

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION DIVISION FOR THE )  
PURPOSE OF CONSIDERING: )

CASE NO. 13,957

AMENDED APPLICATION OF ENERGEN RESOURCES )  
CORPORATION TO AMEND THE COST RECOVERY )  
PROVISIONS OF COMPULSORY POOLING ORDER )  
NO. R-1960, TO DETERMINE REASONABLE )  
COSTS, AND FOR AUTHORIZATION TO RECOVER )  
COSTS FROM PRODUCTION OF POOLED MINERAL )  
INTERESTS, RIO ARriba COUNTY, NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Jr., Hearing Examiner

November 29th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID K. BROOKS, Jr., Hearing Examiner, on Thursday, November 29th, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Secretary's Conference Room, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
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November 29th, 2007  
Examiner Hearing  
CASE NO. 13,957

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## A P P E A R A N C E S

FOR THE APPLICANT:

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Suite 300  
Santa Fe, New Mexico 87501  
By: J. SCOTT HALL

FOR THE ESTATE OF JOSEPH A. SOMMER, THE JOSEPH A. SOMMER  
IRREVOCABLE TRUST, and JAS OIL AND GAS COMPANY, LLC:

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By: CANDICE LEE

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 2:08 p.m.:

3 EXAMINER BROOKS: Back on the record. At this  
4 time we'll call Case Number 13,957, Amended Application of  
5 Energen Resources Corporation to amend the cost recovery  
6 provisions of Compulsory Pooling Order No. R-1960, to  
7 determine reasonable costs, and for authorization to  
8 recover costs from production of pooled mineral interests,  
9 Rio Arriba County, New Mexico.

10 Call for appearances.

11 MR. HALL: Mr. Examiner, Scott Hall, Miller  
12 Stratvert law firm, Santa Fe, appearing on behalf of the  
13 Applicant, Energen Resources Corporation. I have one  
14 witness this afternoon.

15 MR. BRUCE: Mr. Examiner, I'm representing the  
16 Estate of Joseph A. Sommer, the Joseph A. Sommer  
17 Irrevocable Trust, and JAS Oil and Gas Company, LLC, and  
18 I'm appearing in association with Candice Lee of the Sommer  
19 Law Firm, and I have one witness.

20 EXAMINER BROOKS: The witnesses will please state  
21 their names for the record.

22 MR. SOMMER: Kurt Sommer, your Honor.

23 MR. ROTE: Paul Rote.

24 EXAMINER BROOKS: The witnesses will please stand  
25 to be sworn.

1 (Thereupon, the witnesses were sworn.)

2 EXAMINER BROOKS: Mr. Hall, are you -- You're  
3 representing the Applicant in this case?

4 MR. HALL: Yes, sir.

5 EXAMINER BROOKS: You may proceed.

6 PAUL ROTE,

7 the witness herein, after having been first duly sworn upon  
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HALL:

11 Q. For the record please state your name.

12 A. Paul Rote.

13 Q. Mr. Rote, where do you live and by whom are you  
14 employed?

15 A. I reside in Birmingham, Alabama. I'm employed by  
16 Energen Resources Corporation.

17 Q. And in what capacity are you employed by Energen?

18 A. I'm the general manager of land for Energen  
19 Resources.

20 Q. Have you previously testified before the Division  
21 and had your credentials accepted as a matter of record?

22 A. No.

23 Q. Would you please give the Hearing Examiner a  
24 brief summary of your educational background and work  
25 experience?

1           A.    I have an MBA from the University of Colorado,  
2           obtained in 1979. I worked for ARCO Oil and Gas, Atlantic  
3           Richfield, for 15 years. I've been employed as general  
4           manager of land with Energen Resources for approximately  
5           the past 10 years.

6           Q.    And does your area of responsibility include the  
7           San Juan Basin?

8           A.    Yes, it does, my area of responsibility is the  
9           lower 48, including the San Juan Basin.

10          Q.    All right. Are you familiar with the lands that  
11          are the subject of this Application and the Application  
12          itself?

13          A.    Yes, I am.

14               MR. HALL: At this point, Mr. Examiner, we'd  
15          offer Mr. Rote as a qualified expert petroleum landman.

16               MR. BRUCE: No objection.

17               EXAMINER BROOKS: So qualified.

18          Q.    (By Mr. Hall) Mr. Rote, if you would, please,  
19          briefly summarize what Energen seeks by its Application in  
20          this case.

21          A.    We're here to discuss the Martinez Number 1 well,  
22          Pictured Cliff producer, located in the south half of  
23          Section 2, 25 North, 3 West, Rio Arriba County. Energen is  
24          the operator of the well. It is subject to a 1961  
25          compulsory pooling. Energen acquired the well in 1997 from

1 Burlington Resources. We continue to operate it today.

2 There's been a dispute over cost and expenses,  
3 expenses associated with this well from a pooled mineral  
4 owner, and we're here to ask the Division to clarify the  
5 cost recovery provisions under the 1961 compulsory hearing  
6 -- compulsory pooling order.

7 We're also asking the Division to address the  
8 means by which an operator can deduct appropriate costs and  
9 expenses associated with an unpooled int- -- a pooled  
10 interest owner's share of gas which is not being marketed  
11 by the pooled owner.

12 We're also asking for authorization to sell all  
13 our portion of the unpooled interest owner's share of gas  
14 and to provide recovery for appropriate costs and expenses.

15 Q. Now, this is a Pictured Cliffs formation well; is  
16 that correct?

17 A. That's correct.

18 Q. Is it the southwest quarter of Section 2 that's  
19 dedicated to the well?

20 A. That's correct.

21 Q. When you said south half earlier, did you --

22 A. Oh, I meant to --

23 Q. -- mean the southwest quarter?

24 A. -- meant to say southwest quarter.

25 Q. Okay. Let's talk about the ownership and



1 operational history of the well. Who originally drilled  
2 this well? Who's been the successor operators?

3 A. This well was drilled in 1961 by Supron, Southern  
4 Unit Production Company, Supron. They operated it until  
5 1982.

6 Operatorship was taken over by Union Texas  
7 Petroleum. They operated it until 1990 when Union Texas  
8 was acquired by Meridian.

9 1996, Burlington Resources merged with Meridian,  
10 operated the well. They sold it to Taurus, which is now  
11 Energen Resources, in 1997. We've operated the well as  
12 Energen Resources since.

13 Q. Is this one of the package of wells and  
14 properties --

15 A. This was one --

16 Q. -- you acquired?

17 A. -- of a large number of properties that we  
18 acquired from Burlington in 1997.

19 Q. And your familiarity with the history of the well  
20 is based also on your familiarity with the well file you  
21 acquired from Burlington?

22 A. That's correct.

23 Q. Okay. Let's turn to our exhibit notebook and  
24 look at Exhibit 1, please. Based on your familiarity with  
25 the file before this well was drilled, did Supron obtain a

1 compulsory pooling order from the Commission?

2 A. Yes, Order R-1960. That was in our files.

3 Q. And that's Exhibit 1; is that correct?

4 A. Yes.

5 Q. Let's look at Exhibit 2. Does this show us the  
6 current ownership for the 160-acre unit?

7 A. This is a copy of our revenue debt for this well.  
8 It shows the type of interest and the owners of those  
9 interests

10 Q. All right. Can you identify for the Examiner  
11 which of the -- Let me ask it this way. Which of the  
12 interest owners shown on Exhibit 2 are unleased or are not  
13 under a joint operating agreement?

14 A. The RI interest as shown for Energen Resources  
15 Corporation, Jose [sic] Gallegos, Amadito Valdez, were all  
16 signatories to the joint operating agreement. The Luis  
17 Martinez Estate and JAS Oil and Gas are shown as a UMI  
18 interest, which is in our scheme called an unleased mineral  
19 owner. They're not signatories to the JOA. The remaining  
20 interests are all royalty interests, and one overriding  
21 royalty interest.

22 Q. And when we show the JAS Oil and Gas Company  
23 interest, it is both an unleased mineral interest, and is  
24 it also not a party to a JOA?

25 A. That's correct. You also see they show up as a

1 URI, which is an unleased 1/8 royalty interest. They're  
2 being paid their 1/8 royalty on that deck.

3 Q. Okay. Is it the JAS Oil and gas Company that is  
4 the subject of the R-1960 compulsory pooling order?

5 A. That's correct.

6 Q. Okay. And just for clarification, on the Luis  
7 Martinez Estate interest, is that interest now under your  
8 joint operating agreement and marketing letter agreement?

9 A. Yes, Martinez had signed the joint operating  
10 agreement and recently signed a marketing agreement whereby  
11 we will be selling his share of the gas.

12 Q. So it is only the JAS interest that is not  
13 consolidated except by virtue of the compulsory pooling  
14 order?

15 A. That's correct.

16 Q. Now you earlier testified that Taurus, now  
17 Energen, acquired the well files from Burlington. From  
18 that well file did you utilize some of those materials for  
19 exhibits for the Hearing Examiner today?

20 A. Yes. Yes, that's correct.

21 Q. Okay. From your examination of the file, did you  
22 determine that when Energen assumed operations in 1997,  
23 were the takes and entitlements of the interest owners then  
24 in balance?

25 A. It appeared as though they were not in balance.

1 We were provided with the Burlington decks and gas  
2 balancing statement which showed that there was a --  
3 balancing was occurring at the time of our acquisition.

4 Q. All right. Now based on your experience,  
5 familiarity with the industry, is it the custom and  
6 practice of the industry to implement gas balancing when  
7 less than all interest owners in a well have sold their  
8 gas?

9 A. Yes, that's customary.

10 Q. Explain how gas balancing works for the Hearing  
11 Examiner, briefly.

12 A. A hundred percent of the well -- a hundred  
13 percent of the gas flow comes out of the wellbore, and each  
14 of the parties, the working interest parties, have the  
15 right and ability to take that share, their proportionate  
16 share in kind, and market their own share of gas.

