

BEFORE THE
Oil Conservation Commission
SANTA FE, NEW MEXICO

IN THE MATTER OF:

CASE NO. 1000 & 1001

TRANSCRIPT OF PROCEEDINGS

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BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
January 20, 1956

CASE NO 1,000:

Application of Saul A. Yager, et al, for an order compulsorily pooling the NW/4 NW/4 Section 15 with the SW/4, S/2 NW/4 and the NE/4 NW/4 of said Section 15, All in Township 32 North, Range 10 West, Blanco-Mesaverde Gas Pool, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks an order compulsorily pooling the NW/4 NW/4 of said Section 15 with the balance of the acreage lying within the W/2 of Said Section 15, Township 32 North, Range 10 West. Applicant further desires for the Commission to determine the proper costs of a well to be drilled within the proposed W/2 of said Section 15 and to determine the reasonable charge for supervision of the proposed well.

CASE NO 1,001:

Application of El Paso Natural Gas Company for approval of an unorthodox drilling and proration unit in the Blanco-Mesaverde Gas Pool, San Juan County, New Mexico, or in the alternative an order compulsorily pooling the acreage in question. Applicant, in the above-styled cause, requests an order authorizing an unorthodox drilling and gas proration unit of 277 acres consisting of the following described acreage in Section 15, Township 32 North, Range 10 West, San Juan County, New Mexico: SW/4 NW/4, E/2 NW/4, W/2 SW/4, SE/4 SW/4, all of the NE/4 SW/4 except 3 acres of land lying west of the right-of-way of U. S. Highway 550 as it runs on the south side of the NE/4 of the SW/4. In the alternative, applicant requests that the Commission enter an order pooling the W/2 of Section 15, Township 32 North, Range 10 West, containing 320 acres into an orthodox drilling and proration unit. The above acreage lies within the boundaries of the Blanco-Mesaverde Gas Pool, as heretofore defined by the Oil Conservation Commission.

BEFORE: Mr. E. S. (Johnny) Walker,
Mr. William B. Macey.

TRANSCRIPT OF HEARING

MR. MACEY: The hearing will come to order, please. First

case on the Docket this morning is Case 1000.

It is my understanding that there is a move for consolidation of Case 1000 and Case 1001.

MR. CAMPBELL: If the Commission please, Campbell & Russell, representing the applicant in Case 1000; both the applicant in this case and the applicants in Case 1001, have agreed to consolidate the two cases for the purpose of hearing, and, if it is agreeable with Mr. Howell, I will dictate a stipulation to that effect into the record.

MR. HOWELL: Go ahead.

MR. CAMPBELL: It is stipulated and agreed by and between the parties to Case No. 1000 and 1001, now pending before the Oil Conservation Commission, by their respective attorneys that the said cases may be, by the Commission, consolidated for all purposes of hearing and any review or appeal therefrom.

Is that satisfactory, Mr. Howell?

MR. HOWELL: That is satisfactory.

MR. CAMPBELL: I don't know how the Commission wants to proceed; I have discussed with Mr. Howell, so far as Case 1000 is concerned, and our presentation of that. I have requested of Mr. Howell that we stipulate on some basic facts that are apparently agreed upon between the parties as evidenced by the implications themselves, and, if it is agreeable with Mr. Howell, I will read what I have here. If he has any disagreement with it, of course, we can either agree, or we can delete it, whichever he sees fit.

On behalf of the applicants in Case 1000, it is stipulated and agreed between the parties to the consolidated cases by their respective attorneys, as follows:

1. Saul A. Yager & Associates, shown and named in the applications,

are the owners of the unleased oil, gas and mineral interests underlying the NW/4 NW/4 of Section 15, Township 32 North, Range 10W, San Juan County, New Mexico;

2. El Paso Natural Gas Company, is owner of 160 acres of leases in the W/2 of Section 15, --

MR. HOWELL: I will have to interrupt there; I am not willing to stipulate on the ownership, and prefer to prove it. There is a three acre tract there that is involved in the situation, and to the ownership of leases other than the forty acres, of which Mr. Yager and his associates own the unleased minerals, we would prefer to put on proof.

MR. CAMPBELL: All right, sir. Let me withdraw that, and withdraw No. 2.

2. El Paso Natural Gas Company has asked Yager & Associates if they would be agreeable to communitizing their interests to form a unit comprising the W/2 of Section 15, and pay their proportionate part of the drilling costs, which would be approximately \$10,000;

3. Yager has advised El Paso Natural Gas Company that he and his associates are not in a position to pay their part of the drilling costs, that they would be agreeable to communitizing with their proportionate part of the costs of drilling to be taken out of the 7/8's working interest under the forty acre tract owned by them; --

MR. HOWELL: I can't stipulate to that being a 7/8's working interest, since there is no lease on that tract, --

MR. CAMPBELL: Strike out the word "working."

MR. HOWELL: -- and the 7/8's attributed to that tract.

MR. CAMPBELL: 4. El Paso Natrual Gas Company has advised Yager that unless he and his associates pay their proportionate cost

of the drilling costs, El Paso Natural Gas Company would seek forced pooling; Yager has advised El Paso Natural Gas Company, again, he and his associates are not in a position to advance cash, and requested that the costs be taken out of the 7/8's of production, and that is when El Paso Natural Gas Company has advised Yager that they had decided to ask for a non-standard 280 acre unit, rather than forced pooling;

5. Yager then filed application now pending in Case No. 1,000, seeking compulsory pooling, a determination of the estimated costs of the well and an order that --

MR. HOWELL: Mr. Campbell, I think the applications in both cases will speak for themselves. Let's just say the application was filed in Case 1,000, without us stipulating as to the exact contents of it, and you can do the same in 1,001, as they speak for themselves.

MR. CAMPBELL: I was trying to get them in the order, and a statement to the Commission.

6. Yager filed his application in case 1,000, and El Paso Natural Gas Company then filed its application in Case No. 1,001.

Are there any other facts, Mr. Howell, to which you would like to request any stipulation as to the background leading up to the applications?

MR. HOWELL: No.

MR. CAMPBELL: Are those requested stipulations of fact agreeable to you?

MR. HOWELL: Yes.

MR. MACEY: One question, Mr. Howell. I noticed Mr. Campbell mentioned the figure 280 acre non-standard unit; it is actually 277, isn't it?

MR. HOWELL: The letter which went to Mr. Yager was on the assumption that we would be able to get that three acres, and the actual request was for -- or statement, was that we would seek for 280 acres, but the proof will show --

MR. MACEY: The application will speak for itself.

MR. HOWELL: Yes. The proof will show that that three acres is still outstanding.

MR. CAMPBELL: Now, for present purposes, if the Commission please, based upon the stipulated facts here, we have no further testimony at this time to offer. We believe that this, with the possible exception of the cost of the well, is a question, basically, of the extent of the authority of the Commission, and what the Commission wants to do under the law with reference to the application.

We may wish to offer evidence, depending upon the nature of the testimony offered by El Paso Natural Gas Company, but we believe that the simple refusal of a non-consenting working interest owner, which is established by these stipulated facts, is sufficient to justify the Commission in issuing the order requested in case 1,000.

MR. HOWELL: I have two witnesses to be sworn, Mr. Bittick and Mr. Morrell.

(Witnesses sworn.)

If Mr. Anderson, of Pacific Northwest, should arrive, I intend to use him, also.

T. W. BITTICK,

called as a witness, having been first duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N,

BY MR. HOWELL:

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

A T. W. Bittick.

Q By whom are you employed?

A El Paso Natural Gas Company.

Q In what capacity?

A Division Land Man.

Q Covering what area?

A San Juan Basin.

Q How long have you been so employed?

A I have been employed in the lease department of El Paso Natural Gas for three years, and position of Area Land Man for about a year and a half.

Q Is the tract of land under discussion here today within the territory that you supervise for the El Paso Natural Gas Company's Lease Department?

A Yes, sir.

