BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
February 14, 1963

REGULAR HEARING

IN THE MATTER OF: (De Novo)

Application of Southern Union Production Company for an amendment to the Northwest New Mexico Gas Proration Rules and Regulations. Applicant, in the above-styled cause, seeks an amendment to Order No. R-1670 as amended by Order No. R-2086, Rules and Regulations for prorated gas pools, San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico, to permit wells ordered shut-in for extended periods to make up accumulated overproduction to produce not more than 500 MCF each month during such shut-in. Upon application of Southern Union Production Company, this case will be heard de novo under the provisions of Rule 1220.

Case 2694

BEFORE:

Honorable Jack M. Campbell
Mr. A. L. "Pete" Porter
Mr. E. S. "Johnny" Walker

TRANSCRIPT OF HEARING

MR. PORTER: The next case to be heard will be Case 2694, application of Southern Union Production Company for an amendment to the Northwest New Mexico Gas Proration Rules and Regulations.

(Witness sworn.)

MR. PORTER: Mr. Verity.

MR. VERITY: George Verity for Southern Union Production Company.

LEN MUENNINK

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

DIRECT EXAMINATION

BY MR. VERITY:

Q Will you please state your name?

A My name is Len Muennink.

Q What is your present occupation?

A My present occupation is Area Superintendent for Southern Union Production Company in the Farmington District.

Q Have you testified heretofore before this Commission as an expert?

A Yes, I have.

Q Mr. Muennink, are you familiar with the mechanics of the production of gas wells in the San Juan Basin and the Basin-Dakota area?

A Yes, sir, I am.

Q And for the seven prorated gas pools in Northwest New Mexico?

A Yes.

Q If you will, please relate to us the mechanics of the production of an oil and gas well, particularly with regard to the mechanics of turning it on and turning it off and how it gets produced.

A In general, on the gas wells in the Basin the pipelines control the turn-on and turn-off of these wells. They do this in order to better balance their production between operators and the operators themselves do not have much control over whether a well is turned on or turned off.

Q I believe you are familiar with the fact that gas wells are prorated on a six months' period?

A Yes, sir.

Q Is it possible from the standpoint of pipeline companies marketing of gas to produce the same amount of gas during each of the six months of the period?

A Would you repeat that? Is it possible they produce exactly the same amount?

Q That's right.

A No, sir, it is not.

Q Why is it necessary that it be otherwise produced?

A Because of the market demand in the Basin it's inherent in our marketing that at times during cold weather the market requires a great deal of gas. There may be wells producing at the time and these wells are left on while the switchers are busy turning on additional wells in order to cover the market.

Q Then, if I understand you, irrespective of the fact that the order provides for the allowable during the six-month period, there may be a much greater need for gas during the, say the month of January than there is during the last month of that six-month period, June?

A That is right.

Q Also, if I understand your statement, Southern Union Production Company and other operators in the pool actually do not control the turning on and the turning off of their wells?

A That is correct.

Q Who does turn on a well?

A The pipeline company that is tied into the gas well.

Q Tell us what necessitates, or tell us, is it necessitated that a well become overproduced inherently in our system of production and marketing of gas?

A Yes, it is at times. I'll have to go back to the statement I made a little bit ago where the market demand, weather, a lot of times road conditions where it is impossible to get to a particular well that may be overproduced, and it may become overproduced more. Situations such as that.

Q By this are you saying that a well that may be produced

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up to its peak or even overproduced and is in the process of where it would be shut off, cannot be shut off because of the weather?

A At times this is possible, yes.

Q Is this because that the weather necessitates more gas or because the weather makes it impossible to get to the well or both?

A It could be both, but a lot of times the weather makes it impossible to get to the well and other times the market is such that they need that immediate gas and leave the well on.

Q Then, if I understand you, the operator really and actually has nothing to do with the well becoming overproduced beyond its allowable?

A No, sir.

Q Mr. Muennink, are you familiar with the cost of operating gas wells in the Northwest New Mexico area?

A Yes, I am.

Q Have you made any particular study with regard to costs of producing wells, gas wells in that area?

A Yes, I have. I've studied a number of wells and I have some right here.

(Whereupon, Applicant's Exhibit No. 1 was marked for identification.)

Q I hand you what the reporter has marked Exhibit No. 1. Will you tell us what it is, please?

A This is a Pictured Cliff well, Southern Union Company Pictured Cliff well located in the Fulcher Kutz-Pictured Cliff Pool. Here we are showing the well has production of 500 MCF taking off royalty, taxes, less our operating expenses to show what the net income would be for that particular well had it produced 500 MCF.

Q Have you entered on this exhibit the average cost of operating a particular well?

A This is the actual monthly average for a nine-month period for this particular well.

Q What well are you referring to?

A Summit No. 3-B.

Q It is, I believe, a Pictured Cliff well?

A Yes, sir.

Q What is your actual operating expense for that well average over a period of months?

A Our operating expense for a nine-month average was $12.70 per month.

Q Is that the last nine months that you had available at the time this exhibit was prepared?

A That's right.

Q Does that $12.70 include only direct expenses?

A It includes direct expense only, that is correct.

Q Does it include any cost for supervision and overhead expenses with regard to the operation of that well?

A No, I do not have the overhead in this expense.

Q Do you know what your direct and overhead supervision expense on a gas well in the Northwest area is?

A Yes. I don't have the accurate figures from my IBM at the time, but they average between thirteen and fifteen dollars a month per well.

Q Then, if I understand you, if you had a maximum production on a well during the month, on this well during the month of 500 MCF, it would operate at a $32.04 profit without regard to a thirteen or fourteen-dollar expense of supervision and overhead?

A That's correct.

Q And that would have to be taken off of it to leave it operating at a profit?

A That's correct.

(Whereupon, Applicant's Exhibit No. 2 was marked for identification.)

Q I next hand you what the reporter has marked Exhibit 2. Will you please tell us what it is?

A Exhibit 2 is a Southern Union Production well, the Quinn No. 5, located in the Blanco-Mesaverde Pool, San Juan County, New Mexico. Likewise on this exhibit we have taken 500 MCF production, shown the royalty, the taxes and also the average operating expense and came up with what we would show as net income.

Q How did you arrive at your monthly operating cost for this well?

A The monthly operating cost for this well was arrived at from a nine-months average from our IBM reports.

Q Again did you make any inclusion for supervision or overhead charges on the producing of this well?

A No. The overhead is not shown in this operating expense.

Q Again, it is necessary that you have supervision of production by personnel, is it not?

A That is true.

Q And it would be a proper charge here?

A That is correct.

Q Do you know what the approximate average cost of such charges would be on your Mesaverde wells?

A They will average about the same, thirteen to fifteen dollars a month.

