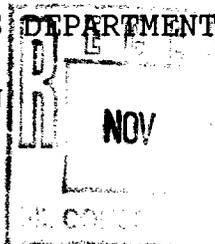


STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION COMMISSION



IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF NEARBURG EXPLORATION)
COMPANY, L.L.C., FOR COMPULSORY POOLING,)
LEA COUNTY, NEW MEXICO)

CASE NO. 11,563

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN
WILLIAM WEISS, COMMISSIONER
JAMI BAILEY, COMMISSIONER

October 30th, 1996

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Wednesday, October 30th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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October 30th, 1996
 Commission Hearing
 CASE NO. 11,563

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By: JAMES G. BRUCE

* * *

1 WHEREUPON, the following proceedings were had at
2 9:02 a.m.:

3 CHAIRMAN LEMAY: Good morning, this is the Oil
4 Conservation Commission, the second day of hearings, on the
5 30th of October, 1996, Commissioner Bill Weiss on my left,
6 Commissioner Jami Bailey on my right, and myself, Bill
7 LeMay. We are the Commission. And welcome, the few of you
8 that are out there.

9 We can start by calling Case Number 11,563, the
10 Application of Nearburg Exploration for compulsory pooling,
11 Lea County, New Mexico, and I shall ask for appearances.

12 MR. CARR: May it please the Examiner, my name is
13 William F. Carr with the Santa Fe law firm Campbell, Carr,
14 Berge and Sheridan.

15 I represent Nearburg Exploration Company, L.L.C.
16 I have two witnesses.

17 MR. BRUCE: Mr. Chairman, Jim Bruce from the
18 Hinkle law firm in Santa Fe, representing A.L. Cone
19 Partnership, and unfortunately my witness had to leave town
20 last night, so I'm -- I'm naked.

21 CHAIRMAN LEMAY: Well, we don't have videos here,
22 so you're all right; let's just go with it.

23 Okay, additional appearances?

24 Those witnesses that are going to give testimony,
25 please stand and raise your right hand.

1 (Thereupon, the witnesses were sworn.)

2 CHAIRMAN LEMAY: Mr. Carr, you may begin.

3 ROBERT G. SHELTON,

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

6 DIRECT EXAMINATION

7 BY MR. CARR:

8 Q. Will you state your name for the record, please?

9 A. Robert G. Shelton.

10 Q. Where do you reside?

11 A. Midland, Texas.

12 Q. By whom are you employed?

13 A. I'm the land manager for Nearburg Producing
14 Company.

15 Q. Mr. Shelton, have you previously testified before
16 the Oil Conservation Commission?

17 A. Yes, sir, I have.

18 Q. At the time of that testimony, were your
19 credentials as an expert witness in petroleum land matters
20 accepted and made a matter of record?

21 A. Yes, they were.

22 Q. Are you familiar with the Application filed in
23 this case?

24 A. Yes, sir, I am.

25 Q. Are you familiar with the status of the lands in

1 the subject area?

2 A. Yes, sir, I am.

3 MR. CARR: Are Mr. Shelton's qualifications
4 acceptable?

5 CHAIRMAN LEMAY: They're acceptable.

6 Q. (By Mr. Carr) Mr. Shelton, would you briefly
7 summarize for the Commission what Nearburg is seeking here
8 today in this *de novo* hearing?

9 A. Nearburg seeks the pooling of two lots of acreage
10 in Section 3 of Township 16-35 for the drilling of a
11 Mississippian test with the primary objective being the
12 Strawn formation, and the pooling of the unleased or
13 uncommitted mineral interest owners, A.L. Cone.

14 Q. And what is the name of the well to which you
15 propose to dedicate this acreage?

16 A. It's the Nike "3" Number 1 well.

17 Q. What is the status of your plans to drill this
18 well?

19 A. We have a rig schedule to spud that well on
20 October 31st, which is the day before our Examiner hearing
21 Order expires, so we're under obligation to have that well
22 spud by that date, by November 1st, under the Examiner
23 order.

24 We also have a third-party commitment from Tom
25 Bell and Fuel Products that requires that well be drilled

1 on or before October 31st. So we are under the gun to make
2 sure that well is spud for two reasons, and we will spud
3 the well as required on October 31st.

4 Q. And that is tomorrow?

5 A. That's tomorrow, Thursday, yeah.

6 Q. Are you asking the Commission to affirm the Order
7 that was entered following the Examiner hearing in this
8 case?

9 A. Yes, we are. We've got all the other parties
10 committed to this, either farmout, participation, committed
11 to an operating agreement, except for A.L. Cone, and we are
12 asking that the order be affirmed that was issued by the
13 Examiner.

14 Q. And in doing that, you're asking that the
15 original dates imposed by that order are maintained; is
16 that correct?

17 A. That is correct, so we would spud the well under
18 the Examiner Order and meet those dates.

19 Q. Have you prepared exhibits for presentation here
20 today?

21 A. Yes, sir, we have.

22 Q. Would you refer to what has been marked Nearburg
23 Exhibit Number 1, identify and review that for the
24 Commission?

25 A. Nearburg Exhibit Number 1 is simply a locator map

1 by Midland Map Company. It shows two 80-acre tracts -- two
2 40-acre tracts colored in yellow. That would be the
3 proposed spacing unit for the well on 80 acres in the
4 Strawn formation. And they're lots, I believe, 13 and 14.

5 Q. 15 and 16.

6 A. 15 and 16, excuse me, of Section 3, 16-35, Lea
7 County, New Mexico.

8 Q. The location of the well is shown in the shaded
9 acreage?

10 A. The location is 3070 feet from the south line and
11 330 feet from the east line. It is a standard location.

12 Q. Let's go to Exhibit Number 2. What is this?

13 A. Exhibit Number 2 is an ownership map. It shows
14 the percentages of interest of all those parties that have
15 a right to drill and operate. Nearburg Exploration Company
16 54 percent; Amerind 20.83 percent, who is committed to
17 participate with us in the well; Enserch Exploration
18 Company 12.5 percent, who has committed their interest to
19 an operating agreement and elected to be nonconsent under
20 the operating agreement; and then A.L. Cone Partnership,
21 who is 12.5 percent, who did not respond with an election
22 under the Examiner Order, and by their own nonelection
23 we've deemed them to be a nonconsenting party under the
24 Order.

