

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO

9 September 1987

EXAMINER HEARING

IN THE MATTER OF:

Case No. 8668 being reopened upon CASE
application of Howard Olsen to re- 8769
consider the provisions of Division
Order No. R-8769, issued in said
Case No. 8769 and dated December 6,
1985.

BEFORE: Michael E. Stogner, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division: Jeff Taylor
 Attorney at Law
 Legal Counsel to the Division
 State Land Office Bldg.
 Santa Fe, New Mexico 87501

For the Applicant:

1
2
3 MR. STOGNER: We'll call next
4 Case 8668, which is reopened in the matter of -- I'm sorry,
5 which is being reopened upon application of Howard Olsen to
6 reconsider the provisions of Division Order No. R-8031 in
7 Lea County, New Mexico.

8 At the request of the
9 applicant, this case will be continued to the Examiner's
10 Hearing scheduled for October 7, 1987.

11 I will also call next Case
12 Number 8769, which is also being reopened upon application
13 of Howard Olsen to reconsider the provisions of Division
14 Order No. R-8091, issued in Case Number 8769, Lea County,
15 New Mexico.

16 At the applicant's request this
17 case will be continued to the Examiner's Hearing scheduled
18 for October 7th, 1987.

19 (Hearings concluded.)
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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO
HEREBY CERTIFY the foregoing Transcript of Hearing before
the Oil Conservation Division (Commission) was reported by
me; that the said transcript is a full, true, and correct
record of the hearing, prepared by me to the best of my
ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a correct and true copy of the proceedings in
the Examiner hearing of Case No. 8767,
heard by me on 9 September 1987.

Michael E. Shyne Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BUILDING
5 SANTA FE, NEW MEXICO

6 7 October, 1987

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 In the matter of Case No. 8769 CASE
10 being reopened upon application of 8769
11 Howard Olsen to reconsider the
12 provisions of Division Order No.
13 R-8091, Jal, New Mexico.

14 BEFORE: Michael E. Stogner, Examiner

15 TRANSCRIPT OF HEARING

16 A P P E A R A N C E S

17 For the Division:

18 Jeff Taylor
19 Attorney at Law
20 Legal Counsel to the Division
21 State Land Office Bldg.
22 Santa Fe, New Mexico 87501

23 For the Applicant:

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3 MR. STOGNER: I will call next
4 Case Number 8769.

5 MR. TAYLOR: In the matter of
6 Case Number 8769 being reopened upon application of Howard
7 Olsen to reconsider the provisions of Division Order No. R-
8 8091, dated December 6, 1985, Lea County, New Mexico.

9 The applicant has requested
10 that this case be continued.

11 MR. STOGNER: Case Number 8769
12 will be continued indefinitely, and will be advertised at
13 such time as it needs to be.

14 (Hearing concluded.)
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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true, and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 8769,
heard by me on 27 October 1987.

Michael E. Stynes, Examiner
Oil Conservation Division

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

12 July 1989

EXAMINER HEARING

IN THE MATTER OF:

In the matter of cases called on this
date and continued or dismissed with-
out testimony presented.

CASES

9689

9691

9692

9696

9697

9698

9699

9700

9701

~~8668~~

8769

BEFORE: Michael E. Stogner, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division:

I N D E X

1		
2		
3	CASE 9689	3
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5	CASE 9692	5
6	CASE 9696	6
7	CASE 9697	7
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9	CASE 9699	9
10	CASE 9700	10
11	CASE 9701	11
12	CASE 8668	12
13	CASE 8769	13
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1 MR. STOGNER: This hearing
2 will come to order for Docket No. 20-89.

3 I'm Michael E. Stogner, the
4 appointed examiner for today's docket, July 12th, 1989.

5 I'll call the continuance and
6 dismissal cases first.

7 I'll first call Case Number
8 9689, which is the application of Yates Petroleum Corpor-
9 ation for a unit agreement, Lea County, New Mexico.

10 Upon the applicant's request
11 this case will be continued to the Examiner's hearing
12 scheduled for July 26, 1989.

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14 (Hearing concluded.)
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1 MR. STOGNER: Next case,
2 Number 9691, which is in the application of Yates Petro-
3 leum Corporation for a unit agreement, Lea County, New
4 Mexico.

5 Upon the applicant's request
6 this case will be dismissed.

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8 (Hearing concluded.)
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1 MR. STOGNER: Call next Case
2 Number 9692, which is the application of Bettis, Boyle &
3 Stovall for an unorthodox gas well location, Eddy County,
4 New Mexico.

5 At the applicant's request
6 this case will be continued to the Examiner's hearing
7 scheduled for July 26th, 1989.

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9 (Hearing concluded.)
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1 MR. STOGNER: Go to the second
2 page.

3 Call next Case Number 9696,
4 which is the application of Robert N. Enfield for compul-
5 sory pooling and a nonstandard gas proration unit, Lea
6 County, New Mexico.

7 Upon the applicant's request
8 this case will be dismissed.

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10 (Hearing concluded.)
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1 MR. STOGNER: Drop down to
2 Case Number 9697, which is the application of Santa Fe Ex-
3 ploration Company for amendment of the special rules and
4 regulations for the North King Camp Devonian Pool, Chaves
5 County, New Mexico.

6 This case will be continued to
7 the Commission hearing scheduled for August 17th, 1989.

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9 (Hearing concluded.)
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1 MR. STOGNER: Call next Case
2 Number 9698, which is the application of Yates Petroleum
3 Corporation for an unorthodox gas well location, Chaves
4 County, New Mexico.

5 At the applicant's request
6 this case will be continued to the Examiner's hearing
7 scheduled for July 26th, 1989.

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9 (Hearing concluded.)
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1 MR. STOGNER: Call next Case
2 Number 9699, which is the application of Yates Petroleum
3 Corporation for compulsory pooling, Chaves County, New
4 Mexico.

5 At the applicant's request
6 this case will be dismissed.

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8 (Hearing concluded.)
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1 MR. STOGNER: Call next Case
2 Number 9700, which is the application of Yates Petroleum
3 Corporation for compulsory pooling, Eddy County, New
4 Mexico.

5 At the applicant's request
6 this case will be continued to the Examiner's hearing
7 scheduled for July 26th, 1989.

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9 (Hearing concluded.)
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2 MR. STOGNER: Call next Case
3 Number 9701, which is the application of Yates Petroleum
4 Corporation for compulsory pooling, Eddy County, New
5 Mexico.

6 At the applicant's request
7 this case will be dismissed.

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9 (Hearing concluded.)
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1 MR. STOGNER: Drop down to
2 Case Number 8668, which is in the matter of said case being
3 reopened upon the application of Howard Olsen for recon-
4 sideration for the provisions of Division Order No. R-8031.

5 At the request of the repre-
6 sentatives of Howard Olsen this case will be continued to
7 the Examiner's hearing scheduled for July 26, 1989.

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9 (Hearing concluded.)
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1 MR. STOGNER: Call next Case
2 Number 8769, which is in the matter of said case being re-
3 opened upon application of Howard Olsen to reconsider the
4 provisions of Order Number R-8091.

5 At their request this case
6 will be continued again to the Examiner's hearing scheduled
7 for July 26th, 1989.

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9 (Hearing concluded.)
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C E R T I F I C A T E

I, SALLY W. BOYD, C. S. R. DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case Nos. 9689, 9691, 9692, 9696,
heard by me on 17 July 19 87. 9697, 9699,
9699, 9700,
9701, 9648,
8769
Michael A. Stager, Examiner
Oil Conservation Division

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

26 July 1989

EXAMINER HEARING

IN THE MATTER OF:

In the matter of cases called on this	CASES
date and continued or dismissed with-	9689
out testimony presented.	9698
	9700
	9703
	9706
	9709
	8668
	8769
	9663

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division:	Robert G. Stovall
	Attorney at Law
	Legal Counsel to the Division
	State Land Office Building
	Santa Fe, New Mexico

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

9 August 1989

EXAMINER HEARING

IN THE MATTER OF:

In the matter of cases called on this
date and continued or dismissed with-
out testimony presented.

CASES
9712
9713
9698
9700
9714
9703
9716
9718
9709
9719
9721
9722
8668
8769
9707

BEFORE: Michael E. Stogner, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division:

Robert G. Stovall
Attorney at Law
Legal Counsel to the Division
State Land Office Building
Santa Fe, New Mexico

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BUILDING
5 SANTA FE, NEW MEXICO

6 6 September 1989

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 In the matter of Case No. 8668 being CASE
10 reopened upon application of Howard 8668
11 Olsen to reconsider the provisions of
12 Division Order No. R-8031, Lea County,
13 New Mexico, and

14 In the matter of Case No. 8769 being CASE
15 reopened upon application of Howard 8769
16 Olsen to reconsider the provisions of
17 Division Order No. R-8091, Lea County,
18 New Mexico.

19 BEFORE: Michael E. Stogner, Examiner

20 TRANSCRIPT OF HEARING

21 A P P E A R A N C E S

22 For the Division: Robert G. Stovall
23 Attorney at Law
24 Legal Counsel to the Division
25 State Land Office Building
Santa Fe, New Mexico

For Howard Olsen: T. Calder Ezzell, Jr.
Attorney at Law
HINKLE LAW FIRM
P. O. Box 10
Roswell, New Mexico 88210

For Doyle Hartman: J. E. Gallegos
Attorney at Law
GALLEGOS LAW FIRM
300 Paseo de Peralta
Suite 100
Santa Fe, New Mexico 87501
and

A P P E A R A N C E S Cont'd

For Doyle Hartman:

William F. Carr
Attorney at Law
CAMPBELL & BLACK, P. A.
P. O. Box 2208
Santa Fe, New Mexico 87501

I N D E X

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CLOSING STATEMENT BY MR. CARR	60

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1 MR. STOGNER: At this time
2 we'll call Cases Numbers 8668 and 8769.

