

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

June 10, 1954

Mr. Fletcher Catron, Attorney
P. O. Box 788
SANTA FE N M

Dear Mr. Catron:

At the request of your secretary, who told us this morning that you are out of Santa Fe for several days, we are mailing you herewith copies of order issued on this date in Case 691, with your client, United Carbon Co., Inc., as applicant.

We also enclose a copy of Order R-463 issued in Case 692 relating to amendment of Rule 404 of the Commission's Rules and Regulations, as it is felt that you and your client will also be interested in the general content of this order relating to the utilization of natural gas in the manufacture of carbon black.

Very truly yours,

R. R. Spurrier,
Secretary - Director

RRS:nr

Encl.

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OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

June 11, 1954

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New Mexico Law Library
Supreme Court Building
SANTA FE N M

Gentlemen:

We submit for your permanent official records three copies
of Oil Conservation Commission Order No. R-461-A issued on
June 10, 1954, in Case 691.

Very truly yours,

I. R. Trujillo
Office Manager

IRT:nr

Please receipt and return copy:

Received by: *Harold McDonald*

Date: *6/11/54*

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

July 7, 1954

Mr. Fletcher Catron, Attorney
P. O. Box 788
SANTA FE, NEW MEXICO

Dear Sir:

RE: OCC Case 691

For your information and that of your client, United Carbon Company, Inc., we enclose two copies of Order No. R-461-B signed by the Commission on this date in Case 691.

Very truly yours,

W. B. Macey
Chief Engineer

WBM:nr

Encl.

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OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

April 27 1954

Mr. Fletcher Catron, Attorney
Blatt Building
SANTA FE, NEW MEXICO

Dear Sir:

RE: OCC Order No. R-461

On behalf of your client, United Carbon Co., Inc., we enclose two copies of the interim order issued by the Commission in Case 691.

Very truly yours,

W. B. Macey
Chief Engineer

WBM:nr

STATE OF NEW MEXICO
COUNTY OF LEA

IN THE DISTRICT COURT

UNITED CARBON COMPANY, INC.,
(Maryland), a corporation,

Petitioner,

vs.


No. 12,011

THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

MOTION TO DISMISS

Comes now the above-named Petitioner and moves the
Court to dismiss its petition for review heretofore filed
herein.


F. A. Catron
Attorney for Petitioner
Santa Fe, New Mexico

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

October 1, 1954

Mr. Fletcher A. Catron, Esq.
Attorney at Law
Blatt Building
Santa Fe, New Mexico

Re: United Carbon Company, Inc. ,
vs.
Oil Conservation Commission
of the State of New Mexico

Dear Mr. Catron:

Enclosed is respondent's reply in this case.
The original was forwarded to the Clerk of the District Court
of Lea County for filing.

Very truly yours,

W. F. KITTS, Attorney
Oil Conservation Commission

WFK/ir
enclosure

C
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OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

October 1, 1954

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Clerk of the District Court
Lea County Court House
Lovington, New Mexico

Re: United Carbon Company, Inc.,

vs.

The Oil Conservation Commission
of the State of New Mexico

Dear Sir:

Enclosed is respondent's reply in the subject case,
which I ask you to kindly file.

Very truly yours,

W. F. KITTS, Attorney
Oil Conservation Commission

WFK/ir
Enclosure

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

UNITED CARBON COMPANY, INC.
(MARYLAND), A CORPORATION,

Petitioner

vs.

THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent

No. 12,061

REPLY

Comes now the Respondent and for its reply to the petition for review, alleges and states:

1. Respondent admits the allegations contained in paragraphs 1, 2, 4, 5, 6, 7, 8, and 9.
2. Respondent denies the allegations contained in paragraphs 3, 11, (including each of the four sub-paragraphs of said paragraph), 12, and 13.
3. For its answer to paragraph 10, respondent admits that it is the belief and contention of petition that Order No. R-461-A and Order R-461-B are both invalid, but respondent denies each and every other allegation of said paragraph, including sub-paragraphs A, B, C and D thereof.

WHEREFORE, having replied fully, respondent prays that petitioner take nothing by his petition and that the same be dismissed, with costs to be borne by the petitioner.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

MELVIN T. YOST

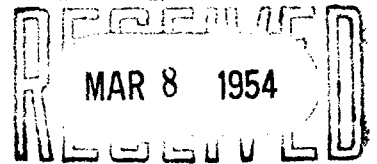
W. F. KITTS,
Attorneys for Respondent
Oil Conservation Commission of N. M.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of October, 1954,
I served a copy of the attached Reply on the defendant, by mailing
a copy thereof, postage prepaid, to Fletcher A. Catron, Attorney
at Law, Santa Fe, New Mexico, attorney for petitioner for this
cause.

W. F. KITTS

One of the attorneys for the respondent



BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PETITION
OF UNITED CARBON COMPANY, INC.,
(MARYLAND) FOR AN ORDER OF THE
COMMISSION EXEMPTING IT AND THE
PRODUCERS OF NATURAL GAS IN THE
SOUTH EUNICE POOL FROM WHOM IT
PURCHASES NATURAL GAS, FROM THE
OPERATION OF THOSE PROVISIONS OF
ORDER NO. R-368-A, CASE NO. 582,
OF THE COMMISSION AND RELATED
ORDERS, LIMITING THE PRODUCTION
OF NATURAL GAS IN THE SO-CALLED
JALCO GAS POOL.

Case No. 691

P E T I T I O N

Comes now the above-named United Carbon Company, Inc., (Maryland)
and respectfully shows the Commission:

1. That it is a corporation duly organized and existing under
and by virtue of the laws of the State of Maryland and is duly qualified
and authorized to engage and is actively engaged in business in the State
of New Mexico, to-wit, in the manufacture of carbon black in its plant
located approximately $8\frac{1}{2}$ miles south of Danice in Lea County, New Mexico,
said plant being the identical plant throughout this petition referred
to.

2. That it is in all respects here material the successor in
interest of Charles Eneu Johnson and Company, a Pennsylvania corporation,
which was at all times material herein duly qualified and authorized to
engage in business in the State of New Mexico and which company is here-
after referred to as "Johnson Company".

3. That heretofore prior to the year 1945 the said Johnson Com-
pany entered into an agreement with the Defense Plant Corporation, an
agency of the United States Government, for the erection, at the expense

of said corporation, and future operation, of a carbon black plant to be located just west of the Texas and New Mexico Railway right of way approximately $8\frac{1}{2}$ miles south of Eunice in Lea County, New Mexico. That said plant, as constructed, consists of six units of forty burning houses each, each unit having a capacity of seven million cubic feet of gas per day; a compressor plant, cooling system and gas treating plant located in the South Eunice Field; gathering lines for the transportation of the gas from its points of delivery in said field to said treater plant; a pipeline for the transportation of the gas from said treater plant to the main plant; and the necessary dwelling facilities for employees both at the main plant and the treater plant.

4. That as of February, 1945, as petitioner is informed and believes, there were 82 wells in the field designated and recognized as the "South Eunice Field" of which 7 had been shut in for economic reasons brought about in whole or in part by the then existing oil-gas ratio limitations imposed by the Commission on said field. That from the remaining wells in said field there was being flared, or otherwise wasted, in excess of 75 million cubic feet of gas per day. That at said time there was no market or demand for said gas, it being of such a character that to gather it and process it for the extraction of gasoline, or for any other purpose, would have been uneconomical.

5. That the site for said plant was chosen by reason of the fact that there was available from the wells in said South Eunice Field gas in sufficient quantity for the operation, at full capacity, of said plant as planned, for which gas there had been no demand and which was being wasted as in the next preceding paragraph set forth.

6. That the undertaking by said Johnson Company to construct said carbon black plant and to, thereafter, operate the same for the Defense Plant Corporation, was conditioned and dependent upon there being

available and being made available to it a sufficient volume of gas for the full operation of said plant for the manufacture of carbon black.

7. That on February 12th, 1945, on the petition of "The Operators of the South Eunice Field", in Case No. 59, the Oil Conservation Commission of the State of New Mexico, hereinafter referred to as the "Commission", entered its Order No. 589 providing:

"Section 1. That the limiting gas-oil ratio for the South Eunice Field provided for in the Lea County gas-oil ratio Order No. 545, Section 2(a) shall be suspended by the Commission and said field shall be placed in Section 2(b) of said Order for the express purpose of the use of gas from said field for the manufacture of carbon black.

"Section 2. Said suspension shall become operative in the following manner:

"When a carbon black plant having obtained permit from the Commission to use gas from said field for the manufacture of carbon black, has notified the Commission in writing that its facilities are ready for such use and the Commission notifies the production Office of no limiting gas-oil ratio for the purpose herein provided for. This order shall endure for the duration of the War and six months thereafter."

8. That as petitioner is informed and believes, and therefore alleges, the "Operators of the South Eunice Field", in said petition and order referred to, included all producers of oil and/or gas in said field, and said petition was filed, and said Order No. 589 was entered thereon, for the specific purposes of lessening future waste and of making available from the field designated and recognized as the "South Eunice Field", for beneficial use, the gas required for the operation of said carbon black plant as and when the same should be completed and be ready to use said gas.

9. That upon the filing of said petition of the "Operators of the South Eunice Field" notice thereof and of hearing thereon was duly given to all interested parties in the manner prescribed by law and that

pursuant to said notice a hearing was duly held at which all parties interested were given opportunity to be heard and to introduce evidence, and evidence was duly introduced to the effect, among others, that the removal of the gas-oil ratio limit in the South Eunice Field as petitioned for by the operators in said field would not result in sub-surface waste.

10. That said Order No. 589 in Case No. 59, above referred to, was made and entered upon a consideration of the testimony adduced at said hearing and upon the Commission being fully advised in the premises.

11. That thereafter, in order to comply with the provisions of Section 2 of said Order No. 589 requiring the obtaining of a permit from the Commission for the use of gas from said South Eunice Field, the said Johnson Company filed its petition with the Commission for a permit to use forty million cubic feet per day of natural gas to be obtained from the Lea County Water Company's compressor station in Lea County, New Mexico, and there was issued by the Commission to said Johnson Company a permit dated May 25, 1945, the material portion of which reads:

"The Commission hereby grants Charles Eneu Johnson and Company its permission to use up to 40 million cubic feet per day of natural gas to be obtained from the Lea County Water Company's compressor station in Lea County, New Mexico, for the period of the duration of the emergency in the production of automobile and truck tires and other products.

"This permit is granted effective this date under the authority of Sections 2 and 9 of the Oil and Gas Conservation Laws of the State of New Mexico."

12. That the natural gas to be obtained as in said permit of May 25th, 1945, prescribed, was to have its source in the said South Eunice Field.

13. That thereafter, in reliance upon said Order No. 589 in Case No. 59, and in reliance on said permit of May 25th, 1945, the Johnson Company, pursuant to its agreement with the Defense Plant Corporation, duly commenced the construction of the carbon black plant

proper and as of May, 1946, there had been expended in said construction approximately \$2,500,000.00 without said plant having been completed or having been put in operating condition.

14. That thereafter, upon the cessation of hostilities between the United States and Japan, the said Defense Plant Corporation decided to discontinue the construction of said carbon black plant as a government enterprise and construction work thereon was discontinued, whereupon negotiations were entered into by and between the Johnson Company and the United States government for the sale to and purchase by said company of said partially completed plant.

15. That at approximately the same time, as petitioner is informed and believes, the Lea County Water Company, from which the Johnson Company was originally to have obtained the gas for the operation of the plant when completed under said permit of May 25, 1945, disposed of its compressor station, by reason whereof it was no longer in a position to furnish to petitioner the gas required for the operation of said plant.

16. That the proposed purchase of said plant by the Johnson Company was wholly dependent upon assurance being first obtained that it would be able to obtain and use, through the securing of a permit from the Commission and through options for contracts with producers in said field, the required 42 million cubic feet of gas per day for the operation of said plant as planned, when completed, and that said company could not and would not have committed itself to make the investment required for the purchase of said partially completed plant and to complete the same without first having obtained a permit to use, and options to purchase, the required volume of gas from said field.

