

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF PREMIER OIL AND GAS,)
INC., TO HAVE A WELLBORE OF ITS INCLUDED)
IN THE AVALON (DELAWARE) UNIT OPERATED)
BY EXXON COMPANY, USA, EDDY COUNTY,)
NEW MEXICO)

CASE NO. 11,838

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
WILLIAM J. LEMAY, COMMISSIONER
JAMI BAILEY, COMMISSIONER

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Oil Conservation Division

April 9th, 1998

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, April 9th, 1998, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Commission Hearing
 CASE NO. 11,838

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:36 a.m.:

3 CHAIRMAN WROTENBERY: Okay, the next case on our
4 agenda is Case 11,838. This is the Application of Premier
5 Oil and Gas, Inc., to have a wellbore of its included in
6 the Avalon (Delaware) Unit operated by Exxon Company, USA,
7 in Eddy County, New Mexico.

8 We're here today upon the Application of Premier
9 Oil and Gas, Inc., to hear this case *de novo* pursuant to
10 the provisions of Rule 1220, and as I understand it, this
11 hearing will be limited today to oral arguments regarding
12 the dismissal of the case at the Division level.

13 Who do we have here making appearances?

14 MR. KELLAHIN: Yes, ma'am, I'm Tom Kellahin of
15 the Santa Fe law firm of Kellahin and Kellahin, appearing
16 on behalf of the Applicant, Premier Oil and Gas.

17 MR. BRUCE: Commissioner Wrotenbery, Jim Bruce of
18 Santa Fe, representing Exxon Corporation.

19 MR. CARR: May it please the Commission, my name
20 is William F. Carr with the Santa Fe law firm Campbell,
21 Carr, Berge and Sheridan. We represent Yates Petroleum
22 Corporation in this matter.

23 CHAIRMAN WROTENBERY: Okay. With that, I
24 understand from talking to Lyn a little bit earlier this
25 morning that we don't have any particular time limits or

1 special format for this type of oral argument, so at this
2 point, Tom, if you'd like to proceed.

3 MR. KELLAHIN: Thank you.

4 This case represents an opportunity for the
5 Commission to give guidance to us in the industry that
6 present statutory unitization cases before you.

7 There have been, since the Act was adopted,
8 relatively few statutory unitization cases. And even fewer
9 of those have resulted in contested disputes resolved
10 either at the Division level or at the Commission level.

11 You had on your docket this morning three such
12 cases.

13 There is the Premier case, which we'll describe
14 in a moment, and there was continued from the docket today
15 two other cases.

16 There was a case filed by Gillespie and Crow to
17 modify a statutory unitization order that had been issued
18 by the Division to make changes in the West Lovington-
19 Strawn Unit.

20 In addition, there was another case involving
21 that same unit, the West Lovington-Strawn Unit. It was an
22 Application by Yates and Hanley for an amendment to that
23 statutory unitization Order, seeking to expand it in a
24 remarkably different way than Gillespie and Crow were
25 proposing.

1 I was involved in the Hanley cases and Gillespie-
2 Crow cases, and when that case was originally decided as a
3 statutory unit, I was absolutely convinced that we were
4 done with that deal. I would have told you then that we
5 had adjudicated a number of those issues and they were
6 resolved.

7 By the actions of Mr. Carr and Mr. Bruce as
8 attorneys for the respective parties in those cases, I have
9 come to re-examine the Statutory Unitization Act, and quite
10 frankly, I'm not sure we're ever done with the management
11 and the supervision by this Commission pursuant to
12 statutory unitization, and let me explain why.

13 There are few instances in your jurisdiction
14 where you have the police powers of the State of New Mexico
15 to involuntarily commit interest owners to involvement in a
16 statutory unit over their objection.

17 One instance is compulsory pooling. We are well
18 familiar with that process where parties are involuntarily
19 committed to a spacing unit.

20 In a large global context, statutory unitization
21 is the same kind of critter, except we're compelling
22 someone to participate in a statutory unit that's more
23 large in scope and process.

24 And when we examine what the Commission does
25 under statutory unitization and exercising the police

1 powers of the state, there are some things in the Statute
2 that I had not paid attention to earlier, and they involve
3 the continuing jurisdiction of this agency concerning
4 issues of dispute over those statutory units. In addition,
5 there is statutory authority for you to exercise that
6 continuing jurisdiction.

7 I have a presentation so that I can refresh your
8 recollection about what we were doing back in December of
9 1995 when Exxon and Yates came before you asking to have
10 this particular Avalon Unit statutorily unitized, and if
11 you'll give me a moment I'll set up the displays and we can
12 look at the picture.

13 CHAIRMAN WROTENBERY: I certainly need to have my
14 memory refreshed.

15 MR. LEMAY: You have a memory?

16 (Laughter)

17 MR. KELLAHIN: I want to distribute to the
18 Commission and the participants a briefing folder I've put
19 together so I can help you visualize our position.

20 In the binder, in the pocket part, there is a
21 foldout which will help you visualize, I think, the basic
22 pattern of the ownership in the unit. I have put a colored
23 copy up on the large display board.

24 Exxon's project was a plan which included the
25 concept of adding some buffer tracts around an original

1 project area defined for waterflood purposes.

2 The Premier tracts are identified on the handout
3 in the shaded area. They are identified with, in addition
4 to well symbols involved, the FV-3 and the FV-1.

5 Behind Tab Number 2, I think it is, you'll find
6 some colored -- I'm sorry, you have -- I believe it's Tab
7 Number 1 that's got the color displays. There's a display
8 numbered Exxon Exhibit 25. This is the waterflood project.
9 This is what they were originally trying to do.

10 You can see the waterflood pattern with the
11 injection wells shown with the arrows, and it is a slightly
12 irregular plan where they were picking up existing
13 wellbores they could utilize for injection and for
14 production, and it had this particular configuration that
15 you can see on the display.

16 Their plan was to also have committed to the unit
17 during waterflood project phase a buffer area. Surrounding
18 the entire unit is a series of linked 40-acre tracts which
19 constitute what has been described as the buffer area.

20 In the buffer area there are also some well
21 location symbols, which were going to be utilized once the
22 project was converted into a CO₂ project.

23 There's also in the binder a copy of Exxon
24 Exhibit 28. This is what Exxon planned to do with the unit
25 at the point in time that the project ever was converted to

1 carbon dioxide flooding.

2 The testimony at the original hearing was that
3 the buffer tracts, including Premier's tract along that
4 section, were not going to receive any benefit from
5 waterflooding, nor was the unit going to derive any benefit
6 from the utilization of the buffer tracts for waterflooding
7 purposes.

8 What the plan was going to be was that
9 eventually, at some unforeseeable time in the future, when
10 the project was ever determined to be feasible for
11 waterflood purposes, Exxon would then expand the project
12 area and include those buffer tracts and the wells
13 involved.