Q Are you familiar with the tract of land, the condition of titles and the negotiations towards drilling in this tract?

A Yes, sir.

Q Have you prepared, or had prepared, under your supervision, a plat showing the Section 15, T32N, R10W?

A Yes, sir, I have had a plat prepared under my supervision.

Q Does that correctly reflect the tracts of land in the section?

A Yes, sir.

Q I might ask, with reference to a small triangular tract that is lettered in blue, as to whether or not that is drawn exactly to scale, or an approximate representation.

A That is an approximate representation of a three-acre tract belonging to Dave Clark.

MR. HOWELL: These exhibits have been marked by letters, I believe. Do you have any desire to change those to numbers?

MR. MACEY: No, sir.

Q Referring, now, to El Paso Natural Gas Company's Exhibit "A," will you state for the record the ownership of the various tracts located in the W/2 of Section 15, as shown by all the information which you have been able to accumulate?

A There is a small tract, colored in blue, in the NE/4 of the SW/4, which belongs to Dave Clark, --

Q Is there any oil and gas lease on that tract?

A No, sir, there is not. The NW/4 of the NW/4 is colored in green, belongs to Mr. Saul Yager and his associates, and that is also unleased. The red acreage in the W/2 of Section 15 belongs to El Paso Natural Gas Company, and that covers --

Q Now, let's stop a minute there. By that, do you mean that El Paso Natural Gas has acquired from the owners of the minerals the oil and gas leases on that land?

A Yes, sir, we have acquired oil and gas leases on that land; and the acreage colored in orange, or a --

Q Well, let's call it orange, that is close enough.

A That is under lease to Pacific Northwest Pipeline Corporation, and that covers approximately 103 acres.

Q The railroad right-of-way that goes through there is under lease to whom?

A Pacific Northwest Pipeline Corporation.

Q Now, do you also have a plat prepared which shows the relative locations of wells on the surrounding area?

A Yes, sir, I do.

MR. HOWELL: Will you mark this Exhibit "B"?

(El Paso Natural Gas Company Exhibit "B" marked for identification.)

Q Referring to Exhibit "B", I will ask you if that shows the location of the well drilled on the east half of the section?

A Yes, sir, it does.

Q And what is the depth of that well?

A 5,265 feet.

Q And was it completed as a producing well?

A Yes, sir, it was.

Q What was the initial potential?

A 1,917 MCF per day.

Q Was that well drilled on a unit with El Paso Natural Gas Company as operator?

A Yes, sir, it was.

Q Now, referring to Section 22, to the south, directly to the south, what wells have been completed on that section?

A In the NE/4, Section 22, is a well drilled by Southern Union, and it was completed at a total depth of 5,550 feet, with an initial potential of 1,329 MCF; in the SW/4, Stanolind Oil and Gas Company's Sullivan 1-A well, completed at a total depth of 5,300 feet, with an initial potential of 1,755 MCF per day.

Q Now, is there any wells completed on Section 21, which is diagonally to the southwest of Section 15?

A Yes, sir, there is two wells there, Stanolind's Sullivan 1-B in the NE/4, completed to a total depth of 5,610 feet, with an initial potential of 3,720 MCF, and, in the SW/4, Southern Union's Payne No. 2 Well, completed to a total depth of 5,608 feet, with an initial potential of 6,980 MCF.

Q Does El Paso Natural Gas Company own any leasehold rights in either Sections 21 or 22 to the south?

A No, sir, we do not.

Q Are any wells drilled in Section 16, immediately to the west?

A No, sir.

Q Now, then, from your testimony, then, it is apparent that the W/2 of Section 15 is surrounded by producing wells, one located directly to the east, one diagonally to the southeast, one directly to the south, and one directly to the southwest as off-set wells?

A Yes, sir, that's correct.

Q Now, has Pacific Northwest Pipeline Company been approached with reference to communitizing this W/2 of Section 15?

A Yes, sir, they have, and they agreed to communitize with El Paso.

Q Do you know approximately the date at which the agreement was entered by them to communitize?

A Negotiations was commenced with their land department in July, 1955; they received the approval of their operating committee on September 9th, 1955.

Q Are they willing to enter an operating agreement substantially the same as the one we shall introduce later on?

A Yes, sir, they are.

Q You have discussed that with Pacific Northwest?

A Yes, sir, I have.

Q Now, the stipulations in this case shows that Mr. Yager and his associates have been unwilling to contribute, in cash, the share of costs of drilling the well, and, I will ask you, also, if you have been able to get the consent of the owner of the three-acre tract?

A No, sir, we have been unable to obtain his consent.

Q Have you, or persons under your supervision in your department, proposed in writing a communitization to Mr. Dave Clark, the owner of that tract?

A Yes, sir, we have.

Q I believe the record shows that Mr. Dave Clark is the owner of the minerals on that tract?

A Yes, sir.

Q Have you also approached him personally or through a subordinate of yours?

A Through a subordinate he has been approached, yes, sir.

Q And Mr. Clark is not willing to enter into any communitization agreement or communitize his three acres with the remaining half, the remaining west half of the section?

A No, sir, he is not.

Q Now, have you compiled any figures showing the cost and experience of El Paso Natural Gas Company in the average cost of wells drilled to a depth of between 5,265 feet and 5,610 feet, completed in the Mesaverde Formation in the San Juan Basin?

A We do not have any average figures as such, Mr. Howell, we do have the total costs of the Heizer P.U. No. 1, located in the E/2 of Section 15.

Q That is the well which immediately joins this to the east?

A Yes, sir.

Q What were the actual costs of completing that well?

A The well cost \$63,610.50.

Q Does that include the direct charges to the well, only?

A That includes all the charges.

Q That includes all charges, including charge for supervision?

A Yes, sir.

Q Now, what experience has El Paso Natural Gas Company had as

to the average cost of supervision, what we term overhead costs, generally?

A Throughout the San Juan Basin, El Paso, and most of the other operators in the Basin, use the figure of \$250.00 per month per drilling well, and \$45.00 per month for producing wells for overhead charges. That does not include the charges for direct supervision, it does not include direct charges for that well.

Q That is, if the toolpusher spends a day on that well, it is customarily charged as a direct charge to the well, and not carried forward in overhead?

A That's correct.

Q So that the average costs which you have mentioned there are generally used by El Paso Natural Gas Company and other companies to reflect the supervisory costs that cannot be pinpointed by direct charges for time of an individual spent on that particular well?

A Yes, sir. That, also in our case, includes -- would include the charges for district and camp expenses.

Q Do you think those figures are fair and reasonable?

A Yes, sir, they are more than fair and reasonable.

Q What do you mean by "more than fair and reasonable"?

A Our accounting department feels we are losing money on that figure.

Q Now, at my request, have you compiled a list of the unit agreements that are in force in the San Juan area, or a substantial number of them?

A Yes, sir, I have.

Q Can you tell us which units you have there, that you have investigated to determine certain provisions?

A San Juan 27-4; San Juan 27-5; San Juan 28-4; San Juan 28-5; San Juan 28-6; San Juan 28-7; San Juan 29-4; San Juan 29-5; San Juan

29-6; San Juan 29-7; San Juan 30-4; San Juan 30-5; San Juan 30-6; San Juan 31-6; San Juan 32-5; San Juan 32-7; San Juan 32-8; San Juan 32-9 Units, Allison Unit; Cedar Mesa Unit; Cox Canyon Unit; Huerfano Unit; Huerfanito Unit; Lindrith Unit and the Rincon Unit.

Q Now, do the operating agreements of each of these units contain provisions that cover the recovery which a drilling party will make when a well is drilled to which one of the owners is not willing to consent?

MR. CAMPBELL: If the Commission please, I am going to have to enter an objection to any testimony based upon voluntary agreements in other areas insofar as what the practice may be with regards to charging the cost of wells; we are here concerned with a compulsory pooling application. What some people may desire to enter into as a voluntary agreement depends upon their circumstances at that particular time, depends upon the nature of the area, depends upon a great many factors that may or may not be present here, and I don't believe that what El Paso has been able to do in other areas has any bearing upon the case here.