17. That thereupon the Johnson Company filed its petition with the Commission in Case No. 75, praying that there be issued to it a permit, in lieu of or as supplemental to and amendatory of the permit

dated May 25, 1945, to use up to 42 million cubic feet of natural gas per day from the South Eunice Field in Lea County, New Mexico, for the manufacture of carbon black in the plant referred to when completed.

18. That notice of the filing of said petition and of hearing thereon was duly given to all interested parties in the manner prescribed by law and, pursuant to said notice, a hearing was held by the Commission on said petition on the 8th day of May, 1946, at which all interested parties were given full opportunity to be heard and to introduce evidence. That evidence was duly introduced in said hearing to the effect that the making available and granting to the Johnson Company of the right to use the 42 million cubic feet per day of gas applied for for the manufacture of carbon black in the plant when completed would not result in waste but would greatly increase the oil recovery in the South Eunice Field and would thereby continue the life of that field.

19. That upon consideration of the testimony adduced at said hearing, and being fully advised in the premises, the Commission thereupon entered its Order No. 651 in said Case No. 75 providing:

"IT IS THEREFORE ORDERED THAT:

"SECTION 1. The Commission hereby grants Charles Eneu Johnson and Company its permission to use up to 42,000,000 cubic feet per day of natural gas from the South Eunice Pool for the purpose of manufacturing carbon black in said company's plant approximately eight and one-half miles South of Eunice, New Mexico, which permission is to become effective as and to the extent that said company's proposed facilities for the use of said gas shall become and be ready for the use thereof for the purpose indicated.

"SECTION 2. The order herein is in lieu of this Commission's permission granted to said company for the use of gas from said pool for carbon black manufacturing purposes dated May 25, 1945, and shall remain in effect for so long as and to the extent that the use of said gas shall not result in or constitute waste as defined in the Oil and Gas Conservation Laws of the State of New Mexico."

20. That contemporaneously with the making and entering of the foregoing Order No. 651 in said Case No. 75, the Commission entered its Order No. 650 in said case by which, after reciting that "the Commission having before it for consideration the testimony adduced at the hearing of said case, and being fully advised in the premises", it ordered:

"SECTION 1. No limiting gas-oil ratio shall be applied in the South Eunice Pool, inasmuch as said Pool is now primarily a gas reservoir; provided that the oil produced with the gas shall not be in excess of the current top unit allowable; and provided further that the gas produced from said Pool shall be put to beneficial use so as not to constitute waste, except as to wells in said Pool for which there are not facilities for the marketing or application to beneficial use of the gas produced therefrom. As to such wells the heretofore existing gas-oil ratio of 6,000 cubic feet shall apply.

"SECTION 2. The order herein is in lieu of Order 589.

"SECTION 3. The effective date of this order shall be July 1, 1946."

21. That in reliance on said Orders 651 and 650, thus made and entered, the Johnson Company consummated the purchase from the United States of America and the Reconstruction Finance Corporation acting by and through the War Assets Administrator, of the partially completed plant and thereafter proceeded with the construction of said plant to completion.

22. That in further reliance upon said Orders Nos. 651 and 650 said Johnson Company exercised options obtained by it and entered into contracts with the producers of natural gas in the area recognized as comprising the South Eunice Field for the purchase from them of natural gas having its source in the wells of said producers in said field, and in further reliance on said Orders, and in reliance on the contracts thus entered into, the said Johnson Company acquired rights of way for and constructed gathering lines for the purpose of transporting the natural

gas thus contracted for to a compressor and treater plant erected by it for the purpose of rendering said gas available and usable for the manufacture of carbon black. That the completion of said plant as planned, including the construction of the required gathering lines and other facilities to render the gas obtained usable for the purpose intended and to transport the same to the main plant entailed an additional expenditure of over a million, six hundred thousand dollars.

23. That by virtue of said Order No. 651 in Case No. 75 and by virtue of the completion of said carbon black plant and the construction of its appurtenant facilities in reliance on said Order and Order No. 650 entered in the same case, the said Johnson Company and petitioner as its successor in interest became vested with the right to obtain and use up to 42 million cubic feet of natural gas per day from the South Eunice Field for so long as such gas should be available from said field and should be used for the manufacture of carbon black in the plant in question.

24. That since the completion of said plant and up to February 1, 1954, the said Johnson Company and petitioner as its successor in interest, have continuously put to beneficial use the full quantity of natural gas, the use of which was granted by said Order No. 651, in the manufacture of carbon black in the plant referred to. That said use has resulted not only in eliminating waste to the extent of the volume of gas thus used, but also in increasing the revenues to producers in said field and to royalty owners, including the State of New Mexico. That, as petitioner is informed and believes, it made possible an increase in the production of oil from wells in said field and the recovery of oil which would otherwise have been lost, and prevented the premature abandonment of wells in said field which would

otherwise have been abandoned. That the construction of said plant and the use of said gas further made possible an additional industrial enterprise in the State of New Mexico with the consequent additional employment of labor and additional revenues to the State of New Mexico.

25. That on November 10th, 1953, the Commission entered its Order No. R-368-A in Case No. 582 promulgating certain "Special Rules and Regulations for the Jalco Gas Pool, Lea County, New Mexico". That said Jalco Gas Pool, as purportedly established by the Commission by its Order No. R-264 in Case No. 245, embraces and includes within its limits the field heretofore recognized as and referred to by the Commission in its Orders Nos. 651 and 650 in Case No. 75 and No. 589 in Case No. 59, as the South Eunice Field and Pool.

26. That the special rules and regulations so adopted by the Commission by its said Order No. R-368-A in Case No. 582 and the enforcement thereof as against the producers of natural gas in the South Eunice Field or Pool with whom petitioner has contracts for the furnishing of gas for use in its said carbon black plant and from whom it has been obtaining gas for use in said plant, has resulted in precluding the said producers of gas in said field from producing and furnishing to petitioner gas in such quantities as to provide petitioner with the full 42 million cubic feet of gas per day to which it has the lawful right under the Commission's Order No. 651 in Case No. 75, and has further resulted in depriving petitioner of the full 42 million cubic feet of gas per day to which it has the lawful right under the Commission's said order, notwithstanding the fact that there is available in and from the said South Eunice Field or Pool, and more specifically from the producers of gas in said field or pool with whom petitioner has existing contracts, in excess of the 42 million cubic feet of gas per day granted by said Order No. 651 and required


by petitioner for the operation of its said plant at full capacity, and by reason thereof petitioner has been compelled to shut down and discontinue the operation of one-third of its said plant.

27. That the continued enforcement of the special rules and regulations in paragraphs 2⁵ and 2⁶ above referred to as against the producers of gas in the said South Eunice Field or Pool from whom petitioner has been obtaining gas for the operation of its said plant will result:

- A. In impairing and depriving petitioner of its legal rights under the Commission's Order No. 651 in Case No. 75 in violation of the 14th Amendment to the Constitution of the United States; Section 18, Article II of the Constitution of the State of New Mexico; and Section 19, Article II of the Constitution of the State of New Mexico.
- B. In depriving petitioner of its property without due process of law, in violation of the 14th amendment to the Constitution of the United States; Section 18, Article II of the Constitution of the State of New Mexico; and Section 19, Article II of the Constitution of the State of New Mexico.
- C. In impairing the obligations of the contracts existing between petitioner and the producers of gas in the said South Eunice Field or Pool with whom it has contracts, in violation of the 14th Amendment to the Constitution of the United States; Section 18, Article II of the Constitution of the State of New Mexico; and Section 19, Article II of the Constitution of the State of New Mexico.

and D. In causing, as petitioner is informed and believes,
irreparable losses in production from the wells in said
field and irreparable loss to the producers in said field,
royalty owners, and the State of New Mexico.

WHEREFORE, petitioner prays that it be granted a hearing on its
foregoing petition and that upon such hearing the Commission enter its
order exempting and excepting the South Eunice Field or Pool from the
operation and effect of the special rules and regulations adopted by
the Commission by its said Order No. R-368-A in Case No. 582 to such
extent as may be necessary to enable petitioner to obtain from the
producers of gas in said field with whom it has existing contracts,
and to enable such producers to produce from said field and deliver
to petitioner's existing gathering lines, the full amount of 42 million
cubic feet of gas per day for use by it in the manufacture of carbon
black in the plant herein involved, and that it be given such other
and further relief as may be just and appropriate in the premises.


F. A. Catron
attorney for petitioner
Santa Fe, New Mexico

GAS SALES CONTRACT

AGREEMENT made this 1st day of October, 1946, between TEXAS PACIFIC COAL AND OIL COMPANY, a Texas corporation, First Party, herein referred to as "Seller", and CHARLES ENEU JOHNSON & COMPANY, a Pennsylvania corporation, Second Party, herein referred to as "Buyer";

W I T N E S S E T H:

WHEREAS, Seller is the owner of an oil and gas lease on the following described lands located in the South Eunice Field, Lea County, New Mexico, to-wit:

Being the lands covered by that certain oil and gas lease from the State of New Mexico, as lessor, to Texas Pacific Coal and Oil Company, as lessee, No. A-983, insofar as said lease covers and affects the following described land, to-wit:

S/2 & NW/4 Sec. 5, containing 480.5 acres, more or less;
S/2 & NE/4 Sec. 7, containing 473.06 acres, more or less;
All of Sec. 8, containing 640 acres, more or less;
N/2 & SW/4 Sec. 9, containing 480 acres, more or less;
All in Township 22 South, Range 36 East;

on which lands are located certain wells productive of natural gas.

WHEREAS, Buyer is a manufacturer of carbon black and is proceeding to complete the construction of a carbon black factory located in Sections Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20), Township Twenty-three (23) South, Range Thirty-seven (37) East, Lea County, New Mexico, and is proceeding to complete the construction of a gas desulphurizing plant located in Section Eight (8), Township Twenty-two (22) South, Range Thirty-six (36) East, Lea County, New Mexico, for the purification of gas to be used in said

carbon black factory; Buyer is also the owner of a pipeline running from a point in said South Eunice Gas field to said factory, and the parties desire to arrange for the sale of gas by Seller to Buyer to be used by Buyer in the manufacture of carbon black in said factory when completed and put in operation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Seller agrees to sell and Buyer agrees to take or pay for the hereinafter described gas produced by Seller from the lands particularly described above and from any other leases Seller may hereafter acquire in the South Eunice Field as redefined by the New Mexico Oil Conservation Commission under Case No. 58, Order No. 588, approved January 29, 1945, upon the terms and conditions following:

1. Upon completion of Buyer's carbon black factory, desulphurizing plant, and gathering lines, which shall be not later than January 1, 1947, delays for reasons beyond the control of Buyer excepted, Seller agrees to deliver and Buyer agrees to take or pay for Seller's ratable share of an average daily minimum of Forty-two Million (42,000,000) cubic feet of gas from the South Eunice Field, calculated on a ninety (90) day basis, to be taken or paid for ratably from the wells connected to Buyer's gathering system.

Seller agrees to deliver and Buyer agrees to take and pay for Seller's ratable share of such lesser daily quantity of gas as Buyer may require from wells connected to its gathering system for use in such operations of said carbon black factory as may be possible prior to completion thereof.

Seller agrees in so far as is reasonably feasible to so schedule the production of gas from its wells as to furnish gas at a uniform hourly rate to Buyer's factory.

Seller will, at any time, or from time to time, deliver to Buyer under the terms hereof, Seller's ratable share of such additional gas as Buyer may require for the

operation of said factory, provided that Seller shall never be required to deliver during any one day, an amount of gas totaling more than One Hundred Fifty (150) percent of the minimum amount Buyer is required to take from Seller hereunder; provided that Seller retains control of the operation of its wells at all times and shall never be required to produce wells at rates, or at times, which in the sole judgment of Seller will be injurious to its wells.

