

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

APPLICATION OF OIL CONSERVATION DIVISION
TO ADOPT 19.15.27 NMAC AND D19.15.28
NMAC, AND TO AMEND 19.15.7 NMAC,
19.15.18 NMAC, AND 19.15.19 NMAC;
STATEWIDE

CASE NO. 21528

REPORTER'S VIRTUAL TRANSCRIPT OF PROCEEDINGS

DAY 2

January 5, 2021

8:30 a.m.

Hearing Officer Felicia Orth

Chairwoman Sandoval

Commissioner Engler

Commissioner Kessler

REPORTED BY: PAUL BACA, CCR #112
PAUL BACA COURT REPORTERS
500 4th Street, NW, Suite 105
Albuquerque, New Mexico 87102

1 Attorneys Present:

2 Eric Ames EMNRD

3 Michael Feldewert NMOGA

4 Adam Rankin NMOGA

5 Ari Biernoff Commission of Public Lands and others

6 Tannis Fox Climate Advocates and others

7 David Baake Climate Advocates and others

8 Elizabeth Paranhos Environmental Defense Fund

9 Chris Moander AG Office

10 Sally Malave AG Office

11 David Baake AG Office

12

13 Also Present:

14 Dylan Rose-Coss Tech Support

15 John Garcia Tech Support

16 Florene Davidson OCC Support

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1 HEARING OFFICER ORTH: What I'm about to
2 say is on the record if you would, please.

3 And, Dylan, if you would mute Mr. Baca
4 now.

5 So good morning, everyone.

6 My name is Felicia Orth. I'm the hearing
7 officer appointed by the Oil Conservation Commission
8 to conduct the hearing in this matter for the
9 application of the New Mexico Oil Conservation
10 Division to consider the proposed rules to regulate
11 the venting and flaring of natural gas from oil and
12 natural gas production and gathering facilities.

13 The case is docketed as case 21528.

14 The hearing is being conducted pursuant to
15 the commission's rule making regulation, Section
16 19.15.3 of the New Mexico Administrative Code, as
17 well as the Open Meetings Act, the State Rules Act,
18 and procedural orders entered by the commission
19 chair and this hearing officer.

20 These orders, along with all of the
21 documents in the rule making record, can be found on
22 the web page of the Energy, Minerals, and Natural
23 Resources Department, or EMNRD, specifically at the
24 Oil Conservation Division outreach and public
25 engagement page.

1 The hearing is being recorded
2 electronically and transcribed by Paul Baca Court
3 Reporters. A copy of the transcript will be posted
4 online when it is completed.

5 The division, obviously, is a party as a
6 petitioner to this matter. There are a number of
7 other parties. I won't go through all of that right
8 now, but you will find all of their prehearing
9 statements on the outreach page. And they will
10 begin presenting their cases at 1:00 this afternoon.

11 If you are joining us for this public
12 comment session, you already know how to arrange to
13 make public comment this morning.

14 In the event two minutes is not a
15 sufficient length of time to convey what you would
16 like the commission to consider, please submit
17 written comment.

18 The commission has asked that written
19 public comment be submitted by 5:00 p.m. on
20 January 8.

21 That comment will be submitted to Florene
22 Davidson. Her contact information is on the
23 outreach page.

24 In the event this hearing is interrupted
25 by an internet outage or by mischief, please try to

1 sign in again. Otherwise, go to the outreach page
2 for further instructions.

3 In the event of mischief, the technical
4 host today, Mr. Dylan Rose-Coss, will expel those
5 who are trying to disrupt the hearing or use foul
6 language, and that expulsion is likely to occur
7 without a warning.

8 We will begin with the first set of
9 commenters.

10 Let me note that we have the commission
11 chair with us. That is Adrienne Sandoval, who you
12 see on the screen, and Commissioner Kessler, Jordan
13 Kessler, also on the screen.

14 I will turn to the list of folks who have
15 scheduled their time slot for this morning, and I
16 will call on you in this order.

17 Carolyn Pruett, Stephen Schmidt, Ann
18 McCartney, Nicholas Knorr, Lucas Herndon, Barbara
19 Weather, Clara Sims.

20 Again, please try to keep your comments to
21 just two minutes. I will break in to let you know
22 when your two minutes have passed and ask you to
23 wrap up.

24 So, Ms. Pruett, I believe you are unmuted.

25

1 MS. PRUETT: Yes. Thank you so much for
2 the opportunity to speak this morning.

3 I want to say that I have an appointment
4 at 9:00. So as soon as I speak, I will have to log
5 off.

6 But I just want to say we applaud the
7 commissioners and Governor Grisham for the
8 opportunity in seeking input on the plan to create
9 regulations to reduce methane waste and pollution
10 from the oil and gas industry.

11 We know we have a waste and pollution
12 problem. We know that it costs our schools millions
13 in revenue. Approximately \$275 million worth of
14 natural gas is lost through venting, flaring and
15 leaks. And that costs our state about 40 million in
16 royalty and tax revenue that could fund public
17 education and other critical services.

18 We don't have any requirements, unlike oil
19 and gas states. I come from the East Coast, been
20 here about three years. And I was in Delaware,
21 close to Pennsylvania, and they have much -- many
22 more regulations than we do. And we don't have any
23 prohibiting methane waste and associated pollution
24 from escaping.

25 So it's not only a revenue problem, which

1 is a conservative argument, but it's also a health
2 problem and health threat to all New Mexicans.

3 And we're looking forward to seeing how
4 the commission will make changes.

5 And thank you so much for letting me
6 speak.

7 HEARING OFFICER ORTH: Thank you,
8 Ms. Pruett.

9 Stephen Schmidt?

10 Stephen Schmidt?

11 MR. ROSE-CROSS: I do not see Mr. Schmidt
12 in the attendee list. I have unmuted Caller
13 Number 3.

14 So, Mr. Schmidt, if you are on the phone
15 you can speak now. You should be unmuted.

16 HEARING OFFICER ORTH: In the event
17 Mr. Schmidt joins us later this morning, or during
18 any of the many slots we have reserved for public
19 comment, I'm happy to let him speak at that time.

20 Ann McCartney? I see Ann McCartney.

21 MS. McCARTNEY: Yes, I'm here.

22 HEARING OFFICER ORTH: Hello.

23 MS. McCARTNEY: Hi. So my name is Ann
24 McCartney, and I live in Los Lunas.

25 I'm a board member of New Mexico

1 Interfaith Power and Light. And I want to thank the
2 Oil Conservation Commission for this opportunity to
3 provide comment.

4 I've lived in New Mexico since 1977 and
5 have watched the weather patterns change, to the
6 point where we are more than ever in a mega drought.

7 We know that methane is a heavy greenhouse
8 gas that is a huge contributor to increasing
9 temperatures in New Mexico and across the US and
10 world.

11 Methane is responsible for 25 percent of
12 the greenhouse gas layer that we are dealing with
13 today.

14 It is our responsibility to take strong
15 action to reduce methane gas being released into our
16 atmosphere. The draft rules for methane emissions
17 get us part of the way, but they must be
18 strengthened.

19 First, the final rule needs to ban routine
20 venting and flaring, and only allow such venting and
21 flaring when necessary for health and safety.

22 And when venting and flaring is allowed,
23 it is important to require flaring over venting, to
24 reduce the amount of methane going into the
25 atmosphere.

1 Second, we need to require oil and gas
2 companies to capture 98 percent of methane emissions
3 for the year -- I'm sorry -- by the year 2026.

4 Third, strengthen state reporting and
5 public notice requirements, to improve transparency
6 and ensure accountability of oil and gas operations
7 here in the state.

8 I think it is a privilege for oil and gas
9 companies to be extracting our resources in
10 New Mexico, and they should be held to a high level
11 of accountability for that privilege.

12 And most importantly, we need to hold them
13 to a high standard to protect the health and safety
14 of New Mexicans and our neighbors across the globe.

15 Nearly 70 percent of oil and gas methane
16 pollution occurs through leaks. It is critical that
17 the New Mexico environment department adopt a rule
18 that holds polluters accountable and cuts emissions
19 across the oil and gas supply chain line.

20 NMED's draft rule exempts 95 percent of
21 wells from regulation across the state from
22 oversight, and basic leak detection and repair
23 requirements. That is unacceptable.

24 I'm asking the commission to make clear
25 that the agencies work in parallel to achieve

1 comprehensive rules that cut methane emissions. I
2 think this is critical for all of us, for our
3 health, for our economy, and for the world.

4 Thank you.

5 HEARING OFFICER ORTH: Thank you,
6 Ms. McCartney.

7 Nicholas Knorr?

8 MR. KNORR: Good morning. My name is
9 Nicholas Knorr, and I live in Santa Fe.

10 I want to thank the commission for their
11 work on reducing methane emissions and for the
12 opportunity to speak today about the draft rules.

13 The draft rules are an important and
14 welcome step to not allow continued emissions. They
15 also lack an effective framework for regulatory
16 supervision and enforcement.

17 Stronger rules are needed to achieve the
18 goals set by Governor Grisham and to protect public
19 health and the environment.

20 To achieve these goals the final rules
21 should require oil and gas companies to capture
22 98 percent of methane emissions by 2026.

23 Strengthen state reporting and public
24 notice requirements to improve transparency and
25 ensure accountability.

1 Ban routine venting and flaring, except
2 when necessary for health and safety, and require
3 flaring over venting, except when necessary for
4 health and safety.

5 The oil and gas industry might object to
6 the cost of implementing these rules; yet, the fact
7 is that the industry has long operated by
8 transferring these costs of production to the public
9 in the form of air and water pollution.

10 It's time to end such freeloading.

11 Thank you.

12 HEARING OFFICER ORTH: Thank you,
13 Mr. Knorr.

14 Next is Lucas Herndon.

15 Mr. Herndon?

16 MR. HERNDON: Yes. I am Lucas Herndon.
17 I'm the energy and policy director of Progress Now
18 New Mexico. Thank you for having me, and thank you
19 for holding these public meetings.

20 I -- you know, everything that has --
21 well, most everything that has been said, both this
22 morning and yesterday that I have heard, is in line
23 with my values and with what I wanted to come here
24 to ask.

25 So I'm going to switch it up a little bit

1 and just say what I think about the fact that -- I
2 have a daughter. And over the -- over the recent
3 break we played a lot of games. And one of the
4 things that makes games fun and fair for both
5 participants is that there are rules, and you have
6 to abide by those rules. And if you don't, then it
7 becomes a one-sided game.

8 And that's currently the way things are in
9 the state of New Mexico. We have an industry that
10 is not playing by fair rules when it comes to how
11 their industry is regulated and how the product that
12 they're trying to extract from us is -- is safely
13 handled to protect our communities, protect our
14 families, and protect our physical interest as
15 citizens.

16 So as I think about that, and as I think
17 about what role this commission has to play, and the
18 future of the state that I want to live in, I want
19 to ask that those making these decisions think about
20 the fact that having a rule in place, or regulations
21 in place that don't actually make significant
22 change, like the previous speaker was mentioning
23 about, exempting 95 percent of wells, what's the
24 point of having a rule if the rule doesn't make, you
25 know, a difference?

1 So I just urge the commission to listen to
2 all of these very well-spoken and well-thought-out
3 arguments that have come from the citizenry. It's
4 very clear what citizens of the state want. And
5 we're lucky that we have a governor and, you know,
6 appointed officials, that seem to be in line with
7 those values. We just need to make sure it gets
8 done.

9 So thank you for having me. And again,
10 thank you for having this commission for everybody.

11 HEARING OFFICER ORTH: Thank you,
12 Mr. Herndon.

13 Barbara Webber?

14 MS. WEBBER: Good morning, commissioners.
15 My name is Barbara Webber.

16 Can you hear me?

17 HEARING OFFICER ORTH: Yes, thank you.

18 (Discussion off the record.)

19 MS. WEBBER: Thank you.

20 Commissioners, my name is Barbara Webber.
21 I am the executive director of Health Action
22 New Mexico, and I thank you for this opportunity to
23 comment on these important rules.

24 It is an undeniable fact that New Mexico
25 air quality is deteriorating. The American Lung

1 Association, in its most recent report, reported
2 that five New Mexico counties, home to 97 percent of
3 the state's oil and gas, are all at risk or in
4 violation of the federal clean air standards.

5 An extensive body of scientific research,
6 including the EPA's own data, demonstrates a close
7 relationship between ozone exposure and respiratory
8 distress, heart problems, premature death, strokes,
9 and neurological effects.

10 In New Mexico, over 138,000 people live
11 within a half mile of the over 55,000 oil and gas
12 facilities, as do 99 schools and childcare centers.

13 Studies have found that living close to
14 oil and gas facilities increases the risk of
15 congenital birth defects, increases low weight in
16 preterm babies, and increases the lifetime risk of
17 cancer by eight times.

18 In New Mexico, our asthma rate is higher
19 than the national rate. The highest ER visits and
20 hospital admissions due to asthma are in the
21 southeastern part of the state.

22 Please enact rules without loopholes that
23 are enforceable and with strong oversight reporting
24 to the public and inspection.

25 The rules under discussion are not just

1 about waste mitigation; but, most importantly, about
2 protecting our most important resource, our people,
3 especially the health of our children, elders, and
4 communities of color.

5 Thank you.

6 HEARING OFFICER ORTH: Thank you,
7 Ms. Webber.

8 Next is Clara Sims.

9 Ms. Sims?

10 Clara Sims?

11 (Discussion off the record.)

12 HEARING OFFICER ORTH: Let me go back to
13 Stephen Schmidt.

14 Has Mr. Schmidt joined us?

15 Well, without Mr. Schmidt or Ms. Sims, we
16 have come to an end of the list of people requesting
17 an opportunity to speak in the 8:30 public comment
18 session.

19 No one signed up for the 9:30 or 10:30.
20 We do currently have a few folks in the 11:30 time
21 slot, which comes before, obviously, our 1:00 case.

22 I'll call one last time, before we adjourn
23 until 11:30.

24 Stephen Schmidt or Clara Sims?

25 Okay. Unless the commissioners want to

1 talk about something else, we can adjourn until
2 11:30.

3 Thank you very much.

4 (Discussion off the record.)

5 HEARING OFFICER ORTH: Ms. Sims, I'm not
6 sure if you can hear me.

7 Let me invite you to either put your
8 comments in writing to Florene Davidson. Or if you
9 can find a way to join us, for example at 11:30,
10 when we will reconvene and hopefully will be able to
11 figure out your audio issues.

12 So, Dylan, I am not sure if you could go
13 further with Ms. Sims after we adjourn here.

14 MR. ROSE-CROSS: Ms. Sims has indicated
15 she will submit her comments in writing.

16 HEARING OFFICER ORTH: Thank you very
17 much, Ms. Sims.

18 And thank you, Mr. Rose-Coss.

19 All right. Now we really will adjourn,
20 and we will reconvene at 11:30.

21 (A recess was taken from 9:00 a.m. to
22 11:31 a.m)

23 HEARING OFFICER ORTH: Good morning.

24 My name is Felicia Orth. I'm the hearing
25 officer appointed by the Oil Conservation Commission

1 to conduct a hearing in this matter related to rules
2 regulating the venting and flares of natural gas
3 from oil and natural gas production and gathering
4 facilities.

5 The docket in this case, 215288.

6 We are continuing this, which is the last
7 of the public comment sessions from yesterday and
8 today, which were entirely devoted to public
9 comment.

10 In the event that you know someone who was
11 not able to join us yesterday or today, please
12 direct them to the subsequent public comment
13 sessions that we have every day, which will end on
14 January 15, and will be continuing at the end of
15 each day.

16 Know that we will be primarily conducting
17 the technical case in this matter, which begins at
18 1:00 p.m. this afternoon.

19 And know that regardless of whether oral
20 public comment is offered, you still have a chance
21 to submit prepared written public comment. That
22 written public comment goes to the Oil Conservation
23 Division outreach and public engagement web page.

