

**STATE OF NEW MEXICO
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED
AMENDMENT TO THE COMMISSION'S
RULES TO ADDRESS CHEMICAL DISCLOSURE AND
THE USE OF PERFLUOROALKYL AND
POLYFLUOROALKYL SUBSTANCES AND
IN OIL AND GAS EXTRACTION,
19.15.2, 19.15.7, 19.15.14, 19.15.16, AND 19.15.25 NMAC**

Case No. 23580

WILDEARTH GUARDIANS,

PETITIONER.

**EOG Resources, Inc., New Mexico Oil & Gas Association, and Nicholas Maxwell's
Joint Response in Opposition to WildEarth Guardians and New Energy Economy's Joint
Motion for Clarification**

The New Mexico Oil & Gas Association ("NMOGA") and EOG Resources, Inc. ("EOG"), through undersigned counsel, and Nicholas Maxwell ("Mr. Maxwell"), individually, submit this Joint Response in Opposition to the WildEarth Guardians ("WEG") and New Energy Economy's ("NEE") Joint Motion for Clarification ("Motion") filed on April 16, 2025, in the Oil Conservation Commission Case No. 23580. WEG/NEE's Motion should be denied because it is both improper procedurally and on the merits. *See* NMSA 1978, §70-2-25 1935. Indeed, WEG/NEE cited no authority for their Motion, which contravenes the express procedures in Section 70-2-25(A)-(B) that provide the exclusive process available for parties to request the OCC reconsider a decision or order in a proposed rulemaking. *See generally* Motion (citing no authority permitting such request); *see also* §70-2-25(A).

1. On February 14, 2025, the Hearing Officer entered her Order Setting Deadline for

Posthearing Submittals, whereby she invited, but did not mandate, all parties that participated in the rulemaking hearing in OCC Case No. 23580 to file, “submittals which may include closing legal argument, and/or proposed findings and conclusions . . . within each party’s discretion.” *See* February 14, 2025, Order Setting Deadline for Posthearing Submittals (“Order”), at pg. 1.

2. On February 19, 2025, WEG, NEE, the Oil Conservation Division (“OCD”), and NMOGA (collectively, “Parties”), Parties to the rulemaking in OCC Case No. 23580, separately provided their post-hearing findings of fact/conclusions of law, closing statements, and final redlines to the proposed regulatory modifications (“Redlined Regulations,” and collectively, “Post-Hearing Submittals”) on the proposed rulemaking to the OCC for consideration. *See* February 14, 2025, Order Setting Deadline for Posthearing Submittals, at pg. 1.

3. On March 11, 2025, in a public meeting, the OCC convened to deliberate on the respective Parties’ Post-Hearing Submittals and proposed rulemaking in OCC Case No. 23580. During this public deliberation, the OCC had all the Parties’ respective Post-Hearing Submittals before them. The OCC discussed, analyzed, and deliberated over the Post-Hearing Submittals from each of the Parties—including the specific modifications WEG and NEE proposed at 19.15.14.9 NMAC. As part of its deliberations, the OCC also duly considered the hearing transcript and evidence presented during the five-day technical hearing on the proposed rulemaking. *See* WEG/NEE Joint Post-Hearing Closing Brief for Adoption of Proposed Rule Amendments (“WEG/NEE Closing Brief”), at pgs. 37-38, ¶ b.

4. The Post-Hearing Submittals that WEG and NEE filed specifically included proposed modifications to extend 19.15.14.9 to all “downhole operations.” *See* WEG/NEE Closing Brief, at pgs. 37-38, ¶ b.

5. After having considered the Post-Hearing Submittals from all Parties—including

those from WEG/NEE and the OCD—and other evidence in the record, at the conclusion of the March 11, 2025, deliberations, the OCC decided to adopt the OCD’s Redlined Regulations for 19.15.14.9, which appeared in **OCD Exhibit 1**. The OCD’s Redlined Regulations at OCD Exhibit 1 extended the scope of the revised provisions to 19.15.14.9 only to hydraulic fracturing operations, not to all “downhole operations” as WEG/NEE proposed. *See* WEG/NEE Closing Brief, at pgs. 37-38, ¶ b.

6. On April 16, 2025, WEG/NEE filed their contested Motion requesting that the OCC reconsider the scope of the provisions at 19.15.14.9 NMAC that the OCC adopted during the March 11, 2025, deliberations. *See* Motion, at pgs. 3-4. Specifically, WEG/NEE’s Motion requested that the OCC reconsider its decision and order excluding “downhole operations” from the modified provisions at 19.15.14.9 and suggested that the OCC’s exclusion of “downhole operations” was an error. *See id.*, at pgs. 2-3, ¶ 5 (“[B]y adopting the OCD’s prehearing proposed redline, the [OCC], perhaps, unintentionally, also decided not to extend the PFA ban to all downhole operations”).