Should a total amount of gas available to Buyer from Seller and all other vendors in said South Eunice Field for any period of Ninety (90) consecutive days fall below Forty-two Million (42,000,000) cubic feet per day, Buyer shall have the right at its option to discontinue operation of such units of said plant as can no longer be operated with the average volume of gas available during such Ninety (90) day period and to remove said units.

Should the total amount of gas available to Buyer from Seller and all other vendors from said South Eunice Field fall below an average of Ten Million (10,000,000) cubic feet per day for a period of Ninety (90) consecutive days, either party shall have the right to terminate this contract.

2. Delivery of gas shall be made by Seller to Buyer at Seller's wells or separators, free of water and hydrocarbons in liquid form, at the well head or separator pressure, and Buyer agrees to install and maintain and operate at its own cost and expense pipelines, gathering lines, and other facilities of suitable capacity and design for the delivery of gas from the wells and separators of Seller to the factory of Buyer.

Buyer shall be liable for all damages to the range, livestock, growing crops or improvements caused by Buyer's installation and operation of pipelines and other facilities on the above described lands.

3. Buyer shall install, maintain and operate at each separator or tank battery on the above described lands, a meter or meters of standard type, together with all appurtenant equipment necessary to measure and record the volume of gas delivered hereunder.

Buyer shall read the meter charts daily or weekly. If Seller so requests, the meter charts for the preceding months will be furnished for inspection and checking purposes. After reading and checking such meter charts, Seller shall return the same to Buyer. Said meter or meters shall at all reasonable times be subject to access and inspection by Seller. Approximately once each month and whenever requested by Seller, Buyer shall calibrate or test said meter or meters in the presence of a representative of Seller. If, upon any test, any meter is found to be inaccurate by more than two percent (2%) but not otherwise, registrations thereof and any payments based on such registrations shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known and agreed upon, but in case the period is not definitely agreed upon, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration but not exceeding fifteen (15) days. Following any test, any metering equipment found inaccurate shall be adjusted immediately to measure accurately. If for any reason meters are out of service or out of repair so that the quantity of gas cannot be ascertained or computed from the readings thereof, the quantity of gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the best data available, using the first of the following methods which is feasible:

- (a) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.
- (b) By using the registration of Seller's check meter or meters if installed and accurately registering.
- (c) By estimating the quantity of deliveries by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

Seller may at its option and expense install and operate check meters to check Buyer's meters, but measurement of gas for the purpose of this contract shall be by Buyer's meters, except as hereinbefore provided. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection and examination by Buyer, but the reading, calibration and adjustment thereof and the changing of charts shall be done only by Seller.

4. The quantity of gas delivered hereunder shall be measured and computed in accordance with the Gas Measurement Committee Report Number 2, Natural Gas Department, American Gas Association, dated May 6, 1935.

Meter runs, meters, orifice plates and other appurtenances shall be installed and maintained in accordance with specifications set out in the Report.

The proper basic orifice flow factor as given in the Report shall be used and the other factors determined from the Report on the following basis;

All gas delivered hereunder shall be computed on a pressure base of thirteen and forty-five hundredths (13.45) pounds per square inch absolute and on a temperature base of sixty (60) degrees Fahrenheit.

It is assumed and agreed that gas delivered hereunder obey Boyle's Law and that the value of the Supercompressibility Factor, the Reynolds Number Factor and the Expansion Factor are One.

The specific gravity shall be determined at the time of each meter test and shall be used to compute the quantity of gas delivered hereunder.

It is assumed and agreed that the flowing temperature in the meter is sixty (60) degrees Fahrenheit provided that either party at its option may at any time install a recording thermometer or thermometers to record the temperature of gas flowing through the meter or meters and the temperature recorded shall be used to compute the deliveries.

5. This contract covers gas from all wells, drilled or to be drilled on the above particularly described land, produced from the two formations occurring below the Yates Sand, commonly known as "The Seven Rivers" and "Queen" formations, except as much thereof as may be required by Seller for the operation and development of its leases and for fuel furnished Seller's lessors or assigns.

It is expressly agreed that Seller is under no obligation to drill additional wells on the above described lands.

6. For gas delivered during each month hereunder, Buyer shall make payment to Seller at the rate of two and Three-eighths cents ($2\frac{3}{8}\text{¢}$) per one thousand (1,000) cubic feet (hereinafter referred to as the "basic price"), subject, however, to the following: If in any month while this contract is in force, the average sales price received by Buyer, before adjustments made for freight differentials or cash discounts, during said month for bona fide sales of carbon black of standard grade and quality (such as is supplied to the rubber trade) f.o.b. Buyer's factory, in carload lots, in bulk for consumption in the United States is more than five cents (5¢) per pound, Buyer shall pay Seller in addition to the basic price such amount per one thousand (1,000)

cubic feet of gas as shall be equal to forty-five percent (45%) of the portion of Buyer's said average sales price per pound which is in excess of five cents (5¢) per pound. If, for example, in a given month Buyer's said average price of carbon black is six cents (6¢) per pound, then Buyer shall pay Seller a total price of two and eight hundred twenty-five one thousandths (2.825) cents per one thousand (1,000) cubic feet of gas delivered hereunder during such month.

7. Notwithstanding the provisions of Paragraphs 3, 4, and 6, should any other Seller delivering gas to Buyer's factory during the term hereof be accorded a higher price, or a more favorable method of measurements and/or computation of quantities than accorded to Seller herein, then and in that event, Buyer shall pay to Seller for gas delivered hereunder the equivalent of the highest price, based upon the most favorable of measurements and computation of quantities accorded any other such Seller or Sellers.

8. On or before the twenty-fifth (25th) day of each month Buyer shall pay Seller for all obligations incurred hereunder during the preceding month. All payments due hereunder shall be made to Seller at Fort Worth, Tarrant County, Texas.

9. During any month during the term hereof, should gas of like kind and quality as that delivered hereunder be sold in the same field or area at a higher price per m.c.f. than provided for herein, and as a result thereof Seller is required to pay royalty to its lessor or lessors based upon such higher price, then and in that event Buyer agrees to reimburse Seller in the amount that the actual royalty paid by Seller to its lessor on gas sold during said month exceeds the amount of such royalty if computed on basis of the price paid hereunder. Sums due under the provisions of this

paragraph shall be paid by Buyer to Seller monthly, within fifteen (15) days after receipt of statement from Seller showing the amount due.

10. Buyer shall have the privilege of shutting down or suspending operation of its said carbon black factory in whole or part from time to time in its discretion, provided that the aggregate of such total and/or partial close-downs shall not exceed the equivalent of a complete shut-down of thirty (30) days in any year. During the time said plant is so shut down Buyer shall not be required to take or pay for the minimum amount of gas provided to be taken under Paragraph 1 hereof.

11. Seller reserves the right to abandon any well or wells which in its judgment are deemed to be commercially unproductive or without substantial value.

12. All lines, fittings, materials and equipment furnished for use under this contract shall remain the property of the party furnishing the same, and may be removed by such party at the expiration of this contract.

13. Seller grants to Buyer, so far as Seller has the right to do so, right-of-way on said leases for such gathering lines and other equipment as may be necessary or desirable to transport gas from Seller's leases or other leases in said Field to said Carbon Plant, with full force of ingress and egress to and from all the land covered by said leases, and the further right to do thereon all acts necessary or convenient for the carrying out of the terms of this contract.

14. Seller hereby warrants the title to the gas to be delivered to Buyer and agrees to indemnify the Buyer from all claims, suits, actions, costs and expenses arising out of adverse legal claims to said gas or to royalties thereon.

All severance and production taxes, assessments or other charges on the production, or sale of the gas sold

and purchased hereunder, levied or assessed by any State, Federal or other governmental body or agency, shall be borne by Seller; provided, however, that any new taxes or increase in present taxes after the date of this agreement, upon the production, severance, or sale of gas delivered hereunder, shall be borne equally by the parties hereto, one-half (1/2) by each. Provided, further, that either party may refuse to pay its proportionate share of any amount by which any new taxes or increased taxes so levied and assessed exceed one cent (1¢) per thousand (1,000) cubic feet with respect to gas delivered under this contract by giving written notice to the other, in which event the other shall have thirty (30) days after receipt of said notice in which to elect whether it will assume and bear all such excess above one cent (1¢) per thousand (1,000) cubic feet, and if such other party shall not within said period of thirty (30) days elect to assume and bear such excess, then this contract shall terminate without future liability of either of the parties to the other.

15. Seller shall not be liable for failure to deliver gas, and Buyer shall not be liable for failure to receive gas or pay therefor, when such failure as to either party is caused by the requirement or requirements of any valid rule, regulation or order of the Conservation Commission, or other regulatory body or commission having jurisdiction, or of any valid statute of the State of New Mexico or of the United States, or the order of any State or Federal Court having lawful jurisdiction therein.

16. Impossibility of performance resulting without limitation from events or causes beyond the reasonable control of the parties respectively, shall excuse the non-performance of such parties, provided that the invoking party shall take all reasonable steps to minimize or remove such causes or events, provided further that Buyer's lack of a market for

carbon black shall not excuse it from its obligation to take or pay for gas hereunder; and provided further that either of the parties hereto shall have the option of terminating this contract should the other party fail to perform hereunder for a period of six months due to conditions beyond its or their control.

17. The term of this contract shall be for the term of Seller's lease as extended or renewed, in so far as it covers the above particularly described land, but in no event beyond January 1, 1957.

18. Whenever used herein, the terms "natural gas" and "gas" mean natural gas, and/or casinghead gas, as produced from the well. "Day" means a period of twenty-four (24) hours. "Month" means a calendar month. "Year" means a period of twelve (12) months ending on the anniversary of the first day of the calendar month next succeeding the month in which delivery of gas was commenced hereunder.

19. All of the covenants and obligations of this contract shall extend to and be binding upon the successors and assigns of the respective parties, and shall be in the nature of covenants running with the said leases, wells, plants and pipelines of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed and sealed in duplicate, by their proper officers, respectively, thereunto duly authorized.

ATTEST:


Secretary

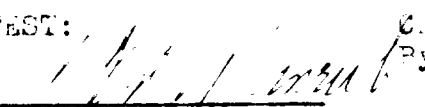
TEXAS PACIFIC COAL AND OIL COMPANY
BY



President

SELLER

ATTEST:


Asst. Secretary

CHARLES ENEU JOHNSON & COMPANY



President

BUYER

THE STATE OF TEXAS |

COUNTY OF TARRANT |

On this 1st day of October, 1946, before me personally appeared J. R. Penn to me personally known, who, being by me duly sworn did say that he is the President of the Texas Pacific Coal and Oil Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said J. R. Penn acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on this, the day and year first above written.

Sybil Woods
Notary Public

My Commission Expires:

June 1, 1947

STATE OF PENNSYLVANIA |

COUNTY OF PHILADELPHIA |

On this 15th day of OCTOBER, 1946, before me personally appeared R. S. Johnson to me personally known, who, being by me duly sworn did say that he is the President of Charles Eneu Johnson & Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said R. S. Johnson acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on this, the day and year first above written.

J. Lang Green
Notary Public

My Commission Expires:

May 1, 1948

BEFORE THE
OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO
Santa Fe, New Mexico

* * * * *

TRANSCRIPT OF PROCEEDINGS

CASE NO. 691

Regular Hearing

April 15, 1954

IN THE MATTER OF:

Case No.
691

Honorable Edwin L. Mechem, Chairman
Mr. E. S. (Johnny) Walker, Member
Mr. R. R. Spurrier, Secretary & Director.

MR. SPURRIER: The next case on the docket is Case 691.

In preparing this petition I have tried to go back and set forth the history, the circumstances under which the order was entered, which gave to the Johnson Company, that was Charles Eneu Johnson Company, of which United Carbon is the successor, the circumstances under which that order was entered. A great deal of the material, many of the allegations that are made in the petition are supported

by facts that are of record with the Commission itself.