14 The issue for you this morning is whether or not
15 Premier gets a hearing with regards to the VF-1 (*sic*) well.

16 Now, the VF-1 well is located at a position
17 that's comparable to this position on the waterflood/CO₂
18 project map. You can see at some point in time in the
19 future this location is going to be utilized as a producing
20 well for the CO₂ project.

21 In terms of the present case, this case was filed
22 back in the summer of 1997. You can see from the briefing
23 book I have organized it in such a way that the first
24 information you have in front of you is Premier's response
25 to the Motion to Dismiss.

1 Premier asked to have the VF-1 well included as
2 an amendment to the statutory unitization. That
3 application was met by a Motion to Dismiss, filed by Exxon
4 and Yates.

5 In response to the Motion to Dismiss, I have
6 prepared for Premier this response that you have in front
7 of you.

8 Now, if you have not had an opportunity to review
9 this or read it, it represents my best effort then and best
10 effort now to explain to you what Premier's position was
11 with regards to this addition of this wellbore.

12 This matter has been pending before the
13 Commission for some time, and then finally in February, I
14 think it is, Exxon and Yates have filed supplemental briefs
15 with you just prior to one of those hearings, and I asked
16 the matter be continued to give me a chance to read those
17 briefs.

18 I found nothing in the material they provided you
19 that caused me to want to change my position or opinions
20 that I've described for you in writing in terms of our
21 response, and that's what you have before you.

22 In 1995, the Commission was dealing with the
23 issue of compelling these tracts to be added into the unit.
24 Premier is a Roswell company, composed of Ken Jones and his
25 mom. They were the only opponents to the inclusion of

1 these tracts. Ken desired to have the tracts left out, and
2 that was what we litigated before the Commission back in
3 December of 1995, was the inclusion of the tracts.

4 The Commission has decided to include those
5 tracts. Ken argued that it was premature to have those
6 tracts included in a waterflood for which he received no
7 benefit, and that it was too speculative to have them
8 included in the CO₂ project for which it had not yet been
9 determined whether it was going to be feasible or
10 practicable. He lost on those issues.

11 When the Division acted on this case and
12 dismissed Ken's application, and we filed for a *de novo*
13 case before the Commission, one of the issues was whether
14 or not there was an express statutory authority for the
15 Division to act on a statutory unit case that had been
16 cited by it.

17 And in Yates' and Exxon's brief, they referred
18 to the *Armijo vs. Save 'N Gain* case. And they cited "for
19 the proposition that in New Mexico, in the absence of an
20 express grant of authority, the power of an administrative
21 agency to reconsider a final decision exists only where the
22 statutory provisions creating the agency indicate a
23 legislative intent to permit the agency to carry into
24 effect such power."

25 Premier agrees with that case and that summary.

1 What we find in looking at Exxon's and Yates' brief is,
2 they stop short of telling you where you, in fact, have
3 that specific authority. To aid you, you'll find behind
4 Exhibit Tab Number 2 a copy of the Statutory Unitization
5 Act.

6 Again, in exercising the police powers of the
7 State of New Mexico, there are at least three of these
8 subdivisions in the Act, one of which is of particular
9 importance.

10 The first one is 70-7-3, and it talks about
11 vesting the Division with the jurisdiction, authority and
12 the power to do, make and enforce such orders and such
13 things necessary to carry out and effectuate the purposes
14 of the Act.

15 And then in 70-7-7, it talks about the order
16 providing for unitizations, *et cetera*, shall be reasonable
17 and equitable, and under J it says, such additional
18 provisions as may be appropriate.

19 But what's important to me, and I hope to you, is
20 70-7-9. If you turn over to page 66 of the Act, you'll see
21 what they're saying. It says "Amendment of plan of
22 unitization."

23 And when you read the statutory authority that
24 you have for issuing orders that provide amendments to
25 prior orders, I cannot read this to limit your action to

1 only those instances where you're adding additional acreage
2 to an existing unit. I find no such limitation in this Act
3 that would preclude you from resolving disputes as we now
4 have with Exxon concerning the addition of the FV-3 well.

5 If it is to be read as a limitation so that you
6 exercise only your authority in those instances where the
7 amendment of the order is to add or subtract acreage, if
8 that's how you read it, then we lose.

9 If you read it, as I do, as to be broader than
10 that, then you give Ken Jones and his mom a forum to
11 resolve and hear this dispute, under statutory -- under a
12 voluntary waterflood, without the jurisdiction of the
13 Commission. My recourse in resolving such a dispute is
14 going to be to go to District Court.

15 However, when you've used your police powers
16 under statutory unitization, my position is, primary
17 jurisdiction lies with this agency, and my first recourse
18 is with you to resolve a dispute as such we have with Exxon
19 over this wellbore.

20 Behind Tab 3 is another issue. My opponents
21 argue that having issued an order, it was an adjudication
22 as to the issues we actually discussed -- having the
23 acreage, distribution of hydrocarbon pore volume,
24 participation formulas -- that they say we adjudicated
25 those issues, and we also adjudicated anything -- other

1 possible thing we might have thought of or brought before
2 you.

3 My position is to the contrary. I say that the
4 statute gives you continuing jurisdiction, and the
5 Commission, in fact, has admitted, as my opponents have,
6 that you retain jurisdiction to resolve such issues as I'm
7 about to describe.

8 For example, behind Tab 3 is a copy of the
9 Commission counsel's brief before the New Mexico Supreme
10 Court. As you may know, Premier has appealed this case.
11 It's now pending decision before the New Mexico Supreme
12 Court. And in the brief, Ms. Hebert refers to, on page 11,
13 that the Commission's "Jurisdiction of this cause is
14 retained for entry of such further orders as the Commission
15 may deem necessary." And she describes it as saying, "In
16 this manner any unanticipated development...can be taken
17 into consideration...at a later date..." by the Commission.

18 My position is, this is an unanticipated
19 development for which your counsel has admitted you have
20 jurisdiction.

21 In addition, my position is, Yates has admitted
22 this as well. If you flip to the next page, you'll find
23 Yates' Motion to Dismiss, filed in August of 1997. And
24 turning to page 3, which I've copied and highlighted for
25 you, Mr. Carr cites an Illinois case from 1936 and says in

1 reliance on that case that "The Division can only reopen a
2 case to consider an new [sic] issue within its jurisdiction
3 that was not decided in the original hearing".

4 If you turn to the brief that they filed here
5 last month, you'll find on page 4, in the third line, they
6 admit that Premier is raising a new issue. It's
7 highlighted for you on the third -- fourth line down on
8 page 4. I take that as an admission that they recognize
9 that this Commission made no conscious decision to talk
10 about the exclusion of the FV-1 wellbore, and it's a new
11 issue.

12 If, in fact, it's a new issue, then I'm entitled
13 to an evidentiary hearing so that we can talk about, either
14 to you or one of your Hearing Examiners, whether it's
15 arbitrary for Exxon to exclude this wellbore, or whether it
16 is not.