7. As of April 17, 2025, the OCC has not entered an order in Case No. 23580, as required for any request for rehearing/reconsideration or an appeal of an OCC decision. *See* §70-2-25(A).

Argument

Section 70-2-25(A) plainly provides, “within twenty days after entry of an order or decision of the [OCC], a party of record adversely affected may file with the [OCC] an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous.” *Id.*; *see also Pubco Petroleum Corp. v. Oil Conservation Comm’n*, 1965-NMSC-023 (“Subsection (a) [of 70-2-25]

specifically require[s] the filing of an application for rehearing setting forth the claimed invalidity of the order entered by the [OCC]. Its purpose is to afford the [OCC] an opportunity to reconsider and correct an erroneous decision”). Accordingly, pursuant to Section 70-2-25(A), the exclusive and proper procedure by which to request that the OCC reconsider “an order or decision” is to file an application for hearing within the statutorily allocated time after entry of the OCC’s final order or decision. *See* §70-2-25(A).

Here, rather than comply with the prescribed procedures in Section 70-2-25 to request that the OCC reconsider its March 11, 2025, decision adopting the modifications to 19.15.14.9 provided for in OCD Exhibit 1 and excluding “downhole operations,” WEG/NEE filed its Motion requesting reconsideration of the OCC’s “erroneous” exclusion of “downhole operations” from 19.15.14.9. *See* Motion, at pgs. 2-3, ¶ 5. Such Motion is procedurally improper for two reasons.

First, neither the Oil and Gas Act, Section 70-2-1 *et seq.*, nor its implementing regulations at 19.15.3 *et seq.* NMAC permit such Motion, particularly *after* the evidentiary record is closed and the OCC has fully deliberated and WEG/NEE cite to no such authority for their Motion. *See generally* Motion (Citing no authority for request).

Second, such Motion violates the *exclusive* procedure provided for in the Oil and Gas Act in Section 70-2-25(A), which plainly requires (1) that the OCC have entered a final order and decision on the modified provisions at 19.15.14.9 and (2) that once the OCC enters this final order, WEG/NEE file “an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous.” §70-2-25(A) (emphasis added). Consequently, WEG/NEE is required to wait until a final order from the OCC on 19.15.14.9 and then file an application seeking rehearing. *See id.*

WEG/NEE may not disregard the Section 70-2-25(A) procedures by masking their claim of OCC error in a “clarification.” *See* Motion, at pgs. 2-3, ¶ 5. The hearing officer should, accordingly, deny the Motion on the grounds that it is procedurally improper and a violation of Section 70-2-25(A).

In addition to being procedurally improper, WEG/NEE’s Motion is also improper on the merits. Not only is the term “downhole operations” ambiguous at best and its incorporation into the modified regulations unsupported by the record, but also during the deliberations, the OCC had the Parties’ respective Post-Hearing Submittals, transcript of the hearing, and evidence in the record before it, including WEG/NEE’s Closing Brief that discussed the scope of 19.15.14.9 at pgs. 37-38, paragraph b. *See supra* ¶¶ 3-5. The OCC, likewise, had the OCD’s Post-Hearing submittals before it, which included all of the OCD’s requested findings of fact/conclusions of law. *See id.*

With all the Post-Hearing Submittals, evidence, and a transcript of the November 2024, hearing before it, the OCC fully deliberated on the proposed modifications to 19.15.14.9 and declined to extend the modifications to all “downhole operations.” *See id.* If WEG/NEE now asserts that the OCC failed to consider or give sufficient weight to WEG/NEE’s Post-Hearing Submittals regarding evidence in the record in deciding to exclude “downhole operations” from the revised 19.15.14.9, such claim is one of error and Section 70-2-25(A) provides the procedures for WEG/NEE to seek a rehearing on this issue. *See* § 70-2-25(A); *accord Pubco Petroleum Corp.*, 1965-NMSC-023, ¶ 7, 399 P.2d 932 (“Subsection (a) [of 70-2-25] specifically require[s] the filing of an application for rehearing setting forth the claimed invalidity of the order entered by the [OCC]. Its purpose is to afford the [OCC] an opportunity to reconsider and

correct an erroneous decision”). The Motion, therefore, is also improper on the merits and should be denied.

Conclusion

WEG/NEE have the exclusive process—the procedures prescribed in 70-2-25(A)-(B)—available to them to request that the OCC have an “opportunity to reconsider and correct an erroneous decision.” *See id.* WEG/NEE may not disregard this process by masquerading a claim of error as a “clarification.” *See generally* Motion. Their Motion should, therefore, be denied.

WHEREFORE, EOG, NMOGA, and Mr. Maxwell respectfully requests that the Hearing Officer/OCC deny WEG/NEE’s Motion and for other such relief as the Hearing Officer/OCC deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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