To present witnesses and have them testify to all those facts and circumstances would do no more than consume the time of this Commission. Those records are there for the Commission's consideration. They have been referred to, the history has been gone into because we think it is material in showing why United Carbon and those from whom it purchases its gas should be exempted from the regulations. The enforcement during the past month, particularly during February and part of March resulted in cutting down the production of carbon black at the plant, in fact, in shutting down one-third of the plant itself.

I think possibly a brief review may help to clear up things and explain our position. This particular plant was started by the United States Government. That was back during the war days. As early as December, 1944 the question arose as to where the gas was to come from that was to be used for the manufacture of the black at this plant. There was a meeting held of the operators of the so-called South Eunice Field, or Pool, in Fort Worth, which was attended, according to the minutes of that meeting, by representatives of all of the operators. At that meeting it was decided that a petition should be made to this body to lift the oil-gas ratio in the South Eunice Field, and the purpose of doing that was specifically to make available for use in the manufacture of carbon black, the gas that could be obtained from that field. Following that a petition was actually filed, notice of the filing and hearing on that petition was given and a hearing was duly held. At that

hearing there were present representatives of all of the companies who were concerned. They were given opportunity to introduce evidence. They were given opportunity to present anything that they might desire in opposition to what was prayed for in the petition. The net result of that hearing was that the oil-gas ratio was lifted and it, as I say, was for the purpose of enabling those companies, those operators to produce gas for use in this plant.

About that same time the Johnson Company had made application for the right to use gas from that field and an order was entered. That order was entered as a result of an executive meeting of the Commission. It was right along about that time that hostilities between the United States and Japan ceased. The question then was, whether the plant would be completed, what would be done with it. The Government discontinued construction. The plant was then offered, the uncompleted plant was offered for sale to various concerns. Among those interested was the Johnson Company. It was at that time then, in May, a little prior to May, 1946 that Johnson Company filed its petition with this Commission, asking that it be granted a permit to use 42,000,000 cubic feet of gas per day from the South Eunice Field. Hearing was held on that after proper notice, and all parties interested, all producers from that area attended at that hearing, and after the taking of evidence the Commission entered its order, granting to the Johnson Company the 42,000,000 cubic feet of gas per day for use in that plant, as and

when the plant should be completed.

At that same time another, or companion order was entered, No. 650 in Case No. 75, which related to the new limiting gas-oil ratio in that field. In other words, in order to make the gas available for which the permit which was represented by the Commission's Order No. 651 in Case No. 75, in order to make that gas available, it was found necessary by the Commission that oil-gas limiting ratio be lifted and that was done. That also was done upon a full hearing, pursuant to notice given. We base our claim here on Order No. 651 in Case No. 75.

It is our position that by that order in reliance upon which the plant was completed, gathering lines were constructed, and a treater plant was constructed, that when we acted in reliance on that order, and went into those expenditures and those investments, that we acquired a right which can not now be affected by subsequent regulations or even legislation. That whether that order of the Commission is construed as a judgment of a quasi judicial body, or whether it is considered as a franchise, or as a contract, that our rights under it are protected. That is, in substance, our position.

First I would like to offer in evidence the order of the Commission in Case No. 59, Order No. 59, which was entered the 12th day of February, 1945, which related to the limiting gas-oil ratio in the South Eunice Field. I would then like to offer the letter form order of the Commission, dated May 25, 1945, addressed to

Charles Eneu Johnson and Company, signed by all members of the, then Commission, which granted the Johnson Company the right to the use of 42,000,000 cubic feet.

Next I would like to offer the order of the Commission in Case No. 75, No. 650, which related to the no limiting gas-oil ratio in the South Eunice Pool, and then Order No. 651 in Case No. 75, which is the order granting to the Johnson Company the permit to use 42,000,000 cubic feet of gas per day.

I have copies of these here. These are, of course, matters of record, the originals are in the Commission's files and while I don't want to take those out of the Commission's files to make them a part of the record in this case, I would like to have leave to substitute duly authenticated copies.

I would, at this time, also like to offer in evidence the petition of December 29, 1944, by the operators of the South Eunice Field, signed by D. D. Bodie as Chairman, with the accompanying exhibit attached thereto, which is a copy of the minutes of the South Eunice operators meeting held in Fort Worth, that I have referred to.

I would then like to offer the transcript of the proceedings held in Case No. 59, before this Commission on February 12, 1945. That was on the petition of the operators of the South Eunice Field, the preceding exhibit, and finally I would like to offer the transcript of the proceedings had before the Commission on May 8, 1946 on the petition of the Johnson Company for the 42,000,000 cubic feet, and on the accompanying question of the

lifting of the oil-gas ratio limit in the South Eunice Field.

MR. SPURRIER: Are those all your exhibits that you wish to offer?

MR. CATRON: That is all at this time.

MR. SPURRIER: Are there any objections to the exhibits offered by Mr. Catron? Without objection they will be admitted. You will have leave to substitute copies.

MR. CATRON: Set forth in the petition the Order 651 in Case 75 it is recited that "The Commission having before it for consideration the testimony adduced at the hearing of said case, and being fully advised in the premises", then proceeded to order in this language:

"The Commission hereby grants Charles Eneu Johnson and Company its permission to use up to 42,000,000 cubic feet per day of natural gas from the South Eunice Pool for the purpose of manufacturing carbon black in said company's plant approximately eight and one-half miles South of Eunice, New Mexico, which permission is to become effective as and to the extent that said company's proposed facilities for the use of said gas shall become and be ready for the use thereof for the purpose indicated. "

The nature of the evidence, testimony that was adduced at that hearing is disclosed by the transcript itself. Various views were expressed by representatives of different companies who attended that hearing. It was, after a full consideration of that testimony and presumably a full consideration of any legal questions that might be involved, the regulations of the Commission were then in

force, that this order was entered. At that time it was made clear that the war emergency had ceased. It was no longer a case of a war emergency which was involved.

I merely want to point out some of those circumstances, not as a matter of argument, but merely as a matter of fact that existed at that time. In any event, as the Commission's records themselves disclose, that plant was completed and upon the completion of the plant the laying of the gathering lines, construction of the required treater plant, the gas which had been granted was taken, was used and continued to be used to the full amount for the manufacture of carbon black at that plant up to February 1st of this year. At that time, as a result of the regulation that is in question, the production of gas from certain of the wells from which we had been obtaining it was cut down to such an extent that one-third of the carbon black plant had to be shut down. Should that regulation be continued in effect, insofar as the carbon black plant is concerned, or more properly the producers within the so-called Jalco Pool, whose wells we have connections with and from whom we have been purchasing, it will mean not only that, that one-third part of the plant will have to be shut down again -- We did get an emergency order continuing our right to take for a time. -- It will mean that one-third, at the least, of that plant will have to be cut down. And, it is our position that that would constitute not only a breach by the State through attempted regulation of our contract with it, if it is to be denominated a contract, but also that it would be an infringement of our rights

under the order, if the order is to be construed as in the nature of a judgment. Also, we say that it would result in taking our property from us without due process of law.

I don't think that the Commission at this time wants to go into the legal questions, exactly. I think it recognizes, it must recognize that it issued that order; that it issued that order in good faith; that it issued it after a full hearing at which everybody was given an opportunity to be heard; and that the Johnson Company acted on that order in good faith and made these investments.

I am not going to try to encumber the record now with a lot of miscellaneous testimony. I do want to show what has been involved in the way of an investment there. I do want to show the nature of that plant, what it has meant to the State of New Mexico. Those things, while possibly not directly material on the issue of whether we have a vested right which can not be taken away from us, are, none the less, matters which are deserving of consideration before this Commission, which, after all is where this whole thing was initiated.

OLDEN W. FOSTER,

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

DIRECT EXAMINATION

By MR. CATRON:

Q Will you please state your name?

A Olden W. Foster.

Q Are you, in any way, connected with the United Carbon Company.

Mr. Foster?

A I am retained by United Carbon as a consultant and adviser.

Q Are you familiar with, or have you familiarized yourself with the operations at the so-called Eunice Plant of United Carbon Company, which lies some eight miles south of Eunice, New Mexico?

A I have.

Q Can you give the Commission some information on the cost of the construction of that plant?

A I can tell you how it stands on the books of the company, Mr. Catron. The cost of the construction was something in addition to that. Prior to the time that the Johnson Company acquired it from the Government there was a substantial amount invested.

Q In other words, the figures that you have are the cost of the plant, insofar as the Johnson Company and its successor, United Carbon is concerned, without regard to the actual cost to the Government of the original construction?

A That is correct.

Q Will you give those figures, please?

A I don't have it broken down as to who made it. United Carbon made substantial increase in the total investment after it acquired the property from the Johnson Company. The investment, the gross cost to the Johnson Company and its successors is in the amount of \$2,601,052.83.

Q What does that plant as an overall unit, if you want to call it that, consist of?

A It consists of a treater, pipe lines, dwellings, miscellaneous equipment and the plant itself.

Q You mentioned pipelines, will you describe the nature of those pipelines?

A The pipeline gathering system in the field gathers from the producers from whom we purchase the gas, brings the gas in to the treater plant and from that point on transports it a distance of about nine miles to the carbon plant.

Q As I understand the gathering lines, those were pipelines that were built to make connection to the wells, at least the sources of the gas, so that it could then be transported to the treater plant, is that correct?

A That is correct.

Q Then there is the main line from the treater plant to the carbon black plant proper?

A Yes, sir.

Q Those gathering lines from the treater plant had to be constructed before the carbon black plant proper could be put in operation, isn't that correct?

A And the compressor station. There is a compressor station that brings the gas in from the wells to the treater plant.

Q Are you familiar with the area from which the gas is obtained, which is gathered and taken to the treater plant? That is, as to whether it is within what was then designated as the South Eunice Field?

A The area from which the plant obtains its gas supply is the area designated by the Oil Conservation Commission as the South Eunice Oil Field. That is a designated area. The order granting the permission to use this gas limited us to that area in securing the gas.

Q Mr. Foster, are you familiar with the operation of the plant itself, that is the carbon black plant, the nature of the operation?

A To the extent it is a typical channel type plant, I am familiar.

Q Is that built in sections, I mean, so that one portion can be shut off independently of the others?

A Yes, sir, it is.

Q During this past winter, early spring, was a portion of that plant shut down?

A Until the 21st of March.

Q What was the extent of the shut-down of the plant during that period?

A Well, I might say that the daily average gas consumption in the fourth quarter of 1953 was 42,025 M cubic feet, during the month of February it was 27,449 M cubic feet. A decrease during that month of 14,576 M cubic feet per day, or 34.7 percent.

Q How did that reflect itself in the operation of the plant? How much of the plant was shut down as a consequence of that?

A Well, the plant was shut down, of course in proportion to the volume of gas used. It was just about in direct proportion.

The decrease in the product manufactured was almost exactly in proportion to the curtailment of the gas supply.

Q What was that curtailment in production?

A During the fourth quarter of 1953 the average production was 72,489 pounds. During February the production was 47,978 pounds. The decrease was 24,511 pounds during the month of February, or 33.8 percent decrease. That compares with the 34.7 percent decrease in gas consumption.

Q Can you give us any idea of the effect of that reduced production resulting from the curtailment in the supply of gas on the cost of production of the carbon black?

A I have information as to the production, the effect of the reduction in consumption of gas, but I think the clearest way to present that is to say that during the fourth quarter of 1953, our average daily profit was \$1,543.00. During the month of February the profit was \$237.00, a loss of approximately 5/6 of the profit by reason of suffering a third drop in the through put, and the decrease in profit during February was \$1,306.00 per day. So, to cut us down in that proportion came close to putting us into the red.

Q Have you any information, Mr. Foster, on the payroll of the company and the operation itself, of the plant there?