17 If you'll look behind Tab 4, we can talk about
18 whether the Commission made a conscious choice to do
19 anything about excluding this wellbore. Here is the Order.
20 It goes on for 19 pages. It is detailed, it is intricate,
21 it is involved, it highlights all the disputed issues, and
22 there is not a specific finding anywhere in that Order
23 where this Commission dealt with the exclusion of the FV
24 Number 1 well. It is simply not in there.

25 The only way you can reach a conclusion that it

1 was somehow adjudicated is to follow the analogy that Exxon
2 and Yates are advancing. They are saying that when this
3 Order -- by boilerplate, quite frankly -- incorporated by
4 reference the unit operating agreement, that that was a
5 conscious decision by you to approve the inclusion of
6 certain specified listed wellbores, and thereby, by
7 omission, a conscious decision to exclude the FV-1.

8 Let's see how we went about that.

9 This is the 500-and-something pages of
10 transcript. These are the two Exxon technical books.
11 These are the Yates exhibits. This is the unit operating
12 agreement. There's the unit agreement. And this stack and
13 that stack, that's the case.

14 Buried in this pile, Exhibit 3, which is 128
15 pages, somewhere in here in Exhibit "H", is the list of
16 wellbores.

17 If you'll turn behind Exhibit 5, Tab 5, let's
18 talk about the opportunity for the Commission to have made
19 a conscious decision about the wellbore list. I've copied
20 for you out of the transcript the cover sheet, and I've
21 turned, first of all, your attention to page 29.

22 This is the examination by Mr. Bruce of Mr.
23 Thomas, their expert witness, who is sponsoring Exhibit 3,
24 which is the unit operating agreement. And he asks him to
25 identify it, which he does. Exhibit 2 is the unit

1 agreement. Bottom of the page, he's talking about the
2 operating agreement, Exhibit 3, and goes over to page 30,
3 and it is nothing more than a perfunctory identification of
4 that 128-page document. There is no discussion in there
5 about the wellbore issue.

6 When you take time to take apart the operating
7 agreement, which I've done for you -- If you'll turn the
8 page you'll find the cover sheet in the presentation book;
9 it says Exhibit 3, the operating agreement. And as you
10 work your way through the index, you come to various
11 articles that deal with the wellbore list.

12 You can find -- it's under Article 2, it's listed
13 as 2.1.5, it says Exhibit "H". It says nothing more than
14 that; it identifies it as an exhibit to the document.

15 If you turn beyond that and find page 10 of the
16 operating agreement, you get to Article 10, and it talks
17 about the wellbore. And it simply says nothing more than
18 Exhibit "H" may be amended to add or to delete wells.

19 Well, we've gone to Exxon and we've asked them to
20 add the FV-1 wellbore to the unit, and they have refused.

21 So the document itself has a provision in it for
22 amending, to add and subtract wells. The fact that the
23 FV-1 wellbore is not on the list was taken of no
24 consequence to Ken Jones. I'm not sure he even consciously
25 thought about it.

1 And we would like to have an evidentiary hearing,
2 because at that hearing, then, he could come and testify
3 why his point of reference was a presumption, a reasonable
4 and fair presumption that the FV-1 well was going to be
5 included in the unit.

6 We get to that point by looking behind Exhibit 6.
7 Tab 6 is what I characterize an unanticipated development
8 concerning this wellbore.

9 Prior to the Commission hearing in December of
10 1995, if you allow us to have a hearing, Ken Jones will
11 come with his mom and testify that they assume that both
12 their wellbores would be included in the unit. That was
13 their presumption prior to coming to the hearing. At that
14 point in time the FV-1 well was a -- had a small gas
15 production in the Bone Springs. It was still producing.

16 But his assumption, with prior communications
17 with Exxon, is that it would be included. He continued
18 with that assumption, in which Terry Payne at the hearing
19 before you in December of 1995 included the two wellbores
20 in his technical analysis. In fact, the FV-1 well was
21 extensively used as a data point to determine pore volume.

22 And then in November of 1995, which I've included
23 behind this little summary sheet, is the fact that Exxon's
24 advised Premier to come forward with wellbores.

25 When you look at the specifics of the statutory

1 unitization Order, you find some discussion about costing
2 and valuing wellbores, but that really is an issue of
3 unimportance to this matter. The valuation is not being
4 disputed, and how you go about testing the well is not
5 being disputed. What we're talking about is the exclusion
6 of the well.

7 After the Commission hearing, then in March of
8 1997, Premier formally requests Exxon to include the FV-1
9 well in the unit. The problem with this is that the voting
10 procedures absolutely preclude us from having any chance
11 for inclusion. Exxon controls 72 percent; they're opposed
12 to inclusion. Yates has got a sufficient percentage to
13 oppose us, which they do.

14 And so if we follow what the agreement says for
15 inclusion, there's no way to get it included unless you
16 take jurisdiction over and decide that the exclusion is
17 arbitrary. We simply want a hearing on that issue of
18 whether or not it's arbitrary and whether or not this
19 Commission will use its jurisdiction authority to add that
20 wellbore to the list of wellbores.

21 We get to that point by looking at the Exhibit B,
22 which is the Exxon letter to Ken Jones of April 24th, 1997,
23 and I've highlighted for you their written response to him
24 which triggered our Application to you.

25 It says, "With regard to the inclusion of" the

1 "FV-1 well, the wells that are to be included in the Unit
2 are listed on Exhibit 'H'." It says, "Since it does not
3 appear that the FV-1 well would add any value to the Unit,
4 I do not believe that working interest owners would approve
5 its acquisition at this time."

6 So therein lies our dispute, is, one, whether the
7 Commission has jurisdiction at this point in time to simply
8 do something about these disputes, or whether or not your
9 decision back in December of 1995 simply precluded us from
10 having this matter dealt for -- in front of you.

11 We don't think it matters that the FV-1 well was
12 not on the list. I think it simply misdirects your
13 attention from what is a more serious problem, is, when you
14 approve these statutory unitizations, are you now assigning
15 to that operator such extensive control and authority that
16 matters like this are now beyond your jurisdiction to do
17 anything about? Does the approval of this unit agreement
18 by reference amount to a conscious decision by the
19 Commission that this wellbore can only be added at the
20 absolute and sole discretion of Exxon?

21 They take the position that it adds no value, but
22 we would like to have a hearing to have them explain to us
23 why they can take the tract into the unit, and yet the
24 wellbore that they propose to have located on this very
25 tract to aid them in the CO₂ project phase cannot be the

1 FV-1 well.

2 Mr. Bruce in his response says, Well, the
3 wellbore is 990 from the east boundary, and somehow that is
4 to make a difference. Well, if it is, let's bring his
5 experts in here and have them talk about that and not hear
6 from a lawyer; let's see what the engineer makes sense of
7 that. The FV-3 well is only 330 from the boundary. It got
8 in.

