

1 NEW MEXICO OIL CONSERVATION DIVISION

2 STATE LAND OFFICE BUILDING

3 STATE OF NEW MEXICO

4 CASE NO. 10407

5
6 IN THE MATTER OF:7 The Application of Great Lakes
8 Chemical Corporation for an
9 exception to Division Order
10 No. R-333-I and the Reassignment
11 of Retroactive Gas Allowables,
12 San Juan County, New Mexico.
13
14

15 BEFORE:

16
17 MICHAEL E. STOGNER

18 Hearing Examiner

19 State Land Office Building

20 November 21, 1991

21
22
23 REPORTED BY:24 DEBBIE VESTAL
25 Certified Shorthand Reporter
for the State of New Mexico**ORIGINAL**

1 EXAMINER STOGNER: I'll call the next
2 case, No. 10407, which is the Application of
3 Great Lakes Chemical Corporation for an exception
4 to Division Order No. R-333-I and the
5 reassignment of retroactive gas allowables in San
6 Juan County, New Mexico.

7 The applicant seeks retroactive
8 reassignment of gas allowables in the
9 following -- I'm sorry -- in six certain wells in
10 Township 27 North, Range 8 West, being the
11 Blanco-Mesaverde Pool.

12 The applicant has also requested that
13 this case be continued to the Examiner's Hearing
14 scheduled here in Santa Fe, in this room, on
15 December 19, 1991.

16 If there are no objections, this case
17 will be continued to the Examiner's Hearing
18 scheduled for December 19.

19 (And the proceedings were concluded.)
20
21

22 I do hereby certify that the foregoing is
23 a complete report of the proceedings in
the Examiner's hearing of Case No. 10407
heard by me on 21 November 1991.

24 Michael C. Stogner, Examiner
25 Oil Conservation Division

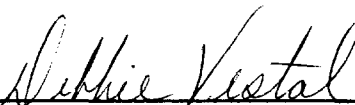
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Debbie Vestal, Certified Shorthand Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I caused my notes to be transcribed under my personal supervision; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL NOVEMBER 27,
1991.


DEBBIE VESTAL, RPR
NEW MEXICO CSR NO. 3

NEW MEXICO OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
STATE OF NEW MEXICO
CASE NO. 10407

IN THE MATTER OF:

The Application of Great Lakes
Chemical Corporation for an exception
to Division Order No. R-333-I and the
Reassignemnt of Retroactive Gas
Allowables, San Juan County,
New Mexico.

BEFORE:

MICHAEL E. STOGNER

Hearing Examiner

State Land Office Building

January 23, 1992

REPORTED BY:

DEBBIE VESTAL
Certified Shorthand Reporter
for the State of New Mexico

COPY

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Appearances

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WITNESS FOR THE APPLICANT:

1. RICHARD L. STAMETS

Examination by Mr. Carr 8,53

Examination by Mr. Swan 40,58

Examination by Mr. Stovall 60,86

Examination by Examiner Stogner 81

WITNESS FOR THE PROTESTANT:

2. H. L. "BABE" KENDRICK

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1 EXAMINER STOGNER: This hearing will
2 come to order for Docket No. 3-92. Note today's
3 date, January 23, 1992. I am Michael E. Stogner,
4 appointed Hearing Examiner today, and Mr.
5 Stovall, General Counsel today, to my right.

6 First case and only case we will
7 consider today we'll call at this time, Case No.
8 10407.

9 MR. STOVALL: Application of Great
10 Lakes Chemical Corporation for an exception to
11 Division Order No. R-333-I and the Reassignment
12 of Retroactive Gas Allowables, San Juan County,
13 New Mexico.

14 EXAMINER STOGNER: Call for
15 appearances.

16 MR. CARR: May it please the Examiner,
17 my name is William F. Carr, with the law firm,
18 Campbell, Carr, Berge & Sheridan, in Santa Fe. I
19 represent Great Lakes Chemical Corporation, and I
20 have one witness.

21 EXAMINER STOGNER: Call for any other
22 appearances.

23 MR. PEARCE: Yes, Mr. Examiner, my name
24 is W. Perry Pearce, with the Santa Fe Office of
25 the law firm of Montgomery & Andrews, appearing

1 in this matter on behalf of El Paso Natural Gas
2 Company.

3 Appearing with me are Mr. Michael K.
4 Swan, of the Houston Office of Andrews & Kurth
5 Law Firm, and Mr. John F. Nance, who is counsel
6 for El Paso Natural Gas Company in El Paso.

7 We also have one witness who needs to
8 be sworn.

9 EXAMINER STOGNER: Any other
10 appearances?

11 Will both witnesses today stand and be
12 sworn.

13 (The witnesses were duly sworn.)

14 EXAMINER STOGNER: Please be seated.

15 MR. STOVALL: Are you planning to give
16 openings?

17 MR. CARR: No, I'm not. Are you
18 planning to, Perry?

19 MR. PEARCE: No, sir. We'll pass.

20 MR. STOVALL: The discussion and given
21 the nature of this case, I sort of understand it
22 because I've had some discussions, but would
23 either of you object to summarizing what the
24 request is about and the actual effect and
25 impact?

1 MR. CARR: As the Applicant, we will
2 present that as the first portion of our direct
3 presentation and review those matters with you.

4 MR. PEARCE: If it would be helpful to
5 the Examiner, let me say a few words. El Paso
6 Natural Gas Company appears today because we are
7 concerned and it appears to us that the rules and
8 regulations, which were adopted by the Division,
9 have not been and possibly are not being
10 followed. We think that that is a threat to the
11 proration system.

12 We think those rules and regulations
13 have been followed and enforced in the past,
14 particularly in the Mesa case, which I'm sure
15 we'll talk about today. We think continuing to
16 enforce those rules and regulations, as they were
17 written and adopted, is appropriate. And we're
18 going to present a witness to discuss those
19 matters with you.

20 MR. STOVALL: Mr. Carr, as far as your
21 opening presentation, you will talk about
22 volumes?

23 MR. CARR: That's exactly right.

24 MR. STOVALL: And what has happened and
25 what would happen?

1 MR. CARR: That's correct.

2 MR. STOVALL: I just kind of wanted to
3 get it into context in some manner. I think it
4 helps us to understand what we're listening to as
5 you proceed if we understand what the objective
6 is in the first place.

7 EXAMINER STOGNER: All right, Mr.
8 Carr. You may continue.

9 MR. CARR: At this time we call Mr.
10 Stamets.

11 RICHARD L. STAMETS

12 Having been duly sworn upon his oath, was
13 examined and testified as follows:

14 EXAMINATION

15 BY MR. CARR:

16 Q. Will you state your name and place of
17 residence?

18 A. Richard L. Stamets. I live in Santa
19 Fe, New Mexico.

20 Q. By whom are you employed and in what
21 capacity?

22 A. In this case I'm employed by Great
23 Lakes Chemical Corporation. I'm an independent
24 consultant in oil and gas regulation and
25 petroleum geology.

1 Q. Have you previously testified before
2 the Division?

3 A. Yes, I have.

4 Q. At the time of that prior testimony,
5 were your credentials as a petroleum geologist
6 accepted and made a matter of record?

7 A. They were.

8 Q. Are you familiar with the application
9 filed in this particular case on behalf of Great
10 Lakes Chemical Corporation?

11 A. I am.

12 Q. Are you familiar with the wells that
13 are involved in this case?

14 A. Yes.

15 Q. Are you familiar generally with how
16 prorationing works in the prorated fields in the
17 San Juan Basin of northeastern New Mexico?

18 A. I am.

19 Q. At the time of your previous testimony,
20 have you also been qualified as an expert in oil
21 and gas regulatory matters in New Mexico?

22 A. Yes.

23 Q. Could you briefly state what Great
24 Lakes seeks in this case?

25 A. In this case Great Lakes is seeking

1 relief from the potentially harmful to very
2 harmful effects of zero deliverability
3 application in the allowable formula for their
4 wells in the Blanco Mesaverde Pool.

5 Q. Would you briefly summarize what you've
6 done to prepare for this presentation?

7 A. Yes. I've gone in and I've gathered
8 data on the F-1, F-2 factors for the period in
9 question. I've set up some spreadsheets which
10 show me what the impacts of various scenarios
11 would be and try and determine what condition the
12 wells would be in under these scenarios.

13 MR. CARR: Are the witness'
14 qualifications acceptable?

15 EXAMINER STOGNER: Are there any
16 objections?

17 MR. PEARCE: No objections.

18 EXAMINER STOGNER: Mr. Stamets'
19 qualifications are accepted.

20 Q. Mr. Stamets, initially I think it would
21 be helpful to explain to the Examiner actually
22 who is Great Lakes Corporation and what are their
23 interests in this state?

24 A. Great Lakes is obviously a chemical
25 corporation. They're located in West Lafayette,

1 Indiana. They originally started out as an oil
2 and gas company in Michigan, but they wound up
3 with more saltwater than they did oil.

4 And being very inventive, they found
5 that they had bromine in their saltwater, so they
6 started producing out of the saltwater and
7 eventually became a chemical company instead of
8 an oil company. And they've essentially been out
9 of the oil and gas business since 1960.

10 In New Mexico they only have six wells,
11 the ones we're going to be talking about here
12 today, plus they have royalty interests in another
13 30. The leases that these wells are on were
14 acquired by the cofounder back in the 1950s.

15 Q. Why are we before the Division today?

16 A. Great Lakes failed to file
17 deliverability tests for 1986 and 1989 on the
18 subject wells.

19 Q. We're talking about six wells?

20 A. That's correct.

21 Q. In fact, no tests were taken; is that
22 correct?

23 A. We believe that's correct.

24 Q. When was this problem actually
25 discovered?

1 A. The problem was discovered in late 1990
2 or early 1991.

3 Q. And how did Great Lakes actually
4 discover this?

5 A. Great Lakes was advised by the Aztec
6 District Office of the problem and their
7 intention, Aztec's intention, to write a
8 supplement reducing the allowable on these
9 wells.

10 Q. And when did this occur approximately;
11 do you know?

12 A. The supplement, I have those in here,
13 seems like the supplements were issued about
14 1/22 of 90. And the retroactive -- it must have
15 been -- they are dated 1/22 of 90, which is
16 wrong. It has to be 1/22 of 91. And they are
17 retroactive to 4/1 of 90. And it's obvious the
18 date is wrong because you can't make something
19 retroactive before it happens.

20 Q. Now, Great Lakes was notified by the
21 Division. What did the Division advise Great
22 Lakes at that time?

23 A. The Division informed Great Lakes that
24 they were going to lose their allowable, their
25 deliverability in the oil formula to zero until

1 new tests were taken and filed.

2 Q. And that was effective as of what time?

3 A. The effective date was 4/1 of 90.

4 Q. In your experience is this a common
5 practice for the Division?

6 A. It's my understanding that that's
7 standard practice that they followed, and we've
8 got the supplement here to show that is indeed
9 what they did.

10 Q. Were subsequent deliverability tests in
11 fact taken?

12 A. Yes. Tests were taken and the results
13 were filed in March and June of 1991.

14 Q. What is the most recent word from the
15 Division on this matter to Great Lakes?

16 A. Well, recently -- and there's a letter
17 dated August 6, 1991, to Mr. Larry Bond with
18 Great Lakes from Frank Chavez, indicating that
19 they plan to take further action in this case.
20 And Great Lakes probably, if they wanted anything
21 else done, should seek relief.

22 In personal conversations with Frank,
23 what it amounted to was Frank intended to issue
24 supplements that would go back to April 1 of 1987
25 for use of the zero deliverability.

1 Q. Have you been able to estimate the
2 impact on Great Lakes of the most recent OCD
3 proposal?

4 A. Yes, I have.

5 Q. And what is that generally?

6 A. Well, it would have serious negative
7 consequences for Great Lakes, and that's why
8 we're here seeking relief.

9 Q. I think it's important to initially
10 just set out who, in Great Lakes' opinion, is
11 responsible for filing these deliverability
12 tests?

13 A. Great Lakes recognizes that the
14 operator is responsible for filing those tests,
15 taking and filing them.

16 Q. And in the general sense, before we get
17 into your exhibits, what is the basis for the
18 request being made by Great Lakes here today?

19 A. In this case Great Lakes feels there
20 are a number of mitigating circumstances which
21 bear on this question, which we feel perhaps will
22 convince the Division that we need some relief
23 and deserve it.

24 Q. Could you at this time just review for
25 the Examiner the events that occurred that have

1 resulted in the tests not being filed with the
2 Division?

3 A. Yes. As I've said earlier, the company
4 is located in West Lafayette, Indiana. It's
5 remote from the oil patch. It's not an oil and
6 gas company. In fact, their paperwork is all
7 assigned to their contract pumper, who takes care
8 of the wells as well.

9 And it sounds like a soap opera, but
10 this poor guy was divorced in 1986. His wife had
11 been his bookkeeper. He was in a car wreck. He
12 was burned in a well fire. And he employed a
13 substitute for a number of weeks or months to
14 help him take care of his wells. And all this
15 got him off to a bad start back when the first
16 set of tests were supposed to have been filed.

17 Then the Division suspended
18 deliverability testing in 1987, and he was left
19 with the impression that the State wasn't too
20 concerned whether the wells were tested or not.
21 And then he was confused by the notice that he
22 received from El Paso relative to scheduling of
23 testing in 1989.

24 And in there was a statement which
25 says, in essence, that if your wells aren't

1 producing, don't turn them on. And this further
2 confused him, and again, left him with the
3 impression that people weren't too interested in
4 whether or not tests were taken.

5 Q. What did the allowable schedule show
6 for these wells during the relevant period?

7 A. The schedules continued to assign the
8 wells' allowables and show the 1984
9 deliverability data in there just month, after
10 month, after month.

11 Q. If the allowable had not been contained
12 in this schedule, what would that have done?

13 A. Well, I think it's reasonable to assume
14 that if in 1987 the Division had taken action to
15 reduce the allowable back to an F-1 factor or
16 cancel the allowable altogether, this would have
17 come to the attention of Great Lakes and they
18 would have taken action at that time to get
19 deliverabilities in.

20 And, you know, I would think in three
21 months, four months, five months max, that they
22 could have had new deliverability tests filed
23 then, all the way back in 87, and we wouldn't be
24 faced with a situation which we have here today.

25 Q. Great Lakes didn't timely file

1 deliverability tests?

2 A. That's correct.

3 Q. Is this situation unique to Great
4 Lakes?

5 A. I don't believe that it is. In looking
6 at this situation, I sat down with the annual
7 statistical report and looked at that portion at
8 the back which shows the deliverability test
9 results. And I took the Blanco Mesaverde Pool
10 and started through there marking the wells that
11 did not have tests for 1989.

12 And I went about three-fourths of the
13 way through that section of the book, and I found
14 something on the order of 569 wells without
15 current tests. And I went back and I
16 spot-checked about 15 percent of those. And of
17 that 15 percent, I found 27 percent that should
18 have been tested and had not been tested, or at
19 least there were no results in the book.

20 If you project that set of numbers
21 across the entire pool, then my estimate is
22 there's something on the order of 200 wells that
23 don't have deliverability tests for 1989 that
24 should have had.

25 Q. You were looking at just what pool?

1 A. Just the Blanco Mesaverde Pool.

2 Q. Any reason to think some of the
3 percentages wouldn't be found in other pools?

4 A. Since there apparently is no way of
5 determining whether people have or have not filed
6 deliverability tests under the Division's
7 schedule, yes, I would presume that that probably
8 exists everywhere.

9 Q. Have you evaluated whether or not this
10 failure to file has had an impact on the
11 prevention of waste or the correlative rights of
12 operators in the pool?

13 A. Yes. That's one of the things I asked
14 myself, and I could not imagine any way that this
15 failure to file could have caused waste. I just
16 don't -- I just don't see how that would happen.

17 If there were any waste to occur, it
18 perhaps could be at the end where if Great Lakes
19 is subject to some sort of severe penalty, it may
20 make the economics of these leases so bad that
21 they may be abandoned somewhat earlier, but
22 that's highly speculative.

23 And yes, I looked at correlative rights
24 too. And, again, I don't see that correlative
25 rights have been violated. And I've got some

1 data in some of the exhibits later that to me
2 show that Great Lakes has not violated
3 correlative rights in this period of time.

4 Q. And these considerations on waste and
5 correlative rights, is that part of the reason we
6 are here today seeking relief?

7 A. Yes, I think so. Clearly, if what
8 Great Lakes had done had caused waste or if it
9 had violated correlative rights, that would be
10 two strikes against it in any application seeking
11 relief. And since it doesn't have two strikes, I
12 think relief has a much better chance in this
13 case.

14 Q. Have you prepared certain exhibits for
15 presentation here today?

16 A. Yes, I have.

17 Q. Will you refer to what has been marked
18 as Great Lakes Exhibit No. 1, identify that, and
19 review it for Mr. Stogner?

20 A. Yes. Exhibit No. 1 is a listing of the
21 wells. And we have two leases here, the Graham
22 lease has the Well No. 1 and 1-A and No. 3. The
23 1 and 1-A are wells on a multi-well unit. The
24 Well No. 3 is on a half-sized proration unit.
25 The same thing exists in the Hammond lease with

1 the 55 and 55-A being a 320 multi-well unit, and
2 the 5-F being a well on 160 acres.

3 Q. All right. Let's move to Exhibit No.
4 2. Please identify that and review it.

5 A. These are the supplements that have
6 been issued by the Aztec District Office on the
7 wells in question. Let's just take a look at the
8 top one. You'll notice up in the upper
9 right-hand corner, it is dated 1/22/90, but that
10 date is in error. I'm sure that's 1991. And as
11 so many of us do with our checkbooks, whoever did
12 the supplement simply put in last year's date.

13 MR. STOVALL: Mr. Stamets, I might ask
14 you, does the received stamp confirm that, help
15 you with that?

16 A. Yes, it does. Now, conceivably it
17 could have been in Santa Fe long enough, a year
18 and a month, but I really doubt it. So this
19 supplement originates in Aztec, goes to Santa
20 Fe. Santa Fe puts the numbers in. It goes back
21 to Aztec.

22 Here it shows on the deliverability
23 line, the revised deliverability of zero with a
24 difference of minus 471. So that's the
25 supplement that reduces the allowable to zero

1 effective 4/1/90.

2 The second page is the later supplement
3 sent in by the District Office that shows the
4 revised deliverability and the effective date of
5 6/25 of 91. So that's when the new
6 deliverability test was taken.

7 And I checked with the Aztec Office
8 yesterday. These supplements have not yet come
9 back from Santa Fe. Apparently they've not yet
10 been recalculated. So the relief that we're
11 seeking here today can be given to us without
12 having to go back and redo something that's
13 already been done apparently.

14 And the rest of the supplement simply
15 deals with the other wells, and I don't see any
16 need to go through those.

17 Q. Mr. Stamets, Exhibit No. 3 is a memo
18 from El Paso Natural Gas Company. Could you
19 explain why this is included in your exhibit
20 package?

21 A. Yes. I alluded to this earlier as part
22 of the reason for the confusion on the part of
23 the pumper. This is from Ed Marcum with El Paso,
24 dated January 23, 1989, having to do with 1989
25 New Mexico State test schedules.

1 Down in the middle of this letter is a
2 line starting with No. 2 that says, "If your
3 wells are not producing, do not turn them on. We
4 will try to schedule them at a later date." And
5 the pumper simply interpreted that to mean that
6 he wasn't supposed to turn them on. And if they
7 got around to it, fine, and if they didn't get
8 around to it, fine.

9 Q. Let's go now to Exhibit No. 4. Would
10 you identify that?

11 A. Yes. Exhibit No. 4 is a three-page
12 exhibit to illustrate the process that I used
13 when I went through and made that estimate of 200
14 wells without deliverability tests that should
15 have had.