A There are 48 employees at the plant, having an annual payroll of \$230,000.00.

Q Have you any figures on the amount in taxes that is being

paid by the company on that plant to the State of New Mexico?

A Total taxes during 1953 were \$19,500.00, consisting of \$6,135.00 property tax, \$7,695.00 on school tax, \$1,585.00 of use tax, \$85.00 automobile tax, \$4,000.00 unemployment tax.

Q Can you give us any figures on the value of the plant? You have testified to the cost of the original construction, its depreciation, reserve, figures of that sort, Mr. Foster?

A Well, the depreciated cost, as of the end of 1953 stands on the books of United Carbon at 1,302,308.59. The reason that figure is of importance to the company is that we have term contracts for the production of this gas and it doesn't follow that if we are curtailed in the month of February and March that we will make it up in some later period. Any loss we suffer is a permanent loss. In other words, the contracts run for about 1,000 days. We stand to lose each day about that proportion of our total expected profit. It isn't deferred, it is an actual loss.

Q What impact has the reduction in the production of carbon black at this plant had on the carbon black industry as a whole?

A I think that question can best be answered by our position as to the stocks of this type of black. The carbon black industry, just in round number figures, the carbon black industry stocks of channel type, at the end of December, 1953 was 233,000,000 pounds; at the end of January, 1954 there was a slight reduction, about half a million pounds. The end of February, 1954, the reduction was a 1,400,000 pounds. We do not have the stocks at the end of March

for the industry as a whole. What I have just described results in the fact that between December 31, 1953 and February 28, 1954, there has been a reduction of a little less than 2,000,000 pounds of black for the industry as a whole. The United Carbon Company's position, which is substantial, but not, of course, a controlling factor in the industry, is this; our stocks at the end of December, 1953 were 52,000,000 pounds. At the end of January, 1954 they were 51,000,000 pounds. The end of February they were 49,000,000 pounds and the end of March, 42,000,000 pounds. In other words, our stocks have gone down to a larger extent than our loss from this plant alone. Our position in the industry is becoming quite embarrassing, because we can not go on indefinitely furnishing our companies with a loss of stock of this sort. Any reduction in curtailment that we suffer is serious with us.

MR. SPURRIER: Let's recess until 1:30, Mr. Catron.

(Recess.)

A F T E R N O O N S E S S I O N

MR. SPURRIER: The meeting will come to order, please. Mr. Catron?

MR. CATRON: Will you please take the stand again, Mr. Foster?

O L D E N W . F O S T E R ,

DIRECT EXAMINATION
(Continued)

By MR. CATRON:

Q Can you state, Mr. Foster, from what concerns United Carbon has taken gas in the South Eunice field?

A Texas Pacific Coal and Oil Company, Cities Service Oil Company, Continental Oil Company, New Mexico Federal Unit, Ohio Oil Company, Two States Drilling Company, Mid-Continent Petroleum Company, and maybe one other; I think that is the list.

Q Those concerns from which it has been taking gas from the beginning, as far as you know?

A Yes, sir.

Q Is there, as far as you know, any gas within that field that would be available at this time to United Carbon?

A No, sir, we know of no gas except one well of Continental Oil Company, the volume from which is quite small, operated on an intermitter and been considered and the conclusion reached that it was not practicable to take the gas. So far as we know, that is the only gas available.

Q And so that if there were a reduction in the amount of gas that you, that is the United Carbon would be permitted to obtain from those producers with whom you have contracts, and from whom you are now taking, you would not have any source of supply, other source of supply within the Eunice field, South Eunice field, is that correct?

A That is correct.

Q And to the extent there would be a reduction in the production of those concerns from whom United Carbon buys gas, there would be a lack of gas and the plant would have to be shut down proportionately?

A Yes, sir.

Q As far as you know, has United Carbon or its predecessors, or the Johnson Company, been willing to take from other producers

in that field since the building of the plant?

A We have.

Q Have efforts been made to obtain gas from other producers in that field?

A Yes, sir, in that field and elsewhere.

Q Without success?

A That is right.

Q When was it, to your knowledge, that United Carbon succeeded to this plant and took over the operations of it?

A I am not certain as to that date, Mr. Catron, but I believe it was about the first of January, 1950, it might have been 1949. I am not certain as to just when that date was. I could find that out, of course.

Q United Carbon has been operating continually since that date?

A Yes, sir, operated under the name of Johnson Company for several years, that is why I am uncertain of the exact date of taking over, I think it has been in the name of the Johnson or United Carbon for the last six years or last five years, excuse me.

MR. CATRON: If anybody desires to cross examine, they may.

MR. SPURRIER: Anyone have a question of Mr. Foster?

MR. WOODWARD: John Woodward representing Amarada.

CROSS EXAMINATION

By: MR. WOODWARD:

Q Mr. Foster, what kind of gas is the applicant in this case taking into its plant? I have reference to whether it is classified as casinghead gas or dry gas, under its present gas purchase contracts?

A Mr. Woodward, we received gas from our suppliers and have no direct knowledge of the source of that gas except we know under

this proceeding that some of it is coming from three or four wells classified by the Commission as gas wells. The balance of the gas we have no knowledge of it. I would say, however, that it probably was casinghead gas that is gas produced with oil.

Q Are you connected in the South Eunice field with all producers of gas in this area? A No, sir, we are not.

Q There are some producers in the field with whom you are not connected? A That is correct.

Q I believe you made the statement and I believe your petition reflects the following and I read Paragraph 26 of applicant's petition. "That the special rules and regulations so adopted by the Commission by its said Order No. R-368-A in Case No. 582 and the enforcement thereof as against the producers of natural gas in the South Eunice Field or Pool with whom petitioner has contracts for the furnishing of gas for use in its said carbon black plant and from whom it has been obtaining gas for use in said plant, has resulted in precluding the said producers of gas in said field from producing and furnishing to petitioner gas in such quantities as to provide petitioner with the full 42 million cubic feet of gas per day to which it has the lawful right under the Commission's Order No. 651 in Case No. 75, and has further resulted in depriving petitioner of the full 42 million cubic feet of gas per day to which it has the lawful right under the Commission's said order, notwithstanding the fact that there is available in and from the said South Eunice Field or Pool, and more specifically from the producers of gas in said field or pool with whom petitioner has existing contracts, in excess of the 42 million cubic feet of gas per day granted by said Order No. 651 and required by petitioner for the

operation of its said plant at full capacity, and by reason thereof petitioner has been compelled to shut down and discontinue the operation of one-third of its said plant." At what price did you offer to buy?

A We have a contract with the producers in which there are a number of elements that enter into the price. We consider that our prices are competitive with other purchasers in that area.

Q Are your gas purchase contracts a matter of record in this case?

A No, sir.

Q They are not, the contracts which you are contending in your petition that maybe abrogated by reason of Order R-368-A are not a matter of record in this hearing?

A No, sir, that is correct.

Q Do you know or do you have within your knowledge any information that would indicate whether gas is available at a price in excess of that which you offer to purchase in these adjacent areas?

MR. CATRON: May I ask what you mean by adjacent areas?

MR. WOODWARD: I would include, if I may refer to an Exhibit that is not of record here, simply for the purpose of identification, any of the gas areas shown on these four maps on the wall beginning in the Eumont, Jalco Arrow gas fields or in the Eunice or South Eunice fields.

MR. CATRON: Well, I object to the question as being wholly immaterial because our whole, the whole basis of our petition here is the fact that the order which was granted and entered into is limited to the South Eunice field.

MR. WOODWARD: Now, I am not directing these questions with regard to that order but simply am inquiring into a statement made

in the petition that gas is not available to petitioner. Now, I would like to understand if they mean it is not available to petitioner from the South Eunice field or other areas. As I understand the testimony, the scope of the testimony, it goes beyond the South Eunice field.

MR. CATRON: The question I asked Mr. Foster was as to whether, to his knowledge, there was any gas that was available in the South Eunice field, I think that is what the record will show.

MR. WOODWARD: Well, if it does not show that you amend your question to limit it to that field.

MR. CATRON: That is the way it was stated, I don't have to amend it.

MR. WOODWARD: As long as it is limited to that field, we have no further concern.

Q Now, I would like to understand further applicant's position with respect to your right to take the amount of gas permitted by Order 651. Is it your position and standing that that right, if it is a right, was acquired subject to police power of the State of New Mexico?

MR. CATRON: That is a legal question, I don't know whether the witness is competent to answer it.

MR. WOODWARD: I think the question is directed to you, Mr. Catron, as the position that you are taking in this hearing, it is purely a matter of understanding what your contention is here.

MR. CATRON: My position is the order speaks for itself.

MR. WOODWARD: And you are not taking any position with regard to, that is any formal position with regard to the acquisition of your rights?

MR. CATRON: Any formal position as to what?

MR. WOODWARD: As to whether or not the acquisition of your rights under that order are subject to the order.

MR. CATRON: Subject to the extent the order prescribes that they are. Our position is that you can not have subsequent legislation or regulations which will impair the obligations of that order or the rights conferred by it.

MR. WOODWARD: That answers my question, thank you. I would then like to draw attention Paragraph 7 of the petition, of applicant's petition. Namely, Paragraph 2, "That said suspension shall become operative in the following," excuse me -- I would like to draw attention to Section 2 of Paragraph 19, that is Section 2 of Order 651. "The order herein is in lieu of this Commission's permission granted to said company for the use of gas from said pool for carbon black manufacturing purposes dated May 25, 1945, and shall remain in effect for so long as and to the extent that the use of said gas shall not result in or constitute waste as defined in the Oil and Gas Conservation Laws of the State of New Mexico." We would, on basis information gained in direct and cross examination, like to make a statement with regard to this case. Our cross examination of the witness is complete and if it is considered proper, we will defer that statement until cross examination is complete from others that may have questions to ask.

MR. SPURRIER: Anyone else have a question of Mr. Foster? Mr. Smith.

MR. SMITH: J. K. Smith, Stanolind Oil and Gas Company.

By: MR. SMITH:

Q Mr. Foster, as I understand your application, also your

testimony, you are presently operating your plant at a two-thirds capacity, is that correct?

A Little more than that but substantially that, but it varies from day to day. That is about right.

MR. CATRON: Let me amplify that an application was filed for an emergency order under which we were given a fifteen day period during which we could, or one of the producers could produce an additional amount of gas which enabled us to operate the plant in part, that was the part that had been shut down.

Q That brings us to the next question. Have you been nominating for gas purchases in the connection with the proration order in that area?

MR. CATRON: I can answer that question. We did not take to nominate at the beginning for two reasons; we did not feel we or the producers which we took from fell under those regulations; secondly, because as I understand those wells which are directly involved were not classified as gas wells until after the regulation was adopted that required the nominations.

MR. SMITH: Then, as I understand your statement, Mr. Catron, you are not at the present nominating for the gas you are using in your plant?

MR. CATRON: We made a nomination, if you want to call it that, for a certain purpose in April. It was a nomination that was made without prejudice to this case or waiver of any of our rights under it, and specifically provided by making that nomination, we did not recognize we fell within the scope of the regulation, or the two producers from which we were taking fell in the scope. That nomination was made as a convenience to the Commission, and also to

assist us in getting temporary gas.

Q Mr. Foster, or Mr. Catron,-- I don't know which of you is testifying--one additional question. On the nomination for pure convenience, did you nominate the 42 million?

MR. CATRON: No, sir, we did not nominate the 42 million, because the only wells that were involved, or that the Commission has stated fell under the regulation, did not produce that volume of gas and we, therefore, limited our nomination to the amount that we contemplated would be taken from the gas which the Commission has said fell under the regulations.

Q I would like to direct a question to Mr. Foster. During the period of time that, or prior to the issuance of the proration orders, establishing proration in that area, has your plant at all times taken 42 million cubic feet of gas?

A It varies a little bit, Mr. Smith, isn't an exact quantity but substantially that, it averages very close to that within, I would say less than half a million feet averaged over a years period.