17 If there's a party that does not elect to market  
18 their share of gas, it is thrown into a gas balancing  
19 accounting-type scenario where they are credited for the  
20 unsold portion of the gas.

21 Q. All right. In the earlier years of the operation  
22 of the Martinez Number 1 well by the prior operators, from  
23 your examination of the files, were you able to tell  
24 whether those operators may have marketed gas on behalf of  
25 all of the interest owners at one point in time?

1           A.    At one point in time it appeared as though all  
2 the gas was being marketed by the operator prior to a  
3 letter from Meridian in 1992, I believe it was.

4           Q.    All right, let's turn to Exhibit 3, if you'll  
5 identify that, please. What is Exhibit 3?

6           A.    This is a letter from Meridian Oil dated March  
7 17, 1992, where in essence Meridian is telling the working  
8 interest owners in all their wells in the Basin, as I  
9 understood it, that they -- that Meridian will no longer be  
10 selling joint operating agreement gas or co-owner gas and  
11 is advising all the working interest owners to find their  
12 own market for their proportionate share of the gas flows.

13          Q.    Okay. Let's look at Exhibit 4. Why don't you  
14 identify that, please?

15          A.    This was a letter from Meridian Oil again, dated  
16 September 28th, 1995, notifying the working interest owners  
17 that their marketing affiliate, Meridian's marketing  
18 affiliate, also known as Meridian Oil Trading, would no  
19 longer sell non-operator gas. It also tells the working  
20 interest owners that if they do not find their own  
21 marketing outlet, that their gas will be subject to gas  
22 balancing.

23          Q.    And we've highlighted some of the language on  
24 there. If we turn to page 3 of that letter, is that where  
25 the interest owners are notified that they will be

1 balanced?

2 A. Yes, the last sentence of that paragraph.

3 Q. Okay. The well files that Taurus and Energen  
4 acquired from Burlington, did it include copies of the  
5 Division orders for the well?

6 A. Yes, they did.

7 Q. Is that Exhibit 5?

8 A. That would be Exhibit 5.

9 Q. And if we turn to page 2 of that Division order,  
10 does it reflect an interest for Joseph A. Sommer?

11 A. Yes, it does, it reflects a 1.04-percent royalty  
12 interest and a 7.29-percent working interest.

13 Q. Okay, let's look at Exhibit 6. What does that  
14 show us?

15 A. This is a transfer order dated May 31st of 1991  
16 where Mr. Joseph Sommers [sic] is having his interest  
17 transferred into Joseph A. Sommer Revocable Trust.

18 Q. Okay. And what's your understanding of the  
19 current ownership of that interest?

20 A. Current ownership of that interest is now held by  
21 JAS Oil and Gas, LLC.

22 Q. Okay. And by the way, is the JAS interest -- the  
23 royalty interest attributable to JAS, is that on pay  
24 status?

25 A. Yes, it is.

1 Q. When Energen took over operations of the well in  
2 1997, did it find that gas balancing was already being  
3 implemented for the well?

4 A. Yes, when we acquired in 1997 -- when Burlington  
5 furnished us with their revenue decks and a copy of their  
6 copy of their current gas balance statement, and -- so  
7 Energen picked up from that statement and has continued it  
8 forward.

9 Q. Okay. Let's turn to Exhibit Number 7. Would you  
10 identify that for the Hearing Examiner?

11 A. This is a letter dated February 13th, 1998, from  
12 Taurus. It comes from our manager of joint interest  
13 accounting to all working interest owners, asking if they  
14 would prefer to have us net out their JIBs, to subtract  
15 their lease operating costs on a monthly basis directly  
16 from their revenue check.

17 Q. Is it Energen's practice to invoice the interest  
18 owners in the well?

19 A. Yes, it's our practice to send out separate JIB  
20 statements, joint interest billing statements, to each of  
21 the working interest owners.

22 Q. So their monthly expenses and charges are not  
23 netted out automatically like some --

24 A. No, they --

25 Q. -- of the operators?

1           A.    No, they are not, not unless we have received  
2 permission from them to allow us to net.

3           Q.    Okay.  Let's look at Exhibit 8.  What is that?

4           A.    Eight is a letter to Mr. Sommers dated October  
5 26, 1998, and it is a notification of -- that he is in  
6 arrears on his joint interest billing statements.

7           Q.    Okay.  By the way, is the Martinez Number 1 paid  
8 out?

9           A.    Yes, it is.  Paid out in 1968.

10          Q.    Okay.  What typically comprises the monthly LOEs  
11 for the Martinez Number 1, currently?  What is the amount?

12          A.    Oh, the amount?

13          Q.    Yes.

14          A.    Typically to the Sommers interest, averages on  
15 the order of \$65 to \$85, somewhere in that range.

16          Q.    Okay.  Now referring back to Exhibit Number 8,  
17 the accounts receivable interest, does it appear that the  
18 accounts receivable notice has triggered some -- an  
19 exchange of correspondence with Mr. Sommers?

20          A.    Yes, it does.

21          Q.    Okay.  Let's turn to Exhibit 9.  What was Mr.  
22 Sommer indicating by this letter?  First of all, let's get  
23 a date to this.  What date is this letter?

24          A.    This letter came from Mr. Sommers January 5th,  
25 1998.



1 Q. And at that time addressed to Taurus?

2 A. At that time addressed to Taurus Exploration,  
3 that's correct.

4 Q. Okay.

5 A. And in essence he has asked -- this is in  
6 response to -- to the Exhibit 8 letter, whereby Mr. Sommers  
7 is asking why he is being charged expenses for a shut-in  
8 well. The well was not shut in at that point in time, and  
9 in fact I don't believe it has ever been shut in.

10 Q. So was he specifically objecting to supervision  
11 and overhead charges?

12 A. Yes, yes. Asks, Why am I being charged with such  
13 items as company labor, supervision and vehicle expenses?

14 Q. Okay. Let's turn to Exhibit 10. And to  
15 expedite, Mr. Examiner, we've highlighted portions of these  
16 letters. We hope that's helpful. But if we turn -- Let's  
17 identify this letter. What's the date of this letter?

18 A. This letter is dated June 15th, 2001. It's  
19 addressed primarily to a lady, Joy Martin, who is our gas  
20 balancing analyst.

21 Q. All right. And to return to page 2 of that  
22 letter, was Mr. Sommer objecting to what he called the  
23 fixed producing overhead charge?

24 A. Yes, he is objecting to it. In fact, he's  
25 outraged by being charged the producing overhead rate.

1 Q. All right. And was he also objecting to the  
2 amount of the production imbalance being reflected on the  
3 statements that are being sent to --

4 A. Yes, he is.

5 Q. Let's turn to Exhibit 11. Why don't we identify  
6 that. What's the date of this letter?

7 A. This letter is dated February 13th, 2002. Once  
8 again, to Joy Martin, the gas balancing analyst.

9 Basically, he's further objecting to his JIB  
10 statements and in particular the COPAS overhead charges.  
11 He's asking for an explanation of the gas imbalances and  
12 seeking an answer to his questions.

13 Q. And if you look on page 2, did he ask  
14 specifically enumerated questions he was posing Energen?

15 A. Yes.

16 Q. Did Energen make any effort to address the  
17 questions that Mr. Sommer was --

18 A. Yes, he received a response to his letter dated  
19 March 11th of 2002.

20 Q. Is that Exhibit 12?

21 A. Yes, it is.

22 Q. Okay. Why don't you summarize what was said  
23 there? Who wrote this letter, first of all?

24 A. That letter was authored by Kirk Flowers, who was  
25 the director of our joint interest and revenue accounting

1 department. And basically what he is doing is responding  
2 to Mr. Sommer's previous letter explaining how gas  
3 imbalancing -- how gas balancing works, how the JIB process  
4 works, in accordance with industry standards.

5 Q. Did Mr. Flowers also explain the ongoing  
6 obligation of the working interest owner to pay his share  
7 of monthly expenses?

8 A. Yes, Mr. Flowers did elaborate on that and said  
9 that a working interest owner is responsible for ongoing  
10 charges and payments for his JIB bills, proportionate to  
11 his working interest.

12 Q. And did Energen offer to correct any errors in  
13 the production imbalance that might have been reflected for  
14 the Sommer interest?

15 A. Yes, he did offer to correct any problems that  
16 may have arisen.

17 Q. Let's look at Exhibit 13. Would you identify  
18 that, please?

19 A. That's a letter dated August 16th, 2002, again  
20 from Mr. Sommers.

21 Q. And it's addressed to Mr. Flowers?

22 A. And this is addressed to Mr. Flowers, responding  
23 to Mr. Flowers' letter of a month earlier -- or his letter  
24 of March 11th.

25 Q. If we turn to page 5 of that letter, and we've

1 highlighted language there, if you look at the first and  
2 second paragraphs of that letter, was it Energen's  
3 understanding that Mr. Sommer was asserting that as of  
4 December 1st, 1995, the operator was without any authority  
5 to sell the Sommer Trust share of gas from the well?

6 A. That appears to be what he's saying. The top of  
7 the letter, he states that we would have no authority to  
8 sell his gas, after the Meridian Oil stopped marketing his  
9 share of gas.

10 Q. And then on that same page what does he say with  
11 respect to the authority of the operator to sell enough gas  
12 to cover its operating expenses?

13 A. Well, I believe he's saying that the only  
14 authority we have is to sell enough gas, in a small amount  
15 necessary to cover the actual production costs and  
16 operating costs to bring that gas out of the ground.

17 He also goes on to say that he strongly is  
18 objecting to paying any part of a fixed overhead COPAS  
19 rate, and basically saying that he is not a signatory party  
20 to the joint operating agreement and, if I understand this,  
21 therefore we would have no authority to sell his gas.