16 The first page of this is a page from
17 the annual statistical report, and I simply sat
18 down and went through and every time I saw a well
19 that didn't have a 1989 test, I marked it. And
20 when I went back for the later examination, --
21 well, I'll refer to that in a minute.

22 But you'll see the wells with
23 asterisks. Those are wells which should have
24 tests for 1989 but did not. A well with an "E"
25 is a well which is exempt from testing based upon

1 its production. And on this page there is one
2 well that's shut-in. And since it's shut-in,
3 there's no need for testing.

4 On the next two pages of the exhibit,
5 you see what I looked at in determining whether
6 or not the wells should have been exempt. And
7 down toward the bottom of the page on the left,
8 we see the Bolack B LS Well No. 3.

9 The way the Division determines which
10 wells should be tested is they take the last six
11 months, in this case of 1987, the first six
12 months of 1989, and determine whether or not the
13 well falls above or below the 2,000 Mcf cutoff
14 line for exempt wells.

15 In this case it's clear that this well
16 is way above the cutoff line and should have been
17 tested, and yet it was not.

18 Q. And this is a procedure you used to
19 determine if there were other wells that were
20 also delinquent?

21 A. That's correct.

22 Q. All right. Exhibit No. 5 is identified
23 as a summary of well data?

24 A. Yes.

25 Q. Would you review that information for

1 the Examiner?

2 A. Here, again, all of the wells are
3 listed that we had on Exhibit No. 1, along with
4 their deliverability tests to date and
5 deliverability, both in 1984 and 1991.

6 And one of the things that I would like
7 to point out is that the deliverabilities on some
8 of these wells had not declined all that much.
9 If you take the 1 and 1-A combined, those
10 declined only from 471 in 1984 to 425 in 1991.

11 The No. 3 Well is down considerably, as
12 is the Hammond No. 5-F. But the Hammond 55 and
13 55-A have only declined from 281 to 214.

14 Q. Mr. Stamets, let's go to Exhibit No.
15 6. And first I'd ask you to explain what this
16 exhibit is designed to show.

17 A. Well, I have tried to do a number of
18 things here. One is to think about relief. The
19 other is to see what sort of damage can be --
20 might be done to these wells and leases to Great
21 Lakes. So I made a series of calculations.

22 One, I went back to April 1 of 1987 and
23 made the calculations of allowable using a zero
24 deliverability up until the time that the new
25 deliverability tests were calculated. And then I

1 determined what the status of all of these units
2 would be as of September 30 of 1991.

3 I did the same thing then under what I
4 called the OCD District Method, which is the zero
5 deliverability beginning 4/1 of 90, until the new
6 deliverability tests were taken.

7 And in the final column, then, I did
8 the same set of calculations, but taking these
9 1991 deliverabilities and projecting those all
10 the way back to 4/1/87.

11 Q. Now, that's what you're calling your
12 retroactive deliverability category?

13 A. That's correct.

14 Q. And how is this category significant as
15 it relates to the issue of correlative rights?

16 A. Well, on the reasonable assumption that
17 deliverabilities declined part-time, I believe
18 it's fair to state that if the wells had been
19 tested in 1986, their deliverabilities would have
20 been higher than their 1991 deliverabilities.

21 If the wells had been tested in 89,
22 they probably would have been a little bit higher
23 than what we have here, which means to me that if
24 the allowables had been assigned back in 1987 and
25 1989 and all the intervening months on

1 deliverabilities that had been taken at that
2 time, that they would have been higher than what
3 was produced.

4 And, therefore, Great Lakes has not
5 produced more than its share from the Blanco
6 Mesaverde Pool. And I believe in not producing
7 more than their share, they've not violated
8 anybody else's correlative rights.

9 Q. Second column is headed with -- the
10 caption is "OCD District Method"?

11 A. That's correct.

12 Q. What does that term mean?

13 A. Well, I'm not sure that that's a term
14 that they use, but it's a term that I applied to
15 what the District did in this case of simply
16 going back to the first day in the proration
17 period, which was 4/1 of 90, and making the zero
18 deliverability retroactive to that date.

19 Q. Are you now ready to go to your Exhibit
20 No. 7?

21 A. Yes. I think perhaps we ought to go
22 ahead here with this, the first, Mr. Carr, and
23 run through some of these numbers. Let's take
24 the zero deliverability to see what the impact
25 would be on Great Lakes. If we take the Graham 1

1 and 1-A wells, and the first line is where they
2 stand right now at the end of September, those
3 wells would be 117,000 overproduced.

4 If you look right below that, you can
5 see that they began the year 116,000 over with a
6 total new allowable of only 76,000. Therefore,
7 there's no way those wells could have made up
8 that overproduction in this year. They'd be shut
9 in well into the next year.

10 The same thing is true with the Graham
11 No. 3. Again, it did not have enough allowable
12 at the beginning of the year, so it would have
13 been shut-in into the next year. The Hammond 55
14 and 55-A are not in as bad a shape. They're
15 okay. The Hammond 5 has enough overproduction
16 that it would have to remain shut-in the rest of
17 this year after September in order to make up
18 overproduction.

19 If we look at the OCD District Method,
20 we can see that only the Graham 1 and 1-A are
21 overproduced. And they're basically one month
22 over, so they're in good shape. Everything else
23 is underproduced. You go back to the
24 retroactive, to the 4/1/87 column, and you can
25 see that they're all way, way underproduced.

1 Q. All right. Now, if we go to your
2 Exhibit No. 7, would you explain first what
3 Exhibit No. 7 is?

4 A. Okay. Exhibit No. 7 and, I believe, 8
5 and 9 also are exhibits which tell you how I got
6 to the numbers that we've just gone through on
7 Exhibit No. 6.

8 Q. So Exhibit No. 7 explains how you used,
9 developed the numbers that you've put under the
10 category, "Zero Deliverability to 4/1/87"?

11 A. That's correct.

12 Q. Let's go and review that exhibit now.

13 A. All right. The first page of that and,
14 I believe, the fourth page are sort of written-up
15 versions of what we find on the spreadsheets.
16 But I like to look at the spreadsheets as long as
17 I can.

18 So let's just take a -- look at the
19 first page of the spreadsheets, which would be
20 the Graham 1 and 1-A wells. Those are on the
21 left-hand side of the page. You can see I've
22 gone back into 1987, and I have the allowables
23 for the unit as a whole. I've recorded the
24 production, the total production, and then
25 calculated the monthly over- or underproduction.

1 So if we start in column "H" there,
2 we'll see that these two wells began this period
3 something in excess of 32,000 underproduced. So
4 if we come down then to March of 1988, all of
5 that underproduction was made up. And we wind up
6 with 41,000 overproduction.

7 The wells continue to be overproduced
8 then every year, and so I've just simply rolled
9 that overproduction forward to March of 1990.
10 And the reason March of 1990 is important is
11 that's the date from which we begin to make up
12 any overproduction.

13 That's the proration year that we're
14 operating in based on what's happened to us. So
15 from that point on is when we make up
16 overproduction. So we can see at that point
17 these wells were something on the order of 95,000
18 over.

19 We get down to -- let's look in column
20 "G," about line 75 and 76. What I've done there
21 is I've divided up the production for the year
22 into overproduction and underproduction. And
23 it's the underproduction which applies against
24 this 95,000, so we wind up with something on the
25 order of 85,000 overage.

1 But to that 85,000 overage then we've
2 got to add the 30,000 over from the year 1990-91
3 because that's got to be made up in the next
4 year, and so that's what yields this 116,000
5 overage.

6 And I've done the same thing for the
7 rest of the wells, for the Graham 3 and for the
8 Hammond lease. And I really don't see any value
9 in going through all those numbers, but that's
10 the process I used and that's where the numbers
11 came from.

12 Q. And the spreadsheets for those other
13 wells are also included?

14 A. They're all in the exhibit, yes.

15 Q. All right. Let's go to Exhibit No. 8.
16 Identify and review that.

17 A. All right. Exhibit No. 8 is the same
18 sort of process I used then to determine status
19 under what I've labeled the OCD District Method.
20 Again, we can take a look at the Graham 1 and
21 1-A. They were marginal in March of 1990. They
22 had 28,685 overage in 1990-91. That's shown on
23 there. And the underage through September was
24 12,892.

25 So, again, all of the data is there.

1 That just simply shows how we arrived at the
2 numbers.

3 Q. Okay. And Exhibit No. 9?

4 A. Exhibit No. 9 is a little more
5 complicated than the others because of the way
6 the whole process works. But give me half a
7 second here, and I will start on it. Let's flip
8 over to the second page of that and again look at
9 the Graham wells, Graham 1 and 1-A.

10 Again, we have the 32,000
11 underproduction in March of 1987. Using the 1991
12 deliverabilities, I calculated the new
13 allowables, determined what the over and under
14 status was for every month. So what we find is
15 that there were 30,000 underproduction for --
16 no. No. No. Let's go back. Let me do this
17 right.

18 We start out with 32,000
19 underproduction. Apply against that 26,000
20 overproduction, we have canceled underage on the
21 order of 6,000. We wind up with underproduction
22 of 30,000. We go forward into the next year with
23 25,000 overproduction. Underage cancel would be
24 5,000.

25 We go to the next page. We have

1 applied against that -- we start out with
2 carried underage 12,000, apply against that 2600
3 underage -- overage, I'm sorry about that -- and
4 we wind up with underage, not made up and
5 canceled, of 9800. The carried underage is
6 56,000. The amount made up is 595. So we wind
7 up that we have underage canceled at 55,000. We
8 have carried underage at 54,000.

9 So, again, I followed the same process
10 all the way through for all of these wells to
11 come up with how much, how much was produced, and
12 what the well status would be.

13 Q. All right. Let's move to Exhibit No.
14 10.

15 A. In Exhibit No. 10, this is the
16 spreadsheet I used to determine what the
17 allowables would be. There I've gone back to
18 April of 1987 and from Division records recorded
19 the F-1 factor and the F-2 factor. I've written
20 down the deliverabilities, the 1991
21 deliverabilities on these wells, and had the
22 spreadsheet calculate what the allowable would be
23 on the wells.

24 I then transferred this data to the
25 spreadsheets in the previous three exhibits. And

1 that's what I used then to determine what the
2 allowables would have been, what the well status
3 would be.

4 One thing I would point out is I
5 rounded off the F-2 factors to four places to the
6 right of the decimal instead of six, but I don't
7 really believe it makes any significant
8 difference in the calculations. Probably cancels
9 out over time.

10 Q. Mr. Stamets, what does Exhibit No. 11
11 show?

12 A. Exhibit No. 11, I was asked to see if I
13 could quantify what sort of damage might have
14 occurred to Great Lakes under what I call the OCD
15 scenario, OCD method. And so what I did is I
16 went back and determined what the allowables on
17 those wells would have been if the
18 deliverabilities, the 1991 deliverabilities, had
19 applied from April 1, what their allowables would
20 have been, contrasted that with what their
21 allowables were.

22 And you can see under the OCD method
23 for the Graham 1 and 1-A, the restricted
24 allowable was something on the order of 50,000.
25 If the allowable had been retroactive to 4/1 of

1 90, using the 91 deliverabilities, they would
2 have gotten 140,000. So they're 90,000 behind.
3 If you take all of the wells you see on
4 allowable, they're 151,000 behind.

5 I also looked at production. That's
6 shown to the right on this page. Took the first
7 nine months of 1990 versus the first nine months
8 of 1991 for each of the sets of wells and
9 determined whether they had a gain or loss. And
10 you can see they were all producing below what
11 they produced in 1990.

12 And in the last column, then, I
13 recorded the status, whether the units were
14 overproduced or underproduced. And what that
15 amounts to is that of this production loss, they
16 would only be able to make up 5,000 of that. So
17 they're nearly 25,000 Mcf behind on production
18 for the first nine months of this year.

19 Q. And what does that mean? Does that
20 mean that is production they will not be able to
21 achieve?

22 A. Yes, because basically the wells are in
23 that sort of a balanced status.

24 Q. Are you prepared to make a
25 recommendation to the Examiner as to what should

1 be done in this situation?

2 A. Yes, I am, and I have some options. We
3 have our preferred option, but I also have some
4 other options to make for the Division.

5 Q. Okay. Let's start with the preferred
6 option, and then we'll work through the others.

7 A. Okay. The preferred option is that we
8 don't think any bad thing has happened here. We
9 don't think waste has occurred. We are convinced
10 that nobody's correlative rights have been
11 violated.

12 What we would like is that our
13 allowables up to 4/1 of 90, that those allowables
14 be affirmed, and that beginning 4/1 of 90, that
15 our new allowables would be based on these 1991
16 deliverables.

17 Q. That's the preferred course of action?

18 A. That's the preferred course of action.

19 Q. If the Division determines that some
20 sort of penalty must be imposed, what would you
21 recommend in that circumstance?

22 A. Well, there are a couple of options
23 there. As I have testified earlier, if Great
24 Lakes had known this back in 1987, if their
25 allowable had been reduced in 1987, then they

1 would have gotten new deliverability tests in in
2 a short period of time.

3 So an option would be to simply
4 penalize Great Lakes for the loss of, say, four
5 to six months of allowable, four to six months of
6 deliverability allowable, and then assign new
7 allowables based upon these 1991
8 deliverabilities.

9 And then, and the final option would
10 be, to allow what's been labeled the OCD District
11 Method to continue to assign Great Lakes a zero
12 deliverability from 4/1 of 90 until the new
13 deliverability tests had come in and allowed the
14 allowables which existed up to 4/1/90 to stand,
15 that those allowables would be affirmed.

16 Q. In your opinion, would it be reasonable
17 or equitable for the Oil Conservation Division to
18 grant Great Lakes' recommendation?

19 A. Yes, I certainly think that it would
20 be.

21 Q. And why is that?

22 A. Well, Great Lakes knows they should
23 have filed the tests, but there are mitigating
24 circumstances in this case. They are not a
25 sophisticated oil and gas operator. They're not

1 located close to New Mexico.

2 There are other mitigating
3 circumstances. The fact that this error was not
4 discovered, that Great Lakes continued to receive
5 allowables, that they relied on the proration
6 schedules to believe that they were in good
7 shape. There was confusion on the part of their
8 field personnel that came from a variety of
9 sources.

10 The bottom line is that there was never
11 any intention on the part of Great Lakes not to
12 comply with the Division rules and regulations.
13 And I don't believe that any damage of any kind
14 has been done by this failure, nor would any
15 damage be done by granting the relief sought by
16 Great Lakes in this case.

17 Q. In your opinion, is there anything the
18 Division could do to deal with this situation and
19 assure that this doesn't occur again and
20 delinquent tests are timely filed?

21 A. Yes. When I became aware of this
22 problem, I was shocked. And I've heard Mr.
23 Nutter say that. And I've always chuckled when
24 Dan would tell me he was shocked about something
25 that had happened that he should have known

1 about. But I always assumed that there was a
2 system in the gas proration side, as there is in
3 the oil proration side, to deal with operators
4 who don't timely file tests.

5 When I put out the oil proration
6 schedule in District 2 for many, many years, if
7 an operator did not file his new gas-oil ratio
8 test, that went out in the proration schedule,
9 and he got zero allowable that month and he knew
10 it. But there is no comparable thing on the gas
11 proration side.

12 That's something that the Division
13 could do, is to work over its computer program so
14 that they would know and operators would know
15 when a required test that was supposed to have
16 been filed was not filed and take reasonable
17 action at that time and not four or five years
18 later to impact the allowable.

19 Also, there apparently are a lot of
20 other wells and a lot of other operators in this
21 situation right now. And perhaps the Division
22 could consider some sort of amnesty for all wells
23 in this condition until the work is done to
24 determine who's delinquent and give everybody an
25 opportunity to get those tests in.

1 Q. In your opinion, if your preferred
2 recommendation is granted, would that be in the
3 best interests of conservation, the prevention of
4 waste, and the protection of correlative rights?

5 A. Yes, I believe that it would.

6 Q. Would it be fair to the operators in
7 the field?

8 A. There would be no negative impact that
9 I'm aware of against the correlative rights of
10 any of the other operators in the Blanco
11 Mesaverde Pool. And it would give Great Lakes an
12 opportunity to produce some more from their
13 leases and protect their correlative rights.

14 Q. And is it your opinion that some
15 changes in the regulatory process are necessary
16 to assure that data is timely filed and the
17 system works efficiently?

18 A. Yes.

19 Q. Were Exhibits 1 through 11 prepared by
20 you?

21 A. Yes.

22 MR. CARR: At this time I move the
23 admission of Great Lakes Chemical Corporation
24 Exhibits 1 through 11.

25 EXAMINER STOGNER: Are there any

1 objections?

2 MR. PEARCE: No objections.

3 EXAMINER STOGNER: Exhibits 1 through
4 11 will be admitted into evidence at this time.

5 MR. CARR: That conclude my direct
6 examination of Mr. Stamets.

7 EXAMINER STOGNER: Thank you, Mr.
8 Carr.

9 Mr. Pearce, I'll turn the witness over
10 to you or your cocounsel.

11 MR. PEARCE: Thank you. I believe Mr.
12 Swan is going to question him. Thank you, Mr.
13 Examiner.

14 MR. SWAN: May it please the Examiner,
15 Mike Swan.

16 EXAMINATION

17 BY MR. SWAN:

18 Q. Mr. Stamets, I want to ask you some
19 questions, sir, first about Great Lakes
20 Chemical. You're aware, are you not, that it's a
21 New York Stock Exchange Company?

22 A. Yes, I am, as a matter of fact.

23 Q. And it has offices in places other than
24 Lafayette, Indiana?

25 A. West Lafayette.

1 Q. West Lafayette.

2 A. Yes. I don't know where they all are,
3 but they do have other offices.

4 Q. They have international divisions?

5 A. Yes.

6 Q. Have staffs of lawyers?

7 A. I've met at least one of them.

8 Q. Have gross revenues exceeding a billion
9 dollars a year?

10 A. If you tell me that, you know, that
11 might be right, it might not be.

12 Q. It's just not a small operation, is it,
13 sir?

14 A. My understanding is that it's a pretty
15 good-sized company.

16 Q. You've told us about the soap opera of
17 the switcher, his difficulties. Your comments
18 about those difficulties are based on something
19 that someone else told you; is that correct?

20 A. Absolutely.

21 Q. And who would have told you that?

22 A. I visited with the pumper, Mr. Tom
23 Smith, personally.

24 Q. And you have done no investigation,
25 have you, Mr. Stamets, as to the amount of time

1 that Great Lakes in its home office may have
2 devoted to ensuring that it was complying with
3 the rules and regulations of the State of New
4 Mexico insofar as production of these wells?

5 A. Tell me -- give me the question again.

6 Q. Sure. Have you done any type of
7 investigation as to the amount of time and effort
8 that Great Lakes has expended to ensure that it
9 complies with the rules and regulations insofar
10 as the operation of these six wells?

11 A. No. I've not done a great deal of
12 effort in determining how they're set up in West
13 Lafayette to deal with all of these little things
14 that they may have scattered around. I have
15 talked with a number of their staff, and it seems
16 clear in talking to them this is a very minor
17 thing and it's something that's easy to get away
18 from them.

19 Q. And it's clear, is it not, that because
20 it's such a minor thing to them, it's fair to
21 conclude that they have given minor or no
22 attention to compliance with the rules and
23 regulations governing the production of these
24 wells?

25 A. I'm not sure that that's altogether

1 true. You know, in this case they continued to
2 receive gas proration schedules, which I'm sure
3 led them to believe they were in good shape.