MR. MACEY: Mr. Campbell, you have raised a very important point, and I think probably we ought to take a short recess and discuss it right now, get it settled.

MR. HOWELL: If the Commission please, I would like to speak a word before discussing it. It is our purpose, in offering this testimony, to show what the majority of operators in the San Juan Basin regard as a fair and customary practice when one party is required to drill a well and furnish costs to be recovered from the other party, and we expect to offer additional testimony in addition to the unit agreements, but the unit agreements are offered as being

one circumstance and one bit of evidence, which, together with others, will show what is fair and reasonable under a situation such as exists here, a fair and reasonable method of proportioning the costs and recovery.

MR. CAMPBELL: May I say that, based upon my objection, that the statutes, with regard to compulsory pooling, which we are involved in here, specifically provide that the costs shall be the lowest actual expenditure plus reasonable supervision; it makes no reference as to how that should be recovered. These voluntary agreements, I realize, provide for 150 per cent, and maybe some people signed up for 200 per cent, but I still contend it is immaterial and irrelevant to the compulsory case now before this Commission.

MR. MACEY: We will take a short recess.

(Short recess.)

MR. MACEY: The hearing will come to order.

Mr. Campbell, your objection is overruled; the Commission feels that the practice of the industry may be a factor, and should be included in any pooling order we might have.

MR. HOWELL: Shall I resume questioning?

MR. MACEY: Yes, sir.

Q Have you, at my request, excerpted from the operating agreements concerning these units that you have listed, the provisions relating to non-consent wells? A Yes, sir, I have.

Q Will you read the provision that is customarily in the block-type unit?

A You want the entire paragraph?

Q Yes, would you read that?

A "If less than all of such parties elect to join in the

drilling of such well, Unit Operator shall, upon obtaining required governmental approvals, proceed with due diligence to drill such well at the sole cost and risk of the party or parties electing to share in the costs thereof, hereinafter called the "drilling parties." In the event any such well is a dry hole (and is not taken over for plug back or deepening), it shall be plugged and abandoned at the sole cost of the drilling parties. In the event such well is a producer, it shall be tested, completed and equipped to produce by the Unit Operator at the sole cost of the drilling parties, and such drilling parties each in proportion to its contribution to the cost of drilling, testing, completing and equipping the well shall be entitled to receive the proceeds of production from the well, or, if it is capable of producing in paying quantities, shall be entitled to receive the proceeds of production allocable to the interests admitted to the participating area on account of such well, after deducting therefrom all royalties, overriding royalties, production payments and one hundred per cent of the operating expenses attributable thereto, until said drilling parties shall have received therefrom one hundred fifty per cent of the costs of drilling, testing, completing and equipping said well to produce."

Q Now, the block-type unit, I believe, is sometimes termed the Township-type unit in the area?

A Yes, sir, that is true.

Q And under the unit agreements which have been filed with the Commission, a drilling unit or a drilling block is set up as either the west half or the east half of a section, as a general rule?

A As a general rule, yes, sir.

Q So that the drilling block referred to in the excerpts, as

a general rule, would be either the east half or west half of a section lying within the unit area? A Yes, sir.

Q Now, do you know which is the closest township-type unit to this particular Section 15?

A Yes, sir. The San Juan 32-9 Unit lies directly to the east.

Q Is the west line of the 32-9 Unit running along the east line of Section 15? A Yes, sir, it does.

Q Now, does Section 15 lie within the defined limits of the Blanco-Mesaverde Pool? A Yes, sir, it does.

MR. HOWELL: If it please the Commission and Mr. Campbell, we have prepared excerpts here, and I suggest, rather than taking the time of the Commission to read them into the record, that we merely introduce these excerpts.

I will ask this witness, Mr. Bittick, if the list which I have marked "Block Type Units," which we shall mark as El Paso Exhibit "C" is a correct transcription of the unit operating provisions, relating to the several units which he has mentioned in his testimony.

A Yes, sir, it is.

(El Paso Natural Gas Company's Exhibit "C" marked for identification.)

Q MR. HOWELL: If there is no objection, I suggest that in the interest of time we merely file this as an exhibit rather than take the time to read these provisions into the record.

MR. CAMPBELL: Well, my basic objection goes to the offering of any evidence with reference to other agreements between El Paso Natural Gas Company and other people in other areas, --

MR. HOWELL: Subject to that,--

MR. CAMPBELL: -- and also, that while I certainly don't

want to bring on the introduction of all these unit agreements, I want to add to that, that I object to introducing portions of agreements which might contain other provisions having a bearing upon the matter.

Q Do you have available copies of the unit operating agreements, Mr. Bittick? A Yes, sir, I do.

Q In photostatic form?

A No, sir, some of them are conformed copies. They are not

Q Are they copies which could be made available to Mr. Campbell? A Yes, sir.

MR. HOWELL: We would tender to Mr. Campbell conformed or photostatic copies of each of the unit agreements if he so desires.

MR. CAMPBELL: Mr. Howell, you are referring to the unit agreements, or --

MR. HOWELL: Unit operating agreement.

MR. CAMPBELL: Are they identical in form with other provisions, other than the non-consenting owner provision?

MR. HOWELL: I think that by and large the block type or township type units are identical in form, except, of course, with reference to the parties to the unit agreement and the description of the property involved, and I think some of the unit agreements and unit operating agreements contain provisions that are slightly different, relating to irregular sections.

MR. CAMPBELL: Are there any differences with reference to sharing of the production?

MR. HOWELL: I will ask the witness that, since I have not recently read each of the agreements.

A Exactly what do you mean, Mr. Campbell?

MR. CAMPBELL: I may not understand all I should about these agreements, but are they all on a participating area basis, or entire unit basis, or are there variations?

A The block-type units are on a participating. Some of the main, Rincon, Huerfano or Allison Units are on an entire-unit basis rather than a participating as far as working interest is concerned.

MR. CAMPBELL: So there is a difference between these agreements as to the manner in which the production from a particular area may be distributed?

A Those are covered separately in this excerpt.

MR. CAMPBELL: If the Commission please, I will withdraw my objection to this on the proposition that it does not represent the entire agreement. I want to call to the Commission's attention, on the basis of the statement made by the witness, that there are factors present in these agreements that can have a bearing upon the agreement which one of the parties desires to sign relative to the costs of these wells, and, of course, that is the basis of my original objection which was overruled, but I simply want to state it for the record.

MR. MACEY: This exhibit was offered, was it, Mr. Howell?

MR. HOWELL: None of the exhibits have, as yet, been offered; they have all been marked. At this time, I will offer Exhibits "A," "B," and "C."

MR. CAMPBELL: Let my objection be reflected at this point.

MR. MACEY: Mr. Campbell's objection is overruled, and the exhibits will be received.

Q Now, Mr. Bittick, do you have a proposed type of communication agreement that has been suggested to Pacific Northwest with

reference to this W/2 of Section 15?

A We have a proposed operating agreement.

Q A proposed operating agreement? A Yes, sir.

Q Is that agreement which you have one which El Paso Natural Gas Company has entered into with another company in an instance in which El Paso Natural Gas Company did not desire to advance costs for drilling a well? A Yes, sir, it is.

Q Has that type of agreement actually been entered into with another?

A Yes, sir. This is a photostatic copy of the executed agreement.

MR. HOWELL: We will mark this as Exhibit "D," and offer it as substantially the operating agreement which El Paso Natural Gas Company proposes for this Section 15, this being a photostatic copy of an agreement which has actually been entered into with others covering another tract of land in the vicinity.

(El Paso Natural Gas Company's Exhibit "D" marked for identification.)

Q Now, what provision does this proposed communitized operating agreement have with reference to recovery of costs when a party elects not to pay its share of well costs?