9 So I just want a chance to talk to somebody that
10 can be an impartial tribunal to decide this issue and see
11 if it comes in or not. I'm most uncomfortable in taking
12 the solution that Exxon gives us, which is, you can't have
13 it in.

14 We think under the case law of New Mexico, the
15 statutory authority of this Commission and the orders and
16 judgments made by this agency, that you have, in fact, the
17 authority to give us a hearing, and we've described to you
18 behind Exhibit Tab 7 the kinds of things that we would like
19 to inquire into about why this wellbore cannot now be added
20 to a project for a CO₂ phase that it has not even begun.

21 Thank you, Madame Chairman. That concludes my
22 position in this matter.

23 CHAIRMAN WROTENBERY: Thank you, Mr. Kellahin.
24 Any questions?

25 MR. LEMAY: Is the form such we can ask the

1 lawyers a question?

2 MS. HEBERT: Sure.

3 MR. LEMAY: Tom, why didn't Premier raise the
4 issue of the FV-1 wellbore at the original hearings? Are
5 you saying that they just kind of overlooked it, or they
6 assumed it was going to be in, even though it wasn't in --
7 specifically listed in the operating agreement?

8 MR. KELLAHIN: Well, let me answer you in two
9 steps.

10 If your decision is based upon whether it could
11 have been raised, and because it wasn't we can't have a
12 hearing, well, then, I lose, because it could have been
13 raised. It's there, someone could find it.

14 Ken's focus was not on the wellbore list. His
15 assumptions with Exxon was that it would be added. He
16 didn't pay any attention to the fact that it wasn't on
17 there. His point of view at that Commission hearing was, I
18 don't want my tracts in here at all, and that was his
19 attention.

20 And his conduct with Exxon was such that he was
21 led to believe that both his wellbores were going in, so he
22 didn't think it was disputed.

23 MR. LEMAY: But you're not saying he couldn't
24 have raised the issue had he felt strongly about it at the
25 time?

1 MR. KELLAHIN: No, I'm not saying that.

2 MR. LEMAY: Other issues were raised, certainly.
3 That could have been raised.

4 MR. KELLAHIN: He could have raised that issue,
5 yes, sir. And the reason he didn't raise it is, he was
6 under the presumption that it was going to be added anyway.
7 So he didn't think it was something to fight over, because
8 there was no fight.

9 MR. LEMAY: How can you -- What kind of a
10 presumption is that if it's not in the operating agreement
11 to take it in? I mean, how -- either didn't read the
12 operating agreement, or he made a mistake or --

13 MR. KELLAHIN: Well, it could be either of -- any
14 of those things. And if that's significant to you, then he
15 doesn't get a hearing because it was there to find and he
16 didn't find it. In hindsight, now, it's an issue that
17 could have been raised. And if you believe that he should
18 have then, then he can't do it now.

19 MR. LEMAY: That's all I have. Thank you.

20 CHAIRMAN WROTENBERY: I guess just in following
21 up a little bit on Bill's question, I noticed in the
22 Commission's decision -- this was what you had provided in
23 Tab 4, the Commission's Order in the unitization case --
24 there is, on page 6, some discussion about Premier's FV-3.
25 Could you explain -- I mean, obviously the specific

1 wellbore, FV-3, was discussed at some length in the hearing
2 on the unitization.

3 MR. KELLAHIN: Yes, ma'am.

4 CHAIRMAN WROTENBERY: If that was the case, why
5 was there no discussion of the FV-1?

6 MR. KELLAHIN: Okay, the FV-3 well was a critical
7 piece of data for the geologists in defining the vertical
8 limits of the pay section in relation to the Yates well to
9 the south. So they were focused on the data that wellbore
10 represented in calculating pore volume, and they were not
11 focusing on whether the wellbore was going to be physically
12 in or out of the unit in terms of the CO₂ project.

13 So the reference here is to the technical data
14 about whether or not the activity conducted in the FV-3
15 well was an indication that it had potential Delaware
16 production. The FV-3 well had been re-entered prior to the
17 hearing in an effort to see if they could actually produce
18 oil out of the Delaware.

19 They never got to the disputed zone, and so they
20 had -- each side had to go back and look at the technical
21 data, and there was some indication when Getty had this
22 wellbore, that there was a waterflow. And if you took one
23 strategy, the waterflow was attributed to the Delaware,
24 which meant that that particular 40-acre tract didn't have
25 contributing pore volume that was hydrocarbon-bearing, and

1 therefore you could exclude or give less value to the
2 Premier tract.

3 The other argument was, the waterflow had come
4 from a different source.

5 And that's the nature of the dispute. It had
6 nothing to do with whether the wellbore was in or out.

7 COMMISSIONER BAILEY: I do have a question.

8 Behind Tab 5, the operating agreement --

9 MR. KELLAHIN: Yes, ma'am.

10 COMMISSIONER BAILEY: -- page 12, Article 11,
11 Wellbores --

12 MR. KELLAHIN: Yes.

13 COMMISSIONER BAILEY: -- does the FV-1 meet all,
14 each and every, criteria for use of a well?

15 MR. KELLAHIN: Yes, ma'am. Back in -- I believe
16 it was September of last year, recognizing that this was a
17 dispute with Exxon, Exxon still afforded Ken the
18 opportunity to have both the FV-1 and the FV-3 tested for
19 mechanical integrity. They both technically qualified
20 under this provision. So they meet the standards for
21 inclusion.

22 MS. HEBERT: May I ask --

23 CHAIRMAN WROTENBERY: Sure.

24 MS. HEBERT: Mr. Kellahin --

25 MR. KELLAHIN: Yes, ma'am.

1 MS. HEBERT: -- is your answer the same as the
2 Commissioner's question as to why this wasn't brought up in
3 your Motion for Rehearing in the Premier case?

4 MR. KELLAHIN: Yes, ma'am. That's right.

5 MS. HEBERT: And when did you file this first
6 amended Application? I couldn't find it anywhere.

7 MR. KELLAHIN: The first amended Application was
8 filed as an exhibit to our response to the Motion to
9 Dismiss, and it will appear as, I think, Exhibit -- It
10 appears as Exhibit D to the brief in response to the Motion
11 to Dismiss, and it's also -- a separate copy is attached
12 behind Exhibit Tab 7 to the briefing book.

13 MS. HEBERT: Thank you.

14 CHAIRMAN WROTENBERY: Anything else, Mr.
15 Kellahin?

16 Thank you, Mr. Kellahin.

17 Mr. Bruce?

18 MR. BRUCE: May it please the Commission, I'm
19 going to discuss the -- primarily the factual issues. Mr.
20 Carr will discuss the legal principles involved in our
21 position.

22 For your benefit, Commissioner Wrotenbery, I'll
23 go into just a couple of minutes of background on this
24 unit.

25 My written argument starts off for the first 20

1 seconds just like Mr. Kellahin's did, then we diverge
2 substantially.