4 As I said, if they had gotten their
5 allowable canceled or reduced back in 1987, I
6 feel certain that they would have taken action
7 then, as they have done. As soon as the Division
8 notified them in 1990 or 1991 that they had a
9 problem, they took their action. They got the
10 tests in.

11 Q. Are you aware whether or not in 1979
12 Great Lakes was sent a letter by the Commission
13 informing them about the consequences of failing
14 to file a deliverability test?

15 A. 1979? No. You know, I'm not sure how
16 far back we've got to go back in seeing who's
17 been delinquent when. That's kind of a long
18 time.

19 Q. Well, you think they ran a test, and
20 that last test was in 84?

21 A. Correct.

22 Q. You're not aware of whether or not they
23 were warned about the failure to run tests prior
24 to 1984?

25 A. No.

1 Q. Mr. Stamets, I've handed you a document
2 from the State of New Mexico Energy & Minerals
3 Department, dated September 24, 79. Have you
4 seen this letter before, sir?

5 A. No.

6 Q. You recognize the gentleman that signed
7 it at the bottom, do you not?

8 A. Certainly.

9 MR. SWAN: And could we mark that
10 as Exhibit No. 1?

11 MR. STOVALL: There's a stamp right
12 there.

13 Q. Now, the well that's referenced there,
14 the Hammond No. 5, is one of the wells that's
15 involved in this case, isn't it?

16 A. Yes.

17 Q. And in your discussion with Great
18 Lakes, they didn't bring the fact that they had
19 been warned before to your attention?

20 A. No.

21 MR. SWAN: And we would offer Exhibit
22 No. 1, Your Honor.

23 MR. CARR: We have no objection.

24 EXAMINER STOGNER: Exhibit No. 1 will
25 be admitted into evidence. Exhibit 1 of El Paso

1 Natural being a letter dated September 24, 1979,
2 signed by Frank Chavez. Please note the governor
3 is Mr. Bruce King.

4 A. Mr. Swan, in looking at this letter, I
5 only see one well listed.

6 Q. That's all I see.

7 A. Do you suppose they tested the other
8 five wells?

9 Q. Mr. Stamets, I don't know whether they
10 did.

11 A. Do you suppose this was an oversight?

12 Q. That may have been. But do you suppose
13 they could have followed their rules and
14 regulations after being notified in 1979 and
15 1984?

16 A. For all I know, this was filed and lost
17 in the Aztec District Office. That's going
18 pretty far afield, as near as I can tell.

19 Q. Have you talked to Mr. Iber, who used
20 to be Mr. Bond's predecessor --

21 A. No.

22 Q. -- about this document or about the
23 failure to file these tests?

24 A. No.

25 Q. You are not aware, are you, Mr.

1 Stamets, that in 1988 Great Lakes had some
2 discussions with Mr. Smith about the need to file
3 the test and decided not to file it?

4 A. No.

5 Q. You mentioned a while ago some
6 confusion resulting from a memo written by Mr.
7 Marcum in 1989. That 89 memo had no impact on
8 their failure to file the test in 86, couldn't
9 have, could it?

10 A. No.

11 Q. And I want to direct your attention to
12 your Great Lakes Exhibit No. 6, please, sir.

13 A. I have that.

14 Q. Where did you get the numbers for the
15 status of the wells beginning in March of 87, the
16 over and under status?

17 A. That's from the gas proration schedule
18 for that period.

19 Q. That period being?

20 A. The period that would end March of
21 1987.

22 Q. Looking at Exhibit No. 6, the first
23 column is zero deliverability to 4/1/87?

24 A. Correct.

25 Q. And all three columns are calculated

1 with production information through September?

2 A. Correct.

3 Q. Of 91?

4 A. Correct.

5 Q. The first column, zero deliverability
6 to 4/1/87, that is a column that applies the
7 Division rule as written, so to speak?

8 A. No. What it does is it applies the
9 zero deliverable back to 4/1/87.

10 Q. How does that differ from the Division
11 rule as you understand it?

12 A. I believe that the Division rule would
13 allow for a zero allowable all the way back.

14 Q. And this does not have a zero?

15 A. No.

16 Q. It says zero deliverability to 4/1/87?

17 A. That's correct, but not a zero
18 allowable.

19 Q. Oh.

20 A. This is my understanding of what was
21 going to happen, and so that's what I based my
22 calculations on.

23 Q. Okay. So the written rule would say
24 zero allowable, and the first column is zero
25 deliverability?

1 A. That's correct.

2 Q. Now, the second column is what you
3 labeled the OCD method?

4 A. Correct.

5 Q. And that's the Aztec Office?

6 A. That's correct.

7 Q. District Method. Now, it differs from
8 the written rule?

9 A. It depends on how you read the rule,
10 but yes, it could very well be interpreted to be
11 different from the rule.

12 Q. And then you make your calculation
13 based on your understanding of Aztec's method?

14 A. That's correct.

15 Q. And the last column you just used the
16 most recent deliverability test and retroactively
17 calculate allowables?

18 A. That's correct.

19 Q. And in each instance, each of those
20 three examples, you used the over and under
21 status as of March of 87?

22 A. Well, I didn't use that in the District
23 Method because they had a different status
24 beginning March -- or ending March of 1989 than
25 they had back in 87.

1 Q. Now, you've given the Examiner your
2 recommendation. And that is to -- it's different
3 than the rule that would say that from 4/1/87
4 these six wells have zero allowables. You have
5 not mentioned that as having been one of the
6 alternatives. Let me back up.

7 A. Well, certainly we have no preference
8 for that whatsoever. That would be devastating
9 to Great Lakes.

10 Q. If the rule was applied as written,
11 that would be one additional option, would it
12 not?

13 A. I presume if the Division chose to do
14 that, they could do that.

15 Q. You are familiar, are you not, Mr.
16 Stamets, with an order the Division issued some
17 time back involving a similar instance, involving
18 Mesa Petroleum?

19 A. I'm not sure it was a similar
20 instance. I've had a chance to take a look at
21 that, and there's some differences.

22 Q. Now, just for the record, you were the
23 Examiner in that case, were you not?

24 A. I believe that's right.

25 Q. And you ultimately signed the order as

1 Acting Director?

2 A. How about that. Good. I hadn't read
3 the last page.

4 Q. And in that case the applicant, Mesa,
5 had applied for retroactive allowable just as
6 Great Lakes has in this case?

7 A. Yes -- no. No. I'm not sure that
8 that's exactly what we've applied for. We've
9 applied for relief. They applied for relief, and
10 they got some relief, as I recall.

11 Q. The Mesa case is Case No. 8298, Order
12 No. R-7669, is that not correct, sir, for the
13 record?

14 A. Looks about right. Now, in the Mesa
15 order, Mesa didn't receive any relief for
16 retroactive allowables?

17 A. Well, you made two different
18 statements there. They did receive relief. They
19 were not -- they were not written retroactive
20 allowables, but the impact of the order was to
21 give them allowable prior to the date of the
22 hearing.

23 Q. I'd like to hand you a copy of the Mesa
24 order just ask you to share with me mine. The
25 order, on the last page, paragraph No. 1, says

1 that, "The application for assignment of
2 retroactive allowable is denied."

3 A. Yes.

4 Q. So the relief for retroactive allowable
5 would have been denied?

6 A. I'm not certain of that. Let's read
7 the next paragraph.

8 Q. No. 2 says, "The overproduction status
9 for the unit is adjusted to zero as of September
10 1, 1984."

11 A. Okay. And so the overproduction that
12 existed before, was wiped out, isn't the impact
13 of that to grant the operator some allowable? It
14 made production which was above the allowable
15 allowed production.

16 Q. Okay. In the Mesa instance, in the
17 Mesa case, Mesa had not filed a deliverability
18 test for the well in question in that proceeding
19 either, had it?

20 A. That is correct.

21 Q. And what the order did in Mesa is it
22 left the Commission's rule about loss of
23 allowable for failure to file a deliverability
24 test intact?

25 A. Bent perhaps.

1 Q. And then the order allows the
2 overproduction to be given and prospectively, so
3 to speak?

4 A. I don't see how you can say
5 prospectively. It wiped it out. It wiped out
6 overproduction as of a certain date. That had to
7 be retroactive.

8 Q. There was no changing of the
9 allowables, however, retroactively?

10 A. Well, there's no number that showed up
11 anywhere assigning the allowable. But the impact
12 was to assign them retroactive allowable.

13 Q. Does your recommendation accomplish a
14 doing away with the deliverability tests for all
15 operators?

16 A. Obviously not. You weren't listening,
17 Mr. Swan.

18 Q. Well, what I don't understand -- I
19 understand your math. You say there are 569, and
20 you did your arithmetic. But in part of your
21 recommendation you said that by taking the action
22 you recommended, it would benefit these other
23 operators as well?

24 A. Well, now, we're talking about two
25 different things. I made recommendation specific

1 to Great Lakes. And then Mr. Carr asked me do I
2 have general recommendations, and I did. And
3 those related to what the Division could do to
4 help this situation: Establish a procedure for
5 being able to detect operators or wells which did
6 not have deliverability tests timely filed; take
7 some immediate action on that; and do something
8 to grant some sort of general amnesty for the
9 other people who may be in the same position as
10 Great Lakes because of what's happened in the
11 past.

12 MR. SWAN: I have no further
13 questions.

14 EXAMINER STOGNER: Thank you, Mr. Swan.
15 Mr. Pearce, do you have any other
16 questions?

17 MR. PEARCE: No, I don't. Thank you.
18 Mr. Carr.

19 MR. CARR: I have a little redirect.

20 FURTHER EXAMINATION

21 BY MR. CARR:

22 Q. Mr. Stamets, if we look at exhibit No.
23 1, El Paso Exhibit No. 1 --

24 A. Yes.

25 Q. -- there's a note written in

1 handwriting on that in the upper corner. It
2 seems to read, "Please straighten this out with
3 NMOCC and let me know what went amiss," signed
4 "Bill." Do you know who "Bill" would be?

5 A. No, I don't know who "Bill" would be.

6 Q. Do you know who would have written
7 that?

8 A. No.

9 Q. Do you know whether or not action was
10 taken to pull this back into line with New Mexico
11 OCD regulation?

12 A. It must have. They had 1984
13 deliverability tests. And I presume if there
14 were a letter written every two years to Great
15 Lakes, that El Paso would have them.

16 Q. Now, let's take a look at the Mesa
17 order.

18 A. Yes.

19 Q. Was this order offered as an exhibit in
20 this case?

21 MR. SWAN: No, I did not.

22 MR. CARR: I'd like to request that the
23 Division take administrative notice of the record
24 in Case 8298 and also Order R-7669.

25 Q. Now, Mr. Stamets, if you would look at

1 this order, and we are apparently dealing in this
2 case with the Mesa State Com. AK Well No. 35-E;
3 is that correct?

4 A. Yes.

5 Q. If you go to the second page of this
6 order and look at Finding No. 8, does the
7 overproduced status of that well appear in that
8 finding?

9 A. Let's see. Says, "Well first appeared
10 in December 1982, gas proration schedule, wherein
11 the GPU was classified as a non-marginal and
12 production during said 18-month period was shown
13 as overproduction of approximately 367,637 Mcf."
14 And what was the question?

15 Q. From this can you make a determination
16 as to what the overproduced status of that well
17 was at the time?

18 A. Yes.

19 Q. What was that?

20 A. This 367,000.

21 Q. Now, if we go down to Finding No. 17,
22 what relief did you recommend and ultimately
23 grant this case?

24 A. Let's see, "The retroactive allowable
25 for period when the well is not in compliance

1 should not be made; however, the well's
2 overproduced status should be adjusted to zero."

3 Q. If you adjust to zero, what does that
4 do to overproduction?

5 A. It wipes it out. It offsets it. In
6 essence, it assigns allowable to make that up.

7 Q. If we go to Finding 18, would you read
8 that, please?

9 A. "The entry of an order with the above
10 status adjustments will not result in waste or
11 violation of correlative rights."

12 Q. A "status adjustment", what would that
13 be? Taking the well back to zero?

14 A. Yes.

15 Q. And why would you find or couch this
16 relief in terms of waste and correlative rights?

17 A. Mr. Swan tried to say that this was a
18 similar case, and I guess it is similar from that
19 standpoint, that I don't see -- I obviously
20 didn't see there was a waste or correlative
21 rights problem there. And I sure don't see that
22 there is one here.

23 Q. Did El Paso appear in opposition to
24 this case at that time?

25 A. I don't see any evidence that anybody

1 appeared in opposition to this.

2 Q. That would be reflected in the record?

3 A. It normally would be somewhere in the
4 findings.

5 Q. If I hand you the transcript of this
6 case, and I want to direct your attention to page
7 22 of the transcript and ask you to look there
8 and determine whether or not El Paso appeared in
9 opposition to this case.

10 A. Okay. Let me see if I can find that.
11 Okay. Well, let's see, Mr. Kendrick is making a
12 closing statement for El Paso. "El Paso, as a
13 producer, opposes the approval of this
14 application."

15 Q. Now, Mr. Stamets, when the application
16 is granted and you find that waste in correlative
17 rights -- will not result in waste, why is waste
18 a consideration for this Division?

19 A. Well, that's one of the -- or perhaps
20 the prime directive of the agency is to prevent
21 the physical waste of oil and gas.

22 Q. What's the second-most significant
23 directive for the agency?

24 A. That's for the protection of
25 correlative rights, giving every operator the

1 opportunity to produce his share from the
2 reservoir.

3 Q. When an application comes before you
4 seeking allowable relief, what should this
5 agency, as an expert administrative process,
6 weigh that request against?

7 A. I think, again, you've got to weigh all
8 of these applications against the prime
9 directives: the prevention of waste, the
10 protection of correlative rights.

11 MR. CARR: Thank you. That's all.

12 FURTHER EXAMINATION

13 BY MR. SWAN:

14 Q. Mr. Stamets, looking at Finding No. 17
15 that Mr. Carr referred to just a few minutes ago,
16 and there's two in there, there's a retroactive
17 allowable for the period when the well was not in
18 compliance with the Division rules, should not be
19 made --

20 A. Uh-huh. Yes.

21 Q. -- and then is followed by what I'll
22 characterize as a forgiveness of the
23 overproduction.

24 A. Well, however you would like to
25 characterize it. That overproduction was somehow

1 offset by allowable.

2 Q. But there was no allowable for the
3 period in which the well produced without a
4 deliverability test?

5 A. There was no supplement written that
6 assigned set allowables for any particular
7 month. I'd like to point out, too, we're dealing
8 here with Mesa Petroleum. They're a big company,
9 or they were. They surely knew what they were
10 doing.

11 They had people in the field. They had
12 lots of engineers, geologists who should have
13 been able to take care of company business.
14 That's their prime business, not a number of
15 other things scattered across the world.

16 Q. You're not suggesting to the Examiner
17 because Great Lakes makes its millions or
18 billions from a chemical operation that it
19 doesn't have to apply with the Commission's rules
20 and regulations, are you?

21 A. There was never any intention on the
22 part of Great Lakes not to comply. This small
23 part of their company just simply had a problem
24 that got away from them, and they weren't helped
25 when they continued to receive proration

1 schedules that assigned them allowables month
2 after month, after month.

3 Q. No question it got away from them?

4 A. Oh, that's right. They admit that.
5 They wholeheartedly --

6 MR. SWAN: I have no further
7 questions.

8 EXAMINER STOGNER: Thank you, Mr.
9 Swan.

10 Any more redirect?

11 MR. CARR: No redirect.

12 EXAMINER STOGNER: Mr. Stovall, I
13 believe you have some questions at this time

14 EXAMINATION

15 BY MR. STOVALL:

16 Q. Mr. Stamets, let's just deal with Order
17 R-7669 real quickly.

18 A. Okay.

19 Q. I guess I can ask you this. Would you
20 say that perhaps, in effect, Paragraph 17,
21 Finding 17, and the combination of paragraphs 1
22 and 2 were inartfully worded in retrospect?

23 A. Well, gee, when you write as many
24 orders as I did over the years, the ability to be
25 inartful was probably there more often than I'd

1 like, so they may be. And, of course, if I'd
2 been thinking about this case back in 1984, I
3 might have written it differently.

4 Another factor of this is that what
5 Mesa had was a new well as an infill well on a
6 multi-well unit. And the system was set up, the
7 gas proration system was set up at that time to
8 allow those wells to just produce forever without
9 getting in a deliverability test.

10 And when they finally did get in, there
11 were many of them winding up with these huge,
12 huge amounts of overproduction. Subsequent to
13 that, under my specific guidance, the rules were
14 changed so that wells could not continue as new
15 wells to receive -- to be allowed to produce and
16 produce and produce without an allowable, but
17 they would receive the acreage factor allowable.

18 So when I was director, I took action
19 to prevent the kind of thing we had in Mesa from
20 happening. And had I known that the situation
21 existed where deliverability tests were required
22 and were not coming in, I would have taken action
23 then to stop that as well.

24 Q. If I understand, let's go back to the
25 Mesa thing, because I want to ask you about the

1 procedures. Is it your interpretation of this
2 order, as you read it today, that what it, in
3 effect, really did was grant a retroactive
4 allowable which was equivalent to production
5 during the period in question?

6 A. That's the impact. It was a
7 retroactive allowable that offset previous
8 overproduction.

9 Q. And the part that was denied was a
10 retroactive allowable based upon a nonexistent
11 deliverability test from the time; is that
12 correct?

13 A. That's right. And it also saves the
14 Division a hell of a lot of work having to go
15 back and write a bunch of supplements and make
16 all the calculations.

17 Q. Based upon your recollection, and I
18 realize we're going back a little bit in history,
19 but had the application been granted as
20 requested, would it have been similar to this one
21 in that it would have created an underproduced
22 status for the Mesa wells?

23 A. I'm sorry, I don't remember. And I
24 haven't looked at the case to know whether that
25 would be the situation or not. And apropos to

1 that, you know, Great Lakes has known now
2 for many, many months what its situation was
3 relative to the OCD District Method. And so
4 they've not -- they've wanted to be in balance.
5 They didn't want to overproduce.

6 And so any underproduction that might
7 come out of this, they would try and make it up.
8 But that's perhaps not as big a consideration as
9 it might have been to Mesa.

10 Q. Did the orders back in that time when
11 you were Acting Director and signed this, did
12 they go through the review process similar to
13 what happens today where other engineers and
14 legal counsel and all those folks look at them
15 too?

16 A. As far as I know, that's what has been
17 done with orders ever since I went to work for
18 the agency.

19 Q. Okay. Let me go back and again ask
20 you, from your perspective, looking back at the
21 time you were Director, you do have familiarity
22 with the mechanisms for dealing with this and
23 enforcement of the Division's regulations; is
24 that correct?

25 A. Yes. Except, obviously, I thought the

1 system worked one way to catch situations like we
2 have here with Great Lakes, and it didn't. And
3 so yes, I was here. Did I know absolutely
4 everything that ever happened? Huh-uh.

5 Q. No, I didn't say that, Mr. Stamets.

6 A. I'm afraid my computer is not big
7 enough to know that.

8 Q. Let me back up. And I'm going to ask
9 you to kind of just listen to the question
10 because I want to take you through this process
11 to make sure. It appears to me that the Division
12 perhaps may share some responsibility in the
13 situation that has occurred; isn't that what
14 you've said? I'm saying blame; I'm saying
15 responsibility.

16 A. Okay. I'm not trying to blame the
17 Division on that, but yes, they're part of the
18 mitigating circumstances. That's correct.

19 Q. Now, you compared the gas proration
20 enforcement mechanism to the oil proration
21 enforcement mechanism?

22 A. Yes.

23 Q. Can you describe how that oil proration
24 system worked in such a way as to allow -- as to
25 create that, the ability to generate timely

1 notices?