A It provides, in Article 20, beginning on page 9, under "Election as to Joinder," provides for recovery of one hundred fifty per cent of the costs of drilling a well if a party does not desire to join and pay his share of the costs.

Q Has Pacific Northwest Pipeline Company expressed its willingness to enter such agreement on this W/2 of Section 15?

A Yes, sir, they have.

MR. CAMPBELL: If the Commission please, I want my objection renewed there. The factors that may lead El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation to sign could be entirely different to factors that might or might not lead the parties in this case to enter such agreement or the Commission to enter an order under its powers.

MR. KITTS: For what purpose will this be offered, Mr. Howell, for what broad purpose?

MR. HOWELL: It is offered to show the type of agreement which the two major owners of working interests are willing to enter as an operating basis for this particular tract of land.

MR. KITTS: Is it the contention of El Paso that the conditions are identical or the same with conditions in the case here?

MR. HOWELL: No, it is the testimony of El Paso that El Paso, in an instance in which it did not advance costs, specifically that Great Western was willing to enter where the other party would recover one hundred fifty per cent of drilling costs before El Paso came in for recovery of its costs.

MR. CAMPBELL: If the Commission please, at this point I think, obviously, this evidence is all going in, but I want to explain to the Commission the basis for my objection. The question of whether El Paso Natural Gas Company, for reasons of its own, the reasons or basis for which El Paso Natural Gas Company may be willing to pay one hundred fifty per cent of the drilling costs in a particular situation may be entirely different from what the Applicant here wants to do. El Paso Natural Gas Company wants the gas, and that is a factor; they may have a tax situation, there may be any number of reasons, and our point is this, that the Commission, if it has any

authority at all to decide how the costs of this well is going to be paid, we think, under the statute, has to apply the standard of not penalizing anybody who doesn't want to consent to the drilling of a well, and that is why we are objecting to evidence about what other people may want to do in a particular situation; we are non-consenting owners, seeking compulsory pooling and requesting the Commission to have El Paso take it out of our share of production.

Frankly, I'm not sure whether the Commission has that power or not, it may be able to enter compulsory pooling, ordering the well and leave it there. If it enters any order involving the cost of this well and how it is going to be allocated, we do not want the Commission to rely upon what other people did.

MR. WALKER: If your application is granted, and you are willing to take out your costs of the share in production, and there is no production, who is going to pay for it?

MR. CAMPBELL: El Paso Natural Gas Company. There is nothing wrong with that. As a matter of fact, many of the statutes provide that if it is not a producing well, that the producers shall pay for it.

MR. WALKER: If this body doesn't hear evidence, we can't write an order. It takes evidence for us to write a reasonable and just order.

MR. CAMPBELL: You can write an order compulsorily pooling the acreage, you can find what the present estimated cost of the well is whether you enter an order requiring us to pay one hundred fifty per cent out of production or \$10,000 in cash, or them to take it out of 7/8's, but if you write one, I think it should be taken out of the 7/8's, and that is what I have requested.

MR. HOWELL: If the Commission please, I don't care to go into any extended argument at this time, but the position which El Paso Natural Gas Company finds itself is that an owner of the minerals and forty acres filed an application for compulsory pooling.

Now, that owner says that he does not want to pay his share of a well on a tract that he wants compulsorily pooled because the initial application in Case 1,000, for compulsory pooling, was filed by Mr. Yager and his associates, and we are offering in evidence the custom of the industry and the history of our own operations as to what is fair and reasonable and equitable in such a situation.

MR. CAMPBELL: If the Commission please, there is one statement I must correct; we are not refusing to pay our costs of the well. We are saying we should not be subject to penalties, because we may not, at this moment, for reasons of our own, desire to have the well drilled, but we are in this unit and I don't think the Commission or El Paso should or really wants to confiscate our property because we want to disagree with them about the well. We are perfectly willing that our costs, share of this well, be taken out of the production. We think the share is limited by the statute.

MR. KITTS: Mr. Campbell, is it your contention that you are a non-consenting owner?

MR. CAMPBELL: Right.

MR. KITTS: I want to ask Mr. Howell a question about these exhibits; are they offered for the purpose, a, showing that this is a reasonable type of interest that the Yager interests should enter into, or, b, are they offered as showing the custom of the industry of determining costs or share of costs where one party is not able or not willing to come up with the cash? In effect, is that the

purpose?

MR. HOWELL: It is offered for both purposes. I may state this, that in the ordinary communitization operating agreement in which parties having a location go together, you don't have non-consent features, because usually the parties have agreed upon the basis on which they are going to drill the well. That is what happens ninety-nine times out of a hundred, so you don't find a great many communitization operating agreements floating around that cover a non-consent situation. We are offering evidence to show the custom of the industry generally upon a non-consent situation, we are offering a specific communitization operating agreement as indicating what certainly this company and another company have done. It is a circumstance showing the custom of the industry, and it shows the willingness of this company, in such a condition, to allow the person or party advancing the cost to recover a hundred fifty per cent of the drilling costs.

MR. GURLEY: You say the custom of the industry. Are all these excerpts taken from your own contracts or your own agreements, that is, between you and other parties?

MR. HOWELL: They are, they are taken, in operating agreements, and a number of other parties within the San Juan Basin area are also parties, and the Commission has in its files, and has approved, the unit operating agreements covering each of these units from which it is apparent that it is a reasonable cross section of the industry that has entered into this type agreement.

MR. GURLEY: But you are party to each one of these agreements?

MR. HOWELL: We are party to each one of these agreements,

is that correct, Mr. Bittick?

A Yes, sir.

MR. HOWELL: That is all of Mr. Bittick's testimony.

MR. MACEY: Mr. Campbell, this Commission has before it an application for a forced pooling order; as I interpret the application, you, as a non-consenting owner, desire to join the unit. There, our statute, and I will quote it, "All orders requiring such pooling shall be on terms and conditions that are just and reasonable," and the documents that El Paso has introduced, such as, I believe, Exhibit "D", will help this Commission determine what is just and reasonable, and I think we should take it in as evidence. The fact that there are a number of circumstances which may or may not have prompted El Paso to enter this agreement or to stay out of the thing, we are aware of that, and, of course, we have got to take that into consideration.

Therefore, I will overrule the objection and accept the exhibits.

I might clarify my point in that this last document may not try to determine whether Mr. Yager should have entered into this contract at all, --

MR. CAMPBELL: Mr. Yager hasn't seen it, to my knowledge.

MR. KITTS: Or this type of agreement.

MR. HOWELL: There is another point I want to get from Mr. Bittick that I overlooked.

MR. MACEY: All right.

Q Mr. Bittick, probably to aid the Commission to write its order, we should identify the several tracts of land that are located in the W/2 of the section with more particularity than we have at the present time. Will you read into the record a description of the

tracts, generally, and give as specific a description as you can of the three-acre tract owned by Dave Clark?

A All right, sir. The El Paso Natural Gas Company is contributing three fee leases to the terms, to the well to be drilled on the W/2 of Section 15; the first one is an oil and gas lease, dated June 26, 1950, from Robert J. Doughtie and wife, Edna Doughtie, lessors, to John F. Sullivan, lessee, embracing, among other lands, 32.5 acres in the SE/4 NW/4 of Section 15, and 47 acres in the N/2 of SW/4 of Section 15, T32N R10W, NMPM; the second lease, dated June 27, 1950, from Robert L. Gadston and wife, Edith Gadston, as lessors, to John F. Sullivan, lessee, embracing, among other lands, the SE/4 of the SW/4 and the East 40 rods of the South 30 rods of the NE/4 of the SW/4 of Section 15, T32N R10W, and containing that tract containing approximately 47 acres. The third lease, dated June 27, 1950, executed by Mary Catherine Heiser, as lessor, to John F. Sullivan, lessee, covering, among other lands, the NE/4 of the NW/4, North 7.5 acres of the SE/4 of the NW/4 of Section 15, T32N R10W, NMPM, covering 47.5 acres, more or less.

