



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL & GAS DOCKET NO. 09-0252373

APPLICATION OF FINLEY RESOURCES, INC., FOR THE FORMATION OF A UNIT
PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE PROPOSED EAST
SIDE UNIT, NEWARK, EAST (BARNETT SHALE) FIELD, TARRANT COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:

Mickey R. Olmstead
Paul R. Tough
Wade Chappell
James Nance

APPLICANT:

Finley Resources, Inc.

FOR INTERESTED PARTY:

Bill Spencer
Glenn E. Johnson

INTERESTED PARTY:

Chesapeake Operating, Inc.

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE APPLICATION FILED:	May 14, 2007
DATE APPLICATION SUPPLEMENTED:	June 20, 2007
DATE OF NOTICE OF HEARING:	July 19, 2007
DATE OF HEARING:	August 24, 2007
EXAMINERS ASSIGNED:	James M. Doherty, Hearings Examiner Marshall Enquist, Hearings Examiner Andres J. Trevino, Technical Examiner
DATE CLOSING STATEMENT FILED:	September 14, 2007
DATE AMICUS CURIAE BRIEF FILED:	January 4, 2008
DATE INITIAL PFD CIRCULATED:	May 12, 2008
DATE AMENDED PFD CIRCULATED:	August 5, 2008

STATEMENT OF THE CASE

This is an application filed pursuant to the Mineral Interest Pooling Act ("MIPA"), Texas Natural Resources Code, Chapter 102.

Finley Resources, Inc. ("Finley") has leased multiple town lots containing a total of 82.9786 acres in the Riverside, Page Company's East Side, KAB Air, and Kendall Additions in Tarrant County, about one mile from downtown Fort Worth. In the same area, Chesapeake Exploration, LLC has also leased several town lots containing 5.9904 acres, Dale Resources, LLC has leased a lot containing 0.1530 acres, and Dale Property Services, LLC has leased several town lots containing 1.4940 acres. There are about 26 town lots containing 5.704 acres in the area of interest to Finley which are unleased. Finley has not been able to obtain leases on these 28 lots either because the mineral owners are unwilling to lease or because the mineral owners could not be found. Finley requests that the Commission enter an order pursuant to the MIPA force pooling the leasehold interests of Finley, Chesapeake Exploration, LLC, Dale Resources, LLC, Dale Property Services, LLC, the interests of their lessors, and the interests of the unleased mineral owners into a 96.32-acre force pooled unit. If the application is approved, Finley proposes to drill a horizontal well in the Newark, East (Barnett Shale) Field on the force pooled unit.

The application is unopposed, and Chesapeake Operating, Inc. ("Chesapeake"), supports the Finley application. A hearing was held on August 24, 2007, before examiners Marshall Enquist and Andres J. Trevino. Finley appeared at the hearing and presented evidence, and Chesapeake appeared as an interested party. Finley filed a written closing statement on September 14, 2007, and Chesapeake filed an amicus curiae brief on January 4, 2008, supporting Finley's position. Examiner James M. Doherty was subsequently assigned to review the record and assist with preparation of a proposal for decision.

The initial proposal for decision in this docket was issued on May 12, 2008. Exceptions and a motion for oral argument were filed. Oral argument was granted by the Commission at conference on June 10, 2008, and oral argument was heard by the Commissioners on June 24, 2008. At conference on July 15, 2008, a majority of the Commissioners voted to approve the application and instructed the examiners to prepare an amended proposal for decision with recommendations as to the terms on which the various interests in the proposed unit should be pooled.

APPLICABLE LAW

Subject to limitations found elsewhere in the act, §102.011 of the MIPA provides that when two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the Commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed

to drill a well on the existing or proposed proration unit to the common reservoir, the Commission, on the application of an owner specified in Section 102.012 of the act and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance.