2 A. I'm not exactly certain how they're
3 doing it now that there are fewer oil
4 proration schedules.

5 Q. Let's talk about then.

6 A. Back in the Dark Ages, when I was doing
7 oil proration schedules, they were coming out
8 every month. And at the beginning of each year,
9 there was a gas proration test schedule that went
10 out, and that was mailed out with the schedules
11 so that all operators had the chance to get this
12 test schedule.

13 And it would say, well, you'll test
14 wells in the Empire Abo Pool during the month of
15 March, and those tests are due in by April 10.
16 And then they would become effective in the
17 schedule that went out in May.

18 So what we would physically do then is
19 write in the new gas-oil ratio data in the
20 proration schedule that we used as a master. And
21 any operator who did not get one in then, it
22 would show no C116 in the schedule and they would
23 receive a zero allowable. And that way they were
24 notified that they had a problem.

25 Q. Now, you were talking about the oil

1 proration schedule then; is that correct?

2 A. Yes.

3 Q. I think you said gas at the beginning
4 of the statement.

5 A. I'm sorry.

6 Q. I wanted to make sure.

7 Under the oil proration system, the
8 allowable is not adjusted monthly based upon
9 quote, "market demand," "nominations," whatever;
10 is that correct?

11 A. Well, when I started, it was. And then
12 eventually it went on 100 percent market demand.
13 I'm trying to think.

14 Q. When did the depth bracket allowable
15 concept come into --

16 A. It seems to me that that may have come
17 in about the time I came up here in the early
18 1970s, but I wouldn't swear. I think it was
19 after I came up here.

20 I think when I worked in Artesia and
21 was doing the schedules, it was still the old
22 Topian (phonetic) allowable system and that the
23 Commission still continued to set allowables
24 either on a monthly or bimonthly basis.

25 Q. Now, the gas system, the gas proration

1 system, explain to me the scheduling. The
2 deliverability tests are only applicable in the
3 Blanco, Mesaverde, and the Basin Dakota; is that
4 correct?

5 A. No. All three -- or all four of the
6 prorated pools, including the Tapicito and South
7 Blanco Pictured Cliffs. If you have a well
8 which is exempt from testing, basically a
9 marginal well, and the schedules will continue to
10 show the old test data in the schedule, but
11 they'll just simply receive the marginal
12 allowable.

13 Wells which are not exempt from testing
14 must take the test in this calendar year. Then
15 that's got to be submitted to the OCD by, I
16 think, no later than March 10 -- could be wrong
17 about that.

18 But, you know, as soon as you can get
19 those in after the tests, then those become
20 effective in the new proration period, which
21 begins April of the following year. So you would
22 test in 1989 for the proration year that begins
23 April of 1990.

24 And that's what happened to Great Lakes
25 in the case of their 1989 test. If they had

1 taken those tests during 1989, submitted them
2 timely, they would have been effective April 1 of
3 1990.

4 Q. What's your recollection about what was
5 going on in the gas world back in the, let's say,
6 86-87 time frame?

7 A. That was a very difficult time period.
8 You had a lot of problems between pipelines and
9 the producers and the pipelines not wanting to
10 take gas that they had contracted for at higher
11 prices. And, you know, they weren't really
12 interested in moving any of that high-priced
13 gas. But they sure took a lot of spot-market
14 gas.

15 You had the advent of the
16 spot-marketers. And what was it, El Paso
17 Marketing Company, taking the place of a
18 purchaser in a lot of cases from El Paso Natural
19 Gas Company and similar things on other
20 pipelines.

21 Q. Now, let me stop you right there.
22 Prior to that period where this market was
23 opening up, how was -- just in the real world how
24 was the testing schedule being conducted? Who
25 was --

1 A. I'm not sure about 1984, but I know
2 that for a long time El Paso essentially did
3 everything for the operators that they were
4 connected to.

5 And in the 80s, and I can't tell you
6 exactly when, they began to unbundle themselves
7 from all of the extras that they had done for
8 their producers. And by 1984 I'm not certain
9 what El Paso was doing.

10 Q. You made some reference, I think early
11 in your testimony, to something about waiving the
12 requirement for tests in 87; is that correct?

13 A. Yes. In 1987 testing was suspended for
14 the entire year and the test scheduling was then
15 set back one year. In other words, if -- let's
16 see, the Blanco Mesaverde was to be tested in 89,
17 so it would have been Basin Dakota -- I'm sorry,
18 in 86. The Basin Dakota would have been tested
19 in 87. So in 87 testing was suspended.

20 Basin Dakota then was tested in 1988 --
21 I'm sorry, 1990. And then Blanco Mesaverde will
22 be tested again in 91.

23 Q. Prior to 91 when was the next previous
24 Blanco Mesaverde test required; do you remember?

25 A. Let me think. 89, it would have been

1 86. So 86, you skipped 87 altogether. Should
2 have been tested in 88, but because of the lag,
3 it was tested in 89.

4 Q. Okay. So the Great Lakes missed the 86
5 test, which was actually scheduled?

6 A. The 86 test would have been effective
7 April of 87, that's correct.

8 Q. Okay. And then, again, it was required
9 to be tested in 89, the Great Lakes received the
10 letter, whatever your exhibit is, the letter that
11 says, "The wells have to be turned on for a
12 test"; is that correct?

13 A. That's correct. And also it's of some
14 interest Great Lakes was not on the spot market
15 after January of that year, so they had no spot
16 sales the rest of the year.

17 Q. Where was Great Lakes selling the gas
18 from 86 to 89; do you know?

19 A. I'm not sure how much spot-market
20 participation they had in that period, if any.
21 I've not had that discussion. The only thing I
22 do know is that they told me they did not
23 participate in the spot market after January of
24 1990 -- I'm sorry. January of 1989, which was
25 the test year.

1 Q. Now, let me back up. I'm sorry for
2 skipping around like this. But go back to the
3 Division processes for enforcement of the
4 regulations. Is it your understanding that --
5 let's see, you were director until January of 87;
6 is that correct?

7 A. December of 86 -- December of 86.

8 Q. Right in that time?

9 A. Yeah.

10 Q. The election year transition?

11 A. Yes. Right.

12 Q. Prior to -- at least during the time
13 that you were director, is it your understanding
14 that the responsibility for ensuring compliance
15 was with the Aztec District Office?

16 A. Well, if you had asked me, I would have
17 said that the computer back here was what was
18 responsible for seeing that deliverability tests
19 were in.

20 Q. Would it be the computer or the people,
21 Mr. Stamets?

22 A. Well, the system, the computer and the
23 people that -- I labored under the false
24 assumption the computer worked with the gas
25 proration schedule the same way I did with the

1 oil proration schedule, that if it said you test
2 and you didn't test, that you got a zero in that
3 deliverability column on the proration schedule
4 and your allowable was impacted. I was not aware
5 that that's not what really happened.

6 Q. When did that computer to which you are
7 attributing the responsibility, when did that
8 system begin to come into operation and function
9 within the Division; do you know? Was that
10 during your period? Were you the director when
11 that started?

12 A. No. The computer gas proration system
13 has been around for a long, long time. It may
14 well have been there when I went to work in
15 1957. If it wasn't, it was shortly thereafter.

16 Q. In 1986 they're using the same system?

17 A. Well, it's -- you know, it's, I suppose
18 so, yeah. It's been modified over the years and
19 different computers. And it's been asked to do
20 different things over different periods of time.
21 But I think it's the same basic system, yes.

22 Q. Now, again, going back to your
23 understanding during that time period, and I just
24 want to draw on your experience here. Am I
25 correct in interpreting what you say is that the

1 gas proration data management system should
2 somehow kick out something that says there's no
3 test; therefore, no deliverability is assigned to
4 this well?

5 A. Absolutely. You know, I would feel
6 over here on the Division's side that that's part
7 of my work, is not to put out garbage, and that's
8 what happened when these tests didn't come in.
9 The information that went out was inappropriate.

10 Q. And the responsibility for getting data
11 in and operating that system, I mean the human
12 responsibility was with the gas proration section
13 here in the Santa Fe Office; is that correct?

14 A. Well, gee, the office here in Santa Fe
15 put together the computer listings to the
16 operators of wells that were to be tested. And
17 I'm not sure if those all went to the District
18 and were mailed out from there or if the District
19 just got a copy and they were mailed directly to
20 the operators. But the District Office also has
21 copies or had copies of the letters that went to
22 the operators.

23 All the deliverability tests would come
24 through the Aztec Office where they were checked
25 for accuracy. They were then sent here to Santa

1 Fe where they were entered into the computer.

2 I think in recent years, probably
3 before some of these problems or after some of
4 these problems, in recent years Frank may have
5 had his computer systems such that they can
6 either be transferred over the phone lines or by
7 data disk.

8 Q. Okay. So, again, I'm going back
9 because in reality you were the director during
10 the time when these tests weren't taken.

11 A. Correct.

12 Q. I just want to make sure I understand
13 the process.

14 A. The first one?

15 Q. Right. Correct. So it's your
16 understanding, vaguely recollected, that the
17 computer would kick out some sort of notification
18 either in form of zero deliverability and/or a
19 letter to the operator that says you have not
20 done the deliverability test as required?

21 A. No. No, I didn't say that. What I
22 said was that I assumed that the gas proration
23 system was like the oil proration system; that if
24 they were to file and they did not file, that
25 that would be reflected in the schedule with a

1 zero deliverability and the allowable would be
2 impacted.

3 And that is not what happened. I was
4 in error when I thought that. But I was so
5 certain of that, and, as I said, I was shocked
6 when I found out that it did not work that way.

7 It seems like such an obvious sort of
8 thing. You send out the list of wells that you
9 expect to be tested. Your computer knows that.
10 There's no reason it can't tell you which ones
11 you didn't get data back on.

12 Q. Given the fact that the computer did
13 not assign a zero deliverability factor to these
14 wells, did it spit out, to your knowledge, any
15 listing or information about wells which were
16 delinquent in their tests; do you remember?

17 A. In talking with the people who are
18 there now, I can't find anyone who says yes, that
19 was standard procedure or -- the only thing I've
20 heard is that, "Oh, yeah, we've got a lot of them
21 like that."

22 Q. A lot of wells without tests?

23 A. Yeah. Right. And no one seemed
24 terribly excited about it.

25 Q. What would be the rule of the Aztec

1 District Office then in enforcement? I mean, it
2 sounds to me like you're saying they didn't have
3 any tools to go out to the operators and say you
4 haven't done this?

5 A. It would seem to me that, as I've said,
6 the simplest thing to do is just take this
7 computer list that comes out of Santa Fe that's
8 in the machine. There's no -- I'm not a computer
9 expert, but I've asked the people back there to
10 do similar things for me, to just say, okay, go
11 through there and tell me how many of those on
12 that original list didn't file tests. Do they
13 have an excuse?

14 It's a pretty simple operation, as near
15 as I can tell, to do that. And if there's no
16 excuse, then they get a zero deliverability in
17 the next proration schedule.

18 Q. But the way you've discovered the
19 system actually worked is that that didn't happen
20 automatically?

21 A. Apparently the notices went out, and
22 there was essentially no follow-up, no organized
23 follow-up after that point. I hope I'm not
24 mischaracterizing anything. But if I can find
25 evidence of a couple hundred wells in the Blanco

1 Mesaverde Pool that should have been tested that
2 weren't, there certainly wasn't a lot of detailed
3 follow-up.

4 Q. But you believe notices did go out to
5 the operators but the deliverability was not
6 adjusted; is that correct?

7 A. That's correct. I've seen copies of
8 the letters that have gone out. I think I've
9 seen a copy of the letter in the Great Lakes case
10 even notifying them that tests were required.

11 Q. And then unless some human being either
12 programmed a computer to do some follow-up or did
13 manual follow-up, then that kind of was the
14 extent of what the Division did in terms of that
15 enforcement effort?

16 A. That's right. And it seems clear that
17 if Amoco didn't file all of their tests, you
18 know, Frank would get on the phone and tell
19 them. But if Amoco filed 98 percent of their
20 tests, the other 2 percent probably wouldn't have
21 been called. And that's just simply by accident.

22 Q. Do you know if there's anybody in the
23 District Office at that time who was specifically
24 assigned primarily or exclusively to enforce this
25 particular rule and requirement?

1 A. I don't think I'd like to comment for
2 Frank on that.

3 Q. What I'm asking you is not to lay blame
4 on anybody, but rather in the structure of the
5 Division, where did this fit into the enforcement
6 mechanism? Was it part of the thing that the
7 District Office handled along with lots of other
8 things, or was it specifically identified as an
9 area?

10 A. I think the District Office did it if
11 it was obvious to them, as I said, if a big
12 company or even a company of any size that they
13 were familiar with day-to-day didn't get them in,
14 they would notice it and they contact them.

15 Something must have happened back here
16 in 1979 on this one well to have brought that to
17 the District's attention because there was a
18 letter that went out.

19 But, gee, from 1979 on up, there were
20 so many wells drilled and there was so much
21 activity, and, you know, it's just difficult for
22 the limited staff that the Division has here in
23 the Santa Fe and in the districts to handle every
24 conceivable thing. And the situation may have
25 just begun to slip after 79.

1 Q. Some of these wells were exempt from
2 testing; is that correct?

3 A. Of the wells --

4 Q. Not these wells.

5 A. Not these?

6 Q. Some of the wells in the basin.

7 A. But of the wells -- yeah, a lot of
8 wells are exempt from testing and they fall below
9 the minimum standards.

10 Q. In a listing that would go out,
11 depending on how it went out, it might show every
12 well that didn't have a test, and then you'd have
13 to research to find out which ones are exempt; is
14 that correct?

15 A. Well, no. My understanding is that the
16 way the system works for test notification is
17 that only wells which qualify for testing based
18 on their production for a 12-month period receive
19 notices to test. And so you would have a master
20 list of wells that you said these wells are to
21 test against which you could then check off to
22 see if they had been tested.

23 Q. Was that done automatically within the
24 system, or was that a manual effort that was
25 required?

1 A. I believe that's an automatic system
2 here in Santa Fe off the computer. And the
3 letters are obviously computer-generated
4 letters. After doing this for those some
5 percentage of wells, I can guarantee you're not
6 going to do it by hand.

7 Q. But apparently from what you can detect
8 in your research into this is that somehow that
9 system did not effectively cause enforcement.

10 A. Apparently it did not, it has not, and
11 it continues not as we sit here.

12 Q. And, again, in an effort to attempt to
13 explain at least the Division's failure to do so,
14 would you agree that that was probably in part
15 due to the fact that there are many activities,
16 some of which have a far greater impact on areas
17 of responsibility of the Division and that the
18 priority in this case may not always be at the
19 top of the list?

20 A. That's true. And as I said, if someone
21 had told me about this back in the 1980s, I think
22 it could have been resolved then because it
23 doesn't sound like that complicated of an effort
24 to determine which wells have been notified to
25 test and which ones haven't. I think we could

1 have fixed it.

2 But there are just so many things out
3 there that you're not aware of. And this is one
4 that never came up. I was totally unaware that
5 it happened.

6 MR. STOVALL: Let the record reflect
7 we're still trying to fix the proration computer
8 system.

9 I don't think I have any more questions
10 for Mr. Stamets at the moment.

11 EXAMINER STOGNER: Is there any
12 redirect, Mr. Carr?

13 MR. CARR: I have nothing further.

14 EXAMINER STOGNER: Mr. Pearce?

15 MR. SWAN: None.

16 EXAMINATION

17 BY EXAMINER STOGNER:

18 Q. I'd like to put something on the
19 record, get something separate here. Your client
20 is asking for an exception to Order R-333-I.
21 Let's look at that particular rule and see which
22 exception that we're talking about.

23 A. Let me have the test manual. It gets a
24 little complicated because the penalty the
25 Division has imposed and has threatened to impose

1 is somewhat different from what's in the test
2 schedule.

3 Do you have a copy of the test schedule
4 there, Mike, Mr. Stogner?

5 Q. I do not see anything, no, sir.

6 A. Okay. In Section 2, let's see, Section
7 2, paragraph B talks about "Annual and biannual
8 deliverability and shut-in pressure tests
9 required by these rules must be filed with the
10 Aztec Office and with the gas transporter within
11 90 days following the test. Test due no later
12 than January 31."

13 The very last paragraph of that says,
14 "Failure to file any test within the above
15 prescribed times will subject the well to the
16 loss of one day's allowable for each day the test
17 is late. A well classified as marginal shall be
18 shut-in one day for each day the test is late."

19 So you can see here we're going back
20 to -- if we're going back to January 1987, Great
21 Lakes is going to have some wells out there
22 shut-in for a long, long time.

23 Q. Do you know what the effective date of
24 these rules are, Mr. Stamets?

25 A. This is the latest set. And these came

1 out somewhat, oh, probably early 87, and I
2 haven't gone back to look at those previous to
3 this time. I presume that that's pretty much
4 standard practice. We could go take a look now
5 or after the hearing, whatever would suit you, to
6 see exactly what this paragraph did say before it
7 was revised.

8 Q. I believe it was effective September 1,
9 1987. I read that on page 4 of that Order
10 R-333-I.

11 A. So obviously that would have applied to
12 the 89 testing even if -- even if it might not
13 have applied to the 86 testing.

14 MR. STOVALL: Mr. Carr, I think we need
15 to, during the break, find perhaps 333-H probably
16 or prior.

17 THE WITNESS: You might be right.

18 MR. STOVALL: We might take a look and
19 see. Obviously, this rule was entered during a
20 transition, or this event occurred during a
21 transition in the rule, and we don't know if that
22 language was modified or not.

23 Q. (BY EXAMINER STOGNER) Mr. Stamets, do
24 you know anywhere in Rule 333-I or any amendment
25 prior of any requirement or what the requirements

1 of the OCD or the Division staff or District
2 staff in notification of parties for new
3 completions, recompletions, or testing periods?

4 A. The rule itself has provisions for new
5 wells, and I don't know that any notice is
6 required for brand new wells. The others do
7 contain, under Section 3, a scheduling of tests.
8 Section A is a notification of pools to be
9 tested.

10 "By September 1 of each year the
11 District Supervisor of the Aztec Office shall by
12 memorandum notify each gas transportation
13 facility and each operator of the pools which are
14 to be scheduled for biannual testing."

15 So it is included, and it does put the
16 obligation on the District Supervisor. But, in
17 fact, it's the Division's computer here in Santa
18 Fe that generates the list for him.

19 Q. Section 3 being the --

20 A. Schedule.

21 Q. -- as far as you know, being the
22 notification of the District to operators of
23 wells to be tested?

24 A. Yes.

25 Q. Is that correct? And --

1 A. Then also part B talks about the gas
2 transportation facilities and scheduling with
3 their producers.

4 Q. And I assume until we look at the
5 previous Order R-333, before this "I" order came
6 out in 87, perhaps this letter that was generated
7 in 79 may not have been a requirement. Perhaps
8 somebody had time to do it. I don't know.

9 A. I don't know either. That's kind of a
10 long way back in history now.

11 Q. I'd also note that Mr. Chavez' title
12 was Deputy Inspector at the time that letter was
13 written in 79, and he is now and has been
14 Director -- I mean the Supervisor of the District
15 Office for quite some time, has he not?

16 A. That's correct.

17 MR. STOVALL: I might note, if I might,
18 Mr. Examiner, that it appears from the content of
19 the 79 letter that the penalty may have been
20 similar, that the last paragraph talks about loss
21 of one day's allowable for each day the test is
22 late.