22 Q. All right. From Energen's ongoing communications  
23 from Mr. Sommer, did the company come to understand that it  
24 was Mr. Sommer's position that Energen had no authority to  
25 sell Sommer Trust gas, or to balance its share of gas?

1           A.    That would be our -- that was our interpretation  
2 of what his arguments were, that we had no authority to  
3 sell his gas and no authority to gas-balance and sell  
4 portions.

5           Q.    Let's look at Exhibit 14.  Would you identify  
6 that, please?

7           A.    That's a letter dated September 3rd, 2002, again  
8 to Mr. Flowers.

9           Q.    And if we turn to page 4 of that letter, the  
10 highlighted language there, can you summarize --

11          A.    Well, simple summary of that paragraph would --  
12 in my interpretation would be, he is in essence saying that  
13 we do not have the right or ability to -- do not have the  
14 right and authority to balance gas.

15          Q.    Okay.  Now did you on behalf of Energen make an  
16 effort to follow up on Mr. Sommer's concerns?  Let's look  
17 at Exhibit 15.

18          A.    Yes, I did, I authored a letter dated September  
19 25th, 2002, to Mr. Sommers in response to his previous  
20 correspondence as to try to remedy the situation and  
21 accommodate what his needs may have been.

22          Q.    Summarize what you are proposing to do for the  
23 Sommer interest.

24          A.    What I offered Mr. Sommers was that we would  
25 market his gas for him, we would allow him to sell his gas

1 plus another 40 percent in addition to his flow. I offered  
2 to buy out his imbalance, I offered to have our accounting  
3 department subtract the previous COPAS overhead charges  
4 from his exist- -- from his outstanding JIB imbalance --  
5 his JIB statements, and offered to buy out his interest of  
6 the well.

7 And so basically I made him a lot of offers to  
8 try to remedy the situation.

9 Q. Attached to your September 25th, 2002, letter  
10 under Tab 15 is -- you have a letter dated September 26th,  
11 2002. What is that?

12 A. This is our company's standard gas marketing  
13 agreement whereby when we agree to market a working  
14 interest shares -- or a working interest owner's share of  
15 gas, we do it under this type of arrangement, our gas  
16 marketing agreement.

17 Q. All right, and let's turn to Exhibit 16.  
18 Identify that, please.

19 A. This is a letter dated October 15th, 2002, from  
20 Mr. Sommers to myself in response to my previous offer  
21 letter.

22 Q. All right, and if we could simply turn to the  
23 last page, page 5 of that letter, what was his response?

24 A. He rejected my offer.

25 Q. Okay. Mr. Rote, based on your understanding of

1 the industry, what is the practical effect of the absence  
2 of authority to implement gas balancing when one or more  
3 interest owners in the well has failed to arrange a market  
4 for their share of gas?

5 A. If you were not allowed to market that owner's  
6 share of gas the entire well would have to be shut in,  
7 which would be detrimental to the correlative rights of all  
8 the other owners.

9 Q. We could clarify. Is it Energen's understanding  
10 that Mr. Sommer was taking the position that unless his  
11 share of gas were marketed, no gas could be marketed for --

12 A. That --

13 Q. -- that well?

14 A. That was our understanding. He's saying that we  
15 were not allowed to market his share, therefore no gas  
16 should come out of the wellbore.

17 Q. And is that position consistent with industry  
18 custom and practice?

19 A. Not at all, it would require the shut-in of 100  
20 percent of the flow from that wellbore.

21 Q. And if the entire well is shut in, would that  
22 pose a threat to Energen's correlative rights, the other  
23 interest --

24 A. Ours and all the other interest owners, royalty,  
25 working, all the owners.

1 Q. By the way, is the Martinez Number 1 well offset  
2 by other Pictured Cliffs wells?

3 A. Yes, it is.

4 Q. And are they operated by operators other than  
5 Energen?

6 A. Yes, it is. In the east half there are a couple  
7 of wells that are Pictured Cliff wells that we do not  
8 operate but are currently producing.

9 Q. Let's turn to Exhibit 17. Let me ask you this.  
10 For parties that participate in wells under standard  
11 industry joint operating agreements, is it the custom and  
12 practice of the industry to balance reflected more or less  
13 along the terms shown on Exhibit E?

14 A. Yes, this exhibit is a model form operating  
15 agreement with an Exhibit E attachment, which is a more or  
16 less standard-type gas balancing agreement utilized by the  
17 industry. There are a number of different variations of  
18 gas balancing agreements. This is one that our company  
19 prefers to use.

20 Q. And by the way, this is a briefed copy of a joint  
21 operating agreement, correct?

22 A. That's correct.

23 Q. What is the current volume of underproduction  
24 attributable to the Sommer JAS interest?

25 A. It's underbalanced now by 7429 MCF, 7429. That's



1 as -- that's through -- Let me make sure I'm right on this.  
2 That's through September of '07.

3 Q. All right. Now by Energen's Application in this  
4 matter, we're requesting that Energen have authorization to  
5 market a portion of the nonmarketed share at least  
6 sufficient to cover monthly expenses or, alternatively, to  
7 market all of the currently nonmarketed share. From  
8 Energen's perspective, which is more administratively  
9 efficient to do?

10 A. Well, it's certainly more administratively  
11 efficient to sell the entire flow of the gas and then  
12 account for each party's share from 100 percent of flow.

13 It's very -- would be very inefficient, in my  
14 mind, to try to determine future JIB invoice numbers,  
15 future prices and then multiply that to determine how many  
16 MCFs or fractional portions of MCFs would have to be  
17 produced from that wellbore that month to accommodate  
18 solely the operating cost as attributable to that share of  
19 gas.

20 Q. All right. And by being able to market the  
21 currently unmarketed share, does Energen propose that it be  
22 allowed to recoup monthly charges and expenses from that  
23 share?

24 A. Yes, yes, that's right.

25 Q. Proportionately, correct?

1 A. Proportionately, yes.

2 Q. So with that authority, would Energen propose to  
3 place the JA [sic] interest in makeup status, in accordance  
4 with Energen's marketing arrangement letter, in its --

5 A. Yes --

6 Q. -- current --

7 A. -- yes, yeah, we'd be more than happy to allow  
8 that gas to be made up and -- as to the 8.33-percent  
9 working interest share plus an additional 50 percent, under  
10 our marketing agreement letter.

11 Q. And so by inflating the JA interest, would it be  
12 allowed to make up its underproduced position faster than  
13 it would be otherwise?

14 A. Yes, it would, by an additional 50 percent.

15 Q. What is the amount of the currently outstanding  
16 joint interest billings due and owing attributable to the  
17 JAS interest?

18 A. Through October of '07, the -- I have to say the  
19 original Joseph Sommers interest was now the JAS interest.  
20 The outstanding JIB amount is at \$8200.24.

21 Q. All right. Now does Energen also seek an  
22 amendment to the compulsory pooling order to allow it to  
23 charge the current prevailing producing well overhead rate?

24 A. Yes, we do.

25 Q. And what producing well overhead rate are you

1 requesting?

2 A. Current producing overhead rate is \$748 per  
3 month.

4 Q. And proportionately, what would be the JAS share  
5 of that?

6 A. 748 times 8.33 percent. I --

7 Q. Sixty-two dollars?

8 A. Something like that, yes, right.

9 Q. And how did you -- Let me ask you, is the  
10 overhead rate you're requesting reasonable in your opinion?

11 A. Yes, it's in accordance with the COPAS bulletin,  
12 and we have adjusted it in April in accordance with the  
13 last upward adjustment. The original COPAS amount on the  
14 1984 joint operating agreement was set at \$350 per month.  
15 Application of the COPAS bulletin rates bring that to \$748  
16 as of April of '07.

17 Q. All right, let me show you what we've marked as  
18 Exhibit 20, if you would identify that, please.

19 A. This is a brief copy of the joint operating  
20 agreement covering the Martinez well dated December 12th,  
21 1984, and...

22 Q. And does it have a portion, an excerpted portion,  
23 of the COPAS bulletin attached?

24 A. Yes, third page, the overhead rate, fixed rate  
25 basis, shows a producing well rate of \$350 per month.

1 Q. And this is the rate that was in place, according  
2 to the JOA circulated by Union Texas at the time --

3 A. Yes, that's right.

4 Q. -- when they were operator?

5 Now let's explain to the Hearing Examiner how you  
6 get from that rate to the \$748 monthly rate. And let me  
7 refer you to Exhibit 21. Would you identify that for the  
8 Examiner, please?

9 A. This is a matrix that is put out by the Council  
10 of Petroleum Accountants, COPAS, that they use to calculate  
11 what the current COPAS overhead rates should be.

12 If you look at this page you'll see highlighted  
13 on the bottom row the year 2007. And move over to the  
14 right, you'll see the figure \$213 -- 213.65. Right above  
15 that is 1984 at the top of the page. How that works is,  
16 the date of the joint operating agreement was 1984, I run  
17 down to the column for the year 2007, I have -- I'm allowed  
18 to escalate my, in this case, \$350 COPAS rate by 213.65  
19 percent.

20 Q. Okay. Have you compared the monthly overhead  
21 rate here to what's being charged by other operators in the  
22 area?

23 A. Yes, I have.

24 Q. Let's look at Exhibit 22. If you would identify  
25 that for the Examiner, please, sir.

1           A.    This is a list of wells in which Energen has a  
2 non-operated working interest in Rio Arriba County, the  
3 same county as the Martinez well. In the last column where  
4 it says GL Amount, that is the COPAS amounts that are --  
5 operators are charging to the account for -- are charging  
6 to wells in which we have an interest.

7                    So if you -- at the first line here, you see the  
8 figure \$834.23. That is the COPAS amount charged by BP for  
9 that particular well for the month of July, '07.