DISCUSSION OF THE EVIDENCE

The Newark, East (Barnett Shale) Field was discovered on October 15, 1981. This field has special field rules providing for 330' lease line spacing, and there is no between well spacing requirement. As to horizontal wells, where the horizontal portion of the well is cased and cemented back above the top of the Barnett Shale formation, the distance to any property line, lease line, or subdivision line is calculated based on the distance to the nearest perforation in the well, and not based on the penetration point or terminus. Where an external casing packer is placed in a horizontal well and cement is pumped above the external casing packer to a depth above the top of the Barnett Shale formation, the distance to any property line, lease line, or subdivision line is calculated based on the top of the external casing packer or the closest open hole section in the Barnett Shale.

The standard drilling and proration unit for the Newark, East (Barnett Shale) Field is 320 acres. An operator is permitted to form optional drilling units of 20 acres. Operators must file a Form P-15 (Statement of Productivity of Acreage Assigned to Proration Units) listing the number of acres that are being assigned to each well on the lease or unit for proration purposes. No double assignment of acreage is permitted. While the allocation formula for the field is suspended, operators are not required to file plats of proration units with Form P-15.

Finley is requesting the Commission to approve a force pooled unit, referred to as the East Side Unit, consisting of 96.32 acres out of the B. E. Waller Survey, A-1659, and the R. Cross Survey, A-304, in Tarrant County. The area of the proposed unit is about one mile from downtown Fort Worth and contains 300 to 350 lots.

Finley commenced attempts to obtain oil and gas leases on the lots in the area of interest in 2005. Since that time, Finley has sent letters to lot owners explaining Finley's proposal, held neighborhood meetings at an area hotel and church, and gone door to door to solicit oil and gas leases. As a result of this activity, Finley has obtained oil and gas leases covering 82.9786 acres within the area of the proposed 96.32 acre force pooled unit. Chesapeake Exploration, LLC has also leased several lots containing 5.9904 acres, Dale Resources, LLC has leased a lot containing 0.1530 acres, and Dale Property Services, LLC has leased several lots containing 1.4940 acres. There are about 26 lots containing 5.704 acres in the area of interest to Finley which are unleased. Finley has not been able to obtain leases on these lots either because the mineral owners are unwilling to lease or because the mineral owners could not be found. Appendix 1 to this proposal for decision is a copy of Finley Exhibit No. 14, which is a plat of the lots within the proposed East Side Unit color

coded to show the particular lots leased by Finley, Chesapeake, and the Dale companies¹, as well as those lots that are unleased. A Chesapeake Energy landman provided Finley with a letter dated August 23, 2007, stating that Chesapeake desired to participate with its full interest in wells drilled by Finley on the proposed unit and intended to execute a mutually agreeable joint operating agreement covering the proposed unit.

In January 2007, Finley mailed a "final offer" to the owners of the lots within the proposed unit that were still unleased, using mailing addresses that Finley had been able to find by internet research of records of the Tarrant County Appraisal District, looking for telephone numbers, door to door canvassing, and neighborhood meetings. The same offer was made to each unleased owner "on a yardstick basis." This offer provided notice that Finley was proposing to form a pooled unit and drill a horizontal well from a "preexisting drillsite location" off the unit to test the Barnett Shale or to a depth of 7,500', whichever was the lesser depth at an estimated cost of \$3,084,477.² The "final offer" made to the unleased owners by Finley stated the net acreage and "estimated percentage" of the proposed unit attributable to each owner. Finley offered the unleased owners three options: (1) lease their minerals to Finley ("Option 1"); (2) participate in the drilling and completion of the well to be drilled on the unit ("Option 2"); or (3) farmout the owners' minerals to Finley ("Option 3").

Regarding Option 1 (lease), Finley offered a \$2,100 per net acre bonus as an incentive to sign an attached oil and gas lease.³ The proposed oil and gas lease provided that the lease was a "no surface use" lease, and the lessee could not conduct any operations on the surface of the leased premises without the express written consent of the lessor. The oil and gas lease the unleased owners were asked to sign further provided that the lease would cover accretions and any small strips or parcels of land owned by the lessor contiguous or adjacent to the leased premises and stated the area to be used for the purposes of determining the amount of any rentals or shut-in royalties "whether it actually comprises more or less".⁴ The proposed oil and gas lease had a three year primary term, granted Finley the option to extend the primary term for two years for \$100 per acre, and provided that the lease would continue in effect after the primary term as long as production or operations continued on the leased premises or on lands pooled therewith. The proposed lease provided for a 20% royalty, and granted the lessee the right to pool.