3 As Tom said, in New Mexico you can force pool
4 interest owners into a particular well unit. Under our
5 compulsory pooling statutes, under the Statutory
6 Unitization Act, you can also force interest owners into a
7 unit covering all or part of a pool, provided that 75
8 percent of the working interest owners and 75 percent of
9 the royalty interest owners voluntarily agree to
10 unitization.

11 That's what we're here about today, the Avalon
12 Unit.

13 As you can imagine, when you're dealing with
14 poolwide unitization, with dozens and dozens of working
15 interest and royalty interest owners, this process can take
16 quite some time. In this particular case, discussions
17 among the interest owners first began in 1991 and continued
18 for several years.

19 In 1994 through early 1995, there were numerous
20 working interest owner meetings, phone calls,
21 correspondence and other contacts discussing the shape of
22 the unit, the waterflood project, the CO₂ project and the
23 tract participation factors.

24 I don't know if I want to dig out the
25 particular -- Well, it's right on top. Exxon Exhibit 7,

1 this is merely the correspondence, and most of it is from
2 1994 and 1995. Premier was involved in these discussions.
3 Premier had numerous phone conferences with the Exxon
4 project manager.

5 In early 1995, the unit agreement and the unit
6 operating agreement were sent to Premier, as well as the
7 other interest owners, and Exxon applied for a hearing to
8 approve statutory unitization. Unitization was considered
9 by the Division at a two-day hearing in Hobbs, in June of
10 1995. It was again considered by the Commission at a two-
11 day hearing in December of 1995. Since then it's been on
12 appeal to the District Court and the Supreme Court.

13 Yet Premier now says that the issue of the FV-1
14 well's inclusion in the unit was never considered. I think
15 that's nonsense.

16 Let's look first at this plat Mr. Kellahin handed
17 out. This was part of the Exxon technical report, Exhibit
18 10.

19 Mr. Kellahin says, Hah, how could you expect
20 anyone to know everything that's in this report?

21 Go through the testimony of the engineers, and
22 there were four different engineers who testified through
23 these four hearings. They read this report in detail. So
24 did their geologists.

25 That's how -- Commissioner Wrotenbery, you asked

1 about the discussion of the FV-3 well. There was, in the
2 record, probably hours -- a couple of hours of testimony at
3 each hearing, just on the FV-3 well. Why? Because
4 somewhere in this technical report -- and there's a big
5 plat that goes along with it -- Premier was attributed -- I
6 forget the exact figure. It might have been 55 feet of pay
7 in the Delaware. That's buried somewhere in this technical
8 report. They dug that out, they contested that for hours
9 on end.

10 Furthermore, looking at this plat, you can see up
11 here in the southeast quarter of the northwest quarter of
12 Section 25 the FV-1 well. That well is 990 feet from the
13 east line of Section 25. I'll get to that in a moment, but
14 remember that number, 990 feet.

15 As far as I'm concerned, all you have to do to
16 determine whether the FV-1 well was considered is to look
17 at two or three exhibits submitted at the hearing. And one
18 is Exxon Exhibit 3, the unit operating agreement. Mr.
19 Kellahin's included certain portions of it in his
20 materials.

21 Article 10.1.1 of that agreement says, "All wells
22 listed on Exhibit 'H' and associated well equipment shall
23 be delivered..." to the unit. It lists 40 wells on mine.
24 I've highlighted the Premier FV State Well Number 3.
25 Clearly, that's the only Premier well that's listed. This

1 isn't so hard to find.

2 Premier had this document for months before the
3 Commission hearing. It had it, it read it. The document's
4 intent is clear. This well was never considered for
5 inclusion in the unit.

6 The second exhibits, Mr. Kellahin put them up on
7 the board. I've handed you -- Or, attached to Exxon's
8 supplemental Motion are the same two exhibits. On mine
9 I've noted Section 25. If you look at that, down in the
10 southeast quarter of the southeast quarter -- Exhibit 25 is
11 a map of the waterflood project -- you can see that
12 Premier's FV-3 well is listed, or is identified. It
13 certainly doesn't show the FV-1 well on there.

14 Exhibit 28, similar map for the CO₂ project. On
15 my map that I submitted to the Commission, I hand wrote on
16 there the approximate location of the FV-1 well. I wrote
17 it in because it's not on that map. It clearly wasn't
18 considered part of the CO₂ project. This map wasn't buried
19 in anything, this was handed out at the Commission hearing.
20 It wasn't attached to anything else; it was a separate
21 exhibit.

22 The reason the FV-1 well is not in the unit is
23 because it does not fit into the pattern for the CO₂ flood.
24 This issue was discussed by all three engineers who
25 testified at the hearing before the Commission on December

1 of 1995. The wells on the outside of the unit are about
2 660 feet off the east line of Section 25, or Section 36
3 immediately below that.

4 At the hearing, Premier's engineer said, Why not
5 move these wells to 990 feet? His position was that that
6 way more reserves would be attributed to Premier's tract,
7 and thus it would get a bigger participation percentage in
8 the unit.

9 That was specifically rebutted by Mr. Boneau,
10 who's sitting here today, who said you would lose injection
11 and recovery and efficiency by moving the wells the extra
12 330 feet.

13 I've cited to the record in my Motion what all of
14 the engineers testified at length about why or why not the
15 wells -- the outer ring of wells should not be 990 feet
16 away. That's why I dispute Mr. Kellahin's statement that
17 the FV-1 well is a comparable position to the well
18 placement on Exhibit 28. It is not at a comparable
19 position, and this was discussed at the hearing.

20 I mean, they were clearly aware of the FV-1 well.
21 I went and dug out Mr. Kellahin's proposed order to the
22 Commission. Page 14, paragraph 27, he specifically makes
23 reference to the FV-1 well in discussing why he thought or
24 why Premier thought that Exxon's geology and apportionment
25 of waterflood reserves was wrong. They discussed it here.

1 They knew about it.

2 In short, the FV-1 well was at issue in the
3 hearings before the Division and the Commission and cannot
4 be raised at this time. This Application should be
5 dismissed.

6 At that I would pass this on to Mr. Carr. I
7 would also ask, so that there is a record before this body,
8 that the Commission take notice of the exhibits and
9 testimony presented before the Commission in Cases 11,297
10 and 11,298, *de novo*.

11 MR. CARR: May it please the Commission, at the
12 beginning of his argument Mr. Kellahin noted that these
13 motions and your ruling in this case today provide you with
14 an opportunity to provide guidance as to how reservoirs can
15 be statutorily unitized.

16 I would also point out that your ruling on these
17 motions can also create confusion and can undermine efforts
18 to put units together under the Statutory Unitization Act.

19 I believe you know, or soon will learn, that
20 every time Mr. Kellahin comes before you, he has a pretty
21 good argument. We've come to expect that.

