No. 33705

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, a West Virginia limited liability company, **COALQUEST DEVELOPMENT, LLC**, a foreign limited liability company, **CONSOLIDATION COAL COMPANY**, a foreign corporation, **HORSE CREEK LAND AND MINING COMPANY**, a West Virginia corporation, **NATIONAL COUNCIL OF COAL LESSORS, INC.**, a West Virginia corporation, **PENN VIRGINIA OPERATING COMPANY, LLC**, a foreign limited liability company, **POCAHONTAS LAND CORPORATION**, a foreign corporation, **WEST VIRGINIA COAL ASSOCIATION**, a West Virginia non-profit corporation, **WPP LLC**, a foreign limited liability company, and **WOLF RUN MINING COMPANY**, a West Virginia corporation,

Petitioners,

V.

WEST VIRGINIA OIL & GAS CONSERVATION COMMISSION, a state agency, **CHESAPEAKE APPALACHIA, LLC**, a foreign limited liability company, **EASTERN AMERICAN ENERGY CORPORATION**, a West Virginia corporation, and **PETROEDGE RESOURCES (WV), LLC**, a foreign limited liability company,

Respondents.

RESPONSE OF CHESAPEAKE APPALACHIA, L.L.C., TO PETITION FOR WRIT OF PROHIBITION

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Date: February 6, 2008

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NOW COMES the Respondent, Chesapeake Appalachia, L.L.C. ("Chesapeake"), pursuant to Rule 14(d) of the West Virginia Rules of Appellate Procedure, and files this response in opposition to the Petition filed on or about September 28, 2007, and the Rule to Show Cause issued on the 7th of December, 2007.

I. STATEMENT OF THE CASE

Petitioners filed their petition for writ of prohibition under the original jurisdiction of this Court, pursuant to Rule 14 of the West Virginia Rules of Appellate Procedure (WVRAP) on September 28, 2007. Petitioners seek review of various orders issued by the West Virginia Oil & Gas Conservation Commission ("Commission"). The Commission is charged with the jurisdiction pursuant to W. Va. Code § 22C-9-1, et seq., to regulate certain matters related to the permitting of "deep" gas wells. A separate administrative tribunal, the Shallow Gas Well Review Board ("SGWRB") is granted statutory jurisdiction to regulate certain matters related to the permitting of "shallow" gas wells. See W. Va. Code § 22-C-8-1, et seq. Generally, the West Virginia Department of Environmental Protection, Office of Oil and Gas, otherwise has regulatory jurisdiction over permitting and operation of gas wells pursuant to W. Va. Code § 22-6-1, et seq.

The dispute in this case arises from a claim by the Petitioners that the Commission has exceeded its lawful jurisdiction and asserted jurisdiction over applications for various well work permits submitted by the Respondents which are considered by the Commission to be "deep" wells. Petitioners assert that the wells in question should be classified as "shallow" wells subject to the jurisdiction of the SGWRB.

Following the filing of the initial petition on September 28, 2007, at the request of the Court the Respondents, Chesapeake Appalachia, L.L.C., and Eastern American Energy Corporation filed response briefs on October 24, 2007. The Commission filed its response brief on October 29, 2007. No appearance has been made by the named respondent, Petroedge Resources (WV), LLC, in this matter.

On the 7th of December, 2007, the Court issued a Rule to Show Cause, setting this matter for oral argument on Wednesday, the 12th of March, 2008.[1] On the 21st of November, 2007 the Respondents filed a Joint Motion for Extension of Time for the filing of their response brief allowed by WVRAP 14(d), on the basis that Respondents believed and believe that legislation may be proposed in the current session of the West Virginia Legislature which would change the definition of a "deep" well and a "shallow" well in a manner which would render the arguments in this case moot.[2] On the 30th day of November, 2007, this Court entered an Order granting the motion and extending the time for the filing of any further responses pursuant to Rule 14(d) of the WVRAP, to and including the 6th day of February, 2008.

II. STANDARD OF REVIEW

The Legislature has declared that:

> The Writ of Prohibition shall be as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or having such jurisdiction, exceeds its legitimate powers.