¹ Finley understands that Dale Resources, LLC has an agreement with Chesapeake pursuant to which Chesapeake purchases leases taken by Dale.

² Finley Exhibit Nos. 6 and 7 are copies of the "final offer" sent to certain unleased owners.

³ It appears from Finley Exhibit No. 9 that the unleased lots range in size from 0.1210 acres to 1.0320 acres. The bonus offered by Finley for a 0.1210 acre lot was thus \$254.10 and the offered bonus for a 1.0320 acre lot was \$2,167.20. The average unleased lot calculated from Exhibit No. 9 is 0.237 acres, for which the offered bonus would have been \$497.70.

⁴ There are streets and alleys within the area of Finley's proposed unit, and Finley believes that under the doctrine of strips and gores, the individual lot owners own the minerals to the middle of these streets and alleys.

Option 2 (participation) in Finley's "final offer" to the unleased owners required the owners to pay their proportionate share of all well costs and provide Finley with a notarized statement agreeing to pay these costs on or before the spud date of the proposed well. The offer set forth an estimated amount of costs attributable to each owner (for example, \$9,434.84 for an owner of a 0.3059 acre lot) but cautioned that this cost "could change considerably due to numerous factors faced while drilling, stimulating and completing a well."

Option 3 (farmout) in Finley's "final offer" required that the unleased owner convey to Finley an 80% net revenue interest attributable to the owner's mineral interest and retain an overriding royalty interest of 20%, proportionately reduced to the extent the owner's mineral interest bore to all of the mineral interests in the proposed unit, until payout of all well costs, with the option, at payout, to convert the retained override to a 25% working interest, proportionately reduced.

The Finley offer notified the unleased owners that if the owner selected Option 2 (participation), the owner would be required to pay the proportionate share of drilling costs attributable to the owner within 15 days prior to commencement of actual drilling operations as set forth in a proposed AAPL Form Joint Operating Agreement, otherwise the owner would be subject to non-consent penalties provided in the JOA.

The unleased owners to whom Finley's "final offer" was made were required to make an election of one of the three options within 14 days of the offer and the offer provided that if such an election had not been made within that time by returning a signed copy of the offer to Finley, it would be deemed that the owner did not choose any option, in which case Finley intended to seek compulsory pooling of the owner's interest pursuant to a forced pooling order to be issued by the Railroad Commission pursuant to the MIPA.

According to Finley, its "final offer" to the unleased owners was as good, if not better, than the offer made to other owners in the proposed unit who agreed to lease. In 2005, Finley began its leasing activity by offering a \$250 per lot bonus and a 18.75% royalty. In 2006, after it experienced competition for leases, it began to offer a \$300 per lot or \$1,750 per net acre bonus and a 20% royalty. Ultimately, it increased the bonus it was offering to \$2,100 per net acre.

Notice of this hearing was mailed to Chesapeake, Dale, and all of the owners of unleased tracts within the area of Finley's proposed unit at their last known mailing addresses. In addition, notice of the hearing was published in the Fort Worth Star Telegram on July 24, July 31, August 7, and August 14, 2007.

Finley Exhibit No. 16 is a plat of Finley's proposed unit showing the tracts leased by Finley, Chesapeake and Dale, the tracts that remain unleased, and "proposed wellbore paths for developing the pooled unit," showing proposed penetration points and "three possible surface locations." A copy of Exhibit No. 16 is attached to this proposal for decision as Appendix 2. All three "possible" surface locations are off the proposed unit. Chesapeake controls "possible" Location A to the west of the proposed unit and has several wells it wants to drill from a pad at that location. There is no agreement to enable Finley to drill from Location A. Finley controls Location B to the south of the

proposed unit, and this is the most likely surface location from which a well on the unit would be drilled. Location C to the east of the proposed unit is, in Finley's opinion, logistically better than Location B, but Finley does not control this location. Finley has been in negotiations with Frost Brothers to obtain a "surface easement" that would permit it to drill from Location C, and if this easement can be obtained, the penetration point and bottom hole orientations shown on Exhibit No. 16 would be reversed, with the lateral sections "approximately the same." According to Finley, operators typically perforate near the end of a lateral and then space out perforations every 200' to 300' all the way across the lateral.