22 But the problem, I submit, with the argument here
23 today is that it is designed more to confuse the issue
24 presented by the Motion to Dismiss than, in fact, to
25 address it.

1 Now, Mr. Bruce has reviewed for you various bits
2 of information on the hearing, and it establishes, I
3 submit, that the FV Number 1 well was, in fact, an issue in
4 the original proceeding.

5 But I would like to focus for a minute with you
6 on the procedural aspects of this matter, because I submit,
7 and it is Yates' belief, that if proper procedures are
8 followed, it is clear that Premier cannot now raise this
9 issue and that you, this Commission, may not now consider
10 this matter.

11 And I think it's important in the midst of all of
12 these facts and everything strewn all over the floor, I
13 think it's important to, in the midst of all of this,
14 recognize that at the core there are several very simple
15 facts which will control the disposition of the Motion to
16 Dismiss. They are these:

17 First, in Order Number R-10,460-B, this
18 Commission approved the Avalon-Delaware Unit. And in your
19 findings, you determined that the proposed unit was fair.
20 I think it's Finding 27, addresses credits that are given
21 to owners for investments in wells. And you found that the
22 unit agreement and the unit operating agreement provided
23 for unitization on terms that were fair, reasonable and
24 equitable.

25 And then you incorporated by reference the unit

1 operating agreement and the unit agreement, and it
2 contained a list of unit wells, and the FV-1 well was not
3 on that list. It was not included. And it isn't something
4 that everyone forgot, that popped up just recently, because
5 as Mr. Bruce pointed out, in his proposed order Mr.
6 Kellahin makes reference to the FV-1 well. It was part of
7 the prior proceeding. It was not something that was
8 overlooked.

9 But recognizing that you once determined the
10 unitization effort was fair, now we have a new Application,
11 and we now assert that unless this well is included, well,
12 the prior Order, the unitization, is not fair to Premier.
13 And I would submit to you that you subscribe to that
14 position. Every issue that properly comes before working
15 interest owners at a working interest owner meeting can
16 become an issue brought to this Commission if you are not
17 satisfied with the Commission's original determination that
18 a unit plan is fair to the owners in the unitized land.

19 I think it's also important to keep in mind as
20 you consider this Motion the procedure path this dispute
21 has followed.

22 Following the entry of the Order, we found this
23 particular unit plan fair. Mr. Kellahin filed for Premier
24 an Application for rehearing. That was denied.

25 And at that point in time, this Order, from an

1 administrative agency point of view, became fine. And
2 under our statutory scheme it was subject, then, to review
3 only by the courts. And they took it to court. It was
4 reviewed by the District Court, and the Commission was
5 affirmed. And he appealed it to the Supreme Court, and it
6 has been briefed and it has been argued.

7 And now, 21 months after you found this unit plan
8 to be fair, confronted with what appears to be a very
9 unsuccessful appeal, Premier wants to start over. They
10 want to come back, they want to come to you.

11 And I would submit that it doesn't make any
12 difference what the evidence says at this point in time, it
13 doesn't make any difference whether the unit agreement
14 provides standards for including a well and this well was
15 not included, because the fact of the matter is, they
16 cannot now have you -- they cannot come forward with this
17 and bring this issue to you, because they simply failed to
18 exhaust their administrative remedy.

19 Now, the Oil and Gas Act contains procedures
20 which govern the appeals of Commission decisions. And the
21 key piece in this whole scheme, for our purposes today, is
22 the Application for rehearing.

23 If you, like Premier, come to the Commission and
24 you're dissatisfied with the order entered by the
25 Commission, you have 20 days to file an application for

1 rehearing.

2 And the Oil and Gas Act provides that that
3 application for rehearing shall set forth the respects in
4 which the order is deemed to be erroneous. You set out the
5 things you think are wrong when you file your application
6 for rehearing. They filed it, they did not raise this
7 issue.

8 They have raised it in the proposed order, but
9 they didn't raise it in the application for rehearing.
10 They have a right to raise it then. But as to this issue,
11 they failed to exhaust administrative remedy. They
12 participated in the hearing, they failed to raise the
13 issue, and Premier cannot bring that issue to you now.

14 Now, what is your role in this regard? Do you
15 have, as the Oil Commission, authority to reconsider at
16 this date the fairness of the Avalon-Delaware Unit? I
17 don't think there's any way you can cast this particular
18 new application as anything but a challenge to the original
19 Commission order approving the unit.

20 The fact of the matter is that in New Mexico,
21 this Commission, like other administrative agencies, has no
22 authority to reopen and reconsider a matter.

23 And I guess we are in agreement on one thing. We
24 both believe that *Armijo vs. Save 'N Gain* is the critical
25 case in defining what your role is when you try to -- are

1 asked to revisit a final order.

2 And in that case, our Court of Appeals in 1989
3 noted that you have no inherent right to reopen and
4 consider a final administrative position. It was at that
5 time that Mr. Kellahin pointed out that I dug back into
6 ancient history and cited a 1936 case. I would note that
7 some cases over time become stale, and some you continue to
8 cite because they're right.

9 And in that Illinois case, the court recognized
10 that there is a real distinction between a matter
11 reserved -- being ruled on later, and an order that has
12 been entered covering and adjudicating all matters at
13 issue.

14 And in this case, we submit you found the unit
15 was fair, and it includes everything Mr. Kellahin has
16 strewn all over the floor before you here today.

17 Now, it notes that -- *Armijo vs. Save 'N Gain*
18 notes that the only power to reconsider a final order is in
19 those circumstances where you are given authority to
20 revisit the order by statute.

21 Our statute isn't silent about whether you can
22 revisit an order. If you go to the Division and you're
23 dissatisfied, you go *de novo*, you have a *de novo* hearing
24 before the Commission. If you're dissatisfied with the
25 Commission, you file your application for rehearing. And

1 those are the only times the Division may reconsider a
2 final order, absent some new, some new fact, that wasn't
3 before you the first time around.

4 Mr. Kellahin wants to draw analogies to the
5 Gillespie-Crow matter. We all know what that is. That
6 wasn't a well in a unit agreement that we talked about, we
7 just forgot to raise in our Application for rehearing.

8 Gillespie-Crow involved a statutorily authorized
9 application to expand the unit because of new data based on
10 the drilling of its three new wells. They don't compare.
11 They have known, in fact. They've waited 21 months. You
12 do not have the authority to reopen the final Order that
13 you entered approving this unit.

14 What they're trying to do is to mount a
15 collateral attack on the prior order. A collateral attack
16 is a challenge, directly or indirectly, on an order other
17 than an attack authorized by statute. You have to have
18 change of conditions. We simply don't have that here.

19 But they go back to this argument of continuing
20 jurisdiction. They say, Well, you said you had continuing
21 jurisdiction, so you certainly can reopen and revisit the
22 issues. And I submit you can't, that's wrong.

