



## Case & Project Experience

### NERA Expert Provides Rebuttal Evidence in Oil Exploration Litigation

*Frankel Offshore Energy Inc. and Frankel Resources LLC v. Texas Standard Oil & Gas LP, Grimes Energy Inc, Petroval Inc, Timothy Roberson, Kim McCullough, David M. Grimes, Michael Grimes, Warburg Pincus LLC, and Grimes Energy Co.*

#### Background

The case was brought by Frankel, an oil promoter/prospector with operations in the Gulf of Mexico. Frankel alleged that an investment bank had inappropriately shared information about its activities which led to its oil and gas project being developed by another party.

#### NERA's Role

NERA was retained by the investment bank Warburg Pincus LLC to address issues relating to the quantification of damages from the alleged lost opportunity to develop the project. The NERA team, led by Senior Vice President Mark Berenblut, included experts in the areas of oil and gas exploration, business valuation, and economic damage quantification. Economic issues addressed included the ability of the plaintiffs to obtain financing to develop the project but for the alleged actions of the investment bank, and valuation issues relating to oil and gas properties and reserves such as the selection of appropriate comparables and the choice of discount rates for reserve cash flow forecasts.

In this case, our analysis demonstrated that Frankel would not have satisfied the credit criteria required to obtain adequate financing at a rate which would have enabled the project to be undertaken on a profitable basis.

Frankel's expert assumed that such financing could have been arranged, ignoring both the particular characteristics of Frankel and its unsuccessful efforts to raise such capital. The expert also failed to consider the particular context in which such capital would have been sought—namely, the deteriorating credit markets of 2007 and early 2008. Furthermore, Frankel's expert overstated the value of the opportunity by using as valuation benchmarks other market transactions for oil and gas properties that were not sufficiently comparable, and by using an inappropriate discount rate to value the forecasted cash flows of the project.

Frankel's expert chose to adopt a discount rate based on the rate stipulated by certain accounting and securities regulatory conventions which are relevant only for the purpose of reporting reserves for financial statement purposes.

NERA explained in a rebuttal report that the use of this discount rate did not conform to accepted valuation principles and did not provide a reliable basis for estimating the fair market value of the properties in question. Rather, the discount rate must be established by reference to the particular risks associated with the asset being valued such as geographic location, the size of the company and the number of projects, the stage of development, and the technology employed.

## The Result

Mark Berenblut provided an expert report and deposition testimony. A motion to exclude the testimony of Frankel's expert was granted. In an order issued on 29 April 2010 in the District Court of Harris County, Texas, Judge R.K. Sandill confirmed Mark Berenblut's finding, stating that "the Plaintiff's expert's assumption as to the discount rate of 10% does not take into account specific facts of the case. It is not reasonably related to the facts at issue and leaves too wide an analytical gap to be useful to the jury." The case settled prior to trial for a relatively nominal amount with no admission of liability.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

## NERA Expert Involved

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