

By: Helen Barrett
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Another court battle seems inevitable over the taxation of gas in storage at the Hopeton Gas Storage Field owned by Panhandle Eastern Pipe Line Company.

As surely as the month turns to June, tax protests begin before the Woods County Excise/Equalization Board. Friday, another special session heard protests by attorney Richard Denny for BP Energy, Kansas Gas Services, Missouri Gas Energy and Proliance Energy.

"Our grounds are the same for all the companies with the exception of one or two minor things," Denny told Board members Rob Nida, Wes Nixon and Chris Olson.

"Each one of these taxpayers have a case pending in District Court in this county," Denny continued. "Our grounds are that the property is exempt under the Freeport Exemption, the taxable property is intangible. We believe situs has not been established for this particular property."

The Freeport Exemption covers merchandise temporarily in storage imported from out-of-state for use in the manufacture of products which are in turn shipped out-of-state.

Denny also stated their position that the taxation violates the Federal Commerce Clause and the Supremacy Clause.

BP ENERGY

Woods County Assessor Monica Schmidt, accompanied by attorney Mart Tisdal and Jerry Wisdom for Visual Lease Services, stated her opinion.

"We're saying the Freeport Exemption does not apply," Schmidt said. "Judge Linder ruled on that last fall."

Schmidt pointed out that BP argued in court for the use of monthly averages instead of the amount in storage on January 1 of each year, the figure regularly used.

After getting monthly numbers from Panhandle Eastern Pipe Line Company, Schmidt said they lowered the assessed value on the average using the \$6.41 rate dictated by the Oklahoma Tax Commission Manual.

"I did lower it after that from \$2,056,078 to \$1,809,485," Schmidt said.

Denny said BP used the figure of \$5.66, a figure used by the Federal Energy Regulatory Commission (FERC).

Denny argued that actual prices for this area are more accurately reflected by the FERC amount.

Olson addressed Denny, "You've got to agree you've got ownership of some gas in there."

"Absolutely not!" Denny replied. "This is being offered as an alternative to the different presentations being made."

Schmidt replied, "That's what is recommended by the Tax Commission. Until the court rules that the numbers are not correct, I want to stick with that."

Denny further argued that the averages were incorrect. Attorney Tisdal asked if Denny preferred using the Jan. 1 figures, which he did not.

"What you're saying is, if it helps your client, you're for it. If it hurts your client you're against it," Tisdal asked.

Denny eventually agreed that the average should apply for this year at least if it "passes the muster" of the courts in regard to being taxable.

Olson then moved to accept the assessor's value for BP Gas. Nixon seconded the motion and it was approved unanimously.

KANSAS GAS SERVICES

When Denny presented the Kansas Gas Services appeal, he disagreed with the formal form which only listed the Freeport Exemption as grounds for dismissal.

"Regardless of what the form indicates, Kansas Gas Services protests on the other grounds as well," Denny stated.

Denny also objected to the 10 percent penalty applied to the balance.

Schmidt explained the penalty could have been 20 percent due to its late filing. The penalty was not included as a reason for protest.

The board again voted to stand by the assessor's figures, affirming the belief that the Freeport Exemption did not apply.

MISSOURI GAS ENERGY

Denny again presented the same reasons for protesting Missouri Gas Energy's valuation -- the Freeport Exemption, intangible personal property, no established situs value, the supremacy clause, the Commerce clause.

"The information provided is on a system wide monthly balance providing a monthly average, not monthly information at a particular location," Denny said.

Schmidt had received a copy of Missouri Gas' reply to the county's subpoena. When County Clerk Pam Small presented the copy faxed to her, Schmidt requested and received a recess to go over the figures.

After a 15-minute recess, the session reconvened.

"We've had a chance to look over it and rework it like we did all the others," Schmidt said. "We've looked at their average . . . I'd be in favor of recommending to the board that we change it to use the Jan. 1 number."

The form Missouri Gas remitted only included the figures for December and January. Had the assessor used those figures, Wisdom said, the average amount would have been 836,603. Using the monthly figures provided, Schmidt recommended using the fair market value of \$792,398, which lowered the amount owed to \$123,619.

"Is that exciting news for you Richard?" Nida asked Attorney Denny.

"We're certainly appreciative," Denny replied, "but we still feel we have to stand by our earlier arguments because we feel they apply."

PROLIANCE ENERGY

The final company represented by Denny was Proliance Energy. Proliance stood by its previous grounds for appeal, Denny said.

"At the informal hearing, we started requesting averages," Schmidt said. "Their first number was 1,087,485. When we got done, it was 4,299,202. This is the first instance that it went higher than the first of January number."

In figuring the average volume over a 12-month period, Schmidt said they were about 4,000 units apart.

"If you do the 12 months like the Tax Commission tells you to do, we're not as far off as it appears," Schmidt said.

Olson said, "We've made the adjustments on the others on the average of 12-months. I think we ought to stick with that on this one if we use the same formula and use the revised numbers we've been provided today."

The board again agreed to uphold the assessor's valuation figures.

The final appeal scheduled for Friday didn't materialize. The representative for Centerpoint Energy Field of Houston, Texas, was a no-show. Schmidt said the amount protested by that company was less than \$100.