W. Va. Code § 53-1-1.

Applying this statute, this Court has held that prohibition lies only to prevent the doing of an act, and can never be used as a remedy for acts already done. *State ex rel. Burgett v. Oakley,* 155 W.Va. 75, 79, 181 S.E.2d 19, 21 (1971). Moreover, as explained by this Court:

> For a writ of prohibition to issue preventing a quasi-judicial administrative tribunal from taking up a particular matter on the asserted basis of lack of jurisdiction, the petitioner must demonstrate that there is a clear limitation on the tribunal's jurisdiction, and that there are no disputed issues of fact such that the jurisdictional question may be decided purely as a matter of law. In other words,

[1] By Order entered the 8th of November, 2007, the Honorable Brent D. Benjamin, Justice, recused himself from voluntary participation in this matter, and the Honorable John W. Hatcher, Jr., Judge of the 12th Judicial Circuit, was assigned to consider this case.

[2] Counsel aver that draft legislation has been prepared and it is anticipated that it will be introduced in the West Virginia Legislature this regular session.

> the prohibition remedy is available only where an administrative tribunal patently and unquestionably lacks jurisdiction over the matter pending before it.

Health Management, Inc. v. Lindell, 207 W. Va. 68, 528 S.E.2d 762, syl. pt. (1999).

This Court has also held that a petition for writ of prohibition is not a substitute for an appeal:

> Traditionally, we have held that a writ of prohibition is an extraordinary remedy and should be granted in only the most extraordinary cases. We have stated that '[p]rohibition lies only to restrain inferior courts from proceeding in cases over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for writ of error, appeal or certiorari.' (citations omitted).

State ex rel. Rose L. v. Pancake, 209 W.Va. 188, 544 S.E.2d 403, 405 (1997).

III. COUNTER STATEMENT OF FACTS

The Petitioners' Memorandum in Support of Petition for Writ of Prohibition, at pages 3-16, numbered paragraphs 1-52, (hereinafter "Pet. Mem. at ___") sets forth a Statements of Facts and cites various statutory provisions believed to be in issue. Chesapeake disagrees in several respects with the Petitioners' Statements of Facts and the applicability of certain of the statutes cited, in the following respects:

1. Petitioners' Statement of Facts, Paragraph No. 26, states that a gas operator may apply for special field rules which allow the operator to ignore the spacing requirements for deep wells within a designated field. Pet. Mem. at 9. This statement is incorrect. By definition, special field rules dictate spacing requirements based on reservoir characteristics and the protection of correlative rights between producers of gas. The spacing required in a special field rule order is not based upon an arbitrary distance limitation. Rather, it is based upon the particular conditions in a field as established by sworn testimony and evidence presented at a public hearing before the Commission.

2. Petitioners' Statement of Facts, Paragraph No. 28, states that the SGWRB has jurisdiction over the drilling and spacing of shallow wells in West Virginia. Pet. Mem. At 10. This is incorrect. The SGWRB only has jurisdiction to decide whether a permit for a new shallow well should be issued where an objection to the well location is filed by a coal owner or operator. W. Va. Code § 22C-8-3(b), specifically states that the jurisdiction of the SGWRB shall not apply to or effect "any shallow well as to which no objection is made under... W. Va. Code § 22-6-17."

3. Petitioners' Statement of Facts, Paragraph Nos. 35 and 47, states that Chesapeake asked the Commission for special field rules to allow it to drill over 1,800 wells within 1,000 feet of each other or that the Commission has granted a blanket authorization for 1,000 foot spacing. Pet. Mem. At 11, 14. This statement is incorrect. Chesapeake requested the special field rules be applied to a specific area. At no time did Chesapeake ask for an order to allow it to drill a specific number of wells, but merely responded to inquiries from the Commission during an administrative hearing regarding the potential number of wells that could be drilled in an area. In addition, Chesapeake expressly agreed to abide by the 1,500 foot spacing limitations which would apply even if these wells were considered shallow wells, in the event a coal owner or operator filed an objection to Chesapeake's drilling permit application for a particular well. The Commission noted that Petitioner Pocahontas Land Corporation through its counsel withdrew its objection at the hearing, but only insofar as it related to the particular hearings at issue, based upon the agreement with Chesapeake that in the event a coal seam owner or operator objected to the proposed drilling or deepening of a well to the Marcellus Shale, the terms and provisions of W. Va. Code § 22C-8-8 would apply, i.e., the 1,500 foot spacing limitations. See Exhibit G to Pet. Mem., Commission Order at 6. Accordingly, Petitioners' representation that the underlying