Finley decided on the proposed laterals shown on Exhibit No. 16 based on geology and engineering to maximize access to the natural fractures that exist in the Barnett Shale, which generally trend to the southwest. The proposed laterals shown on Exhibit No. 16 approach near to or actually traverse some of the unleased tracts within the area of Finley's proposed unit.

A number of Barnett Shale wells have been drilled in the area of the proposed unit, with the more heavily developed trend in the Trinity River bottom. All nearby Barnett Shale wells are productive, although not all are currently producing due to lack of pipeline access. The lower Barnett Shale member is the target zone for most wells in the area. A stratigraphic cross section anchored on top of the Barnett Shale shows that the formation is consistent across several miles in the area of Finley's proposed unit. Initial production rates for Barnett Shale wells in this area show productivity along the trend area over several miles. An isopach map prepared from the few logs available, scout tickets, or other available data shows a few thick areas of the lower member of the Barnett Shale, 400' to 500' thick, in the area of Finley's proposed unit, and a thickness of 325' to 350' across the whole area within 2.5 miles of the unit. Barnett Shale wells to the south of the proposed unit have produced to date about 1 BCF each. A structure map of the top of the lower member of the Barnett Shale shows a fairly subtle change in subsea depth over the several miles covered by the map. Finley sees no reason to believe that there are any missing sections of the lower member of the Barnett Shale in the area of its proposed unit and believes that all the acreage in the proposed unit is productive in the Barnett Shale. The Newark, East (Barnett Shale) Field is said to be a common reservoir beneath all of this acreage. Finley projects recovery of about 8 BCF of gas for each of its proposed laterals on the proposed unit.

If the Finley application is approved and production on the proposed unit is obtained, proceeds of production attributable to the owners of unleased tracts will be escrowed and paid when such owners are found. If an unleased owner is never found, proceeds of production attributable to his interest will be "ceded" to the State. Finley requested that in the event the Commission approves the Finley application, the Commission's order provide for payment by the unleased owners within the force pooled unit of a 100% risk penalty. Finley says the risks are mostly mechanical, involving possible problems with the hole while drilling. Finley also proposes that it be designated the operator of the force pooled unit.

According to Finley, it is not likely that it will drill the proposed wells if this application is not approved because of the need to obtain a Rule 37 exception for the location of the proposed laterals near unleased tracts. There are some pathways through the unit area, but Finley believes that

drilling around some of the unleased tracts would be circuitous and impractical due to the danger of unintentional trespass under an unleased tract.

EXAMINERS' OPINION

Pursuant to §102.017 of the MIPA, a compulsory pooling order must "be made on terms and conditions that are fair and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to produce or receive his fair share." Each such order must: (1) describe the land included in the unit, identifying the reservoir to which it applies; (2) designate the location of the well; and (3) appoint an operator of the unit.

Pursuant to §102.051(a), for the purpose of determining the portion of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. This notwithstanding, pursuant to §102.051(b), if the Commission finds that allocation on a surface-acreage basis does not allocate to each tract its fair share, the Commission shall allocate the production so that each tract will receive its fair share, which for any nonconsenting owner must be no less than he would receive under a surface-acreage allocation.

Pursuant to §102.052, as to an owner who elects not to pay his proportionate share of the drilling and completion costs in advance, the Commission shall make provision in the pooling order for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completion, and operating costs plus a charge for risk not to exceed 100 percent of the drilling and completion costs.