23 THE WITNESS: That's right.

24 MR. STOVALL: At least give us a
25 starting point to look at as far as any R-333.

1 THE WITNESS: Right.

2 MR. STOVALL: May I ask another
3 question of Mr. Stamets?

4 EXAMINER STOGNER: Yes, Mr. Stovall.

5 FURTHER EXAMINATION

6 BY MR. STOVALL:

7 Q. Basically what Great Lakes is seeking,
8 if you will, to sort of use lawyer-ese in non --
9 strictly legal fashion, is some sort of equitable
10 relief that says we goofed, but the harm that has
11 been caused is not as great as the penalty which
12 would be imposed under strict application of the
13 rule; is that correct?

14 A. Well, yes. I feel, especially when you
15 look at what -- like I say, when you take those
16 1991 deliverability tests and project them back,
17 they have not produced more than their share out
18 of this pool.

19 Q. Let me stop you there then and say,
20 based just upon what's in the order of R-7669, it
21 appears that Mesa was in a similar, if not
22 identical, situation where they had the threat of
23 loss of allowable under a similar rule?

24 A. Well, Mesa was unusual or somewhat
25 different from this. As I said, they had a brand

1 new well which was not tested, or at least the
2 test data hadn't been filed. There was a lot of
3 that that went on in that period of time. And we
4 were having a lot of trouble with operators.

5 And so they didn't come in here in good
6 odor, I'm afraid, at the time they came in. So
7 some slight differences. You know, it wasn't
8 like they had wells out there, as Great Lakes
9 has, that produced for many, many years. This
10 was a little bit different case.

11 Q. Are you suggesting from your comment
12 that you felt that the Division was relatively
13 hard on Mesa, or were they fairly generous with
14 them in terms of granting them relief?

15 A. Well, Mesa paid a penalty for their
16 failure to file in this case. Because they had
17 been shut-in a considerable amount of time. And
18 yet, when I look at the order, yes, Mesa was
19 granted a considerable amount of relief.

20 It seems to me that, and I could be
21 wrong about this, but at the time they came in
22 for the case, they had been shut-in for months,
23 and they were more overproduced than they had
24 been before because the allowables had declined
25 so terribly. I'm not sure about that. There's

1 some screwy thing that --

2 Q. You mean, they were shut-in and not
3 gaining ground?

4 A. I think they were more months
5 overproduced at the time they came in for the
6 hearing than they had been before because of
7 declining allowables.

8 Q. Now, that is considerably different
9 than from the Great Lakes' situation?

10 A. Yes.

11 Q. But what would be your opinion -- I
12 just throw this out as another option of the
13 Division -- adopting a similar sort of relief of
14 saying, you can have what you produced, which in
15 this case it appears there's no overproduction
16 involved unless you cancel the allowable, but you
17 don't get any benefit for what you haven't
18 produced, as that underproduction might be
19 calculated under whatever scenario could be
20 applied to it, of just saying what has happened
21 has happened and we're going to put zeros in the
22 O/P line and the over/under line and let you
23 start from a point in time, whatever that point
24 in time might be?

25 A. I'm not sure that that's appropriate

1 relief in this case. If you look at Exhibit No.
2 6, I think it is, which has the three scenarios
3 on it --

4 Q. Uh-huh.

5 A. -- and the center one being the OCD
6 District Method, that's basically where we would
7 be standing today on the assumption that, I guess
8 you could just called it standstill order were
9 issued, and there we have just a very, very minor
10 amount of overproduction, the other wells being
11 underproduced.

12 I'm not sure how you could go about
13 applying the Mesa type relief to these wells.
14 There you had one proration unit. You had one
15 status, one thing that happened to it. Here
16 you've got three proration units and differing
17 things have happened to it and differing things
18 would happen depending on what sort of relief you
19 granted.

20 Q. So you don't like my idea is what
21 you're saying?

22 A. Well, I'm not exactly clear on how it
23 would work. I think it would be better to wind
24 up with Great Lakes having some allowable that
25 they could point to to show how they got to where

1 they are.

2 You know, how would you -- what would
3 you do with the Graham No. 3, which is
4 underproduced under the OCD District Method? You
5 know, would we just say, well, that's all right?
6 That's going to be its status, but we're not
7 going to give it any allowable before. That gets
8 a little --

9 Q. No. What I'm suggesting is that, in
10 effect, to use the language of your order, would
11 be retroactive allowable is not granted, but all
12 over and under is canceled and the well is in a
13 balanced condition as of -- picking your day,
14 just as an example, 9/30/91, that may not be the
15 right date, but you would just look at it and say
16 that well is --

17 A. I'm not sure. That would wipe out the
18 underproduction that we do have here under the
19 OCD District Method, and I think that would be
20 less desirable than what is out there right now.

21 Q. But it would wipe out a heck of a lot
22 of overproduction that could occur if it got what
23 El Paso is asking for?

24 A. Well, yeah.

25 MR. STOVALL: Okay. I have no further

1 questions.

2 THE WITNESS: I'm trying to visualize
3 what the order would look like and what the
4 records would look like, and I can't really say
5 whether that would be a problem or not to Great
6 Lakes.

7 EXAMINER STOGNER: Any other questions
8 of this witness? If not, Mr. Stamets may be
9 excused at this time. And let's take a 15-minute
10 recess.

11 (A recess was taken.)

12 EXAMINER STOGNER: Hearing will come to
13 order.

14 Mr. Pearce.

15 MR. PEARCE: Thank you, Mr. Examiner.
16 I would call at this time Mr. H. L. "Babe"
17 Kendrick to the witness stand, please, who has
18 been previously sworn.

19 MR. STOVALL: Are we going to go
20 carefully into his qualifications, Mr. Pearce?

21 H. L. KENDRICK

22 Having been duly sworn upon his oath, was
23 examined and testified as follows:

24 EXAMINATION

25 BY MR. PEARCE:

1 Q. For the record, sir, would you, please,
2 state your name and your place of residence.

3 A. I'm Harold L. "Babe" Kendrick. I live
4 in El Paso, Texas.

5 Q. Mr. Kendrick, by whom are you employed?

6 A. I'm employed by El Paso Natural Gas
7 Company.

8 Q. And in what capacity, sir?

9 A. As a conservation engineer.

10 Q. How long have you worked with similar
11 responsibilities, if not a similar title, for El
12 Paso Natural Gas Company?

13 A. Since 1973 in a similar type work
14 capacity.

15 Q. During that time since 1973 have you
16 been actively involved in proration and
17 regulatory matters in the State of New Mexico?

18 A. Yes, sir.

19 Q. And you're aware of what's being sought
20 by Great Lakes Chemical Company in this case and
21 were here during Mr. Stamets' testimony; is that
22 correct?

23 A. Yes, sir.

24 MR. PEARCE: Mr. Examiner, I would ask
25 that Mr. Kendrick be qualified as an expert in

1 the field of New Mexico oil and gas regulatory
2 matters and natural gas proration.

3 EXAMINER STOGNER: Are there any
4 objections?

5 MR. CARR: No objections.

6 EXAMINER STOGNER: Mr. Kendrick is so
7 qualified.

8 MR. PEARCE: Thank you.

9 Q. Mr. Kendrick, at this time I want to
10 hand you what I have marked as Exhibit No. 2 to
11 this proceeding, and I'd ask you to just tell us
12 what that is.

13 A. This is an exerpt from order -- the Oil
14 Conservation Division Order R-8170, as Rule 9(a),
15 telling of the deliverability tests that are
16 required.

17 Q. All right, sir. And what is Order
18 R-8170?

19 A. 8170 is the currently used order of the
20 Commission that establishes allowables in
21 prorated pools in New Mexico, the manner which
22 allowables are assigned to wells in New Mexico.

23 Q. And for those who do not have a copy in
24 front of them, would you, please, read Rule 9(a)
25 from Order R-8170.

1 A. Rule 9(a) says, "Deliverability Tests:
2 In pools where acreage and deliverability are
3 proration factors, deliverability tests taken in
4 accordance with Division rules shall be used in
5 calculating allowables for the succeeding
6 proration period. Deliverability shall be
7 determined in accordance with the provisions of
8 the appropriate test manual (See manual of Gas
9 Well Testing Rules and Procedures)."

10 Q. All right, sir. Interestingly enough,
11 I would like to now address your attention to
12 what I've marked as Exhibit No. 3 to this
13 proceeding, and could you describe that exhibit
14 for us, please?

15 A. Exhibit No. 3 are some pages from the
16 Gas Well Testing Manual for Northwest New Mexico,
17 or copies of pages, which includes a copy of
18 Order R-333-I and the first portion of the test
19 manual, I believe 15 pages, of the Rules of
20 Procedure for Northwest New Mexico.

21 Q. All right, sir. With reference to the
22 Rules of Procedure, as opposed to the order --

23 A. Yes, sir.

24 Q. -- were you one of many people who
25 participated in the formulation of those Rules of

1 Procedure?

2 A. Yes, sir.

3 Q. And in what capacity did you
4 participate? What was your involvement?

5 A. I was chairman of the committee that
6 rewrote this test manual.

7 Q. Who appointed that committee?

8 A. My recollection tells me that Dick
9 Stamets appointed it.

10 Q. And looking at Order R-333-I, it refers
11 to Exhibit A. And it's your understanding that
12 these Rules of Procedure were the Exhibit A
13 attached to that order; is that correct?

14 A. Yes, sir.

15 Q. All right, sir. You mentioned that you
16 were present this morning during Mr. Stamets'
17 testimony. I would ask you to turn to page 5,
18 and it has Roman Numeral III right above the page
19 number 5. And that is Section 3-B. Do you
20 recall that some parts of Section 3-B were
21 discussed this morning?

22 A. Yes, sir.

23 Q. All right. I would ask you to read
24 into the record, please, the next-to-the-last
25 complete paragraph of Section B. It begins with,

1 "It shall," could you read that for us, please?

2 A. "It shall be the responsibility of each
3 operator to determine that all of its wells are
4 properly scheduled for testing by the gas
5 transportation facility to which they are
6 connected in order that all annual and biannual
7 tests may be completed during the testing
8 season."

9 Q. All right, sir. Now, I would like you
10 to direct your attention, please, to another
11 section which Mr. Stamets addressed, and that is
12 Section 2-B, as in "boy." It begins at the
13 bottom of page 3 of that set of rules of
14 procedure.

15 Could you summarize, please, what the
16 first paragraph of that Section 2-B provides?

17 A. The paragraph labeled "B" at the bottom
18 of page 3 is stating that as deliverability tests
19 are conducted throughout the year, those tests
20 shall be filed during the year, soon after
21 completion of the test, with a cutoff date set as
22 January 31 as the late or due date for all tests
23 of the years tested.

24 And do you want to go to the next
25 paragraph?

1 Q. Yes. Now, let's go to the next
2 paragraph, please.

3 A. The paragraph in that same section at
4 the top of page 4 says, "Failure to file any test
5 within the above-prescribed times will subject
6 the well to the loss of one day's allowable for
7 each day the test is late. A well classified as
8 marginal shall be shut-in one day for each day
9 the test is late."

10 Q. What is your understanding of the
11 similar provision prior to the adoption of this
12 set of rules of procedure? Do you know if there
13 was a similar provision?

14 A. I believe that provision has been in
15 most all of the deliverability testing orders
16 that have been written by this Division.

17 Q. All right, sir. Let's turn, please, to
18 what I've marked as Exhibit No. 4 to this
19 proceeding. And could you describe that for us,
20 please?

21 A. Exhibit No. 4 is a group of some six
22 pages that are copies of form C122-A, which are
23 the Well Deliverability Test Report forms for
24 wells in the San Juan Basin. And this seems to
25 be filed on wells operated by Great Lakes

1 Chemical Corporation for the six wells in
2 question in this hearing.

3 Q. All right, sir. For the record, would
4 you, please, go through, and one page at a time,
5 name the well and give the filing date of the
6 report contained in the exhibit?

7 A. The top page is for the Great Lakes
8 Chemical Corporation, Graham No. 1. The test was
9 received March 5, 1991, by the Oil Conservation
10 Division, District 3, according to their stamp on
11 the page.

12 The second page is for Great Lakes
13 Chemical Corporation, Graham No. 3, the filing
14 date of March 5, 1991, at the Aztec Office of the
15 Division. The third page, Great Lakes Chemical
16 Corporation, Hammond No. 5. That test was
17 received at the Oil Conservation Division, March
18 5, 1991.

19 Next page is Great Lakes Chemical
20 Corporation, Hammond No. 55. That test was
21 received by the Oil Conservation Division, June
22 5, 1991. The next page is Great Lakes Chemical
23 Corporation, Hammond No. 55-A. That test was
24 received by the Oil Conservation Division, June
25 5, 1991.

1 Did I misstate the previous one? The
2 year should be 1991.

3 MR. STOVALL: You said that correctly,
4 I think.

5 A. And the last page is Great Lakes
6 Chemical Corporation, Graham No. 1-A. That test
7 was received by the Oil Conservation Division,
8 June 5, 1991.

9 Q. All right, sir. Now, I'd ask you to
10 get again your copy of Exhibit No. 2, which is
11 the copy of Rule 9(a).

12 A. Yes, sir.

13 Q. Could you read the first sentence of
14 that rule again for us, please.

15 A. "In pools where acreage and
16 deliverability are proration factors,
17 deliverability tests taken in accordance with
18 Division rules shall be used in calculating
19 allowables for the succeeding proration period."

20 Q. First of all, the six wells in question
21 are all in the Blanco Mesaverde Pool; is that
22 correct?

23 A. Yes, sir.

24 Q. And does that fit the criteria of the
25 first portion of that sentence by being a pool

1 where acreage and deliverability are proration
2 factors?

3 A. Yes, sir.

4 Q. And based on that, tests that were
5 filed in March or June of 1991, for what
6 proration period do you believe those tests
7 should be applicable according to the rule?

8 A. It would be a succeeding proration
9 period.

10 Q. Thank you. I don't have anything
11 further on that exhibit, Mr. Kendrick.

12 Let's look now, please, at what I've
13 marked as Exhibit No. 5 to this proceeding, and
14 could you describe that for us, please?

15 A. Exhibit No. 5 is a group of pages, I
16 believe eight pages, representing deliverability,
17 monthly production, allowables, and an over/under
18 status for each of the proration units involved
19 with these six wells.

20 Q. And by your emphasis of "proration
21 unit," you're referring to the fact that there
22 are six wells but only four proration units?

23 A. Yes, sir.

24 Q. Okay. Let's go through some
25 information reflected on these exhibits, if we

1 can, Mr. Kendrick. You described the columns.
2 Let's begin with the first entry on the top
3 sheet. That is the sheet that relates to the
4 Graham 3 well. The first line of data is for
5 March of 1987; is that correct?

6 A. Yes, sir.

7 Q. Where did you get the deliverability
8 number reflected in the deliverability column?

9 A. The deliverability of 246, as shown on
10 this page, was copied from the gas proration
11 schedule for March 1987.

12 Q. All right, sir. The
13 over/underproduction column appears to reflect
14 8,932 Mcf of underproduction, according to the
15 key at the top of the page; is that correct?

16 A. Yes, sir.

17 Q. Could you describe how you arrived at
18 that number?

19 A. The figure of 8,932 is the figure that
20 was reported in the May gas proration schedule as
21 the over/under current status of that well.

22 Q. And why did you use the May proration
23 schedule number and label it as the March 87
24 date?

25 A. The May over/under status, the numbers

1 shown in the May gas proration schedule as the
2 over/under status includes the production and
3 allowable through March of 1987.

4 Q. All right. And so that is the, once
5 you account for actual production and actual
6 March allowable assignment, that was the actual
7 over/under status as of April 1 of 1987; is that
8 correct?

9 A. Yes, sir.

10 Q. All right. Now, let's look at the
11 April 1987 line and describe those entries. What
12 is the deliverability that you have shown on your
13 display?

14 A. The deliverability I have shown is
15 zero.

16 Q. And why is that, sir?

17 A. Because there was not a current
18 deliverability test filed on that well at that
19 time.

20 Q. All right, sir. Monthly production
21 number, what's the source of that data?

22 A. That is the actual -- let me think just
23 a minute. That came from the proration
24 schedule. Let me look to be sure what month that
25 is. Whether it's produced, I believe it's the --

1 MR. PEARCE: May we pause for a moment,
2 Mr. Examiner?

3 EXAMINER STOGNER: Okay.

4 A. The figure that I have shown as 2396
5 for April 1987 was actually gas produced in April
6 1987.

7 Q. All right, sir. Thank you. And you
8 used the same procedure on each of the following
9 wells for each month involved; is that correct?

10 A. Yes, sir, I did.

11 Q. All right, sir. Now, let's look at the
12 fourth column, the third column of data. Why
13 have you entered a correct allowable of zero?

14 A. According to the rules, as I understand
15 them, that if the well does not have a current
16 deliverability on file, it gets zero allowable.

17 Q. And the rule you're referring to is the
18 rules that we addressed earlier contained in
19 Exhibit 3 to your testimony; is that correct?

20 A. Exhibit 2, the Rule 9(a)?

21 Q. 3.

22 A. 3. Yes.

23 Q. And then the fourth column of data, the
24 fifth column shown on the paper, what have you
25 done to get that entry?

1 A. Starting with the first entry of 8,932,
2 I subtracted the monthly production and added the
3 correct allowable, and that is stepped right down
4 through the months of the year.

5 Q. All right. And you have performed a
6 similar calculation for each month reflected in
7 this exhibit; is that correct?

8 A. Yes, sir.

9 Q. All right. Let's go to the second page
10 of this exhibit, which is also a page that
11 relates to the Graham No. 3 well.

12 A. Yes, sir.

13 Q. And I want to focus your attention,
14 please, on the month of April of 1991.

15 A. Yes, sir.

16 Q. I notice that a deliverability number
17 has been entered in that column; is that correct?

18 A. Yes, sir.

19 Q. What's the source of that
20 deliverability?

21 A. The source of that deliverability of 86
22 would come from the deliverability test filed by
23 Great Lakes Chemical Corporation on the Graham 3
24 well received by the Oil Conservation Division,
25 March 5, 1991.

1 Q. Okay. And I notice that in the correct
2 allowable column, once again, you have stopped
3 utilizing a zero correct allowable and have
4 apparently performed some calculation or gotten a
5 number from somewhere. What's the source of the
6 1921 number?

7 A. 1921 number shown as correct allowable
8 would be from calculating an allowable for April
9 of 1991 using the F-1 and F-2 factors for the
10 Blanco Mesaverde Pool for that month.

11 Q. And you have performed similar
12 calculations through December of 1991; is that
13 correct?

14 A. Yes, sir.

15 Q. And that's the most recent data
16 available to you in January of 92; is that
17 correct?

18 A. Yes, sir. I extended the same
19 deliverability for January, February, and March
20 of 1992 as was used for that portion of 1991.
21 And the allowable for October of 91 was changed
22 to 2,094 Mcf, and that was continued through
23 March of 1992.

24 Q. And why was that allowable changed to
25 2,094 and continued through March of 1992?

1 A. The October through March 1992 F-1 and
2 F-2 factors are different to what the factors
3 were for April through September of 1991, and
4 those factors were used in calculating that
5 allowable.

6 Q. Thank you, sir. I notice that at the
7 bottom of each year's production data there
8 appears to be a total line for the year; is that
9 correct?

10 A. Yes, sir.

11 Q. And if we were to add the production
12 year totals through 1991 -- no, I'm sorry. I
13 withdraw that. With regard -- let's look now,
14 please, at the third page of this exhibit, which
15 varies a little bit in method because it is a
16 two-well proration unit.

17 A. Yes, sir.

18 Q. Could you just describe for us the
19 different steps you've taken with regard to the
20 Graham 1 and 1-A wells that you didn't do or that
21 you did in addition to what you did on the Graham
22 3 well you've just described?