orders which are challenged by the Petition if not overturned would result in Chesapeake being allowed to drill 1,800 wells within 1,000 feet of each other, is not supported by the record or the orders of the Commission. The Respondent agreed to abide by 1,500 foot spacing limitations, so the Petitioners charts and calculations of potential impact on the coal estate if wells are spaced at 1,000 foot intervals is not an issue in dispute and is purely hypothetical.

4. Petitioners' Statement of Facts, Paragraph No. 46, alleges that the Commission's orders have deprived the Petitioners of their statutory right to object to the spacing of shallow wells pursuant to W. Va. Code § 22C-8-8. Pet. Mem. At 14. This is incorrect. The right to object to a shallow well permit is not found in W. Va. Code § 22C-8-8. A gas operator applying for a well work permit is required to give notice of such to every coal owner or operator pursuant to W. Va. Code §§ 22-6-12, 22-6-13. The coal owner is allowed 15 days to file any objections they may have to the proposed well location, for either a deep or shallow well. Any objections to a shallow gas well permit are referred to the SGWRB, and any objection to a deep well permit to the Chief, pursuant to W. Va. Code §§ 22-6-15, 22-6-17. Either way, an affected coal owner or operator receives a notice of the gas well permit and has the full opportunity to object and be heard regardless of the special field rules.

IV. ARGUMENTS AND AUTHORITIES RELIED UPON

The Petition should be refused for the following reasons:

A. THE OIL AND GAS CONSERVATION COMMISSION DID NOT EXCEED ITS LAWFUL JURISDICTION

1. The Statutory Definition Of A "Deep Well" Does Not Require That The Well Be Drilled <u>And</u> Completed Below The Top Of The Onondaga Formation.

The crux of the Petitioners' argument relies upon the definitions of "shallow wells" and "deep wells" as requiring both the drilling and the completion[3] of a well below the top of the Onondaga Group before it fits the statutory definition of a "deep well". The Petitioners' analysis of the statutory definitions is flawed.

This case challenges the jurisdiction of the Commission whose authority is derived pursuant to W. Va. Code § 22C-9-1, et seq., and in particular, the definition section, W. Va. Code § 22C-9-2. Therein, a shallow well and deep well are defined as follows:

> "Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, that in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of 20 feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;
>
> "Deep well" means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group."

W. Va. Code § 22C-9-2(a)(11), (12).

Petitioners allege that since the definitions use the conjunctive "and," that unless both drilling and completion are below the top of the Onondaga Group, that the definition of a deep well cannot be satisfied. What Petitioners have failed to point out to the Court, however, is that within the very same definition section of Chapter 22C, Article 9, the Legislature declared that:

> Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both.

W. Va. Code § 22C-9-2(b).

---

[3] A well can be drilled to various potentially gas bearing formations, but a well is "completed" when a particular formation or depth is fractured or "stimulated." "Stimulate" means any action taken by a well operator to increase inherent productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations. W. Va. Code § 22-6-1(s).

The Legislature clearly stated that "and" and "or" were interchangeable, and there is nothing in this case to support a claim that "the context clearly indicates otherwise" that the definition of a "deep well" requires that a well be drilled and completed below the uppermost portion of the Onondaga. Accordingly, the definition of deep well, within the express terms of the statute, can be read to be any well, other than a shallow well, drilled and/or completed in a formation at/or below the top of the uppermost member of the "Onondaga Group." If this definition is an accepted interpretation of the statute, then the Petitioners' argument fails and the Commission has acted completely within its lawful jurisdiction.