(Whereupon, Applicant's Exhibit No. 3 was marked for identification.)

Q Mr. Muennink, I hand you what the reporter has marked Exhibit 3. Will you please tell us what it is?

A Exhibit 3 is a Basin-Dakota well, Southern Union Production Company Zachary No. 19, located in the Basin-Dakota Pool, San Juan County, New Mexico. On this exhibit we show a production of 500 MCF taken of our royalty, our taxes and our operating expense to show a net income.

Q What is your monthly average operating expense on this well?

A On this particular well the average monthly operating expense was $30.91.

Q Does this include supervision or overhead charges?

A No, once again, the overhead charges are not in this expense.

Q From the study that you've made, not only of these wells but the wells in the Northwest producing area, do you have an opinion as to whether or not an allowable of 500 MCF per month would allow wells to operate at a profit?

A Yes, from studying the wells that we're operating an allowable of 500 MCF would show a profit.

Q You think in order for a well to operate at a profit or in paying quantities that it would be necessary that it produced during the month at least 500 MCF?

A That is correct.

MR. VERITY: That's all.

MR. PORTER: Does anyone have a question of Mr. Muennink?

MR. DURRETT: Yes, sir, I have a question or two.

CROSS EXAMINATION

BY MR. DURRETT:

Q Mr. Muennink, I'm quite interested in this statement or question about who turns gas wells off and on. Did you mean literally that the pipeline taker or the pipeline transporter comes in and turns the operator's wells off and on?

A The pipeline or transporter designates which wells are to be turned on and turned off.

Q But they are, in fact, turned off and turned on by switchers, is that correct?

A By switchers, and in our particular case with gas company, a lot of the Pictured Cliffs and Mesaverde are turned on strictly by the transporter's switchers.

Q And the transporter pays these switchers?

A That is correct.

Q They're on his payroll?

A That is correct.

Q But you also have some switchers on your payroll, do you not?

A That's correct.

Q Let's make this statement, agree or disagree with me whether or not this is true. If a well is allowed to run over the amount that you intended to take out of it, the amount to be taken out of it is a switcher's fault, as a rule, is that correct?

A No, sir.

Q Well, would you have a general statement as to whose fault it usually is?

A Normally it would not necessarily be anyone's fault. It could be that the well was needed to be off for some particular reason. They're trying to balance production, the pipeline, or dispatch the proration. They are trying to balance production between five, six hundred wells, and at times it happens due to market, as I say, at other times due strictly to the operations of that many wells.

Q Well, sometimes they are intentionally overproduced to meet the market at that time, is that what you mean?

A They are left on and they're known to be overproduced due to market, yes.

Q Going to the statement that was made about the fact that wells have to be overproduced to meet market demand somewhat at least in the colder months, how long would you say this would hold true as a general situation, two or three months, or what?

A You mean the over-all, an individual well being on or --

Q Well, take a bunch of wells or all the wells in a pool, I believe you made a statement on direct examination that during the cold winter months there were times when the wells had to be overproduced to meet market demand.

A Yes.

Q Let me more or less rephrase my question. This would not be true for the entire year, is that correct?

A That is correct, it would not.

Q It probably would not be true for a half a year, would it?

A No.

Q Well, then, it would just be true for at least less than six months, two or three months, would that be correct?

A I would say three or four months during the hardest winter, yes.

Q Well, even at that, since we have a six months' proration period and a six months' balancing period, then that fact alone would not mean that it was impossible to keep a well within its allowable considering the six month balancing period, is that correct?

A It would not be impossible. There are a number kept in balance, but at times with the low allowables in these fields, a well gets overproduced during this winter to such an extent that six months, they can not make it up.

Q Well, could we say that it might be impractical to do it but it's definitely not impossible to do?

A It definitely is not impossible, at times it is impractical, yes.

Q Let me ask you this question, Mr. Muennink, is Southern Union Pipeline Company the purchaser for Southern Union Production Company in the Northwesterly area up there?

A They are one of the purchasers, yes.

Q Is it a correct statement that the market demand in that area is less than the allowable indicated to Southern Union Pipeline Company?

A That's true.

Q Isn't it also true that Southern Union Pipeline Company allocated market demand is less than the allowables for the wells that they are connected to?

A I lost you there. Would you repeat that, please?

Q Isn't it true that Southern Union Pipeline Company allocated market demand is less than the allowables for the wells that they're connected to?

A Yes.

Q Isn't it also a correct statement that in a total one-year period Southern Union Pipeline Company has enough flexibility in their required take they should be able to control their takes in order to never have a well overproduced through a six months' balancing period in the proper administration of a company, if it's handled right?

A I believe it would be nearly physiclly impossible to keep from getting any well overproduced in a six months' period due to the mechanics of it itself and due to the situation of the market.

Q You believe it is impossible to keep from overproducing wells to the point that they have to be shut in after a one-year period, within a one-year period of time, you do not think that Southern Union Pipeline Company has enough flexibility that they can control their takes so as not to get any given well in an overproduced status?

A No, sir. I don't believe due to the great mechanics of it that they can keep every well from being overproduced. Due to the inherent characteristics of operations and the market,

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at times these wells become overproduced.

Q Well, you would be willing to go along with me to the point that they could certainly keep the great majority from getting in that status?

A Yes, I'll go along with that.

Q So the number left would be almost very small?

A There would be a smaller number that got greatly overproduced, that is correct.

MR. DURRETT: Thank you, I believe that's all I have.

MR. PORTER: Does anyone have a question of Mr. Muennink?

MR. VERITY: I have another question.

REDIRECT EXAMINATION

BY MR. VERITY:

Q Mr. Muennink, if I understand you then, it isn't anyone else's fault that a well becomes overproduced even beyond a six months' balancing period?

A No, I do not feel it is.

Q This is a matter of the weather and the exigencies of the market situation, is this correct?

A That's correct.

Q It's necessary, is it not, that pipeline companies maintain a staff that is reasonably busy during the entire year?

A That is correct.

Q If they multiply this staff by a hundred times or by many, many times during unusual weather conditions and during periods when it can be made up, this would possibly enable companies to eliminate some of the overproduction, correct?

A That is correct.

Q Again, from a practical and an economic standpoint this is not a possibility, is it?

A That's correct.

Q So we do have a result without any fault of any operator of overproduction of a well?

A That is correct.

MR. VERITY: That's all.

MR. DURRETT: I have one further question, if the Commission please.

MR. PORTER: Mr. Durrett.

RECROSS EXAMINATION

BY MR. DURRETT:

Q Mr. Muennink, since we seem to be assuming that it's no one's fault that wells get into an overproduced status through a one-year period and have to be shut in, and since the only person or element that could be at fault is the weather and the market, and I suppose that you feel that the Commission should be controlling the weather and the market and not the operator?