25 Q. You have at this time 87.5 percent of the working

1 interest committed to the Nike "3" Number 1 well; is that
2 right?

3 A. That is correct.

4 Q. And you're proposing to drill this with the
5 primary objective being the Strawn formation?

6 A. Strawn is the primary objective. We'll go to the
7 Mississippian, but the Strawn is the primary objective.

8 Q. Could you go to what has been marked as Nearburg
9 Exhibit Number 3 and review this for the Commission?

10 A. Exhibit Number 3 is a packet of information which
11 originally sets forth the proposals that were made in this
12 case. You'll see some letters to Jimmy Lee Hooper [sic],
13 who now has leased to Amerind, so they're not applicable
14 any longer.

15 We have a letter to A.L. Cone on June 25th where
16 we -- The original proposal that was made in this case to
17 all the working interest owners was by letter dated June
18 10th, and we made this proposal to all the people. And
19 you'll see a letter in there to A.L. Cone on June 10th,
20 proposing the well at a location of 2970 feet, along with
21 an AFE at 2970 feet.

22 Later, when we went out to stake that well, that
23 was directly under a large power line, and we had to move
24 it 100 feet. So we restaked the location at 3070 feet.
25 You'll find another series of proposals made by certified

1 mail -- the green cards are attached -- showing that we
2 changed the location to 3070 feet and also offering a
3 second AFE with the corrected location.

4 Also included in that package of information is
5 the affidavit of notice and service for the force-pooling
6 hearing, and also an operating agreement which we mailed to
7 each of the parties for their review and subsequent
8 execution by those parties who elected to participate.

9 Q. Did A.L. Cone partnership appear at the Examiner
10 hearing held in August?

11 A. Yes, they did, through their attorney. They
12 didn't have any witnesses at that time, as I remember.

13 Q. What is the --

14 A. That was on the 25th of July, when that hearing
15 was held.

16 Q. What is the cost you anticipate for a completed
17 well if you are successful?

18 A. The AFE for a completed well in this case is
19 \$1,018,430.

20 Q. And are these costs in line with what other
21 operators in the area charge for similar wells?

22 A. Yes, they are. Amerind is an operator in this
23 area, and they have signed our AFE for this amount, so I'm
24 sure it's in line with other --

25 Q. In your opinion, has Nearburg made a good-faith

1 effort to obtain the voluntary participation in this well
2 of the A.L. Cone Partnership?

3 A. Yeah, we really have. In fact, I think we've
4 gone a little bit normally more than what we do, because
5 we're under a gun, quite frankly, in this well, because we
6 had our original commitment date with the -- under the Bell
7 agreement, was September 31st [sic], which we had to get
8 extended for 30 days, which was at some cost to Nearburg.

9 And because of that date and because of that
10 obligation, we -- Cone wrote us, and you'll see by Exhibit
11 4 --

12 Q. Let's go to that now and review that.

13 A. Exhibit 4 was a letter when we originally
14 proposed the well to Cone on June 10th. They wrote us back
15 and said they didn't think they could make a decision on
16 the well, and they wanted to see our geologic/geophysical
17 information, which we normally do not give to other
18 operators. It's, you know, confidential information.

19 In this case we -- It's a high-risk well. We
20 actually wanted the participation of Cone, or we didn't --
21 I mean, if they participated, fine, of course, and if they
22 didn't, that was fine. So you'll see on Exhibit 4 they
23 requested our geophysical information and geologic
24 information.

25 You'll see by Exhibit 5 where we in fact said,

1 Yes, we'll be happy to show you our geophysical and
2 geological information if you'll either agree to
3 participate in the well or give us an oil and gas lease for
4 \$100 an acre and a quarter royalty.

5 And in fact, they did verbally agree to do that,
6 and then their representative, Mr. Larry Petrie, came to
7 our office -- Now, let me see, I have a schedule when all
8 this happened. They came to our office in July, late July,
9 and we did present to them all of our geologic information,
10 all of our geophysical information, allowed them access to
11 all of our records, so we could get their participation
12 before the hearing. That was unsuccessful. We didn't get
13 their cooperation.

14 Q. What is Exhibit Number 6?

15 A. Exhibit Number 6 is a package of, again,
16 information from Amerind and Enserch where they had made
17 elections to participate in the drilling of this well or
18 executed our operating agreement, with certain conditional
19 letters of acceptance showing that we do have the joinder
20 of all those individuals.

21 Q. All right, and Exhibit Number 7?

22 A. Exhibit Number 7 is a letter after the date of
23 the hearing, which the hearing was dated on July 25th. The
24 Order was issued, I believe, on the 29th. We wrote the
25 partnership at that time and gave them an AFE as we're

1 required to under the order, and we asked for their
2 election to participate or go nonconsent. And this is a
3 letter, again, with the AFE, with the corrected location on
4 it, asking their election be made pursuant to the order.

5 Again, at that time they called back and said
6 they didn't think they could make an election, and they
7 wanted to send a separate representative to look at our
8 geophysical data again, which we agreed to do. And a
9 Midland geophysicist by the name of Mr. Don Hibbitts came
10 to our office and actually worked the data that we had that
11 we were basing our location on. And so we were hoping to
12 get an election under the order for them to participate, or
13 at least for them to have some voluntary agreement.

14 Exhibit Number 8 is information where we did
15 not -- We did not get a letter. Their election date was
16 due September 12th. We wrote them on September 10th, again
17 asking -- We'd been notified by Mr. Bruce through our
18 attorney that he'd filed a *de novo* hearing for this case to
19 get more time for an election, as we understand.

20 And so we wrote the A.L. Cone partnership back in
21 this letter, and this was to inform them that we intended
22 to enforce the election if they didn't make -- enforce
23 their nonconsent election if they did not make a voluntary
24 election by September 12th, which was the date due. And so
25 we were giving them again notice that we were going to

1 pursue the effect of the Order.

2 Q. What is Exhibit Number 9?

3 A. Exhibit Number 9, at some point very recently, on
4 October 22nd, evidently, Mr. Bruce thought that our well
5 had already been drilled, which it has not been drilled.
6 It hasn't been spudded yet. And they sent us a subpoena to
7 us for all well information, including the logs, production
8 information, anything filed with the State.