Q You consider yourself obligated, shall we say, by the contract with the Commission, here to take 42 million?

A If it was or is available, yes, sir.

Q In other words, it would constitute a breach of your contract or franchise if you took 15 million instead of 42 million?

A We are obligated to take the gas if it is there.

Q In other words, they are taking positions, as you always have in the past and are required under this Order to at all times take 42 million regardless of market conditions or the necessity to make repairs in your plants or any other factors that may enter into

the operating of your plant from an economic standpoint?

A We operate the plant at the rate of 42 million feet per day if we have got the gas.

Q If you have the gas?

A Yes.

Q And you consider that it is your obligation under this Order that you continue to take the 42 million and at no time 15 million or a less quantity than 42 million?

A That is correct, we consider we are under obligation to take it if they have got it.

MR. SMITH: I believe that is all, thank you.

MR. SPURRIER: Anyone else? Mr. Rhodes.

By: MR. RHODES:

Q Mr. Foster, you stated that you made a nomination during the month of April with the Oil Commission for the purpose of obtaining some gas.

A You asking me the question?

Q Yes, sir.

A I believe the question was asked and Mr. Catron answered it.

Q Well, who signed the order?

A I didn't ask the question, Mr. Smith, I believe asked the question? Did you not just--

Q (Interrupting) Let me start over again. Did the United Carbon Company submit a nomination for gas from the Jalco Pool at sometime in April?

A United Carbon Company submitted a nomination for gas from the Cities Service Company, Cities Service Oil Company from four wells that are classified under Commission's orders as being in the Jalco Pool.

Q Then, you did nominate for gas under our present proration setup?

A I don't know.

Q You see, in order to--

A (Interrupting) I don't know what the words, "our proration set-up" means.

Q In other words, in order to obtain this gas and to, or to purchase this gas you had to nominate it, the purchase of so much gas from the Jalco Pool during the month of April, since this Pool is a prorated pool.

A I don't believe that is a correct statement of why we had to do it. No, sir, I don't believe that is a correct statement.

Q Well, did you nominate, regardless of what the reason for the nomination was, did you make a nomination?

A We nominated as I stated, sufficient gas to enable us to operate the plant at the 42 million rate for the 11 days, starting with the 21st of March.

Q You remember how much gas you nominated, Mr. Foster?

A I would have to look at that record.

Q I believe it was 17 million cubic feet a day, if I might supply that figure, and your total daily take, Mr. Foster, you said it was approximately 42 million feet a day?

A That is correct.

Q And there are four wells under consideration here, are there not?

A I think that is correct, yes, sir.

Q And the total number of wells from which United Carbon draws gas comes to something like 22, doesn't it?

A I am not prepared to state that. We buy our gas and the

producers don't know how many wells they have hooked on or where the gas is coming from. We are buying under a supplier type contract, we have no control over the field, don't know how much or who, what well supply we have or what lease; we have no knowledge of that.

Q Well then, as I understand, you stated that your total take is approximately 42 million feet a day and since you have nominated 17 million feet from the four prorated wells in the Jalco Gas Pool, and since this 17 million feet approximates 40 percent of your total take for one day, is that correct?

A No, I think you are arriving at an arithmetic conclusion. We took that quantity from certain wells to operate until the date of this hearing and how the arithmetic was arrived at, I don't know. I believe the arithmetic is leading to an assumption that is not consistent with our take from the field. We wanted gas to operate until the expiration of a 15 day emergency order and that is the way we got it. It amounted to the arithmetic you state.

Q It did amount to the arithmetic I stated?

A I think that is correct, it amounted to that figure, it was a figure arrived at to give us the certain amount of time. Had the fifteen day period started at the time we petitioned for it, it would have expired, let's say the 3rd, 4th, or 5th of April, but that date would have been inconvenient for the assembly to come here, so I think convenience had considerable to do with the quantity. It was simply an arithmetic quantity. If it would have been 18 days or twenty, it would have been more.

Q Then, you submit that by nominating 17 million feet from the Jalco Pool, you did not intend for that 17 million feet to come

from these four wells which are concerned in this case, or should I say, which are subject to proration?

A That was the only place that we could get the gas.

Q Why is that, you purchased from others besides the operators in those four wells, didn't you?

A That is correct. We purchased from everybody that we have a contract with in the field.

MR. RHODES: That is all I have.

MR. SPURRIER: Anyone else? Mr. Howell.

MR. HOWELL: Ben Howell representing El Paso Natural Gas Company.

By: MR. HOWELL:

Q Mr. Foster, were your takes from these four wells in the month of January of 1954, at the same rate that you had been taking previous that time?

A That is a variable quantity, Mr. Howell, it depends on-- well, each producer is supposed to supply us rateably with what gas they have available up to the total of 42 million; we don't know where that gas is coming from and sometimes one producer gives us a little more and another a little less, so to what extent--if you look at the month of December, for example, for 1953 or December 1952, I am sure you would find an entirely different ratio; practically every month we take no fixed quantity from anybody.

Q Is there any great variance in the amount you took in January, 1954, from your average takes preceding that time?

A I never examined the record for that, I don't know.

Q How much did you take from these four wells in the month of January, 1954?

A I think we supplied that information to the Commission, I believe that is a matter of record, I don't remember.

Q With reference to the Clauson 1-J Well, did you take 68,144,000 cubic feet of gas during the month of January?

A If that is what the record shows.

Q And from the Clauson A-1, did you take 194,651,000 cubic feet of gas?

A Well, the answer is the same to this extent, I do not know whether the producer or our company furnished those figures but I am quite sure if they were furnished for the record, they are accurate, they are metered, it is in a metered quantity.

Q You wouldn't deny that the figures as shown by Order Number A-G-1C for March, 1954 are correct as to January, would you?

A I would expect them to be correct, sir.

Q And from the Clauson 3-I well, your takes were 194,650,000 cubic feet during that month?

A If that is what the record shows, yes, sir.

Q So, that as compared with the allowable given to gas wells in the field from those three wells you took, as to one, an excess of 31,723,000; as to another an excess of 158,230,000 and as to a third, an excess of 158,292,000, if the record so shows, that is correct?

A We take from the producer, if the record shows that is the producer's production from that less, your statement is correct.

Q You would not deny, if it appears on the March order for proration, that that is a correct statement?

A I don't deny; I stated the record so far as I know is correct.

Q Is it your company's desire to continue to take the production

from these three wells at that rate?

A We want to take 42,000,000 feet a day from the South Eunice Oil Field according to our contract with the producers and the order we received from the Commission.

Q And if an order to that quantity, it will require you to take from these three wells at that rate, you desire to do so, is that correct?

A We desire to continue to take under the order we have from the Commission and producer's contract.

MR. HOWELL: That concludes our cross examination. We do have a statement we would like to put in the record at a later time.

MR. SPURRIER: Mr. Stahl.

MR. STAHL: Stahl, with Permian Basine Pipeline Company.

By: MR. STAHL:

Q Mr. Foster, I believe you testified that no gas was available to your company in this area. Is my recollection correct?

A In the South Eunice Oil Field as defined by the Commission.

Q In the South Eunice Oil Field? A Yes, sir.

Q Is there any, is there any gas available from what we call dry gas wells in the Jalco Field?

A I have no knowledge of that, Mr. Stahl.

Q Have any efforts been made by your company to secure additional gas by virtue of purchasing it from gas wells in the Jalco Field?

A The Jalco Field is defined by the Commission, I assume you are referring to--

MR. SPURRIER: That is right.

A The Jalco Field is an area that is extended over a considerable

scope of territory. We have always felt that we were limited as to the scope of our territory by this Commission order, so long as the producers from which we have contracts had enough gas to supply us. When the question arose as to the possibilities of a decline in that rate of supply we looked elsewhere, and that occasion was several years ago.

Q You mean the Clauson Cities Service Wells?

A No, sir, we looked outside the South Eunice Oil Field. In other words, we could see the handwriting on the wall, we thought and we thought what if we needed more gas, so we looked around. As it turned out, we didn't need more gas and the people with whom we negotiated did not supply the gas, I mean we were unable to come to an agreement with them, and to that extent we have looked elsewhere and as I say, maybe two or three years ago, but not since that time.

Q Not since that time?

A Not to my knowledge, no, sir.

Q Within your knowledge, are there any wells or any acreage which does not have a well which is not presently committed to another market in the economic, within economic reach of your plant?

A Without being factitious, I would say you had all the information on that; you are seeking gas in that area.

Q I am asking whether your company has made any efforts--

A (Interrupting) I told you we considered ourselves, as long as this area could supply it we consider ourselves bound to stay within this area.

Q Would your company have any objections to going outside this area if the Commission rules that you are not permitted to

overproduce these Clauson Wells, does not give you an exception?

A We want to operate that plant. If we can secure gas elsewhere, and at the same time protect our present suppliers, we will consider it.

Q Do you have, within your knowledge, there has been no action taken by your company within the past six months to secure such additional gas?

A No, sir.

Q Don't you feel you are a little premature, Mr. Foster?

A No, sir, I don't. We are down to two hundred-fifty a day.

MR. CATRON: Premature to what?

MR. STAHL: Not having exhausted the possibilities of securing gas from some other source.

MR. CATRON: We are trying to protect our rights under what we consider a writ, an order.

MR. STAHL: That is where you and I differ.

MR. CATRON: Right.

MR. SPURRIER: Anyone else have a question of Mr. Foster?
Mr. Adair.

MR. ADAIR: Adair, with Texas Pacific Coal and Oil Company.
By: MR. ADAIR:

Q In order that this record may be complete, do you happen to have available the copy of the contract you entered into with the producers in the South Eunice Field?

A We have a photostatic copy of the contract.

Q I wonder if you would make it a part of this record?

A We have no objection, the contracts are identical, the contracts with all our suppliers are identical and if you have no objections, we will furnish a copy of the one we have here, it happens

to be the one with your company.

Q That is all right.

A They are identical with all other of our suppliers.

Q I believe the contract has been amended in respect to the price paid, since it was originally entered into?

A Yes, sir.

Q Otherwise, the contract that you offered in evidence constitutes a contract?

A That is correct.

MR. STAHL: That is all I have.

MR. SPURRIER: Anyone else? Mr. Woodward.

MR. WOODWARD: One other question.

By: MR. WOODWARD:

Q Do I understand that contract and all its terms are now in the record?

A Yes, sir, that is my understanding. We are supplying that at the request of Texas Pacific Coal and Oil Company.

MR. SPURRIER: Is there objections to the inclusion of this contract in the record?

MR. WOODWARD: Well, I will--

MR. SPURRIER: Without objections, admitted.

MR. WOODWARD: Is there an inclusion of the entire contract and all its terms?

A That is correct.

MR. ADAIR: Except the price.

A There has been a revision in the amount of money paid.

MR. WOODWARD: The price of this contract is not a matter of record?

A As I stated before the elements of price are four or five

in number and they are all in there except the amount paid, dollars and cents per MCF paid; the other elements are all in there, gathering, pipeline pressure, everything, quantity terms.

MR. WOODWARD: The formula is the actual contract?

A The contract is complete except for the revision in per MCF.

MR. SPURRIER: What is your objection to including that price in this contract?

A We hadn't included the contract until we were asked to, that was put in at the request of the other company, we had not expected to put it in.

MR. CATRON: We have no objection to putting it in, as to what the price may be.

MR. SPURRIER: Well, what is that price then?

A On a 5025 basis, 3.91. I would call your attention however to the fact, it is a term contract, low pressure gas, fixed quantity per day; all those things were considered in negotiating the price and the total consideration have a bearing on it.

MR. SPURRIER: You say low pressure gas?

A Yes, sir, we take the gas down to 15 pounds and we come and get it. We gather it.

MR. SPURRIER: Anyone else have a question of Mr. Foster?

MR. CATRON: Also has to be treated, is that correct?