A No, sir, I don't feel that way.

MR. DURRETT: Thank you. I think that's all I have.

MR. PORTER: Any further questions? Mr. Utz.

BY MR. UTZ:

Q Mr. Muennink, you are asking for this, this 500 minimum for how many prorated pools?

A For Northwest New Mexico.

Q All the prorated pools in Northwest New Mexico?

A The Indian leases. This is covering the Indian leases in those particular pools.

Q Is it possible due to the low market demand for the Northwest area to have allowables of less than 500 MCF a month assigned to certain wells?

A Allowables of less?

Q Yes.

A Mr. Utz, I'm not that familiar with the proration schedules. I have seen some very low allowables on some of the poor Pictured Cliffs, yes.

Q Do you recall seeing allowables of less than 500 MCF a month?

A Right off-hand I don't. A lot of those wells that won't hardly produce that are classified on the marginal schedule. I don't off-hand recall it.

Q Would you agree that it was a distinct possibility that we could have allowables over a six-month period assigned to certain wells with less than 500 MCF a month?

A For the individual month you are speaking of?

Q No, as an average for the six-month period.

A Yes, I imagine that it would be possible or probable.

Q Then in that case if we assigned an overproduced, a well that is overproduced an allowable of 500 MCF a month and his allowable was 500 MCF a month or less, then he could never make up any overproduction, could he?

A If that particular well was involved, I believe so, but I would think that a well that had a small allowable would be on the marginal schedule.

Q Wouldn't that depend on the market demand for the pool?

A It would to a certain extent, the allowable, yes, it sure would.

Q I think you've agreed that that situation could exist. Do you have any answer as to how we can ever get a well back in balance?

A The particular well like that, of course, if the market increased the allowable would increase.

Q Is there any prospect of the market increasing in the San Juan Basin in the next two or three years?

A That I'm not qualified to answer.

MR. PORTER: Could you give us an optimistic prediction?

MR. UTZ: That's all I have.

MR. PORTER: Mr. Verity.

REDIRECT EXAMINATION

BY MR. VERITY:

Q Mr. Muennink, the problem of overproduced wells doesn't occur in your small allowable wells, does it?

A Not normally, no.

Q These problems occur in the high potential wells, isn't this correct?

A Yes.

Q Because that's the wells that they overproduce in the cold weather?

A In most of the cases, yes. There are exceptions, of course.

MR. VERITY: That's all.

MR. PORTER: Anyone else have a question?

MR. DURRETT: I have a question, if the Commission please.

MR. PORTER: Mr. Durrett.

RECROSS EXAMINATION

BY MR. DURRETT:

Q Mr. Muennink, isn't it a fact that it does occur, the question does occur in small allowable wells? Let me call your attention to a well that I have some history on here, Basin-Dakota well, Delhi-Taylor, I believe it's Hargraves Well No. 1. That well had a twelve-month average allowable during the last twelve months of 480 MCF. It's low monthly allowable was in July, 1962 and it had an allowable of 310 MCF. This happens to be a well that's on 40 acres and capable of producing more than that 310. Isn't that actually where the problem occurs in that usually a well, as far as we're talking about, as far as this application goes, isn't it usually a well on 40 acres and the only well that would be inclined to overproduce to keep the lease?

A There could be exceptions to that, yes. But the cases we have run across were not wells on 40 acres, they were on standard spacing patterns, but had become overproduced having allowables up to four or five million a month and had become overproduced. I think there could be exceptions, yes.

Q Would you agree with me, assuming that there could be exceptions and that this situation existed, if you established the 500 MCF per month, would it not be to the operator's advantage to overproduce his well and acquire an overproduced status so he then could produce 500 MCF per month rather than his allowable of less than that?

A Well, the operators themselves could not overproduce the well as the pipeline controls their market and designates which wells will be turned on and off. I think that the pipeline would have the control of whether the well is on or off.

Q You wouldn't be inclined to think that an operator might try to influence a pipeline in order to get more out of this so that he could produce the 500 MCF rather than the 380 or whatever he had before?

A I think it would be very unethical.

Q It's a possibility?

A Yes, it's a possibility, but I would say it's very unethical.

MR. DURRETT: That's all I have.

MR. VERITY: One more question.

REDIRECT EXAMINATION

BY MR. VERITY:

Q Mr. Muennink, it hasn't been lawful for many years in Northwest New Mexico to drill a 40-acre gas well?

A No, not to my knowledge.

Q There are only a few 40-acre wells up there, isn't that correct?

A I would say that there are very few. I don't believe we have any.

Q You don't have any at all?

A No, sir.

MR. VERITY: That's all.

MR. DURRETT: One further question.

RECROSS EXAMINATION

BY MR. DURRETT:

Q Mr. Muennink, doesn't the Commission have rules allowing non-standard proration units?

A Yes, sir.

Q It can be acquired legally then?

A Yes.

Q Forty acres?

BY MR. UTZ:

Q Mr. Muennink, you have recommended 500 MCF here, have you not?

A Yes.

Q Would you agree that you could probably get by on something less than 500 MCF, say 400, 300?

A Yes, sir, we could on some Pictured Cliffs and

Mesaverde wells. Mr. Utz, we took the 500 MCF as a figure in order to cover our more expensive Dakota operations. Where I say expensive where we have drip tanks, separators to maintain, and in order to show that that particular well or lease was in paying quantities, that's the figure that we arrived at. However, Pictured Cliffs and so forth could operate on less.

Q What would you say the minimum would be in your opinion on the Pictured Cliffs?

A I would say the minimum would be 250.

Q To produce gas in paying quantities?

A That's correct.

Q Two hundred wouldn't do it?

A Well, I haven't made a study that close, but if I could --

Q But in round figures?

A Round figures, 250, yes.

MR. PORTER: If no further questions, the witness may be excused.

(Witness excused.)

MR. PORTER: Did you have some exhibits that you would like to introduce?

MR. VERITY: I would like to introduce Exhibits 1, 2 and 3.

MR. PORTER: Those are the three sheets on cost of operation?

MR. VERITY: That is correct.

MR. PORTER: Without objection the exhibits will be admitted for the record. You may call your next witness, please.

MR. VERITY: May it please the Commission, probably any lawyer in the court room could serve as the next witness, but I think there is one that I feel is eminently qualified. I would like for Guy Buell to take the stand, if he will.

(Witness sworn.)

GUY BUELL

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

DIRECT EXAMINATION

BY MR. VERITY:

Q You are, I believe, a lawyer and an attorney?

A Yes, sir. That's correct, Mr. Verity.

Q I think that also you have been practicing before this Commission over a period of several years, have you not?

A Yes, sir, it has been several years.