According to Smith & Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.6(B) at page 12-64 (Matthew Bender 2007), the Commission's selection of a percentage risk factor will be determined by the riskiness of drilling in that area of the field, as evidenced by the number of dry holes, junked wells, and marginal or uneconomic wells drilled, and by the percentage risk factor that appears in private joint operating agreements in the field. Although §102.052 appears to require that the Commission's order contain a charge for risk if an owner elects to be carried, this section does not require that the risk factor be greater than zero, only that it cannot be greater than 100 percent. Smith & Weaver, *Texas Law of Oil and Gas*, *supra* at Vol. 3, Chapter 12, §12.6 at page 12-65.

The examiners recommend that the Commission describe the land in the force pooled unit according to the plat identified as Finley Exhibit No. 3 and the metes and bounds description in Finley Exhibit No. 4, designate the location of the unit well as that location depicted on Finley Exhibit No. 16, and appoint Finley as the operator of the unit.

There is no evidence to show that allocating production to the various interests in the unit on a surface-acreage basis will not afford each tract within the unit its fair share. Accordingly, pursuant to §102.051(a) of the MIPA, the examiners recommend that for the purpose of determining the portion of production owned by the persons owning interests in the pooled unit, the production

be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.

The examiners recommend that the interests of lessors of tracts within the unit that have leased to Finley, Chesapeake, and the Dale companies be pooled as royalty interests. The evidence is to the effect that Chesapeake "desires to participate with its full interest" in the well to be drilled by Finley on the unit and intends to execute a mutually agreeable joint operating agreement covering the unit. The evidence is further to the effect that Chesapeake has an agreement with the Dale companies pursuant to which Chesapeake purchases leases taken by Dale. The examiners accordingly recommend that the interests of Finley, Chesapeake and the Dale companies in tracts within the unit be pooled as working interests. Because Chesapeake, for itself and as potential successor to the interests of the Dale companies, has indicated its agreement to participate fully, to the extent of its interests, in the Finley unit and well, there appears to be no need to provide in the final order that the interests of Finley and the Dale companies be carried by Finley subject to a risk penalty.

Provisions of orders to afford unleased mineral interest owners their fair share are discussed in Smith & Weaver, *Texas Law of Oil and Gas, supra* at Vol. 3, Chapter 12, §12.5(B)(1) at page 12-53:

"MIPA is silent regarding the rights of unleased mineral interest owners. Section 102.017 simply requires that the pooling order give each owner a 'fair share' of the unit's production. The unleased owner may be offered the same three options as the nonoperating lessee and similarly must be offered the right to be carried. The pooling acts of several other states make specific provisions for the unleased owner, who is generally treated as a royalty owner to the extent of 1/8 of production and a working interest owner as to the remaining 7/8. The Railroad Commission has the authority to fashion any order that is fair and reasonable to unleased owners. Thus, if the prevailing royalty fraction for leases in the area or in the proposed unit is 1/6, a fair order would probably accord the unleased owner a 1/6 royalty interest and a 5/6 working interest. The owner's share of expenses (plus any risk factor if the owner elects to be carried) would be payable only from this 5/6 of production rather than the entire mineral interest."

The evidence shows that the prevailing royalty agreed to by Finley in oil and gas leases covering the Finley leased tracts in the unit is 20 percent. Furthermore, the evidence shows that there is virtually no risk that Finley will drill a dry hole on the unit, and no evidence of dry holes, junked wells or marginal or uneconomic wells anywhere in the area. The only "risk" identified by Finley is the same mechanical risk encountered when any horizontal well is drilled. Furthermore, it is the opinion of the examiners that imposition of a risk penalty against owners who have not consented to lease their tracts and are being pooled against their will is not fair or reasonable. Accordingly, the examiners recommend that the owners of the unleased tracts within the unit be pooled as owners a 1/5th royalty and a 4/5ths working interest, proportionately reduced, with these owners' share of expenses (subject to a risk penalty of zero) payable only from 4/5ths of production rather than from

their entire mineral interest. The examiners recommend also that the Commission's final order include a condition that the unleased tracts in the unit shall not be subject to any surface use by the unit operator without the unleased owner's written consent. A comparable provision is included in the oil and gas leases covering the Finley leased tracts within the unit and was contemplated by the lease option that Finley offered to the unleased owners.