9 And I quite frankly think, you know, after having
10 from June 10th to now to make a decision, and then thinking
11 that we had drilled the well in filing for this subpoena,
12 it appears to me that it's an attempt to ride the well
13 down, to get free information and have a look at this well
14 before an election has to be made. And, you know, just the
15 desire for this information in itself, I think, expresses
16 that.

17 At any rate --

18 Q. What about Exhibit 10?

19 A. Exhibit 10, we -- Again, to avert this *de novo*
20 hearing, we contacted Mr. Bruce on the 24th, last Thursday,
21 and said, Okay, if you want to change your election, if you
22 want to decide to participate, we'll give you one more
23 chance so we won't have to go to the *de novo* hearing. And
24 we wrote this letter to them saying, you know, If you still
25 want to make an election, do it.

1 Q. And the second page of that is simply a letter
2 that followed correcting the errors in my letter; is that
3 right?

4 A. That's right.

5 Q. All right.

6 A. So we're -- you know, we're -- You know, we just
7 don't want to see them ride us down, get information on a
8 well which is, I don't think, the purpose of these
9 hearings, is to allow that to occur.

10 Q. What about Exhibit Number 11? Was this prepared
11 by your office at your direction?

12 A. Yes, it was prepared by --

13 Q. And what is this?

14 A. It's a chronology of events which sets forth in
15 more detail, probably, than what I've been able to express
16 the events that happened throughout this, our attempts to
17 get the joinder of A.L. Cone or an oil and gas lease. It
18 shows the dates of when we proposed the wells, the
19 Application, the Order, the contacts we had with Cone, the
20 fact that we allowed them to see all of our private,
21 confidential information, the date the *de novo* hearing was
22 filed, and it shows on the back page the date we even gave
23 them last week another chance to decide they wanted to be
24 in the well or make a decision on the well at all.

25 Q. You first contacted the Cone interests June the

1 10th concerning the drilling of this well; is that right?

2 A. That's correct.

3 Q. The hearing on -- The first pooling hearing was
4 held on the 25th of July?

5 A. That is correct.

6 Q. At that time were you a witness?

7 A. Yes, I was.

8 Q. Did Cone appear at that time?

9 A. I don't think they -- They did not have any --

10 Q. Did they present any --

11 A. -- testimony.

12 Q. -- testimony? Did they present --

13 A. I don't believe so. Is that right, Jim?

14 MR. BRUCE: (Nods)

15 THE WITNESS: I think that's correct.

16 Q. (By Mr. Carr) And since that time, you have been
17 attempting to provide them with data and obtain their
18 voluntary participation?

19 A. That's correct.

20 Q. And you have been unsuccessful in doing that?

21 A. Yes, sir.

22 Q. Will Nearburg call a technical witness to review
23 the risk associated with the drilling of this well?

24 A. Yes, sir, we will.

25 Q. Have you made an estimate of the overhead and

1 administrative costs that will be incurred while drilling
2 the well and while producing it, if it is successful?

3 A. Yes, we have. Those rates are \$6000 drilling
4 well rate and \$600 producing well rate, which have been
5 accepted by the other partners in the well.

6 Q. Are they also the figures contained in the
7 original pooling Order?

8 A. Yes, they are, they're in the original Examiner
9 Order.

10 Q. Do you recommend that these figures remain the
11 overhead and administrative costs for the proposed well?

12 A. Yes, sir.

13 Q. Does Nearburg request to be designated operator
14 of the well?

15 A. Nearburg Producing Company, that's correct.

16 Q. Were Exhibits 1 through 11 either prepared by you
17 or compiled at your direction?

18 A. Yes, they were.

19 MR. CARR: At this time, may it please the
20 Commission, we would move the admission into evidence of
21 Nearburg Exhibits 1 through 11.

22 CHAIRMAN LEMAY: Without objection, Exhibits 1
23 through 11 will be admitted into the record.

24 MR. CARR: And that concludes my direct
25 examination of Mr. Shelton.

1 CHAIRMAN LEMAY: Thank you.

2 Mr. Bruce?

3 CROSS-EXAMINATION

4 BY MR. BRUCE:

5 Q. Mr. Shelton, you said you had a third-party
6 commitment to start drilling by September 30th, right?

7 A. By October -- Well, originally it was September
8 31st, that's correct.

9 Q. September --

10 A. And we got that extended to October 31st.

11 Q. Now, August 31st or -- you said --

12 A. September, I'm sorry, September 31st is our --

13 Q. -- 30th --

14 A. -- third-party --

15 Q. -- September 30th.

16 A. 30th, that's correct.

17 Q. Who was that with?

18 A. Tom Bell, with Fuel Products in Midland, Texas.

19 We actually had an agreement with Tom Bell, John Herbig and
20 Mark Nearburg to start a well -- start this well on or
21 before that day.

22 Q. Okay. So the time limits that you're operating
23 under are because of your own agreement with Tom Bell and
24 these other folks?

25 A. That and the Examiner Order.

1 Q. Now, the first letter to anyone was dated June
2 10th, 1996; is that correct?

3 A. That's correct.

4 Q. When was the Application for force-pooling filed?

5 A. Let me see. An amended application for the
6 correct location was filed June 28th, with the correct
7 location on it.

8 Q. When was the original pooling application filed?

9 A. Let me see if I have that. I don't know. We
10 went off the date we filed the amended Application, Jim,
11 because that was the correct location, and we felt like we
12 had to go from that day.

13 Q. Okay. Looking at your Exhibit 3, it appears that
14 Mr. Carr's notice letters were dated June 20th.

15 A. Okay.

16 Q. So the Application had to have been filed before
17 that date?

18 A. Okay.

19 Q. Is that the normal time frame you used for a
20 pooling, send out a letter and file the Application in the
21 same week?

22 A. No, not at all, but because of the time frame at
23 that time, we had a September 30th commitment date. I
24 agree, we were very rushed. We weren't dealing with
25 anybody that -- We were dealing with industry people, and

1 we knew that there would be -- and we were more than
2 willing to give whatever time we needed to have an election
3 made.

4 Q. Now, regarding your Exhibit 5, did you ever
5 receive any written response to this letter?

6 A. Let's see. No, it was a verbal response. We did
7 not receive a written commitment. Or they told us that if
8 we let them look at -- if we would let them look at our
9 geologic and geophysical information they would either
10 lease to us or make an election or participate or do
11 something, but we never got anything in writing from them.