Q During this period of time you have become familiar with the conservation laws of New Mexico and the rules and regulations of this Commission?

A Yes, sir, in the course of my experience I have become generally familiar both with the statutes and with the rules of this Commission.

Q And I believe you are familiar in a general way with the application of conservation rules in Northwest New Mexico?

A Yes, sir, that's correct.

Q You are a staff attorney for what company?

A Pan American Petroleum Corporation. I am just an attorney, not a staff attorney.

Q I beg your pardon. I believe that Pan American Production Company --

A Petroleum Corporation.

Q Pan American Petroleum Corporation has extensive interests in Northwest New Mexico gas pools?

A Yes, sir, we do have extensive interest in that area as well as Southeast New Mexico.

Q You are familiar with the practical effects as well as the legal effects with regard to the rules and proration in Northwest New Mexico?

A Yes, sir.

Q Are you also familiar with the attitude of the Navajo Tribe of Indians with regard to whether or not a lease has terminated that goes for one month without any production and is beyond its primary term?

A It is my understanding that they are insisting on that interpretation and say they will literally stand behind it and consider a lease cancelled or forfeited, or however you would like to put it.

Q Mr. Buell, you were in the Commission hearing room and heard the testimony of Mr. Muennink, I believe?

A Yes, I was here.

Q Are you also independently familiar with the facts that he testified to with regard to why wells become overproduced?

A I am certainly familiar in Pan American's operations with overproduction and underproduction of gas wells.

Q Does this occur without Pan American bringing it about, overproduction of some of their wells?

A Actually, probably Pan American is in a little different position than most operators in that for all practical purposes we switch our own wells. So we are different in that regard.

Q But the average operator up there does not switch his own wells?

A That's my understanding. We are one of the few who do.

Q Are you familiar with the fact that weather and market conditions play upon whether or not wells become overproduced?

A Actually, Mr. Verity, it's been the history with gas proration that due to seasonal fluctuations such as weather, the over-all picture of demand as well as what I term interseasonal fluctuations, the gas purchasers may not agree with that nomenclature, but that's what I call it. In other words, in January and February Southern Union and El Paso know that it's going to be cold but they don't know how cold. It's tremendously difficult to forecast the demand.

Q If the Commission allows the application in this case and would permit leases that were on Navajo lands to be produced under some proper administrative procedure in an amount of 500 MCF during the month, do you think that this would adversely affect correlative rights of adjoining lease holders?

A No, sir. I cannot see how allowing production of that magnitude could adversely affect anyone's correlative rights.

Q Do you have an opinion as to whether or not such an order would protect the correlative rights of the particular lessee on the Indian lands?

A Well, in this case you are looking at the possibility of a loss of a lease or leases, certainly if you lose your lease you have no correlative rights left to protect. It would seem to me that the granting of an allowable of that low magnitude to a well that is in an overproduced condition would be a rule that would protect correlative rights.

Q Is it necessary to protect correlative rights to sometimes produce an overproduced well in order to insure against the lease termination?

A Yes, sir.

Q Mr. Buell, you are a lawyer and a graduate lawyer. What is the basis for the authority of regulatory bodies in general, and the New Mexico Oil Conservation Commission in particular, to regulate the production of oil and gas wells?

A I haven't thought of it in a long time, Mr. Verity, but actually all the authority and power of this Commission derive from the police powers of the State of New Mexico.

Q Does the Constitution of the United States and the State of New Mexico require that these powers be applied within certain limits?

A Mr. Verity, the police power of the State, in all aspects it's a tremendous power, normally a lot of us, we think of police power, we think of it mostly affecting a person. Actually the police power affects property rights as well. The subject case is a good case in point. We are discussing an amendment to a rule here that a lot of lawyers think the way it's written out could cause the loss of a valuable property right.

The Basin-Dakota case which is coming up next, millions of dollars in property rights are involved in that case. The police power is tremendous, and in our systems of laws, our checks and balances where the power is tremendous, there are safe-guards set up to see that there is no abuse of that power. Those safeguards would apply to this Commission.

In other words, for any rule or order of this Commission to be valid it cannot be unreasonable. It cannot be a capricious it cannot be arbitrary, and it cannot be confiscatory.

Q In your opinion if the rules and regulations of the Commission in regard to Northwest New Mexico causes an Indian lease to be shut in for a period in excess of six months and the Navajo tribe cancels or terminates that lease, do you think that that order in that particular instance to that extent would be confiscatory?

A The loss of the lease under those terms that you set out would be confiscation.

Q Now, do you think that if the Commission sees fit to grant an allowable which would permit even an overproduced lease to produce an amount sufficient that it could produce during that month in paying quantities, that this is the proper method to soften this rule so that it does not amount to an abuse of the police power?

A Yes, sir. Actually the complete shut in, as far as I know there is no justification for it, it's arbitrary. Your 500 MCF is a semi-arbitrary figure except that under your circumstances it will allow you to produce in paying quantities and continue your lease in effect. I can see no deterrent whatsoever from a legal standpoint of this Commission amending the rule, not only in the Northwest but in the Southeast to allow an overproduced well to produce up to 500 MCF a month while it is making up its overproduction. Did that answer your question?

Q That answered it, thank you. Mr. Buell, if the Commission insists on a stringent application of the rule that we have asked be amended and softened in this respect, what is the alternative that is left to the operator in the area in order to protect himself from possibly having a lease cancelled?

A The only alternative you would have would simply be to make sure that your well was never overproduced.

Q From a practical standpoint is this possible?

A It is not possible from a practical standpoint. Theoretically two and two make four, you can theoretically say you can do it. From a practical standpoint, I don't think you can, and after all, the very purpose of a balancing rule is that it recognizes the inherent fluctuation of gas production and by its very terms it anticipates that, so if you are precluded

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from using your balancing rule you have no flexibility whatsoever.

Q So, then, if each and every operator insisted that his well never become overproduced, the net effect of this would be to disrupt the economic system of marketing gas?

A Historically gas production fluctuates from month to month for one reason or another and it would be tremendously difficult and it would disrupt gas production in New Mexico.

Q If this occurred, do you have an opinion as to whether or not that would adversely affect the correlative rights of all of the producers in the pool?

A I'd say this, it would result in the production of less gas in New Mexico, as all of us know now, our gas market is not what we would like for it to be even producing with our flexibility, so any reduction in the gas that I, as an operator, would not be able to produce, I would think it would violate my correlative rights.

MR. VERITY: That's all.

GOVERNOR CAMPBELL: I may ask a question.

CROSS EXAMINATION

BY GOVERNOR CAMPBELL:

Q Mr. Buell, are you familiar with the provisions of the Navajo Indians' leases relative to continuing production?

A No, sir, I'm not intimately familiar with the Navajo leases.