24 So having said that, we have just three
25 folks who signed up to offer public comment in this

1 session.

2 And I will call you in this order: Trish
3 Foschi, Greg Petty, and Dr. David Tsosie.

4 Is Ms. Foschi with us, Trish Foschi?

5 MS. FOSCHI: Yes, I am.

6 HEARING OFFICER ORTH: Thank you.

7 If you would, please go ahead and please
8 try to keep your comments to a few minutes -- two
9 minutes.

10 MS. FOSCHI: Thank you.

11 The biggest problem that I see in this
12 proposed bill is the possible exemptions for
13 marginal wells, because these wells appear to be the
14 largest sources of methane emissions.

15 Studies seem to vary greatly in estimating
16 the number of wells that would be exempted, from
17 about 70 to 95 percent. But it is clearly that the
18 majority of these wells that now exist would be
19 exempted.

20 It has also been determined that methane
21 leaks not vented and flaring are a greater problem,
22 and that these leaks are mostly due to faulty
23 equipment, equipment that has not been properly
24 maintained.

25 I believe that any fossil fuel company

1 doing business in this state -- and for that matter,
2 any company doing business in this state -- should
3 be required to maintain their equipment properly.
4 Poor maintenance has the potential to create other
5 problems, like explosions and employee injuries.

6 Companies should be required to clean up
7 existing wells before getting new permits, and they
8 should be required to have third-party verification.
9 This should not be voluntary.

10 There is also an environmental justice
11 issue here. The people of this state most impacted
12 are the native and rural populations, people who
13 have health issues caused by existing oil and gas
14 development, including increased asthma attacks,
15 cancer risks, and other things.

16 Keeping methane emissions uncontrolled
17 only makes their health issues worse.

18 Early in her tenure, Governor Michelle
19 Lujan Grisham issued an executive order directing
20 her administration to take action on climate change.
21 This bill should be rewritten to reflect that goal.

22 New Mexico can and should be leading the
23 nation on methane regulations and all other
24 pollution issues, in order to fight climate change
25 and protect community health.

1 Thank you for letting me make my comment.

2 HEARING OFFICER ORTH: Thank you very
3 much, Ms. Foschi.

4 Greg Petty?

5 MR. PETTY: Good morning. My name is Greg
6 Petty. I live in Albuquerque, New Mexico. And I
7 would like to thank all of the members of the
8 commission for allowing me to comment.

9 I'm a member of the generation that pushed
10 for the very first Earth Day, and I have remained
11 informed on many of the issues affecting the earth's
12 ecology since that time.

13 I now have three grandchildren, so I want
14 to leave them a better world. That's my whole
15 motivation for this meeting. I'm afraid about the
16 world that we're leaving them.

17 I support Governor Grisham's call for
18 vastly improved methane rules. I have a map to show
19 you. I'm sure you've probably all seen it. The
20 methane image map showing the San Juan area, and
21 also the Permian Basin.

22 And I'm sure you all know this also.
23 Methane is 84 times more potent than carbon dioxide.

24 So first of all, this is a health crisis
25 not only for New Mexico, but for the four states

1 around us: Texas, Colorado, Utah, and Arizona. And
2 it also vastly affects the Navajo, the first
3 American nations.

4 Secondly, it's a health crisis for all of
5 those, and it's a drastic climate change altering
6 situation for all four states and maybe, perhaps,
7 even Mexico.

8 Lastly, it's a wasted economic opportunity
9 for both the companies and lost state revenue.

10 On top of this situation, the leaks
11 went -- apparently, from what I can tell --
12 2 percent in 2019 to 5 percent in 2020. So we're
13 going the wrong way.

14 I would like the final rule to do the
15 following:

16 Ban routine venting, except when necessary
17 for health or safety.

18 Require all companies to capture
19 98 percent of methane emissions by -- the rule
20 states by the end of 2026. But I think five years
21 is too long, given that this is a crisis. So I
22 would -- I would suggest 2024. It gives all of
23 those companies three years to do what they should
24 have been doing all along.

25 Improve the state and industry reporting

1 to the public to provide transparency of problems
2 and progress, and most of all, accountability of
3 these companies.

4 Require all companies to comply with the
5 mandatory leak detection and repair. This means
6 closing the exemption that the previous speaker
7 spoke about, which could account for as much as
8 9- -- 95 percent of the wells escaping regulation.

9 I would like to reward responsible
10 operators who invest in these gas capturing and
11 reporting and maintenance rules by allowing them to
12 obtain new leases, rather than that denial of new
13 leases for those countries -- companies who do not
14 make the efforts.

15 So I just don't want them getting new
16 leases, when they've already proven to be
17 irresponsible.

18 The industry spokesmen will, as usual,
19 tell us that the rules take into account cost and
20 reporting categories with the same old line that it
21 will be too costly and you'll put us out of
22 business.

23 How many times have we heard that from
24 various industries?

25 We are not advocating that. We are

1 advocating responsible and safe rules for the
2 protection of our people and our environment.

3 Thank you.

4 HEARING OFFICER ORTH: Thank you very
5 much, Mr. Petty.

6 Dr. Tsosie?

7 MR. TSOSIE: Good morning. Can you hear
8 me?

9 HEARING OFFICER ORTH: Yes, I can. Thank
10 you.

11 MR. TSOSIE: Okay. Thank you.

12 I'd like to thank the commission for
13 giving me the opportunity to come before you and to
14 offer my position.

15 My name is David J. Tsosie. I have a
16 doctorate in education from the University of
17 Arizona. And I'm also a citizen of the Navajo
18 Nation. And I am a member of the Dine Hatathlie
19 Association. That's a spiritual organization here
20 on the Navajo Reservation.

21 I'm also a practicing healer and a Dine
22 Hat medicine man. I'm also an associate researcher
23 with the research of the University of Arizona.

24 I have authored many articles and done --
25 also heading up several research projects regarding

1 oil and gas impact on the Navajo communities.

2 I'm here today to voice my concern for the
3 lack of the will to address the Navajo peoples'
4 well-being, public health of people living in the
5 Four Corners area, and then also the draft of
6 New Mexico's OCC's venting and flaring proposed
7 rules to eliminate unnecessary methane waste.

8 I have witnessed many negative impacts of
9 oil and gas development on the health of the Navajo
10 people for decades, and witnessed generations
11 exposed to hundreds of chemical and pollutants
12 associated with venting and flaring, especially the
13 oil and gas development in the Four Corners region.

14 And with the pandemic on our reservation,
15 that really affects the health of the people who are
16 living and having health problems due to fracking
17 activities in the three chapters of the northern
18 Ariz- -- part of the Navajo Reservation.

19 I have -- I am currently a principal
20 investigator in studying the impact of fracking on
21 the Navajo people living in the eastern part of the
22 Navajo Reservation, and looking at specifically the
23 whole social structure and the spiritual connections
24 that they have with the environment.

25 And I have witnessed the increase effects

1 that it is has had on the people having problems
2 with respiratory problems -- asthma, bronchitis,
3 headache, and even the possibility of death,
4 eventually, leading to cancer. So it's a real
5 problem that I -- that I am witnessing.

6 And I would like to have the final rule.
7 It must include public and tribal communities' input
8 throughout.

9 HEARING OFFICER ORTH: Thank you,
10 Dr. Tsosie.

11 THE WITNESS: Can I continue?

12 HEARING OFFICER ORTH: Yes. I thought you
13 were finished.

14 MR. TSOSIE: The final rule must require
15 rules on venting and flaring to protect the culture
16 and well-being of the Navajo people, the health and
17 safety of all people living in the region, requiring
18 operators to immediately notify persons and
19 communities at risk when methane releases threaten
20 public health, safety, or the environment.

21 The final rule must require developing
22 safety standards by increasing the testing of all
23 chemicals at the drilling sites, and open reports to
24 the public for input, incorporate cultural links and
25 community-based studies and research findings into

1 safety standards, and requiring the operators to
2 immediately notify persons and communities at risk
3 when methane release threatens public health,
4 safety, or the environment, as well as all known
5 methane emissions that have primarily contributed to
6 the climate change.

7 And nearly 70 percent of the oil and gas
8 methane pollution in New Mexico occurs through
9 leaks.

10 Lastly, I recommend all private drillers
11 and companies to require to capture 98 percent of
12 their methane emission by 2026.

13 And these are the concerns that we have,
14 and the people that I associate with in the Northern
15 part of the reservation.

16 Again, I'd like to thank the commission
17 for giving me the opportunity to state my position.
18 Thank you.

19 HEARING OFFICER ORTH: Thank you,
20 Dr. Tsosie.

21 We have reached the end of the list of
22 people signing up for the 11:30 public comment
23 session.

24 We will begin the technical case at 1:00
25 this afternoon.

1 Let me ask if, by chance, there is anyone
2 present who was, perhaps, signed up for a comment
3 session yesterday or this morning, and was unable to
4 sign on earlier, and is now with us and just not
5 already made a comment.

6 If you would, please make yourself known
7 through the chat portion to Dylan Rose-Coss, our
8 technical person.

9 I'll wait a moment, in the event that
10 there is anyone communicating with Mr. Rose-Coss.

11 All right. In that event, let me ask if
12 the Commissioner -- Madam Chair or Commissioner
13 Kessler -- have any questions ahead of our 1:00
14 technical presentations this afternoon.

15 CHAIRWOMAN SANDOVAL: I do not. Thank
16 you.

17 COMMISSIONER KESSLER: No.

18 HEARING OFFICER ORTH: All right. Thank
19 you.

20 Thank you. And we will be back. We will
21 reconvene at 1:00 p.m.

22 I'll make another lengthy introductory set
23 of remarks. We will hear, presumably, opening
24 statements, at least from the petitioner, perhaps
25 some of the other parties, and then we will hear

1 from -- certainly the division's technical
2 witnesses.

3 So thank you all very much. We will
4 reconvene at 1:00.

5 CHAIRWOMAN SANDOVAL: Just a quick
6 question.

7 Are we doing all of the opening statements
8 first before we go into...

9 HEARING OFFICER ORTH: I'm sorry. I was
10 acknowledging the -- the question, not you.

11 So we leave that to the discretion of the
12 counsel. So certainly, Eric would be doing the
13 opening statement, because his witnesses are going
14 first.

15 The others, the other lawyers, would have
16 the choice of making their opening statements
17 immediately following Eric, or reserving -- it's
18 called reserving their opening statement for a time
19 that would immediately precede their presentation of
20 their witnesses.

21 So ask them what they want to do.

22 COMMISSIONER KESSLER: There's a pending
23 motion. Is that going to be addressed this
24 afternoon, or is that something that we are waiting
25 for?

1 HEARING OFFICER ORTH: Right. The
2 motion -- I believe you're talking about the motion
3 to exclude testimony around some of the Climate
4 Advocates' proposals, which would make the
5 proposed -- the original proposal.

6 The Climate Advocates and any other party
7 who wants to, has an opportunity to make a written
8 response to that motion. So I really don't think
9 we're going to be doing anything with that this
10 afternoon, other than potentially identifying a
11 deadline through those written responses.

12 COMMISSIONER KESSLER: Thank you.

13 HEARING OFFICER ORTH: Any other
14 questions?

15 Thank you.

16 I thought we had some really excellent
17 public comment over the last day and a half. I'm
18 looking forward to the technical case.

19 We will see you at 1:00.

20 CHAIRWOMAN SANDOVAL: Thanks.

21 (A recess was taken from 11:49 a.m. to
22 1:10 p.m.)

23 HEARING OFFICER ORTH: All right. Let us
24 begin.

25 Good afternoon. My name is Felicia Orth.

1 I'm a hearing officer appointed by the Oil
2 Conservation Commission to conduct a hearing in the
3 matter of the application of the New Mexico Oil
4 Conservation Division, to consider proposed rules to
5 regulate the venting and flaring of natural gas from
6 oil and natural gas production and gathering
7 facilities.

8 The case was docketed as Case
9 Number 21528.

10 The hearing will be conducted pursuant to
11 the commission's rule making regulation at Section
12 19.15.3 of the New Mexico Administrative Code, as
13 well as the Open Meetings Act, the State Rules Act,
14 and the procedural orders entered by the commission
15 chair and this hearing officer.

16 These orders, along with all documents in
17 the rule making record, can be found on the web page
18 of the Energy, Minerals, and Natural Resources
19 Department, or EMNRD, specifically at the Oil
20 Conservation Division outreach and public engagement
21 web page.

22 If you are on the OCD imaging web page,
23 you may search for Case Number 21528.

24 This hearing is being recorded
25 electronically and transcribed by Paul Baca, from

1 Paul Baca Court Reporters. A copy of the transcript
2 will be posted online when it is completed.

3 The petitioner in this matter is the Oil
4 Conservation Division.

5 Other parties from which timely prehearing
6 statements were received include the New Mexico Oil
7 and Gas Association, or NMOGA, the state land office
8 and commissioner of public lands, a collection of
9 environmental nonprofits known collectively as the
10 Climate Advocates, and the Environmental Defense
11 Fund.

12 The Climate Advocates include the Center
13 for Civic Policy, Conservation Voters New Mexico,
14 Dine CARE, Earthworks, the Natural Resources Defense
15 Council, San Juan Citizens Alliance, Sierra Club,
16 and 350 New Mexico.

17 The petitioner and other parties will
18 begin presenting their witnesses tomorrow -- I'm
19 sorry -- today, this afternoon. Yesterday and this
20 morning were reserved for public comment.

21 There remain a number of opportunities to
22 offer public comment on the proposed rules before
23 the commission. You may employ one or both of two
24 different methods.

25 One is to offer verbal comment. We do

1 that by signing up for a two-minute slot in one of
2 the many sessions available between now and
3 January 15. To sign up you e-mail Florene Davidson,
4 who will schedule you in your preferred time slot,
5 as long as it is available.

6 The slots remaining in this hearing are
7 typically first thing in the morning, 8:30 in the
8 morning each day, and 4:30 to 5:00 each day between
9 now and January 15.

10 Ms. Davidson's contact information can be
11 found on the outreach of public engagement web page.

12 You may also, either in lieu of verbal
13 comment or in addition to verbal comment, put your
14 comments in writing, send them to Florene Davidson
15 as well.

16 The commission has asked that written
17 public comment be submitted before 5:00 p.m. on
18 January 8.

19 Just to be clear, no public comment will
20 be accepted through the Webex chat function. The
21 settings on the chat function are such, I believe,
22 that you may send messages only to the host. Our
23 host will be a rotating member of division staff
24 people who are technologically capable.

25 Our host today is Dylan Rose-Coss.

1 In the event you have trouble logging in
2 at all, please contact John Garcia. His number is
3 505-490-0957. That's in the event that you or a
4 friend cannot get in at all.

5 CHAIRWOMAN SANDOVAL: Ms. Orth?

6 HEARING OFFICER ORTH: Yes.

7 CHAIRWOMAN SANDOVAL: Or maybe Sally, it
8 looks like you're on. Are you taking the place for
9 Chris today?

10 MS. MALAVE: Chair Sandoval, I'm here for
11 most of the afternoon. Chris is attending another
12 client meeting. I sent you a message --

13 CHAIRWOMAN SANDOVAL: All right.

14 MS. MALAVE: -- to that effect.

15 But yeah, I'll be on so long as Chris is
16 attending another meeting.

17 CHAIRWOMAN SANDOVAL: Okay. Great. I
18 just wanted to confirm before we got going.

19 HEARING OFFICER ORTH: Madam Chair, while
20 you were speaking with Ms. Malave, Mr. Coss sent me
21 a message to the effect that some folks were having
22 difficulty hearing me. And I'm wondering if, in
23 fact, that is an issue.

24 CHAIRWOMAN SANDOVAL: I can hear you
25 better now than earlier. You are coming in clearer

1 after you did the adjustment.

2 I can hear you just fine.

3 HEARING OFFICER ORTH: All right.

4 (Discussion off the record.)

5 HEARING OFFICER ORTH: All right. So,

6 Mr. Coss, I have been hearing some noises, some

7 ambient noise from Mr. Baca's connection.

