

- a) Total asserts that its interest in the proposed spacing unit is subject to a Farmout Agreement (hereinafter referred to as the GLA-46 Agreement) dated November 27, 1951, between Brookhaven Oil Company and San Juan Production Company, predecessors in interest to Total and Burlington, respectively. Total further asserts that under the provisions of the GLA-46 Agreement, its operating rights to the subject acreage are already effectively transferred to Burlington without restriction as to well depth (i.e. Total has already agreed to participate) and that a carried interest provision provides that Total's share of drilling costs are to be recovered out of one-half of Total's share of production;
- b) On April 22, 1997, Burlington sent a proposal letter and AFE for the Marcotte Well No. 2 to Total seeking its voluntary participation in the drilling of the 14,000 foot Pennsylvanian test;
- c) Total responded to Burlington's well proposal and AFE by informing Burlington that it elects to participate in the drilling of the Marcotte Well No. 2 under the terms of the GLA-46 Agreement; and,
- d) Burlington responded to Total by stating that it regarded the GLA-46 Agreement as being inapplicable to depths below the Mesaverde formation and that it regarded Total's response as indicating that it was not participating in the drilling of the Marcotte Well No. 2.

(15) Total presented evidence and testimony to support its position that the GLA-46 Agreement should apply to the Marcotte Well No. 2 and that it has voluntarily agreed to participate in the drilling of the well pursuant to its execution of Burlington's well proposal under the terms of the GLA-46 Agreement.

(16) Total further testified that in its opinion, Burlington has not negotiated in "good faith", and that Burlington's landman threatened to create administrative obstacles and difficulties in other properties where Burlington and Total are joint interest owners, including certain offshore properties.

(17) Burlington presented no evidence or testimony with regards to the GLA-46 Agreement, but reiterated its position that this agreement does not apply to "deep gas wells" within the San Juan Basin. Burlington did testify however, that of the six GLA-46 owners, only Total has taken the position that the GLA-46 Agreement covers the "deep gas" while all of the other owners have agreed to either sign a new operating agreement or to farmout their interest for the "deep gas".

EXHIBIT

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