Q Do you believe that the police powers of this Commission extend beyond the power to prevent waste and protect correlative rights?

A No, sir. I think that the purposes and the authority of this Commission are to prevent waste and to protect correlative rights.

Q How would you relate an order issued as requested here, with the prevention of waste or the protection of correlative rights, or both?

A I'm a little confused. Mr. Verity, in his questions, more or less restricted his questions to Navajo leases. I was under the impression the call of the docket was to amend the rule as it applies to Northwest Navajo leases, fee leases, state lease.

Q Wouldn't you think this would have to be the case in order to bring it within the general powers of the Commission?

A It would certainly be my recommendation, yes, sir.

Q How, in that event, do you relate the allowable here for the purpose of holding a lease to the prevention of waste or protection of correlative rights?

A The balancing rule as it's now written, the purpose of it is to, I think we'd have to say to protect correlative rights and not to prevent waste. I know of no gas reservoir in New Mexico that's rate sensitive. The purpose, and the way I look at it, is that if the Commission has the authority in order to protect correlative rights to provide a rule with a complete shut in for an overproduced well, they certainly have the authority to amend that rule to provide for a nominal amount of production while an overproduced well is making up its over-production. It seems to me it would be clearly in the interest of protecting correlative rights.

Q What are the correlative positions that are protected in this kind of a situation?

A You mean with respect to the balancing rule?

Q With respect to a rule which would permit a minimum production per month irrespective of the allowable normally granted. Whose correlative rights are involved?

A In this case, and the way you asked the question, the correlative rights of the operator of such a lease.

Q His correlative rights as against who, or what other right? I'll put it this way, do you believe as a lawyer that an order of this kind comes within the definition of correlative rights?

A Yes, sir.

Q Protection of correlative rights under the New Mexico statute?

A Yes, sir. It's hard for me to distinguish the difference between the validity of a complete shut in as opposed to the validity of a minimum or maximum of 500 MCF per month.

GOVERNOR CAMPBELL: That's all.

BY MR. PORTER:

Q Mr. Buell, has Pan American ever lost a lease because of this rule of the Commission?

A No, sir. As you are aware, there has been a time or two when we thought the possibility of us being challenged might come up. Of course, a lot of lawyers including myself think that you could make a successful fight in court and sustain your lease.

Q In other words, as I've heard it discussed, it might be that the court would rule that the production had already been had for that particular lease?

A That would be the argument I will make. The purpose I would have in urging a nominal allowable like that would be to avoid having the question ever come up. When you go to the Court House someone is going to lose.

Q To your knowledge, though, no one has lost a lease because of this shut in?

A No, sir, now to my knowledge Pan American has lost a lease but not under identical circumstances as this. It was where a lease was shut in to prevent the flaring of casinghead gas. While it's not completely analogous, it simply shows that the order of the Commission requiring the shut in is not complete provision under your force majeur or anything like that to the loss of the lease.

Q This question concerns waste. Can you see where waste might result?

A Yes, sir.

Q In the event that our order isn't amended?

A I can easily visualize a situation, I don't know of any specific case in New Mexico, but in any gas formation that is making any amount of water I've heard it explained many times that water standing on the near face of the well bore and in the well bore can cause well bore damage. I don't know of any specific situation in New Mexico, but it could easily result in waste.

MR. PORTER: Does anyone else have a question?

MR. DURRETT: Yes, sir, I have a question. It seems like this ought to be a good opportunity for the engineers as well as the lawyers.

BY MR. DURRETT:

Q Mr. Buell, would you agree with me as a lawyer that the word correlative as used in correlative rights means some type of a reciprocal relationship between people or parties, or somebody?

A I have never thought of it that way, Mr. Durrett. When I talk of correlative rights I always consider it a very personal thing.

Q Couldn't be correlative by the definition of the word unless somebody else has a reciprocal corresponding right?

A If all correlative rights are protected in the sense you are using the word, you are correct.

Q Proceeding a little further, when the parties draw a lease between the lessor and the lessee and they enter into a lease agreement, isn't it a fair assumption they are aware of the Commission rules and regulations when they draw that lease?

A I would say certainly that in the case of Pan American we are aware of it, now as far as our lessor, I don't know.

Q You would say for certain the operators should be aware of it?

A Pan American would certainly be, yes, sir.

Q Well, along my line of thinking in this matter is if both of the parties are aware, if you will assume with me for a moment that the lessee or lessor are aware of the rule and what will happen and if the lessee desires the lease not to be forfeited when it was overproduced and shut in why not put a clause in there to that effect and would the operator, if he would agree to it, not persuade him to in their contractual negotiations?

A I got interested in what you were saying, I didn't get the question. What was the question?

Q I'll try to clarify my question, Mr. Buell. Let's assume that the lessee and the lessor in this relationship are both aware of the rules and that they both desire a result of their lease relationship and that result is that if a well is overproduced at the end of a six-month balancing period they desire to not have the lease forfeited, they desire to have the lease continue in effect, if both parties agree on this, would they not put it in the lease?

A I would say this, if both parties do agree to that they could put it in the lease, yes, sir.

Q And would they not be inclined to do so as an ordinary thing?

A I'll say this, that is certainly not the case.

Q Wouldn't the operator be inclined from his own personal interest to try to persuade the lessee to put such a clause in the lease force majeur clause or any other type of clause covering this situation?

A Most leases have a force majeur clause, but as I pointed out a moment earlier, in one of Pan American's experience, the force majeur did not protect us.

Q Wouldn't the operator be inclined from his own point of view to try to get the lessee to agree that they could put a specific clause in the lease governing the subject matter of the application before us today, that if a well is overproduced at the end of six months' balancing period and shut in, the lease would not be forfeited?

A Yes, sir, that could protect it. Let me say this, certainly Pan American to my knowledge has not included any such provision in any of their leases. It was always my understanding, and I never urged that they do and I don't know that anyone has, because I always felt that in a case such as that where a lease was in possible jeopardy, that you could get relief from the Commission to produce a nominal amount of gas. That's where you and I meet on that.

Q Yes, that's true. Would you go along with me to the effect that if they are both aware of the rule and they do not put it to a lessor, make some type of a contractual arrangement concerning it, that at least one of those parties is not too interested in having it in there?

A No, sir, I'd rather think this, and since we are both just kind of supposing, I would rather suppose that they felt like I did, both parties did, that they would have no trouble getting relief from the Commission.

Q They would be inclined to put that in there if they could get no relief from the Commission?

A This has only been a recent development.

Q Would you go along with me that since the lessee did not want such a provision in his lease, in other words, that he wanted the lease forfeited if the well was shut in, whether it was shut in by the Commission or weather or something else, isn't that a contractual right that he has, rather than a correlative right, is it not rather a contractual type of right?