3 MR. STOVALL: 8668. In the
4 matter of Case Number 8668 being reopened upon application
5 of Howard Olsen to reconsider the provisions of Division
6 Order No. R-8031 issued in Case 8668 and dated September
7 27th, 1985, which granted the application of Doyle Hartman
8 to compulsory pool all mineral interests to a well in the
9 southeast quarter of the southeast quarter of Section 23,
10 Township 25 South, Range 37 East in -- I believe that's Lea
11 County, New Mexico. Is that correct?

12 MR. CARR: Yes.

13 MR. STOVALL: And Case 8769.
14 In the matter of Case 8769 being reopened upon the applica-
15 tion of Howard Olsen to reconsider the provisions of Divi-
16 sion Order No. R-8091, issued in said Case 8769 and dated
17 December 6th, 1985, which granted the application of Doyle
18 Hartman to compulsory pool all mineral interests to a well
19 dedicated to the southeast quarter of the northeast quart-
20 er of Section 26, Township 25 South, Range 37 East, in Lea
21 County, New Mexico.

22 MR. STOGNER: At this time
23 we'll call for appearances.

24 MR. EZZELL: Mr. Examiner,
25 Calder Ezzell with the Roswell office of the Hinkle Law

1 Firm, representing the applicant, Mr. Olsen.

2 MR. CARR; May it please the
3 Examiner, my name is William F. Carr with the law firm
4 Campbell & Black, P. A., of Santa Fe. I'm appearing in
5 association with J. E. Gallegos of the Gallegos Law Firm,
6 also in Santa Fe. We'll be presenting this case on behalf
7 of Doyle Hartman.

8 I have one witness.

9 MR. STOGNER: Are there any
10 other appearances?

11 At this time we'll have a pre-
12 hearing conference.

13 Mr. Stovall.

14 MR. STOVALL: Well, Mr.
15 Ezzell, this is your application. Why don't you tell the
16 Examiner what it is all about.

17 MR. EZZELL: What it is all
18 about.

19 We have a situation where we
20 feel that the two subject orders were not followed and we
21 seek enforcement of those orders.

22 We have a stipulation to the
23 facts that counsel have entered into, which indicates that
24 the facts are not in dispute; that the provisions of the --
25 of each of the orders were not followed. Specifically the

1 provisions we refer to are the requirement that after the
2 entry of the order, or at the effective date of the order,
3 that the applicant for the forced pooling, Mr. Hartman,
4 notify each and every working interest owner whether or not
5 they want to join and submit a copy of an Authorization for
6 Expenditure, or AFE, for the well to be drilled.

7 The other provision that was
8 not adhered to is the provision in the order that within 60
9 days, I believe, after the completion of the well the de-
10 signated operator would submit to the OCD and to any inter-
11 est owner who had been pooled under the order an itemized
12 statement of actual well costs.

13 The facts are clear that the
14 applicant did not do either of these in either -- in either
15 case, and we have one July hearing and then one November
16 hearing.

17 The facts also stipulate, or
18 the stipulated facts also show that there is a physical im-
19 possibility for Mr. Hartman to have complied with these
20 technical, literal provisions of the order, because he
21 drilled the first well before the order had entered, and
22 it's our contention that he did so at his own risk and that
23 should have no effect on the application of the order to
24 Mr. Olsen or his opportunity to participate in the well.

25 In the second case, again the

1 facts are clear, as shown on the -- on the stipulation.
2 The order was entered December 4th, I believe; the well was
3 spudded December 10th. There was no attempted communica-
4 tion from Mr. Hartman's office to Mr. Olsen from the period
5 of time before the hearing until after the well was com-
6 pleted, and it is obvious that -- that there are many other
7 factors involved. There are equities involved and there
8 are questions of just basic fairness involved, but I think
9 as far as the proceeding before the Oil Conservation Divi-
10 sion, whose jurisdiction is the enforcement of the order,
11 that in a situation where the parties have agreed that the
12 order -- they have agreed to the facts which indicate that
13 the order was not adhered to, that the -- that the Commis-
14 sion has no alternative but to enter an order directing
15 that the original order be followed.

16 And it's similar to a summary
17 judgment type situation in litigation, I think, I'm not a
18 litigator (sic) but I think that from Mr. Olsen's point of
19 view we would agree that everything, all of the facts and
20 all of the testimony that -- that Mr. Hartman's counsel
21 would put on, even if construed in the worst light against
22 Mr. Olsen, would still not make any difference in the
23 matter of whether the orders were followed or not.

24 MR. STOVALL: Let me just ask
25 you, just for understanding, what relief are you asking

1 for? What do you want the Commission to do for Mr. Olsen?

2 MR. EZZELL: I want the Com-
3 mission to do that which it has done in numerous other
4 situations where the order was not -- a similar order was
5 not followed in the same way, and that would be enter an
6 order directing that the applicant afford the parties that
7 were force pooled in this case, if there was just one, with
8 the opportunity to participate in the well.

9 MR. STOVALL: Mr. Carr?

10 MR. CARR: Initially, I'd like
11 to provide to the Examiner a hearing memorandum that covers
12 the -- we think, the applicable law in this situation.

13 I think it's important to re-
14 cognize that what we're here for today is to respond to Mr.
15 Olsen's application in which he is asking you to order
16 strict compliance with some prior Oil Commission orders, or
17 in the alternative, to set the orders aside.

18 As Mr. Ezzell has set out, the
19 real basis of the claim is whether or not Mr. Hartman,
20 after the effective date of the pooling orders and before
21 spudding the wells, provided an AFE to Mr. Olsen, and
22 whether or not he provided, in accordance with the order,
23 the information on the reasonableness of the costs incurred
24 in drilling the well.

25 They're focusing on a couple

1 of very simple and, as Mr. Ezzell pointed out, very tech-
2 nical facts, and if the only issue was did we supply the
3 AFE after the order and before we spudded the well, then we
4 ought to all go home, because, of course, we did not, and
5 that's not an issue in dispute here today.

6 But the fact of the matter is
7 it isn't the simple case that Mr. Ezzell would have you
8 believe. There are a number of factors that you have to
9 review and weigh if you're going to consider this case, and
10 you must take all of the facts, not just the two techni-
11 calities upon which Mr. Olsen is relying on.

12 You've got to take all of
13 those facts and those facts must be considered in the con-
14 text of the controlling law and the controlling law is
15 contained in that memorandum, and in essence what it says
16 is simply that administrative decisions are not set aside
17 for procedural errors unless those errors are major, sub-
18 stantial, and prejudicial.

19 MR. STOVALL: Let me interrupt
20 you at this point --

21 MR. CARR: Yes.

22 MR. STOVALL: -- Mr. Carr. In
23 talking about procedural error --

24 MR. CARR: Yes.

25 MR. STOVALL: -- are we talk-

1 ing about procedural errors in the conduct of the adminis-
2 trative process which resulted in the order or in the
3 carrying out of the order?

4 MR. CARR: In compliance with
5 the order, and I think if you read the cases cited in this
6 memorandum, Mr. Stovall, they go both directions, and what
7 we're talking about is procedural compliance with -- in
8 terms of providing the AFE, and as Mr. Ezzell pointed out,
9 it's impossible.

10 We came before you, I was the
11 attorney, Mr. Aycock was the witness, and we told you we
12 had immediate plans to go forward with the well because we
13 were trying to develop properties before the end of the
14 year, and we did, and we got the order after the well had
15 been spudded. So from that moment it was impossible to
16 comply with those technical provisions of the order, but
17 the test is was this failure prejudicial to Mr. Olsen? Was
18 it substantial? Was it major?

19 Now in this case, this is un-
20 like Oil Commission cases. I differ with Mr. Ezzell, I
21 don't think there's precedent for asking you to do this.
22 There's also some things in this that are unique in depo-
23 sitions taken in this case from all of the parties. And so
24 the evidence has been fully explored on both sides and we
25 know what the evidence is, Mr. Ezzell does, it's contained

1 in our exhibits and in the stipulation of facts that
2 counsel has entered, but when all the facts are before you,
3 and we intend to present them here today, you are going to
4 see that Mr. Olsen simply cannot meet these tests. He
5 cannot show prejudice. He cannot show that these errors
6 were substantial; that they were major; because no harm
7 came from them. Any harm he sustained was a result of Mr.
8 Olsen's failure to act.

9 So there is no dispute on the
10 technical things that we have set out in the stipulation of
11 facts, but the evidence is not just going to show that.
12 The evidence is going to show that as a practical matter
13 Mr. Hartman has complied with the pooling orders and the
14 evidence is going to show you that Mr. Olsen is not an un-
15 knowledgeable individual. He's operated wells. He's fami-
16 liar with the Oil Commission. He's familiar with compul-
17 sory pooling actions. He knows if you don't show up they
18 pool the lands. He knows if you don't show up penalties
19 are imposed. He was in negotiations with Hartman. They
20 discussed whether he would join, whether he would farmout,
21 whether he would sell his interest. Mr. Hartman gave him
22 an AFE prior to the time of the hearing. He had the in-
23 formation, the AFE that was used for both wells was avail-
24 able to him before the hearing. He had the data he needed
25 to decide whether or not to join. If there was a technical

1 error, it was harmless because the information was in the
2 hands of Mr. Olsen. He was given notice of the hearing.
3 He was knowledgeable of what was going on and he did
4 nothing. He didn't show up with counsel. He didn't come
5 by himself. He did nothing at that time and he didn't do
6 anything for years to come. He sat back and let it happen
7 and he sat on the fence again during the second hearing.
8 The whole scenario unfolded again.

9 What did Mr. Hartman do?
10 Well, he acquired the property from Sun. He negotiated
11 with the other owner, Mr. Olsen, exploring farmout, join-
12 der, purchase, whatever. He gave him notice of the hearing
13 as required by the rules. He provided him with the data,
14 the AFE. He thought he had a deal for the purchase of the
15 well. He told him so. He told you so. He drilled the
16 well.