2. The Commission's Exercise Of Jurisdiction Is Consistent With The Legislative Intent.

It is a longstanding axiom of statutory construction, that wherever possible a court will interpret same in order to comply with legislative intent. *Copier Word Processing v. Westbanco Bank, Inc.*, 220 W.Va. 39, 640 S.E.2d 102, 110 (2006). In this case, the Legislature has provided in a series of articles within the West Virginia Code, for the creation and administration of various duties and responsibilities of the Chief of the Office of Oil and Gas within the Department of Environmental Protection, and has established certain commissions and boards, including the SGWRB to deal with objections to permits requested for shallow wells, and the Commission, to deal with regulation of deep wells. With respect to deep wells, the Legislature has declared the public policy of the state and made specific legislative findings which are embodied within W. Va. Code § 22C-9-1:

> (a) It is hereby declared to be the public policy of this state and in the public interest to:

> (1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;
> (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;
> (3) Encourage the maximum recovery of oil and gas; and
> (4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.
> (b) The Legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than one hundred years; that oil and gas deposits in such shallow sands or strata have geological and other characteristics different than those found in deeper formations; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact statutory provisions relating to the exploration for or production from oil and gas from shallow wells, as defined in section two of this article, but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in said section two.

As can be gleaned from the above passage, the Legislature was primarily concerned with the prevention of waste, and special concerns associated with drilling to deeper formations. In this case, the Commission has chosen to exercise jurisdiction because it believes that it is clear and unambiguous that any wells drilled more than 20 feet below the top of the Onondaga clearly falls within the definition of a deep well. Moreover, the reasoning behind allowing the Commission to exercise jurisdiction in this case is consistent with the declared legislative intent.

As explained at the administrative hearings before the Commission, the reason that Chesapeake, and other operators, wishes to penetrate more than 20 feet below the top of the Onondaga is a matter of technology and prevention of waste. Whenever a gas well is drilled through a potentially gas bearing formation, tests are run which are referred to as "logging" a

well. In this case, Chesapeake, and the other operators, are interested in evaluating the gas bearing potential of the "Marcellus Shale," a formation that lies directly on top of the Onondaga formation. As explained by the engineers and geologists at the administrative hearing before the Commission on May 17, 2007, the length of the tool that must be used for purposes of logging the Marcellus Shale formation is 66 feet in length, and another is 34 feet long. In other words, in order to log the Marcellus Shale, the tools must penetrate in excess of 20 feet below the top of the Onondaga in order that the operator can properly log and evaluate the complete portion of the Marcellus Shale. See Pet. Mem., Ex. W, pgs. 17-23; 27; 30-32; 39-44. If Chesapeake or the gas driller is not able to drill more than 20 feet below the top of the Onondaga they will either (a) not be able to completely log the Marcellus Shale in which case they will be "shooting in the blind" and not have the necessary technological information to determine whether the Marcellus Shale is a potentially economical and gas bearing formation, and (b) otherwise will engage in extreme expense in breaking down the tool and otherwise attempting to log the Marcellus Shale in an inefficient fashion. *Id.* Thus, the record below established that the reason for granting a permit to drill more than 20 feet below the top of Onondaga is to prevent waste, i.e., to completely log the Marcellus Shale formation, which is a relatively "new play" for Chesapeake in West Virginia. *Id.* The only entity with the authority to issue a permit for any well drilled more than 20 feet below the top of the Onondaga is the Commission. The Commission's exercise of jurisdiction, therefore, is in accordance with the legislatively declared public policy and findings to prevent waste, and to allow a Commission comprised of experts in the geology and operation of gas wells to deal with and consider the distinctive problems and issues which arise with the drilling of deep wells as opposed to shallow wells.