8 Would you be able to mute Mr. Baca?

9 And I will make...

10 CHAIRWOMAN SANDOVAL: I can hear you just

11 fine. Can any of the other parties not hear

12 Ms. Orth or Commissioner Kessler?

13 Can you hear her?

14 COMMISSIONER KESSLER: I hear Ms. Orth

15 very clear.

16 HEARING OFFICER ORTH: Thank you,

17 Commissioner Kessler.

18 All right. I'm going to go back to my

19 opening remarks at this point.

20 In the event this hearing is interrupted
21 by an internet outage or by mischief, please try to
22 sign back in. And if that does not work, check your
23 e-mail or the OCD outreach web page for further
24 instructions.

25 Know that if our technical host has heard

1 an attempt to disrupt the hearing or use vile
2 language, that person will be expelled, and likely
3 expelled without a warning from the hearing officer.

4 So I'd like to begin with the introduction
5 of the commissioners we have on the line today.

6 Madam Chair?

7 CHAIRWOMAN SANDOVAL: Thank you, Ms. Orth.
8 I am Adrienne Sandoval. I'm the chair of the Oil
9 Conservation Commission and director of the Oil
10 Conservation Division.

11 HEARING OFFICER ORTH: Thank you.

12 And, Commissioner Kessler?

13 COMMISSIONER KESSLER: Good afternoon. My
14 name is Jordan Kessler.

15 (Discussion off the record.)

16 COMMISSIONER KESSLER: Good afternoon. My
17 name is Jordan Kessler. I'm with the New Mexico
18 State Environment Fund, and I'm the designee of
19 Commissioner Garcia Richard.

20 HEARING OFFICER ORTH: All right. Thank
21 you, Mr. Baca.

22 Mr. Rose-Coss, if you would mute Mr. Baca
23 again.

24 Let's turn, then, to the appearances by
25 counsel for each of the technical parties.

1 We do have an order that was agreed upon
2 by the parties in a previous virtual session, and I
3 will call on you in that order, which will apply to
4 direct presentations, cross-examination, and
5 rebuttal, if rebuttal is given.

6 So let's start with you, Mr. Ames.

7 MR. AMES: Ms. Orth, I apologize. I had
8 to step away from my laptop for a moment, and I did
9 not hear what you are calling on me for. My
10 apologies.

11 HEARING OFFICER ORTH: No, that's all
12 right.

13 We have gotten to the part of the
14 introduction where I'm calling for appearances.

15 MR. AMES: Oh, I can do that. Thank you.

16 Good morning, Madam Hearing officer, Madam
17 Chair, members of the commission, counsel for other
18 parties.

19 My name is Eric Ames. I'm an attorney in
20 the office of general counsel for the Energy,
21 Minerals, and Natural Resources Department,
22 appearing today on behalf of the Oil Conservation
23 Division.

24 HEARING OFFICER ORTH: Thank you.

25 Mr. Feldewert?

1 MR. FELDEWERT: Good afternoon,
2 Madam Examiner, Madam Chair, members of the
3 commission.

4 Michael Feldewert and Adam Rankin,
5 Santa Fe office of Holland and Hart. We are
6 appearing on behalf of the New Mexico Oil and Gas
7 Association.

8 HEARING OFFICER ORTH: Thank you.
9 Mr. Biernoff?

10 MR. BIERNOFF: Good afternoon,
11 Madam Hearing Officer, and commissioners. This is
12 Ari Biernoff, on behalf of the Commission of Public
13 Lands, Stephanie Garcia Richard, and the New Mexico
14 State Land Office.

15 HEARING OFFICER ORTH: Thank you.
16 Ms. Fox?

17 MS. FOX: I'm Tannis Fox, with Western
18 Environmental Law Center. Here with me is David
19 Baake.

20 And we are representing Climate Advocates.
21 And unless anybody objects, I won't repeat the eight
22 names the third time.

23 HEARING OFFICER ORTH: All right. Thank
24 you, Ms. Fox.

25 And, Ms. Paranhos.

1 MS. PARANHOS: Good afternoon. I am land
2 officer and commissioner and counsel. My name is
3 Elizabeth Paranhos, and I represent the
4 Environmental Defense Fund.

5 HEARING OFFICER ORTH: Thank you all very
6 much.

7 So we have, again, a number of
8 witnesses -- a couple dozen witnesses -- that we
9 will be hearing from, from each of the parties who
10 filed prehearing statements with a summary of their
11 testimony and all of the exhibits, including a few
12 demonstrative aids.

13 You can find all of that, again, on the
14 outreach web page.

15 Let me ask counsel, though, if there are
16 preliminary matters that we can discuss before I
17 invite Mr. Ames to make his opening statement.

18 Yes, Ms. Fox?

19 MS. FOX: Thank you, Madam Hearing
20 Officer.

21 NMOGA has filed a motion to exclude some
22 of our evidence, so we'd like to just set the date
23 for that response. We're going to suggest next
24 Monday, because we've been very busily preparing for
25 this hearing. We're also going to be working at

1 night on this hearing, and so we're requesting that
2 we be able to file a response next Monday.

3 HEARING OFFICER ORTH: Okay.

4 Any other comments?

5 MS. PARANHOS: Thanks, Madam Hearing
6 Officer.

7 I guess my understanding of the most
8 recent order that you issued, it seems to indicate
9 that response as to motions would be after the close
10 of the hearing, which would...

11 HEARING OFFICER ORTH: No.

12 MS. PARANHOS: Okay. Maybe I
13 misunderstood. Okay.

14 I would definitely concur with Ms. Fox
15 that additional time would be helpful, since we're
16 all busy working on this, prepping our witnesses,
17 and attending this hearing, which does take up every
18 day this week as well as next.

19 HEARING OFFICER ORTH: All right.

20 Other comments?

21 MR. FELDEWERT: Madam Hearing Officer,
22 Michael Feldewert.

23 I have no problem with the filing of a
24 response next Monday. I think that would afford the
25 commission time to address the motion before the

1 opportunity for the presentation of the evidence
2 that's at issue is presented, because -- well, it's
3 nothing more than a guess. My -- I anticipate that
4 the division's witnesses and our witnesses will take
5 us into at least Monday.

6 HEARING OFFICER ORTH: I agree with you,
7 Mr. Feldewert.

8 Any other observations?

9 Okay. In that case, the deadline for
10 responses to NMOGA regarding the evidence and
11 testimony that would be put on by Climate Advocates
12 and the Environmental Defense Fund will be next
13 Monday.

14 And we will, after the responses are
15 received, set aside a time to discuss that motion,
16 which will be both after the responses are received
17 and before the challenged evidence is presented.

18 MS. FOX: Thank you, Madam Hearing
19 Officer, and thank you, Counsel for NMOGA.

20 HEARING OFFICER ORTH: All right.

21 Is there -- actually, I do have one matter
22 to address with counsel before we begin. But let me
23 ask if there are any other preliminary matters you
24 would raise.

25 MR. AMES: Yes, Madam Chair. I do have

1 one procedural issue to raise.

2 Would you like me to go first?

3 HEARING OFFICER ORTH: Yes, please.

4 MR. AMES: Thank you.

5 It's my understanding when OCD calls its
6 first witness, the chair will admit that witness in
7 order to be a panelist and present their testimony
8 on screen.

9 We -- because of the -- the way that this
10 is working, we will need at least one other witness
11 to be admitted, so that they can assist in the
12 presentation of the materials, and at some point
13 along the way be allowed to share screens so that we
14 can switch from one document to another in a
15 relatively smooth and efficient manner.

16 And I believe the other person will be --
17 well, I'll confirm who it is. But for the purposes
18 of Ms. Polak's testimony, who will be possibly
19 proceeding first, I do not believe we will need a
20 second.

21 But at the point we reach the next
22 witness, we will. So I will confirm who it is, and
23 if we can ensure that that happens, I would
24 appreciate it.

25 HEARING OFFICER ORTH: Yes.

1 Mr. Rose-Coss is the one who would be
2 directing that request to. So if you would please
3 bring it up at the right time.

4 MR. ROSE-CROSS: Ms. Polak has been made a
5 panelist. She should be able to speak now.

6 HEARING OFFICER ORTH: All right. He's
7 raising another issue, which is for the second
8 witness, he would like both the second witness and
9 another person made panelists, but we are not there
10 yet.

11 All right.

12 Any other preliminary issues?

13 No?

14 So the one I have is currently, as I've
15 mentioned just a bit ago, we do have available
16 public comment sessions between 8:30 and 9:00 and
17 4:30 and 5:00 each day between now and January 15.

18 I'm, frankly, loathe to waste that time --
19 or let me put it this way -- not make use of that
20 time if, in fact, the sign ups for those public
21 comment sessions are slow.

22 So for example, although we had a couple
23 of time slots in the last day and a half that were
24 full, most of them were not. And I would like to
25 make use of that time if we can.

1 So my proposal would be that "we" --
2 meaning Florene Davidson and I -- let counsel know
3 whether there are any sign ups and how many there
4 are, and that we be flexible enough to make use of
5 that time, if we can.

6 Are there objections to that?

7 MR. AMES: Ms. Orth, OCD has no objection.
8 I do have a question, however.

9 Does -- does your plan apply to the next
10 morning, the first half hour of the next morning as
11 well, or is it just the afternoon of the day where
12 we have begun?

13 HEARING OFFICER ORTH: So as I understand
14 it, Ms. Davidson would be able to tell us at the end
15 of this afternoon whether there are any sign ups for
16 the 8:30 to 9:00 session in the morning.

17 I see Madam Chair, there, nodding her
18 agreement.

19 So what I'd like to do then is, before we
20 end today, check with Florene to see if we have any
21 sign ups for the morning, and begin to start at
22 8:30 if we don't. And if we only have one or two,
23 then shortly after 8:30.

24 Any objections or questions about that?

25 MR. ROSE-CROSS: As it stands, there are

1 six people scheduled to speak tomorrow morning at
2 8:30.

3 HEARING OFFICER ORTH: Ah, okay. All
4 right. Thank you for that, Mr. Coss.

5 In that case, I think tomorrow we will
6 start at -- we will start at 9:00, in that case.

7 I would just like to make that decision on
8 a day-to-day basis. Again, just because I'd like to
9 maximize the use of the time we have together.

10 All right. If I don't hear any -- any of
11 the parties speak up with additional preliminary
12 matters, I will invite Mr. Ames to make his opening
13 statement.

14 And following his opening statement, I
15 will ask each of the other parties whether they
16 would like to make their opening statements this
17 afternoon or to reserve them for their own
18 presentation.

19 So -- oh, Ms. Fox?

20 MS. FOX: Thank you, Madam Hearing
21 Officer.

22 Just a matter of video etiquette, and how
23 closely should we hew to the direction from our last
24 meeting, that we should turn off both our video and
25 mics if we're not speaking?

1 HEARING OFFICER ORTH: So certainly, you
2 can turn off your mic if you're not speaking. I
3 think that's absolutely something we are going to
4 need to all remember for the next two weeks.

5 CHAIRWOMAN SANDOVAL: I think it's
6 important too, to turn off the video, so we don't
7 overwhelm people's bandwidth.

8 But if you are speaking, that -- that was
9 the intent of that, because the more videos that are
10 on, sometimes the more sluggish it can be.

11 So I think it would be helpful if the
12 videos are off, if you are not speaking. But if
13 your party is going, presenting witnesses,
14 et cetera, definitely I think have the videos on.

15 HEARING OFFICER ORTH: Thank you, Madam
16 Chair.

17 Any other questions or comments before we
18 begin with Mr. Ames' opening statement?

19 All right. If you would please, Mr. Ames.

20 MR. AMES: Thank you, Madam Chair -- Madam
21 Hearing Officer -- excuse me -- of the commission.

22 OPENING STATEMENT

23 BY MR. AMES:

24 Eric Ames, for the Oil Conservation
25 Division.

1 Today, OCD proposes rules to regulate
2 venting and flaring from oil and gas in the oil and
3 gas industry in New Mexico.

4 OCD's proposed rules respond to Governor
5 Lujan Grisham's executive order to reduce waste of
6 natural gas.

7 This commission is authorized to adopt the
8 rules proposed today by the Oil and Gas Act, which
9 establishes this commission's purpose and duty to
10 reduce waste and protect correlative rights and
11 protect the environment and public health.

12 With me today are four witnesses for OCD:
13 Ms. Tiffany Polak, deputy director of OCD;
14 Mr. Brandon Powell, the engineering Bureau Chief;
15 Mr. Matt Lepore, the principal of Insight Energy
16 Law, and former general counsel and director of the
17 Colorado Oil and Gas Commission; and Jim Bolander, a
18 registered professional engineer with years of
19 experience in the oil and gas industry, including
20 vice president of resource development, health,
21 safety, and environment and chief operations
22 engineer.

23 I'd like to begin by reviewing the
24 executive order, and this commission's statutory
25 authority to adopt the rules, and then describe the

1 rules, including where the parties appear to agree
2 and disagree.

3 As you will hear from our witnesses today,
4 in January of 2019, the governor signed Executive
5 Order 212003.

6 That order set forth a number of actions
7 for state government to take to address climate
8 change and energy waste.

9 Most relevant to us here today, the
10 Energy, Minerals, and Natural Resources Department
11 has directed involved statewide enforceable rules to
12 reduce the waste of methane, the primary component
13 of natural gas, in the oil and gas industry.

14 The order directed the department to
15 develop rules that meet four principles:

16 Use the best available science, use
17 creative engineering and technological solutions,
18 engage stakeholders and communities, and that can be
19 meaningfully enforced.

20 OCD believes that the rules proposed here
21 today satisfy these principles. They rely on
22 performance standards, regulations. And in that
23 sense, they establish expectations and allow the
24 creative and innovative engineers of the oil and gas
25 industry to find the best solutions.

1 OCD consulted broadly with stakeholders
2 and communities. And we have continued, right up to
3 now, to talk with the industry organization, any of
4 the groups, looking for ways to address their
5 concerns and look for middle ground.

6 And finally, the rules spell out clearly
7 the consequences for violation, and clearly
8 establish the division's ability to meaningful
9 enforcement action.

10 With respect to statutory authority, the
11 OCC has both the duty and the authority to prevent
12 waste. As the parties previously explained to the
13 commission during a motion hearing on December 30,
14 Section 702 of the Oil and Gas Act expressly states
15 that the commission is, quote, empowered, and it is
16 its duty to prevent waste prohibited by this act and
17 to protect correlative rights.

18 That same section also expressly
19 authorizes this commission to, quote, make and
20 enforce rules, regulations and orders, and do
21 whatever may be reasonably necessary to carry out
22 the purposes of this act, whether or not indicated
23 or specified in any section thereof.

24 Now, The Courts will preserve whatever
25 rules adopted by this commission are valid. If this

1 commission finds that a rule is more likely than not
2 to be reasonably necessary to prevent waste, the
3 Courts will uphold it.

4 The real issue now is: What does venting
5 and flaring -- what aspect of venting and flaring
6 constitutes waste?

7 The act and the commission rules define
8 waste very broadly as excessive or unnecessary loss
9 of natural gas without beneficial use.

10 And it expressly includes the loss and
11 destruction of natural gas without beneficial use
12 resulting from the manner of operating and producing
13 a well.

14 The New Mexico Oil and Gas Association, or
15 NMOGA, filed their prehearing statement on
16 December 17 and made several legal arguments. And
17 this is the division's first opportunity to respond,
18 and I will do so briefly.

19 That motion, first of all, argues that the
20 division's statement in the rule that all venting
21 and flaring is waste is not consistent with the
22 definition of waste in the statute or in OCC rules.

23 The division recognizes that its original
24 statement may have been broader than intended, and
25 it has proposed to modify that language to be

1 consistent with the definition of waste already in
2 the commission rules.