12 MR. BRUCE: That's all I have, Mr. Chairman.

13 CHAIRMAN LEMAY: Thank you.

14 Commissioner Bailey?

15 COMMISSIONER BAILEY: I don't have any questions.

16 CHAIRMAN LEMAY: Commissioner Weiss?

17 EXAMINATION

18 BY COMMISSIONER WEISS:

19 Q. What's the problem here? I didn't understand it.
20 Tell me in layman's terms.

21 A. The problem is, if we're obligated, which we are,
22 to spud this well and --

23 Q. I mean between you and Cone.

24 A. And Cone? What we'd like to do is have their
25 commitment to either participate in the well or farm out,

1 lease to us, give us, you know, a nonconsent, whatever
2 their election is, so that when we start this well next --
3 tomorrow, there's not an election period, which allows us
4 -- which forces us to have to drill this well, then they
5 get all the information, and they get a free look at the
6 well. We've paid 100 percent of the expense. If it's a
7 dryhole, then they don't have to participate. If it's a
8 good well, then they elect to participate without any risk
9 whatsoever --

10 Q. No penalty?

11 A. No penalty, nothing. And that's -- You know,
12 that's not fair, to have somebody -- We pay, take all the
13 risk, and then they get the benefit of a very risky well.

14 COMMISSIONER WEISS: Thank you. That's the only
15 question I have. Thank you.

16 EXAMINATION

17 BY CHAIRMAN LEMAY:

18 Q. I've got one, Mr. Shelton. Who's the A.L. Cone
19 Partnership? I see -- Is there a general partnership, a
20 limited partnership? Do you know the principals?

21 A. The A.L. Cone Partnership is a group of Cone
22 family individuals out of Lubbock, Texas, who are very
23 sophisticated people in the oil and gas business in New
24 Mexico. We've dealt with them several times before and
25 gotten oil and gas leases from them and done some business

1 with them. I do not know all the partnership arrangements,
2 and I do not know all the principals under that
3 partnership.

4 Q. Is it Gordon Cone? Is that -- Is he the
5 deceased?

6 MR. BRUCE: I have no idea, Mr. Chairman. I
7 imagine -- You know, there was that big Cone family that
8 was around Lovington. I presume they're all related.

9 Q. (By Chairman LeMay) I guess the purpose of the
10 question was, they are sophisticated in oil and gas
11 matters?

12 A. Oh, yes, they are.

13 Q. And they've been involved --

14 A. They participate in wells and they -- They're
15 very active in the oil and gas business.

16 And we've participated with them. We drilled our
17 Leo well over in eastern Lea County, New Mexico, with them
18 as participants, and we've worked with them several times.

19 Q. They joined in that well?

20 A. Yes, they did, in that particular well.

21 CHAIRMAN LEMAY: That's the only question I had.
22 Thank you.

23 You may be excused.

24 MR. CARR: At this time we would call Mr. Jerry
25 Elger.

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JERRY B. ELGER,

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

DIRECT EXAMINATION

BY MR. CARR:

Q. Will you state your name for the record, please?

A. My name is Jerry Elger.

Q. Where do you reside?

A. In Midland, Texas.

Q. By whom are you employed?

A. I'm a petroleum geologist with Nearburg Producing Company.

Q. Have you previously testified before this Commission?

A. Yes, I have.

Q. At the time of that testimony, were your credentials as an expert witness in petroleum geology accepted and made a matter of record?

A. Yes, they were.

Q. Have you made a geological study of the area that is involved in this case?

A. Yes, I have.

Q. And are you prepared to share the results of that study with the Oil Conservation Commission?

A. Yes, I am.

1 MR. CARR: Are the witness's qualifications
2 acceptable?

3 CHAIRMAN LEMAY: His qualifications are
4 acceptable.

5 Q. (By Mr. Carr) Mr. Elger, let's go to what has
6 been marked Nearburg Exhibit 12. Could you identify and
7 review that for the Commission?

8 A. Exhibit 12 is a Strawn algal facies isopach map
9 in the vicinity of the prospect area. This is the same map
10 that was presented at the original hearing, and it's been
11 updated to incorporate some new well data in Section 2.

12 Just to review the significance of the colors in
13 the map, the red circles around each of the hexes are wells
14 that have produced from -- or have encountered algal-mound
15 facies in the Strawn. The purple-shaded wells are what's
16 interpreted as intermound -- or near-mound facies. And
17 then the brown-shaded wells are wells which encountered
18 intermound -- dirty intermound mudstone.

19 If I could refer also to Exhibit Number 13, which
20 is a cross-section incorporating the open-hole log sections
21 of the surrounding wells, and again this is the same cross-
22 section which was utilized in the original hearing, and it
23 too incorporates the new wellbore that was drilled in
24 Section 2. That well being the closest to the proposed
25 location, to the right-side of the proposed location, was

1 drilled by Amerind Oil.

2 At the time of the original hearing, that well
3 was drilled and completed, but the information on that
4 well, the geological information, the completion
5 information, the open-hole log sections remain tight. So
6 we did not have that data at the time of the original
7 hearing.

8 That information has since been released and
9 incorporated into both of these exhibits, and they show
10 that that well has encountered and has completed from
11 algal-mound porosity within the Strawn formation.

12 If I could review the cross-section just briefly,
13 again, the facies that you see on Exhibit 12 relate to the
14 color-coding on the cross-section. The gray areas shaded
15 on the cross-section below the top of the Strawn are what
16 I've interpreted as dirty intermound mudstones. They're
17 nonreservoir facies. What has been shaded a light blue on
18 the cross-section, that segment of the Strawn is what I
19 have interpreted as clean near-mound mudstone, but again it
20 is nonreservoir facies. And what has been shaded purple on
21 the cross-section is the main pay in the Strawn, the algal-
22 mound facies.

23 The three producers on the right side of the
24 cross-section are -- The perforations are shown in the
25 depth track of each one of these logs, and the cumulative

1 production and current daily rates are shown both on the
2 map and on the cross-section. We see that those three
3 wells have all -- are fairly new wells, and they're all
4 extremely good Strawn producers.