10                   If you run through these pages you'll see that  
11 our COPAS rate of \$748 is well within the range of the low  
12 and the high throughout all these wells.

13           Q.    All right. Let me ask you, Mr. Rote, were  
14 Exhibits 1 through 17, 20, 21 and 22 compiled by you from  
15 the records maintained by Energen in the ordinary course of  
16 its business?

17           A.    Yes, they were, yes.

18                   MR. HALL: And Mr. Examiner, Exhibits 18 is our  
19 notice affidavit and 19 is the affidavit of publication.

20                   That concludes our direct of this witness.

21                   We'd move the admission of Exhibits 1 through 22.

22                   MR. BRUCE: No objection, Mr. Examiner.

23                   EXAMINER BROOKS: One through 22 are admitted.

24                   MR. HALL: Pass the witness.

25                   EXAMINER BROOKS: Cross-examination, Mr. Bruce?

## CROSS-EXAMINATION

BY MR. BRUCE:

Q. Yeah, Mr. Rote, what is the approximate depth of the producing formation in this well?

A. I'm not -- I'm not certain of that.

Q. Okay.

A. It's Pictured Cliffs, and I would be guessing if I threw a number out.

Q. Have you checked the Ernst and Young overhead survey?

A. No, I have not.

Q. So you can't tell me what that says?

A. No.

Q. Does this -- This well is a gas well, producing natural gas.

A. Yes.

Q. Does it produce any water?

A. Let me check. I may have some of that information.

Q. And while you're looking at it, I was also going to ask, does it produce any --

A. -- oil?

Q. -- oil?

A. I don't believe that it does. No, it does not produce any oil, nor is there any water production

1 associated with this, according to the ONGARD database on  
2 the OCD site.

3 Q. So it's a pretty simple well to produce?

4 A. Yes.

5 Q. And you used the \$350 under the -- \$350 initial  
6 starting rate for overhead rates under that 1984 JOA; is  
7 that correct?

8 A. That's right.

9 Q. Why use that?

10 A. Why use that? Because that was in the joint  
11 operating agreement, and that's what our baseline was.

12 Q. And the Sommer and Martinez interests are not  
13 subject to that JOA; is that correct?

14 A. He did not execute the JOA.

15 Q. Now you testified that it was Mr. Sommer's --  
16 Joseph Sommer's position that he produce all the gas or  
17 none, but Energen obviously disagreed with that, didn't  
18 you?

19 A. Yes.

20 Q. Because you continued producing?

21 A. Continued producing, yes.

22 Q. At capacity?

23 A. Yes.

24 Q. And you will agree that when it comes to overhead  
25 rates, the original pooling order contained no COPAS

1 adjustment, no inflation adjustment in that order?

2 A. We're seeking clarification here from the  
3 Division to verify the cost recovery provisions.

4 Q. Okay. But you can't point to anything in that  
5 order that says that there is some type of adjustment on  
6 the overhead rates?

7 A. I think it's subject to interpretation. I would  
8 be interpreting it if I answered your question. I'm not --

9 Q. But you can't point me to any specific provision  
10 in the order?

11 A. I cannot point you to the words producing  
12 overhead or COPAS, no.

13 Q. Well, looking at your Exhibit 1, Mr. Rote, down  
14 at the bottom it says, It is therefore ordered. And then  
15 you go down actually to the top of page 2 of the order.  
16 The order does provide for taking out of production a  
17 reasonable charge for supervision, does it not?

18 A. Where are you reading?

19 Q. Top of page 2, the very first paragraph, starting  
20 with, Provided further.

21 A. Reasonable charge for supervision, yes.

22 Q. Shall be paid out of production?

23 A. Shall be paid out of production.

24 Q. Then why wasn't Energen, and before that Taurus,  
25 taking reasonable charges for supervision out of



1 production, rather than sending JIBs to the Sommer  
2 interest?

3 MR. HALL: Object, Mr. Examiner, I think the  
4 question is unclear.

5 MR. BRUCE: Okay, I'll rephrase it.

6 THE WITNESS: Please.

7 Q. (By Mr. Bruce) Doesn't the order state that  
8 reasonable charges for supervision shall be taken out of  
9 production?

10 A. And they were taken out of production.

11 Q. Well, then how come you're sending -- how come  
12 you're billing the Sommer interest --

13 A. They were taken out of production, and his share  
14 of those costs were being charged to his account.

15 Q. That's not what the order says, though, is it? A  
16 proportionate share of the cost of development of the  
17 pooled unit, including a reasonable charge for supervision,  
18 shall be paid out of production by each nonconsenting  
19 working interest owner.

20 The Sommer interest was a nonconsenting working  
21 interest owner, correct?

22 A. Yes.

23 Q. Then why weren't those charges taken out of  
24 production?

25 A. I can't answer that. I don't know.

1 Q. You don't know? But -- Why don't you know?

2 A. Because I don't -- because I don't know.

3 Q. You obviously -- You're in charge of the land,  
4 you obviously told the accounting people to take it out of  
5 production.

6 A. I did not do that. I do not know how that -- it  
7 was inherited this way, this is how it was handled.

8 Q. So you didn't look at the order to determine what  
9 the provisions of that order were?

10 A. At what point in time? When we acquired it? No,  
11 I did not look at that.

12 Q. Well, when did you first look at it?

13 A. I looked at this as Mr. Sommer's letters started  
14 to arrive.

15 Q. Okay, and you didn't notice this provision?

16 A. I did not pay attention to it.

17 Q. And Mr. Sommer's letter, I believe -- letters, I  
18 believe, say you can take it out of --

19 A. His letters said that, yes. We're here for a  
20 clarification on how to interpret that.

21 Q. What's to clarify -- Okay, then what's to  
22 clarify?

23 A. Well, I think we need to ask the Division.

24 Q. Okay. You know, regarding gas sales, does the  
25 land department handle that, or is there a separate gas

1 marketing division within Energen?

2 A. We have a gas marketing vice president that  
3 handles the marketing of the gas.

4 Q. Okay, what is his name?

5 A. It's Ms. Holly Lagrone.

6 Q. L-e-g-r-o-n-e?

7 A. Yes -- L-a-g-r-o-n-e.

8 Q. L-a- -- Okay.

9 Have -- you're the -- Energen has been active in  
10 this state for a decade now?

11 A. That's correct.

12 Q. And it has conducted a number of force poolings  
13 up here at the Division?

14 A. That's right.

15 Q. Have you seen recent force pooling orders -- and  
16 recent, I mean, you know, over the last five or six years,  
17 regarding Energen's force pooling cases?

18 A. Yes, I've seen some.

19 Q. Okay. Could you tell me -- and let's go to an  
20 instance where somebody is force pooled, an unleased  
21 mineral interest owner. What do the current orders  
22 provide?

23 A. Is this a test?

24 Q. Well, Mr. Examiner -- or excuse me, Mr. Rote,  
25 you're telling me you want to bring the terms of the old

1 force pooling order in compliance with current practices,  
2 and so I would ask you what the current practices are.

3 MR. HALL: Mr. Examiner, let me interpose an  
4 objection at this point. If Mr. Bruce wants to ask him  
5 about a particular provision in a compulsory pooling order,  
6 ask him to show us one, and we can ask questions about  
7 that.

8 MR. BRUCE: Well, I could probably run down to  
9 the Division's orders and grant [sic] one. But you know,  
10 he was qualified as an expert landman and he's seeking  
11 to --

12 EXAMINER BROOKS: I don't think it's necessary  
13 that he have an order present, but I think he --

14 MR. BRUCE: I will --

15 EXAMINER BROOKS: -- I think the question --

16 MR. BRUCE: -- I will focus the question

17 EXAMINER BROOKS: -- is too broad --

18 MR. BRUCE: I will -- I will --

19 EXAMINER BROOKS: -- I would request that it be  
20 focused on what was the -- what was -- if he knows, what  
21 current orders provide as to a specific subject.

22 Q. (By Mr. Bruce) Let's just deal with unleased  
23 mineral interest owners.

24 A. Okay.

25 Q. And you force pool an interest owner, and just

1 like in this order there's always a 1/8 interest that is  
2 deemed, quote, unquote, a royalty interest --

3 A. Yes.

4 Q. -- would you agree with that?

5 A. That's my understanding.

6 Q. And the other 7/8 interest is a -- considered a  
7 working interest from which a nonconsent penalty would be  
8 taken?

9 A. That's my understanding.

10 Q. Okay. Let's take this slightly different --  
11 because I want to see what Energen's position is on this --  
12 with respect to an unlocatable interest owner. What  
13 happens to that full 8/8 interest?

14 MR. HALL: Mr. Examiner, I'm going to object. I  
15 think it's totally irrelevant.

16 MR. BRUCE: I don't think so, Mr. Examiner. I  
17 would -- well, what would -- I'll focus --

18 EXAMINER BROOKS: Well --

19 MR. BRUCE: -- the question a little bit more.

20 EXAMINER BROOKS: Yeah, I will let you ask about  
21 his understanding, but of course it really is a legal  
22 question, it's not --

23 MR. BRUCE: Well --

24 EXAMINER BROOKS: -- his -- he's not shown to  
25 have expertise in the legal effect --

1 MR. BRUCE: Okay.

2 EXAMINER BROOKS: -- of this, but his  
3 understanding, to extent you want to present that, you may  
4 inquire about it.

5 Q. (By Mr. Bruce) What I would ask is this: If you  
6 have an unleased owner, are you aware that in current  
7 pooling orders an unleased and unlocatable mineral owner,  
8 or for that matter even an unlocatable working interest  
9 owner, after payout plus penalty, that the money has to be  
10 placed in suspense, the money attributable to that interest  
11 has to be placed in suspense in a bank in the county where  
12 the well is located?

13 A. It's my understanding that the money goes into  
14 suspense. I did not know that it needed to be placed in a  
15 bank.