3 That said, the division believes that
4 NMOGA goes too far in its argument, when it claims
5 that the act allows venting and flaring for, quote,
6 efficient and effective operations, and that it is
7 not excessive under, quote, the prudent operator
8 standard, end quote.

9 Nothing in the act says that venting from
10 low-pressure equipment is allowed. Nothing in the
11 act exempts venting from low-pressure equipment from
12 the definition of waste.

13 So why does NMOGA want to read these
14 phrases into the statutory definition so precisely?
15 So it can get low-pressure equipment without having
16 to count those volumes as waste.

17 Now, the division believes that the
18 situation is more nuanced than NMOGA has portrayed
19 here.

20 Venting gas from some low-pressure
21 equipment is waste, and some may not be.

22 If gas can be captured in solo, venting
23 that gas is not necessary, is excessive, and is not
24 beneficial use.

25 From a legal perspective, it is waste.

1 Operators should not be allowed to waste
2 gas simply because it is, quote, more efficient or
3 effective, or to be clear, because it costs more to
4 install additional or better equipment.

5 NMOGA also argues that the commission
6 cannot prioritize flaring over venting.

7 This also is not true. As you will hear
8 from our witnesses, Section 72.12.B21 and 22,
9 expressly authorizes this commission to regulate the
10 disposition of nondomestic waste from the
11 exploration, development, production, storage,
12 transport, and treatment of oil and gas to, quote,
13 protect public health and the environment, unquote.

14 If the OCC declares that certain venting
15 and flaring of natural gas is waste, it can
16 establish a preference for flaring over venting, to
17 protect public health and the environment.

18 Finally, what NMOGA contends is that the
19 division's proposed rules violate its commitment to
20 correlate with the environment department.

21 And NMOGA, in this context, specifically
22 references the pressure equipment, AVO inspections,
23 and reporting.

24 The division has been very careful to stay
25 in its statutory lane, which is to prevent waste and

1 protect public health and the environment. It has
2 worked closely with the department of environment to
3 ensure that its rules are coordinated to the extent
4 possible.

5 The environment department hasn't claimed
6 that OCD is stepping on its toes. In fact, it's my
7 understanding that Ms. Ely, the division director,
8 appeared yesterday and testified that the department
9 supports the division's proposed rules.

10 It is also worth noting that the division
11 can only go so far in coordinating with the
12 environment department.

13 The division's rules are being heard
14 today.

15 The environment department won't go to
16 hearing on its rules for months.

17 If NMOGA wants to make an argument about
18 coordination, it needs to make it to the environment
19 department, not to this commission.

20 Thank you for that.

21 Let me move on to the rules themselves.

22 Today the commission proposes two new
23 rules and revisions to three others.

24 The new rules, which are the primary focus
25 of this hearing, are part 27, which establishes

1 requirements for the operators of production
2 facilities to reduce the venting and flaring of
3 natural gas.

4 And part 28, which establishes
5 requirements for the operators of natural gas
6 gathering systems, including gathering pipelines, to
7 reduce the venting and flaring of natural gas.

8 OCD also proposes revisions to three other
9 rules, 7, 18, and 19, which are necessary in order
10 to accommodate the new parts 27 and 28.

11 Now, I would like to take a moment to
12 orient the commissioners to the versions of part 27
13 and 28 that the division will be testifying
14 regarding today.

15 In October, the division submitted
16 original proposals for parts 27 and 28 with its
17 application.

18 On December 17, the division submitted
19 revised proposals with its prehearing statement.

20 Also on December 17, other parties
21 submitted proposed changes to the department for the
22 division's proposed rules.

23 The division has closely reviewed those
24 proposed changes and agrees with some of them; and,
25 therefore, on December 30, the division filed

1 revised versions of parts 27 and 28, and those are
2 labeled OCD Exhibits 2A and 3A.

3 Those exhibits are the primary focus of
4 our testimony today.

5 Now since then, the division has filed a
6 notice of errata to correct a few errors in the
7 Exhibits 2A and 3A.

8 And in addition, we will propose a few
9 more changes to the language regarding the stripper
10 wells, which we believe will result in better
11 control of waste.

12 Those changes are reflected, in part, in
13 our revised PowerPoint, which the division filed
14 last night. And that revised PowerPoint is labeled
15 Exhibit 4A.

16 And as inevitably happens in proceedings
17 like this, I've discovered a few more edits that
18 need to be made, we will describe those in the
19 testimony.

20 To help the commission keep track of all
21 of these changes moving forward, the division's
22 provided Exhibits 2B and 3B, which are clean
23 versions of the proposed changes in Exhibits 2A and
24 3A.

25 So if you want to mark those up as we move

1 along, that may help you all keep track of the
2 various proposals of the parties and where agreement
3 is being reached.

4 So I'd like to give now a very brief
5 outline of how the proposed rules in parts 27 and 28
6 work.

7 First, there is the overall natural gas
8 capture requirement.

9 Operators must capture 98 percent of all
10 their produced gas by 2026. Operators will have
11 five years to achieve this level of control, and
12 they must do it in annual increments over that
13 five-year period.

14 Second, operators must prepare natural gas
15 management plans containing very specific
16 information so that they can evaluate their options
17 for achieving compliance with this 98 percent
18 capture requirement.

19 Third, the rules impose a general duty to
20 maximize the recovery of natural gas. And in
21 connection with that, also impose a general
22 prohibition on venting and flaring that constitutes
23 waste, but with clearly-defined exceptions.

24 It is important to know what is not
25 allowed by any of these exceptions.

1 Routine flaring, which includes flaring
2 due to the lack of pipeline capacity.

3 In addition, the rules expressed a clear
4 preference for flaring over venting, except when
5 venting -- excuse me -- except when flaring is
6 technically infeasible or poses a risk to safe
7 operations or personnel.

8 The rules impose some performance
9 standards for certain types of equipment. Flares
10 and storage tanks specifically require operators to
11 report their venting and flaring in different
12 categories based on metering. Or if metering is not
13 available, on estimation methods that must be
14 independently verifiable, and also require operators
15 to account, using very specific methods, how they
16 are complying with the gas capture requirements.

17 Finally, OCD can require a third-party
18 verification of both the reporting and the
19 accounting, if necessary, to confirm the data that's
20 being provided.

21 Now there's general agreement, while I
22 think there is one more thing to mention. That is
23 the meaningful enforcement and compliance measures
24 built into this rule.

25 If an operator is out of compliance, it

1 must submit a plan -- excuse me -- it must submit a
2 plan, showing how it will fix the problem.

3 If OCD is not satisfied with that plan,
4 the operator cannot spud any new wells until the
5 problem is fixed.

6 OCD can also deny, or conditionally
7 approve APDs, and has and retains its full range of
8 enforcement to rules, including shutting in wells,
9 revoking the authority to transport, and assessing
10 civil penalties for violations.

11 Now while there is general agreement to
12 many of the provisions, or appears to be agreement
13 to many of the provisions in these rules, there's
14 still areas where the parties disagree.

15 And for the OCC's convenience, I would
16 like to give a quick roadmap of about a half dozen
17 issues where we think there are areas of -- of
18 disagreement still.

19 The first is stripper wells. The OCD has
20 proposed less restrictive -- a less restrictive set
21 of rules for stripper wells. Mainly, centering
22 around flares, AVO inspections, and metering.

23 As you will hear our witnesses testify, we
24 believe that some regulation is needed for these
25 stripper wells, given the number of wells and the

1 general condition of these wells. For instance,
2 their age, primarily. But that too much regulation
3 may render these wells economically inviable.

4 The parties disagree about when flares
5 must be upgraded and how many AVOs should be
6 conducted.

7 The second area of disagreement involves
8 low-pressure equipment. OCD will testify that it
9 has proposed rules to require operators to capture
10 gas, when technically feasible, to operate a
11 separator, and not before, because of safety
12 concerns that it has.

13 It appears, from the filings, that NMOGA
14 supports this proposal and the environmental groups
15 would like to terminate.

16 The fourth issue is flares. OCD proposes
17 that new flares be equipped with auto igniters or
18 continuous pilots, and be designed and operated for
19 complete and continuous combustion.

20 NMOGA proposes a standard of proper
21 combustion, and the environmental groups appear to
22 want automatic igniters on all flares, and that all
23 flares meet a 98 percent destruction efficiency.

24 Fifth is reporting categories. The
25 division has proposed reporting in 12 categories.

1 NMOGA wants to eliminate six of those
2 categories, mostly from low-pressure equipment.

3 The environmental groups want to add a
4 category, control storage tanks, and expand another
5 involving downhole maintenance.

6 And then finally, with respect to
7 compliance tools, the division proposes to deny or
8 conditionally approve APDs to help operators not
9 meeting their capture requirement, and to prohibit
10 operators from spudding wells until operators are
11 back into compliance.

12 It's our understanding NMOGA supports
13 these proposals. But the environmental groups would
14 want to compel OCD to deny APDs to operators who are
15 not in compliance.

16 So those are the six big areas of
17 difference that we see right now. We think that
18 there is considerable agreement on the general
19 contours of the rule. And we are hopeful, going
20 forward, we will be able to find language that
21 solves the concerns of the various parties.

22 With respect to part 27, there are really
23 only two issues that we have identified as
24 significant.

25 One is mapping. The OCD proposes to

1 require operators to submit a GIS layer identifying
2 the date, location, and volume of emergencies,
3 malfunctions, and releases of venting and flared
4 gas.

5 NMOGA proposes that OCD create those
6 layers.

7 And then secondly, with respect to
8 operation plans, OCD proposes to require operators
9 to submit operation plans describing how they will
10 identify and reduce the frequency of leaks and
11 releases.

12 NMOGA disagrees and does not want to do
13 operation plans.

14 And then finally, I want to address one
15 issue that came up -- apparently has been coming up
16 in the public comments. Apparently members of the
17 public have been suggesting that our rules exempt
18 95 percent of all wells from regulation.

19 You'll hear testimony that that is
20 absolutely not true. Every well in the state is
21 covered by OCD's rule. The nature of the rules may
22 differ by well, for instance, between stripper wells
23 and other wells. But all wells are covered.

24 All operators are covered. All natural
25 gas gathering systems are covered.

1 The comments regarding 95 percent may be
2 relevant to the environment department's rules, but
3 not to the division's.

4 So now, I would like to introduce our four
5 witnesses.

6 Our first witness is Tiffany Polak. She
7 is the deputy director from the Oil Conservation
8 Division. Tiffany will testify regarding the
9 historic scope of venting and flaring in New Mexico,
10 the executive order, this commission's statutory
11 authority, and the OCD's process in developing
12 proposed rules.

13 We will then call Mr. Matt Lepore,
14 principal and founder of Insight Energy Law. He
15 will testify regarding proposed rules in parts 27
16 and 28, with specific emphasis on their objective,
17 function, and policy, as well as OCD's proposed
18 modifications, in response to the proposals of other
19 parties.

20 Mr. Jim Bolander will follow. He's a
21 registered professional engineer and the principal
22 of JLB Engineering. He will review each section of
23 part 28, and also explain the objection --
24 objectives of the policy, of those rules, with a
25 particular emphasis on patrolling engineering

1 concepts.

2 And then finally, the division will call
3 Mr. Brandon Powell, chief of the OCD's engineering
4 bureau, to testify regarding the proposed rules in
5 27 and 28, with an emphasis on historical practices
6 in New Mexico, and expected changes in OCD processes
7 that will apply to the new rules. And he will also
8 address the other changes in parts 7, 18, and 19.

9 So that said, we are prepared to call our
10 first witness, Madam Hearing Officer.

11 Thank you.

12 HEARING OFFICER ORTH: Thank you very
13 much, Mr. Ames.

14 Let me ask if any of the other technical
15 parties would like to make their opening statement
16 now, or hold it in reserve.

17 I will start with Mr. Feldewert.

18 MR. FELDEWERT: Thank you, Madam Hearing
19 Officer, Madam Chair, members of the commission.

20 I don't have much.

21 OPENING STATEMENT

22 BY MR. FELDEWERT:

23 We -- we filed our prehearing statement to
24 outline our position on various issues, and we don't
25 need to get into an extensive debate over

1 jurisdiction.

2 I think Ms. Ely, in her comment, said it
3 best. I mean, oil conservation is best suited and
4 is tasked with addressing surface waste issues.

5 And the environment department is best
6 suited, and has the expertise, to address the
7 additional issues.

8 And where the commission starts to -- is
9 asked to -- the commission is asked to dictate
10 emission issues, what emissions are allowed, what
11 combustion standards should occur, what venting or
12 flaring should occur and under what circumstances,
13 and whether it should be venting or whether it
14 should be flaring.

15 Then you start to step into the area that
16 is under the exclusive purview of the New Mexico
17 environment department, and you create potential for
18 conflict.

19 I think the division has done a pretty
20 good job of walking down that -- that path, and have
21 presented a rule that focuses primarily on the
22 prevention of surface waste.

23 But there are still areas where they seem
24 to depart into the emissions arena, in which the
25 New Mexico environment department is best suited to

1 address.

2 So I will ask you, as you go to these
3 rules, to keep a focus on your duty and the
4 demarcations between what you do and what the
5 environment department does.

6 And as Mr. Ames pointed out -- and they
7 made some adjustments to their introductory
8 standards and their rules -- the legislature has
9 made it very clear that not all venting and flaring
10 is waste. Not all emissions constitute surface
11 waste. There are reasons for it.

12 So -- and the other thing is to avoid
13 straying, and avoid being asked to stray, into
14 emissions-related issues that should be left for the
15 environment department, because it's very
16 complicated. It could be very area specific, and
17 they are best suited to address those types of
18 concerns.

19 Thank you.

20 HEARING OFFICER ORTH: Thank you,
21 Mr. Feldewert.

22 Now, Mr. Biernoff, do you have an opening
23 statement today or would you like to reserve?

24 MR. BIERNOFF: Thank you, Madam Hearing
25 Officer.

1 I will hold that in reserve, please.

2 HEARING OFFICER ORTH: Thank you.

3 Ms. Fox?

4 MS. FOX: Thank you, Madam Hearing
5 Officer. We would like to present our opening
6 statement now.

7 HEARING OFFICER ORTH: All right.

8 Mr. Ames, would you mute yourself, please?

9 Go ahead, Ms. Fox.

10 MS. FOX: Thank you, Madam Hearing
11 Officer.

12 OPENING STATEMENT

13 BY MS. FOX.

14 Commissioners, Madam Hearing Officer,
15 thank you for the opportunity to present an opening
16 statement in this important proceeding.

17 I'm Tannis Fox, with Western Environmental
18 Law Center. With me here today is my cocounsel
19 David Baak. Together, we represent Climate
20 Advocates, eight organizations, each of whom has a
21 significant interest in this proceeding, and that is
22 to make sure that the commission's final rules
23 minimize waste from methane emissions from oil and
24 gas operations, to the greatest extent possible, and
25 protect our environment and New Mexicans' health.

1 At the outset, we would like to commend
2 the Oil Conservation Division staff for proposing a
3 set of strong rules to address flaring and venting
4 of natural gas.

5 It is evident from their detailed
6 proposals that staff have worked very hard to
7 propose rules intended to minimize the wasteful
8 practice of venting and flaring of natural gas,
9 which has seen unprecedented increases over the
10 recent years.

11 Governor Michelle Lujan Grisham also is to
12 be commended for outstanding leadership on climate
13 change, and her directive that OCD should adopt
14 national-leading rules to eliminate waste of natural
15 gas.

16 While OCD has proposed strong rules,
17 Climate Advocates will present evidence that the
18 proposed rule should be strengthened to achieve the
19 governor's goal and to fulfill the commission's
20 obligation under the Oil and Gas Act to prevent
21 waste.

22 With those goals in mind, I'd like to set
23 forth the principal provisions in the division's
24 proposal that our directed case will support.

25 First, we will present evidence in support

1 of the division's general prohibition of venting and
2 flaring of methane that constitutes waste, including
3 its ban of associated gas due to lack of takeaway
4 capacity, for routine flaring.