17 MR. STOVALL: Mr. Carr, let me
18 interrupt you again at this point.

19 MR. CARR: Yes.

20 MR. STOVALL: Basically what
21 you're telling me, you're telling the Examiner --

22 MR. CARR: Is substantial com-
23 pliance.

24 MR. STOVALL: -- is -- well,
25 it is also the type of matter which would be entered into

1 evidence in a forced pooling hearing.

2 MR. CARR: That's correct.

3 MR. STOVALL: Can you -- I
4 have not read the record in --

5 MR. CARR: Uh-huh.

6 MR. STOVALL: -- the original
7 case, the forced pooling case. Can you tell me, was there
8 testimony put into the record at that time regarding nego-
9 tiations --

10 MR. CARR: Yes.

11 MR. STOVALL: -- between
12 Hartman and Olsen?

13 MR. CARR: Yes, there certain-
14 ly was and they're included in this exhibit and they've
15 been covered in the depositions that are also included in
16 this exhibit and we were advised, you were advised each
17 time what we thought the arrangement was.

18 The first time we thought we'd
19 reached a farmout agreement. There are letters in here
20 that evidence that.

21 The second time we thought we
22 had an agreement to purchase and we told you we had to go
23 forward, and it's all -- it's all in this material, Mr.
24 Stovall, and the fact of the matter is, Mr. Olsen didn't
25 just play an absolutely neutral role. It even got to the

1 point where he told his agent, the people he was working
2 through dealing with Mr. Hartman, to quit dealing with it,
3 we found out later, and he even refused to accept mail, and
4 we would try by certified mail to notify him that the
5 Carlson No.5 has been drilled, and now he contends we did
6 not comply, when he had every bit of data he needed.

7 Questions about the well cost,
8 when the questions were raised, what did we do? We said
9 bring your CPA, come down to our office, and for four days
10 they got to look at anything they wanted, and the objec-
11 tions they had, we believe now have been by and large re-
12 solved.

13 We find that where we stand is
14 these are the facts. You take these facts, you'll find to
15 that law we have substantial compliance; the error is harm-
16 less. If there is any prejudice it isn't because we didn't
17 give them the data, it's because they did nothing with it.
18 In fact, it's even further underscored. We're here today
19 because of an application filed two years ago to pursue
20 these matters and we're here for hearing because Mr. Hart-
21 man has conveyed these properties to Meridian and he's got
22 to get this issue resolved and he's got to get this issue
23 resolved, and we're the ones who are forcing a hearing
24 because it is time to get this over so this matter can be
25 closed, and when you look at this evidence, one conclusion.

1 It's clear that the application of Mr. Olsen must be dis-
2 missed and we can go about our business and get this out of
3 the way.

4 MR. STOVALL: Gentlemen, be-
5 fore we go any further, let -- let me get your concurrence
6 in procedural process as far as -- it sounds to me like
7 we've got a legal battle here. Actually, is there any
8 substantial, factual problems, matters, to go on the record
9 as far as you're concerned?

10 I know we have depositions. I
11 know we have an agreed to statement of facts.

12 Where -- where are you headed
13 with this is --

14 MR. CARR: Yeah.

15 MR. STOVALL: -- is that I am
16 at this point inclined to suggest that we have -- the
17 Examiner is the one who makes the recommended decision;
18 however, we're within an area which is more within my area
19 of expertise rather than his at this time, and I'm inclined
20 to conduct this in more of the manner of a court type pre-
21 hearing conference, interplay between the parties, unless
22 there is some objection and you want to follow the more
23 rigorous process of the --

24 MR. CARR: Well --

25 MR. STOVALL: -- of presenting

1 the case and having the Examiner hear these cases.

2 MR. CARR: I'm prepared to do,
3 you know, whatever you desire, but it's important, I think,
4 that we have Mr. Hartman here because I think it will be
5 important to show that to the extent there is an error and
6 a failure to comply, it was impossible. What he did was in
7 the good faith and if there is an issue, the problems that
8 exist in this are certainly the result of an innocent error
9 and an honest attempt to -- to get the acreage pooled and
10 developed, and for that reason I think Mr. Hartman's testi-
11 mony would be significant.

12 MR. STOVALL: Well, let me --
13 let me go back and try to focus this down again, and I'm
14 not saying that we won't use his testimony or that we
15 wouldn't want to hear from him. I want to make sure that
16 we understand what really is available in the form of a
17 remedy at this point.

18 And in the normal -- if a
19 forced pooling case is conducted in the proper and proce-
20 dural manner, the party proposing the well comes before the
21 Commission after attempting negotiations with all of the
22 interest owners, asks us to force pool those interests, to
23 establish certain parameters including administrative
24 costs, provisions regarding the AFE, and I think probably
25 most significant in this case, a penalty provision for

18 Now, if I understand this
19 issue correctly, that in order to make that decision, the
20 force pooled party needs to know what the costs are. What
21 am I going to have to put up front in order to join this
22 well so I can make a decision whether I'm willing to take
23 that risk up front or whether I want the operator to take
24 that risk for me, knowing that I will incur a penalty.

25 That's one point. Now it

1 sounds to me in this case that there were probably some
2 negotiations that took place prior to the forced pooling
3 case in one, according to the stipulated facts as Mr. Ez-
4 zell has relayed them, one well was drilled shortly before
5 the case came to hearing; one well was drilled -- okay,
6 correct me.

7 MR. EZZELL: They were both
8 drilled after the hearing. In one case in the July hearing
9 the well was spudded before the entry of an order but after
10 the date of the hearing.

11 MR. STOVALL: Uh-huh.

12 MR. EZZELL: And in the second
13 case, the well was spudded four days after the hearing was
14 entered -- I mean after the order was entered.

15 MR. STOVALL: After the order
16 was entered. Okay.

17 MR. CARR: Uh-huh.

18 MR. STOVALL: So the question
19 would be did Mr. Olsen have sufficient amount of time in
20 which to make an evaluation of whether or not to partici-
21 pate in the well prior to its spudding when nobody knew
22 what kind of well it was going to be and the converse side
23 of it, he's now coming back in and saying I didn't have
24 time, I now know what kind of well we've got and I would
25 like to participate --

1 MR. CARR: And I'd --

2 MR. STOVALL: -- or I would
3 like the opportunity to participate --

4 MR. CARR: That is not --

5 MR. STOVALL: -- without pen-
6 alty.

7 MR. CARR: That is not estab-
8 lished. We do not at this time know that he is interested
9 in participating.

10 MR. GALLEGOS: By his own
11 sworn testimony, that's --

12 MR. STOVALL: And we don't
13 know if he wants to participate, what he's asking for is
14 the opportunity to participate.

15 MR. EZZELL: Required by the
16 order, right.

17 MR. STOVALL: He may elect
18 still not to participate, I understand that. Is that -- is
19 that more correct?

20 MR. GALLEGOS: Well, you may
21 -- I'm sorry, if I may interject, I take it, Mr. Stovall,
22 you -- you focused very accurately on the heart of the con-
23 troversy but I think what is important, and the evidence
24 that we want considered, is that Mr. Olsen has had repeated
25 opportunities to make that decision and participate and has

1 repeatedly rejected that from the beginning and numerous
2 times after that right up to the time of an audit conducted
3 in his behalf in the fall of 1987, when there was actual
4 well cost, and he still did not avail himself of the op-
5 portunity. Thats -- that's key evidence because -- and
6 that's what Mr. Carr refers to as the reason why there
7 could be no prejudice and no reason for relief to be
8 granted, because it will be shown everything he would have
9 received had there been strict literal compliance with the
10 order, he has received and has not stepped forward and said
11 I will pay my share of the well costs, over and over again
12 that's some of the evidence that we think is important to
13 at least highlight on the record and bring out here.

14 MR. EZZELL: If I could
15 respond to that, with respect to well costs, Mr. Gallegos
16 is 100 percent correct. After my firm got involved after
17 prior counsel who was in Oklahoma had been working on the
18 relationship between Mr. Hartman and Mr. Olsen, we filed --
19 when -- when we did our research and found that the orders
20 -- and there again, we have had nothing but cooperation
21 from Mr. Hartman's staff throughout this entire process,
22 his attorneys and his staff immediately told us when we
23 asked, did you send the AFEs required by the order, and
24 they said, well, no, we didn't. He already had AFEs. He
25 was given the AFEs before the hearings, and in the case of

1 the first well that was true. There is a letter furnishing
2 him with an AFE and asking him to participate. He didn't
3 want to do it, (unclear), he wanted to participate. But as
4 far as the actual well cost, from the time we first made
5 demand for an accounting or access to Mr. Hartman's re-
6 cords, we were given it immediately and the only part of
7 Mr. Olsen's confusion, although he was never given at any
8 of those times the opportunity to participate, and I wish
9 that he had in 1987. I wish that we had been able to have
10 this hearing in 1987 when it was originally set. We
11 wouldn't have the dollars involved that has -- that have
12 made this controversy exist, but in October of '87 we were
13 at the well, we were provided well costs and well revenue.
14 We had no idea, obviously, of the revenue attributable to
15 the well because we were not receiving it.

16 In October of '87 they had
17 indicated that neither well had paid out.

18 We were again, I would -- in
19 negotiations with Mr. Hodge of Mr. Hartman's office to try
20 to settle this matter, and we had offered the -- our inter-
21 est in the lease, the four wells on the lease, to Mr. Hart-
22 man for the sum of \$134,000 and the offer was -- the offer
23 was rejected.

24 And in the process of my nego-
25 tiations with Mr. Hodge, I asked for updated well costs and

1 well revenues so we could find out where the parties were.
2 I thought if we were getting close to payout of both wells
3 it would be a very good time to get the matter resolved be-
4 cause Mr. Hartman had have gotten his money back. He
5 wouldn't have had any of Mr. Olsen's money if, in fact, Mr.
6 Olsen had participated and the well would have paid out.
7 It would be a wonderful time to get it resolved.

8 In May of -- as of May 31st of
9 '88 we get the numbers provided to us from Mr. Hartman's
10 office and those are one of the exhibits.