A That is correct, it is treated sour gas that we treat.

MR. SPURRIER: Mr. Rhodes.

By: MR. RHODES:

Q Mr. Foster, does that contract provide whereby Texas Pacific will provide you with a stipulated amount of gas?

A No, sir, we take it rateably from all producers under whom

we have that contract.

Q How about any of your other contracts?

A All the same. Just a different name in each contract, the total volume is mentioned 42 million a day per order.

Q Prices all the same?

A Yes, sir.

MR. SPURRIER: Anyone else? Any further questions of the witness. If not, he may be excused.

(Witness excused.)

MR. SPURRIER: You have another witness, Mr. Catron?

MR. CATRON: No, sir, just one thing else, I negotiated to offer the original petition of Johnson Company on which Order Number 651 was based. I was checking the transcript and it doesn't appear in the transcript. I would like to have the petition as filed with the Commission, incorporated as an exhibit, if it has not been marked, and substitute a copy for it.

MR. SPURRIER: Is there objections? Without objections it will be admitted and substitution may be made.

MR. CATRON: Now, I am taking the position, if the Commission please, it is before it's own records that this is in the nature of a--it is not an adversary proceeding, it is a hearing before the Commission and it may, of course, take notice of its own records and the proceedings before it. It may take notice of its records as to the production of gas from the South Eunice Field, from the wells from which United takes, and the quantity that has been furnished, and I request that the Commission do take notice of those things.

For the rest as I stated at the beginning, the right elements of this petition, of course are the backbone of it. It is all a

matter of record before this Commission. The matter of how much we pay for gas is wholly immaterial to our rights under the Order. I made no objections to a great many of these questions because to get up and make a lot of objections would just encumber the record that much more. But we are concerned with what are the rights under that Order.

We are not seeking to put the Commission in an embarrassing position, we are not seeking to embarrass anybody. We want to live up to our contracts with those from whom we have been taking gas, and we want the State to live up to the contract that it entered into with us. But whether it be regarded as a contract or a franchise or whether it be regarded as a judgment of a judicial body, that is the substance of the thing.

I have no more evidence; such evidence as is required is right in the records of your office, except for what we have now introduced and the testimony that has been given by Mr. Foster.

I would like to make a few remarks as to some of this historical background as disclosed by the transcript of the proceedings that were held back in 1945 and 1946, and if the Commission will bear with me, I will make it very brief.

We here in New Mexico for many many years, have been trying to get industry to come into the State, we purport to offer inducements. We cannot hope to have industry to come into the State, if we are going to hold out opportunity with one hand and take it away with the other hand. If we are going to have individuals from outside the State come in here and make expenditures of their money and the assurances that the State gives in one guise or another, we cannot continue to induce industry to come here, if we then take away

what we have granted.

This enterprise was an industry for the State of New Mexico. In its inception, it had maybe its origin in War necessity, but before this particular order was entered that War necessity was over with, we were no longer carrying on hostilities with anybody, and if you will read the transcripts of proceedings in those cases, you will find that the question of how this gas should be utilized most beneficially was raised and was discussed and that at that time it was the opinion and the expressed view of the Commission that if we could use this gas for industry within the State of New Mexico that that was advisable and was to be preferred over using that gas in other ways which would carry it outside the State of New Mexico.

It was on that theory and those representations and on the testimony of representatives of the very companies who are here now, today, that that Order was entered. The very companies who are here, represented at this hearing were represented then, they had full opportunity to be heard, some of them got up and expressed themselves and it was on the strength of those expressions and upon the considerations that I have mentioned that this industry was started. Insofar as this particular plant is concerned, we feel that not only as a matter of law but that as a matter of justice that nothing should be done which would destroy that industry which was encouraged to come into this State, which has paid taxes into the Treasury of this State, which has meant employment in this State. That is all.

MR. SPURRIER: Mr. Woodward.

MR. WOODWARD: I would like to state first that we agree

with a statement that Mr. Catron made earlier in the proceedings, I believe, to the effect that this probably was not the proper form to argue matters of law. However, certain contentions are made, as I understand it, by petitioner, are made in the petition and he has asked for, as a matter of law and as a matter of justice. Therefore, I would like to simply state our contentions in this matter. Our contentions, legal contentions in the matter, and at the outset we are stating our legal contentions in this matter as a opponent and not as a proponent of this application.

We note first that the Legislature of this State declared that the police power of the State extends to the protection of correlative rights. It is our contention that every contract, every agreement and every man with any right in this State is subject to that police power whether or not that assignment is granted. The State has chosen to exercise all its power that it may be granted under the Constitution.

It is our position that acquisition of applicant's rights under Order R-651, is subject to this power of the State to protect operators under correlative rights and that the reduction or curtailment of applicant's right to take 42,000,000 cubic feet of gas from the Eunice Field under Order R-368-A does not constitute an unconstitutional abrogation of applicant's contractual rights in any sense of the word. Those rights, whatever, they were, were acquired with reference to this power and the exercise of the power cannot abrogate those rights.

Second, applicant did not, it is our position, did not acquire such a vested property interest in its right to take this 42,000,000 feet of gas under Order 651, that limitations on that right

would constitute and unconstitutional taking of applicant's property, for the reason we do not believe it acquired a right of that nature.

Third, the grant of applicant's right under Order 651 is expressly made subject to the Commission's power to prevent waste, and that in the exercising of these powers, the Commission under the 14th Amendment of the Federal Constitution, and under the State Constitution cannot unreasonably discriminate among producers of gas in the pool, if it issues any waste orders in that pool.

That is the crux of our position here, that to arbitrarily discriminate in the beginning, to some producers in the same common source of supply, protection which is denied to other producers, opens that order to a Constitutional attack.

Now, I would like to say further that this looks like none of our business but I would like to point out why we have made it our business, that is, why we are here, why Amarada is sticking its nose in United Carbon's application. It is this.

As you may know, there is a contention before the Commission now that the South Eunice Field has, as well as a great many other gas and oil fields have, part of one common source of supply. We are very much concerned in seeing that a valid proration order is issued for that area, and we are very much concerned that any special treatment which is given to any gas purchaser or any producer which subjects that order, when it is issued, to an attack is a matter of primary concern to all producers in the State. It is a matter of primary concern to the State itself.

Now, we do not know and cannot know the extent with which some producers may take exceptions to that situation. Whether or not it is a matter of real concern to him, he may be so effected by

the Order ultimately issued in some other area that this offers an Achilles Heel to the entire proration scheme in the State, and we do not feel that any purchaser, however meritorious their claim may be, and whatever the equities involve, deserve a protection which would invalidate a proration order for so large an area involving such tremendous resources, and the interest and equities of so many other people.

MR. SPURRIER: Mr. Malone.

MR. MALONE: If it please the Commission, Ross Malone for Gulf. Gulf opposes the granting of the requested exception, for this reason. In our view, if it is granted it is entirely inconsistent with an attempt to allocate production of gas wells in the area that is now embraced in the Jalco, Langmat, Arrow and Eumont Gas pools, as will be shown by evidence which Gulf will present in Case Number 673.

It is our view that there is in fact, a common source of supply here and to eliminate, out of the heart of that common source of supply, approximately 20 wells from the operation of a proration schedule would, we feel, be not only inadvisable but invalid.

MR. ADAIR: What wells are you referring to?

MR. MALONE: I believe the testimony was there were approximately 20 wells from which the applicant was taking gas.

MR. ADAIR: They are not all within the Jalco Pool or subject to the existing regulations, even under the theory of the Commission.

MR. MALONE: The number of wells is of no consequence, whatever. The principle is the same whether it is four or 20. If I was in error in the number, I will withdraw the statement.

~~MR. ADAIR: We are concerned now with those particular wells~~

which the Commission contends and you contend fall under the existing regulations, and I believe that is just four, isn't that right, Bill?

MR. MACEY: Four wells under the gas proration schedule.

MR. ADAIR: The rest are outside and not to be considered in this connection then.

MR. MALONE: In that connection, I would like to modify my statement then to make it applicable to the four wells, and point out that insofar as the owners of the other adjacent acreages, to those four wells, the results would be equally as disastrous as if there were 20 wells involved.

MR. SPURRIER: Mr. Smith.

MR. SMITH: Stanolind would like to join with Amarada and Gulf in the statements that have been made in opposition to the granting of this exception.

I would like to state at the outset we have no quarrel with the United Carbon Company to continue to operate their plant, but we do think that granting an exception of this nature would, as Mr. Woodward pointed out, set off a chain reaction which would serve in itself to invalidate the entire proration orders that might be issued in this field, you must protect correlative rights, the Supreme Court of the United States has passed upon the power of the Commission in Oklahoma to abrogate and change the terms of existing contracts which permitted the Oklahoma Commission to set a minimum price for gas.

I think it is within the authority of the Commission, in exercise of police power, to change this order or not. I think if they grant the exception that such a grant would be an arbitrary

exercise of discretion of the Commission. It certainly isn't going to result in anything other than the permission of certain wells to go the limit of the 42,000,000. Your market trend is declining, it is inequitable draining and migration over great distances and over a great number of years it would eliminate gas from people's possessions/^{now}and ultimately go to other people who will produce it. There is a deprivation of invested right that has been there, probably a great deal longer than has been the right of United Carbon Company.

I would like to submit one other thought, that is that certainly the power of the Commission to issue the original order was no greater than the power of the present Commission, and what one Commission has done, a later Commission can certainly undo. I cannot consider that the Commission has authority to write a contract with me or with my company which will permit us to do certain things for ten or fifteen or twenty years from now.

MR. SPURRIER: Mr. Stein, with the El Paso Natural Gas Company.

MR. STEIN: It is our belief when gas wells in a gas pool are prorated that all should be prorated, and we feel very strongly, exceptions or exemptions to the rules should not be made. We further feel that consumption of high pressure gas from gas wells by carbon black plants is wasteful, particularly when casinghead gas is being flared in the same county, and we frown on that.

We have under contract a great deal of residue gas and a great deal of casinghead gas. We certainly do not wish to run any industry out of New Mexico. We will be very happy to sit across the table from United Carbon Company and try to work out some reason-

able contract with the, whereby they can be furnished either residue or casinghead gas for the operation of their plant.

MR. SPURRIER: Mr. Hinkle.

MR. HINKLE: If the Commission please, Clarence Hinkle with Humble. We would like to go on record as being opposed to the petition of the United Carbon Company in Case Number 691. As expressed by Mr. Smith and Mr. Woodward, I think this Case has been submitted purely as a question of law. I don't think it is a matter of law that the entering of an Order by this Commission would grant the United Carbon Company an exclusive permit or franchise to take the gas. If there is any latitude on the part of the Commission, we think as a matter of policy, it would be a great mistake for the Commission to make an exception of this kind in connection with our proration setup.

MR. SPURRIER: Mr. Foster.

MR. FOSTER: I hope this Commission will, and I am sure that it does recognize this application for what it is. This is an elaborate attack being made upon the Order of the Commission prorating gas in the Jalco Pool. Now, the order itself does not expressly provide for any exceptions to be made to it. Perhaps it should have done so but it didn't. But had it provided for an exception of this nature, it is clearly evident to me that the exception would have been void, for the very simple reason that it would place it within the power of the Commission to grant an exception, just for any reason that might be advanced.

Now, with all the broad powers and discretions that this Commission possesses, there are some limitations upon the Commission's power. They are well recognized, I believe, by everybody, and one

of those limitations is that you cannot just arbitrarily and indiscriminately grant exceptions to your proration order. Now, there are only two valid exceptions that may be granted, and I think the Commission has the power to grant those exceptions, implied at least in all those instances where they are not expressly provided for, and one is, to prevent waste, certainly that isn't here. And the other, is to prevent confiscation of property over which the Commission has sought to exercise jurisdiction, and certainly that isn't here.