5 Second, we will present evidence in
6 support of the division's requirement that, if not
7 technically feasible or are not unsafe -- or unsafe
8 to capture gas, operators must flare rather than
9 vent.

10 Third, we will present evidence in support
11 of the division's proposed annual gas capture
12 requirements that require all operators to capture
13 98 percent of their gas by the end of 2026.

14 How that capture is calculated, what's in
15 the numerator and what's in the denominator, are
16 critically important to maximizing waste prevention.
17 We generally support the division's approach to that
18 calculation and oppose NMOGA proposals to exclude
19 low-pressure sources from the calculation.

20 These three provisions lie at the heart of
21 OCD's proposed rules, and we will present evidence
22 why these provisions should not be weakened in any
23 way in their final form.

24 That said, our evidence will also
25 demonstrate that OCD's rules should be strengthened

1 in a number of critical areas, if New Mexico is to
2 lead the nation as the governor has directed.

3 First, we'll present evidence on the
4 importance and technical feasibility of regulating
5 completions and recompletions to reduce gas
6 emissions.

7 Completions and recompletions are a major
8 source of methane waste, and OCD's proposal fails to
9 keep pace with developing technology to reduce this
10 waste.

11 You will hear our witnesses describe how
12 the state of Colorado recently promulgated rules to
13 close a loophole in federal recompletion
14 requirements and ensure that operators begin
15 capturing gas as soon as flowback begins.

16 New Mexico must do the same, or better, if
17 we are to be at the forefront of reducing methane
18 waste.

19 Second, we will present evidence for
20 strong performance standards for flares. Unlit and
21 malfunctioning flares are extremely common in the
22 field, and they are a major source of emissions.

23 Automatic igniter technology is the most
24 reliable method for reducing the likelihood and
25 duration of venting from an unlit flare which,

1 again, is why Colorado regulators require use of
2 auto igniters.

3 Third, making sure that operators fully
4 and timely comply with their annual gas capture
5 requirements is an absolute necessity if the
6 fundamental objectives of the commission's
7 regulations are to be achieved.

8 Yet, as proposed, if operators are out of
9 compliance with their annual gas capture
10 requirement, it can still obtain new permits to
11 drill new wells.

12 We will present evidence that when an
13 operator is out of compliance with this most basic
14 obligation under the rules, the operator should
15 first expend resources to come into compliance with
16 its annual capture requirement before being allowed
17 to start up new activity, which could further --
18 could drive it further out of compliance.

19 Ensuring that operators are in full
20 compliance before they get new permits is consistent
21 with requirements in other environmental statutes,
22 including the Water Quality Act, to which the Oil
23 Conservation Division is subject.

24 Requiring compliance prior to issuing a
25 new permit is particularly important here, where OCD

1 has limited enforcement resources.

2 Fourth, we will put on evidence in support
3 of provisions that improve reporting and public
4 notice requirements in order to increase
5 accountability of industry and transparency to the
6 public.

7 And fifth, we will provide evidence on the
8 importance of planning and communications between
9 producers and midstream companies, to make sure that
10 adequate takeaway capacity is in place before wells
11 start producing.

12 The commission's statutory imperative is
13 to prevent waste. And the Oil and Gas Act expressly
14 provides that waste must be given its quoted or near
15 meaning.

16 Exploitation of a resource, in a way that
17 causes damage to human health, the environment, and
18 neighboring properties constitutes waste in the
19 ordinary sense of the word.

20 The commission can and should take steps
21 to prevent all forms of waste, including practices
22 that cause waste by damaging human health and the
23 environment.

24 The commission also has statutory
25 authority to consider protection of the environment

1 of public health pursuant to 72.12.B21 and 22, as
2 Mr. Ames has already pointed out.

3 And the commission has authority to
4 require wells to be drilled and operated to prevent
5 injury to neighboring leases or properties pursuant
6 to 72.12.B7.

7 This provision allows the commission to
8 prevent harm to neighboring residents and
9 communities.

10 Consistent with these authorities, Climate
11 Advocates will present testimony from Brenda
12 Ekwurzel and Adella Begay.

13 Dr. Ekwurzel has a Ph.D. in geochemistry
14 from Columbia University, and is instructor of
15 climate science for the Union of Concerned
16 Scientists. Dr. Ekwurzel will lead off Climate
17 Advocates' case with a presentation on the impacts
18 of climate change on New Mexico and the Southwest.

19 New Mexico and the Southwest are right in
20 the bulls eye of climate change. And Dr. Ekwurzel's
21 presentation will underscore the imperative of
22 attacking climate change now, by reducing methane
23 emissions to the greatest extent possible.

24 Ms. Begay is a public health nurse, and
25 retired after serving as director of public health

1 nursing for IHS, for the central agency of the
2 Navajo Nation. She is from the Four Corners area,
3 and is a member of the Navajo Nation.

4 Ms. Begay will provide testimony on the
5 very serious public health impacts associated with
6 air pollutants released during venting and flaring
7 of natural gas, and explain that this pollution
8 disproportionately impacts Native Americans who live
9 in San Juan County.

10 Mario Atencio and Kendra Pinto are from
11 northwest New Mexico, who are members of the Navajo
12 Nation as well, will echo in their testimony
13 Ms. Begay's concerns regarding the public health
14 impacts on their communities from oil and gas
15 development, as well as the need to protect their
16 ancestral lands in the greater Chaco landscape,
17 which is sacred to the Navajo and other tribes.

18 Ms. Begay, Mr. Atencio, and Ms. Pinto are
19 all members of Dine CARE, a party in this
20 proceeding, whom we represent.

21 Climate Advocates will present Alexandra
22 Teitz, a lawyer who led the development and
23 promulgation of the Bureau of Land Management's 2016
24 methane waste rule.

25 Ms. Teitz will provide testimony in

1 support of a ban on routine flaring and the
2 imperative of requiring reduced emissions
3 completions, as will Dr. David Begay, an atmospheric
4 scientist and Ph.D. chemist with the Clean Air Task
5 Force.

6 Dr. Begay will also explain to the
7 commission why it should require auto igniters for
8 all new flares to ensure their reliability. And he
9 will explain why low-pressure sources of emissions
10 should not be expanded for the definitions of
11 flaring and venting, and should not be excluded from
12 emissions calculations.

13 He will explain that these sources make
14 significant amounts of methane waste, and why we
15 support OCD's most recent draft that rejects NMOGA's
16 proposals to exempt these sources from the rules
17 requirements.

18 We believe it's important for the
19 commission to hear about experiences of community
20 members who live near oil and gas operations.

21 You will hear from Don Schreiver, whose
22 ranch and leased land has substantial oil and gas
23 development, and about his struggle to push
24 operators to do reduced emissions completions on
25 wells on and near his land.

1 We will also put on Nathalie Eddie, a
2 lawyer with Earthworks, another party who we
3 represent in this proceeding.

4 She is also certified to operate a flare
5 optical gas motion camera. Ms. Eddie has filmed
6 numerous oil and gas sites in the San Juan Permian
7 Basin over the years, and will tell the commission
8 about her experiences in the field as witness to
9 many unlit and malfunctioning flares in the Permian
10 Basin. Her testimony underscores our proposal to
11 require auto igniters for the flares.

12 There is a real absence of good data and
13 data analysis on the extent of flaring and venting
14 in New Mexico and the reasons therefore.

15 You will hear from Lesley Fleischman, a
16 senior analyst with the Clean Air Task Force, who
17 has performed the only analysis of their kind, of
18 which we are aware, based on OCD flaring and venting
19 data.

20 Ms. Fleischman has found that a relatively
21 small number of oil companies are responsible for
22 much of the flaring and venting in our state, and a
23 good number of companies meet or are close to the
24 98 percent capture goal, indicating that compliance
25 of that goal is achievable.

1 Dr. Thomas Singer is a senior policy
2 adviser with Western Environmental Law Center, who's
3 spent over 15 years researching, analyzing, and
4 making policy recommendations regarding greenhouse
5 gases and reducing methane waste and emissions.

6 Dr. Singer, who has a Ph.D. in
7 international business, will discuss his analysis of
8 forms operators file with OCD seeking permission to
9 flare, the C 129 forms, and his findings that some
10 operators flare for years on end.

11 He will contrast his findings with a
12 report issued by NMOGA, that did not identify
13 long-term routine flaring as a reason that
14 New Mexico operators flare.

15 Dr. Singer will also offer detailed
16 proposals to the commission for how to improve
17 reporting requirements for venting and flaring. He
18 will explain that the commission, OCD, and the
19 public, must have more complete information by
20 operators flaring and venting, in order to
21 understand the contribution of different causes to
22 total venting and flaring statewide, in order to
23 both improve compliance and enforcement of the rule.

24 And he will support the state land
25 office's proposal to ensure better compliance and

1 accuracy in reporting, by requiring routine,
2 independent verification of flared and vented
3 volumes.

4 And Charles de Saillan, one of
5 New Mexico's most experienced environmental lawyers,
6 will provide testimony in support of Climate
7 Advocates' proposal to more effectively achieve full
8 compliance of the gas capture requirement, by
9 requiring denial of an application for commission to
10 drill a new well to operators who are not meeting
11 their annual gas capture requirements.

12 That rounds out our witness list. We
13 thank the commission for this opportunity to provide
14 you with an overview of our case. We know that each
15 of you appreciates the importance of this rule
16 making to the state, that the eyes of the nation are
17 on New Mexico, and that robust rules that minimize
18 methane waste to the greatest extent possible will
19 increase revenues and royalties to the state, reduce
20 a highly potent greenhouse gas, to combat the
21 existential threat of climate change, and help
22 protect the health of fellow New Mexicans.

23 HEARING OFFICER ORTH: Thank you, Ms. Fox.

24 Ms. Paranhos, would you like to make an
25 opening statement now or hold it in reserve?

1 MS. PARANHOS: Thank you, Madam Hearing
2 Officer. We will hold our opening statement in
3 reserve.

4 HEARING OFFICER ORTH: All right. Thank
5 you.

6 Before we get to Mr. Ames' first witness,
7 I would like to take a 10-minute break. And note
8 also that we will be taking a 15-minute break
9 between 3:30 and 3:45. So let's come back -- it is
10 2:13 now. Let's come back at 2:23.

11 Thank you.

12 (A recess was taken from 2:13 p.m. to 2:23
13 p.m.)

14 HEARING OFFICER ORTH: All right.

15 And, Mr. Ames?

16 I believe I saw Ms. Polak on as well.
17 There you are.

18 Ms. Polak, if you would, please raise your
19 right hand.

20 (Discussion off the record.)

21

22

23

24

25

1 TIFFANY POLAK,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 EXAMINATION

5 BY MR. AMES:

6 **Q. Will you please state your name and spell**
7 **your last name for the record?**

8 A. Yes. My last name is spelled P-O-L-A-K.

9 **Q. Thank you.**

10 We, too, are very interested in a good
11 record, so whatever we can do to help Mr. Baca.

12 Tiffany, could you please state your full
13 name for the record?

14 A. Yes. My name is Tiffany A. Polak.

15 **Q. And, Tiffany, where do you work?**

16 A. I work for the Energy, Minerals, and
17 Natural Resources Oil Conservation Division.

18 **Q. What do you do there?**

19 A. I'm the deputy director, which means in my
20 particular area of responsibility is the
21 environmental bureau and all the district offices.

22 **Q. And how long have you been with OCD?**

23 A. I'm coming up on one year.

24 **Q. What did you do before you joined OCD?**

25 A. I worked over 20 years in oil and gas for

1 upstream operators.

2 Q. Can you give us a thumbnail sketch of your
3 background, who you worked for and what kind of jobs
4 you did?

5 A. Sure. So I worked international,
6 domestic, conventional, unconventional, plays.

7 I had roles ranging from, in the very
8 beginning, a file clerk to geoscience and
9 engineering technicians, to various engineering
10 roles, and then managerial roles. My longest
11 tenures were with Hus Corporation and Marathon Oil.

12 And my most recent role, before joining
13 the OCD, was with Marathon Oil as the development
14 director for their Permian assets. And my
15 responsibilities in that role included overseeing
16 over 100 employees, including subsurface geoscience,
17 reservoir engineering, planning-type support groups,
18 production engineering, operations, and regulatory
19 groups.

20 Q. Are you an engineer?

21 A. I am.

22 Q. Where did you receive your engineering
23 degree?

24 A. Texas A&M.

25 Q. And that's a master's degree in

1 **engineering.**

2 **Is that correct?**

3 A. It is. I have a bachelor of science in
4 professional zoology from the University of
5 Oklahoma, a master of science in disease control
6 epidemiology from the University of Texas Medical
7 Center, and then the master's of geoengineering from
8 Texas A&M.

9 **Q. Thank you.**

10 **Did you prepare a CV, a curriculum vitae,**
11 **for this proceeding?**

12 A. I did.

13 **Q. Is that the document labeled OCD**
14 **Exhibit 1?**

15 A. It is.

16 **Q. That's a correct copy of your CV?**

17 A. Yes.

18 **Q. Okay. I move admission of Exhibit 1.**

19 HEARING OFFICER ORTH: Are there
20 objections to the admission of Exhibit 1 from the
21 other parties?

22 I think what I'll do, unless someone has a
23 better idea, is to just pause for a moment to allow
24 the other parties to leap in -- unmute themselves
25 and leap in with objections, rather than going round

1 robin each time and getting affirmative responses
2 from every counsel.

3 All right. So just pausing a moment,
4 Exhibit 1.

5 Exhibit 1 is admitted.

6 (Exhibit admitted, 1.)

7 MR. AMES: Thank you.

8 Q. (By Mr. Ames) Now, Tiffany, have you
9 prepared a presentation for today's hearing?

10 A. I have.

11 Q. Is that originally Exhibit 4, the
12 PowerPoint presentation, and Exhibit 4A, the revised
13 PowerPoint presentation that the division filed last
14 night?

15 A. Yes.

16 MR. AMES: I move admission of Exhibits 4
17 and 4A.

18 HEARING OFFICER ORTH: Pausing for a
19 moment, Exhibits 4 and 4A.

20 4 and 4A are admitted.

21 (Exhibits admitted, 4 and 4A.)

22 MR. AMES: Thank you.

23 Q. (By Mr. Ames) And finally, in the
24 housekeeping category, the division's original
25 proposed modifications on December 17 are

1 exhibits -- for part 27, Exhibit 2, and for part 28,
2 Exhibit 3.

3 And then subsequently, the division
4 submitted revisions on December 30 labeled 2A for
5 attaching, Version 2B for a clean version of
6 part 27, and the same for part 28, which are labeled
7 3A and 3B.

8 Is that correct?

9 A. That's correct.

10 MR. AMES: I move admission of Exhibits 2,
11 2A, 2B, 3, 3A and 3B.

12 HEARING OFFICER ORTH: Pausing for a
13 moment for objections to these exhibits.

14 MR. FELDEWERT: Michael Feldewert for
15 NMOGA. I don't have an objection to these exhibits.
16 I'm sorry, you went too quick for me.

17 Mr. Ames, you introduced both Exhibits 4
18 and 4A. Is there a need to have both of them? I
19 thought 4A was a supplement for Exhibit 4.

20 MR. AMES: 4A is a demonstrative aid, but
21 we are admitting it because it is an exhibit. It's
22 not being admitted for substantive evidence,
23 evidentiary purposes.

24 MR. FELDEWERT: I'm sorry.

25 My question is: What purpose does

1 Exhibit 4 serve, because I thought 4A replaced
2 Exhibit 4.

3 MR. AMES: That is exactly right. 4A
4 replaced 4. 4 is still a document that we
5 submitted. We requested it be admitted to the
6 record.

7 MR. FELDEWERT: Okay. Is there anything
8 in exhibit -- let me ask it this way.

9 Is there anything in Exhibit 4 that's not
10 in 4A?

11 MR. AMES: Madam Hearing Officer,
12 Mr. Feldewert is asking if there's anything in
13 Exhibit 4 that's not in 4A. I don't have the
14 specific answer for that question. I would need to
15 review each page of the document.