To support the decision reached by a majority of the Commissioners at the July 15, 2008, conference, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Notice of this hearing was mailed to all interested parties at mailing addresses provided by the applicant Finley Resources, Inc. ("Finley"), at least 30 days prior to the hearing date.
2. Notice of this hearing was published in the Fort Worth Star Telegram on July 24, July 31, August 7, and August 14, 2007, the first date of such publication being 30 days prior to the hearing date for this application.
3. Finley is requesting the Commission to approve, pursuant to the Mineral Interest Pooling Act, a force pooled unit in the Newark, East (Barnett Shale) Field, referred to as the East Side Unit, consisting of 96.32 acres out of the B. E. Waller Survey, A-1659, and the R. Cross Survey, A-304, in Tarrant County. The area of the proposed unit is about one mile from downtown Fort Worth and contains 300 to 350 lots. The Finley application is not protested, and Chesapeake Operating, Inc., supports the application.
4. Finley has obtained oil and gas leases covering lots containing 82.9786 acres within the area of the proposed 96.32 acre pooled unit. Chesapeake Exploration, LLC has also leased several lots containing 5.9904 acres, Dale Resources, LLC has leased a lot containing 0.1530 acres, and Dale Property Services, LLC has leased several lots containing 1.4940 acres. There are about 26 lots containing 5.704 acres in the proposed unit which are unleased. Appendix 1 to the proposal for decision, which is incorporated into this finding by reference, is a plat of the proposed unit color coded to show the lots leased to Finley, Chesapeake, and the Dale companies and the lots that are unleased.
5. Dale Resources, LLC has an agreement with Chesapeake pursuant to which Chesapeake purchases leases taken by Dale. Chesapeake has advised Finley that it desires to participate with its full interest in wells drilled by Finley on the proposed unit and intends to execute a mutually agreeable joint operating agreement covering the proposed unit.
6. Oil and gas leases taken by Finley from the owners of lots containing 82.9786 acres within the proposed unit contain pooling clauses granting to Finley the right to pool these lots into a pooled unit. Finley has the right to form a voluntary pooled unit consisting of 82.9786 acres for the drilling of a well or wells in the Newark, East (Barnett Shale) Field, and

Chesapeake appears to be willing to participate in such a unit by contributing at least an additional 5.9904 acres.

7. The Newark, East (Barnett Shale) Field was discovered on October 15, 1981. This field has special field rules providing for 330' lease line spacing, and there is no between well spacing requirement. As to horizontal wells, where the horizontal portion of the well is cased and cemented back above the top of the Barnett Shale formation, the distance to any property line, lease line, or subdivision line is calculated based on the distance to the nearest perforation in the well, and not based on the penetration point or terminus. Where an external casing packer is placed in a horizontal well and cement is pumped above the external casing packer to a depth above the top of the Barnett Shale formation, the distance to any property line, lease line, or subdivision line is calculated based on the top of the external casing packer or the closest open hole section in the Barnett Shale.
8. The standard drilling and proration unit for the Newark, East (Barnett Shale) Field is 320 acres. An operator is permitted to form optional drilling units of 20 acres.
9. The Newark, East (Barnett Shale) Field is a common reservoir underlying all of the tracts within the proposed unit, and all of the acreage in the proposed unit is productive in the Newark, East (Barnett Shale) Field.
10. About nine of the unleased tract owners within the proposed unit could not be found by Finley to discuss whether these owners were willing to lease to Finley. The remaining owners of the unleased tracts within the proposed unit were unwilling to lease to Finley.
11. The unleased tracts within the proposed unit range in size from 0.1210 acres to 1.0320 acres.
12. Finley proposes to drill a horizontal well in the Newark, East (Barnett Shale) Field with two laterals extending from penetration point to terminus west to east across the proposed unit. A plat of the proposed unit showing the proposed location of this well is attached to the proposal for decision as Appendix 2 and is incorporated into this finding by reference.
 - a. There are three "possible" surface locations off the proposed unit.
 - b. Chesapeake controls "possible" Location A to the west of the proposed unit and has several wells it wants to drill from a pad at that location. There is no agreement to enable Finley to drill from Location A.
 - c. Finley controls Location B to the south of the proposed unit, and this is the most likely surface location from which a well on the unit would be drilled.
 - d. Location C to the east of the proposed unit is, in Finley's opinion, logistically better than Location B, but Finley does not control this location. Finley has been in negotiations with Frost Brothers to obtain a "surface easement" that would permit it