16 Q. Okay, and let's ignore that. I don't care where  
17 the bank is located. So the money needs to be placed in  
18 suspense that is attributable to that interest after cost  
19 plus payout?

20 A. That would be my understanding.

21 Q. How can that money be placed in suspense if  
22 Energen is not selling that interest owners share of gas?

23 A. The suspense, I guess, would be a credit device.  
24 We have received -- we have received revenues from the sale  
25 of the well, from proceeds from the well, and a proportion

1 of those proceeds would be credited to the suspense account  
2 for that particular owner.

3 Q. And so what you're telling me is, money isn't  
4 placed in suspense, some phantom credit out there is placed  
5 in suspense?

6 A. I don't think I would call it a phantom credit.  
7 There's an accounting to account for the amount of money  
8 that that suspense account represents.

9 Q. Okay. And if the money needs to be placed in a  
10 bank account in the county where the well is located, are  
11 you going to place gas balancing credits in that bank  
12 account?

13 A. Of course not, no.

14 Q. And so the only way to place money -- to place  
15 money in suspense is to sell that person's share of gas and  
16 place it in suspense?

17 A. That person's share of gas has been sold, it's  
18 been -- revenues accruing to that gas. If that owner is  
19 unlocatable, it's put into a suspense fund. At such time  
20 that that suspense, and assuming the owner is unlocatable  
21 after a certain period of time, it is escrowed to the  
22 state.

23 Q. After how long?

24 A. Each state is different. I don't know off the  
25 top of my head what the statute in New Mexico is.

1 Q. Okay. But let's assume that unlocatable person's  
2 portion of the revenues of the well have to be placed in  
3 suspense in a bank account. Why then would you not also  
4 sell the gas of a locatable owner such as the Sommer  
5 interest, and pay them their share of gas?

6 A. Would you rephrase that question?

7 Q. If a pooling order -- Let me take a step back.  
8 This -- Notice of this was also given to the estate of Luis  
9 Martinez and other people. Are they currently unlocatable?

10 A. Mr. Martinez is locatable, we have located him.  
11 In fact, he has recently signed our marketing agreement to  
12 allow us to sell his share of gas.

13 Q. Okay, I'm asking this: If under the terms of a  
14 modern pooling order an unlocatable interest owner's money  
15 share of production has to be sold and placed in suspense,  
16 why wouldn't you do that for a locatable owner?

17 MR. HALL: I'm going to object to the question,  
18 Mr. Examiner. It presumes that there's a legal requirement  
19 that the operator must sell and market on behalf of a  
20 pooled interest owner.

21 EXAMINER BROOKS: I'll overrule the objection.  
22 It's kind of an argumentative question, but if the witness  
23 can answer it, he may do so.

24 THE WITNESS: Once again, repeat your question,  
25 please. I'm not understanding your question, sir.



1 Q. (By Mr. Bruce) If the revenues attributable to  
2 an unlocatable interest owner's interest in a well --

3 A. Yes.

4 Q. -- must be sold and placed into suspense --

5 A. All right.

6 Q. -- in a bank account so that the proper people  
7 can be -- the reason is so proper people can potentially  
8 locate -- be located and that money paid out, why wouldn't  
9 you do the same? Why wouldn't you sell production for a  
10 locatable owner?

11 MR. HALL: The same objection, Mr. Examiner. I  
12 understand your prior ruling.

13 EXAMINER BROOKS: Okay, overrule the objection.

14 THE WITNESS: That locatable interest owner is  
15 not marketing his gas, so what we are doing is balancing  
16 his account for future payment at the depletion of that  
17 wellbore.

18 Q. (By Mr. Bruce) Okay. But the unlocatable owner  
19 isn't marketing his gas either?

20 A. Correct, right.

21 Q. Then why -- What's the difference?

22 A. Because the gas balance -- for that as well.

23 That unlocatable owner is not sold, we have to account for  
24 their production as well.

25 Q. Are you telling me that with respect to

1 unlocatable owners in the State of New Mexico, once payout  
2 has been reached, payout plus penalty under a pooling  
3 order, you are not selling their share of gas? Their  
4 shares of gas?

5 A. I'm selling a hundred percent of the flow from  
6 the well and accounting for their interest by virtue of  
7 carrying them in an in-balance status or in an imbalanced  
8 status in that case.

9 Q. But you're not -- But in New Mexico again, you're  
10 not paying their shares of revenues into a suspense fund?  
11 Money into a suspense fund?

12 A. I don't believe we are, I don't think so. I  
13 believe we're carrying them in the gas balance.

14 Q. Okay. And then let's assume the well depletes  
15 and no further production from the well. What would then  
16 happen to that unlocatable owner's interest?

17 A. The unlocatable owner? We would -- we would  
18 likely to account for what is owed them on the same basis  
19 that we would account for the out-of-balance owners and  
20 base what they were owed on historical pricing and take  
21 that amount of money and apply it to the suspense fund to  
22 the unlocatable owner which would be escheated to the state  
23 at some point in time.

24 Q. Couple more questions. With respect to -- You  
25 included Meridian's documents. Did -- Were the Sommer

1 interests underproduced when Energen took the well over  
2 from Meridian/Burlington?

3 A. The gas balancing statement we received from  
4 Burlington show that Mr. Sommers was in overproduced  
5 status.

6 Q. Why over- -- Why was it overproduced?

7 A. I don't know. It's curious. I don't have an  
8 explanation for it. That's what we got from Burlington.  
9 So when we carried forward the gas balancing, we started  
10 with a positive credit at the time that we acquired the  
11 property and applied that positive.

12 Q. If Meridian wasn't taking a summer share of gas,  
13 except for the 1/8 royalty, how could it be overproduced?

14 A. I can't explain how that happened. That was  
15 before our acquisition of the property.

16 Q. Now in the \$748 overhead rate you're asking for,  
17 that would be it. Are there any type of other fees  
18 assessed against the Sommer interest?

19 A. That is one piece of the monthly LOE statement.  
20 Other pieces to that statement would be the equal expense,  
21 electricity, pumpers, supervision, et cetera.

22 Q. Has Energen ever assessed something called a  
23 management fee to the Sommer interest?

24 A. No, not that I'm aware of. I never heard of  
25 that.

1 Q. Just a couple more, Mr. Rote. The correspondence  
2 with Joseph Sommer goes back to what, 1998 and 1999?

3 A. I believe so.

4 Q. Why did Energen wait 10 years to seek  
5 clarification of the order, if it needed clarification?

6 A. The issue had not arisen until Mr. Sommers  
7 brought it to our attention.

8 Q. Well, that was almost 10 years ago. So my  
9 question is, why did you wait 10 years if it in fact needed  
10 clarification?

11 A. Ten years from what, his first letters? Is that  
12 what you're saying? 1998? We didn't believe that it  
13 required any adjustment on our part.

14 Q. So you thought the order was clear in 1998?

15 A. I can't answer that.

16 Q. And is there any provision of the 1960s pooling  
17 order that allows for gas balancing?

18 A. I don't -- It's not stated in the pooling orders,  
19 as best as I can tell.

20 MR. BRUCE: I pass the witness, Mr. Examiner.

21 EXAMINATION

22 BY EXAMINER BROOKS:

23 Q. Okay. Mr. Rote, are you -- as landman, I assume  
24 you're familiar with the terms that are generally  
25 incorporated in a joint operating agreement?

1 A. Yes, sir.

2 Q. Okay. Was there -- Now it's fairly customary to  
3 have an escalation provision for administrative overhead,  
4 correct?

5 A. Yes, sir.

6 Q. Was there a time when administrative overhead  
7 provisions generally called for just a fixed rate and  
8 didn't have escalation clauses?

9 A. Well, sir, I don't know the answer to that  
10 question. Since I've been involved in the industry the  
11 past 25 years or so, it's been my understanding that  
12 escalation was a normal event.

13 Q. But you don't know one way or another what might  
14 have been the practice in 1961?

15 A. I do not know that, no.

16 Q. Do you know if Energen is a party to any joint  
17 operating agreements that have fixed overhead charges that  
18 do not have escalated clauses?

19 A. We have some joint operating agreements, there's  
20 language that specifically provides that it cannot be  
21 escalated, that's true.

22 Q. Okay. You testified, I believe, that customarily  
23 if a party does not market their share of gas, that it's  
24 adjusted in accordance with a gas balancing agreement?

25 A. That's correct.

1 Q. And a gas balancing agreement is customarily a  
2 part of the joint operating agreement, correct?

3 A. It is attached as an exhibit to many of them. I  
4 would have to say that I have seen joint operating  
5 agreements without a gas balancing agreement attached, and  
6 I would guess that gas balancing is the remedy to handle  
7 those accounting issues, even without a formalized signed  
8 agreement in place.

9 Q. Well, the gas balancing agreement states in some  
10 detail how the gas balancing is done, right?

11 A. Yes, it does.

12 Q. So it might be a little difficult to figure out  
13 how it could probably -- how it would probably be done if  
14 you didn't have enough of detail to --

15 A. I think there's -- Perhaps so. I think there's  
16 some broad guidelines on how they work, which is, a party  
17 is allowed to take -- a nonmarketing party is allowed to  
18 take his share, plus negotiated addage to it. I think it's  
19 common practice that final settlement would be made at  
20 depletion, and I believe it would be common practice that  
21 that settlement would be based on the historical actual  
22 prices that were received for the gas/oil during the period  
23 of imbalances.

24 Q. Of course, the parties can put in any kind of  
25 provisions that they want to --

1 A. Certainly can, yes, sir.

2 Q. -- into an agreement that they negotiate?

3 To your knowledge, is there any controversy about  
4 any of the expenses that have been charged to the Sommer  
5 interest, other than the administrative overhead?

6 A. My understanding that his letters are that he has  
7 had difficulty with the producing overhead rate, the COPAS  
8 as well as the lease operating expenses generally.