5 Based on just thickness, it appears that the
6 newest well in Section 2, which is the -- again, the well
7 closest to the proposed location to the proposed location,
8 on the right side of the proposed location, appears to have
9 the thickest pay, and is very possibly going to be the best
10 well of the three.

11 An older well up in the north half of Section 2,
12 also drilled by Amerind Oil, has completed from the Strawn
13 and has already produced in excess of 209,000 barrels of
14 oil, 309 million cubic feet, with a current daily rate of
15 over 500 barrels of oil per day, so it's also a very good
16 producer.

17 And you'll also notice, and this map has been
18 updated to include new proposed drill sites as development
19 locations for the Strawn -- with the Strawn objectives.
20 Those wells are shown as circles with hexes that are
21 uncolored. There's one in Section 2 and there's one in the
22 west half of Section 1. Those are development locations by
23 other operators.

24 The significance of this cross-section and facies
25 map is that at the proposed location, there's a number of

1 wells that have been drilled to the Strawn in Section 3.
2 Three of those wells encountered -- did not encounter any
3 algal-mound porosity, but they did encounter near-mound
4 limestones, clean limestones, suggestive of very close
5 proximity to algal mounds.

6 There's a well in the south half of -- southwest
7 quarter of Section 3 and also one in the north half of
8 Section 10, also on the cross-section at A.

9 Those were old wells drilled in the Townsend-Penn
10 field, which happened to drill to the Strawn, and those
11 wells encountered, in my opinion, very thin segments of
12 algal-mound porosity, indicating, based on the subsurface
13 information and the geophysical information which Mr.
14 Shelton alluded to that is in Nearburg's possession, which
15 also is incorporated into this interpretation, that an
16 algal mound of Strawn age extends from the newer
17 development up in the north half of Section 2, the south
18 half of Section 32, across the proposed proration unit and
19 down -- and ties in with those wells in the southwest
20 quarter of Section 3, north half of Section 10, as one
21 continuous lobe of algal-mound development.

22 Based on that interpretation, Nearburg has
23 proposed the Nike well at the location which Mr. Shelton
24 described, and we feel like it's a good, valid prospect.
25 Again, it's risky from the point of view that the closest

1 nearby wells did not encounter any algal-mound porosity.
2 We are anticipating that there should be some at the
3 proposed location, but, you know, that's the risk of the
4 prospect. We're willing to take that risk.

5 Q. Are you prepared to make a recommendation to the
6 Commission as to the penalty that should apply to the Cone
7 interest as a nonconsenting party in the well?

8 A. Yes, I am.

9 Q. And what is that?

10 A. That's 200 percent.

11 Q. Do you believe there's a chance that a well at
12 this location might in fact not be a commercial success?

13 A. Yes.

14 Q. Does Nearburg seek to be designated operator of
15 the well?

16 A. Yes, it does.

17 Q. In your opinion, will granting of this
18 Application and the drilling of the proposed well be in the
19 best interests of conservation, the prevention of waste and
20 the protection of correlative rights?

21 A. Yes, it will.

22 Q. Were Exhibits 12 and 13 prepared by you?

23 A. Yes, they were.

24 MR. CARR: At this time, Mr. Chairman, I would
25 move the admission into evidence of Nearburg Exhibits 12

1 and 13.

2 CHAIRMAN LEMAY: Without objection, Exhibits 12
3 and 13 will be admitted into the record.

4 Mr. Bruce?

5 CROSS-EXAMINATION

6 BY MR. BRUCE:

7 Q. Jerry, this is based primarily -- Well, it's
8 based on seismic and well control?

9 A. Yes, both.

10 Q. Without getting into seismic, because I
11 understand that's confidential, did you examine that
12 yourself or --

13 A. The interpretation was done by our geophysicist,
14 Terry Durham.

15 Q. Did he consider the quality of the seismic good?

16 A. Yes. And in fact, the data was not shot by
17 Nearburg; it was purchased by Nearburg. And the location
18 of that data -- Although the shot points are not
19 incorporated on this exhibit, the location of those two
20 lines which Nearburg incorporated into this interpretation
21 were shot down the section lines, one being a north-south
22 line down the boundary between Sections 2 and 3, and an
23 east-west line that goes down the north section lines of
24 between 31 and 2 and 32 and 2.

25 Q. This is an area where there are some fairly large

1 algal mounds, are there not?

2 A. That's correct.

3 Q. I believe the West Lovington-Strawn unit is just
4 over to the east or northeast of your location?

5 A. That is correct.

6 Q. And that covers what?

7 A. That covers in excess of 640 acres. I'm sure
8 it's probably twice that.

9 Q. Okay.

10 A. And it's still being expanded. I believe there
11 still is development opportunities occurring in that
12 particular development.

13 Q. And is that part of your basis for making this
14 algal mound rather large in extent?

15 A. That's -- Not really. I've seen these mounds.

16 There's a well -- You'll notice a well in the
17 north half of the northwest quarter of Section 32. That's
18 also a well that was drilled by Mitchell Energy as a
19 development well in this play. In fact, it was drilled
20 before these good wells were. And that well appears to
21 have a very limited reservoir, very limited size. I don't
22 have the exact -- the cumulative production for that well
23 on here, but it was a very poor well, and it's very near
24 the end of its life.

25 Q. What do you think your chances are of making a

1 well at this location?

2 A. I'm not an odds-maker, but I would say they --
3 that there is a high degree of risk, and that's one of the
4 reasons -- one of the attractive -- one of the points
5 that's attracted Nearburg to this particular location is
6 the multiplicity of secondary objectives, including but not
7 limited to the Mississippian, which is productive in -- I
8 believe it's the Mesa Townsend State Com well, which is on
9 this cross-section, which was dry in the Strawn.

10 Q. Is the Mississippian gas or oil?

11 A. I believe it's oil.

12 Q. Are there any other secondary zones?

13 A. There are some zones -- again, the Townsend-Penn,
14 which is a Wolfcamp -- I believe it's a Wolfcamp-age trend
15 that occurs in this particular area. And in fact, we will
16 be drilling a -- Our proposed location is very close to a
17 well that was drilled back in the 1950s as a Townsend-Penn
18 objective. There are some porosity stringers that appear
19 to be untested in that old well that we will observe as we
20 drill our well.