A I see the approach you are taking. I don't think that's any more of a contractual right than putting in the lease it would be developed at a ten-acre density, because that is a portion that is governed by the rules and regulation of the Commission. You can get a contract to defeat the rules of the Commission. I see nothing sacrosanct about complete shut in. The Commission could have, when they originally adopted the rule, put in 500 MCF a month, a thousand MCF a month, it would have been just as valid.

Q If you found, Mr. Buell, if you would assume that there's at least some type of a contractual right and maybe we should say contract dash correlative right that is involved between the two parties, then is it really confiscation for the Commission to go ahead with this rule like it is now?

A In my opinion it would be, yes, sir. When the Commission could just as validly grant a maximum allowable of 500 MCF a month.

Q If you granted the 500 MCF a month, would you not be confiscating the lessee's contractual right to have his lease terminated for non-production which is in the lease?

A No, sir, I don't think so, Mr. Durrett, and I don't think so for this reason: I don't think either parties contemplated, when they negotiated that contract they were not considering this type of non-production. This is the type of production over and above the physical aspects of making a well and producing the well. Some supreme body has interjected itself, so-to-speak, being the Commission.

MR. DURRETT: Thank you, Mr. Buell, I believe that's all I have.

MR. PORTER: Governor Campbell.

BY GOVERNOR CAMPBELL:

Q Let's suppose a little more, suppose you have a well

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that's affected in the way you have described and this well has reached a late stage of depletion and it is shut in and the lease is cancelled because it has been shut in under the present rule and the operator moves his equipment and maybe his pipe and everything off the hole and it's not economical to drill a new well for the remaining reserves, would this not cause waste, physical waste?

A Yes, sir. In the situation you are describing with the reservoir at that stage of abandonment, it would probably cause and result in physical waste. Some of the other wells in the field would get some of the gas that this well would have got, but they won't get as much as that well would have got.

MR. PORTER: Mr. Verity.

MR. VERITY: I have another question.

REDIRECT EXAMINATION

BY MR. VERITY:

Q You are aware of the fact that the primary term in Indian oil and gas leases is ten years?

A Is what?

Q Ten years.

A I would have assumed that, and now that you've told me I know it.

Q Are you aware of the fact, or possibly the Commission will take judicial notice of the fact that Order 1670 is dated November 20, 1960?

A Yes, sir, I know that now.

Q So that the leases that are a problem at the present time with regard to this termination, or which will be a problem prior to 1970, were made prior to this order taking effect, is this correct?

A Yes, that's exactly right, and that's the only type of lease that would be affected, because if you are still in the primary term you have no problem.

Q So actually we have no case where two people are contracting with regard to this order but rather we have two people that contracted and now the Commission is making an order that will affect their contract?

A In that case you are exactly right, but my opinion is not restricted to those facts.

MR. VERITY: All right. That's all.

MR. PORTER: Does anyone else have a question? Mr. Utz.

RECROSS EXAMINATION

BY MR. UTZ:

Q Mr. Buell, I believe early in your testimony you did state, did you not, that you were familiar with the switching operations of gas wells?

A No, sir, I stated that it's my understanding, I have never switched a gas well. But it's my understanding that Pan American, for all practical purposes, switches its own gas well.

Q You are familiar with the procedures of switching gas wells?

A No, sir, I am not.

Q You are not?

A I just know --

Q Would you have any opinion as to how easy a 500 MCF rule would be to comply with? In other words, in your opinion is there any danger of overproducing the 500 MCF?

A I would say no more danger than overproducing a thousand MCF. There's always inherent danger that you won't turn the valve at precisely, you'd have to have one man reading and calibrating the meter and the other at the well head to shut her off.

Q There is more danger of overproducing 500 MCF than not producing at all?

A Yes, sir, that's correct.

MR. PORTER: In other words, the 500 MCF rule would be more difficult for the operators to comply with?

A As compared to complete shut in?

MR. PORTER: Yes, sir.

A Yes, sir.

MR. UTZ: That's all I have.

A May I say this, I discussed this with Mr. Eaton and he advises me that working in that range is not a hard range to work in. You'll turn the valve on and a thousand will slip out before you can shut her back off.

Q (By Mr. Utz) You don't anticipate that a switcher will turn a well on to get his 500 MCF some evening and go back the next morning and be overproduced?

A I won't say it won't happen, because it probably will, but I think it will be very insignificant, Mr. Utz.

MR. PORTER: Any further questions?

MR. DURRETT: May I ask one more question?

MR. PORTER: Yes.

BY MR. DURRETT:

Q Assuming with me that the rule is issued as proposed, the 500 MCF rule, and at the end of a six months' balancing period a well instead of being shut in would be shut in with a 500 MCF allowable, what would you propose to do if he overproduced his 500 MCF, which we just discussed could happen very easily?

A That's right, it could happen, but I think it would be so seldom and so insignificant that it will not really be a problem for the Commission.

Q We should have something to govern the fact that he could overproduce again? In other words, overproduce the 500 MCF, should we not?

A Are you thinking about overproduction in a substantial amount or just say 510 MCF?

Q I think actually about any overproduction.

A Just any?

Q Yes.

A It would seem to me that if the Commission had experience with an operator who under these conditions continued to overproduce his 500 MCF, I think the rule should provide that he would be completely shut in.

Q But we would have to almost make it part of the rule that anyone that overproduced the 500 MCF would be shut in, would he not, in order not to be discriminatory?

A Yes, sir.

Q Then are we not right back where we started from?

A No, sir.

Q Except you overproduced the 500 MCF instead of a shut in?

A I think when you do that it becomes obvious that the operator is, either through absolute carelessness or through a predetermined effort, is going to overproduce his 500 MCF, I wouldn't have any sympathy at all for him. I say shut him in.

Q You don't think that the weather or any of the other factors could influence that?

A I think under these conditions and the provision that you refer to in the order, it would be incumbent on the operator to shut the well off.

Q Well, Mr. Buell, if he knows he's going to lose his lease under the present rule, is it also not incumbent upon him now to do the same thing to protect his lease?

A Mr. Durrett, you are right, it is. But think for a minute like an operator thinks. You know, we all know that our market demand for gas in New Mexico is not, is low to what we would like it to be. Think how hard it would be on an operator to say in the face of a demand for gas "No, you will overproduce my well, don't take that gas." An operator is going to say "Take it", because there's a demand, people might be cold and he's going to say "Take my gas", and he's going to overproduce my well.

Q You don't think he would do that if he had a 500 MCF instead of no allowable?

A No, sir, I don't think he would. Now, I may be putting too much faith in my fellow man, but I don't think so.

MR. PORTER: Do you think this would be the place where the line might be drawn that the operator might see to the operation of his own well rather than the allocation to the pipeline?