The three leases contributed by El Paso covers ^{47.5}~~47~~ acres, more or less, in the W/2 of Section 15.

Pacific Northwest Pipeline Corporation is contributing a lease from the Denver & Rio Grand Western Railroad Company, as lessors, to Phillips Petroleum Company, as lessee, covering all of the Denver & Rio Grand Western Railroad Company right-of-way in the W/2 of Section 15. Do you want the description of each specific lease, or just this three-acre tract.

Q Yes, will you go ahead and read into the record the description of the Pacific Northwest leases?

A The second lease contributed by Pacific Northwest Pipeline Corporation, a United States Oil and Gas Lease, bearing serial number Santa Fe 079625, issued to Hazel L. Gentle, as lessee, and covering, among other lands, the SW/4 of the NW/4 of Section 15, T32N R10W, NMPM; the third lease contributed by Pacific Northwest is an oil and gas lease dated December 11, 1951, from Catherine Hendricks, a widow, et al, as lessors, to H. C. Wynne, as lessee, covering the SW/4 SW/4 of Section 15, T32N R10W, NMPM; the fourth lease contributed by Pacific Northwest, an oil and gas lease, April 22, 1954, from Edward E. Miller, and Lena A. Miller, lessors, to Phillips Petroleum Company, lessee, covering a strip of land 30 rods wide over the south side of the N/2 of the SW/4 of Section 15, T32N R10W, NMPM, containing 30 acres, more or less, excepting the existing right-of-way of the Denver & Rio Grand Railroad Company, the right-of-way of State Highway 550, and excepting the East 40 rods in width of said 30 acres, more or less, said East 40 rods being a part of the NE/4 of the SW/4 of said Section 15, and excepting all that part of the above described 30 acres, more or less, lying west of the right-of-way of said State Highway 550, said tract containing 3 acres, more or less, and the last exception covered -- describes the acreage owned by Dave Clark.

Q Does that cover all of the several tracts other than that owned by Mr. Yager and associates?

A Yes, sir, it does.

MR. HOWELL: I think that is all.

MR. MACEY: Any questions of Mr. Bittick?

MR. CAMPBELL: Yes, sir.

MR. KITTS: Just a minute right here. I think the record should show that Mr. Macey's statement as to what purpose Exhibit "D"

was being considered in being received should go to the previous exhibits, "A," "B," and "C" as well.

MR. MACEY: Well, more particularly, Exhibit "C," not "A" and "B", but "C."

C R O S S E X A M I N A T I O N

BY MR. CAMPBELL:

Q Mr. Bittick, I want to be sure that I understand your figures correctly; am I correct that you stated that the total cost of the Heizer Well in the E/2 of Section 15, including the supervisory charges for drilling, was \$63,610.50? A Yes, sir.

Q And that the normal overhead cost of items which cannot be specifically set up, that your company adopts \$250.00 a month, during drilling, and \$45.00 a month after the well is completed?

A Yes, sir, that is correct.

Q Is it then your estimate, based upon that figure, that, barring unforeseen difficulties, that the well in the W/2, if drilled, would cost approximately the same amount?

A According to our engineers it would cost about \$3,000 more, Mr. Campbell. We have a well-cost estimate prepared on that well.

Q Just state what the reason for that is for, the additional estimates there by your engineers, is it deeper?

A I don't know. The estimate here is \$66,972.00, and that can be caused by additional road costs. There are many factors that can enter into that.

Q Is that \$66,972.00 based upon the total cost in the same manner of the cost of the Heizer Well? A Yes, sir, it is.

Q Now, Mr. Bittick, if you drill that well, at whatever cost is involved, the well is not going to cost El Paso Natural Gas Company

any more or any less whether the tract of Yager's is in it or not, is it, it doesn't affect the basic cost of drilling the well?

A It wouldn't affect the total cost; it will affect who pays it.

Q So that if you take your share, the Yager share of the costs of that well out of production, it will cost El Paso less to drill the well than if the Yager tract isn't in there, would it not?

A You are assuming that there will be production.

Q Didn't you testify that this well was off-set on all sides?

A It is off-set to the south, yes, sir.

Q Do you consider this to be a wildcat well?

A Well, I'm not a geologist, and I don't know how far they would go in saying it is a wildcat well.

Q Now, Mr. Bittick, this brings us down to the question of these agreements that have been offered here with relation to the percentage of costs charged to a non-consenting owner; all of those that you offered here were, as I understand it, involved in Township- or Block-type unit agreements in the San Juan Basin area?

A Yes, sir.

Q Are those normally entered into before there is any drilling on the unit?

A You can't make a general statement on that; some of those would be entered into before there was drilling, some of them would have a great deal of development on them before the unit was formed.

Q Now, Mr. Bittick, as a land man, can't you say that it is true, generally, that the determination of what a non-consenting owner must pay is passed, primarily, beyond the 100 per cent, obviously, on the risk that is involved to the person that is drilling the well?

A Yes, sir, I feel that it is for the risk involved.

Q And a risk in a wildcat area is considerably different than it is in an area which has been developed by offset wells, is it not?

A Yes, sir, there is a difference in the risk.

Q So that you must, in each instance, I assume, as a land man, negotiate that with the people who are involved in that area, isn't that correct?

A Yes, sir.

Q And each instance, generally, would have to stand on its own, would it not?

A Not necessarily. You are going to have a similiarity of factors there in almost any instance. For instance, the 29-7 Unit was highly developed before it was formed and it contains the 150 per cent provision.

Q Now, let's persue that similiarity in these agreements a little farther. Isn't it correct that in the area where these unit agreements are involved that the acreage involved there is primarily Federal acreage, percentage wise, isn't the majority of acreage in most of these units involved actually Federal leases?

A I don't think I could say, off hand. There is a great deal of Federal acreage involved, but as far as percentage wise, I wouldn't guess.

Q Now, insofar as any unit agreement involving Federal acreage is concerned, that unit agreement is on a form that has to be approved by the Federal Government?

MR. HOWELL: If the Commission please, we object to that because the agreements we have introduced are unit operating agreements, and does not require approval, and the ones that do require

is immaterial in this case, because it does not contain interests of the working interest and the proportionate costs between them.

Q Well, let me ask you this. You are acquainted with Federal leases, I assume?

A Yes, sir.

Q Isn't it true that under a Federal lease that the working interest owner, if the Government requests it, is required to enter into unit operations?

A That is what they say, but they have never required anybody to enter into one.

Q It is a provision in the lease, you know that?

A Yes, sir.

Q Don't you think that the elements which lead a person not only to join the unit agreement, but to go along on a form of operating agreement that are present under a Federal lease might not be present under a fee?

A I think most Federal ownerships are well acquainted with the fact that they are not required to on a --

Q Mr. Bittick, what I am getting at is this, you know that both the unit and operating agreement, where Federal acreage is involved, have become more or less standardized, have they not?

A Yes, sir.

Q Do you think that the same factors that apply to your trading with people on Federal leases, with reference to their entering into these arrangements, is the same as the people with fee acreage?

A Well, I don't see any material difference in the situation that we are discussing, as far as a provision for 150 per cent recovery is concerned, I don't see whether it is fee, State or Federal enters

into negotiations whether you are going to have to pay 100 per cent or 150 per cent costs of the well.

Q Do you believe that an operator, under these agreements, in a proven area is entitled to recover 150 per cent of the costs of the well?

A Yes, sir, I do, if the other party is not willing to put up the cash.

Q Upon what grounds do you base that?

A Well, in any area there is still an element of risk there, depending on the area. You will have a varying amount of risk; there can be a dry hole in one half section and a good producer in the other half.

Q But where the risk is less, the penalty ought to be less, isn't that correct?

A Well, of course when you get into that, you are going to get into a percentage problem there, how much less is the risk? how much greater? and I don't feel I am qualified to say whether it should be reduced by ten per cent, fifteen per cent. I do know that this type of agreement has been used in a great many areas in the San Juan Basin.

MR. CAMPBELL: That is all.