9 Q. Well, you believe that there is controversy about  
10 other items of expense, other than just the administrative  
11 overhead?

12 A. That's -- that's -- I believe that, yes.

13 Q. Okay. But you're the only witness that's been  
14 called today, correct?

15 A. Yes.

16 Q. And you've not given any testimony as to the  
17 fairness and reasonableness of any of the other charges,  
18 one way or the other?

19 A. No.

20 EXAMINER BROOKS: Okay, that's all I have.

21 MR. BRUCE: Could I ask one follow-up question?

22 EXAMINER BROOKS: You may.

23 FURTHER EXAMINATION

24 BY MR. BRUCE:

25 Q. And maybe I'm rephrasing the Examiner's question

1 wrong, where he asked, is Energen a party to any JOAs, old  
2 JOAs, where there's no adjustment in the overhead rates?  
3 And I think we've all seen some of those out there. I'm  
4 just curious, is Energen subject to any old JOAs that also  
5 have fixed well costs? In other words, for drilling a  
6 well, drilling and completing a well?

7 A. Nothing comes to mind. I'm not really sure I --  
8 When you say fixed well costs, are you talking about --

9 Q. What I'm getting at is, I know -- I've seen these  
10 old -- and most of these are dead and gone now, but these  
11 old gas lease sales agreement that existed for El Paso --

12 A. The GLA things?

13 Q. GLA things, where it said the operator shall  
14 drill Mesaverde wells at a cost of \$150,000 --

15 A. Okay, yes --

16 Q. -- or something like that?

17 A. -- all right. And the question is, have I seen  
18 those?

19 Q. Is Energen party to any of those agreements --

20 A. Yes --

21 Q. -- that are still in effect?

22 A. -- yes, we were party to a small number of GLA  
23 agreements. I don't know I have the details to answer any  
24 specific questions about those, but yes, we are subject to  
25 certain GLA agreements.



1           Q.    Has Energen either tried to hold the operator  
2           under that agreement -- under those agreements to those  
3           well costs or, conversely, has a party to those agreements  
4           tried to hold Energen as operator to those fixed well  
5           costs?

6           A.    I don't recollect any events surrounding that  
7           issue that come to my recollection.

8           MR. BRUCE: Thank you. Thank you, Mr. Rote.

9           MR. HALL: Are you finished, Jim?

10          MR. BRUCE: Just one. My witness...

11          Q.    (By Mr. Bruce) Do you know what the overproduced  
12          amount was when Energen/Taurus took over the well?

13          A.    I do.

14          Q.    And that will finish me up.

15          A.    This is a -- I have a copy of the balancing  
16          statement that we were provided to -- from Burlington,  
17          1997, and it shows that as to Mr. Sommer's 8.33-percent  
18          interest, he was overproduced by 1121.41 MCFs.

19          MR. BRUCE: I'd ask Mr. Hall if after the hearing  
20          we can get a copy of that.

21          MR. HALL: Yes.

22          EXAMINER BROOKS: Any further questions, Mr.  
23          Hall?

24          MR. HALL: Briefly, Mr. Examiner.

25          EXAMINER BROOKS: Go ahead.

## REDIRECT EXAMINATION

BY MR. HALL:

Q. Mr. Rote, Mr. Bruce asked you why didn't Energen simply deduct LOEs and supervision charges out of the Sommer interest share. Let me have you refer back again to Exhibit 7. Again, did you explain that it's simply Energen's practice that it not net expenses and supervision charges out of a --

A. It's --

Q. -- non-owned interest?

A. It's not a normal practice unless we are provided the authority and permission to do so.

Q. Okay. And other than that, didn't it remain the case at the time that the Sommers were objecting to the supervision charges and lease operating expenses being applied to its interest?

A. Yes, they were objecting to it.

Q. Okay. By the way, if we refer back to Exhibit 20, this is the joint operating agreement for the Martinez Number 1 well, correct?

A. Yes.

Q. And it is a brief copy. Do you know if the JOA in its entirety has any gas balancing agreement made an exhibit to it?

A. Yes, there is one.

1 Q. All right. And in your opinion, Mr. Rote, are  
2 the lease operating expense charges that Energen seeks to  
3 recover reasonable?

4 A. Yes, sir, I believe they are reasonable.

5 Q. Can you briefly summarize what monthly lease  
6 operating expenses are?

7 A. What they consist of?

8 Q. Amounts?

9 A. The amounts? I'm sorry, Scott, breakdown of the  
10 vehicle expenses and -- Could you rephrase your question?

11 Q. Yes. What amounts of monthly lease operating  
12 expenses are charged to the well currently?

13 A. On an 8/8 basis?

14 Q. Yes.

15 A. I don't know, let me see if I can find for you.

16 Q. Let me ask you this way. Do you have that  
17 information with you? Would you be willing to provide that  
18 to the Hearing Examiner?

19 A. Yes. On -- Average for this well on 8/8 basis  
20 from the period of July '06 through June of '07, I would  
21 say the average amount here is on the order of \$950 to  
22 \$1000.

23 MR. HALL: Thank you, Mr. Rote.

24 I have nothing further, Mr. Examiner.

25 EXAMINER BROOKS: Very good. Does Applicant

1 rest?

2 MR. HALL: Yes, sir.

3 EXAMINER BROOKS: Okay, you may call your  
4 witness, Mr. Bruce.

5 MR. BRUCE: Where would you prefer him to sit?

6 EXAMINER BROOKS: Over here, across from the  
7 court reporter.

8 KURT A. SOMMER,

9 the witness herein, after having been first duly sworn upon  
10 his oath, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. Would you please state your name for the record?

14 A. Kurt A. Sommer.

15 Q. And where do you reside?

16 A. 756 Calle Altamira here in Santa Fe.

17 Q. What is your relationship to JAS Oil and Gas  
18 Company, LLC?

19 A. I am the trustee of the sole member, the sole  
20 member being Joseph A. Sommer Revocable Trust.

21 Q. And so JAS Oil and Gas owns this particular  
22 mineral interest of record?

23 A. It does.

24 Q. And the trust is the sole owner of the LLC; is  
25 that right?

1 A. That is correct.

2 Q. Okay. And as a result, are you familiar with the  
3 matters involved with this Application and the trust --  
4 formerly the trust, and now JAS's ownership of the interest  
5 in the Martinez well?

6 A. I am.

7 Q. Let's -- Maybe start off by saying -- by asking  
8 you, what is -- and I'll just refer to it as -- overall as  
9 Sommer. It's easier for me than to say everything else.  
10 What is the Sommer position regarding the sale of its share  
11 of production from the Martinez well?

12 A. The sommer position is that the 1961 order  
13 allowed for charges and sales solely for supervision of the  
14 well. There was no right to balance, to sell all of it and  
15 then create a balanced account. The Sommer position is  
16 that if they thought there was an inconsistency with  
17 respect to that order, they should have been in here 10  
18 years ago when the objection was raised by Joseph Sommer.

19 In the interim what they've been doing is selling  
20 100 percent of the gas that's produced from the well and  
21 telling Mr. Sommer, and subsequently me, that -- Here's the  
22 balance that you're due.

23 When I went in and asked for them to deliver the  
24 well -- deliver the overproduced amount, they refused to  
25 deliver it. They told us they would credit over time. I

1 asked them to do it when gas was selling at \$15 an MCF. I  
2 said, Produce it, I'll find a buyer on that particular day.  
3 They rejected it, they wouldn't even respond to me.

4 And so my particular position, and Joe's  
5 particular position with respect to this whole thing, is  
6 simple: You don't have a joint operating agreement, you  
7 don't have a right to do balancing, and don't keep  
8 referring back to these documents that you don't have the  
9 right to rely upon as the basis to form a settlement in  
10 this particular case.

11 If you don't think it's right, go back to the OCD  
12 and get an order that lets you do what you want to do. But  
13 in the interim, if you're not going to do that, please come  
14 out here, don't sell my gas. And if you're going to sell  
15 my gas, give me my portion of the revenue and offset the  
16 supervision charges only. What they've been doing is  
17 adding more than just supervision. That's not allowed for  
18 under the order.

19 And so in October of '05, or September of '05, I  
20 asked and requested that they deliver to us at a particular  
21 point the amount they were claiming was an imbalance, and  
22 we would sell it ourselves. They wouldn't do that either.  
23 But they offered us simply to give us a credit over time of  
24 some excess amount until it was paid out.

25 We wanted it, they wouldn't produce it, the got

1 the money for it, they haven't paid any interest, and  
2 they've had the benefit of the money. It's as simple as  
3 that.

4 In the interim what we have done is, we filed a  
5 lawsuit in Rio Arriba County, and that's what prompted this  
6 revision to this order. And before that, there was no  
7 intent to come before the OCD and ask for a clarification.

8 Q. Mr. Sommer, I've handed you Sommer Exhibit A.  
9 What is that?

10 A. This is a letter to Mr. Hall on September 27th,  
11 2005, dealing with a potential settlement of this dispute  
12 and a request to do one of two things: Either pay  
13 immediately for the BTUs that they were showing as a credit  
14 balance, or deliver the accessible BTUs to a purchasing  
15 company that we would find to buy the gas. There was no  
16 response to this letter. There was neither deliver nor  
17 payment.

18 Q. So you did attempt to bring this matter back in  
19 balance, and Energen wouldn't respond?

20 A. That's -- Only on their terms would they respond,  
21 and their terms were set out in the letter from Mr. Rote  
22 that we will pay a 40-percent amount over time, and that's  
23 how we'll do it, but we're not going to pay what's due  
24 today.