If Petitioners' argument were accepted that the Commission only has jurisdiction when a well is drilled more than 20 feet below the top of the Onondaga and the well is completed, i.e., stimulated, fractured or produced, within the Onondaga group or below, then it would be possible for a driller to drill thousands of feet below the top of the Onondaga, but only complete the well above the top of the Onondaga, and never have a permit or receive the permission of the Commission for same. This clearly was not the legislative intent, as the Legislature clearly wanted to create a commission which would specifically focus on issues arising from those drilling through and more than 20 feet below the top of the Onondaga. In this case, such a distinctive and special problem has arisen, i.e., the technology has developed which will allow the logging of the Marcellus Shale, but to efficiently do so, a gas operator must drill more than 20 feet below the top of the Onondaga. The Commission has prudently determined that they do have jurisdiction under the statutory definition over such a well, and therefore may consider special field rules and other issues which are distinctive to "deep wells."

Moreover, the legislatively declared intent to have the Commission deal with issues specific to deep wells, particularly applies with respect to certain safety concerns. As noted at the administrative hearing, for purposes of the drilling of a deep well, in the absence of a variance from the Commission, a site safety plan is required, and there are special concerns related to the potential release of hydrogen sulfide gas when drilling into the Onondaga and below. See Pet. Mem., Ex. W., at 37; 43-44. In fact, the Petitioners' counsel argued at the administrative hearing that if the Commission was in fact going to grant the special field rules, that the Petition would insist on the placement of hydrogen sulfide monitors as part of the special field rules. See Pet. Mem., Ex. W, at 60. The Commission in issuing its orders granting the special field rules recognized particular safety hazards associated with the drilling of deep wells,

by requiring that hydrogen sulfide monitors be present at any of the permitted deep wells drilled by Chesapeake. See Pet. Mem., Ex. C, at pg. 4, Commission Order, Paragraph No. 6.

Petitioners seems to recognize that if its interpretation of the statute were accepted, then the Respondent and other gas operators would not be able to drill more than 20 feet below the top of the Onondaga without violating findings of the Commission and potentially avoiding the opportunity to produce gas from the Marcellus Shale. Petitioners allege, however, that such a concern can be alleviated because it is possible that the Office of Oil and Gas may grant a variance allowing gas operators to drill more than 20 feet below the top of the Onondaga formation without converting the shallow well to a deep well. The Petitioners rely on language found in the Code of State Regulations, particularly 35 CSR § 4-18 to argue that the Chief of the Office of Oil and Gas has the authority to grant such a variance. This interpretation of the code section is at best speculative and not supported by any authority.

The first sentence of 35 CSR § 4-18 states that "[u]pon request, or upon his own initiative, the chief may grant a variance from any of the other requirements of this series... ." Clearly, the Chief's authority to grant a variance is restricted to only requirements in this series of the regulations, but this does not give the Chief authority to override statutory provisions which do not provide for or grant the Chief any authority to ignore or revise a statutory requirement providing for the jurisdiction of Commission over any well drilled more than 20 feet below the top of the Onondaga. W. Va. Code § 22C-9-4. Thus, Petitioners' argument that the Chief of the Oil and Gas has jurisdiction to grant the variance for drilling more than 20 feet below the top of the Onondaga, is merely a speculative suggestion, and not one that is dictated by the statute, regulations, nor any precedent which indicates that the Chief of the Office of Oil and Gas would in fact have or even exercise any discretion to grant any such variances.

B. PETITIONERS' ARGUMENTS SHOULD BE ADDRESSED TO THE LEGISLATURE, NOT THE COURT.

It is apparent that the underlying concern throughout the Petitioners' memorandum is not whether the Commission has jurisdiction, but a question or concern that the Commission could under its statutory authority and pursuant to its legislative rules, grant spacing of wells at a minimum of 1,000 feet apart within a special field, whereas under the authority granted to the SGWRB, that agency can only grant spacing at a minimum of 1,500 feet from an existing well. This discrepancy between distance limitations is a function of the different production capabilities of shallow versus deep wells, and is part and parcel of the legislature's declared findings to create distinctions between the regulation of shallow wells and deep wells. Accordingly, should Petitioners believe that there is potential danger to the recoverable coal reserves if deep well permits are granted and if the Commission exercises its statutorily granted authority to allow spacing at 1,000 foot intervals, their argument should be addressed to the legislature which is the body which has created these different administrative bodies, and different statutory schemes and spacing limitations to deal with the differences between shallow wells and deep wells.

