STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, NON-STANDARD SPACING AND PRORATION UNIT, AND UNORTHODOX LOCATION LEA COUNTY, NEW MEXICO.
CASE NO. 16169

IN THE MATTER OF THE APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, NON-STANDARD SPACING AND PRORATION UNIT, AND UNORTHODOX LOCATION LEA COUNTY, NEW MEXICO.
CASE NO. 16170

IN THE MATTER OF THE APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, NON-STANDARD SPACING AND PRORATION UNIT, AND UNORTHODOX LOCATION LEA COUNTY, NEW MEXICO.
CASE NO. 16171

IN THE MATTER OF THE APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, NON-STANDARD SPACING AND PRORATION UNIT, AND UNORTHODOX LOCATION LEA COUNTY, NEW MEXICO.
CASE NO. 16172

IN THE MATTER OF THE APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, NON-STANDARD SPACING AND PRORATION UNIT, AND UNORTHODOX LOCATION LEA COUNTY, NEW MEXICO.
CASE NO. 16173

IN THE MATTER OF THE APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, NON-STANDARD SPACING AND PRORATION UNIT, AND UNORTHODOX LOCATION LEA COUNTY, NEW MEXICO.
CASE NO. 16174

CONSOLIDATED WITH DEVON ENERGY PRODUCTION COMPANY CASES Nos.

16099, 16100, 16101, 16102, 16103 and 16104.

REPLY TO DEVON ENERGY PRODUCTION COMPANY, L.P.'S RESPONSE TO PRIDE ENERGY COMPANY'S MOTION TO STRIKE EVIDENCE SUBMITTED WITH CLOSING ARGUMENT

For its reply to Devon Energy's response to Pride Energy's motion to strike, Pride Energy states:

A. The concept of closing argument does not need redefinition.

Devon argues that Pride Energy's cited case authorities do not apply because those cited cases are federal case citations that are not applicable to a state administrative proceeding, i.e., the Oil Conservation Division. Those cases define closing arguments and their scope. The hearing examiners in this case did not redefine a closing argument to allow submission of new rebuttal evidence or as an opportunity to cure a poorly prepared case. Pride Energy's motion to strike distinguished between those cases involving prosecutorial misconduct where strict adherence to the record was applied from more lenient administrative hearings. Nonetheless, the cited cases stand for the proposition that closing arguments should be based on the record. Had the Hearing Examiner requested proposed orders from the parties, findings would have had to be based on the record of the hearing, not on manufactured evidence based on afterthought following the hearing.

Secondly, Devon argues that because the rules of evidence do not apply in Oil Conservation Division hearings, a party at the conclusion of the case and the closing of evidence, may submit rebuttal evidence at any time. Rule 19.15.4.17 does not go that far. Although the rules of evidence in a non-jury trial do not apply, "guidance" as used in the rule would indicate that an adjudicatory hearing would follow non-jury trial guidelines so that fairness may be achieved. Blind siding a party with rebuttal evidence disguised as closing argument is totally inappropriate and improper.

B. The cases cited by Devon on the applicability of the rules of evidence are misplaced.

One of the cases cited by Devon, Archuleta v. Santa Fe Police Dept. ex rel. City of Santa Fe, 137 N.M. 161, 169, 108 P.3d 1019, 1027, 2005-NMSC-006 ¶ 21, interestingly relies on a 10th Circuit Court of Appeals case for the proposition that:

> The technical rules of evidence and procedure often do not apply in an administrative hearing. *See, e.g., Gallagher v. Nat'l Transp. Safety Bd.*, 953 F.2d 1214, 1218 (10th Cir.1992) (citing the Administrative Procedures Act, 5 U.S.C. § 556(d) (2000)); *see also* NMSA 1978, § 10–9–18(A), (C) (1999) (providing that the rules of evidence do not apply to the termination, demotion, or suspension of state employees under the Personnel Act); NMSA 1978, § 12–8–11(A) (1969) (relaxing the rules of evidence under the New Mexico APA).

The facts of Archuleta were that a hearing was held for the demotion of a police lieutenant to sergeant and the exclusion of evidence of the conduct in other disciplinary matters was the issue for relaxation of the rules of evidence. That case did not involve after the fact evidentiary submissions as in this case. It was a substantial evidence case based on the hearing evidence and whether the demotion was arbitrary and capricious.

The other cases cited by Devon do not involve supplementation of the record as Devon has done in its closing argument.

C. Conclusion.

Through this reply, Pride Energy simply requests that the Oil Conservation Division consider the record that the parties submitted at the June 12 hearing, and not evidence manufactured for rebuttal following the hearing. Fair play in this case demands that the new evidence submitted by Devon be disallowed and stricken from any consideration in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 29th day of August, 2018.

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