11 That one well has paid out.
12 By pay out I mean well cost plus operating expenses, not
13 everything. One well has paid out by some \$20,000.

14 The other well had not -- was
15 some \$40,000 away from paying out. Okay, it's still a good
16 time to negotiate.

17 Then the week before the depo-
18 sition that was -- that finally occurred, I was given yet a
19 third set of numbers which indicated that the first well
20 paid out in September of 1987 and the second well paid out
21 in December of 1987, and so all, you know, we have, and we
22 have asked about the discrepancy and have been told that
23 the last set of figures is the best set of figures and
24 that's the ones that we should deal with. We don't have
25 any problem with that but the bottom line is Mr. Olsen has,

1 until the week or so before the deposition, never really
2 knew what the payout status was, which would obviously
3 affect his decision purely from a financial standpoint or
4 an economic standpoint as to whether he would want to par-
5 ticipate.

6 Just like the Commission poli-
7 cies requires the opportunity to participate to be afforded
8 to someone who has been force pooled after the entry of the
9 order. Someone may want to go under the order if it was
10 120 percent penalty; someone may want to participate and
11 get hit for the full 200 percent penalty. It's just been
12 my understanding that that's -- that's why the orders are
13 written the way they are.

14 I think Mr. Carr indicated
15 that there is no precedent for what we are seeking and
16 there the case is shockingly similar. Both the hearings,
17 Examiner hearings had before the OCD, had exactly what we
18 are asking be granted, and that's the case of Bill Taylor
19 versus C & K Petroleum, Case 6289, Order 5332.

20 MR. STOVALL: Are you asking
21 administrative notice be taken of that order?

22 MR. EZZELL: I assumed that
23 everyone would be aware that the Commission had done this
24 before and, yes, I would ask that since Mr. Carr's gone on
25 record as saying there's no precedent, I would ask that you

1 take notice of that to establish that yes, there is prece-
2 dent in exactly this type of action.

3 MR. STOVALL: It seems to me
4 just narrowing the focus of this, what -- what can we do at
5 this point. One thing we can do is require Mr. Hartman to
6 provide in effect an accounting of the cost, an accounting
7 of the well to this point and allow Mr. Olsen to make a
8 decision, which gives Mr. Olsen the advantage of being able
9 to look at the well and saying, gee, now I can make my
10 decision based upon the performance of the well. And I can
11 elect to participate in a well which -- which has paid out
12 or I can elect not to participate in a well which will
13 never pay out, which his two options may be.

14 MR. EZZELL: But the result is
15 clear and, as I said in my comments about fairness, it may
16 not seem fair but it is, if you don't comply with the order
17 you get a -- the other guy gets a free look at the well.

18 Maybe if we had heard it in
19 '87 when we originally wanted to, we would not have gotten
20 a free look at a paid out well.

21 MR. STOVALL: Well, the ques-
22 tion that would come up, and I think Mr. Carr will address
23 this, is whether Mr. Olsen did in fact have sufficient in-
24 formation to make a decision early on. This -- we're basi-
25 cally looking at an equity situation, is that correct, Mr.

1 Carr?

2 MR. CARR: And I think, you
3 know, what Mr. Ezzell thinks is fair is on our side of this
4 table patently absurd. Let me tell you -- let me respond
5 to several --

6 MR. EZZELL: All I'm saying is
7 that it was -- that is seems very unfair.

8 MR. CARR: Okay, all right.
9 To get a free look because after getting notice of a hear-
10 ing you don't show up, you refuse to accept your mail, and
11 now four years later you come in and say what I'm entitled
12 to is now to come in free after somebody else took the
13 risk, after the person who put the money on the line, who
14 took property and made it produce like it could produce
15 instead of how it had been producing, is the guy who in
16 fact is going to get the penalty. That is unfair. It's
17 ridiculous and the burden and the problem that Mr. Olsen
18 faces is simply not because he didn't have the data. It's
19 because he didn't do anything with it.

20 If you take the stipulation
21 that we have both signed this morning, Mr. Ezzell and I,
22 and you look, you can see on July 10, '85, he got the AFE
23 for the Carlson No. 4. That well was spudded September the
24 10th and completed on October the 5th.

25 He'd like to know what

1 happened at the hearing in 1984. If we'd known that we
2 could have made a better decision, maybe even become parti-
3 cipants in the blasted hearing. Now they want to talk
4 about the cost involved and they come in here and they say,
5 well, we didn't even know payout status until just a few
6 weeks ago. They audited all these records in 1987. They
7 had every bit of information that there was available on
8 the cost of this well and you can't know the payout of a
9 well in 1985 until you get that well on production and
10 start producing the blasted thing.

11 It's -- it's absolutely ridi-
12 culous to come in here and claim about prejudice to you and
13 harm you sustained when the reason you're in this problem
14 right now is because you've just been sitting on the fence
15 for years and you can come in and after you're permitted to
16 review records, file an application, bring the case before
17 this commission and then push it to hearing, and we have to
18 -- we have to turn around and do that.

19 Mr. Stovall, you stated cor-
20 rectly the way a pooling case ought to be brought but I
21 think you also ought to keep in mind the public policy
22 reasons behind a pooling application and that is to get
23 lands pulled together so people can go forward and develop.
24 When somebody takes the risk, when somebody acts in good
25 faith, when somebody tries to deal with somebody and get

1 properties on production, I think it's absurd that four
2 years after the fact let somebody come in here and cite a
3 technicality that you were aware of when you wrote your
4 order as something that could not have been complied with
5 at that time and then simply be given a free look, I think
6 that's the most ridiculous thing I've ever heard of and I
7 think if you think this is a legal matter, then you ought
8 to just dismiss these cases and say go take it someplace
9 else, but the fact of the matter is we're here with a wit-
10 ness. We've been sitting around for two years waiting for
11 the hearing. We're wasting a whole morning. Mr. Hartman
12 could have testified by now. We'd like to get on with this
13 thing and get it resolved.

14 MR. GALLEGOS: Let me point
15 out one thing because I think in light of Mr. Ezzell's com-
16 ments, they say volumes about Howard Olsen's tactics and
17 position, and I think virtually you could rule at this
18 point.

19 First of all, no party can
20 come before this Division and expect any more than they
21 would have been entitled to if the order had been liter-
22 ally complied with, and you know that if that had been the
23 case, he would have to have made a decision prospectively.
24 He wouldn't know what the financial results of the well
25 would be, but in the exhibits, Exhibit Number Twenty-seven

1 is a letter from Mr. Olsen himself to the Hinkle Firm in
2 October of 1987, undisputed, this is Mr. Olsen, with the
3 well costs. There they are, the cost of the 4 and 5. They
4 were less than the amount of the AFE in both cases and he
5 has them, and now he has the audacity to come before the
6 Commission and say well, we had the well costs but it
7 wasn't to payout yet. We still wanted to play the game.

8 I suppose if the wells weren't
9 producing as well we might have to wait five or six years
10 in this case, just lay in limbo, until Mr. Olsen says,
11 well, now it looks like one's paid out. I want to come in
12 now.

13 He had, if he didn't have it
14 before, which the evidence will show he did, what the wells
15 were going to cost and unequivocally said in his own sworn
16 testimony, he didn't want to participate in a well that
17 cost \$390,000 or even \$300,000. He didn't want to partici-
18 pate; set that aside, we'll show that, but set that aside,
19 he had it in October of 1987 and he did nothing. Did he
20 step up then and say here I am? I want to be a voluntary
21 participant? Mr. Ezzell admits, no, he wants to sit back.
22 It doesn't work that way, the law doesn't work that way.
23 What counsel has said, I submit, ends his case and this
24 application should be dismissed. You can't give somebody
25 more than they would ever be entitled to under what they're

1 complaining was a defect.

2 That's what they're asking
3 for. Mr. Olsen wants a free lunch. That's what it amounts
4 to.

5 MR. EZZELL: Mr. Olsen wants
6 the orders to be adhered to, which I freely admit results
7 in a free lunch. There is no doubt. I mean I have been
8 maintaining this for four years. There aren't any facts in
9 dispute. I do dispute Mr. Carr's referral that I've
10 delayed the hearing. We have always wanted the hearing to
11 occur. We had it set for October of 1987 and Mr. Gallegos
12 and Hartman's counsel requested that it be continued until
13 after the discovery proceedings were --

14 MR. GALLEGOS: Now, wait a
15 minute. It think you misspoke, Mr. Ezzell. You said Octo-
16 ber of '87 --

17 MR. STOVALL: Well, let's not
18 -- let's --

19 MR. GALLEGOS: -- didn't you
20 mean '89? You're two years off.

21 MR. EZZELL: I thought it was
22 set immediately upon you and Jim Bruce --

23 MR. STOVALL: When did Mr. --
24 when did Mr. Olsen file file his application for -- to re-
25 open the case?

1 MR. EZZELL: In 1987.

2 MR. CARR: October.

3 MR. STOVALL: The wells were
4 drilled in 1985?

5 MR. CARR: Yes.

6 MR. EZZELL: Right, the wells
7 were drilled in 1985.

8 MR. CARR: Right.

9 MR. EZZELL: One in July of
10 1985 and one was completed in January of '86.

11 MR. GALLEGOS: The application
12 was filed in August of '87.

13 MR. EZZELL: August of '87.

14 MR. STOVALL: Now, I -- now
15 you have got depositions of Mr. Hartman and Mr. Olsen.

16 MR. CARR: And his accountant.

17 MR. STOVALL: And the account-
18 ants, which you are going to stipulate that they may be ad-
19 mitted into the record, is that correct?

20 MR. CARR: Yes.

21 MR. EZZELL: Yes.

22 MR. STOVALL: And that testi-
23 mony is going to relate to what has happened from the time
24 that Mr. Hartman approached Mr. Olsen regarding the drill-
25 ing of this well through this -- whatever accounting that

1 --

2 MR. CARR: That is correct.

3 MR. STOVALL: Now, Mr. Carr,
4 do you -- you -- well, let me understand you correctly, you
5 don't disagree that Mr. Olsen would be entitled to an ac-
6 counting for the well whether or not he was a participant,
7 is that correct?