C. PETITIONERS' HAVE FAILED TO APPEAL THE ADVERSE RULINGS AND MAY NOT CURE THAT ERROR BY PROCEEDING BY WRIT OF PROHIBITION

As noted before under the Standard of Review, this Court has held that:

> Traditionally, we have held that a writ of prohibition is an extraordinary remedy and should be granted in only the most extraordinary cases. We have stated that '[p]rohibition lies only to restrain inferior courts from proceeding in cases over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for writ of error, appeal or certiorari.' (citations omitted) (emphasis added).

State ex rel. Rose L. v. Pancake, 209 W.Va. 188, 544 S.E.2d 403, 405 (1997).

Petitioners allege they are aggrieved by orders issued by the Commission which have granted special field rules. Orders of the Commission are appealable to the circuit courts pursuant to the provisions of W. Va. Code § 22C-9-11. No such appeals were filed, and accordingly, this petition is procedurally invalid and must be denied. *Id.*

Here, it is apparent that given the statutory declaration that "and" is interchangeable with "or" it is clear that the Commission was acting within its jurisdiction and otherwise is acting in accordance with legislative intent. This Court should not otherwise exercise any discretionary authority to grant a writ of prohibition, inasmuch as the clear remedy available to the Petitioners is to seek legislative redress, or appeal of any orders of the Commission, pursuant to W. Va. Code § 22C-9-11.

D. PETITIONERS' CLAIMS OF "STERILIZATION" OF COAL ARE SPECULATIVE AND UNSUPPORTED BY THE RECORD.

Again, it is apparent that the underlying concern in this case is not a question of the lawful interpretation of the jurisdictional authority granted to the Commission, in this case, but a speculative concern that the Commission might allow through the granting of special field rules, spacing limitations at a minimum of 1,000 feet, as opposed to the 1,500 foot limitation which could be granted if these wells were declared to be "shallow wells" subject to the exclusive jurisdiction of the SGWRB. These claims are unfounded in this case. Petitioners assert in their memorandum that it is Chesapeake's plan with the approval of the Commission to grant 1,000 foot spacing on all wells to be drilled within the special field. This is not the case. As made clear in the record before the Commission, this 1,000 foot spacing limitation was requested only as to be available in the field if special field conditions be encountered which would require a spacing at less than 1,500 feet. The Respondents stipulated in the hearing proceedings, that if a

coal owner or operator had an objection to the location of a well less than 1,500 feet from an existing well that Chesapeake would abide by the 1,500 foot spacing limitations. See Pet. Mem., Ex. W, at 44-51; Pet. Mem., Ex. G, pg. 2, Finding of Fact ¶ 5; pgs. 3-4, Commission Order ¶¶ 3 and 4. The Commission accepted this proposal and specifically found in Paragraph No. 4 of its Order granting the special field rules that:

> In the event that a coal seam owner or operator objects to the drilling or deepening of a well to the Marcellus Shale under these special field rules, then the terms and provisions of W. Va. Code § 22C-8-8 will apply.

That code provision states that for any well with the depth of 3,000 feet or more, there shall be a minimum distance of 1,500 feet from the drilling location to the nearest existing well. See W. Va. Code § 22C-8-8(a)(2). Petitioners' arguments regarding potential "sterilization" or impact upon coal, therefore, is a matter of gross speculation and conjecture at this point and is not a claim or controversy in dispute in the underlying matter.

V. CONCLUSION

Wherefore, for all of the foregoing reasons, the Respondent respectfully requests that the Court deny the Petition and refuse to issue a rule to show cause.

CHESAPEAKE APPALACHIA, L.L.C.
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CERTIFICATE OF SERVICE

I, Timothy M. Miller, counsel for Chesapeake Appalachia, L.L.C., do hereby certify that a true and exact copy of the foregoing **RESPONSE OF CHESAPEAKE APPALACHIA, LLC, TO PETITION FOR WRIT OF PROHIBITION** has this 6th day of February, 2008, been served upon the following parties, via U.S. mail, addressed as follows:

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