21 But for the most part, that is a solution gas
22 reservoir, and it's doubtful that there's any remaining
23 reserves. That particular reservoir is very depleted at
24 this present time, and it's doubtful that there's any
25 reserves left in that particular pay.

1 Q. Getting back to the chances, would Nearburg be
2 drilling this well if it thought it had a less-than-50-
3 percent chance of making a well?

4 A. We just take our -- You know, we looked at all of
5 the data, the seismic data, the subsurface data, and we --
6 and in our opinion, we have a good possibility -- and I
7 can't put a percentage number on it for you -- a good
8 possibility of encountering some algal-mound porosity at
9 our proposed location, or we wouldn't be proposing it. We
10 wouldn't be drilling it just for the second objectives.

11 MR. BRUCE: Thanks.

12 MR. CARR: Mr. Chairman --

13 CHAIRMAN LEMAY: Yes.

14 MR. CARR: -- a couple follow-up questions.

15 CHAIRMAN LEMAY: You bet.

16 REDIRECT EXAMINATION

17 BY MR. CARR.

18 Q. Mr. Elger, you talked about secondary objectives
19 in the well.

20 A. Yes.

21 Q. Does Nearburg also seek the pooling of all
22 formations developed on 80-acre spacing under this acreage?

23 A. Yes, we do.

24 Q. And does your testimony concerning the
25 applicability of the 200-percent risk penalty also apply to

1 those other formations?

2 A. Yes, it does.

3 MR. CARR: That's all I have.

4 RE CROSS-EXAMINATION

5 BY MR. BRUCE:

6 Q. I just had one question. It's not related to
7 that, but what is the depth bracket allowable in the Strawn
8 here, Jerry? Do you know?

9 A. The depth bracket allowable?

10 Q. Yes.

11 A. I am not sure.

12 MR. BRUCE: That's all I have, Mr. Chairman.

13 CHAIRMAN LEMAY: Okay. Commissioner Bailey?

14 COMMISSIONER BAILEY: I don't have any questions.

15 CHAIRMAN LEMAY: Commissioner Weiss?

16 COMMISSIONER WEISS: Yeah, I've got two, sir.

17 EXAMINATION

18 BY COMMISSIONER WEISS:

19 Q. On your cross-section here, the violet is the
20 dark blue on the plat?

21 A. Yes, that's correct.

22 Q. Okay, and then is this a naturally fractured
23 reservoir, do you know?

24 A. It's -- I believe there is some fracturing in it,
25 but most of the porosity is fossil-moldic porosity.

1 Q. So the permeability is not due to fractures; it's
2 due to --

3 A. Primarily it's due to interconnected fossil-
4 moldic porosity, that's correct.

5 COMMISSIONER WEISS: Thank you, that's all my
6 questions.

7 EXAMINATION

8 BY CHAIRMAN LEMAY:

9 Q. Do you know who's drilling those two -- those
10 wells over there to the east of your proposed location, the
11 one --

12 A. I'm not sure of the well in Section 1. It
13 escapes me at this time. But I think the well in Section 2
14 is a proposal from Yates Petroleum Corporation.

15 Q. They didn't have your seismic, then, when they
16 staked those, did they?

17 MR. BRUCE: Mr. Chairman, the Section 1 well is
18 Charles Gillespie.

19 CHAIRMAN LEMAY: Gillespie, okay.

20 THE WITNESS: That's correct.

21 Q. (By Chairman LeMay) And Section 2 is Yates?

22 A. (No response)

23 Q. Who owns the direct east offset 80 to this
24 location? The land map looks like it says Yates in part.

25 A. I don't know the answer to that.

1 MR. SHELTON: If you don't mind me answering --

2 CHAIRMAN LEMAY: No, please.

3 MR. SHELTON: -- it's owned by Amerind and Yates.

4 CHAIRMAN LEMAY: Amerind and Yates?

5 MR. SHELTON: One of the things that's important
6 here, you know, you all know, being oil men yourselves,
7 often you use the well to set up other acreage that you
8 have.

9 In this particular case, we have no other offset
10 acreage, other than to the south, we have less than 1-
11 percent interest, and so this well is the only well that
12 we'll be able to drill to get any benefit from.

13 I will say, however, A.L. Cone does own other
14 minerals in this area. Even the drilling of this well will
15 help him, regardless of his election.

16 CHAIRMAN LEMAY: Okay, thank you. That was the
17 purpose of my question, to find the leverage this well
18 would have with all the interest owners.

19 MR. SHELTON: We own less than 1 percent to the
20 south, none to the east. We are a little -- that 1
21 percent, also, to the diagonal southeast offset.

22 CHAIRMAN LEMAY: That's the main -- Those are my
23 questions. That's the only questions I have. Thank you,
24 Mr. Elger.

25 MR. CARR: That concludes our presentation. I

1 have a statement.

2 MR. BRUCE: I have a statement.

3 CHAIRMAN LEMAY: That's it? Can we hold you
4 there just for a minute?

5 (Off the record)

6 MR. CARR: Mr. Chairman?

7 CHAIRMAN LEMAY: Yes.

8 MR. CARR: Would it be all right before you rule
9 on anything to make a brief statement --

10 CHAIRMAN LEMAY: Fine.

11 MR. CARR: -- to present our positions, because I
12 think it would be important to put this in some sort of a
13 context.

14 This is not, I think, the first time this issue
15 has come up within the last 20 years when I've been
16 involved with this. It is certainly the first time it has
17 come to the Commission, and I think both of us would like
18 to make brief statements.

19 CHAIRMAN LEMAY: We'd like to have those. I
20 didn't know you had planned on it. Go ahead, please.

21 MR. BRUCE: Mr. Chairman, members of the
22 Commission, we're here today simply because my client needs
23 more time to decide whether to make a substantial cash
24 investment in this well. I think, based on Bob Shelton's
25 figures, completed well costs will cost my client about

1 \$75,000, \$80,000.

2 And I can hear Mr. Carr speaking already. But my
3 point is, what's wrong with that? In my opinion, nothing.
4 We think it's specifically provided for in the compulsory
5 pooling statutes, and I'll discuss those in a minute.

6 My client has reviewed Nearburg's seismic data.
7 They had their geophysicist look at it. He wasn't
8 satisfied, so he's also been trying to locate any other
9 data, seismic or otherwise, in this area so that he can
10 advise my client whether to join in this well.