8 MR. CARR: No, that's exactly
9 right. He has an ownership interest in it and he asked for
10 an accounting, and was given a complete accounting and he's
11 had a full --

12 MR. EZZELL: Always.

13 MR. CARR: Always, and he has
14 been -- he's had his CPA's in Mr. Hartman's office four or
15 five days.

16 MR. EZZELL: As to cost --

17 MR. CARR: Whatever.

18 MR. STOVALL: So there's no
19 issue.

20 MR. CARR: No.

21 MR. STOVALL: So really the
22 only issue that we can decide under the terms of the order,
23 is in effect, the effect of what we will decide as either
24 Mr. Olsen is given the chance now to participate in the
25 well, make a decision to participate in the well, or Mr.

1 Olsen is, if we determine that there has been compliance
2 with the orders, --

3 MR. CARR: You dismiss --

4 MR. STOVALL: -- substantial
5 compliance, and he is subject to the penalty provisions of
6 the well as a nonparticipant. That's the narrow issue that
7 is before us.

8 MR. CARR: And the way you do
9 that is you dismiss the application or you grant it, and if
10 you dismiss it, we prevail and he is bound by the order as
11 it stands.

12 And we ask you to look at
13 these facts and we believe you'll see that Mr. Hartman has
14 substantially complied with the provisions. He's given Mr.
15 Olsen the information that he was entitled to, everything
16 that he would get if you ordered the compliance, except
17 that if you go for this application, you now mean that Mr.
18 Hartman is penalized because Mr. Olsen didn't do anything
19 with that information.

20 That's how we see it.

21 MR. STOVALL: And in effect
22 what we're really being asked to do is form -- being equi-
23 table in a legal sense, an evaluation of the behavior of
24 the parties before us as to who is more culpable and --

25 MR. CARR: Well, we're asking

1 you to determine whether or not the procedural errors, and
2 we're talking about providing the AFE on a day that didn't
3 exist in time because the well was spudded before the
4 order. We're asking if that procedural error was substan-
5 tial, major or prejudicial. Those are the legal standards,
6 and we're asking you to find that they are not because no
7 harm could have come from those because the data you were
8 saying provide, had been provided on July the 10th.

9 MR. EZZELL: If you wanted
10 that to be harmless error, even though the well was drilled
11 or drilling and not yet completed, rather than not sending
12 an AFE and an opportunity to participate at all, if you
13 sent one while it's a tight hole and still the person you
14 have force pooled made his decision in the blind, that
15 would have been the way to have harmless error.

16 MR. STOVALL: But that didn't
17 -- none of that has occurred at this point, so we can't go
18 back and reconstruct ignorance.

19 Let me ask another --
20 ignorance being lack of knowledge of the information, not
21 what you do with it.

22 Mr. Carr, let me ask at this
23 point --

24 MR. CARR: Yes, sir.

25 MR. STOVALL: -- and then I

1 think the Examiner may have a question. If we take the
2 depositions into the record, and see some monstrous thing
3 that has now been placed in front of you, --

4 MR. CARR; I believe you'll
5 find the monstrous thing to be something that could be
6 reviewed in a relatively short period of time.

7 MR. STOVALL: Well, I, you
8 know, I don't want -- certainly if you put Mr. Hartman on
9 and he wants to testify, what's -- what will his testimony
10 add to the depositions? Can you just briefly state that or
11 do you have a problem with answering it?

12 MR. CARR: Well, it would give
13 us the opportunity to flush out exactly what he understood
14 at the time and that in fact he was attempting to reach an
15 agreement, go forward in good faith with development of the
16 property. I mean, frankly, we want to be certain that
17 there is no suggestion hanging over these proceedings that
18 we're trying to deal in good faith and there was no effort
19 here to -- to deny anyone their ownership interest in the
20 property. We were in the business of drilling wells and
21 getting this property on production, concerned about
22 drainage and got the data out and got the wells going and
23 got smacked then with El Paso not honoring its gas purchase
24 agreements, and went on, and now four years later, here we
25 are, and in a situation where we're confronted with someone

1 who wants a free look and we think even today it's not
2 clear that -- that they know what they would do and they've
3 had the data now for four years.

4 MR. STOVALL: Yes, my only
5 question is, can Mr. Hartman today, and I certainly would,
6 you know, am not going to deny him the opportunity to
7 speak, but can he today add any more than -- than the
8 volumes of deposition and stipulation of fact that we al-
9 ready have?

10 MR. GALLEGOS: Well, let me
11 remark, because the substance, when it's all summed up, the
12 substance of Mr. Hartman's testimony would be that the
13 literal noncompliance with the order was not an intentional
14 action meant to deprive Mr. Olsen of information but rather
15 that it was in good faith and it was unintentional, inno-
16 cent, based on the belief that they had a deal with Mr.
17 Olsen and later other events happened including the turn-
18 down of production by -- in early 1986 in Lea County by El
19 Paso, and Mr. Hartman was engaged in litigation and that's
20 what he'd show and we might be able to stipulate to that.

21 We just want this record to be
22 clear that literally not sending those things was innocent,
23 unintentional, and not meant to deceive Mr. Olsen, and
24 maybe we can stipulate to that.

25 MR. EZZELL: I do not doubt

1 that for one second.

2 MR. GALLEGOS: Then that says
3 it was --

4 MR. EZZELL: That is was not
5 an intentional effort to defraud him of his opportunity to
6 participate.

7 MR. GALLEGOS: Okay, then we
8 have that as a stipulated fact.

9 MR. EZZELL: Could I ask
10 counsel, is there anything in this volume which we just saw
11 for the first time this morning that is not either an ex-
12 cerpt from the deposition or a deposition exhibit or a part
13 of your brief?

14 MR. GALLEGOS: No, the reason
15 that it seems so voluminous, it's not really as ominous as
16 it looks, it contains the transcripts of the prior two
17 pooling hearings --

18 MR. CARR: And the deposition.

19 MR. GALLEGOS: And then it
20 contains the deposition, so that's what makes it look big.

21 MR. STOVALL: Well, let me
22 just ask the final question before we decide whether to
23 proceed with -- let me ask you this and I'll do it -- a
24 lawyer's statement in a moment, have either or both of
25 these wells paid out, cost plus operating cost?

1 MR. CARR: Yes, they have.

2 MR. STOVALL: Both wells have
3 paid out?

4 MR. CARR: Yes.

5 MR. EZZELL: According to the
6 information that we've been given --

7 MR. STOVALL: So at this point
8 it really comes down to Mr. Olsen gets to join the well
9 with anywhere from a zero to 200 percent penalty, depending
10 on -- that's all we can really do as a practical matter, is
11 let him join that well. The original penalty was 200 per-
12 cent, I guess.

13 MR. CARR: Yes.

14 MR. STOVALL: So we can -- we
15 can either allow him to join the well at 200 percent, I
16 mean he is under the forced pooling order and comes back in
17 after a 200 percent additional recovery, or we could back
18 and amend the order and modify that penalty provision in
19 effect, and that's what we're really doing.

20 MR. EZZELL: I don't think you
21 can. I think you can only attack a penalty within 30 days
22 after the issuance of an order.

23 MR. CARR: I think that's
24 right. I think that there has not been a change in circum-
25 stances that would warrant a reopening of the underlying

1 pooling case.

2 MR. EZZELL: We are --

3 MR. STOGNER: So he either
4 gets to, in effect, give Mr. Hartman a check and then
5 receive his proceeds or -- at the 200 percent, is that
6 correct?

7 MR. EZZELL: Despite this
8 preliminary statement, we're not seeking a withdrawal or
9 the amendment of the order. We're only seeking the en-
10 forcement of the orders.

11 MR. CARR: Okay, well the ap-
12 plication actually stated or setting it aside two years
13 ago.

14 MR. STOVALL: Well, I'll tell
15 you what my initial inclination and recommendation to the
16 Examiner is, just based upon what you say, and then I'll
17 let you respond to it, is -- is that we have -- I mean if
18 you stipulate to the admission of the depositions --

19 MR. CARR: And we have.

20 MR. STOVALL: -- we have the
21 record before us to determine whether in fact there was
22 substantial compliance with the order or whether the order
23 -- we should require more strict compliance.

24 MR. EZZELL: I agree.

25 MR. STOVALL: And I am in-

1 clined to think, to recommend, unless you feel that Mr.
2 Hartman's additional testimony will --

3 MR. CARR: Well --

4 MR. STOVALL: -- supplement, it
5 would give us more useful information, that we have a suf-
6 ficient record to make a decision.

7 MR. CARR: Much of our con-
8 cern was, I think, addressed, when Mr. Ezzell agreed that
9 there was certainly no willful attempt on Mr. Hartman's
10 part not to provide Mr. Olsen, and it was an innocent er-
11 ror. In fact, it's got to be less than that, it's an im-
12 possible item in the original order form.

13 Perhaps --

14 MR. EZZELL: I tend to agree
15 with you.

16 MR. CARR: -- perhaps, I mean
17 at this point in time, unless Mr. Gallegos feels that it is
18 significant to put Mr. Hartman on, I believe that the re-
19 cord is sufficient, because Mr. Gallegos actually took the
20 deposition.

21 MR. STOVALL: Well, I've only
22 -- I've -- I think Mr. Stogner has read the depositions
23 that were provided to him. I have only read the summaries,
24 as you well know.

25 MR. CARR: And the exhibits to

1 the deposition, I believe, were not provided. They're
2 included in this material.

3 MR. STOVALL: Well, some of
4 the exhibits were there, so --

5 MR. CARR: Mr. Stogner, I
6 don't believe had those when they were sent to the Divi-
7 sion, I don't believe the exhibits were included. They
8 are, however, in the material that is before you now.