Now, the Commission, in its proration order hasn't sought to exercise any jurisdiction over the operation of the carbon black plant, it has merely sought to exercise jurisdiction over the proration of gas in a common source supply. And, I want to urge the Commission to give consideration to the limitations within which it may properly act in respect to applications of that nature. And, I believe once we get this thing into a proper focus that we won't have much trouble in applying the right rules and arrive at the right rule.

MR. SPURRIER: Anyone else?

MR. DIPPEL: Harry Dippel, Continental Oil Company. Continental would like to have the record show that it too, is opposed to the applicant, the application in this Case. Rather than to try to pinpoint our reasons, we should just like to endorse what was said by Mr. Woodward in behalf of Amarada and Mr. Smith in behalf of Stanolind.

MR. STAHL: Stahl with Permian Basin Pipeline Company. I don't want the record to show that Mr. Stein is the only person that is in the gas selling business. If United needs gas, we are

in the gas selling business too. We will be happy to sell it to them if we can work out a deal, but I can assure Mr. Foster and Mr. Catron, it won't be for a price as cheap as 3.91 cents.

MR. SPURRIER: Anyone else?

MR. CATRON: If there is no one else, I would like to have a closing word.

MR. SPURRIER: There is someone else. Mr. Stein, would you care to say what you did awhile ago under oath? You have any objections to it?

MR. STEIN: What part of it, all of it? No, I have no objections to it, I am very sincere about it, I am not up here kidding anybody.

W I L L I A M B. M A C E Y

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

DIRECT EXAMINATION

By: MR. KITTS:

Q State your name, please? A William B. Macey.

Q And you are employed by the Oil Conservation Commission, as Chief Engineer, Mr. Macey? A Yes, sir.

Q Mr. Macey, have you examined the petition in this Case and the records, transcript of former hearings and so forth introduced and made a part of the record in this Case?

A Yes, sir.

Q And from your inspection or study of those instruments, do you care to make any comment or have you reached any conclusions?

A Yes, sir, I have examined in part and in some places in whole, the entire record that Mr. Catron introduced in his presentation. I think one of the most significant things which no one

has brought out as yet is the fact that the original order in the South Eunice Pool--

Q (Interrupting) What number was that?

A I believe it was Case 59--if I may refer to the record, Case 59, Order 589. The original Case involved the gas-oil ratio limitations in the South Eunice Oil Pool. The South Eunice Oil Pool was, as the Commission determined, essentially a gas reservoir but it was an oil pool as defined by the Commission. Now, we were dealing with casinghead gas produced with oil, the gas-oil ratio limit in the pool speaks for itself. In the presentation of that Case, it was pointed out there was a lot of gas being flared, being wasted and they gave the Charles Enew Johnson Company the permit to take 42,000,000 feet of gas from the South Eunice Oil Pool.

Now, I think that the records of this Commission will show that the Commission has delineated the Jalco Gas Pool under their powers and the Jalco Gas Pool is defined as the Yates, and all but the lower one hundred feet of the Seven Rivers. That is the way it stands right today. The permit which the Johnson Company got was for flared gas from oil wells. Whether their contract pertains to flare gas from oil wells or what it pertains to, is not essential the point. The Commission very specifically limited them to the South Eunice Oil Pool.

Now, the Commission has come along and under their statutory authority have re-defined, have defined a gas pool and they have gone ahead and prorated that gas pool. The four wells under consideration here are all producing from the limits of the Jalco Gas Pool. I personally examined the well logs, the well records, and it is my contention that the Order which was granted to the Charles

Enew Johnson Company applies to the South Eunice Oil Pool, in the casinghead gas and not to the Jalco Gas pool in the dry gas which is produced therein.

I might also point out in the gas sales contracts which were entered into, the record, this particular contract is with Texas Pacific Coal and Oil Company, I believe the record in this Case shows that it is the same with everyone involved. The contract specifically covers the Seven Rivers and Queens Formation. I will read this in the record, Paragraph 25, page 6 of the contract:

"This contract covers gas from all wells drilled or to be drilled on the above particularly described land, produced from the two formations occurring below the Yates Sand, Commonly known as the Seven Rivers and Queens Formation, except thereof required by seller for operation and development of their leases, lessors or assigns." The records of the Commission on the four wells reflect that some of the gas was brought out of the Yates Formation. Therefore, they are not even covered by the contract, that producing zone.

Now, I believe that if the Commission were to go ahead and we have heard this case of the large volumes of gas that have been produced, but I contend if the Commission is to allow this, recognize it and allow them to take this much gas from the gas wells in the Jalco Gas Pool, they are defeating proration.

I further contend that the Rules of the Jalco Gas Pool give to the United Carbon Company an opportunity to purchase that gas on the open market. If the United Carbon Company needs 17,000,000 feet of gas from these four wells, it is obvious to me that under the proration system, that those wells will not be granted that allowable

and that allowable will be reassigned to other wells in the Pool according to the Pool Rules, consequently somebody is going to end up with an underage, as far as the take is concerned and eventually going to have to take that gas and dispose of it somewhere; the logical place, of course, would be to United Carbon Company.

I have no quarrel whatsoever with United Carbon Company's obtaining dry gas in exception to the Commission's Rules, but I do contend that to allow this permit to be kept in force and effect and to allow them to have an exception to the Pool Rules would defeat promotion.

MR. KITTS: You wish to cross examine, Mr. Catron?

MR. CATRON: No.

MR. SPURRIER: Any question of the witness? We will take a short recess.

(RECESS)

MR. SPURRIER: You have something more, Mr. Catron, in 691?

MR. CATRON: I have one brief statement I would like to make. I will try not to strain the patience of this gathering or the Commission.

There are one or two corrections, I would like to have made in what has been brought out. If reference would be made to Order 650, in Case 75, it will be found that the Commission at that time made a finding that the South Eunice Pool was primarily a gas pool at that time. There was still oil being produced but the very reason for lifting the oil-gas ratio was to enable, not only the additional production of gas for this carbon black plant but also, according to the evidence that was introduced, to permit the recovery of oil which according to the testimony would otherwise have been

lost and never have been recovered.

We are still dealing, at that time, when this Order was entered, with a pool which was producing oil though it was then classified as primarily a gas pool. All of those who were present at that time knew of the delineation of the South Eunice Field, they knew of the finding that was made, there was no protest made to that, there was no evidence directly contrary to that geology and technical engineering testimony, that was offered at the time. What now is objected to, the basis for the objections that are now being made is that though they had full opportunity to be heard at that time, although all the geological factors and all the engineering factors were available and could have been admitted and most of them were admitted at that time, now, they feel there has been some change in that and therefore the Order should also be changed.

We could have that continue from day to day from here until doom's day, because your engineering factors, your geologic factors are going to be changed to suit the various economies of the various companies that are here. They are so speculative themselves that the very thing that has been developing here and the conflicts that have been occurring illustrate that you don't know what is going on underneath the ground.

So, I say that we have here something that was granted to us upon which we relied upon, which we made our investments; to now abrogate that Order would deprive us of our property without due process of law and would impair the obligations of our contract. I am talking about the contract with the State. Not merely the contracts with our producers.

If this were a strictly judicial proceeding, you would find

no court in the world who would go back and say you could re-introduce evidence on the same point on which there has been a decision and vary that decision. You may have a reversal, you may have a departure from a decision in legal effect, but that does not undo the rights that have become vested under the decision that is being reversed. Those became fixed. That is a fundamental principle of law.

So as far as the offer of El Paso Natural, that is not controlling on the Commission here. It doesn't have a direct bearing on what our rights may be. Certainly, we would be willing to deal with them if there is a solution to this thing but we do not feel that our rights should be dependent on our ability to make a contract, whether it be with El Paso Natural or with Permian. We still recognize and feel that we have obligations to those companies with whom we have contracts and from whom we have been purchasing. We do not want to be forced into a position where we are either going to deny them what they are due or that we are going to be deprived of what they are ready and willing to furnish us.

As far as correlative rights are concerned, the ones that are mentioned in the statute are primarily those which are calculated to give each producer equal opportunity to market. We have sought to give those producers in that field the opportunity to sell to us. We were not critical from whom we took. As far as the offer of El Paso Natural is concerned, it is too bad that was not made several years ago, at the time when we attempted to make a deal with them and were turned down.

I still feel that this is a case which is little different from the ordinary one where you can fall back on the good old

regulatory powers of the Commission under the police power here. The State has gone out definitely and encouraged this company to come in and build this plant and spend this money on representations that it would be permitted to obtain that amount of gas from that field which was a definite field. That was done with the knowledge of all these companies that are here.

We feel that we are entitled to go ahead on the strength of that permit. After all, that line that was drawn west of which, say this falls within the Jalco Pool and the subject regulations and on this side, it does not. From the evidence I heard here at different times, it was a purely arbitrary line apparently. I don't want to get into those technicalities, I don't know a damn thing about them. That seems to be an arbitrary proposition. That whole question would have been eliminated if that line had been moved over a short distance. That is all.

MR. SPURRIER: Anyone else to be heard in the Case? Mr. Stahl.

MR. STAHL: I would like to make one statement in answer to Mr. Catron's broad, general statement that all companies had an opportunity to be involved when the Order came out during the War. For Mr. Catron's information there was no Permian Basin Pipeline Company at that time.

MR. SMITH: One brief statement, purely, say in denial of the conclusions of law that Mr. Catron stated. In the first place I don't think the Commission has authority to write a contract nor has it the right to issue a franchise. It has never had that right in my opinion. If such an implication can be given to the Orders that were entered, they were void since their inception because of

lack of authority on the Commission. So far as the suggested franchise, the suggested contract and the other was a judgment. With respect to the finality of a judgment, I had occasion sometime back to set aside a judgment which had been final for eight years in Federal Court.

MR. SPURRIER: Any other comment in this Case? If not, we will take the case under advisement and move on to Case No. 692.

MR. CATRON: Before you do that, may I ask one thing? You have taken the case under advisement. We have an emergency Order that expires today. I would ask that it be put in the record, a request on the part of United for extension of the emergency order for a further period of 15 days and if the Commission will permit, I will then file tomorrow an application for it in writing. We are confronted with the same situation we were confronted with just 15 days ago. I believe that the Commission realizes the conditions under which that emergency order was entered, originally, and what warranted it.

MR. DIPPEL: Henry Dippel, representing Continental. If the Commission please, we are a direct offset operator and as we understand it, I haven't looked at the map, one of our engineers has, and he says that our State E No. 17 Well is a direct offset to this. We are going to object to a further extension of the emergency order. We believe that our correlative rights are not being protected.

MR. SPURRIER: Any further objections to Mr. Catron's motion?

MR. DIPPEL: I would like to emphasize that is a State Lease and our correlative rights are not being protected either.

MR. SPURRIER: Mr. Catron, we will get you an answer before midnight. Is there anything further in this case, Case 691? If not,

we will take it under advisement, and move on to Case 692.

Some of the carbon black people have approached the Commission on Rule 404. The Commission has no preconceived motion on anything different than the Rule now states. We are sitting here to take testimony to either amend or revise or delete or add to this Rule.


Is there anyone to be heard in Case 692?

* * * * *

STATE OF NEW MEXICO)
 : ss.
COUNTY OF BERNALILLO)

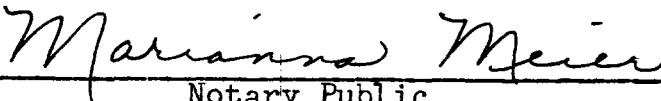
WE, ADA DEARNLEY AND MARIANNA MEIER, Court Reporters, do hereby certify that the foregoing and attached transcript of proceedings before the New Mexico Oil Conservation Commission, at Santa Fe, New Mexico, is a true and correct record to the best of our knowledge, skill and ability.

IN WITNESS WHEREOF WE have affixed our hands and notarial seals this 26th day of April, 1954.


Notary Public

My Commission expires:

June 19, 1955


Notary Public

My Commission Expires:

April 8, 1956