11 Mr. Shelton made a big deal about turning over
12 the seismic data. The fact of the matter is, if this had
13 gone through in the normal course of events and they hadn't
14 turned it over, we could have subpoenaed it. That's been
15 established in several cases.

16 This case started on June 10th, 1996, when
17 Nearburg mailed the letter to my client proposing this
18 Mississippian test. I think you can look in your files and
19 get the exact date, but within two to three days after my
20 client received that letter, Nearburg filed its compulsory
21 pooling application.

22 I'll tell you right now, that isn't proper. For
23 a number of years now, the Hearing Examiner has been
24 telling us that they want to see a month, and preferably
25 two, of negotiations before an Application is filed.

1 However, Nearburg told us that it had to hurry
2 because it had -- the first date I heard, Mr. Chairman, was
3 an August commencement deadline, told today it was
4 September, and now it's October 31st. Bob just told us
5 they're spudding the well tomorrow.

6 I point out these time lines because I think
7 there was really no need to rush us through like was done
8 back in June. And frankly, any deadlines in this matter
9 are of Nearburg's own making. They're the ones who
10 contracted on this deal where they had the deadlines.

11 We simply want time to make a considered decision
12 for an \$80,000 investment.

13 What we want out of this case is a new Order with
14 a new election period. Will such an order affect Nearburg
15 adversely? I don't think so. They'll get the new order,
16 even if you affirm the Order, the prior Order, today.

17 I'm sure Bob will run right back, mail a new
18 letter out to my client, 30 days will run, and by the time
19 my client's election period goes, will there be any new
20 well data? No. I don't think Nearburg's going to share
21 any data with my client. I would probably fall out of this
22 chair if they didn't hold that data tight.

23 So even if you enter a new order, as we request,
24 with a new election period, Nearburg is not harmed.

25 Now, should the order require Nearburg to send a

1 new 30-day election letter to my client, we think not only
2 should it do so, but it must do so.

3 And now I'll sound like our friend Tom Kellahin.
4 I'll start citing the statutes to you like he did
5 yesterday.

6 Section 70-2-17.C. requires a pooling order to
7 allow an interest owner to join in the well, or to go
8 nonconsent. Also, the statutes provide that any party to
9 an Examiner hearing shall have the right to appeal a case
10 *de novo*. *De novo* means hearing the matter as if it had not
11 been heard before.

12 Combining those two statutory items results in a
13 new pooling order entered by the Commission, which must
14 contain a new election period.

15 We have no interest in riding down the well. As
16 I said, there won't be any data before my client has to
17 make its new election. We are only trying to have enough
18 time to make a considered judgment on a large cash
19 investment. That's all we ask.

20 On the other hand, if you grant Nearburg's
21 request and refuse to allow a new election period, you'll
22 be issuing an order which is contrary to the pooling
23 statute and which in effect nullifies the right to a
24 hearing *de novo*.

25 Nearburg is going to drill the well regardless of

1 what my client does today or in the next 30 days. Thus,
2 granting this request harms no one, and we request that you
3 issue a new pooling order.

4 Thank you.

5 MR. CARR: Mr. Chairman, members of the
6 Commission, as I said a moment ago, this is a simple case,
7 but I think it's an important case.

8 During my time practicing before the Division,
9 this situation has occurred on several occasions. It's
10 never before come before the Commission. And when Mr.
11 Bruce says the rules are the rules and the statutes are the
12 statutes and they allow this, I think when we look at them,
13 you'll see that they do not.

14 And I think when you look at the facts of this
15 case and you remember that Mr. Bruce says, Well, we don't
16 need to be rushed through anything, five months for
17 experienced oil and gas investors is very simply not
18 rushing anybody through anything. It's expecting them to
19 act like responsible parties and not block other people
20 from developing their mineral interests.

21 But the issue in this case is a simple one: It
22 is whether or not an interest owners is going to be allowed
23 to play games with the rules, to gain a free look, to gain
24 the benefit of the efforts of someone else, to ride them
25 down and to avoid having to pay their share of the costs

1 for developing a property, and to avoid the risk that
2 generally is imposed on those who don't pay their share,
3 who don't do their part.

4 And it's important for you to rule, because you
5 have got to decide what the game rules are in this kind of
6 a situation, because if you don't, if you let people play
7 these games, it will work for Jim today and for me tomorrow
8 and Tom the next day, and we'll be back again and again and
9 again. So I think it has to be addressed.

10 This really isn't a compulsory-pooling case.
11 There's no dispute between us, either at the Examiner level
12 or here today, whether or not Nearburg ought to be the
13 operator of this well, whether or not they have a right to
14 drill, whether or not the overhead and administrative costs
15 should be assessed at the requested level or whether or not
16 a risk factor of 200 percent should apply. Mr. Bruce
17 hasn't challenged that at all. It's not really a pooling
18 case.

19 I would go beyond that to tell you that if we
20 look at the statute, it isn't even really a *de novo* case,
21 because Mr. Bruce said, Yes, the statutes give you a right
22 if you're a party of record to go to the hearing, but there
23 are another couple of words in there that you also have to
24 look at. It says, When any matter or proceeding is
25 referred to an Examiner and a decision is rendered thereon,

1 any party of record adversely affected shall have the right
2 to have the matter heard *de novo*.

3 There's no evidence here that Cone is going to be
4 adversely affected by having five months and working our
5 data in our office and then being required to decide if he
6 wants to join in the well or not.

7 I would submit that it isn't even properly before
8 you in a *de novo* posture, because you don't have a right to
9 drag proceedings on forever; you have a right to come back
10 if you are adversely affected, and that simply has not been
11 shown.

12 They don't challenge it, they want a free ride,
13 they want to avoid the burdens of working interest
14 ownerships when their properties are developed.

15 And that's the reason -- You shouldn't enter a
16 new order. You should say, You shouldn't be here in the
17 first place. The Order should be affirmed and the original
18 date should stand unchanged.

19 Well, Mr. Bruce says, Well, it's too bad, but the
20 rules are the rules, and they allow this, the pooling
21 statute gives us a right to join.