9 MR. EZZELL: Here are all of
10 the exhibits. I attached the exhibits to the deposition.

11 MR. GALLEGOS: Exhibits One
12 through Thirty-seven of Hartman for this hearing include
13 all the deposition exhibits and additional exhibits. The
14 only thing that Exhibits One through Thirty-four Hartman
15 don't include is the Hartman deposition. We expected him
16 to testify but we would agree that that should also be
17 submitted as part of the record in this case.

18 MR. EZZELL: Well, we submit-
19 ted the Hartman deposition day before yesterday, along with
20 the 1, 2, 3, 4 exhibits that were introduced at the Hartman
21 deposition, so we're talking about --

22 MR. STOVALL: Let's make the
23 -- let's -- now, let's make -- let's identify what is going
24 to be part of this record so that we know what we're look-
25 ing at when we --

1 MR. EZZELL: Yeah.

2 MR. STOVALL: I think I've
3 heard you say that you agree that the depositions and
4 associated exhibits together with the record of the ori-
5 ginal case, provide sufficient information to make that
6 narrow decision we've got to make.

7 MR. EZZELL: Okay, well can --

8 MR. STOVALL: Now let's ident-
9 ify those items so that we have a record as to what the
10 record is.

11 MR. GALLEGOS: And in this,
12 we're on the record in the hearing now, right?

13 MR. STOVALL: Correct, yes.

14 MR. GALLEGOS: So the respon-
15 dent Hartman would offer in evidence in this proceeding
16 Exhibits One through Thirty-four, and let me make the ob-
17 servation, Mr. Examiner, that that would include deposi-
18 tions taken of Mr. Olsen and his accountant, Mr. Bowlby,
19 along with the transcripts of the two compulsory pooling
20 hearings that -- that are in these dockets and various
21 other exhibits.

22 We'd ask that those be admit-
23 ted.

24 MR. CARR: And I also think it
25 should be noted that in the book of exhibits there is a

1 table of contents. It describes the exhibit by number. It
2 also cross references to the deposition exhibit number, so
3 that you can see exactly where they relate.

4 It indicates also -- it indi-
5 cates the depositions that Mr. Gallegos has just identified
6 and we would also want to include as, if we need to, Exhi-
7 bit Thirty-five, the deposition of Mr. Hartman.

8 MR. GALLEGOS: And then our
9 evidence, Mr. Examiner, would also consist of the stipu-
10 lation of counsel that the literal compliance with the
11 forced pooling orders was innocent and intended in good
12 faith and not meant to deceive Mr. Olsen, and that would be
13 the evidence on our part.

14 MR. STOVALL: So the evidence
15 as proposed to be submitted by Mr. Carr is as contained in
16 the booklet identified as in the matter of these cases,
17 Examiner Hearing, September 6th, Exhibits of Doyle Hartman,
18 and listed on the index is Hartman Exhibits One through
19 Thirty-four. In addition, you would offer the deposition
20 of Mr. Hartman as Exhibit Thirty-five for numbering
21 purposes?

22 MR. CARR: Yes, sir.

23 MR. STOVALL: And are there
24 associated exhibits with that deposition that would be
25 incorporated in the deposition, is that correct, as part of

1 Exhibit Thirty-five?

2 MR. CARR: No. Actually,
3 those are identified and included here and if you will note
4 in the table of contents, they are numbered just as they
5 were in the deposition. If you'll look at Exhibit Number
6 Twelve, that's Case Order 8668 Order - Compulsory Pooling
7 1-H. That's Exhibit One to the Hartman deposition.

8 MR. STOVALL: Okay.

9 MR. CARR: And that's how
10 they're cross referenced.

11 MR. STOVALL: So there will be
12 -- we'll have thirty-five exhibits in this case. Anything
13 that you wish to add to that, Mr. Ezzell?

14 MR. EZZELL: I guess my ques-
15 tion is, I haven't an opportunity to review this. I as-
16 sumed when we submitted the depositions to the Examiner day
17 before yesterday, that the exhibits that were attached and
18 made a part of those depositions were included.

19 I submitted the deposition of
20 Mr. Hartman, along with Exhibits 1-H through 4-H to those
21 depositions, which were my part of the deal to submit. I
22 assumed that Mr. Gallegos submitted the depositions of Mr.
23 Bowlby and Mr. Olsen, with the remainder of the exhibits,
24 which were 1-0 through 16-0, and I need to know whether
25 that is correct or not and it seems like the Examiner

1 stated that he did not have all the exhibits when he was
2 reading the depositions.

3 MR. CARR: Well --

4 MR. STOGNER: Well, let me --
5 let me interject here for a second.

6 On September the 5th I did re-
7 ceive an Oral Deposition of Doyle Hartman taken August
8 25th, 1989, with the Exhibits One through Four which Mr.
9 Ezzell has just mentioned.

10 Also that same day I received
11 from Mr. Gallegos' office depositions by a one Mr. Howard
12 Olsen. I did, by the way, read these in total, and also
13 there was a deposition taken by Mr. Gerald Bowlby?

14 MR. EZZELL: Bowlby.

15 MR. STOGNER: But, there was
16 reference to exhibits in these two depositions that were
17 not included with the -- with what I received on the 5th
18 from Mr. Gallegos' office or Mr. Ezzell.

19 And the way I assume today,
20 the exhibits referred to in the deposition by Mr. Olsen is
21 included -- are included in the big booklet.

22 MR. CARR: One exception.
23 There are a couple at the end. You'll recall counsel stip-
24 ulated they were not relevant to the proceeding and they
25 were not included, but other than that, they're all here.

1 MR. GALLEGOS: If you'll look
2 at our cross reference you'll see that One through Thirteen
3 of Olsen are included within the exhibits that are marked
4 One through Thirty-four.

5 Two exhibits, I think, I may
6 stand corrected, maybe three, kind of came in at the tail
7 end of Mr. Olsen's deposition and it involved sort of a
8 hassle about El Paso suspending his funds, that he wasn't
9 getting paid by El Paso, and Mr. Hensley and I both said --
10 we agreed it had nothing to do with this OCD case, and so
11 we didn't see fit to put them in here.

12 MR. EZZELL: It would be my
13 position that the depositions to be used cannot be used
14 without the exhibits that were tendered at the time of the
15 deposition, so I would offer --

16 MR. STOVALL: Do you have an
17 original of the -- I mean a certified copy that you're
18 offering?

19 MR. EZZELL: I certainly --

20 MR. CARR: Yeah, we're not
21 trying to keep anything out and if you want those others
22 that Mr. Hensley said didn't have any bearing on this, --

23 MR. STOVALL: The deposition
24 will reflect that they don't have any bearing.

25 MR. CARR: -- that's right.

1 Mr. Hensley stated so and you may certainly have them as
2 part of the record if you want them.

3 MR. EZZELL: I think it's
4 easier to use the depositions when you have the exhibits
5 entered as -- you will be able to look at the exhibits as
6 you're hearing the testimony. Again, I am sure that all of
7 the exhibits except the ones that Mr. Gallegos just iden-
8 tified are included in here. I notice they're maybe not in
9 the same order and I don't know that that's going to make
10 any difference. I have not had an opportunity to go
11 through this to see what additional exhibits might be en-
12 tered in their offer or tender offer of Exhibits One
13 through Thirty-four, so I would, and I don't think they're
14 trying to slip anything by us, so if I could just ask them
15 --

16 MR. CARR: Well, let me tell
17 you, --

18 MR. EZZELL: -- what is new in
19 here and I can look at it and --

20 MR. CARR: -- you can -- it's
21 very simple to identify. The index has placed the exhibits
22 in chronological order. All right?

23 So with the exhibits in chron-
24 ological order you then may go to the cross referenced de-
25 position exhibit column and you can see which had been pre-

1 viously used.

2 MR. EZZELL: And if it is
3 blank, it's not --

4 MR. CARR: If it's blank, it's
5 new.

6 MR. EZZELL: Okay.

7 MR. CARR: If you go to
8 Exhibit Number Four, it is my letter transmitting to this
9 Commission the application to force pool the Carlson No. 4.

10 MR. EZZELL: That's a matter
11 of record in this case, anyway.

12 MR. CARR: If you go to Number
13 Seven, that's a transcript of the Examiner Hearing.

14 Number Eight is a letter from
15 me to the Bureau of Land Management indicating to them that
16 an application had been filed and the matter had gone to
17 hearing.

18 We have Exhibit Nine, the
19 application for permit to drill filed with the BLM.

20 Ten, Ruth Sutton notes just
21 evidencing that she had made telephone calls and negotiated
22 with certain people at the office of Mr. Olsen. We could
23 call Mr. Hartman to establish a foundation to admit that
24 exhibit. That's all that is.

25 MR. EZZELL: I have no problem

1 with that.

2 MR. CARR: Sixteen is my
3 letter to Mr. Stamets enclosing the application -- I think
4 we should go through these just so we can get them all into
5 the record.

6 MR. EZZELL: Okay.

7 MR. CARR: Is my letter to Mr.
8 Stamets enclosing the application to drill the Carlson No.
9 5.

10 The Exhibit Number Eighteen is
11 again the application for permit to drill for the No. 5.

12 Nineteen is a transcript of
13 the Examiner Hearing.

14 Twenty is the Sundry Notice
15 which shows and reflects the actual spud date for the
16 Carlson Federal No. 5.

17 Exhibit Number Twenty-three is
18 the El Paso Natural Gas Company Notice to Sellers, which is
19 explanation for the reason that certain proceeds were then
20 not being made to Mr. Olsen because it shows that no pro-
21 ceeds were being paid to Mr. Hartman.

22 We also have as Twenty-four a
23 letter to Mr. Hartman to the New Mexico Oil Conservation
24 Commission showing that he was attempting to address the
25

1 allowable situation to assure production continued from the
2 property. He can be put on to state just that.

3 Twenty-five is a May 29 El
4 Paso Notice to Sellers. This addressed casinghead gas;
5 casinghead gas is gas that is involved in this matter and
6 we wanted again to show you the reason why certain funds
7 were not being paid, because they were not coming in.

