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RECEIVED
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LAND DEPARTMENT

Mr. Paul Rote
General Manager - Land
Energen Resources Corporation
605 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-2707

Oil Conservation Commission
Case No. 13957
Exhibit No. 8
Sommer

Re: Martinez Well #1

Dear Mr. Rote:

Thank you for replying to my letters dated August 16, 2002 and September 3, 2002. After having received no response of any kind for such a long period of time. I finally placed a telephone call to Mr. Flowers to see whether Energen intended to reply. Possibly my telephone call finally prompted your answer. From the long delay I was convinced that Energen was not taking my correspondence seriously. Having read Energen's proposal of September 25, 2002, I am now persuaded that Energen neither comprehends my concerns nor realizes the precarious legal and financial position in which it reasonably should find itself to be. By way of illustration:

1. Because I did not sign, or become a party to the Joint Operating Agreement (the "JOA"), or amendment thereto, then in converting to its own use through selling all of my MCF's over and above my entitlement of 8.333% of total production, Energen has been and is committing a succession of torts. Rather than address what is due for ongoing torts, Energen's offer blithely assumes that I have consented to and will in the future accept gas imbalances, as shown on Energen's monthly statements through June, 2002. Energen would "graciously" permit me to recover the accumulated "imbalances" at the rate of 40% over my future monthly "entitlements" (if production continues that long). This phase of your offer simply assumes, and is based upon the false premise that, I entered into the JOA and its amendments. Your offer being based upon a false premise, all I can say is "garbage in, garbage out."

2. By the terms of Energen's offer, I would be financially responsible for its past and future asserted cost of producing the gas (according to Energen, $3,764.26 as of June, '02) to which I was entitled and which Energen has sold (less only any COPAS overhead charges). Again, this assumes that I initially had some liability to pay such overhead charges in the first place, arising from my having been a party to the JOA or its amendment. That being a phony major premise, I do not agree with Energen's conclusion that, as of August 31, 2002, I owe Energen $3,764.86, a part of which its offer would "forgive," and would continue to accrue such monthly liabilities. Again, these charges stem from the spurious notion that I agreed in the first place to the JOA and its amendment.

EXHIBIT

In addition, Energen completely ignores its peril for having converted my gas to its own use, and for its business practice in what it and its predecessors have perpetrated. Not only does its offer not take into account its liability for what it lists as my 3,254 MCFs, but also the 19,357 MCFs to which the remaining working interest owners of Martinez No. 1 Well were entitled as of June of 2002. And even more importantly, think of Energen's potential liability to the fractional working interest owners of the large number of oil and gas wells in which Energen is the owner in New Mexico and elsewhere of less than a 100% working interest, but 100% of the oil and gas of which Energen has been converting to its own use and selling through the years. These numerous other working interest owners belong to a class, the members of which have not found it economically feasible to sue as individuals and were seemingly unaware or indifferent up until now of the potential of joining in a class action without expense to them to recover their damages, compensating and punitive, plus costs and attorney's fees. If Energen is aware of the large punitive damage and attorney's fees being awarded, its offer does not seem to reflect it.

Even for those working interest owners in New Mexico who did sign the JOA and its amendment, I suspect that such a JOA as amended is unenforceable because of being unconscionable, or a contract of adhesion, or both, as a class action would determine.

The elements of an unenforceable adhesion contract are set forth in *Guthmann v. La Vida Llena,* 1985, 103 N.M. 506, 709 P.2d 675, by the Supreme Court as follows, at page 509):

1. The agreement is in the form of a standardized contract prepared or adopted by one party for acceptance of the other.

2. The party proffering the standardized contract must enjoy a superior bargaining position because the weaker party virtually cannot avoid doing business under the particular contract terms.

3. The contract is offered to the weaker party on a take-it-or-leave-it basis, without opportunity for bargaining.

If any of the owners of a small percentage of a working interest in Martinez Well No. 1, or in the numerous other gas and oil wells in New Mexico, did in fact sign the Oil Balancing Agreement (Exhibit "F" to the JOA), it would only have been because such a small operating interest owner had no choice in the matter. Such owner by himself, herself, or itself, could hardly find a marketing company which would bother with a small interest. For example, the JOA of December 12, 1984, shows as owners of very minimal operating interests in Martinez Well No. 1, 3 with 1.2500%, 1 with .31250%, and 9 with .10417%, or .10417%. According to a Statement of Gas Imbalances of June, 2002, two operating interest owners were entitled during that month to 11 MCF's, six to2 MCF's, and nine to 1 MCF's each. For any such owner to find a company that would arrange to market one, or two, or eleven MCF's, would virtually be impossible. What really happened, however, until at least December 1, 1995, the operator, then Meridian Oil, Inc., did in fact market these one, two, eleven, seventy-two and two hundred forty-one MCF segments to its affiliates, Meridian Oil Trading, Inc., Meridian Oil Production, Inc., Southland Royalty Company and/or El Paso Production Company, credit such minority owners with the sales price received against the asserted cost of production and marketing, and remit the remainder to each operating owner. As a result, the question of marketing was academic, since the operator handled it as noted above. Thus, those who had signed the JOA as amended with its balancing statement contract had no cause to complain about balancing, since there was no balancing. Except for the entitlement of Olivia M. Cordova, which constitutes a 28 33% operating interest that, for all I know, may now be marketed by Energen, the sole change that has physically taken place since each operating interest owner was left to market his or her gas is that of Energen's accounting systems. As before, it continues to produce and market the gas of the minority owners, but is now by its accounting procedure treating gas to which minority owners are entitled as belonging to Energen, billing the minority owners for producing such gas, and substituting MCF credits for money.