16 But 4A is the revised version of 4.

17 MR. FELDEWERT: Okay. Okay. Thank you.

18 HEARING OFFICER ORTH: All right. Thank
19 you.

20 Let me pause for a moment, in the event
21 the exhibits draw an objection.

22 No? They are admitted.

23 Thank you, Mr. Ames.

24 (Exhibits admitted, 2, 2A, 2B, 3, 3A, 3B.)

25 MR. AMES: Thank you, Madam Hearing

1 Officer.

2 Q. (By Mr. Ames) Ms. Polak, you said you
3 prepared a presentation to guide your testimony.

4 Are you prepared to begin?

5 A. I am.

6 Q. Please begin.

7 A. Let's attempt to work the technology here.

8 CHAIRWOMAN SANDOVAL: Mr. Coss, you may
9 need to right click on her name and make her the
10 presenter.

11 THE WITNESS: Oh, yeah, much better.

12 Let me know that you can see this.

13 HEARING OFFICER ORTH: We can.

14 THE WITNESS: Okay. Perfect.

15 Okay. So what you're seeing, hopefully,
16 is the overview and rule making process slide,
17 correct?

18 Q. (By Mr. Ames) Yes. It is showing,
19 Ms. Polak.

20 A. Okay. Perfect. Perfect. Okay.

21 So I will begin.

22 So you have -- thank you, Madam Chair,
23 members of the commission, for allowing us to speak
24 today. This is a culmination of a great journey
25 that we've all learned a little bit more about

1 today, for those that haven't been as intimately
2 involved.

3 We're very excited to be here today.

4 So while I have been introduced to you and
5 met some of you, at least virtually, I would like to
6 introduce -- I would like to start by introducing
7 the other members of the team here.

8 So again, as Mr. Ames alluded to, I will
9 be discussing some of the background process and
10 overview for the rule.

11 Matt Lepore, with Insight Energy, will be
12 digging into a lot more details around parts 27 and
13 28.

14 Mr. Bolander, from Insight Energy, will be
15 discussing mainly the details of part 28, but he
16 will also touch on some of the parts in 27 as well.

17 And then Brandon Powell, who works for the
18 OCD as our engineering bureau chief, will be giving
19 us what I believe is very important testimony on
20 some of the New Mexican context for what we see here
21 in New Mexico, and why we chose to approach certain
22 portions of this rule the way that we did.

23 And he will also talk about some of the
24 knock-on effects in parts 7, 18, and 19, for which
25 we will have to make adjustments based off of the

1 changes in this rule.

2 And then last but not least, we have Mike
3 Swanson, with Insight Energy, who will not be
4 testifying today, but who was a member of the team
5 who wrote these drafts.

6 So I want to start our discussion today
7 with a grounding. And you've gotten a little bit of
8 this in Mr. Ames' opening statement, but I want to
9 ground us in the OCD statutory objectives and
10 authority.

11 I feel like it's particularly important
12 that we understand what we have the right to
13 regulate, especially since we have integrated rules
14 with NMED, which has very different statutory
15 authority and can often be confused.

16 The Oil and Gas Act charges us with
17 preventing waste and protecting correlative rights,
18 the public health, and the environment. It's our
19 claim that venting and flaring is often waste -- and
20 I'll clarify the word "often" in a few slides -- and
21 that prior regulations have been inadequate.

22 We are governed by the Oil Conservation
23 Commission, the OCC, for which we appear before
24 today.

25 Okay. Moving on to a little bit more

1 detail here -- and again, these were cited by
2 Ms. Fox and Mr. Ames.

3 This outlines some of the specific
4 language within the Oil and Gas Act that authorizes
5 us to regulate waste.

6 Section 70-2-2 specifies that handling of
7 oil and gas products that result in waste is
8 prohibited.

9 70-2-11 outlines additional empowerment of
10 the division to prevent waste and protect
11 correlative rights by enforcing rules, regulations,
12 and orders that are reasonably necessary to conduct
13 that purpose, whether or not they are specifically
14 stated in the act or not.

15 Section 70-2-12 further outlines the right
16 of the OCD to make rules and orders related to --
17 and I've only here listed those that are pertinent
18 to this hearing -- regulation of oil and gas
19 operation assets to protect public health and the
20 environment.

21 And in 70-2-12B22, it discusses the
22 regulation of oil and gas operations as it's related
23 to waste and related to transportation and treatment
24 of products.

25 So in essence, all of this specific

1 language is saying that once we have considered
2 something as waste, we can impose additional
3 requirements to better protect.

4 And this is the premise of -- so while I
5 stated we "often," venting and flaring is considered
6 waste, this is because we do recognize operational
7 emergencies and we do allow the option for
8 beneficial use. And you will hear more details of
9 that as my colleagues testify.

10 Okay. So given that, we have established
11 our statutory authority to regulate waste of venting
12 and flaring. We have to step back and ask ourselves
13 if what we currently see is significant enough to
14 impose such regulations, and the answer is yes.

15 We often hear claims that venting and
16 flaring has dramatically decreased, regardless of
17 increase in well production.

18 The data that the OCD has would not
19 indicate that.

20 If I can refer you to the chart on the
21 left of this slide.

22 Well, yes, venting shows a marked
23 decrease. Flaring and total waste of gas products,
24 whether vented or flared, which is the red line on
25 this chart, has not decreased.

1 Now we do know that the data that we have
2 right now is inconsistent. We have unanimous
3 agreement from stakeholders that the data that we're
4 currently collecting is inadequate.

5 We see examples such as operators not
6 reporting venting or flaring, or mistakenly
7 reporting venting as flaring, or flaring as venting.

8 Or we have some situations where we have
9 seen reporting happening, and then when a new
10 acquisition happens, the reporting stops by the new
11 acquiring company.

12 So do I hold that the chart at the left is
13 completely correct? No, I do not.

14 But we all agree the problem exists, and
15 this is a call to one of the main focus points of
16 the rule that we will discuss, the reporting and
17 data integrity.

18 The significance of the value of the lost
19 gas is showing between a 10 and \$200 million per
20 year for the state of New Mexico.

21 Now, that's a ridiculously wide range.
22 And again, given the difficulty to pin a value
23 number base, there is a difficulty of pinning a
24 value number based off of the integrity of the data.

25 I'm getting a lot of background noise.

1 Can you guys hear that?

2 (Discussion off the record.)

3 THE WITNESS: Okay. Perfect.

4 So I was -- so I was just speaking to the
5 wide range of value that I have listed on the slide
6 for the lost gas revenue for the state.

7 I recognize that's a really wide range of
8 value significance. However, it is very hard to pin
9 an accurate value number, depending on the data
10 you're referencing.

11 But we know that the value of the lost gas
12 is significant, and those two numbers came from two
13 public government sources, one being the executive
14 order.

15 And so on that note, I'd like to go to
16 that executive order, or at least a part of it.

17 So Governor Michelle Lujan Grisham is
18 committed to clean energy, climate improving
19 strategies, and waste prevention. And as part of
20 this focus, the governor issued an executive order
21 in 2019, Number 3, of which I will read you an
22 excerpt now.

23 "EMNRD," which is my division, "and NMED,
24 the environmental department, shall jointly develop
25 a statewide enforceable regulatory framework to

1 secure reductions in oil and gas sector methane
2 emissions, and to prevent waste from new and
3 existing sources and enact such rules as soon as
4 practicable."

5 As part of the executive order, we were
6 charged with developing rules that adhere to certain
7 primary tenets.

8 Science. Use the best science
9 available -- and in this case, mostly science is
10 engineering -- to inform the rule.

11 You will hear several examples as we go
12 through the testimony. But some would include the
13 methane advisory panel technical report, and the
14 technical experts' guidance that was sought and
15 discussions that were had as we went through the
16 stakeholder process.

17 Innovation. We purposely built language
18 around certain parts of this rule that not only
19 encourage innovation, but that also attempt to
20 prevent a regulation that, for lack of a better
21 term, hamstring us to only the technology we know
22 today.

23 We strive to construct language that
24 allows for technology we can't imagine today, and
25 incentivizes industry in all realms to strive to

1 find this technology.

2 Collaboration. This is not only
3 collaboration with the stakeholders, but also our
4 partner in this charge, NMED, to create
5 complimentary and noncombative rules. We try to
6 prevent duplication in rules.

7 We've heard it said multiple times from
8 various stakeholders that this has been the most
9 integrative rule making process they've seen in
10 their careers. For that, we are proud.

11 Compliance. Lastly, we've created a rule
12 that ensures we can set proper targets and hold
13 those stakeholders compliant to those targets, in
14 order to have meaningful reduction of waste.

15 Being able to set the right measure of
16 enforcement is very important.

17 So this, I really put up to illustrate the
18 charge between NMED and EMNRD, since we are in this
19 together.

20 You have already seen the right-hand side
21 of this, and we've talked about this.

22 But I wanted it here to enforce the
23 differences between the two agencies. Namely, that
24 NMED is charged with regulating air pollutants.
25 They are given that authority through the Air

1 Quality Control Act, and they are governed by the
2 Environmental Improvement Board, EIB, as opposed to
3 our OCC.

4 So we've referred to this as a journey,
5 and I'm going to walk you along a little bit here.

6 In order to understand the way in which
7 this rule was written and the lengths to which we
8 went, I'd like to walk you through some of the
9 milestones and key points of the past two years.

10 So as mentioned, the process began with
11 the issuance of the executive order on January of
12 2019.

13 Several stakeholder meetings were held to
14 understand the issues at hand. And in September --
15 here we go -- September 2019, the methane advisory
16 panel was established. Now, this is something
17 that's unique to New Mexico, so I'd like to talk a
18 little bit more about what that was.

19 So this is a joint EMNRD and NMED-led
20 panel, comprising a cross-section of stakeholders
21 and technical experts to discuss technical issues
22 related to the capture of methane. It was a
23 27-member team with a wide breadth of experience.

24 All of the members are listed -- all of
25 the representing members are listed in the yellow

1 box at the right.

2 They convened between September and
3 November of 2019.

4 And again, the goal here was to provide
5 technical expertise, have integrated discussions to
6 identify issues, outline processes, discuss
7 equipment, costs, and ultimately resulting in a
8 technical paper that could be used to provide some
9 intent and underpinning recommendations for the
10 writing of the actual rule.

11 So post the final public methane advisory
12 panel meeting, the team began drafting the rules for
13 official release in July. We chose to release as a
14 preproposal. And we did that, so that we could
15 allow stakeholders time for comments and influence
16 on the actual draft rule that we would bring to the
17 OCC.

18 We held multiple stakeholder meetings and
19 allowed 60 full days of informal comment, so that
20 became a very important process for us.

21 And I'd like to talk a little bit more
22 about what that stakeholder process looked like.

23 So again, we released preproposals in
24 July. We had some initial conversations post that
25 release, starting at the beginning of August through

1 mid September.

2 We then called for followup conversations
3 to clarify some of the feedback we -- we obtained in
4 that initial -- in those initial meetings, that was
5 not clear to us, and so we felt followup was needed
6 on our end. We did that the end of August through
7 the beginning of October.

8 There was then that full 60 days of
9 informal comment period, for which we received more
10 than 450 comments, and 60 of those were unique
11 responses.

12 We made some changes, and we'll talk a
13 little bit about those.

14 And then we proposed the rules that were
15 filed with the OCC on October 16.

16 Following October 16, we had some followup
17 conversations with stakeholders to clarify language
18 and the intent of the newly proposed rules.

19 And that was held between mid November
20 through when we actually published the New Mexico
21 Register on December 17.

22 And I'll just note that the groups in bold
23 at the bottom of that slide are all of the groups
24 that we met with during this process, some of whom
25 we met with multiple times.

1 So in October, again as stated, the OCD
2 released the proposed rules to the commission.

3 Now what I'd like to say here is that this
4 entire time NMED, the environmental division, and
5 EMNRD, were actually things in parallel and holding
6 multiple joint sessions together to discuss the
7 rule -- you know, our own separate rule writing, to
8 make sure that we were complimentary to each other.

9 We also did all of the initial stakeholder
10 discussions together, given the wide breadth of the
11 rules that we were each developing, and the
12 differing statutory authorities. We felt that best
13 to handle together with stakeholders, to have better
14 discussions.

15 But once the OCD submitted final proposed
16 rules, this is where our time line split. And I'm
17 going walk you through that a little bit now.

18 So the OCD followed a path on the green
19 arrow, focused on getting us to this hearing.

20 NMED, in the lower blue arrow, continued
21 to review comments. They're awaiting key modeling
22 data. They're currently adjusting their role. And
23 cross fingers, they will be at hearings in the
24 spring -- spring or summer of this year.

25 We came to you, the OCC, on November 4, to

1 seek a hearing, which was set for this week. We had
2 some legal requirements upon our filing of the legal
3 notice with the New Mexico Register, and I'd like to
4 make that clear, right now.

5 So again, November 24, we published in the
6 New Mexico Register. We concurrently published in
7 the Albuquerque Journal. We sent the notice to
8 persons on the OCC's rule making list. We posted on
9 OCD's website in two places, actually, and then we
10 posted on all of the OCD's statewide offices.

11 Now, we did this -- we're required to do
12 this, and we chose to do some additional things, so
13 that all stakeholders of all kinds had the
14 opportunity to view and give input.

15 We posted all pertinent information on our
16 OCD outreach website, which you've heard referenced
17 here in this hearing.

18 While we normally only post on the rules
19 and hearings page, we felt it was important to make
20 sure that the public could find all of the info
21 related to this rule very easily, because there's a
22 lot of info.

23 The public comment period did begin with
24 the publication in the New Mexico Register on
25 November 24, and it does end with the ending of this

1 hearing.

2 So that covers the journey.

3 I'd like to, right now, go through a very
4 high level, and I emphasize the word "very," because
5 you're going to hear a plethora of details in the
6 coming testimonies.

7 But I would like to talk at a high level
8 and talk to you a little bit about the evolution of
9 changes that Mr. Ames alluded to.

10 I just want to set the tone here. Each of
11 my colleagues will dig into additional details as we
12 move through the testimony. But I want to set the
13 stage and frame that discussion up for them as well
14 as for the commission.

15 So we talk about the rules very
16 informally, just amongst ourselves, in phases.

17 Phase one is focused on reporting and
18 getting all of that appropriate data that we
19 referenced in prior discussion, to set the best
20 baseline targets for enforcement.

21 This phase, as outlined, runs from June of
22 this year until January of next year. It requires
23 operators to measure, estimate in some cases, and
24 report all venting and flaring during operations.

25 You will hear more about the categories

1 for reporting and the means with which we require
2 reporting in further detail, as my colleagues delve
3 into that in the coming days.

4 So phase two is what we refer to as the
5 gas capture phase of this rule.

6 In this phase each individual operator has
7 a baseline that will be established from the data
8 collected in phase one, and then has year on year
9 targets to reduce their waste by fixed amounts to
10 achieve that 98 percent gas capture by December 31,
11 2026, and every year thereafter.

12 It's important to note that the proposals
13 apply to both upstream, which is the focus of
14 part 27, and midstream, the focus of part 28.

15 It does -- the rules do provide
16 flexibility for marginally producing stripper wells,
17 to conduct inspections and retrofit equipment, but
18 does not exempt them from the 98 percent gas
19 capture.

20 I want to make sure we are clear on that
21 point, as there has been some confusion that
22 Mr. Ames alluded to in his opening statement.

23 No wells are exempt from these rules. We
24 do allow some -- what I like to call time line
25 flexibility for stripper wells, but they are not

1 exempt from the 98 percent gas capture reporting
2 requirement.

3 We do provide some incentives for new
4 technology. For example, but not limited to
5 flyovers, to help detect and fix leaks, gas leaks,
6 quicker.

7 And then finally, the rule does authorize
8 the OCD to enforce restrictions on those who are not
9 compliant, which could include APD denials, shutting
10 of production, and civil penalties.