8 We have Twenty-six, which is
9 the permanent Injunction that Mr. Hartman obtained in the
10 litigation against El Paso, again showing that he was re-
11 presenting the interest owners in these properties and
12 assuring that the properties were able to produce by pur-
13 suing his legal rights, and I'm giving some editorial that
14 Mr. Ezzell can object to.

15 Exhibit Number Twenty-seven is
16 Mr. Olsen's letter to Mr. Hensley concerning this matter
17 that Mr. Gallegos previously referenced.

18 We have Exhibit Thirty, Mr.
19 Bowlby's letter to Mr. Olsen. This addresses concerns
20 about the costs incurred in drilling the wells, costs which
21 we now believe have been basically resolved.

22 Thirty-one is Transfer of
23 Operating Rights from Mr. Hartman to Meridian, which indi-
24 cates he no longer operates, the properties have been
25 transferred to another.

1 And the deposition of Mr.
2 Olsen --

3 MR. EZZELL: What number was
4 that, please?

5 MR. CARR: Transfer of the
6 operating rights is Number Thirty-one.

7 MR. EZZELL: Thirty-two is a
8 deposition of Mr. Olsen.

9 Thirty-three is a deposition
10 transcript of Mr. Bowlby.

11 And Thirty-four is a well cost
12 comparison. It is the last exhibit and it simply shows
13 that the wells were drilled below the AFE cost and their
14 status has been (unclear).

15 And that's what we would move
16 and believe should be the record in this matter.

17 MR. STOVALL: Plus the deposi-
18 tion of Mr. Hartman, okay?

19 MR. CARR: Plus the deposition
20 of Mr. Hartman. We believe that's the complete record.

21 MR. GALLEGOS: And the Stipu-
22 lation.

23 MR. STOVALL: And what Mr.
24 Ezzell has offered is a document entitled Exhibits to the
25 Oral Depositions of Doyle Hartman and Howard Olsen --

1 MR. CARR: And we have no
2 objection to those being included. Some were agreed by
3 counsel not to be relevant but to the record complete they
4 may go to that.

5 MR. STOGNER: Are you saying
6 that all but those two or three exhibits are included in
7 this booklet --

8 MR. CARR: Yes.

9 MR. STOVALL: -- but Mr. Ez-
10 zell has offered no objection and I think that would be
11 Number Thirty-six, Sally, in the record.

12 MR. CARR: Thirty-five.

13 MR. STOVALL: Thirty-five is
14 the Hartman deposition.

15 MR. CARR: Thirty-five is the
16 Hartman deposition.

17 MR. STOVALL: Thirty-six is
18 this packet of exhibits.

19 MR. CARR: That's correct.
20 That's correct.

21 MR. EZZELL: Actually, aren't
22 they a part of the depositions themselves and would go with
23 the depositions? Do they need a separate number.

24 MR. STOVALL: I normally would
25 say yes but in this case I think for identification let's

1 keep it separate. We've got them in both places.

2 MR. GALLEGOS: Uh-huh.

3 MR. EZZELL: Okay.

4 MR. STOVALL: Is there any-
5 thing else which -- now, there has been a stipulated
6 chronology of events.

7 MR. EZZELL: Yes, that should
8 be a part of the --

9 MR. CARR: And that's also
10 part of the record, but at this time, just to avoid any
11 confusion, I move the admission of Hartman Exhibits One
12 through Thirty-six, as just summarized.

13 MR. STOGNER: Are there any
14 objections?

15 MR. EZZELL: That would be
16 this book plus Mr. Hartman's deposition is Thirty-five --

17 MR. CARR: Hartman's deposi-
18 tion and we'll treat that as Hartman Exhibit Thirty-six and
19 offer the exhibits.

20 MR. EZZELL: And we're not
21 doing this one now?

22 MR. CARR: Well, we can make
23 that --

24 MR. EZZELL: Is this an exhi-
25 bit or is this just a --

1 MR. CARR: It's a stipulation
2 of counsel.

3 MR. EZZELL: I don't know if
4 it's really an exhibit.

5 MR. STOVALL: Okay, I agree.
6 It's part of the stipulation.

7 MR. EZZELL: Okay, then I have
8 no objection to Exhibits One through Thirty-six.

9 MR. STOGNER: Exhibits One
10 through Thirty-six will be admitted into evidence at this
11 point.

12 MR. STOVALL: Now, let's --
13 now you have a stipulation of counsel with respect to the
14 chronology of events.

15 MR. CARR: Yes.

16 MR. EZZELL: Yes.

17 MR. STOVALL: Okay, that will
18 --

19 MR. EZZELL: I think we would
20 all request --

21 MR. STOVALL: And you're of-
22 fering that as part of the record.

23 MR. EZZELL: -- that that be
24 part of the record --

25 MR. STOVALL: It's not an ex-

1 hibit. It is --

2 MR. CARR: But we ask it be
3 incorporated into the record of this hearing.

4 MR. EZZELL: Part of the re-
5 cord.

6 MR. STOVALL: That is ident-
7 ified as a chronological statement of the key facts? Is
8 that the correct identification? Do I have the right
9 document?

10 MR. EZZELL: Yes, and it is
11 executed by Mr. Carr and by me.

12 MR. STOVALL: Now, there is
13 also in copies of depositions which we received over the
14 last couple of days, there is summary of depositions. I
15 don't know who prepared those summaries, whether they're --

16 MR. EZZELL: I would object to
17 the entrance of any deposition summaries because they're
18 not --

19 MR. CARR: I would state this.
20 We haven't offered those. They were prepared by Mr.
21 Gallegos' office and I would -- we won't make them part of
22 the record.

23 MR. STOVALL: Okay. Is there
24 anything else to -- to be offered in this case at this
25 time?

1 MR. GALLEGOS: Just a remind-
2 er that we have a stipulation as to the conduct of Mr.
3 Hartman that is a wrap-up. It's back up there in the re-
4 cord.

5 MR. STOVALL: That is a matter
6 of record. I think we have a -- I certainly feel well
7 aware of that, don't you?

8 MR. STOGNER: Notice has been
9 so noticed.

10 Gentlemen, is there anything
11 further?

12 MR. EZZELL: I would just
13 officially in closing request that the applications to
14 enforce these two orders be granted. I think we've esta-
15 blished that there are no material facts in dispute. Mr.
16 Hartman drilled the first well prior to the entry of the
17 order at his own risk. It's the same as drilling it and
18 completing it and then going, oops, I forgot the rules
19 about it. It's just a fact. It was not intentional at all.
20 It was not an effort to deprive Mr. Olsen of an opportunity
21 to participate because, as the record shows in that case,
22 Mr. Hartman and his people did everything conceivable to
23 get voluntary joinder, a farmout, and a sale of the --
24 voluntary joinder and a farmout of the initial drill site
25 tract and a sale. That's one of the main facts that shows

1 the breakdown between the parties. There was an agreed to
2 purchase price.

3 Mr. Hartman, and his people,
4 felt that it was for two 40-acre tracts and Mr. Olsen, and
5 his people, felt that it was for one. That's why the sale,
6 the deal that -- that everyone thought would go through
7 didn't go through.

8 In the case of the second
9 well, the impossibility argument again does not apply. The
10 order was entered prior to the spud date and again the spud
11 date was controlled by no one other than the operator. In
12 each case Mr. Olsen was the only individual that was
13 pooled. He had a 25 percent interest and the other 75 per-
14 cent owners had agreed to participate or were all Mr. Hart-
15 man.

16 Again the record says that
17 with respect to the first well Mr. Aycock testified that we
18 got a phone call yesterday and we think Mr. Olsen will pro-
19 bably farmout. I'm sure Mr. Hartman's counsel are saying
20 that Mr. Hartman drilled these wells in reliance on either
21 the farmout and later the agreed upon sale, and he did that
22 in good faith. He thought he was going to buy it.

23 But the fact remains, and it's
24 even in Mr. Aycock's testimony with respect to 8668, that
25 we're going ahead, even though we think we've got a deal.

1 We're going ahead with the hearing in order to get an order
2 to protect Mr. Hartman in case the deal falls through.

3 Well, that's what they should
4 have done. That's what I do when I think I've got a deal
5 and have a forced pooling case. I go ahead and unless the
6 deal's in writing I carry on with the -- with the hearing
7 and then I comply with the provisions of the order, and
8 that just didn't happen in this case.

9 And the second hearing, that
10 was in November, the record and the depositions indicate
11 that there really was no contact with Mr. Olsen other than
12 Mr. Carr's letter to Mr. Olsen informing him of the hearing
13 and in fact enclosing a copy of the docket. And then a
14 letter after the well was completed from Mr. Hartman to Mr.
15 Olsen, which I believe was the letter that was rejected,
16 not accepted. It was sent certified and it was not ac-
17 cepted by Mr. Olsen, for whatever reason.

18 I can't believe that after the
19 sale had been agreed to in July or September and after the
20 assignments had been sent to Mr. Olsen's agent, he then
21 notices that they cover two 40-acre tracts instead of one
22 40-acre tract and the deal falls through, it's clear that
23 the deal has fallen through, both from the correspondence
24 from Mr. Hartman's office and correspondence from Mr.
25 Foraker, who was the geologist who was handling the sale

1 for Mr. Olsen.

2 The deal was dead. The deal
3 was dead in October. I can't believe that they drilled the
4 well that they drilled in December on reliance of that same
5 deal. It was clearly over. There was nothing in writing.
6 The assignments necessary to consummate the transaction had
7 been specifically rejected. So I can't believe that they
8 -- that they actually through that they were drilling the
9 second well in reliance of the quote/unquote deal that had
10 fallen through months ago.

11 The OCD would not include the
12 provisions in the orders that exist unless there was a
13 reason for it. I think I mentioned earlier that it is OCD
14 policy to allow those people who are force pooled one last
15 shot, aware of the fact that the order had been entered and
16 with the penalty involved as a matter of public record.
17 Then and only then can they make an informed and economic
18 decision as to whether they want to suffer the penalties of
19 the risk penalty or gut it up and write a check, or do
20 nothing, and we're not trying to say one way or another
21 what Mr. Olsen would have done because it didn't happen and
22 we don't know.