to drill from Location C, and if this easement can be obtained, the penetration point and bottom hole orientations shown on Appendix 2 would be reversed, with approximately the same lateral sections.

13. Finley will not drill the proposed well unless compulsory pooling is ordered as requested because of the impracticality of drilling around the unleased tracts.
 - a. The locations of the horizontal laterals of Finley's proposed well were selected based on geology and engineering to maximize access to natural fractures that exist in the Barnett Shale, which generally trend to the southwest.
 - b. The horizontal laterals of Finley's proposed well approach near to or actually traverse some of the unleased tracts within the unit area.
 - c. Drilling the proposed well around the unleased tracts would involve circuitous horizontal laterals or would be impractical because use of directional tools could not foreclose the danger of an unintentional trespass under the unleased tracts.

14. In January 2007, Finley mailed a final offer to the owners of the lots within the proposed unit that were still unleased, using the mailing addresses that Finley had been able to find by internet research of records of the Tarrant County Appraisal District, looking for telephone numbers, door to door canvassing, and neighborhood meetings. This offer provided notice that Finley was proposing to form a pooled unit and drill a horizontal well from a preexisting drillsite location off the unit to test the Barnett Shale or to a depth of 7,500', whichever was the lesser depth. Finley offered the unleased owners three options: (1) lease their minerals to Finley ("Option 1"); (2) participate in the drilling and completion of the well to be drilled on the unit ("Option 2"); or (3) farmout the owners' minerals to Finley ("Option 3").
 - a. Regarding Option 1 (lease), Finley offered a \$2,100 per net acre bonus as an incentive to sign an attached oil and gas lease. The proposed oil and gas lease had a three year primary term, granted Finley the option to extend the primary term for two years for \$100 per acre, and provided that the lease would continue in effect after the primary term as long as production or operations continued on the leased premises or on lands pooled therewith. The proposed lease provided for a 20% royalty, and granted the lessee the right to pool. The oil and gas lease proposed by Finley contained a restriction against any surface use.
 - b. Option 2 (participation) in Finley's final offer to the unleased owners required the owners to pay their proportionate share of all wells costs and provide Finley with a notarized statement agreeing to pay these costs on or before the spud date of the proposed well. The offer set forth an estimated amount of costs attributable to each owner (for example, \$9,434.84 for an owner of a 0.3059 acre lot) but cautioned that this cost could change considerably due to numerous factors faced while drilling, stimulating and completing a well.

- c. Option 3 (farmout) in Finley's final offer required that the unleased owner convey to Finley an 80% net revenue interest attributable to the owner's mineral interest and retain an overriding royalty interest of 20%, proportionately reduced to the extent the owner's mineral interest bore to all of the mineral interests in the proposed unit, until payout of all well costs, with the option, at payout, to convert the retained override to a 25% working interest, proportionately reduced.
 - d. The Finley offer notified the unleased owners that if the owner selected Option 2 (participation), the owner would be required to pay the proportionate share of drilling costs attributable to the owner within 15 days prior to commencement of actual drilling operations as set forth in a proposed AAPL Form Joint Operating Agreement, otherwise the owner would be subject to non-consent penalties provided in the JOA.
 - e. The unleased owners to whom Finley's final offer was made were required to make an election of the three options within 14 days of the offer and the offer provided that if such an election had not been made within that time by returning a signed copy of the offer to Finley, it would be deemed that the owner did not choose any option, in which case Finley intended to seek compulsory pooling of the owner's interest pursuant to a forced pooling order to be issued by the Railroad Commission pursuant to the MIPA.
 - f. The lease option offered by Finley to the unleased owners was as good as, or better, than the terms offered to other owners in the unit area.
15. The owners of unleased tracts within the proposed unit have not agreed to lease to Finley, or accept any other aspect of Finley's offer to pool their unleased interests into the proposed unit.
16. Compulsory pooling as requested by Finley will afford the owners of each tract or interest in the proposed unit the opportunity to produce his fair share of hydrocarbons and avoid the drilling of unnecessary wells.
- a. The individual lots within the proposed unit, whether leased or unleased, do not contain sufficient acreage to permit the drilling of a well.
 - b. Pooling of the individual lots within the proposed unit is necessary in order to provide sufficient acreage to drill the horizontal well proposed by Finley.
 - c. Based on initial production rates of Chesapeake wells in the Barnett Shale to the south of the proposed unit, Finley estimates that each of its proposed horizontal laterals ultimately will recover about 8 BCF of gas.