MR. MACEY: Does anyone else have a question of the witness?

Mr. Utz.

C R O S S E X A M I N A T I O N

BY MR. UTZ:

Q Do you know of any dry holes within the pool limits of the Blanco-Mesaverde?

A I don't know whether there are any or not, at this time,

Mr. Utz.

Q The \$45.00 a month operating costs that you spoke of, for operating the wells, does that include all costs and supervisory and office clerical help, or --

A It includes -- it does not include all costs. If a gas engineer has to go out and spend time on that well, or if we have a geologist out there for some reason, his time is charged directly to that well in addition to the \$45.00 a month or the \$250.00 a month.

Q Do you have a figure that would include all operating costs?

A No, sir. That I don't believe you can get one figure that would cover it all, because the time that a geologist or petroleum engineer, or gas engineer, might spend on one well would vary, and a gas engineer, for instance, might be out there one day or he may be out there ten days, or it might not be out there at all one month and ten days the next, so I don't believe you can reach any direct figure and say, as far as direct charge is concerned, "This is what it will be." It is based strictly on what is done at the well.

Q It would be a month-to-month proposition?

A Yes, sir.

MR. UTZ: That is all.

MR. MACEY: Does anyone else have a question of the witness?

C R O S S E X A M I N A T I O N

BY MR. MACEY:

Q Mr. Bittick, on one of your exhibits, I believe Exhibit "B," what is the status of the well which is located in Section 10 of 32N, 10W?

A That was a proposed well. It has not been drilled, has not been spudded.

Q In other words, the north end of the proposed unit is not offset by production, either northwest or northeast?

A No, sir. Up in the northeast, in Colorado, I think it is right above Section 8, if I'm not mistaken, there is a dry hole or an abandoned hole 5,200 feet deep, I believe, but there is no production north of there.

Q Turning to your Exhibit "C," which is this document that I have in my hand, I note that after examining the various provisions contained in that Exhibit, that the provisions vary to a certain degree as to the percentage of the total that the drilling party is to receive from the cost of the well. A Yes, sir, it does.

Q Now, briefly, in a block-type unit, what are the participating areas in a block-type unit? In other words, when a well is drilled on a 320-acre drilling tract, do the people who own interests under that tract, do they share just in that well, or in the entire unit?

A They share in the entire unit when that well is taken into the participating area.

Q All right. Now, simply, are there not unit agreements in effect in the Basin which limit the person's interest solely to the 320 acres upon which the well is drilled?

A No, sir. If I understand your question, I don't believe there are any.

Q In other words, in each of these agreements, when a person puts his acreage into a unit and thereby a well is productive in that acreage, he shares in a total of the unit in the proportion that his acreage bears to the total? A Yes, sir.

Q In every instance?

A In these block-type units. Now, he is going to share in an acreage basis on all of them, but in the Rincon Unit, the working interest owners share in the entire share to the proportion that they own in the unit.

Q Now, when a man owns an interest in a block, 320 acre unit, under an agreement, and he agrees to pay his proportionate share of the well to be drilled in that tract, at that time, he knows that whether that well is a good well or a poor well, is not going to materially affect his overall income?

A No, sir, that is not correct. He -- the well has to meet the standard of the unit participating area. If it does not, it will not be taken in, and if it does not, he will have his half section --

Q What are the standard for the minimum?

A That varies. We have no --

MR. HOWELL: Might I interrupt a minute and suggest that this is right next to the 32-9 Unit, and that you ask questions as to what the standards are for commercial wells in the 32-9 Unit area?

MR. MACEY: All right. That would be satisfactory.

A We have adopted a standard of 1,500 MCF from Mesaverde.

Q Open flow?

A Open flow.

Q Now, don't you think that it would be a little bit of a different situation if a man knew that he had a reasonably good chance of sharing in a unit, where there wasn't any question as to whether the well was going to make 1,500 MCF, because his interest would be in the total, and the fact that there might be 15- or 20-million foot wells on that area that he is going to share in, don't you think that would govern whether he might join in the drilling of a well or not?

A Yes, sir, that would affect the element of risk as far as

he is concerned.

Q I would like to ask you one question about that element of risk business which I don't think you brought out. In addition to the element of risk as to whether or not from a geological or reservoir standpoint that gas is going to be productive under a certain tract, isn't there a mechanical risk from the standpoint of losing a well when you get about three quarters of the way down?

A Yes, sir, but the estimate on this well is if everything goes right, it could be \$150,000.00, you never know.

Q Has El Paso, in the Basin, experienced any amount of difficulty from a mechanical standpoint? Have they lost any wells purely from mechanical reasons, I'm talking about.

A I'm not sure, Mr. Macey. I couldn't give you any specific example. We have participated in some that other people were drilling that ran up to \$150,000 or so, due to mechanical difficulties, or so --

MR. MACEY: That is all. Does anyone else have a question of the witness? If not, the witness may be excused.

(Witness excused.)

MR. HOWELL: We will offer in evidence Exhibit "D." I think we have offered "A" and "B" and "C," but not "D."

MR. CAMPBELL: What was "D"?

MR. HOWELL: This contract.

MR. CAMPBELL: My objection goes to that also.

MR. MACEY: The objection will be overruled and the exhibit will be received.

MR. HOWELL: Mr. Morrell, will you take the stand, please?

F O S T E R M O R R E L L,

called as a witness, having been first duly sworn on oath, testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. HOWELL:

Q State your name for the record, please.

A My name is Foster Morrell.

Q Where is your home, and what is your occupation?

A My home is in Roswell, New Mexico; I am a petroleum consultant.

Q What experience have you had in the oil and gas industry with reference to the San Juan Basin?

A My experience in the industry is 25 years with the United States Geological Survey, and four years, and a majority of the time been spent in operations and administrative matters in the San Juan Basin.

Q Prior to your becoming a petroleum consultant, what position did you have with the U.S.G.S.?

A Regional Oil and Gas Supervisor, Roswell, Southwestern Region.

Q Is that the office that has jurisdiction of the San Juan Basin?

A It is.

Q Are you familiar with the development and many of the contracts which have been made with reference to development and drilling of wells in the San Juan Basin? .

A I am personally familiar with them.

Q Did you participate in the preparation of the so-called block-type unit?

A I did.

Q And have you been employed by El Paso Natural Gas Company

and other companies, to circulate agreements, unit operating agreements and communitization agreements in the San Juan Basin?

A I have.

Q Would you make an estimate as to how much time you have spent in discussion with both land owners, major companies, and independent operators, the terms of communitization, operation agreements and unit operating agreements?

A During the last four years?

Q During the last four years.

A I would say approximately three years out of the four.

Q Are you familiar with the custom of the industry in the San Juan Basin with reference to the recovery of costs in a drilling block or a drilling unit when one of the owners of the mineral interests or of the leasehold working interest does not care to put up and pay in cash his share of the drilling costs?

A When a party does not put up --

MR. CAMPBELL: If the Commission please, just before he answers that question, please show that I renew my objection to what the custom may be in other situations on the ground that the compulsory pooling statute sets out the basis on which the costs of the well shall be established as the lowest actual expenditure and reasonable cost of supervision. Go ahead.

A When the party does not desire to put up his cost of the drilling, it is a general practice in the San Juan Basin and including the San Juan 32 dash unit agreement which offsets the tract which is the subject of Case 1001, the unit operator is entitled to recover 100 per cent of the operating costs, plus 150 per cent of the drilling costs until the non-consenting party participates.

Q You say the unit operator is entitled to --

A The working interest owners; the unit operators does it on behalf of the owners who do contribute.

Q What does the owner of the minerals who fails to contribute cash receive out of production, as a custom of the industry?

A Under the non-consent provision?

Q Yes.

A He receives nothing until the 150 per cent cost of it is recovered.

Q That is 150 per cent of the drilling parties' costs of drilling that would be attributable to the mineral owners acreage?

A His percentage.

Q That is the part of the block that is being drilled?