22 Well, if they want to play by the rules let's
23 look at the rules. Division orders, once entered, at a
24 Division level are valid, and they're valid from the date
25 they're entered, and the operators have a right to rely on

1 those orders the date they're entered at a Division level.
2 And yes, if someone is adversely affected, they may
3 challenge it by going *de novo*.

4 But this act of going *de novo* does not suspend
5 the effect of the Order. It is still a valid Order. And
6 the actions taken by an operator pending *de novo* review are
7 taken in accordance with an order properly entered by you,
8 and they may rely on that.

9 And while this Order was in effect, and it still
10 is, the Examiner Order, Nearburg went forward, they gave
11 notice to Cone, they provided an AFE, they gave them 30
12 days to participate as required by the Order. Nearburg has
13 complied with the Order.

14 And what did Cone do? They took the notice, they
15 were given an opportunity to join, and that time was
16 voluntarily extended by Nearburg. They didn't exercise
17 their election, and now they stand in a posture of being
18 nonconsent. The time has run, the game is up.

19 Mr. Bruce says the rules authorize what they're
20 trying to do. Well, if they were truly going to be
21 adversely affected, they could have come in as we did in
22 Dagger Draw and sought a stay. That's the way you stop an
23 order pending *de novo* review, and you can do that if you're
24 adversely affected, which has not and cannot be shown on
25 the facts of this case.

1 So at this moment, J.R. Cone is nonconsent under
2 a valid pooling Order. He did not act to stay it, and now
3 he's asking you to reset the clock, to restart the process,
4 to penalize those who played by the rules.

5 I think it's fair to say that when people come
6 before you, they're expected to act in good faith. They're
7 required, as all operators are, to perform these Division
8 orders in utmost good faith, and we submit Nearburg has
9 done exactly that, and we also submit that Cone has not
10 acted in good faith.

11 We're an owner of interest, we're seeking to
12 pool, we've negotiated in good faith, we've shared our
13 data, we've provided notice, we've extended the Order, and
14 now we don't think the day before we have to drill the well
15 the game rules should be changed.

16 They don't want an opportunity to join, no matter
17 what they say. They could do that. They want a free ride,
18 they want a free look. And when you look at what they did
19 the minute they thought the well had been drilled, rush in
20 with a subpoena to get our data, I think that quick action
21 in and of itself shows that what they're after is data, not
22 an opportunity to participate. At least they want a free
23 look after they get that data, an opportunity to come in
24 free of risk.

25 You as the Commission have not only the duty but

1 the -- you are required, I believe, to interpret and
2 enforce your rules, and it's time for you to interpret your
3 rules to require operators to act responsibly and in good
4 faith.

5 It's time for you to enforce your rules and to
6 say, You may appeal an order to the decision if you're
7 adversely affected. But I think it's important to go back
8 to the statute and look again at something Mr. Bruce didn't
9 read.

10 And when we talk about appealing your decisions
11 to the court, the statute says, The pendency of proceedings
12 to review shall not of itself stay or suspend operation of
13 the order or decision being reviewed. But during the
14 pendency of such proceedings, the district court in its
15 discretion may upon its own motion or upon proper
16 application of any party thereto stay or suspend in whole
17 or in part the operation of the order pending the review
18 thereof.

19 That's what the statute says when your order is
20 appealed. You have a right to -- and an obligation to
21 interpret your own statute. Certainly the same principle
22 applies. If they're adversely affected, they can stay the
23 Order. If not, the order is in effect and we have a -- we
24 are entitled to rely thereon.

25 I think if not, if you don't hold their feet to

1 the fire on this, don't stand behind your Order, you
2 encourage applications for hearing *de novo* when parties are
3 not adversely affected and your rules will be abused,
4 you're going to incur unnecessary hearings like this one
5 and like this closing statement that consume your time
6 unnecessarily, you're going to discourage parties who have
7 third-party obligations to get on with the efforts to
8 attempt to drill the well, because the rug can be pulled
9 out from under them.

10 Typically, it takes about 45 days from the time
11 you file to get an order if everything goes well. You then
12 have 30 days to file *de novo*. It generally takes about 45
13 days to get to a Commission hearing. You then have 30 days
14 after that to get an order. You have a five-month delay.
15 That's if you get with it. That's what we have here, five
16 months, and we're looking at having to drill the well
17 tomorrow.

18 We think what Cone is trying to do is
19 inconsistent with the purposes of the Oil and Gas Act.
20 It's inconsistent with how your rules should be applied to
21 operators who are trying to operate thereunder, and for
22 that reason we're asking you not to enter a new order. But
23 if you do, please enter it today so we have a chance to get
24 the notice period run again before we have data on the
25 well.

1 But what we're asking you to do is say, You
2 shouldn't come here, you shouldn't play games with our
3 rules, you could act like a responsible operator, because
4 in the past you have been and today you should be and we're
5 going to affirm the action of the Examiner, we're going to
6 let that Order stand by simply here and now affirming that
7 decision.

8 CHAIRMAN LEMAY: Thank you, Mr. Carr.

9 Just a second -- Did you have something else, Mr.
10 Bruce?

11 MR. BRUCE: Yeah, I just wanted to say one thing.

12 CHAIRMAN LEMAY: Yes.

13 MR. BRUCE: I know Bill gets the last shot, and
14 he can challenge me on this, but I think any 200-percent
15 penalty is adversely affecting my client, and therefore I
16 don't think this case should be dismissed.

17 I think in prior cases this issue has come up as
18 to whether the party gets an election period, in Cases
19 10,211 and 10,219, which were counter-applications by Santa
20 Fe Energy and Hanley Petroleum, and Hanley Petroleum was
21 given a new election period.

22 That's all I have to say.

23 MR. CARR: And I would simply note that what you
24 heard are comments of counsel.

25 If Mr. Cone was going to be harmed by having to

1 make an election or if a 200-percent penalty is considered
2 abusive or excessive in the context of his business
3 operations, he should have come here and told us and not
4 just Mr. Bruce. And I don't think that's an appropriate
5 way to address that issue.

6 CHAIRMAN LEMAY: Thank you. Do you want to hold
7 it just a second?

8 (Off the record)

9 CHAIRMAN LEMAY: The Commission acting from the
10 bench will affirm the Examiner's Order, and there will be a
11 written Order to follow.

12 Thank you, gentlemen.

13 (Thereupon, these proceedings were concluded at
14 9:58 a.m.)

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