- d. Pooling of the individual lots within the proposed unit will enable the owners of the lots that have been leased to Finley, Chesapeake, and the Dale companies and the owners of the unleased lots to receive their fair share of hydrocarbons from the reservoir.
 - e. Any well that might be drilled on the acreage within the unit area leased by Finley, Chesapeake, and the Dale companies would have the potential for draining hydrocarbons from beneath the unleased tracts, and in the absence of compulsory pooling, the unleased owners would not be compensated for such drainage.
 - f. The drilling of multiple vertical wells on optional 20 acre units on the acreage currently under lease to Finley, Chesapeake, and the Dale companies in the unit area to recover hydrocarbons beneath such acreage potentially would involve the drilling of unnecessary wells when compared to the drilling of the proposed horizontal well to recover the same hydrocarbons.
17. Finley did not prove that there is any risk of drilling a dry hole on the proposed unit or present any evidence as to any dry holes, junked wells, or marginal or uneconomic wells in the area of the proposed unit.

CONCLUSIONS OF LAW

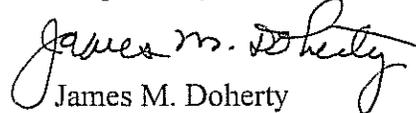
- 1. Pursuant to Texas Natural Resources Code §102.016, notice of the filing of this application and of this hearing was given to interested parties by mailing to their last known mailing addresses and by notice by publication in the case of interested parties whose whereabouts were unknown at least 30 days before the hearing.
- 2. The Commission has jurisdiction over the parties and the subject matter and to issue a compulsory pooling order pursuant to Texas Natural Resources Code, §102.011.
- 3. The offer made by Finley Resources, Inc., to the owners of the unleased tracts within the area of the proposed East Side Unit to pool voluntarily was fair and reasonable within the meaning of Texas Natural Resources Code §102.013.
- 4. Compulsory pooling of the owners of the unleased tracts within the area of the proposed East Side Unit as owners of a 1/5th royalty and a 4/5ths working interest, proportionately reduced, with these owners' share of expenses, subject to a risk penalty of zero, payable only from 4/5ths of production, and subject to a no surface use restriction, is fair and reasonable within the meaning of Texas Natural Resources Code §102.017.
- 5. Compulsory pooling of all interests in the proposed East Side Unit, as herein ordered, will serve the purposes of protecting correlative rights and avoiding the drilling of unnecessary wells within the meaning of Texas Natural Resources Code §102.011.

6. Compulsory pooling, as ordered herein, meets all requirements of the Mineral Interest Pooling Act, Texas Natural Resources Code, Chapter 102, §102.001 *et seq.*

RECOMMENDATION

To give effect to the vote of a majority of the Commissioners at the July 15, 2008, conference to approve this application, the examiners recommend adoption of the attached final order.

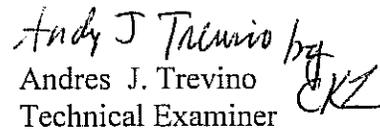
Respectfully submitted,



James M. Doherty
Hearings Examiner



Marshall Enquist
Hearings Examiner



Andres J. Trevino
Technical Examiner