A Yes, sir.

Q Are you familiar with any other -- in instances instead of 150 per cent, where there has been interest charged on the unpaid balance?

A Under the terms of the unit agreements, the unit operator is entitled to receive the cost of each mineral owner's or working interest share of the drilling of a well in advance. He may also elect to receive six per cent interest on any unpaid balances that are not received currently.

Q Now, if I understand that, that is that the unit operator that makes any expenditure in behalf of others in the unit, is entitled, under the operating agreements, to be paid six per cent interest on any unpaid amounts?

A That's right.

Q Now, with reference to the 150 per cent provision, in your opinion, the provisions which permit drilling parties to recover 150

per cent of the drilling costs before the non-consent or non-drilling party receives his share of production, are those 150 per cent provisions solely connected with risk, or does the value of the money, the use of money, enter into that?

A The value of the use of money is a definite part of it, in addition to risk.

Q Have you actually negotiated agreements covering this 150 per cent with various owners of mineral interests or leasehold working interests?

A I have. A number of them.

Q In your opinion, is it a fair and reasonable provision?

A In my opinion it is a fair and reasonable -- and, in fact, it is based and included in many federal contracts not on the basis of something that is pulled out of the air by the Federal Government, but on the recommendations from operators from all over the United States.

Q In your opinion, is such a provision customary throughout the San Juan Basin in a situation in which one party who owns a portion of the acreage pooled to form a drilling unit is not willing to pay in cash his share of the costs?

A It is used throughout the San Juan Basin.

Q You have heard the testimony of Mr. Bittick as to the overhead costs that are customarily charged by El Paso Natural Gas Company on both drilling and operating wells, have you not?

A Yes, sir, I have.

Q In your opinion, are those overhead costs for supervision fair and reasonable?

A They are fair and reasonable and in general use throughout

the San Juan Basin.

Q Now, with reference to this W/2 of Section 15, the testimony shows, I believe, that there are a number of tracts involved; we have a situation here in which one party has a three acre tract who has refused to participate in any fashion. Will you tell the Commission whether or not in your opinion it would be proper to have an unorthodox unit, excluding that three acres, in order to permit the owners of other tracts within the W/2 to recover their fair and just share of the oil and gas underlying the W/2 of the section?

A It would certainly be my opinion that it would be reasonable to have an unorthodox unit in order to protect the interests of the parties that have leases.

Q And in the event a fair and equitable portion of the costs cannot be achieved, and interests which refuse to participate in such costs by contributing cash, elect not to join in the drilling, would it be necessary to have a smaller unit than the 317 acres, in order to permit those who do desire to participate to get their fair share and recover their fair share of the oil and gas underlying the land?

A It would.

Q I believe that the record shows that this tract of land is located within the Blanco-Mesaverde Pool; can you testify definitely as to that?

A All of Section 15 is included in the Blanco-Mesaverde Pool by New Mexico Oil Conservation Commission Order 409, dated March 31, 1954.

Q Do you have any other points in connection with this case that you -- statements you would like to make? You have investigated it on behalf of the company.

A I think that the non-consent provision for the 150 per cent recovery for the drilling costs is very reasonable. You come to a matter of six per cent interest; six per cent will numerically double in approximately sixteen years, the payout on some of these Mesaverde wells, including wells of the low initial potentiality, as you have in the area of Section 15, may be in the neighborhood of eight to fifteen years, so that even with the six percent, it could run more than 150 per cent of the drilling costs.

MR. CAMPBELL: I would like the record to show my objection to Mr. Morrell's testifying as to what is good for my client.

MR. HOWELL: That is all.

MR. MACEY: Does anyone else have any questions of Mr. Morrell?

MR. CAMPBELL: Yes, I have.

C R O S S E X A M I N A T I O N

BY MR. CAMPBELL:

Q Mr. Morrell, if the Yager acreage is excluded from this unit, and you get a 277 or 280-acre nonstandard unit, this well that you propose to drill is going to cost exactly the same amount of money, isn't it?

A As far as the actual cost of the well, yes.

Q So that if you recover your share of the Yager costs of the well out of his gas, even 100 per cent, and get that additional gas from the unit, isn't that to some advantage of El Paso Natural Gas Company, or is this all a one-way proposition?

A I say it is no advantage to the El Paso Natural Gas Company.

Q They are getting some help in the payment of their well, are they not?

A They are getting some help in payment of the well by your non-consenting?

Q If a compulsory pooling order is entered, Mr. Morrell, that puts this forty acres in this unit and requires us to pay our share of the costs out of some portion of the production -- forget for the moment the hundred or hundred fifty per cent, but if it is a hundred per cent, El Paso is better off, is it not, to have that contribution to the costs of the well than to have a non-standard unit excluding our acreage and paying the same amount for the well?

A No, because El Paso is taking gas, and the gas that they produce is paying you for your contribution.

Q Well --

A It would not be better for El Paso.

Q --it is a payment out of our gas, is it not?

A But you haven't got the gas to produce, and they drill a well.

Q Another factor, Mr. Morrell, El Paso Natural Gas Company can use the gas, can they not, you will get a larger allowable if you get that?

A Depends on who has the well.

Q But you would get more production allocated if it were a 217 acre and 280 --

A That gets into the market situation, and not what we are involved in here.

Q If you were engaged in private negotiations as you frequently are, in connection with this, those would be factors you would consider, would they not?

A I would always enjoy getting a well paid on production that

somebody else drilled.

Q It just depends on whose foot the shoe is on, doesn't it?

A Well, yes.

MR. CAMPBELL: That is all.

MR. MACEY: Does anyone else have any questions of the witness? Mr. Utz.

C R O S S E X A M I N A T I O N

BY MR. UTZ:

Q Mr. Morrell, are you familiar with the geology of the Blanco-Mesaverde Formation in this area and the wells in this pool?

A To a considerable extent.

Q In your opinion, will one well efficiently and economically drain 320 acres in this pool?

A It will.

Q Do you believe that a well drilled in the Blanco-Mesaverde on three acres, which will serve three, or point nine three seven per cent of a 320 acre allowable would be an unnecessary well and thereby --

A A separate well on that three acres would definitely be an unnecessary well.

Q Do you believe that one well drilled through the Mesaverde Formation on the west half of Section 15, 32N 10W would economically and efficiently drain that acreage?

A The three acres or the 320?

Q The 320.

A I think it would.

MR. UTZ: That is all I have.

MR. MACEY: Does anyone else have a question of the witness? If not, the witness may be excused.

A If the Commission please, I might bring up one other point that I think is rather direct to this particular case. We had a similiar situation on a 320 tract that involved some unadvertised land and some non-committed land and they did not seek to lease the land to others or to join a non-consent proposition, and was brought out definitely at that time that an unorthodox unit was granted by the Commission. The parties who did not consent and did not join in that can join at any time by the payment of the share of the costs of the well and enjoy benefits of production from that time on.

MR. CAMPBELL: Mr. Morrell, are you proposing that?

A No, I'm saying it was a case that had some similar characteristics.

MR. MACEY: If there are no further questions of Mr. Morrell, he may be excused.

MR. KITTS: I would like the record to show whether or not Mr. Clark has made an appearance at any time this morning.

MR. MACEY: I don't believe there is anyone here representing Mr. Clark.

MR. KITTS: Is Mr. Clark in the hall now? Apparently not.

MR. HOWELL: If it please the Commission, Mr. Macey handed me a telegram from Pacific Northwest which I ask be made a part of the record, and, with that, we would rest our testimony.

MR. MACEY: Do you want to read it?

MR. CAMPBELL: I have no objection.

MR. MACEY: Please include that telegram in the record.

MR. KITTS: Do you want it read?

MR. MACEY: Go ahead and we can get rid of it.