11 And again, that is -- that is not our
12 objective. That does not help the state of
13 New Mexico to incur those penalties. However, those
14 are tools in our toolbox to help make sure that we
15 can protect New Mexicans, if we have operators who
16 are out of compliance.

17 So now I'd like to move on to the
18 evolution of change, I call this.

19 So remember that we -- we released the
20 draft in July, the preproposal in July, and we had
21 the comment period in September.

22 We poured over those comments, we made
23 adjustments, we released new drafts, or a proposal,
24 October 16.

25 This side summarizes, very high level, the

1 larger changes that we made based off of all of
2 these conversations. This is, by no means, all the
3 changes that were made.

4 Originally, the preproposal had the
5 98 percent gas capture target as a full statewide
6 for the operator.

7 In the October 16 proposal we broke that
8 into two regions. So if an operator, for example,
9 has development in the region 1 and region 2, they
10 have to meet 98 percent gas capture in both regions.

11 We also -- we've -- you've heard me say
12 that reporting and data is important. We may have
13 gotten a little overzealous in our initial
14 preproposal. We heard you.

15 So in our October 16 submission we did
16 quite a bit of streamlining, with the help of many
17 suggestions from the stakeholders, on forms, setting
18 thresholds, reducing reporting categories, and --
19 but we still feel that we're set up for a meaningful
20 data collection and reporting.

21 We did provide some incentive for the gas
22 management plan, for those operators who are
23 meeting -- who are compliant. We have said, Hey,
24 you don't have to submit as much to us. If you're
25 compliant, you're going to have the incentive of

1 doing less work on the reporting side.

2 And then finally, we -- between July and
3 October we removed some regulatory language that we
4 had in the preproposal that would have been
5 preempted by federal law and our pipeline section.
6 And so that was absolutely correct to remove that.

7 Okay. So then we published the rules in
8 October. And then post that publication, as you saw
9 on our stakeholder engagement summary, we had
10 multiple feedback sessions and comments submitted to
11 us.

12 The changes on the next two slides of
13 this, being part 27, the next slide is part 28, are,
14 again, the high level changes that were made between
15 October 16th and December 17th.

16 Now, I am not going to go through and read
17 all of these. And the reason why I'm not going to
18 do that is because since December 17, we've poured
19 over more redlines and comments and submissions and
20 additional changes that they've made. And those are
21 very clearly represented in my colleagues'
22 testimony, and they will be highlighting those as we
23 go through.

24 I just thought that it was important for
25 you to see the level of engagement that we had, the

1 amount of changes and conversations that we had as
2 we went through each step in this process.

3 So I'll end with -- with this slide.

4 We're pretty proud of this effort, this
5 journey that we've been on with many of you. We
6 feel that we have adhered to the charge of the
7 governor and held to the primary guiding tenets and
8 proposed a very strong rule to protect the state of
9 New Mexico, but while also not being unnecessarily
10 restricting to industry, for which New Mexicans also
11 rely on for jobs and revenue.

12 I think there's some very unique aspects
13 of this rule for New Mexico that would include
14 regulation of both upstream and midstream in these
15 rules.

16 Most of the other states put a lot of the
17 focus on upstream and not the regulation of the
18 midstream. And we heard very strongly, throughout
19 the map process, that regulating the midstream as
20 part of this set of rules was going to be important.

21 To the best of my knowledge, this rule is
22 the only one that establishes an actual percent
23 target within a time frame. Many of the other
24 states have time frames and reduction targets, but
25 not an actual target to get to for the entire state.

1 We do also prohibit routine flaring. We
2 have incentivizations for the innovation tenet that
3 we've talked about, and you'll hear more about.

4 And then sometimes -- sometimes it's
5 beneficial to come in a little later, because you
6 get to lean upon those who came before you.

7 And so at our disposal you made to us, we
8 had all of the resources from other agencies and
9 other states who have put regulations like this in
10 place before New Mexico. And we were able to use
11 all of those for which we think we have made a
12 better and stronger rule.

13 And that concludes my presentation,
14 Mr. Ames.

15 **Q. (By Mr. Ames) Thank you, Tiffany.**

16 I don't have any questions about your
17 **testimony. But we do need to move to admit some**
18 **exhibits.**

19 You have referenced the executive order.
20 **I believe that's OCD Exhibit 5.**

21 The map report, OCD Exhibit 6.

22 The New Mexico Register of legal notice,
23 **OCD Exhibit 7.**

24 The OCC notice to mailing list, OCD
25 **Exhibit 8.**

1 And finally, the affidavit of publication,
2 OCD Exhibit 9.

3 Are those true and correct copies of those
4 documents?

5 A. Yes.

6 MR. AMES: I move the admission of OCD
7 Exhibits 5, 6, 7, 8 and 9.

8 HEARING OFFICER ORTH: Thank you,
9 Mr. Ames.

10 Let me pause a moment, in the event a
11 party has an objection. Exhibits 5 through 9.

12 Hearing no objections, Exhibits 5 through
13 9 are admitted.

14 (Exhibits admitted, 5, 6, 7, 8, 9.)

15 MR. AMES: Thank you, Madam Hearing
16 Officer.

17 Thank you, Ms. Polak.

18 I pass the witness.

19 HEARING OFFICER ORTH: All right. Thank
20 you.

21 We are going to proceed with questioning
22 by the parties in the established order, and then
23 I'll turn to the commissioners in the event they
24 have questions.

25 Mr. Feldewert, do you have questions of

1 Ms. Polak?

2 MR. FELDEWERT: Yes, thank you.

3 EXAMINATION

4 BY MR. FELDEWERT:

5 Q. Good afternoon, Ms. Polak.

6 A. Hi there.

7 Q. Let's look at what you have up here right
8 now on your Slide 22.

9 There's a line item in here called
10 "Prohibits routine flaring."

11 Do you see that?

12 A. I do see that.

13 Q. I've seen that in some of the other
14 division slides later on, and I've also heard a lot
15 of discussion about that.

16 Would you please explain what you mean by
17 "routine flaring"?

18 A. It means that we prohibit flaring --
19 venting and flaring, unless it is of the part of the
20 exceptions that we have defined within the rule.

21 We have some specific exceptions that
22 we've outlined within the rule. And unless it is
23 one of those -- falls within one of those
24 categories, it is prohibited.

25 Q. Is there a common understanding of what

1 **routine flaring is?**

2 A. Define "common."

3 **Q. Are you aware of how others view and use**
4 **the term "routine flaring"?**

5 A. I'm aware, throughout discussions of
6 stakeholder engagements, as to what people refer to
7 as flaring.

8 **Q. I'm talking about routine flaring.**

9 A. Routine flaring. I'm sorry.
10 I'm aware of only what's come up in the
11 stakeholder conversations.

12 **Q. And how has it been described in the**
13 **stakeholder conversations?**

14 A. Flaring, with regard to operational
15 practice and/or as needed in the event of lack of
16 takeaway.

17 That's -- those are two examples.

18 **Q. Lack of takeaway?**

19 A. Capacity.

20 **Q. Have you also heard it described as**
21 **high-pressure flaring?**

22 A. Yes.

23 **Q. Okay. Do you have the ability to move**
24 **down to Slide 38, perhaps?**

25 A. I don't believe I can do that before that

1 testimony has been presented, can I?

2 Q. Yeah.

3 MR. AMES: Just move to 38. Let's hear
4 the question, Tiffany, and we'll go from there.

5 THE WITNESS: Okay.

6 MR. FELDEWERT: Eric, I'm looking at
7 Exhibit 4A. That's what I am using, which I think
8 it -- which is important, because I think, Mr. Ames,
9 some of the page numbers changed between 4 and 4A.
10 So I have Exhibit 4A, Slide 38. Okay?

11 Q. (By Mr. Feldewert) So I believe,
12 Ms. Polak, this is an area Mr. Ames indicated that
13 the division had made some changes.

14 This is essentially your introductory
15 phrase to both these rules in part 27.

16 And then there's a similar introductory
17 phrase as you reflect on here for the rules for
18 part 28, correct?

19 A. Correct.

20 Q. Okay. And this reflects the changes that
21 the division has made since the rule was first
22 published?

23 A. Correct.

24 Q. Okay. And this new language reflects,
25 now, a citation to Rule 19.15.2?

1 A. Correct.

2 **Q. Okay. And does that rule contain the**
3 **definition of surface waste that we see in the**
4 **statute?**

5 MR. AMES: Objection; beyond the scope of
6 the witness' testimony. We will have a witness who
7 will testify regarding this slide.

8 And so to this point, Mr. Feldwert's
9 questions have been fairly innocuous, and basically
10 orienting the witness to a particular topic.

11 But now that he's asking questions about
12 the topic, that should be reserved for the witness
13 who will testify to it.

14 HEARING OFFICER ORTH: Mr. Feldewert, I
15 know that this is Mr. Ames' overview witness, not
16 the witness speaking to the details of the language
17 here.

18 MR. FELDEWERT: Well, I guess my -- my
19 point was, I think a lot of what has occurred here
20 goes to policy. And my assumption is that Ms. Polak
21 is the best person situated to address the policy
22 statements that are contained in these introductory
23 clauses.

24 HEARING OFFICER ORTH: Mr. Ames, if he
25 rephrased his question along policy lines, it may be

1 acceptable.

2 Would you like to rephrase, Mr. Feldewert?

3 MR. FELDEWERT: Sure.

4 Q. (By Mr. Feldewert) Ms. Polak, as a matter
5 of policy, the division determined to cite to this
6 particular regulation, correct?

7 A. Correct.

8 Q. And you're familiar with that regulation?

9 A. Mr. Feldewert, to be very honest, I
10 confuse a lot of numbers and letters. There's a lot
11 of them going on.

12 If there's something you would like to
13 refer to me specifically, I can do that.

14 Q. Okay. Let me -- is there a way that I
15 could take over the screen for a moment?

16 A. I'll stop sharing.

17 Q. Okay. And will I be allowed to share?
18 (Discussion off the record.)

19 Q. (By Mr. Feldewert) Can you see what I've
20 put on the screen, Ms. Polak?

21 A. I cannot. Can anyone else? Is it just
22 me?

23 HEARING OFFICER ORTH: I don't see
24 anything.

25 MR. FELDEWERT: That's because I hadn't

1 started sharing.

2 Q. (By Mr. Feldewert) How's that?

3 A. It's coming.

4 Okay. There we go.

5 Q. All right. One of the things that NMOGA
6 did in its prehearing statement on page 4 was to
7 provide the division -- or the commission, I should
8 say -- with a definition of surface waste that you
9 see at the bottom of page 4. Okay?

10 The regulation that you have now cited,
11 that conforms with this statutory definition,
12 doesn't it, Ms. Polak?

13 A. I'm sorry, Mr. Feldewert. You cut out.
14 Could you just repeat the question?

15 Q. The regulation that you cite in your
16 introductory statements, that regulation quotes this
17 statutory definition of surface waste?

18 A. That's correct.

19 Q. Okay. All right.

20 All right. Could we go back to that
21 slide 38 that you kindly put up for me, and I will
22 stop sharing?

23 A. I can. I will see if I can.

24 (Discussion off the record.)

25 Q. (By Mr. Feldewert) Okay.

1 A. I want to go back to Slide 38.

2 Q. Now, I want to talk a little bit about the
3 policy that is expressed in this part 27.8A. Okay?

4 A. Okay.

5 Q. When I move through, after you quote --
6 quote to the -- or cite to the definition of surface
7 waste, the next sentence says:

8 "The operator has the general duty to
9 maximize the recovery of natural gas."

10 Do you see that?

11 A. I do see it.

12 Q. Okay. Do you understand where that
13 "maximize the recovery" statement came from?

14 A. I -- I'm not sure what you're meaning by
15 that question.

16 Q. My question to you is: When the division
17 put in this part --

18 A. Yes.

19 Q. -- this general duty to maximize the
20 recovery of natural gas, what was -- do you know
21 what the purpose behind that was or where that came
22 from, that statement?

23 A. It's likely coming from our interpretation
24 of the Oil and Gas Act.

25 Q. Okay. Did you mean to -- does the

1 division mean to imply that there's no economic
2 component to the recovery of natural gas?

3 A. That wasn't our intent.

4 Q. Would you agree with me that there's a
5 duty there by operators to recover a gas that is
6 economically recoverable?

7 A. For the operator, yes. To the division,
8 we're not required to conduct economics, per our
9 regulation authority.

10 Q. Did you mean to say, in this provision
11 here, that operators have an obligation to go out
12 and recover natural gas no matter what the cost or
13 what the economics are associated with that effort?

14 A. No.

15 Q. And is that understanding expressed in
16 here, as you read it? Would an operator understand
17 that, reading the language you've chosen?

18 MR. AMES: Objection, calls for
19 speculation as to what someone else might think.

20 HEARING OFFICER ORTH: That's sustained,
21 Mr. Feldewert. Please rephrase.

22 Q. (By Mr. Feldewert) Do you think,
23 Ms. Polak, it's important to perhaps put in here
24 that there's a duty to recover gas that is
25 economically recoverable?

1 A. I'm sorry, Mr. Feldewert. I lost you at
2 "perhaps."

3 Q. Would you agree with me that it might be
4 helpful, in properly articulating the duty of an
5 operator, to reference in here that it's -- that
6 that duty is to produce economically recoverable
7 gas?

8 A. I don't know that I would agree with that.
9 I think that --

10 Q. Why not?

11 A. Well, I think regarding economics, we have
12 tried to consider some of that in some of the other
13 provisions in the rule.

14 So for example, let's take the stripper
15 well provision.

16 We recognize that those are lower
17 producers. We recognize that they may be
18 economically challenged, and we've allowed some
19 flexibility there, and knowing that it's going to
20 cost the operator money that the wells may not
21 likely be recovering as much.

22 So I don't know that the language needs to
23 be specific here. But I believe that we've taken
24 that into consideration in other places.

25 Q. Okay. But you can see my concern here.

1 **If someone is reading this, and you don't have some**
2 **reference to economics here, that this could be read**
3 **as requiring operators to undertake efforts to**
4 **recover, even if it's not economic to do so?**

5 A. I can understand that, and I would leave
6 that to the commission to decide whether or not they
7 feel that economics needs to be specifically stated
8 here, because I don't believe that it's the OCD's
9 requirement to have an economic test here.

10 **Q. Or by the same token, the OCD division did**
11 **not mean to imply that an operator is required to**
12 **undertake actions to recover gas where it's not**
13 **economic to do so?**

14 MR. AMES: Objection, form of the
15 question.

16 The question is not clear whether he's
17 asking the witness to agree with him or to state
18 what the division's position is.

19 HEARING OFFICER ORTH: Mr. Feldewert, I
20 think actually, you have already asked that
21 question, and I believe Ms. Polak has already
22 answered it.

23 MR. FELDEWERT: And I'm sorry. I was just
24 confirming.

25 **Q. (By Mr. Feldewert) I think the answer was**

1 yes, you did not mean to indicate here that there's
2 no -- that the duty extends beyond recovering gas
3 that is economically recoverable.

4 MR. AMES: Objection, asked and answered.

5 HEARING OFFICER ORTH: Right. I believe
6 it was asked and answered.

7 Please move on.

8 MR. FELDEWERT: Okay.

9 Q. (By Mr. Feldewert) Ms. Polak, then I'm
10 going to move on to the last sentence of the policy
11 statements in here. Okay?

12 A. Okay.

13 Q. The division has said that in all
14 circumstances, all circumstances, the operator shall
15 flare rather than vent natural gas, except where
16 it's technically infeasible or would pose a risk of
17 safe operations or personnel safety, correct?

18 A. Correct.

19 Q. Okay. Now would you agree with me that
20 this particular provision, this statement, has
21 nothing to do with the prevention of surface waste?

22 A. I think that this has to do with the
23 protection of health and the environment.

24 Q. So this would be -- this is one of those
25 areas of -- you're dealing with peer commission

1 **issues?**

2 A. I am looking at this as falling within our
3 authority to prefer flaring over venting for safety
4 reasons and environmental reasons.