23 A. All right, sir. The Graham 1 and 1-A
24 wells are on one proration unit. They have an
25 additive deliverability. And from March 1987 the

1 figure for deliverability of 471 is the total
2 deliverability available at that time for that
3 proration unit.

4 The monthly over/underproduction shows
5 as 53,627. That is the gas proration unit
6 underproduced volume, showing again the same
7 manner as was picked for the Graham No. 3 in the
8 earlier example. This continued through the
9 years 88, 89, 90, until April of 1991, calculated
10 in the same manner as the first example.

11 In April of 1991 a deliverability of
12 266 shows for that well. That is a result of a
13 test filed on one of the wells, the Graham 1 or
14 1-A.

15 Q. I would ask you to refer, please, to
16 what we've marked as Exhibit 4, and could you
17 find the test for us?

18 A. Possibly I have found the test as the
19 first page of Exhibit 4. It shows the Great
20 Lakes Chemical Corporation, Graham No. 1, with a
21 deliverability showing of 265 on this page, and
22 that may have been corrected somewhere to 266.

23 Q. Okay.

24 A. And that is the figure that I have as
25 266.

1 Q. All right. And then what subsequently
2 happens to the deliverability column on this
3 page?

4 A. It continued at 266 through April, May,
5 and June, and July the figure changes to 425,
6 which is a total figure for the deliverability of
7 the Graham 1 and the Graham 1-A. The Graham 1-A
8 shows a deliverability being the last page of
9 Exhibit 4 at 159.

10 Q. All right, sir. Thinking back to the
11 provision of Rule 9(a), is it your interpretation
12 that a strict following of Rule 9(a) -- when
13 would that second test on the 1-A well become
14 applicable with a strict following of the
15 provisions of Rule 9(a)?

16 A. At some date after the test was filed,
17 whether it is on the date that the test is
18 received in the Oil Conservation Division Office
19 in Aztec. And on this I took it as the first of
20 the month following.

21 The allowables calculated on the
22 exhibit for the Graham 1 and 1-A changes as the
23 deliverability changes using the same F-1 and F-2
24 factors as were applicable for April through
25 September of 1991.

1 Q. All right, Mr. Kendrick, I have just
2 taken a moment and looked at the last over/under
3 entry for each of the four proration units that
4 we've been discussing. And each of those is
5 under your calculation in an overproduced status;
6 is that correct?

7 A. Yes, sir.

8 Q. Do you believe that your calculations
9 are an accurate reflection of what Oil
10 Conservation Division rules and regulations
11 require?

12 A. Yes, sir.

13 Q. During his testimony earlier in the
14 day, Mr. Stamets was asked a few questions about
15 correlative rights. You've indicated that you
16 were in attendance during the testimony. I would
17 ask you, first of all, have you done any study to
18 determine whether or not tracts offsetting the
19 Great Lakes four proration units are suffering
20 any impairment of correlative rights as a result
21 of this action?

22 A. No, sir, I have not.

23 Q. You don't have an opinion on that?

24 A. No, sir.

25 Q. Do you have an opinion, sir, on whether

1 or not the three solutions proposed, or at least
2 discussed by Mr. Stamets, represent any threat to
3 correlative rights in the Blanco Mesaverde Pool
4 if they were universally applied?

5 A. I think they could.

6 Q. And would you discuss that with me for
7 a minute. How is that, sir?

8 A. Should one operator be allowed to be
9 assigned allowables for one deliverability test,
10 using the value of one deliverability test over a
11 period of years, while other wells are assigned
12 allowables on periodically run deliverability
13 tests, so that if there is a decline in
14 deliverability on each well in the pool, that one
15 operator using earlier tests would be given an
16 unfair advantage of the other wells within that
17 same pool.

18 Q. For that reason do you think the three
19 solutions discussed by Mr. Stamets are
20 inappropriate particularly in view of the opinion
21 he expresses that there may be other wells in a
22 condition similar to the Great Lakes' well?

23 A. Will you repeat the question?

24 Q. Yes. Would you think that, in view of
25 Mr. Stamets' expressed opinion, that there may be

1 a significant number of wells in the basin in a
2 similar condition, do you think it would be
3 appropriate for the Division to adopt any of the
4 three solutions suggested by Mr. Stamets?

5 A. No, sir.

6 Q. That's because of the correlative
7 rights problem you've discussed with us?

8 A. Yes, sir.

9 Q. Mr. Kendrick, when an operator receives
10 a proration schedule, does that bound-up book
11 with the proration schedule reflect the well's
12 deliverability anywhere in it?

13 A. Yes, sir.

14 Q. And if an operator over a course of
15 five or six years receives schedules which showed
16 no change in the deliverability of his well, do
17 you think he would have some reason to suspect
18 that something was amiss?

19 A. I think I would suspect that.

20 MR. PEARCE: Let me take just a minute,
21 if I may, Mr. Examiner. I'll be right back with
22 you. Mr. Examiner, I don't recall, have we
23 admitted El Paso Exhibit No. 1?

24 EXAMINER STOGNER: I think we have,
25 yes.

1 MR. STOVALL: Exhibit No. 1, yes.

2 MR. PEARCE: Assuming we have, I would
3 move the admission of El Paso Exhibits 2 through
4 5. And in case we did not, I would ask that
5 Exhibits 1 through 5 be admitted.

6 EXAMINER STOGNER: All the exhibits of
7 El Paso, 1 through 5, will be admitted at this
8 time. Also, I'll take jurisdictional notice of
9 Case 8298, Order R-7669.

10 MR. STOVALL: At the Examiner's
11 request.

12 EXAMINER STOGNER: Yes.

13 MR. PEARCE: Thank you, sir. I have no
14 further questions of Mr. Kendrick at this time.

15 EXAMINER STOGNER: Mr. Carr, your
16 witness.

17 EXAMINATION

18 BY MR. CARR:

19 Q. Mr. Kendrick, the prehearing statement
20 filed in this case states, "El Paso Natural Gas
21 Company is a party interested in this
22 proceeding." That's how it starts. My first
23 question to be directed to your interest in the
24 proceeding, does El Paso at this time operate any
25 wells in the Blanco Mesaverde field?

1 A. Not to my knowledge.

2 Q. Do you own working interests or other
3 interests in the field?

4 A. If my understanding is correct, that
5 interest has been transferred to another
6 organization.

7 Q. Is there anything in the Great Lakes'
8 application that would deny El Paso an
9 opportunity to produce its fair share of reserves
10 from the pool? I would presume now that you
11 don't have any; is that a fair statement?

12 A. Let me answer your previous question a
13 little bit differently. We may have interest as
14 a purchase interest or such in the pool so that
15 we do have an interest in the pool. We may not
16 have an interest in each individual well.

17 Q. Are you aware of any situation in the
18 pool where granting Great Lakes' application
19 would deny El Paso an opportunity to produce its
20 fair share of reserves from any of its wells?

21 A. No.

22 Q. So your correlative rights are not at
23 issue in this case, El Paso's correlative rights?

24 A. If they hold interest in purchase,
25 would that also go into correlative rights?

1 Q. I'm asking the questions. Do you
2 understand the definition of correlative rights
3 as an expert in oil and gas regulation?

4 A. I believe I'd say no because it depends
5 on who you're discussing correlative rights with
6 as to what my understanding is compared to
7 someone else.

8 Q. If you don't know what it is, then you
9 can't really give us an opinion on whether
10 they're going to be impaired, can you, Mr.
11 Kendrick?

12 A. I can give you an opinion of what my
13 thought of correlative rights is.

14 Q. Well, I guess, if we go to the
15 definition of correlative rights in the statute,
16 which is an opportunity afforded to each interest
17 owner in a pool to produce without waste his fair
18 share of the reserves from the pool, my question
19 is to you, is El Paso being denied an opportunity
20 to produce without waste its fair share of
21 reserves anywhere in this pool?

22 A. As a producer, I do not believe we
23 would be subjected to correlative rights as a
24 producer.

25 Q. So when you're talking about

1 correlative rights, you're expressing an overall
2 concern; it isn't just focused on El Paso's
3 interest?

4 A. Yes, sir.

5 Q. And if I understood your testimony, you
6 haven't defined any particular situation where an
7 individual's correlative rights may be impaired?

8 A. I believe I defined that a case where
9 correlative rights could be impaired is where one
10 operator is using one deliverability test longer
11 than other operators and would subject that to a
12 violation of correlative rights by having
13 allowables assigned on deliverability tests not
14 current with other operators.

15 Q. And you worked on a committee to
16 develop these rules, did you not?

17 A. Yes, sir.

18 Q. And one of the objectives of that
19 committee was to assure that timely
20 deliverability tests were filed; isn't that
21 correct?

22 A. Yes, sir.

23 Q. At that time no one anticipated that
24 the ramifications of this rule might be that
25 operators five years after the fact discovered

1 they hadn't filed these tests; that wasn't
2 considered when you were looking at the rules,
3 was it?

4 A. We tried to keep in the rules a
5 provision that would say all wells will be tested
6 on the same intervals. So in that respect, yes,
7 we were looking for all wells to be properly
8 evaluated at the same time in each pool.

9 Q. And when you were looking at that, that
10 was your objective; correct?

11 A. Yes, sir.

12 Q. And you weren't at that time thinking
13 that, gosh, we need to put something in the rule
14 because somebody ten years from now may be in a
15 situation where years of allowable may be
16 canceled; that didn't even come up, did it?

17 A. We were looking at the situation where
18 all allowables would be assigned on an equal
19 basis, yes.

20 Q. I understand that. But my question was
21 not what you were trying to decide to do in a
22 positive sense. My question was, this situation
23 we have here before us today isn't a ramification
24 of this rule that anyone really thought about at
25 that time, is it?

1 A. It was thought about that people or
2 operators do not test their wells and what should
3 be done with that operator's wells that are not
4 tested.

5 Q. And the result was to cancel allowables
6 on days they didn't have a test on file; right?

7 A. Yes, sir.

8 Q. Did anyone in any of those proceedings
9 ever say, my gosh, this could result where
10 somebody may be five years behind the goal and
11 lose years' and years' worth of allowables? That
12 wasn't an objective, was it, to have a punitive
13 rule? It was to assure the data was on time?

14 A. We wanted to prohibit operators from
15 not filing tests, yes.

16 Q. At that time had you, as an expert in
17 regulation, also been involved with rules
18 governing the testing of oil wells?

19 A. I served on a committee one time
20 with -- in southeast New Mexico on associated gas
21 pools, and that's been so long ago I'm not sure I
22 recall what all we did.

23 Q. Are you aware today that if you don't
24 file tests on an oil well, that the allowable is
25 in fact canceled on a very short time frame?

1 A. I understand that's true.

2 Q. That's not what we have when we look at
3 these rules that are at issue here today. It can
4 go on as here for years?

5 A. I don't believe that.

6 Q. Well, then, if you don't believe that,
7 wouldn't you at least agree with me that this has
8 gone on for years in this particular
9 circumstance?

10 A. That is no fault of the rules, as I see
11 it.

12 Q. I didn't ask you that. I asked you if
13 the situation -- you said you didn't understand
14 that this could go on for years. My question is,
15 I think it's obvious, obviously here this has
16 gone on for years?

17 A. I did not say that the rules -- could
18 not go on for years. I said it was our intent to
19 keep it from going on for years.

20 Q. But if the intent was to keep it from
21 going on for years, the rules didn't work in this
22 particular situation, did they? It's gone on for
23 years?

24 A. Apparently that is true.

25 Q. Okay. Now, you stated that if you

1 looked at a proration schedule and you saw no
2 change in deliverability, you would suspect that
3 something was amiss if this went on for an
4 extended period of time; is that a fair
5 characterization of your testimony?

6 A. Yes, sir.

7 Q. Now, you're an expert in this
8 particular area; correct?

9 A. Yes, sir.

10 Q. There might be people who wouldn't know
11 that there are wells that are exempt from
12 testing, are there not?

13 A. Yes, sir.

14 Q. Someone less sophisticated than
15 you might not glean from the proration schedule
16 just what you might pick up; isn't that a fair
17 statement?

18 A. In today's world there should not be
19 those people.

20 Q. But whether there should be or not,
21 there are people out there who you would have to
22 agree do not have the expertise in prorationing
23 that you have?

24 A. Possibly.

25 Q. Some of them sitting at this table at

1 this moment; isn't that right?

2 A. Do I have to answer that question?

3 MR. PEARCE: I'll take the heat.

4 MR. STOVALL: Are you raising an
5 objection, Mr. Pearce?

6 MR. PEARCE: No, sir. It was a
7 confessional movement.

8 Q. (BY MR. CARR) Mr. Kendrick, let's go
9 to your Exhibit No. 3, the rules that you read
10 into the record, portions thereof. And my
11 question -- I guess I should back up a little bit
12 and ask you when did you, Mr. Kendrick, become
13 aware of the problem with these particular wells?

14 A. I do not recall a date. If I was to
15 guess a date, I'd say maybe a year ago.

16 Q. And what have you done to examine what
17 actually transpired with these particular wells?
18 Did you go back and try to determine when in fact
19 tests were taken?

20 A. Yes, I did.

21 Q. And if we go to, from questions that
22 have been asked by your counsel today, there's
23 some confusion as to what happened in 1987. My
24 question is do you know what happened in 1989?
25 Was a test scheduled?

1 A. I cannot answer that. I can answer it
2 on an apparent basis, that yes, a test was
3 scheduled.

4 Q. If we look at what you've marked as
5 your Exhibit 3, and I read the second paragraph
6 on page 5, Roman Numeral III on 5, it says, "In
7 the event a well is not tested in accordance with
8 the existing test schedule, the well shall be
9 rescheduled," and it says, "by the transportation
10 facility." Now, if one was scheduled, do you
11 have any idea what El Paso -- you are the
12 transportation facility, aren't you?

13 A. Yes, sir.

14 Q. And you would take the test, would you
15 not?

16 A. No, sir.

17 Q. You do not?

18 A. No, sir.

19 Q. Are you the party under this rule that
20 would reschedule it?

21 A. Yes, sir.

22 Q. Do you know what was done to reschedule
23 tests in 1989 that weren't taken as to this well?

24 A. That is not under my jurisdiction. But
25 El Paso Natural Gas, in cooperation with the

1 operator, schedules all wells requiring tests for
2 that year, and it also becomes the responsibility
3 of that operator who doesn't take the test to
4 tell El Paso to reschedule the test.

5 So if that test is scheduled, we as El
6 Paso would assume that the test is going to be
7 taken and filed in accordance with the schedule
8 unless we're notified differently.

9 Q. If you are notified, it says,
10 "rescheduled by the gas transportation
11 facility," then that is your responsibility to
12 reschedule; is that correct?

13 A. It is El Paso Natural Gas Company's
14 responsibility, yes, not my individual
15 responsibility.

16 Q. Did you happen to see our Exhibit No.
17 3, I believe it was, Mr. Kendrick? It's a memo
18 from El Paso. It's got some language that is
19 underscored on it basically saying if your wells
20 are not producing, do not turn them in. We will
21 try to schedule them for a later date?

22 A. Yes, sir, I saw that.

23 Q. Do you know how this directive from the
24 transporter would relate to this obligation to
25 reschedule tests?

1 A. No. Because this is the first time I
2 saw this exhibit.

3 Q. Are you saying that if a test is
4 scheduled, you would as El Paso have no way of
5 knowing if it is taken or not?

6 A. That is correct.

7 Q. And so how would you find out if it
8 wasn't taken?

9 A. The operator should notify that person
10 in charge of rescheduling a well for tests.

11 Q. When you retest, I mean, when wells are
12 retested, isn't it a typical result that
13 deliverabilities change in some direction, up or
14 down?

15 A. It would be a rare occasion when you've
16 got the same deliverability two times in a row,
17 yes.

18 Q. Now, El Paso also is regulated by this
19 Division as a transporter; isn't that right?

20 A. I don't know how to answer that
21 question because they're regulated by other
22 people too.

23 Q. But also by this agency. You have to
24 comply with OCD rules and schedules?

25 MR. PEARCE: I object to the extent it

1 calls for a legal conclusion.

2 EXAMINER STOGNER: Can you rephrase
3 your question?

4 Q. (BY MR. CARR) In your role as an
5 expert on prorationing and a conservation
6 engineer, do you deal with proration schedules?

7 A. What proration schedules?

8 Q. The proration schedules that come out
9 monthly from the New Mexico Oil Conservation
10 Division or now at a varying period of time, a
11 gas proration schedule?

12 A. Yes.

13 Q. And what is the proration schedule to
14 your understanding as it relates to El Paso?

15 A. In the current situation?

16 Q. Yes.

17 A. It may be a superfluous piece of paper.

18 Q. Now, you're aware of the rules of the
19 Division, are you not?

20 A. Some of them, yes, sir.

21 Q. And just to tell you, and you may check
22 this if you like, the proration schedule is
23 defined in these rules as the order of the
24 Division authorizing the production, the
25 purchase, and transportation of natural gas.

1 Now, do you routinely review these
2 schedules in your role as a conservation
3 engineer, even if it's a superfluous piece of
4 paper?

5 A. I do not routinely inspect the
6 proration schedule as published by the New Mexico
7 Oil Conservation Division in today's role.

8 Q. Does anyone in El Paso do that? Is
9 there someone who does?

10 A. Today it is my understanding the answer
11 would be no.

12 Q. So no one in your organization checks
13 the order of the Division authorizing
14 transportation?

15 A. Would you rephrase the question or
16 restate the question? Excuse me.

17 Q. I'm just trying to be sure I understand
18 your testimony. I think it was that you said you
19 don't know of anyone in your organization today
20 who reviews the proration schedules of this
21 Division?

22 A. Yes, sir.

23 Q. I mean, that's certainly not an effort
24 to ignore the orders of the Division?

25 A. No, sir.

1 Q. Now, with your expertise and aware of
2 the fact that deliverabilities change generally
3 when wells are tested, I think you said and I
4 think you stated you would suspect something
5 amiss if you didn't see a deliverability change;
6 isn't that right?

7 A. Yes, sir.

8 Q. Well, if you're looking at the order
9 that authorizes you to transport, wouldn't it be
10 fair to say if you had looked at this order of
11 the Division authorizing transportation, that you
12 too might have suspected something was amiss?

13 A. Had I been looking at those schedules,
14 possibly I would have thought that, that
15 something was remiss.

16 Q. Now, does the prorationing system here
17 have any impact on El Paso's taking of gas from a
18 well? I mean, would you take in excess of a
19 proration or an allowable amount in a proration
20 schedule?

21 A. What time frame are you talking about?

22 Q. This month you look at the current
23 proration schedule and it says the allowable for
24 the well is "X," is there anything in your system
25 that would say this well is going over the stated

1 amount, we can't take it?

2 A. It is my understanding we do not.

3 Q. Now, let's talk about waste. You know
4 how waste is defined in the Oil & Gas Act as an
5 expert on oil and gas regulation; correct?

6 A. I could not quote you the definition of
7 waste.

8 Q. Is there anything in the application of
9 Great Lakes that would cause the waste of
10 hydrocarbons if it's granted?

11 A. What is the definition of waste that
12 you're going by?

13 Q. Any definition that you care to look
14 at, Mr. Kendrick. These are the rules.

15 MR. PEARCE: Can you point him to a
16 section, Mr. Carr, to save us some time?

17 MR. CARR: Yes. I think it's on A-6
18 where waste is defined.

19 MR. STOVALL: 70-2-3 is the statutory
20 section if that's what you wish to refer to in
21 the statute.

22 MR. CARR: And also in your rules, it's
23 carried, I think, on page A-6 in the definition
24 section.

25 EXAMINER STOGNER: You're referring to

1 the general rules?