A I am sure you are right.

MR. PORTER: When it comes to the 500 MCF, he might be producing that himself?

A You might be right. We cannot use the excuse that somebody else is overproducing our wells because if we have done it, we have done it. If we have done it, it's because we are gas producers and we want to sell our gas.

BY MR. ARNOLD:

Q You would anticipate that this 500 MCF which is assigned would certainly be taken into account in the final balancing of an allowable on a well anyway, wouldn't you? It isn't actually additional allowables that they're asking for, it's merely flexibility in balance?

A Yes, sir. If I understand your question. Say this well's allowable for this particular month was 2000 MCF and he produces his 500 MCF maximum, then he would only make up 1500 MCF of his overproduction.

Q So nobody is actually asking for additional allowable?

A No, sir, it's just asking for the authority to produce a small portion of your allowable while you are making up overproduction.

MR. PORTER: Does anyone else have a question? Mr. Buell, you may be excused.

(Witness excused.)

MR. PORTER: Mr. Verity, does that conclude your testimony?

MR. VERITY: That concludes my testimony, Your Honor.

MR. PORTER: I don't know if we took formal action on your exhibit.

MR. VERITY: I believe you admitted them.

MR. PORTER: The exhibits will become a part of the record. Does anyone have anything further, any testimony they want to offer in this case? Mr. Howell.

MR. HOWELL: Ben Howell, El Paso Natural Gas Company. Yes, we would like to make a statement in support of the application and in that connection I would like to state to the Commission that this matter that is raised by Southern Union is a matter of real concern to lessees. There is a case in Texas in which the operators shut in his well in the Sprayberry Field pursuant to an order of the Commission. Later in a case in which this operator was not even a party, the Supreme Court of Texas determined that the shut in order was beyond the jurisdiction of the Texas Railroad Commission, whereupon this man having, this operator, this lessee having complied with the Commission's order, and in the case the order being found invalid, lost his lease because the production terminated and he could not interpose the invalid order of the Commission as a shield.

Now, I am quite familiar with the situation in connection with certainly the Navajo tribal leases and the position which the Navajo tribe takes, and that position is one which does challenge the jurisdiction of any state to exercise control over a well drilled upon the Navajo Reservation, so that if the Navajo tribe should in a court proceeding be found correct in that assumption, then any protection that the lessee or operator would normally have by reason of having obeyed an order of the Commission would leave the operator in the same position as the operator was down in Texas who lost his lease, and it is a real problem.

Mr. Whitworth and I have given considerable study to this problem and in fact we just finished an article that will be published in one of the law reviews which covers that study that we have made. While I certainly concur with Mr. Buell in his testimony that overproduction should be considered as constructive production on down until such time as the well is in balance, and

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I hope that the law is going to be that some day, nevertheless I haven't been able to find a decision that held that yet where some court has agreed with that.

So that it is a matter of serious concern to the operators and it is a matter in which I believe the Commission clearly has jurisdiction because as Mr. Buell pointed out, the Commission has the jurisdiction in protection of correlative rights to order an overproduced well shut in. Well, it certainly has the jurisdiction to order less than a complete shut in if it so desires. Furthermore, there is the clear statutory grant of the power which the Commission has to make orders to prevent the premature abandonment of wells, and as Governor Campbell brought out, it could very easily result in premature abandonment of a well if the order should in any case be held invalid, and no one else would be willing to go in and drill that acreage.

Now, we feel we wish to support the application. However, we feel this, that there should be at least a form of administrative action so that one would have a record of having obtained permission to produce the well during the period. Otherwise we fear that an operator might face it that if he shut his well in to try to keep from overproducing it, that since he might under a general authority to produce not to exceed 500 MCF, might imperil his lease by having failed during that month to produce anything on it even though it was shut in and he was trying to balance before it was necessary for the Commission to issue an order, so we feel that it would be desirable to have some type of record granting that permission to the individual operator, and we think an administrative procedure without the necessity of notice and hearing would be a proper way to handle it, so please count us as supporting Southern Union's position in this matter.

MR. PORTER: Anyone else have a statement to make? Mr. Buell.

MR. BUELL: Pan American Petroleum Corporation supports the rule.

MR. PORTER: Mr. Anderson.

MR. ANDERSON: John Anderson, Geological Survey, Roswell, New Mexico. This matter first became apparent to us, oh, several years ago when we received a letter from El Paso Natural Gas Company asking us in our opinion whether an Indian tribal lease or allotted land lease in its extended term by reason of production would expire if the well was shut in for proration purposes.

As I recall, our reply was something like this, that the Survey didn't believe that the lease would expire, but we were not the ones who made the final decision as to whether it expired or not, that decision is in the Bureau of Indian Affairs, and the tribe in the case of a tribal lease. For that reason we suggested that a lessee take the precaution of producing a small amount of oil or gas each month, we put it on a monthly basis because that is the reporting period, so that no question would arise that might result in the termination of a lease.

We referred the inquiry to the Gallup area office, the Bureau of Indian Affairs, which has jurisdiction over the various Indian tribes and reservations in northern New Mexico, in fact, all of New Mexico, with a request that the area director reply to the question. The area director's answer was quite similar to ours.

Now, in Northwestern New Mexico we have three Indian reservations on which there are producing oil and gas wells, the Navajo Reservation, the Ute Mountain Reservation and the Jicarilla Reservation; all of them have gas wells and a lot of these are in their extended term because of production or some of them shortly will be in their extended term. As far as the Indian tribes are concerned, I think some of you are probably aware that certain responsible men for the Navajo tribe make the assertion that the reservation isn't even in New Mexico. The Southern Ute tribe is in Colorado, but in their communitization they put in a clause that simply because they go along with the spacing set by the Colorado Oil and Gas Commission, that accepting that spacing is not an admission by the Southern Ute tribe that the Colorado Commission has now, ever did have or ever will have any jurisdiction over the lands of the Southern Ute Indians. The Jicarillas so far have been silent.

We did have a case of a gas well on a Navajo Reservation here within the last year or two where the lease went into its extended term and the well was produced through a temporary line for a period of, oh, six or eight months. During a portion of this time the well produced only about ten dollars of gas a month. The Navajo tribe contested the fact that we and the Indian Bureau believed that the lease was continued by production in paying quantities and went so far as to appeal to the Secretary from the decision of the Superintendent that the lease was still extended. Then they withdrew their appeal and everything seems to be peaceful.

In any event, we believe that if it is possible under the laws and regulations that the Commission might operate under, that they could give this relief to the operators of Indian leases that are in their extended term, that it certainly would be helpful to the lessees of these leases, and also make it quite certain that our lessees would not be faced with possible suits to cancel leases because wells were shut in by the Commission for overproduction.

