Jicarilla Apache Tribe in support of our
24 resolution, and Innergen was present and consented
25 or supported our application in their presence.

1 Q. Mr. Ekberg, do you recall during that
2 hearing did Black Hills call a geologist that
3 discussed how horizontal wells are drilled in the
4 Picture Cliffs Formation?

5 A. Yes, we did. We called Richard White, a
6 senior geologist at Black Hills to present the
7 geology testimony, and he did describe how the
8 horizontal wells would be drilled. I think that was
9 on Page 36 of the transcript. And he actually
10 stated that if we had concluded that the Picture
11 Cliffs is a good formation to be developed
12 horizontally.

13 Q. Did Black Hills also present the testimony
14 of a reservoir engineer to discuss the Picture
15 Cliffs reservoir?

16 A. Yes, we called Thomas Sattak, who is a
17 consulting reservoir engineer for us on the project
18 specifically to look at development of the Picture
19 Cliffs in the area as a horizontal area and the
20 requirement for the density.

21 Q. What were his conclusions?

22 A. His conclusions were that well density of
23 80 acres is effectively required to drain the
24 Picture Cliffs Formation in this area, and that this
25 density will result in incremental reserves being

1 recovered.

2 EXAMINER BROOKS: What was the case in
3 which his testimony was given?

4 MS. MUNDS-DRY: 13816, Mr. Examiner.

5 EXAMINER BROOKS: Thank you.

6 Q. Did all of the interest owners in that
7 case agree to the application?

8 A. Yes. As I mentioned we had support from
9 the BLM, the Jicarilla Apache nation, from Innergen,
10 and we were not advised of any protests.

11 Q. Collateral rights were addressed in that
12 case?

13 A. Yes. One of the conclusions was no there
14 are no collateral rights issues.

15 Q. And the order also addressed wastes?

16 A. Yes, the conclusion was granting of the
17 order will maximize production and minimize surface
18 disturbance and result in incremental reserves.

19 Q. Thank you for the brief highlight of what
20 occurred in the case. I thought it would be helpful
21 to this application. So in your opinion, will the
22 granting of this application be in the best interest
23 of conservation, the prevention of waste and the
24 protection of correlative rights?

25 A. Yes.

1 Q. Is this well the subject of an emergency
2 order allowing Black Hills to produce this well?

3 A. Yes, it is.

4 Q. Will we need some sort of -- let me back
5 up. Do you know when the emergency order expires?

6 A. It expires at the end of this hearing.

7 Q. So we need an interim authority or some
8 sort of bridge authority in order to produce the
9 well pending this order?

10 A. Yes, ma'am, we do.

11 Q. Or alternatively an expedited order?

12 A. Either one.

13 MS. MUNDS-DRY: Mr. Brooks, obviously you
14 are aware of with the emergency order and since that
15 expires today we make that request for some -- one
16 or the other. If I can assist you in providing a
17 draft order, I will be glad to do that if that
18 helps. I will leave that to whatever you think is
19 best.

20 EXAMINER BROOKS: Does that conclude your
21 examination of the witness?

22 MS. MUNDS-DRY: I had one other thing.

23 EXAMINER BROOKS: Go ahead.

24 Q. Mr. Ekberg, do we request that future
25 applications for these sort of nonstandard operation

1 units be processed administratively?

2 A. Yes, we do. We expect that this would be
3 the way the area is developed and save OCD time and
4 our time.

5 Q. Is Black Hills Exhibit No. 4 an affidavit
6 of publication giving notice of the case.

7 A. Yes.

8 Q. Were Exhibits 1 through 4 either prepared
9 by you or compiled under your direct supervision?

10 A. Yes.

11 MS. MUNDS-DRY: Mr. Brooks, we would move
12 the admission of Exhibits of 1 through 4 into
13 evidence.

14 EXAMINER BROOKS: Exhibits 1 through 4 are
15 admitted.

16 (Note: Exhibits 1 through 4
17 admitted into evidence.)

18 MS. MUNDS-DRY: That concludes my direct
19 examination.

20 EXAMINER BROOKS: What you are currently
21 asking is only for the three spacing units, correct?

22 THE WITNESS: Yes, Mr. Examiner.

23 EXAMINER BROOKS: There are only the three
24 wells shown on Exhibit 1 within the three spacing
25 units?

1 THE WITNESS: Yes. The two vertical and
2 the one horizontal well.

3 EXAMINER BROOKS: Right. I think the best
4 solution for an interim order is to draft another
5 order, and I don't think it will be a drafting
6 problem, because we will do the same -- we will make
7 it just like the previous two except it will not be
8 an emergency order because it's an order that's been
9 issued after a hearing. Therefore, it will not be
10 an emergency order so it will not be limited to ten
11 days.

12 Of course, if I could get the questions
13 resolved this afternoon I would love to do that, but
14 I don't know that I can. For some reason, and I
15 attempted to contact the gentleman yesterday and
16 tell him -- left a message saying I wanted to
17 discuss it before the hearing, but he did not get
18 back to me. Maybe he is out of the office. But he
19 had very serious concerns about the issue, and I
20 don't understand what they are. So.

21 MS. MUNDS-DRY: I don't understand what
22 they are either, Mr. Brooks. I can tell you my
23 conversation with him, from what I understand, he
24 was concerned about making a decision on this
25 particular unique circumstances without Santa Fe

1 first reviewing it.

2 EXAMINER BROOKS: Well, I believe the
3 application -- formatting it as an application for
4 nonstandard spacing unit was pursuant to my
5 suggestion, was it not?

6 MS. MUNDS-DRY: I believe that's correct.

7 EXAMINER BROOKS: Because the Rule 111
8 permits a project area consisting of multiple
9 spacing units. It does not, of course, deal with
10 the land issues that arise from that situation, so
11 it leaves industry out in a questionable area in
12 terms of figuring out how to deal with the land
13 issues.

14 But --

15 MS. MUNDS-DRY: That's my view of it as
16 well. In some with regard, Mr. Brooks, that's going
17 to have to be the operator, the industry company's
18 problem really in addressing how they allocate
19 production, and some of that they are just going to
20 have to deal with.

21 EXAMINER BROOKS: Of course, there's a
22 history in New Mexico of the OCD attempting to
23 regulate things in a way that consolidates spacing
24 units and make them also ownership units.

25 Apparently whoever drafted Rule 111, and I

1 believe it was Michael Stoddard, did not take
 2 account of that, which is okay, because like you
 3 say, it's really industry's issue except when
 4 there's forced pooling. But I do not -- I am
 5 unclear on why Mr. Haden gets so exercised about
 6 this case, but I know that he does. I need to
 7 anything that out before I can figure out to how to
 8 address it.

9 MS. MUNDS-DRY: Appreciate that. I would
 10 remind you that's why we hope that the case will
 11 provide guidance in the future for the district
 12 office so the applications can go back to being
 13 processed administratively. Because frankly, the
 14 issues of correlative rights have already been
 15 addressed. Not that we don't like coming to see
 16 you, but it would be more efficient and we can go
 17 back to processing these administratively.

18 EXAMINER BROOKS: I don't believe we
 19 should have unnecessary hearings. Okay. Case No.
 20 14057 will be taken under advisement and this docket
 21 is adjourned.

22 (Note: The hearing was concluded.)

23 I do hereby certify that the foregoing is
 24 a complete record of the proceedings in
 25 the Examiner hearing of Case No. _____
 heard by me on _____

_____, Examiner
 Oil Conservation Division

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

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

REPORTER'S CERTIFICATE

I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.



JAN GIBSON, CCR-RPR-CRR
New Mexico CCR No. 194
License Expires: 12/31/08