The three elements of a cohesive contract are present; (1) the JOA for the Martinez Well No. 1 is on a standardized contract, namely, a copyrighted American Association of Petroleum Landmen Form 610-1982-Model Form Operating Agreement; (2) as the owner of 50% of the operating interest, Energen cannot be removed as operator, and therefore enjoys a superior bargaining position because no owner of a minority operating interest could have avoided entering into the JOA if it wanted to do business with the then operator, Union Texas Petroleum Corporation; and (3) any operating interest owner could take or leave the JOA if it wanted to do business with Union Texas Petroleum, and its successors, of which Energen is one.

Those owners of operating interests on Martinez No. 1 who might have signed the JOA, and other owners of oil and gas wells operated by Energen in New Mexico, have entered into adhesion agreements that are unenforceable, thus enabling them in a class action to prove a conversion of the oil and gas sold by Energen in excess of its real costs of producing and marketing.

Is the JOA, and in particular, the so-called attached Gas Balancing Agreement, unconscionable and therefore not enforceable? In my previous correspondence, I detailed how it was unfair to the holders of working interests who signed it, thus meeting the requirements of unconscionability defined by the New Mexico Court of Appeals in *Bowlin's, Inc. v. Ramsey Oil Co., Inc.*, 99 N.M. 660 (App.), 662 P.2d 661, cert. Denied by Supreme Court at 99 N.M. 644. The Court there defined the basic test as "whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract." Union Texas Petroleum knew at the time of entering into the JOA for the Martinez No. 1 Well, and the other oil and gas wells in New Mexico, that, if it elected not to market, as it did previously, the oil and gas to which minority owners were entitled, they would be saddled with out-of-pocket expenses and no income by which to pay for the gas and oil produced but would be required to accept MCF imbalance credits.

If the operator owning 50% of the operating interest had not ceased to market the entitlements of the fragments of the remaining 50% owners of the gas, in the instance of Martinez No. 1, the Gas Balancing Agreement would not have come into effect and place each such minority owner in the impossible position of being forced by the Gas Balancing Agreement to be charged with paying in cash Energen's supposed cost of production while receiving in return a non-cash item, namely, a credit for gas to be paid, if ever, from future production of Martinez No. 1 well.

The way in which Energen has managed the production of gas, contrary to the manner that the operators managed it by marketing the entitlement of gas of minority owners, belies the pious and posturing recitation in the Gas Balancing Agreement that recited that:

> Accordingly, this agreement is intended for use as an operating procedure to assist in bringing the gas accounts of the parties into balance as soon as possible and to assist in maintaining such account in balance.

Knowing that the minority owners of operating interests that could never, as a practical matter, market their gas entitlements except through Energen, the latter has, in the case of Martinez No. 1 Well, and, I suspect, of numerous other wells throughout New Mexico, simply piled up credits. This is indeed one-sided, that is, unconscionable.

In the case of Martinez No. 1 Well, the accumulation of credits to minority owners reached the aggregate of 22,611 MCF's at the end of June, 2002, according to figures provided by Energen. If the same imbalances exist throughout Energen's operations in New Mexico, the claims of the minority owners in a class action should be enormous. At this time, only Energen knows the size of such an aggregate class claim. With the quoted price per MCF hovering around $4.00 per MCF, I would venture to say the sum is in the millions of dollars.

Needless to say, the liabilities of Energen thus existing might well have a devastating effect upon, and require filing a restatement of, lower past gross or net income of Energen with the SEC and possibly other governmental agencies.

If Energen's legal counsel is consulted, I believe they also will be inclined to think the pending offer has not taken into account Energen's exposure to far greater perils than are commensurate with such offer.

Accordingly, Energen's offer necessarily, and hereby, is rejected.

Sincerely yours,

Joseph A. Sommer

Joseph A. Sommer

JAS:mp