MR. KITTS: "To W. B. Macey, Oil Conservation Commission,

Capitol Annex Building, Santa Fe. Re: Case No. 1,001 which is to be heard before the Oil Conservation Commission this morning. Pacific Northwestern Pipeline Corporation, on September 6, 1955, agreed with El Paso Natural Gas Company to join in communitizing and developing west half of Section 15, T32N R10W, San Juan County. Pacific also agreed to bear its proportionate share of development costs. (Signed) R. N. Richey, Pacific Northwest Pipeline Corporation." The telegram was sent from Albuquerque at 8:40 a.m., January 20th.

MR. CAMPBELL: I have no objection.

If the Commission please, may I ask Mr. Morrell one question to clarify a matter?

MR. MACEY: Yes, sir.

MR. CAMPBELL: Mr. Morrell, when you were referring to arrangements by which a non-consenting owner pays six per cent interest, is that a situation where the recovery is up to 100 per cent, or is that 150 per cent plus six per cent?

A That is a case where you might advance some, and at the unit operator's election, he may allow a deferred payment at six per cent. That would be on the basis of a hundred per cent cost of the well.

MR. GURLEY: Mr. Morrell, you mean the six per cent is on the money which must be paid in a case like that?

A On the unpaid balance, yes.

MR. GURLEY: What I mean, in case the well were dry, the proportionate cost, share, would be at six per cent?

A Yes.

MR. GURLEY: Where, in this other instance, the operator takes all the risk and in case the well should be dry, the non-consenting interest owner pays nothing, is that correct?

A That's correct.

MR. MACEY: Does anyone else have anything further in this case? Any statements?

MR. CAMPBELL: I think I would like to make a statement.

If the Commission please, in the first place, as I have stated during the course of this hearing, the New Mexico Statute with reference to compulsory pooling, as the Commission well knows, has never been tested in any manner or interpreted, actually, by this Commission or by a Court.

Our statute differs in some respects from the statutes of a number of other states that have compulsory pooling arrangements. For example, the Statute of Oklahoma now contains specific provisions, that in the event of a compulsory pooling order, the non-consenting owner's share of the cost of the well shall be paid out of the 7/8's or whatever the leasee's interest is, and they define the leasee's interests under an unleased mineral interest as the 7/8's.

I point that out because I don't want the Commission to get the impression that we are completely unreasonable in suggesting that the costs should be borne out of the 7/8's, because that is exactly the situation that is followed under the Statute in Oklahoma.

Now, I must concede that our statute contains no such specific provision, but it does indicate that that approach has been taken. I believe I am correct in saying that the same general statutory provisions are in effect in Colorado, but I know of no cases up there where an order has been issued though there may have been some. In Oklahoma there have been a number of orders which either require the man to put up the cash or his share of the costs of the well will be taken out of the working interest. In some instances, those

orders provide for 125 per cent. The Oklahoma Statute contains the lowest actual expenditure provision, and, to my knowledge, that has never been tested in Oklahoma, but I point that out to indicate that what approach this Commission takes on this matter, that the attitude and position of the applicant in this case, I don't believe, is an unreasonable one under the circumstances.

Now, I think that this situation can be made an analogy in many respects to a non-consenting tenant in common under an oil and gas lease where one tenant in common wants to drill a well and the other does not. I think it is a recognized principal in law that the owner who wants to drill a well may do so and he is entitled to recover the non-consenting interest out of his share in production, but I don't know of any arrangement in which somebody who does not want to take a risk in any particular situation is penalized for not going along, and that, the question of whether he wants to go along can depend at any particular time on any number of factors: He may not have the money in cash; he may not want to spend money to drill that year; his tax picture may be different from the other party's; he may decide he wants to put his money in some better risk where-- and he may want to wait a few years, hoping he will get a better market price for his gas. There could be other reasons, but I don't think the Conservation Laws contemplate that that owner who is put into the drilling unit and who should be, because if he isn't, you have confiscated his property.

That that owner, because somebody else in that unit wants to drill a well at a particular time, should be penalized; certainly he should bear his costs in that well, but these questions of interest and 150 per cent and so forth, I can't honestly see that that is the

proper approach to non-consenting arrangements in these pooled tracts. What they want to agree to under unit agreements, is, I think, an entirely separate matter.

So, if the Commission feels that under the general authority to set fair terms and conditions, it can, in its order, provide a method of recovery of costs, I believe that the fair way to do it is to apply it to the 7/8's interest on the 40 acre tract on the basis of the lowest actual expenditure and reasonable costs of supervision.

I'm not certain that the Commission has such power, because our statute stops after it recites that the Commission, in the case of dispute, may determine the costs of the well and the reasonable supervisory charge. It says nothing about determining how the production shall be allocated or how that costs shall be borne, and we may be in a situation where the Commission may want to issue its order compulsorily peeling the acreage, establishing the present estimated costs of the well, retaining jurisdiction in the future to determine the actual costs if there is a dispute, and then leave the parties to their own negotiations or litigations to determine in an accounting action how the fair costs of that well is to be borne, but the impression seems to be created here that the applicants are taking an unreasonable and unfair position. I don't think that is true. I think they have the right to determine, at a particular time, whether they will either make a cash investment or be cut out of these units and be deprived of their gas. I think it is to the advantage of the applicant, El Paso, here, where these non-consenting owner situations arise, if they can't enter into voluntary agreements, and that hasn't been explored here too greatly, but where they run

into those situations, certainly it seems to me that it is to the advantage of El Paso Natural Gas Company to recover part of the costs of the well even if it is 100 per cent and to get the gas.

I believe that is all I have to say at this time.

MR. HOWELL: If it please the Commission. I shall try to be very brief.

It is a pleasure to concur with one statement of Mr. Campbell's and I wish to make it quite clear that El Paso Natural Gas Company does not in this case or does not expect in the future to take the position that it quarrels with any individual who says, "I do not care to put up in cash my share of the costs of drilling a well." I concur completely with Mr. Campbell in saying that any individual or company has the right to say that he does not or does want to share the costs and pay the cash.

Where I differ from Mr. Campbell, and where El Paso Natural Gas Company differs from Mr. Campbell's clients, is the effect that that position has upon the well that may or may not be drilled upon the tract of land. I think the point at issue, generally, can be clarified to these points: Mr. Campbell's clients contend that although they are the owners of the minerals, and under the Statute of New Mexico, are the persons entitled to go upon and drill that particular forty acres, there is no lease outstanding, they own so many acres. We cannot subscribe to their contention that having advanced for them the costs of drilling the well that they should receive 1/8 of the gas attributable to that 40 acres free of charge and to expect us to recover out of 7/8 of the gas attributable to that acreage the money that we have advanced for their account, nor do we think that it is fair and reasonable, as the statute suggests or specifies, the

Commission shall determine with fair and reasonable manner, that any company who invests its funds, puts its cash into the drilling of a well, should be limited to recovering out of production that may or may not result from the drilling of that well, exactly the amount of money it spent without regard to the value of the use of its money during the time that it has been invested for the benefit of another person or without regard to the risk taken by the drilling party in drilling the well.

We think that the statute does not prevent the Commission from making such a determination, and we suggest that the evidence in this case, that the record overwhelmingly and without contradiction, supports the Commission in determining that it is the custom of the industry and that it would be fair and reasonable in entering a compulsory pooling order to permit the parties either to pay their share in cash of the costs of drilling the well, or failing to pay their share in cash, to have their entire share of production retained by the drilling party or until the drilling party has recovered all operating costs and 150 per cent of the drilling costs, at which time the nonconsent party would then come into the full share allocated to that 40-acre tract.

We think that is the fair and equitable and reasonable solution of a problem and is overwhelmingly supported by the records in this case.

Thank you.

MR. MACEY: Does anyone else have anything further in these cases?

If not we will take the cases under advisement.

(Recess.)

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

I, THURMAN J. MOODY, Court Reporter, do hereby certify that the foregoing and attached transcript of proceedings before the Oil Conservation Commission for the State of New Mexico, is a true and correct record to the best of my knowledge, skill and ability.

WITNESS MY HAND, this, the 27th day of January, A. D. 1956.


Court Reporter.