2 MR. CARR: Yes, sir, I am.

3 Q. If you see there, it says, "Waste, in
4 addition to its ordinary meaning, shall include,"
5 and it's a number of categories and it's
6 lengthy.

7 A. Yes.

8 Q. I don't have anything secret in any of
9 this. It's underground waste, surface waste. Is
10 there anything in this, Mr. Kendrick, that at
11 this time you can say is going to result in -- if
12 this application of Great Lakes is granted -- in
13 production not being recovered? Are we going to
14 cause production not to be recovered or
15 unavoidably lost?

16 A. If this application is not granted?

17 Q. If it is granted, will oil and gas be
18 wasted?

19 A. I do not readily recognize it as waste.

20 Q. Now, if the application is denied and
21 wells are shut-in and the costs continue and
22 ultimately they're shut-in at an earlier date,
23 reserves could be left in the ground at that
24 time; isn't that right?

25 A. If the operator chooses to plug these

1 wells without going to some abandonment other
2 than just go out today and plug them, there could
3 be waste of minerals left in the ground.

4 Q. And if the costs of operating the wells
5 are increased because of periods of shut-in and
6 the wells hit their economic limit sooner, they
7 might be plugged sooner, isn't that right,
8 somewhere down the road?

9 A. The word "economics" gives me a problem
10 in that I don't know whose economics it is.

11 Q. But if the economics as a general
12 principle get worse, you generally stop producing
13 the well sooner, isn't that a fair thing,
14 anybody's economics?

15 A. Yes.

16 Q. Now, the prehearing statement stated
17 that El Paso opposed this application because it
18 was contrary to the requirements of the Division
19 orders and is not in the best interests of the
20 regulatory process. Your real area of expertise
21 is the regulatory process; isn't that correct?

22 A. I believe so.

23 Q. And when circumstances arise and there
24 are ramifications from orders that you may not
25 have anticipated, isn't it customary that you can

1 bring a matter like Great Lakes has to the Oil
2 Conservation Division and seek relief?

3 A. Yes.

4 Q. And they have general authority to
5 grant relief if waste and correlative rights
6 considerations dictate that that should be done;
7 isn't that right?

8 A. I believe so.

9 Q. In fact, in your experience there have
10 been other hearings where you've been involved
11 where people were coming in and seeking a relief
12 from previous Division orders that may not have
13 been complied with to the letter; isn't that
14 correct?

15 A. Yes, sir.

16 Q. The Mesa case was one?

17 A. Yes, sir.

18 Q. Recently there was a case that UNOCAL
19 brought where El Paso hadn't commingled
20 production in accordance with an OCD order and
21 special relief was being sought by UNOCAL because
22 of that; do you recall that hearing, in the
23 Rincon unit?

24 A. Yes.

25 Q. And when those cases come before the

1 Division, it isn't inappropriate for them to try
2 and find an equitable solution and look at
3 mitigating circumstances; isn't that fair to say?

4 A. Yes.

5 Q. And so you're not saying that, although
6 your exhibit, I guess it's Exhibit 5, is a
7 calculation of what would happen if the rule was
8 strictly applied, you're not saying that it's
9 improper for the OCD to consider other factors?

10 A. Exhibit 5, as I have presented it, is
11 my interpretation of the current rules in effect
12 for that pool.

13 Q. Now, are you recommending that the
14 rules as they are in effect for the pool be
15 applied to Great Lakes?

16 A. In the procedures that we went through
17 writing the test procedures, that was the general
18 rules that we would set up for all operators to
19 abide by.

20 Q. And the question was, are you
21 recommending that those rules be strictly applied
22 to Great Lakes in this case?

23 A. Anyone.

24 Q. Any operator?

25 A. Why not?

1 Q. So they should apply to Great Lakes?
2 That was the question.

3 A. Yes, sir.

4 Q. And the next company on the proration
5 schedule is Great Western Drilling. They have a
6 zero or would have a zero for not timely filing;
7 it should apply to them too?

8 A. Yes, sir.

9 Q. Have you undertaken an effort to
10 determine how many wells in the pool might be
11 affected if the rules were strictly applied?

12 A. No, sir.

13 Q. If I told you there were right now 32
14 Meridian wells in this position with maybe 40
15 years' worth of months, would you recommend, Babe
16 Kendrick, to this Commission that those wells get
17 a zero allowable for every month?

18 A. The rules were made.

19 Q. And that is your recommendation then?

20 A. Yes, sir.

21 Q. And is it your recommendation, if
22 that's the position that you're taking here, that
23 all operators in this position ought to receive
24 notices from the OCD that they're losing those
25 allowables?

1 A. I have not made that statement.

2 Q. Well -- go ahead.

3 A. I have not made a statement that the
4 OCD should notify anyone that they're losing
5 allowables.

6 Q. Well, if I understood your testimony
7 from the prehearing statement, you were here to
8 testify about matters that you felt were in the
9 best interests of the the regulatory process.

10 A. All right.

11 Q. And based on what I understand you to
12 say, isn't it fair to say that if what you
13 believe should be applied to, say, Great Lakes
14 and Meridian and Great Western Drilling should
15 apply to other operators, that the regulatory
16 practice procedures here to be sure those
17 problems don't go on would be served by notifying
18 every operator in this position that their
19 allowables are being canceled?

20 A. If that's the rules, follow them.

21 Q. If we followed the rules -- the rules
22 in the statutes that govern the activities of the
23 Division do, however, provide that the Division
24 may do whatever needs to be done, whether
25 expressly provided in those rules or not, to

1 prevent waste and protect correlative rights.

2 A. That is my understanding.

3 Q. When this matter came up, did you
4 contact the Oil Conservation Division about this
5 particular problem with the Great Lakes' wells?

6 A. I have talked with the Aztec Office of
7 the Oil Conservation Division about tests filed
8 on these wells, yes, sir.

9 Q. And how was it that you wanted to talk
10 to the Aztec Office about just these particular
11 wells?

12 A. I had been asked to look at the
13 deliverability of these wells and I needed to
14 know the date that the newest test was filed with
15 the Oil Conservation Division, and I called Aztec
16 and got that information from them.

17 Q. And do you know why you were asked to
18 look at these particular wells?

19 A. I understand there is some litigation
20 between the parties.

21 Q. And do you understand the nature of
22 that litigation?

23 A. No, sir.

24 Q. And your recommendations here and the
25 reason you've called these particular wells is --

1 and if this is wrong, correct me -- it's because
2 of the litigation?

3 A. I would not have looked at these
4 particular wells had someone not directed my
5 attention to find out what tests are on file for
6 these wells.

7 Q. And so the concern in bringing this
8 case really wasn't the regulatory process, but
9 these particular wells; isn't that right?

10 MR. PEARCE: Objection. I don't
11 believe the record reflects that El Paso brought
12 this case.

13 Q. When you undertook this study, it was
14 because of the litigation?

15 A. (No audible response.)

16 Q. Do you not know?

17 A. No, sir. I was asked to get the date
18 of the deliverability tests on file.

19 Q. And you talked to the Division about
20 this at that time as well, did you not?

21 A. I have talked with the Division fairly
22 recently and some time ago I talked with them
23 about some of them.

24 MR. CARR: I have nothing further.

25 EXAMINER STOGNER: Mr. Pearce, any

1 redirect?

2 MR. PEARCE: Yes, if I may.

3 FURTHER EXAMINATION

4 BY MR. PEARCE:

5 Q. Mr. Kendrick, earlier in your
6 questioning by Mr. Carr, I believe I understood
7 you to say that something indicated to you that
8 apparently notice had been sent or received about
9 scheduling of deliverability tests for the Great
10 Lakes' wells; do you remember that?

11 A. Vaguely, yes, sir.

12 Q. What was the apparent nature, that's
13 obviously a less-than-sure, what makes you say
14 that apparently that was done?

15 A. As I recall, Mr. Carr was talking about
16 scheduling or rescheduling of wells that had not
17 been tested. And had El Paso knowledge that the
18 wells were not tested at the appropriate time,
19 they would have worked with the operator to
20 schedule the wells for test at that time.

21 Q. Okay. Let's look, please, once again
22 at -- I've lost track -- the deliverability test
23 reports are exhibit number what, Mr. Kendrick?

24 A. Exhibit No. 4.

25 Q. Let's look at those, please. I notice

1 running through these, Mr. Kendrick, that the top
2 three test pages were received March 5 of 1991,
3 and the subsequent three tests were received June
4 5 of 1991. Are you aware of whether or not those
5 test date differences occur because the operator
6 for Great Lakes informed El Paso that the three
7 tests filed in June had busted during February
8 and they had to be retested?

9 A. I do not know.

10 Q. Okay. Thank you. Mr. Kendrick, Mr.
11 Carr asked you some questions about why you had
12 sought information on these wells. If you had
13 come upon the information independently that some
14 operators' wells had not been timely tested for
15 deliverability, would your conduct have been any
16 different?

17 A. No, sir. Had I caught something from a
18 gas proration schedule or looking at summaries in
19 the New Mexico Oil & Gas Engineering Committee
20 Report that reflected a deliverability was in
21 error, I would have called it to the attention of
22 the Oil Conservation Division.

23 MR. PEARCE: Okay. I don't think I
24 have anything further of the witness, Mr.
25 Examiner.

1 EXAMINER STOGNER: Thank you, Mr.
2 Pearce.

3 Mr. Carr?

4 MR. CARR: No.

5 EXAMINER STOGNER: The Division has
6 some questions of this witness. I'll turn it
7 over to Mr. Stovall at this time.

8 EXAMINATION

9 BY MR. STOVALL:

10 Q. Mr. Kendrick, let me first state that I
11 personally at least, and I think the Division,
12 recognize you as the one of the top two or three
13 experts in gas prorationing in the State of New
14 Mexico, so we're calling upon your expertise in
15 this system. And I say that because I know you
16 have been involved in writing most of the rules
17 and the deliverability tests and you have been
18 working with the gas proration people, and you've
19 been of great assistance. So your opinion is
20 highly valued in this.

21 Let me ask you, let's go back to sort
22 of the line of questioning I went through with
23 Mr. Stamets, would you describe for me in the old
24 world, that which existed from, say, the time
25 which you started in 1973 through about 1984, how

1 the real world operated in terms of testing and
2 obtaining tests and scheduling and the role,
3 particularly focus on the role of El Paso.

4 A. This could start earlier than that, if
5 you please, and I do not know the cutoff date
6 because the cutoff date was determined by what
7 happened to the market situation: Do interstate
8 pipelines still buy gas at the wellhead and sell
9 it? When that ended, there has been a change in
10 the overall business world.

11 Q. I'm talking about up to that. I think
12 the cutoff date was probably an evolutionary date
13 rather than a specific date.

14 A. Up until that time, the pipelines
15 worked with the operators to be sure that every
16 well that needed a deliverability test conducted
17 on it was scheduled sometime through the year so
18 that the gas could be produced into the pipeline
19 and that the well could be shut-in to have the
20 shut-in pressure measured.

21 It was an overall effort of each of the
22 pipelines serving the area that they would more
23 or less be in charge of that because they knew
24 what day or what weeks the gas could flow into
25 the pipeline more than the operator did. But

1 they would try to work in conjunction with the
2 operator to get dates that were suitable to the
3 operator and the pipeline company.

4 And the schedules were made for those
5 tests to be conducted at those times. Notice was
6 sent to the operator: Here are the dates for
7 conditioning periods, the dates for flow periods,
8 the dates for shut-in of the well.

9 Q. Is it not true to characterize, again
10 let's talk about before this transition date,
11 which is sometime in the 80s, that in fact the
12 operator -- or excuse me, the pipelines were (A)
13 the major purchasers and (B) controlled virtually
14 all of the production scheduling, turning wells
15 on and off, et cetera, throughout the State of
16 New Mexico, at least? Is that a fair
17 characterization?

18 A. I believe it could be a fair
19 characterization of El Paso Natural Gas in that
20 El Paso had a scheduling system that they
21 operated through in trying to produce the most
22 underproduced wells first and the most
23 overproduced wells lastly in meeting each day's
24 market demand.

25 Q. And in practice isn't it true that if a

1 well became -- reached its overproduction limit
2 under the rules, that El Paso actually took an
3 active part in shutting those wells in and
4 maintaining compliance?

5 A. El Paso probably took the second step
6 maybe in conjunction with the operator, in that
7 the first step was the Oil Conservation Division
8 in publishing a monthly proration schedule would
9 place an asterisk on a well that had reached an
10 overproduced limit or had volumes of gas to be
11 curtailed that it had not made up, then El Paso
12 as a transporter would find those asterisked, or
13 starred wells -- that's an easier word to say.

14 Q. Sure.

15 A. -- starred wells in the schedule, and
16 we would work with the operators that do not
17 produce that well because it should be shut-in.
18 And otherwise we would try to tell them which
19 wells needed to be produced and which wells did
20 not need to be in each day's market.

21 Q. Again, is it a fair characterization to
22 say that sometime for the period prior to the
23 early 80s when this gas market took a trip, if
24 you will, that the operator and El Paso worked
25 fairly closely together? And I say El Paso, I'm

1 talking about all the pipelines, really had a
2 relationship.

3 And the pipelines really had the
4 methods, the mechanisms, the computer systems,
5 the procedures established to do the bulk of
6 regulatory compliance work and that the operators
7 really, perhaps not by contract or statute or
8 anything else, but by practice became somewhat
9 dependent upon the pipelines to help them stay in
10 compliance?

11 A. I would say in answer to that question
12 that El Paso Natural Gas Company did. I do not
13 know about other pipelines. But El Paso would
14 even calculate the deliverability test. Once the
15 field data were taken by the operator, if they
16 would bring it to El Paso, we would calculate the
17 test for them.

18 We would not submit it to the
19 Commission. We would give that completed test
20 calculation back to the operator, and it was up
21 to him as to whether that test was filed with the
22 Commission or not.

23 Q. And did that change then in this period
24 of the early 80s that we're talking about where
25 the gas market deteriorated, the Open Access

1 became a fact of life?

2 A. Yes, sir. And we no longer calculate
3 deliverability tests for other operators and our
4 production scheduling has not been in the same
5 manner that it was in those other days.

6 Q. Now, let's try to set a time period as
7 to when that started to occur and when that kind
8 of change in the role in the relationship between
9 the operator and the pipeline took place. Can
10 you give me roughly years? I don't need months.
11 Is 82 to 86 a good description? 83 to 87? 82 to
12 87? What is the time frame in which that
13 evolution --

14 A. My mind is not geared up to pull up a
15 date for that one. I'm sorry, I cannot.

16 Q. Just for the record, I think we can
17 find the actual date. And perhaps Mr. Swan knows
18 it; he's more familiar with the federal side of
19 it. But would it be safe to say that if the
20 Federal Energy Regulatory Commission Order 436
21 and 451 were the starting points for triggering
22 this activity, are you familiar with that?

23 A. Whatever the date was when the
24 interstate pipelines no longer had control to
25 their markets, I believe.

1 Q. Those are the Open Access orders, which
2 caused that to happen. Would you agree that that
3 really was a good starting date to start working
4 with was when those orders were issued?

5 A. I would tend to agree with that, yes,
6 sir.

7 MR. STOVALL: And I think, Mr. Swan,
8 you can stipulate that that is in approximately
9 the 84-85 time frame; is that correct?

10 MR. SWAN: I think that's correct.
11 It's in that time frame certainly. You might
12 want to back up Order 380 as well.

13 MR. STOVALL: That's correct.

14 Q. (BY MR. STOVALL) Transition caused a
15 lot of disruption in the gas business, didn't it,
16 in that time?

17 A. It did ours, apparently.

18 Q. During that time period -- now, as far
19 as the requirements to do a deliverability test,
20 what has to happen is you have to shut the well
21 in, get some pressures, and then flow some gas to
22 find out how much will flow under the
23 requirements as set forth in the test manual; is
24 that correct?

25 A. Yes, sir. There is a certain amount of

1 flow time for a well and a certain amount of
2 shut-in time for a well, yes, sir.

3 Q. Now, is it correct with respect to El
4 Paso, that sometime after the orders that we've
5 been talking about, the FERC orders that we've
6 been talking about, that because El Paso was no
7 longer virtually the exclusive commodity buyer to
8 the wells connected to its system, that in fact
9 it was transporting a lot of gas on spot-market
10 sales, and it didn't need all the gas that was
11 there, that it told operators in some cases they
12 couldn't produce the gas to get these tests
13 conducted unless they had a market for
14 themselves?

15 I'm not talking about specific wells.
16 But did that not occur in Northern New Mexico, or
17 Northwest New Mexico in the San Juan Basin?

18 A. It is my understanding that as our
19 system worked at that time, if the gas was being
20 taken on the commodity market, we would schedule
21 that for test. If you did not have your gas on
22 the commodity market, then you do not take our
23 schedule strictly at heart and say, "Oh, I've got
24 to produce these certain days of this month and
25 put the gas in El Paso's pipeline," when you have

1 no market.

2 Q. In other words, you couldn't conduct a
3 test if you didn't have some other market and a
4 transportation arrangement with El Paso, isn't
5 that correct, in say, 84, 85, 86, somewhere that
6 time frame?

7 A. Now, that part is where the operator is
8 the responsible party to that. El Paso is
9 subject to what the operator chose to do.

10 Q. Well, yes. And when I say "you," I say
11 an operator would have problems actually
12 conducting a test during that time frame if (A)
13 El Paso was unwilling to take the gas into its
14 commodity and (B) the operator did not have
15 another market and a transportation arrangement
16 with El Paso.

17 In other words, the gas that is flowing
18 for a test has to go someplace; correct?

19 A. Yes, sir.

20 Q. And if it can't go anyplace, then you
21 can't run the test; correct?

22 A. Yes, sir.

23 Q. And that was a complicated process, as
24 evidenced by Mr. Marcum's letter, which was sent
25 out, I believe, in 87; is that correct?

1 A. Whatever the date of it, yes, sir.

2 Q. I mean, the exhibit. I think it's
3 Exhibit 3 or -- 2 or 3 of Great Lakes.

4 El Paso had a lot of people working on
5 trying to figure out how to comply with all the
6 new rules in the marketplace at that time, did it
7 not?

8 A. I assume so.

9 Q. What about the Division's role then in
10 enforcing these requirements back in that
11 transition period? I mean, you heard me say to
12 Mr. Stamets that in fact the Division has to
13 accept some responsibility in this area. What
14 was the Division's role? How did the Division
15 act to enforce these rules prior to this period
16 that we're talking about, the change in the gas
17 market, the Open Access period?

18 A. Through the years up until that date,
19 there were various functions that the Aztec
20 Office of the Oil Conservation Division followed
21 in trying to see that each operator did submit
22 his in a timely manner. And if they didn't, then
23 the action was to each operator that failed to
24 submit his test.

25 Q. And at least as far as El Paso is

1 concerned, did El Paso participate in that in
2 cooperation with the Division and with the
3 operators to help get these things done?

4 A. We did many times. As I recall, if we
5 had had a bad season of moving gas from the San
6 Juan Basin and were unable to produce the wells,
7 we have come to the Division asking for
8 extensions to the testing rules so that the time
9 limit might be extended to get the tests
10 submitted. El Paso did that openly as a pipeline
11 company for any wells connected to our system.

12 Q. But in 1986 that was certainly less so,
13 if not totally untrue, anymore, is that correct,
14 that the pipeline was playing a much, much
15 smaller role in compliance, particularly with the
16 deliverability testing rules?

17 A. If that is after the cutoff date of the
18 good old days, I'd say yes.

19 Q. I think we can agree that that is after
20 the Open Access rules and the cutoff date of the
21 good old days. I think that's the good times, as
22 Mr. Dugan would call them.