23 I think my distinguished
24 colleagues will probably say that he probably would have
25 done nothing and I would have to agree with that, but

1 nevertheless, the opportunity was not afforded him.

2 I don't think that there is
3 any question of delay. There is not any foot-dragging
4 here. As I have said earlier, I wish the matter had come
5 up when it was originally scheduled for hearing because the
6 wells would not have paid out and there wouldn't be any
7 money involved. But because of need for discovery, a
8 myriad of reasons, it has gone on, as Mr. Hodge in Mr.
9 Hartman's office told me, we have other fish to fry right
10 now, and they did. They were tremendously busy with the
11 things they had going on.

12 I really think that -- that
13 the facts speak for themselves. I think that the Commis-
14 sion is charged with the enforcement of the orders. Any
15 equitable considerations may or may not be within the --
16 within the realm of the OCD and the enforcement of an order
17 that they had previously issued.

18 As far as responding to the
19 brief which states that, I believe, that an administrative
20 agency has discretion to relax the procedural rules, it was
21 not error on the part of the Commission. I guess techni-
22 cally if you spud the well prior to the -- prior to the is-
23 suance of the order the operator should notify the Commis-
24 sion that he's done so.

25

1 It was within Mr. Hartman's
2 sole control as to when those wells would be drilled and I
3 don't think that you can -- that you can drill a well early
4 and then rely on an impossibility defense for the adherence
5 to the order.

6 He knew he was taking a risk.
7 He, I'm sure at that point, in every good faith assumed
8 that he had either farmed out or would farmout or would buy
9 Mr. Olsen's interest. And he spudded his well.

10 It just didn't happen. The
11 deal feel through, like deals do.

12 As far as whether the harm to
13 Mr. Olsen was substantial or not, one of the very basic
14 reasons for the order in the first place is, and the way
15 the order is written, is to afford anyone that wants to
16 the opportunity to participate after the entry of the order
17 and prior to the drilling of the well.

18 He was denied that opportunity
19 to participate and I think that is very substantial.

20 With respect to the well
21 costs, we've seen a few different -- there is -- there is
22 dispute as to the well costs. We're willing to accept the
23 numbers that Mr. Hartman's office provided and willfully
24 provided on numerous occasions. We are a little confused
25 as to the payout status and I assume that is a function not

1 so much of well costs but of revenue attributable to the
2 well and the payout status has changed back and (unclear)
3 but that is really immaterial to the -- to the Commission's
4 and the Examiner's duty, I think, to enforce the order.

5 And I really have nothing
6 further except to ask that Mr. Olsen's applications in this
7 matter be granted.

8 MR. STOGNER: Mr. Carr?

9 MR. CARR: I think one of the
10 beauties of the Oil Conservation Division over the years is
11 there has been a concerted effort not just in your orders
12 but in the underlying statutes that govern your activity to
13 accommodate the practical necessities of the industry.

14 There's a provision in the Oil
15 and Gas Act that addresses what happens when there are
16 lands that have not been properly pooled. It says that if
17 it hasn't been properly pooled you either -- the non-pooled
18 party is entitled to what he would have received if he had
19 been pooled or if he had not, whichever is greater.

20 That doesn't really relate
21 here except in one respect and that is that that whole
22 section of the statute is keyed off of filing an applica-
23 tion for pooling. It says if you haven't filed a proper
24 application for pooling then these various penalty factors
25 come into play. The reason that is significant is even in

1 the statute itself it recognizes that there are times when
2 you file an application that you must drill your well and
3 you must go forward. And to sit here and suggest it's just
4 in Mr. Hartman's discretion when he moves a rig out there,
5 when he is a prudent operator who has obligations not just
6 to himself but to Mr. Olsen and other interest owners in
7 the well, I think is wrong, and I think what you've got
8 here is a situation where once again you're being asked to
9 interpret the Act as the Act is written and that is in a
10 fashion which recognizes the way the industry really works.

11 We can sit here and we can
12 talk about precedent in the Taylor case. Well, I'll stand
13 on my earlier statement. You look at that case, the facts
14 are not like this. There's never been before a situation
15 where we have some one put in this kind of a position be-
16 cause the other side simply didn't act, and we can sit here
17 and we can say the prejudice is great. But the prejudice
18 is great, it stems from Mr. Olsen's failure to act. There
19 was no prejudice at all from what Mr. Hartman did, because
20 if you'll look at the -- at the facts that are now before
21 you, you can see the AFE was provided, July 10, 1985, to
22 Mr. Olsen. On October 1 he was given notice of the first
23 well; on January 6th he was given notice of the second, and
24 he did nothing. He did absolutely nothing but sit back.
25 And he is a man, when you see his deposition, who was

1 knowledgeable in the oil and gas business, was knowledge-
2 able about this Commission, knew when you didn't act a
3 penalty could be imposed and it would be withheld out of
4 your share of production.

5 What happens in the real world
6 is when you have your rig on location it's time to go; when
7 you've filed the proper application; when you've given pro-
8 per notice; when you've been to hearing; when you've told
9 the Commission you're on your way, you go forward and you
10 spud your well.

11 And now, four years after the
12 fact, we're sitting here with a technicality on the table
13 and we're trying to get somebody a free ride and the per-
14 son who's going to get the free ride if you grant the
15 application is not the guy who took the risk, is not the
16 guy who did his job, it's the guy who did nothing. That's
17 what it boils down to, and on these facts we can go on, we
18 can talk about everything from where we stand on auditing
19 the records and the costs and the confusion there, those
20 are accounting questions, questions we've tried to resolve.
21 They're not before you now.

22 The question is very simple.
23 Was there a procedural error that was substantial, major,
24 and did that procedural error result in harm. The answer
25 to all of those is no. On this record you have one option

1 available to you, dismiss the application of Howard Olsen.

2 MR. STOGNER: Thank you, Mr.
3 Carr. Is there anything further?

4 MR. STOVALL: I have some
5 questions for Mr. Ezzell, Mr. Carr and Mr. Gallegos re-
6 garding the issues.

7 My first question would be,
8 Mr. Ezzell, do you -- would you care to brief the issue and
9 if you do, then we'll have to discuss timing.

10 And my second question is I
11 would, Mr. Gallegos, in your firm, would it be possible to
12 provide particularly the significant cases that you've
13 cited?

14 MR. GALLEGOS: Certainly.

15 MR. STOVALL: I would like the
16 opportunity to review those and then advise the Examiner
17 for the record.

18 MR. GALLEGOS: We will do
19 that.

20 MR. STOVALL: Mr. Ezzell, do
21 you want to brief or do you not?

22 MR. EZZELL: I have not read
23 this brief, obviously, and I think Mr. Gallegos is a liti-
24 gator who would probably tell me it would be stupid for me
25 not to protect my rights to read it and then brief it. So

1 -- so I, yes, I would like to read that. I think that we
2 would probably want to respond as to whether the adminis-
3 trative agency committed a procedural error. I don't think
4 that is the case and that --

5 MR. STOVALL: Well, I just
6 think you -- if you would like to read it, then let's --

7 MR. CARR: We're not asserting
8 that -- we're not asserting that you did. We're stating
9 procedurally we couldn't do what you told us to, and it's
10 procedural, not substantive. That's what our position is.

11 MR. STOVALL: I understand.
12 The question -- all I'm trying to do is do you want to
13 brief?

14 MR. EZZELL: Yes.

15 MR. STOVALL: How much -- can
16 you do that in a week, ten days?

17 MR. EZZELL: Ten days?

18 MR. STOVALL: And you gentle-
19 men, are you going to want to reply brief?

20 MR. GALLEGOS We'd want the
21 opportunity to reply, let's say, in five days. Sorry, i
22 don't understand what your briefing time is?

23 MR. EZZELL: Ten days.

24 MR. GALLEGOS: Ten days for
25 the applicant.

1 MR. EZZELL: Ten days from 9-7
2 and five days from your receipt of my brief.

3 MR. STOVALL: Mr. Gallegos, if
4 you would provide me with copies of (unclear) --

5 MR. GALLEGOS: We'll be
6 pleased to do that. Very well.

7 MR. STOVALL: Mr. Ezzell, to
8 the extent that you have additional cases beyond those
9 cited in here that you wish to use as authority in your
10 brief, I'd appreciate copies of those.

11 MR. EZZELL: Yes, we will be
12 happy to submit that too.

13 MR. STOVALL: I don't need
14 anything that's part of the OCD records. Cases cited.

15 I have nothing further.

16 MR. STOGNER: Does anybody
17 else have anything further?

18 MR. CARR; Nothing further.

19 MR. STOGNER: I might state
20 that this is a unique situation which we're going through,
21 taking briefs. This is a pilot case and this is not to be
22 considered as establishing a precedent.

23 We will hold this --

24 MR. STOVALL: We don't
25 actually need to hold the record open, no. We've got the

1 briefing schedule established. The parties (unclear). We
2 won't make a decision until after the briefs are in but
3 there will be -- the record will not be kept open for
4 further testimony.

5 MR. STOGNER: Okay.

6 In that case, it will be taken
7 under advisement pertaining to -- or -- or not -- except
8 for the 10-day briefing period that you have given and the
9 5-day counter-brief, I guess we can call it.

10 MR. EZZELL: Upon -- upon re-
11 view of your-alls (sic) brief, if we do not wish to
12 respond, we will notify both the Commission and you all so
13 that that five days can go away.

14 MR. CARR: All right, agree-
15 able.

16 MR. STOGNER: In that case,
17 hearing adjourned.

18
19 (Hearing concluded.)
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21
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23
24
25

C E R T I F I C A T E

I, SALLY W. BOYD, C. S. R. DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case Nos. 8663 & 8769
heard by me on 6 Sept. 1987.

Michael J. [Signature], Examiner
Oil Conservation Division