25 Q. Okay. And I'll hand you what's been marked

1 Sommer Exhibit B, Mr. Sommer, and briefly what is that?

2 A. This is a typical statement that we receive --  
3 it's for February of '07 -- that shows how they're  
4 marketing the imbalances, or telling us what the cumulative  
5 imbalance was that they're showing of their records. As of  
6 February of '07 they were saying that JAS Oil and Gas  
7 Company was owed 6985 MCF, after taking whatever credits  
8 they think were due from the time that they acquired the  
9 well.

10 Q. Okay. And showing this, obviously, the imbal- --  
11 or, Mr. Rote gave another figure, the current  
12 underproduction?

13 A. Right.

14 Q. But when you made your demand in 2005, there was  
15 underproduction, which you could make up?

16 A. That is correct, there was an underproduction at  
17 the time of -- I can't remember the exact amount. It was  
18 roughly -- it had to have been less than the 6900. It was  
19 fifty-some-hundred MCF at the time, probably.

20 Q. Okay. Mr. Examiner, I apologize for not having  
21 these marked up in time. I would only remind you, at one  
22 hearing I was hand-drying an exhibit while my witness was  
23 testifying.

24 I've handed you Sommer Exhibit C, Mr. Sommer.  
25 What does that reflect?



1           A.    This is a typical monthly billing that we receive  
2           from Energen for the various wells that they're operating,  
3           including the Martinez well, and the gross amounts that  
4           they think are due for operating costs.

5                    What you will see, particularly on page 2 of this  
6           particular exhibit, they have company labor, they have  
7           company supervision, they have field office charges, they  
8           have vehicle charges, they have R&M surface charges, and  
9           they have LOE, lease operating expenses, none of which  
10          appear to be authorized under the 1961 order, except for  
11          the supervision.

12          Q.    Except for the overhead rates?

13          A.    That's correct.

14          Q.    And even then, there was nothing in the order  
15          which authorized a 1984 JOA overhead rate to be escalated?

16          A.    No, there is not.

17          Q.    And again, it is your position that certainly  
18          proper reasonable overhead rates should have been taken out  
19          of production?

20          A.    Yes, and if you look at the Exhibit 22 that was  
21          handed out by Mr. Hall you'll see that for Pictured Cliff  
22          wells, a typical well would be charged \$283 in one case,  
23          \$477, \$970, \$477, when it looks to me like they're charging  
24          in the neighborhood of \$950 to \$1000 for a Pictured Cliff  
25          well.   Seemed excessive, and Joe just didn't want to

1 acquiesce to that.

2 Q. Okay. And you looked at Exhibit --

3 A. -- 22.

4 Q. -- Energen Exhibit 22, and it appears that  
5 overhead rates for Pictured Cliffs wells on this list seem  
6 to be, on the whole, substantially lower than those  
7 requested by Energen today?

8 A. That is correct.

9 Q. Based on that and the other information you've  
10 seen, is it your opinion that the rates requested by  
11 Energen are not reasonable?

12 A. That is correct, I think they're excessive based  
13 upon what's being charged in the field by other Pictured  
14 Cliff well operators.

15 A. I've handed you Sommer Exhibit D, Mr. Sommer.  
16 What does that reflect?

17 A. This was a payment for a workover of the McCroden  
18 well, and the reason that we're submitting this is to show  
19 that we're not unreasonable. When there has been a request  
20 for a workover, we have been willing to participate in  
21 wells. And this is for the McCroden well, we paid our *pro*  
22 *rata* share of the workover for that particular well.

23 Q. That well is in the same section as this Martinez  
24 well, is it not?

25 A. I believe it is.

1 Q. And I've handed you Sommer Exhibit E. What is  
2 that?

3 A. This is the same as Exhibit 16 that is in the  
4 package that was handed out by Energen. It's Mr. Joe  
5 Sommer's letter to Mr. Rote of October 15th, 2002, in which  
6 he was again advising Mr. Rote that, one, he's premising  
7 all his offers on a joint operating agreement to which Mr.  
8 Sommer was not a party, and therefore the premise on which  
9 these settlements were based was not reasonable.

10 He was further pointing out to Mr. Rote that  
11 because of Energen's marketing position and ability to  
12 control the well, that it was a contract of adhesion and  
13 that there was no ability to market or negotiate these  
14 particular terms, and therefore he would not agree to it  
15 the way it was set out.

16 And I believe that the way he set out his letter  
17 here clearly set forth his case and why he was objecting to  
18 the overhead charges and the charges that were being  
19 imposed by Energen against his interest, and to set forth  
20 why the imbalancing was inappropriate, particularly because  
21 the 1961 order didn't allow for it.

22 Q. And you have -- perhaps with the McCroden well,  
23 you have signed JOAs with Energen, have you not?

24 A. Yes, we did sign a JOA on the McCroden well.

25 Q. And those JOAs are negotiated, are they not?

1           A.    They were, and we marked it up, and they would  
2 not accept a single change.

3           Q.    And along that line, gas balancing agreements are  
4 generally negotiated agreements, are they not?

5           A.    That is correct.

6           Q.    And do you think it's proper for the Division to  
7 impose a gas balancing agreement, absent negotiation  
8 between the parties?

9           A.    I do not believe it would be appropriate because  
10 of the terms of the balancing act could be complicated and  
11 would be difficult to impose in an order.

12          Q.    And do you think it's proper to -- apparently,  
13 from what I understand, Energen is requesting retroactive  
14 relief at least 10 years -- apparently they're seeking to  
15 go back 20-some years to the 1984 JOA to impose operating  
16 charges. Do you believe that retroactivity is proper?

17          A.    It's inappropriate in this case for several  
18 reasons. One is, they've had the use of the money, they've  
19 had the use -- the ability to use it and not pay any  
20 interest on it. I don't believe, unfortunately, that this  
21 Division has the ability to order the imposition of the  
22 past payment together with interest. I believe that they  
23 have violated New Mexico law in numerous provisions, and  
24 we're entitled to attorney's fees and costs for having to  
25 force this action in Rio Arriba District Court. And if it

1 was to be appropriate, we think it would be prospective to  
2 the modification of the 1961 order, not retrospective.

3 Q. Do you have anything further, Mr. Sommer?

4 A. I have nothing further.

5 Q. Were Sommer Exhibits A through E either prepared  
6 by you or compiled from the records of JAS or the trust?

7 A. Yes, they are.

8 Q. And do you believe that the denial of Energen's  
9 Application, except for perhaps some prospective relief,  
10 should be -- is proper?

11 A. I think it would be appropriate in these  
12 circumstances.

13 MR. BRUCE: Mr. Examiner, I move the admission of  
14 Sommer Exhibits A through E.

15 MR. HALL: No objection.

16 EXAMINER BROOKS: Sommer Exhibits A through E are  
17 admitted.

18 MR. BRUCE: And I pass the witness.

19 CROSS-EXAMINATION

20 BY MR. HALL:

21 Q. Mr. Sommer, to your knowledge has Sommer JAS  
22 previously allowed the prior operators of the Martinez  
23 Number 1 well to market on behalf of their interest?

24 A. I believe that, in fact, the gas was marketed by  
25 the predecessors to Energen.

1 Q. And did that include Meridian Oil and Burlington  
2 Resources, to your knowledge?

3 A. To my knowledge, Burlington did, as well did  
4 Meridian.

5 Q. And did the Sommer interest previously allow  
6 Meridian and Burlington to balance the Sommer interest as  
7 well?

8 A. I don't know whether there was a balancing that  
9 was allowed in that particular case.

10 Q. Do you know whether, in fact, there was  
11 balancing?

12 A. I do not know whether there was in this case.

13 Q. When did -- Joe Sommer is your father, correct?

14 A. That's correct, was.

15 Q. And do you know when he might have first objected  
16 to anyone about balancing?

17 A. I don't have in our records the first letter he  
18 may written, and it may have been to -- The first letters I  
19 saw were to Energen. I don't recall any letters that may  
20 have been written to Meridian. There might have been, I'm  
21 just not aware of them.

22 Q. I believe in response to one of Mr. Bruce's  
23 questions, if this refreshes your recollection at all, you  
24 said he's been protesting for more than 10 years. Does  
25 that sound accurate?

1           A.    He's been protesting since roughly 1998, 1999.

2           MR. HALL:   Okay.  Nothing further, Mr. Examiner.

3           EXAMINER BROOKS:  Mr. Bruce, anything further?

4           MR. BRUCE:  No, sir.

5           EXAMINER BROOKS:  I think the questions I have  
6 would be really to counsel more than to Mr. Sommer,  
7 although I understand that you are a lawyer, so you've  
8 doubtless participated in the formation of your legal  
9 position.

10           But until Mr. Sommer's testimony, I was not aware  
11 that there was an action pending in district court, and of  
12 course I'm interested in the parties' position.  Our  
13 jurisdiction under this situation, confident there aren't  
14 any pertinent decisions under the New Mexico Oil and Gas  
15 Act, because I'm reasonably certain that I've read all the  
16 cases -- the very few cases that construe the New Mexico  
17 Oil and Gas Act.

18           Mr. Bruce, I gather you're taking the position  
19 that we do not have the jurisdiction to construe our order  
20 because of the pendency of the district court case.

21           MR. BRUCE:  Well --

22           EXAMINER BROOKS:  I'd be interested in your  
23 position first.

24           MR. BRUCE:  -- I think the Division has the  
25 authority to construe its order, but I think that would be

1 limited to the statute when it talks about reasonable --  
2 you know, the Division, in the event of a dispute relative  
3 to such costs, which refers to drilling and operating  
4 costs --

5 EXAMINER BROOKS: Right.

6 MR. BRUCE: -- I think the Division has  
7 jurisdiction. And Mr. Hall can correct me if I'm wrong,  
8 that the court action was stayed for a period of 90 days to  
9 allow this action to proceed before the Division.