23 Mr. Kellahin always cringes when I recite this
24 quote. It's one of my favorites. And he's not the only
25 one who always forgets. This -- We all stray from a very

1 fundamental principle, and that is, as our Supreme Court
2 announced in the *Continental* decision, the Oil Conservation
3 Commission is a creature of statute. And your powers are
4 expressly defined and limited by the Oil and Gas Act.

5 We don't just, every time something comes in,
6 treat it as if it were a brand-new world and what's fair is
7 fair. We go back to the Act and say, What are you charged
8 with doing? And the Oil and Gas Act, there is nowhere in
9 that statute, anything, which authorizes you to reopen and
10 consider a final order unless there is a new fact that is
11 now raised before you, and this fact was raised before.

12 And this principle, this finality aspect of the
13 Commission and Division orders, is important. It's
14 important to an orderly regulatory process, or if not, we'd
15 continually reopen and reconsider matters, and there would
16 be no point in the administrative process where you really
17 would know that agency review was over, and you probably
18 should take the matter to court.

19 But see, Premier ignores this aspect of finality.
20 They want you to follow them in a situation where you can
21 forever come back.

22 And I submit that if you follow Premier, many
23 cases will be like this one, an endless barrage of new
24 applications, new issues, new claims about, in this case, a
25 unit, new claims about matters that, in fact, were

1 addressed by you and decided by you in an order that you
2 determined this unit plan was fair, was reasonable and was
3 equitable, and, I submit, procedural. They cannot raise
4 this issue procedurally. You may not now reopen and
5 reconsider.

6 For that reason, Yates Petroleum Corporation asks
7 you to dismiss the Application.

8 CHAIRMAN WROTENBERY: Any questions?

9 MR. LEMAY: Yeah, one I would like each one of
10 the lawyers to answer, if they could, briefly, if possible.

11 I guess starting with you, Mr. Carr, would you
12 define, if you could, unanticipated development? What does
13 that mean to you?

14 MR. CARR: An unanticipated development is
15 something that doesn't spring from the record. In the
16 Gillespie-Crow matter an unanticipated development was the
17 drilling of two wells immediately offsetting the unit that
18 were in the reservoir. It was inconsistent with the prior
19 geologic interpretation.

20 An unanticipated development is not the fact that
21 you thought your wells should be in, you didn't raise it,
22 and 21 months later you would like to bring it back to the
23 Commission and start the process over.

24 MR. LEMAY: Mr. Bruce?

25 MR. BRUCE: I don't know that I have much to add

1 to what Bill said.

2 I think you have to look at new developments and
3 not what existed for years and years. In the hearing I
4 specifically asked Mr. Jones, the owner of Premier, about
5 the FV-1 well, and he discussed that it was producing in
6 the Bone Spring and that he had extra plans for that well.
7 So that was brought up specifically on the record.

8 MR. LEMAY: I guess what I'm getting at, it's not
9 -- and defining development with development, would that be
10 a new well, new information, a new fact, or an overlooked
11 situation? Would all those qualify, in your definition?
12 Something overlooked, would that qualify?

13 MR. BRUCE: Well, it certainly wasn't overlooked
14 by Exxon. You know, if every party -- If there was a fact
15 that no one knew of, then, you know, an old fact could be
16 an unanticipated development. But Exxon and Yates and the
17 other interest owners certainly knew of the FV-1 well out
18 there.

19 MR. CARR: This process only works if we do our
20 job when we come to you. If we can just say we overlooked
21 something and start our process over after the unit has
22 been up and running for two years, there is no finality,
23 there is no end to this process.

24 MR. LEMAY: So you would scratch overlooked as
25 far as --

1 MR. CARR: I would scratch that, absolutely.
2 Overlooked? No.

3 MR. LEMAY: Okay.

4 MR. CARR: Unknown, yes.

5 MR. LEMAY: Would you define that, if you could,
6 Tom?

7 MR. KELLAHIN: I'd be delighted to.

8 Unanticipated development, Mr. LeMay, is when
9 Exxon's project manager represents to Ken Jones that when
10 he stops using this wellbore as a Bone Springs well it can
11 be added to the unit; it's totally unanticipated when they
12 change their mind and refuse now to put it in the unit.
13 That is an unanticipated development.

14 MR. LEMAY: That may be an example in your mind,
15 but would you consider something overlooked as --
16 overlooked, a new well, new information, a new fact? Would
17 you include all of those?

18 MR. KELLAHIN: Absolutely. And it comes under
19 your continuing jurisdiction and your specific statutory
20 authority under 70-7-9 to amend these orders.

21 MR. LEMAY: So something overlooked would be an
22 unanticipated development in your definition?

23 MR. KELLAHIN: It may be expensive, it may be
24 time-consuming, it may involve effort for the Commission to
25 supervise statutory unitization cases, they may be a

1 nuisance to you. But it's an incredibly responsible thing
2 you do when you exercise the police powers of the State of
3 New Mexico and take somebody's property when they don't
4 want to be in this unit. You have continuing jurisdiction
5 to resolve these issues, and I'm sorry it may be a
6 nuisance, but we have to have some forum to resolve these.

7 CHAIRMAN WROTENBERY: Mr. Carr, did you have
8 something you wanted to add?

9 MR. CARR: You know, everyone always casts stones
10 at the lawyers because that's -- all the engineers and
11 geologists don't trust us.

12 But let me tell you that there are some legal
13 principles that come into play when you start talking about
14 representations prior to the entry of a contract.

15 The unit agreement is a contract. And the prior
16 conversations are merged into the four corners of that
17 agreement. The agreement does not represent the F-1 well.

18 And prior discussions between employees of this
19 company do not change the fact that what is in the
20 agreement is what's controlled, and those prior
21 negotiations are merged into it, any more than if anyone in
22 this room was trying to sell their house and their realtor
23 said something that was inconsistent with the terms of the
24 contract. Once the contract is signed, those prior
25 representations do not override the agreement.

1 This unit agreement defined the unit, mapped out
2 how it was going to be operated, and it identified the
3 wells that were going to be unit wells. It did not
4 identify this.

5 And prior discussions, years before, between
6 company employees, or company employees with Mr. Jones,
7 don't change the fact that it was not in, and it was
8 approved in that format, and the well is not included, it
9 wasn't included then, and they knew it. They can't raise
10 it now.

11 MR. KELLAHIN: May I respond? Very quickly.

12 CHAIRMAN WROTENBERY: Very quickly.

13 MR. KELLAHIN: The operating agreement
14 specifically allows these Schedule H wells to be amended.
15 It's not the omission originally from the list; it's the
16 circumstance that's changed where Exxon has shown a
17 willingness to add the well, pursuant at least to that
18 amendment provision, and now tells us no.