MR. PORTER: Thank you, Mr. Anderson. Mr. Durrett, do you have some correspondence?

MR. DURRETT: Yes, sir, I have a letter from Texaco I would like to read into the record. This letter was received on February 11. It reads as follows: "Dear Sir: This letter is in regard to Case Number 2694-De Novo to be heard February 14, 1963 at Santa Fe. Texaco is a leasehold owner and has six completed gas wells in the Basin Dakota Pool. It is Texaco's opinion that leasehold estate could be jeopardized if a producing well is shut in completely, without any production, for extended periods. For this reason Texaco concurs with and supports Southern Union Production Company's application, Case No. 2694-De Novo." That letter is signed by Mr. J. F. N-e-i-l-l.

MR. PORTER: Mr. Swanson.

MR. SWANSON: Kenneth Swanson, Aztec Oil and Gas. Mr. Anderson may have been referring to a situation that involved Aztec. We had a similar attack in a Navajo lease of ours made by the tribe. The question of restricted production because of overproduced status, it was not in that case. However, it was attacked on several grounds, including non-commercial production or interrupted production, and we were satisfied that the tribe probably felt any interrupted production past the term did satisfy the lease. We were able to satisfy them that those allegations were not facts in this case.

We would like to go on record as supporting this application. We feel that it applies not only to Indian acreage. My understanding of the federal regulation, no lease may be terminated if it's in a producible status provided it is put on production after a specified time after notice to that effect is given. I believe this is a ninety-day period.

It occurs to me that it could arise that a well would still be overproduced and it would be impossible for the operator to place it back on production as requested by the regulations. We feel, of course, that if this protection is extended to Indian and federal leases, it should apply as well to fee leases.

MR. PORTER: Thank you, Mr. Swanson. Mr. Anderson.

MR. ANDERSON: I would like to add to my statement. The Bureau of Indian Affairs is now considering legislation to enable tribal leases to be extended past their fixed term where production in paying quantities has been obtained but is not being marketed because of lack of a market for it. At the same time, in connection with some of the other matters that were brought up as to why certain things were not in the Indian leases, we have recently recommended to the Bureau of Indian Affairs that it amend its lease terms and regulations to the effect that no lease will expire whether it is shut in in its extended term for proration, whether the Bureau will put that in the regulation or leases or not I don't know, but I see no reason why they shouldn't. I think it would be a very good addition to them.

MR. PORTER: Anyone else have any comment on this case? Mr. Verity, I had a question of you before you get into your statement.

MR. VERITY: Yes, sir.

MR. PORTER: In the event that the Commission saw fit to grant your application, is it your recommendation that this be something that's automatic or something that the affected operator would have to apply to the Commission for, say in the form of a letter?

MR. VERITY: No, sir. This is the first point that I meant to take up. From the standpoint of our application, we have suggested 500 MCF a month. After living with this matter for several months, we have this problem, we can't strike an average because an average is not the problem that will be encountered. We must have a situation so that any particular lease will have a sufficient monthly allowable that will give some pay or paying quantities over and above the cost of operating that lease.

Now, the Basin-Dakota wells cost more to produce, as you probably noticed from this testimony, than do the Pictured Cliffs wells, and this was undoubtedly in Mr. Utz' mind with his questions. We feel that the proper way for this matter to be handled, and which I feel will answer this question, also, is that the Commission enter an order which sets up an administrative procedure that would call for an affidavit from the particular operator who has the Navajo lease that has been overproduced and is facing a complete shut in. That he file an affidavit as to the amount of gas that must be produced in order to preserve that, not to exceed 500 MCF, and that then the Commission allow your Aztec office to grant a letter that permits this amount of production on that lease which would be something in excess of the amount to put it in paying quantities not to exceed 500 MCF per month.

MR. PORTER: That answers my question.

MR. VERITY: We do think that it is necessary, because sometimes this just comes to light toward the end of the month, that this can be granted at the local office or at the district office in Aztec.

Very briefly, Your Honor, and the Commission, I would like permission to file a brief with regard to this matter. We think that the interest that is evidenced and the fact that there's no opposition to this and that the industry is becoming more and more aware of the fact that we have this problem, that it is one of magnitude, and I would like to more or less make my statement in that brief, but we feel that the Commission must at all times be aware of the fact that its authority does base itself on police power, and this is a power that the courts have uniformly and universally held must be exercised with discretion, and in this instance we think that the discretion is that there must be some minimum relief that will not adversely affect these lessees' correlative rights.

MR. PORTER: How long would you like, how long a period of time to file your brief?

MR. VERITY: Ten days or two weeks. Ten days would be all right.

GOVERNOR CAMPBELL: I would like to ask Mr. Verity another question, I'm not clear on exactly what's being sought here. Are you seeking a general amendment to the shut in provisions of the gas prorationing rule which would have the effect of abrogating them or are you seeking limited authority just on the Navajo leases because those are the lessors that pressure the most, or what?

MR. VERITY: Our critical situation at this time, or the one that is impendingly critical, are the Navajo leases.

The industry is aware of the fact, as you have been advised here today, that these problems oftentimes go outside of that, but the scope of our application merely pertains to Indian leases, tribal leases.

GOVERNOR CAMPBELL: Do you believe that authority of this kind limited only to a particular type of lease would be a valid exercise of the Commission power?

MR. VERITY: I think it would be valid, Your Honor. I don't think it would, as the testimony has shown, adversely inflict on anybody else's correlative rights. But we certainly would not have any objection, and as a matter of fact, we would urge that the Commission not necessarily limit it to Navajo leases.

Our problem is the Navajo leases, and that's all that we have requested at this time. The problem does exist outside of that and we think the Commission should be aware of that also. Does that answer your question, Governor?

GOVERNOR CAMPBELL: The case has been advertised as a general rule, as I understand it, and not as particular leases, so that's the way you want to approach it, but you want to be sure you are protected on the Navajo lease?

MR. VERITY: Our application was on the Navajo lease. If the advertisement, if it was that broad, we think it would be proper and we would join in urging the Commission in solving the entire problem at one time.

MR. PORTER: Mr. Verity, the Commission will allow you to March 1st to file a brief. That will give you approximately two weeks.

Does anyone else have a statement or anything else to say concerning this case? If not, the case will be taken under advisement. We're going to have a short recess after which we'll take up Case 2504.

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

I, ADA DEARNLEY, Court Reporter, do hereby certify that the foregoing and attached transcript of proceedings before the New Mexico Oil Conservation Commission at Santa Fe, New Mexico is a true and correct record to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF I have affixed my hand and notarial seal this 20th day of February, 1963.

Ada Dearnley
Notary Public-Court Reporter

My commission expires:
June 19, 1963.