23 A. Okay.

24 Q. Just again, I asked Mr. Stamets earlier
25 and what Great Lakes seems to be seeking with

1 this is some sort of, if you will, equitable
2 i.e., fair relief, something to not put them in a
3 condition where it looks like close to
4 half-a-million cubic feet of gas feet or is it
5 half-a-billion, I guess -- whatever the number --
6 overproduction which would require them to be
7 shut-in for a substantial time in the future, do
8 you think that the relief that El Paso is
9 requesting in opposing the application is fair
10 and equitable to this operator in this
11 circumstance?

12 A. It's fair to the other operators of the
13 basin; why would it not be fair to them?

14 Q. Now, have you had an opportunity to
15 review Mr. Stamets' information with respect to
16 the number of wells in this pool alone that may
17 not have a current deliverability test or may not
18 have had in any point in time to determine
19 whether his estimate, I guess, of roughly 200
20 wells is accurate?

21 A. No, sir, I have not.

22 Q. If that were the case and each of these
23 wells were to be denied their allowable back to
24 the date that the test was required strictly in
25 accordance with the rule, what would that do to

1 the gas market today; do you have an opinion?

2 A. I have no idea.

3 Q. If the Division were to strictly
4 enforce the rule in this situation, as El Paso is
5 suggesting it could, it should, I understand you
6 to say, then, it should go and enforce the rule
7 with respect to every operator who doesn't have a
8 current deliverability test or did not have a
9 current deliverability test at any time in the
10 past; is that correct?

11 A. That is why I thought we made these
12 rules.

13 Q. What would it take, in terms of
14 resources of the Division, do you think, based
15 upon your knowledge and the fact that you've been
16 working with us for 20 years, what would it take
17 to (A) determine and (B) enforce that kind of
18 effort? Do you have any sense? Is it
19 realistic? I guess that's the question.

20 A. In my opinion, it is very realistic and
21 it is an overlooked obligation of the Oil
22 Conservation Division.

23 Q. Given what we know today and, again,
24 I'm asking for your opinion, is that penalty
25 provision that is in the rule, given 20-20

1 hindsight on how it could impact at least six
2 wells and who knows how many more gas proration
3 units throughout Northwest New Mexico, would you
4 recommend the adoption of that provision today,
5 or would you recommend some other form of penalty
6 for failure to comply with submission of a
7 deliverability test?

8 A. Today I would stand with the rules as
9 we have them. There might be other committees
10 formed that could work on new rules if they -- if
11 it is felt that new rules are needed. Today this
12 is the best we have.

13 Q. I'm not asking you in terms of what we
14 have. In terms of looking at a real-world
15 situation and things that have happened, would
16 you -- and I'm talking specifically about, and
17 I've forgotten, I'm sorry, which particular rule
18 it is, the one that says the allowable will be
19 canceled or will be granted no allowable for each
20 day for which the test is late -- can you think
21 of an alternative to that that perhaps would be
22 less onerous and still create an incentive?

23 And I'm thinking prospectively, should
24 this rule be amended? Should that penalty
25 provision be in some way revised to be a little

1 less harsh?

2 A. No. I cannot think of any way to
3 change it.

4 Q. What would we do with somebody, say,
5 like El Paso who used to operate wells who might
6 have been in that situation? We might find some
7 tests back there when El Paso operated wells. Do
8 we now go to Meridian, or whoever purchased those
9 wells, and shut them in?

10 A. That's the rule.

11 Q. Let me ask another question, Mr.
12 Kendrick. Recognizing that El Paso -- and I'll
13 try to do this as inoffensively as possible
14 because I know you don't want to answer it --
15 recognizing that El Paso, particularly in this
16 area, has cooperated greatly with the Division
17 and made substantial contributions to the
18 Division, is it really El Paso's purpose in being
19 here today and opposing this application to seek
20 just application, strict application, of the
21 rules of the Division in this particular area, or
22 is there some other reason that El Paso is here
23 in this particular case?

24 A. This is the only reason I know.

25 Q. You mentioned the fact that El Paso is

1 involved in litigation. Does that have anything
2 to do with this particular case?

3 A. I believe my statements were that I
4 understand they're in litigation. Beyond that I
5 know nothing about it.

6 Q. Now, isn't it true in most matters in
7 which El Paso appears before the Division that
8 Mr. Pearce, who is a partner in Montgomery &
9 Andrews, is counsel for El Paso?

10 A. (No audible response.)

11 Q. To your knowledge. To your knowledge.

12 A. Mr. Pearce has appeared as counsel for
13 El Paso Natural Gas in a lot of hearings in Santa
14 Fe before the OCD.

15 Q. And Andrews & Kurth has not appeared
16 before, is that right, as far as your knowledge
17 in, say, the last five or ten years before the
18 Division?

19 A. I do not recall them being here
20 before.

21 MR. STOVALL: I guess what I'm saying
22 is I suspect, and in a minute I'm going to ask to
23 go off the record, I suspect that there is an
24 underlying transactional reason why El Paso is
25 opposing this application and seeking this

1 relief.

2 Mr. Examiner, what I would like to do,
3 I'm taking my leave, if you will, from Chief
4 Justice Ransom of the Supreme Court, who says,
5 "Why are we here," I think he asked. I believe
6 Mr. Carr was in the Supreme Courtroom when he
7 asked that question in a separate matter. And
8 the other matter he asked is, "Is there anyway to
9 do something about solving the underlying problem
10 through the Oil Conservation Division?"

11 Mr. Examiner, I'd like to request a
12 recess, and I'd like to meet with counsel and, if
13 they wish their company representatives be here,
14 to discuss some underlying things off the record
15 and see if we can get this case resolved in a
16 practical manner.

17 Do you have any problem with that,
18 either counsel? I've got some things I'd like to
19 make you aware of. I don't want to do that on
20 the record.

21 MR. PEARCE: I certainly am not opposed
22 to having a discussion among counsel. Counsel
23 and I have lots of discussions about fishing,
24 about families. We have lots of discussions.

25 If you are suggesting that this hearing

1 be recessed in order to get at the nut of some
2 underlying litigation, we can stay in the room.
3 We are not going to accomplish anything. I am
4 not counsel in that proceeding; Mr. Carr is not
5 counsel in that proceeding; Great Lakes is not in
6 the room, except through an independent expert.

7 MR. CARR: I can tell you that I know
8 exactly as much about the litigation as Mr.
9 Kendrick.

10 MR. STOVALL: I just want to make you
11 aware of something. I want to do it off the
12 record because there's some concerns here that
13 bother me in this thing from the Division's
14 standpoint that I want to make counsel aware of
15 and, as I say, I want to do it off the record.

16 MR. CARR: I'm certainly not opposed to
17 getting information on what the Division is
18 thinking.

19 MR. STOVALL: We can either take a
20 lunch break -- it will take me five minutes to
21 tell you what I'm concerned with, and we can make
22 it into a lunch break and come back, or are you
23 through as far as testimony?

24 MR. CARR: It might be appropriate to
25 conclude this witness, and then we can talk about

1 it. I think, in fairness to Mr. Kendrick and all
2 of us, if we're going to have a round-robin on
3 this matter that --

4 MR. STOVALL: I have no more questions
5 for Mr. Kendrick. I'm sorry. I should have said
6 that before.

7 EXAMINER STOGNER: Are there any other
8 questions of this witness?

9 Mr. Kendrick, you may be excused at
10 this time.

11 MR. PEARCE: If I could, Mr. Examiner,
12 I'd like to suggest let's take a brief recess and
13 come back and close this proceeding. There are
14 people who have travel obligations. Let's see
15 if, rather than taking a lunch break first, we
16 can get them out of town.

17 MR. STOVALL: That's fine. I don't
18 have any problem with that.

19 EXAMINER STOGNER: At this time I'm
20 going to call a ten-minute recess, and I will
21 leave the room if you all want to stay in here.

22 (A recess was taken.)

23 EXAMINER STOGNER: Hearing will come to
24 order. I believe we're ready for closing
25 statements at this time. Mr. Pearce, I will let

1 you and your associate go first and followed by
2 Mr. Carr.

3 Mr. Pearce.

4 MR. PEARCE: Thank you, Mr. Examiner.
5 El Paso Natural Gas Company appears in the
6 proceeding today because it is an interested
7 party. It is interested because it is a
8 purchaser/transporter of gas out of prorated gas
9 pools in this state. We appear because we're
10 interested because we have a long history of
11 trying to cooperate with the Division in making a
12 workable regulatory framework.

13 The regulatory framework has been
14 written; it has been tested; and it has been
15 supported. It's been written over many years,
16 most recently restated in 1987 in Order R-333-I,
17 which we've talked about this morning. It's been
18 tested and supported in the Mesa case.

19 That case considered an application for
20 the granting of retroactive allowable, which was
21 necessary because the operator had not performed
22 timely deliverability tests. That is what Great
23 Lakes failed to do in this case.

24 The transcript of the Mesa case shows
25 that there was a failure of what I'll refer to as

1 administrative oversight. That's what Great
2 Lakes claims with what has been referred to as a
3 soap opera and other confusion in the system.

4 The Mesa hearing resulted in an order
5 which denied retroactive allowable. This
6 followed the rule that El Paso Natural Gas
7 Company believes should be followed and El Paso
8 Natural Gas Company believes that the correct
9 allowable is zero for each day a deliverability
10 test is late.

11 We believe it's necessary for you to
12 follow that rule in order to give a proper signal
13 to all operators in the San Juan Basin in
14 prorated pools. If an operator is made aware
15 that retroactive allowable is available equal to
16 whatever quantity of gas he produces, the
17 operator is not confronted with a regulatory
18 system. He is confronted with some other kind of
19 system, but it's not regulatory.

20 The Mesa order talks about some shut-in
21 that was suffered by the Mesa well. Based on
22 that and some other factors, some adjustment was
23 made. Mr. Stamets indicated that he didn't
24 believe the Division was unfair to Mesa in that
25 case. In fact, the Division may have been

1 generous to Mesa in that case.

2 El Paso Natural Gas Company takes no
3 position on the handling of the overproduction.
4 Whether future production is restricted or
5 whether the period for making up that
6 overproduction is extended or whether part or all
7 of that overproduction is canceled, but El Paso
8 does believe that the signal needs to be sent,
9 particularly if there are, as has been suggested,
10 a number of wells that are in a similar
11 position.

12 Mr. Stamets indicated that it seemed to
13 him that nobody cared whether or not the rules
14 were being enforced. We suggest that if that is
15 the case, an appropriate signal needs to be sent
16 so that rules will be complied with. If a rule
17 is not being complied with, you don't get future
18 compliance by ignoring the problem.

19 El Paso suggests that if the regulatory
20 system needs adjustment, it should be adjusted in
21 the future through rule-making and possibly
22 committee work. But it's not appropriate to
23 adjust the system by sending a wrong signal that
24 says we're going to ignore the rules.

25 Each of Mr. Stamets' proposals has the

1 effect of wells carrying underproduction as a
2 result of four years of operation when the wells
3 should not have gotten any allowable at all, his
4 system grants underproduction. We think that's
5 inappropriate.

6 We have a draft order which we ask you
7 to consider. I can tell you that the effect of
8 this draft order is to establish the correct zero
9 allowables for each of these wells during the
10 period when the deliverability tests were
11 delinquent. We think that's what the rule
12 requires, and we believe that's appropriate.

13 However we have reviewed the Mesa case
14 with some care. We're aware that after that
15 solution was arrived at in the Mesa case by
16 denying the application for retroactive
17 allowable, some adjustment, which I guess we can
18 call an equity adjustment, was made. We don't
19 have a position on whether an equity adjustment
20 should be made in this case or what that
21 adjustment should be.

22 And you'll notice in the ordering
23 paragraphs of this draft order, I just have blank
24 spaces. I've just left one ordering paragraph
25 entirely blank. I don't know what you'll want to

1 do.

2 If you believe some adjustment should
3 be made, we think it is appropriate after you
4 assign the zero allowables to make that
5 adjustment as they did in the Mesa case. We do
6 not believe it is appropriate to go back and
7 assign retroactive allowables which, as I've
8 said, we believe sends the wrong signal. Thank
9 you.

10 EXAMINER STOGNER: Thank you, Mr.
11 Pearce. Do you have that draft?

12 MR. PEARCE: I do.

13 EXAMINER STOGNER: And you're providing
14 Mr. Carr a copy of that; is that correct?

15 MR. PEARCE: I am, sir.

16 EXAMINER STOGNER: Mr. Carr.

17 MR. CARR: May it please the Examiner,
18 Great Lakes Chemical Corporation is before you
19 today seeking allowable relief for six wells in
20 the San Juan Basin. We do not stand before you
21 even suggesting that we should not have filed
22 deliverability tests, but we do believe when you
23 review this application, there are mitigating
24 circumstances which you should consider,
25 circumstances which are real and which caused

1 legitimate confusion as to what this operator
2 should do.

3 Great Lakes' intention has only been
4 throughout its years operating wells in New
5 Mexico to comply with the rules of this agency.
6 We're not saying this trying to blame anyone.
7 What we're saying is there is an explanation for
8 what happened. And what happened was testing was
9 suspended for a time.

10 There were notices from El Paso that
11 caused confusion on the part of the field people
12 we had employed to deal with this matter. And
13 month, after month, after month, allowables were
14 assigned by this Division. And when we looked at
15 the allowables schedule, it says basically,
16 "Here's your allowable schedule," and we assumed
17 from that that things were okay, and obviously
18 they were not.

19 We have a situation here that is unlike
20 the system in New Mexico for oil allowables where
21 there is a swift cancelation of allowable if test
22 data isn't filed. Years and years have passed.
23 And I think, from the testimony here today, it is
24 clear that when these rules were adopted, the
25 ramifications of this rule, as we see them today

1 in this case, were never anticipated.

2 The result, if you follow El Paso's
3 recommendation and apply the rule literally
4 without taking any other circumstance, is
5 severe. It's so severe it simply doesn't match
6 the facts. It doesn't match the facts as they
7 apply to Great Lakes or to Meridian or to Great
8 Western Drilling. It's an absurd result.

9 I think it's important to note, while
10 El Paso stands before you and they talk about the
11 procedure, the process, "We don't think they
12 should have overproduction," what no one has
13 really testified to, except Great Lakes, is
14 really waste and correlative rights.

15 El Paso doesn't have their correlative
16 rights at issue -- well, maybe. They in a
17 general way say, "Well, maybe somebody
18 somewhere." They can't find waste, and those are
19 the jurisdictional bases to which you must return
20 as you try to resolve this particular question.

21 A few years ago I was in a case between
22 Hickson Development Corporation and Mobil.
23 Hickson had drilled a well too close to the
24 boundary line of a proration unit and was
25 accordingly encroaching on Mobil. The OCD did

1 not catch this, and they approved the drilling
2 permit and the well was drilled.

3 Frank Chavez testified on behalf of
4 Hickson in that case, and I think in that case he
5 made a very significant statement about what he
6 perceived the policy of this agency to be, in
7 circumstances where there was an honest mistake
8 or a mix-up.

9 As you may recall in that case, they
10 were saying, "Well, you're too close. Why don't
11 we treat it as if you're on 40 and use that as
12 the basis for your allowabe." On
13 cross-examination Mr. Chavez said, "What we're
14 proposing here has never been done."

15 He went on to say, "Some of our rules
16 are not always perhaps as good as they can be,
17 even when they're issued, many times we don't see
18 the ramifications later on, and that's why we
19 come to hearings." And then when asked what you
20 did when you got to hearing, he said, "We look
21 for an equity situation."

22 I think that's a pretty good way to
23 look at this case. No one anticipated that we
24 would have this kind of a problem facing an
25 operator. Mr. Kendrick said the objective was

1 timely filing of information. And I'm asking you
2 to go back to waste considerations to the
3 protection of correlative rights and find an
4 equity situation.

5 I do have one concern, the heavy
6 reliance being placed on the Mesa case. And the
7 reason I call this to your attention is because
8 I'm concerned that, as we all know, there are
9 other things going on between these parties and
10 perhaps the road to the result following Mesa is
11 more important to El Paso than the bottomline
12 itself evidenced by the blank space in the order
13 that's just been tendered to you.

14 I believe what we propose is
15 reasonable. It's reasonable for us obviously.
16 It's reasonable for other companies, not just
17 us. I think it's reasonable and fair to the
18 Division. El Paso obviously does not. They're
19 concerned about the regulatory process. And yet
20 they come in here looking at one operator,
21 flagging the Mesa decision, and not talking about
22 waste, not talking about correlative rights. And
23 I would wonder what their real objective is.

24 Now, I can suggest to you that, as we
25 see it, this case really is a situation where

1 there has been no harm, no foul. You know, I
2 wouldn't suggest for a minute that a prehearing
3 statement stands on the same footing with a, say,
4 deliverability test. But I can say to you that
5 there's no harm to the system -- there has been
6 no more harm to the considerations of waste and
7 correlative rights by what Great Lakes did than
8 by the very fact that in this case El Paso didn't
9 file its prehearing statement in a timely
10 fashion. There was no harm. There was no foul.

11 Beyond just suggesting that, I can
12 recommend to you that perhaps you should look at
13 what Mr. Chavez said in the Hickson case. I
14 think it's an exceptionally fine statement of how
15 this agency has operated over the years, how they
16 have dealt with problems when mistakes are
17 involved.

18 And finally, I will say to you that if
19 you are to meet your statutory duty to prevent
20 waste, if you are to act to protect correlative
21 rights, if you base your decision on the record
22 made in this case, you must grant the application
23 of Great Lakes. And I tender an order to you for
24 your consideration which will do just that.

25 EXAMINER STOGNER: Do you have it, Mr.

1 Carr?

2 MR. CARR: Yes, if I can find it here,
3 I do, Mr. Stogner. And that concludes my
4 presentation.

5 MR. STOVALL: In terms of any external
6 considerations, what is the urgency of getting an
7 order? Are we talking an expedited situation, or
8 is 30 days going to make a difference? I'm not
9 suggesting for any reason it would be delayed,
10 but just wild thoughts running through my head.

11 MR. PEARCE: Thirty days is not a
12 problem.

13 EXAMINER STOGNER: You're granting me
14 30 days to get an order out?

15 MR. CARR: If you use it expeditiously,
16 yes, sir.

17 EXAMINER STOGNER: Thank you.

18 Is there anything else further to be
19 brought out in Case No. 10407?

20 Thank you, gentlemen, for preparing
21 rough drafts. This case will be taken under
22 advisement. Hearing adjourned.

23 (The proceedings were concluded.)

24 I do hereby certify that the foregoing is
25 a complete and correct transcript of the
the Evidence presented in the above case,
heard by me on _____ 19____.

_____, Examiner
Oil Conservation Division

1 CERTIFICATE OF REPORTER

2
3 STATE OF NEW MEXICO)
4 COUNTY OF SANTA FE) ss.
5

6 I, Debbie Vestal, Certified Shorthand
7 Reporter and Notary Public, HEREBY CERTIFY that
8 the foregoing transcript of proceedings before
9 the Oil Conservation Division was reported by me;
10 that I caused my notes to be transcribed under my
11 personal supervision; and that the foregoing is a
12 true and accurate record of the proceedings.

13 I FURTHER CERTIFY that I am not a
14 relative or employee of any of the parties or
15 attorneys involved in this matter and that I have
16 no personal interest in the final disposition of
17 this matter.

18 WITNESS MY HAND AND SEAL February 5,
19 1992.
20

21
22 
23 _____
24 DEBBIE VESTAL, RPR
25 NEW MEXICO CSR NO. 3