19 We're not asking you to reinvent the wheel here;
20 just force them to do what they said they would.

21 MS. HEBERT: Could I ask a question?

22 CHAIRMAN WROTENBERY: Yes, sure.

23 MS. HEBERT: Mr. Carr, could I ask you a
24 question?

25 MR. CARR: Yes.

1 MS. HEBERT: *Armijo* was a worker's compensation
2 case --

3 MR. CARR: Yes.

4 MS. HEBERT: -- and I don't think they had
5 anything to deal with like 70-7-9, and --

6 MR. CARR: -- which is?

7 MS. HEBERT: -- and that's the "Amendment of Plan
8 of Unitization".

9 MR. CARR: Yes.

10 MS. HEBERT: If Premier is just wanting to come
11 in and explain why now it's appropriate that the FV-3 well
12 be included, isn't it up to the Division and the Commission
13 to either look at what the evidence is and say, Well, no,
14 this is nothing new, and we're not going to --

15 MR. CARR: Well --

16 MS. HEBERT: -- include it, or, Yes, you've
17 brought us something new, and it does seem appropriate now.

18 MR. CARR: It does seem to me that if you do
19 that, we will have an endless parade of working interest
20 owners, dissatisfied with one determination after another,
21 to this Commission.

22 I would submit that there are certain things that
23 you approve, i.e., the fairness of the unit and the unit
24 plan, and there are other things that then are carried out
25 by the operators and the parties to these contracts.

1 I would also submit that when we look at 70-7-9,
2 the section you cited, concerning the amendment of a plan
3 of unitization, these agreements of a plan of unitization,
4 and it says "An order providing for unit operations be
5 amended by an order made by the division in the same manner
6 and subject to the same conditions as" the "original
7 order", and that before you get into that, you'd have to go
8 back to the rest of the statute and see if it was properly
9 proposed and all the conditions set forth in seventy-seven
10 point seven have been met, and I think you're stretching
11 and stepping far beyond the intent of the statute.

12 MR. BRUCE: Ms. Hebert, could I add something?

13 The provision I quoted before, Article 10.1.1,
14 does contain a provision about adding wells to Exhibit "H".
15 Now, what Premier is here saying is that it hasn't been
16 included and it now wants you to compel Exxon to include
17 it, without changing the language of the unit agreement.

18 What they're actually asking you to do is to
19 override the unit agreement that you've already found to be
20 fair and reasonable. Their Application is not termed an
21 amendment of the plan of unitization. They just want to
22 abrogate that provision of the unit operating agreement.

23 And just their Application alone is faulty,
24 because if they're going to -- What they really want is to
25 amend the unit operating agreement, and if they want to do

1 that, then I think they need to propose it to the working
2 interest owners and take procedures and the steps that Mr.
3 Carr just mentioned.

4 CHAIRMAN WROTENBERY: Mr. Kellahin, would you
5 like to take a few minutes to respond, and I'll give the
6 same opportunity to Mr. Carr and Mr. Bruce?

7 MR. KELLAHIN: I don't want to be --

8 CHAIRMAN WROTENBERY: Do you have anything to
9 add?

10 MR. KELLAHIN: No, ma'am, I don't want to be
11 repetitive about what I've argued to you. I've set forth
12 in my memorandum as best I can articulate this position in
13 writing to you. I'll respond to questions as best I can.

14 Ms. Hebert in her brief to the Supreme Court said
15 there is an opportunity to have this issue addressed as an
16 unanticipated development. I've looked at your orders, all
17 of them. I find that you always put continuing
18 jurisdiction language in there. If it's not to mean
19 something let's take it out, because it confuses me.

20 But after practicing before this Commission for
21 almost 30 years, I have come to realize something very
22 simple, that there's nothing simple, there's no case that
23 seems to be over. We revisit all of these.

24 And that's the burden and the challenge for all
25 of us, is to go back into these matters and make equity and

1 fair judgments so that these parties can have a fair
2 opportunity.

3 Statutory unitizations are very complicated,
4 they're expensive, they're unusual. We're still fleshing
5 out the details of how to manage them from a regulatory
6 point of view.

7 So what are we to do? How do we ever get this
8 issue resolved? If you have simply given Exxon a blank
9 check when you passed on this operating agreement, what am
10 I to do?

11 Thank you.

12 CHAIRMAN WROTENBERY: Mr. Carr? Mr. Bruce?

13 MR. CARR: All I would note is that I would
14 submit there is a distinction between giving an operator a
15 blank check when you've approved the unit plan and as a
16 contract it details how operations will be conducted. I
17 don't think that's what you have done, and I don't think
18 that's what statutory unitization is.

19 But I think the danger is, if you follow Mr.
20 Kellahin's line of reasoning in which you don't approve the
21 plan and authorize statutory unitization, you, in fact,
22 become co-operator of the unit, and I think that would be a
23 disaster.

24 CHAIRMAN WROTENBERY: Thank you. I think at this
25 point, then, I'll entertain a motion to close this session

1 pursuant to the provisions of the State's Open Meetings Act
2 so that the Commission can deliberate on this matter.

3 MR. LEMAY: So move.

4 COMMISSIONER BAILEY: Second.

5 CHAIRMAN WROTENBERY: Then we will go into closed
6 session here and ask the audience to step out of the room.

7 We will come back into open session at the
8 conclusion of our deliberations.

9 (Off the record at 10:48 a.m.)

10 (The following proceedings had at 11:15 a.m.)

11 CHAIRMAN WROTENBERY: We'll come back into open
12 session at this point, and I'll note for the record that
13 the only matter that the Commission discussed in our closed
14 session was the Premier Application. That's Case Number
15 11,838.

16 And at this point I'll entertain a motion.

17 MR. LEMAY: Madame Chair, I move that the
18 Commission dismiss the Application filed in Case Number
19 11,838, based on the fact that Premier did not raise the
20 FV-1 well issue at the original hearing or application for
21 rehearing, and that the Commission did approve the Avalon
22 Unit agreement at those hearings and found all elements of
23 the agreement to be fair.

24 COMMISSIONER BAILEY: I second the motion.

25 CHAIRMAN WROTENBERY: Is there any discussion on

1 the motion?

2 Not hearing any discussion, all in --

3 MS. HEBERT: Excuse me. Was it your intent that
4 it was the FV-1's omission from the unit plan --

5 MR. LEMAY: Yes.

6 MS. HEBERT: -- that could have been raised?

7 MR. LEMAY: Yeah, the fact that the FV-1 wellbore
8 issue was not raised, and therefore it was omitted.

9 Discussion of it was omitted.

10 CHAIRMAN WROTENBERY: Okay, all in favor of the
11 motion say aye.

12 COMMISSIONER BAILEY: Aye.

13 MR. LEMAY: Aye.

14 CHAIRMAN WROTENBERY: Aye.

15 Any opposed, no?

16 With that, we conclude our action on that case.

17 I will confirm in writing the Commission's action on this
18 case.

19 (Thereupon, these proceedings were concluded at
20 11:17 a.m.)

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