10 Mr. Hall is asking -- in my opinion, Mr. Hall is  
11 asking for more than the Division has authority to do.

12 EXAMINER BROOKS: So what is your position on the  
13 Division's authority in this case?

14 MR. BRUCE: I think it should be limited to the  
15 overhead rates, the supervision charges.

16 EXAMINER BROOKS: Is it your position that the  
17 order does not provide for -- the order is somewhat  
18 strangely worded, at least it seems that way to someone  
19 who's familiar with the way we write them today -- but is  
20 it your position that the order does not provide for the  
21 recovery of operating costs?

22 MR. BRUCE: No, no, I believe the order does  
23 provide for the recovery of operating costs, and I think it  
24 was Mr. Rote's opinion that it does not. But it's -- and I  
25 was going to use that in my -- very briefly in my closing



1 argument.

2 EXAMINER BROOKS: Well, maybe I should go ahead,  
3 then, and allow Mr. Hall to make his closing argument, so I  
4 can hear yours, and then he can reply to it.

5 MR. BRUCE: Sure.

6 EXAMINER BROOKS: Mr. Hall, do you want to  
7 proceed with your closing?

8 MR. HALL: I'll discuss it briefly. I was hoping  
9 you to spare anything more. I know you've been through a  
10 lot recently.

11 EXAMINER BROOKS: Well, but normally I think  
12 closing arguments are fairly worthless in OCD cases, but  
13 this is not an ordinary OCD case so I would be interested  
14 in hearing your thoughts on this.

15 MR. HALL: I agree, Mr. Examiner. You might  
16 recall this case was originally scheduled for hearing in  
17 July, I believe, and --

18 EXAMINER BROOKS: I do not recall that.

19 MR. HALL: -- a lot has happened since then.

20 We were advised the day before the Hearing  
21 Examiner by -- by the Hearing Examiner by phone message  
22 that the case would be continued without --

23 EXAMINER BROOKS: Right.

24 MR. HALL: -- any explanation, so pursuant to  
25 that we set a prehearing conference. You were there, and

1 we discussed briefly what this case might be about. There  
2 was some indication at the time that Mr. Bruce would file a  
3 dispositive motion with the Division, and we would discuss  
4 jurisdiction. We're still pleased to do that if you  
5 request.

6 One thing Mr. Bruce and I discussed is possibly  
7 giving you the briefing we provided to the Rio Arriba  
8 County District Court, which discusses jurisdiction.

9 EXAMINER BROOKS: Well, that would be helpful  
10 because I think the -- I believe that there are  
11 jurisdictional issues here, but I would be interested in  
12 knowing the parties' positions on that.

13 MR. HALL: We'll be glad to brief that to you.  
14 Let me just summarize. I don't think there's --

15 EXAMINER BROOKS: Okay.

16 MR. HALL: -- any question. I think Mr. Bruce  
17 agrees that the Division does have continuing jurisdiction  
18 over its orders and has a mandatory duty under the pooling  
19 statute to address the issues, objections over cost.  
20 That's what we're doing here today.

21 EXAMINER BROOKS: Yeah.

22 MR. HALL: As you point out, the wording of this  
23 antiquated order is hard to decipher and apply in each and  
24 every case. That's why we're here.

25 EXAMINER BROOKS: Well, the order --

1 specifically, the order refers to development costs,  
2 including a fee for supervision or something, words to that  
3 effect. It doesn't, as far as I saw, say anything  
4 specifically about operating costs. But of course, the  
5 present edition of the pooling statute specifically says we  
6 will provide for operating costs. I don't have with me my  
7 color-coded copy that shows the history of all the  
8 phraseology in the Oil and Gas Act, so...

9 MR. HALL: Well, that's certainly in accord with  
10 our request for relief. If you'll look at our amended  
11 Application and our prehearing statement, it says just as  
12 much.

13 In addition to that, we are asking for relief  
14 under Rule 414. To my knowledge, I don't think a Rule 414  
15 case has come before the Division prior to this one.

16 I thought it might be helpful for you to have a  
17 copy of the order -- that's Order R-8361, which gave rise  
18 to the rule; I have an extra copy for you -- and it  
19 addresses the situations where the Division contemplated  
20 the relief it might accord. There were several proposals  
21 made to the Division, and one of them, one proposal -- and  
22 it's set out as a finding in the order -- is that there  
23 would be no balancing permitted, period, without the  
24 written gas balancing agreement.

25 The Division rejected that and said, you know, we

1 want to have the latitude to address any situation that  
2 comes before us where we think correlative rights may be  
3 affected by situations we can't foresee now.

4 EXAMINER BROOKS: Right.

5 MR. HALL: I think this is one of those, where  
6 you have a non-operating interest owner whose interests are  
7 pooled, and not only is he objecting to supervision  
8 charges, which he clearly has been, and lease operating  
9 expenses, he refutes the operator's authority to market gas  
10 on his behalf.

11 Taken to its logical course, if you look at that  
12 argument, what he's saying then, is, unless all of the gas  
13 is marketed then none of the gas is marketed. So the owner  
14 of an 8-1/3-percent interest in the well can require the  
15 other 92 percent to be shut in, and that's a direct  
16 violation of correlative rights within the unit itself.

17 In addition to that, I think you have a situation  
18 here where this well is offset by other non-operated, non-  
19 owned Pictured Cliffs production. Gives rise to the  
20 possibility of violation of correlative rights.

21 And so I think any interest owner, non-operating  
22 or an operating interest owner, can come before the  
23 Division and seek relief, and I think you have jurisdiction  
24 to grant it.

25 EXAMINER BROOKS: Okay, Mr. Bruce?

1 MR. BRUCE: Getting along with -- you know, maybe  
2 it would help in addition to submitting the court briefs,  
3 maybe just to do a two- or three-page outline of my  
4 argument --

5 EXAMINER BROOKS: That might be helpful.

6 MR. BRUCE: -- and submit it to you afterwards.

7 But first of all, a couple of things. There has  
8 never been a case under Rule 414, I can -- until today.

9 EXAMINER BROOKS: I remember asking -- I remember  
10 at one time asking Mr. Stogner and Mr. Catanach if they  
11 knew of a case under it, and neither one of them -- both of  
12 them were of the opinion that there had been no cases under  
13 the --

14 MR. BRUCE: And it's my opinion that really the  
15 pooling order is there to protect the correlative rights,  
16 and I think the pooling statute and the pooling order  
17 protect everybody's correlative rights, and I don't think  
18 we need to look to Rule 414.

19 So we believe, you know, it's our opinion, that  
20 Energen has been violating the terms of the order by not  
21 recovering at least reasonable supervision charges from  
22 production.

23 And I'm handing you -- this will be Sommer  
24 Exhibit F, and this is simply Exhibit 4 from the original  
25 pooling hearing. And that is a letter from Mr. Thomas

1 McKenna who was an old-time attorney and partner of Joe  
2 Sommer's for quite a number of years, and I've -- simply  
3 highlight the third paragraph.

4 Even back then, Mr. McKenna, on behalf of Mr.  
5 McKenna and Mr. Sommer -- and they both owned an unleased  
6 mineral interest in that acreage, that they had no problem  
7 with reasonable operating costs when the well is put on  
8 production.

9 So you know, the position is that certain charges  
10 should have been taken out of production, and since they  
11 weren't, I don't know why, but I don't see a big problem  
12 with doing that. After all, the statute itself says  
13 pooling orders shall make definite provision for the *pro*  
14 *rata* reimbursement solely out of production of well costs,  
15 which shall include a reasonable charge for supervision.  
16 And I think that's pretty much reflected in the old pooling  
17 order, the same type of language. So that should have been  
18 done.

19 And I think it's improper at this point to impose  
20 a kind of an *ad hoc* gas balancing agreement where, as Mr.  
21 Sommer said, any suggestions made by them to Energen  
22 regarding these matters are just simply ignored.

23 So the other issue is, you know, making an order  
24 retroactive 10 years, and that seems -- along that line,  
25 retroactive relief can be proper by state administrative

1 bodies, I understand that. Certainly in a force pooling it  
2 should go back to date of first production, but we're not  
3 at that issue here, and I think it would be improper to go  
4 back 10 years to impose these charges, which I don't think  
5 enough information has been put forward in this hearing to  
6 determine what was proper in 1997, much less, I don't think  
7 -- if you look at Exhibit 22 of Energen, I don't think  
8 their proposed overhead rates are proper.

9 So I think while the Division can determine  
10 proper operating charges, it should be on a prospective,  
11 ongoing basis.

12 EXAMINER BROOKS: Very good. So then allow the  
13 parties to file briefs?

14 MR. BRUCE: I don't think you need to see them in  
15 the next week.

16 EXAMINER BROOKS: No urgency here, I think I  
17 would say. I think 30 days from now would be adequate.

18 MR. BRUCE: And that would be fine with me.

19 EXAMINER BROOKS: Well, that would be in the  
20 middle of the Christmas holidays, but...

21 MR. BRUCE: We can push it out to anywhere you --

22 EXAMINER BROOKS: Yeah, January the 7th, I  
23 believe, is a Monday --

24 MR. BRUCE: Okay.

25 EXAMINER BROOKS: -- so that would be a good

1 time, as far as I'm concerned.

2 Okay.

3 MR. HALL: Thanks very much.

4 MR. SOMMER: Thank you very much.

5 EXAMINER BROOKS: Thank you.

6 If there's nothing further, then Case Number  
7 13,957 will be taken under advisement, and this docket will  
8 stand adjourned.

9 (Thereupon, these proceedings were concluded at  
10 3:50 p.m.)

11 \* \* \*

12  
13  
14  
15 I do hereby certify that the foregoing is  
16 a complete and correct transcript of the proceedings in  
17 the Ex. of Case No. 13957,  
18 heard on Nov 29, 2007.  
19 *David K. Brooks* Examiner  
20 Oil Conservation Division  
21  
22  
23  
24  
25



## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO     )  
                                  )   ss.  
COUNTY OF SANTA FE     )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL December 13th, 2007.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2010