5 **Q. What are safety reasons?**

6 A. Well, so I guess let's comment there, that
7 there's a clause that says when it's safe to do so.

8 It's also our ability to recover the
9 product from flare versus vent.

10 I'll state that very simply, and then I
11 think that I would say that you should speak around
12 the specifics, the technical specifics regarding
13 combustion, et cetera, to some of my colleagues who
14 are going to testify specifically to this later on.

15 **Q. Well, am I incorrect that if you vent or**
16 **if you flare, you're not recovering the gas,**
17 **correct? It's being released?**

18 MR. AMES: Objection; form of the
19 question.

20 Counselor started with saying "Am I not
21 correct," and ends by saying "correct, am I
22 correct?"

23 And I don't know what the witness is
24 supposed to figure out from this question.

25 **Q. (By Mr. Feldewert) Did you understand my**

1 **question, Ms. Polak?**

2 A. I would appreciate it if you would
3 simplify it a little bit.

4 **Q. Certainly.**

5 A. Thank you.

6 **Q. If you vent gas, you're not recovering**
7 **that gas, correct?**

8 A. That is correct.

9 **Q. If you flare gas, you're not recovering**
10 **the gas?**

11 A. Correct.

12 **Q. So there's -- the difference between**
13 **venting and flaring is the type of emissions that**
14 **occurs?**

15 A. Correct.

16 **Q. Do you agree with that?**

17 A. Agree.

18 **Q. All right. And would you agree that, as**
19 **Ms. Ely indicated, that the NMED is the agency that**
20 **is best tasked with addressing emission decisions?**

21 A. Yes.

22 **Q. Okay.**

23 MR. FELDEWERT: If I may share the screen?

24 A. Yes, gave me one second, maybe.

25 Okay. I think Mr. Rose-Coss can control

1 it better than we can, actually.

2 (Discussion off the record.)

3 HEARING OFFICER ORTH: The host duties
4 have been passed from Mr. Rose-Coss to Mr. John
5 Garcia. You'll see a different name now.

6 MR. FELDEWERT: I think I am in a position
7 where I can share, if I may, Madam Hearing Officer.

8 HEARING OFFICER ORTH: Yes. Please go
9 ahead.

10 Q. (By Mr. Feldewert) Can you see what I've
11 put on the screen, Ms. Polak?

12 A. I can.

13 Q. Okay. I -- I think this is -- this is
14 similar to what you and I discussed earlier, but in
15 a little bit different context.

16 I put up on the screen page 7 from NMOGA's
17 Exhibit A. Okay?

18 A. I see that.

19 Q. Okay. I believe we had sent you and the
20 commissioners an exhibit of our proposed changes.
21 We had a small notebook that has Exhibit A, which
22 has our proposed changes to part 27.

23 A. Yes.

24 Q. Okay. So I'm looking at page 7 of that,
25 in case anybody has the notebooks.

1 Now, you will see that we suggested that
2 the commission change the term "technically
3 feasible," when it comes to capturing or combusting
4 natural gas during drilling, to "reasonably and
5 practical."

6 Do you see that?

7 A. I see that.

8 Q. Now, the division used the term
9 "technically feasible."

10 And my question is, as a matter of policy,
11 did the division mean to say that a drilling -- that
12 an operator, drilling, is required to attempt to
13 capture the gas despite the cost?

14 A. No.

15 Q. Okay. Would you agree with me that the
16 term "technically feasible" does not, perhaps,
17 communicate that economics is a component here?

18 A. I would agree with you.

19 I would also agree that the suggestion
20 doesn't, as well.

21 Q. "Reasonable and practical"?

22 A. Yeah. In both of these cases, it -- I
23 don't see the terms economic being implicit there.

24 Q. Have you examined what the term
25 "reasonably practical" means?

1 MR. AMES: Objection. This is NMOGA's
2 proposal, not ours, and they should be explaining
3 it.

4 HEARING OFFICER ORTH: Mr. Feldewert,
5 please rephrase. I think you can ask her if she has
6 an understanding.

7 Q. (By Mr. Feldewert) Ms. Polak, if you --
8 if there's testimony that this type of term,
9 "reasonably practical," takes into account an
10 economic component, that then it would be more
11 appropriate?

12 A. I can agree with that.

13 Q. Okay. I'm going to ask you, Ms. Polak, to
14 take back over the slide, if you can.

15 So I'm going to stop sharing. Okay?

16 A. Okay. I believe I've got it.

17 Q. Now, would you be able to go to Slide 83?

18 A. Hold on.

19 Is this the slide you're referring to,
20 Mr. Feldewert?

21 Q. Yes.

22 A. Okay.

23 Q. This slide indicates reasons why the
24 division added the reporting category and removed
25 other reporting categories.

1 A. Yes. I believe this slide outlines all of
2 our existing categories. And there is a highlight
3 there that notes a change that I believe was the
4 addition of an exploration well.

5 Q. Which I think -- yes, it used to be called
6 the delineation well?

7 A. It was called the delineation well, yes.

8 Q. And the division added that as an item to
9 be -- to be reported on?

10 A. Correct.

11 MR. AMES: Objection, beyond the scope of
12 the witness' testimony.

13 HEARING OFFICER ORTH: Mr. Feldewert?

14 MR. FELDEWERT: Sure. Let me lay a
15 foundation.

16 Q. (By Mr. Feldewert) Ms. Polak, do you
17 happen to have your notebook of exhibits in front of
18 you?

19 A. I do not.

20 Q. Okay. Let me ask you this.

21 I think you presented a slide 16, so I
22 guess we have to -- let's go to that.

23 A. Okay.

24 MR. FELDEWERT: And I will lay my
25 foundation here, Mr. Ames.

1 (Discussion off the record.)

2 Q. (By Mr. Feldewert) One of the things you
3 mentioned is that it's important to have accurate
4 data to establish meaningful baselines?

5 A. That is correct.

6 Q. And enforceable rules?

7 A. Correct.

8 Q. Okay. Because you don't want data that
9 could be inconsistent when it comes to reporting?

10 A. Correct.

11 Q. And I think on Slide 19 -- you want to
12 flip to that?

13 A. Is this the slide you're referring to,
14 Mr. Feldewert?

15 Q. Yes, ma'am.

16 Under "Reporting," you indicated that the
17 division reduced categories for reporting, while
18 still ensuring meaningful data capture.

19 That was a goal?

20 A. Yes.

21 Q. Okay. Because in order to begin to have
22 accurate reporting, or useful reporting, you've got
23 to have meaningful -- the ability to capture
24 meaningful data?

25 A. Correct.

1 Q. Which is why you would have added,
2 perhaps, a delineation well, because that's a
3 circumstance where the operators can capture
4 meaningful data about what is being flared, for
5 example?

6 A. So we added that because we added a
7 provision within the rule to allow for exploration
8 wells, and the ability of those to flare for a
9 certain period of time, recognizing that in the new
10 exploratory play there may not be the means to
11 extend such capital to set up a midstream takeaway
12 before it's been established that the play exists.

13 So we added that category to be able to
14 capture that, yes.

15 Q. And operators would be able to provide --
16 capture the data on the lines being flared at that
17 point, right?

18 A. Yes.

19 Q. And be able to provide meaningful data on
20 that.

21 And if you go to Slide 25.

22 A. (Witness complies.)

23 Q. That's the category of reporting,
24 Ms. Polak, as I look at the right-hand side, the
25 second -- down -- on down.

1 That's a category of reporting where the
2 division would be able to obtain complete and
3 accurate measurements and reports of the volume of
4 vented and flared natural gas?

5 A. That is what the slide says, yes.

6 Q. Okay. So, ma'am, could you then, having
7 made that -- discussed that, I want to go, then,
8 back to that slide 83. Okay?

9 A. Okay. Hold on.

10 Q. Well, I think this is one of those
11 circumstances where -- slide 83 is -- I think you're
12 at the right slide, as far as I'm concerned.

13 A. Okay.

14 Q. Okay. So if I look at -- just for the
15 record, if I look at the amended Exhibit 4A,
16 although this slide says 70-something, if you go by
17 the pagination, it is absolutely slide 83.

18 Okay, Ms. Polak?

19 A. Okay.

20 Q. All right. So now on this slide the
21 division indicated why it deleted certain reporting
22 categories?

23 A. Correct.

24 Q. Okay. And as I look through this, the
25 division deleted, for example, reporting categories

1 **during drilling operations because the volumes are**
2 **too small to measure and not considered waste?**

3 A. So throughout, that -- that is correct.
4 That is what the slide says.

5 Throughout our stakeholder conversations,
6 the feedback was given and agreed to that these
7 categories were not necessary.

8 Q. Okay. Then when I go to -- down to the
9 packer leakage test, do you see that?

10 A. Yes.

11 Q. You deleted that because the volume is --
12 "TSTM" means too small to measure?

13 A. Correct.

14 Q. And then there was the next category
15 dealing with -- pneumatics, the division deleted
16 because of the high cost to measure with low
17 accuracy, right?

18 A. Correct.

19 Q. And there was no credible method of
20 estimation?

21 A. Correct.

22 Q. Okay.

23 HEARING OFFICER ORTH: I'm sorry to
24 interrupt your questioning.

25 As I mentioned earlier, we need to take a

1 break from 3:30 to 3:45.

2 MR. FELDEWERT: Okay.

3 (A recess was taken from 3:30 p.m. to 3:45
4 p.m.)

5 HEARING OFFICER ORTH: Mr. Feldewert, I'm
6 sorry. We are back after a break.

7 If you would, resume your questioning of
8 Ms. Polak.

9 MR. FELDEWERT: Sure.

10 Q. (By Mr. Feldewert) Ms. Polak, just to get
11 us back where we were.

12 As I understand it, looking at this slide
13 on why the division deleted certain reporting
14 categories, okay, that these were circumstances
15 where the activity involved -- involved emissions
16 that could not be reliably measured.

17 Is that fair, some of these?

18 A. Correct.

19 MR. AMES: Objection, confusing question.
20 Mischaracterizes the slide.

21 HEARING OFFICER ORTH: Mr. Feldewert, I'm
22 sorry.

23 Would you rephrase the question?

24 Q. (By Mr. Feldewert) Okay. As I understand
25 it from this slide, you list on here circumstances

1 **where emissions could not be reliably measured or**
2 **estimated?**

3 A. That is how the slide characterizes it,
4 Mr. Feldewert. I would encourage hearing the
5 testimony of the witness presenting this slide,
6 because the slides aren't characterizing all of the
7 discussions that we had surrounding these
8 categories.

9 Q. Okay. But these were circumstances where
10 the division determined that trying to estimate or
11 measure these categories would not provide
12 meaningful data?

13 A. Correct.

14 Q. Okay. Would you agree with me, then, that
15 to the extent that -- not dealing with the remaining
16 categories, okay -- that the division has listed in
17 subpart 287.182, that if the remaining categories --
18 if some of them meet this same requirement, that
19 they should likewise be removed?

20 A. I think that we would have to be convinced
21 of that, because we've had that discussion several
22 times in stakeholder engagement.

23 And the commission could not -- the OCD
24 really could not get our arms around collapsing
25 those as much as I know you -- you would like.

1 Q. Okay. So -- but the point being, if we
2 have a reporting category that's not going to
3 provide data, then there's no reason to have it as a
4 reporting category, correct?

5 A. If that statement is true for everyone,
6 yes.

7 Q. Okay. All right.

8 Now, Ms. Polak, talking about the
9 remaining categories. There's quite a few of them,
10 right?

11 A. I believe we started with 22, and we are
12 down to 12, I believe.

13 Q. Okay. Are you familiar with production
14 accounting reporting systems, based on your
15 experience?

16 A. I have cursory awareness, based on my
17 experience developing fields, but I am by no means
18 an expert.

19 Q. Okay. Is there someone else that's going
20 to testify that's more familiar than yourself with
21 production accounting reporting systems?

22 A. Are you referring to these categories, or
23 the actual systems of individual operators and how
24 they account for production?

25 Q. The ability to implement these reporting

1 categories under a production accounting reporting
2 system.

3 A. We will have people who can testify to
4 that.

5 Q. Do you know -- can you tell me who that
6 is, so I get the right person?

7 A. Fair point. I believe that Mr. Bolander
8 can speak to that.

9 Q. Okay.

10 A. Based on his experience.

11 Q. All right. So he would be a better person
12 to address those kind of issues?

13 A. Yes.

14 Q. All right. I understand.

15 I think you -- you touched on it, and
16 Mr. Ames certainly touched on it.

17 But attempting to achieve a 98 percent
18 capture rate over the next five-year period is going
19 to be unprecedented, right?

20 A. So to the best of my knowledge, yes.

21 Q. Okay. Would you agree that along that
22 line, if they're going to try to do this, that there
23 may be some unforeseen events or circumstances that
24 arise in attempting to achieve that never-achieved
25 goal over a five-year period?

1 A. I agree.

2 Q. All right. Would you agree that it may be
3 appropriate, then, for the commission to afford some
4 kind of a relief, in the event that an operator can
5 demonstrate that there are some unique circumstances
6 or unforeseen events that may cause the operator not
7 to be able, legitimately, to meet the -- these
8 goals?

9 A. So I would say that that is up to the
10 commission. But I would say that we have built some
11 provisions like that into the rule in certain
12 circumstances.

13 Specifically, regarding the conditional
14 APD approval and denial of APDs for an operator who
15 is out of compliance on their annual target.

16 Q. And I suppose an operator could always
17 seek a hearing, right, to determine whether there's
18 any provisions of this rule for which they should be
19 entitled to some kind of a relief?

20 MR. AMES: Objection, beyond the scope of
21 her testimony.

22 MR. FELDEWERT: Okay. All right.

23 HEARING OFFICER ORTH: I think so,
24 Mr. Feldewert.

25 MR. FELDEWERT: All right. That's all the

1 questions I have.

2 Thank you for your time, Ms. Polak. I
3 appreciate it.

4 THE WITNESS: Thank you, Mr. Feldewert.

5 HEARING OFFICER ORTH: Thank you,
6 Mr. Feldewert.

7 Mr. Biernoff, do you have questions of
8 Ms. Polak?

9 MR. BIERNOFF: Madam Hearing Officer, I do
10 not have any questions of this witness.

11 Thank you.

12 HEARING OFFICER ORTH: Thank you.

13 Ms. Fox, do you have questions for
14 Ms. Polak?

15 MS. FOX: Thank you, Madam Hearing
16 Officer. I have a few.

17 EXAMINATION

18 BY MS. FOX:

19 Q. Good afternoon, Ms. Polak.

20 A. Hi, Ms. Fox.

21 Q. And thank you for your testimony today.

22 Ms. Polak, approximately how many oil and
23 gas wells does OCD regulate, whether they are active
24 or inactive or abandoned?

25 A. I cannot tell you exactly with certainty.

1 I would say we're in the ballpark of --
2 oh, I don't want to give that number without
3 checking for the record. I just don't want to give
4 that, Ms. Fox.

5 Q. Can you approximate? Is it 10,000?
6 30,000? How many?

7 A. No, I'm -- I'm not willing to approximate
8 that number.

9 Q. Okay. Do you know if you regulate over
10 30,000 wells?

11 A. Yes.

12 Q. Do you know if you regulate over 40,000
13 wells?

14 A. Yes.

15 Q. Do you know if you regulate over 50,000
16 wells?

17 A. Are we going in 10,000 increments?
18 Yes. Yes, we do.

19 Q. Okay. Thank you. That -- that is -- that
20 is certainly sufficient.

21 And how many division staff are assigned
22 full-time to enforce OCD's regulations and the Oil
23 and Gas Act?

24 A. Full-time, including everyone?

25 Q. Full-time inspectors, full-time

1 **enforcement staff.**

2 A. Okay. Enforcement, I believe we have
3 between 10 and 15 inspectors, and we are in the
4 process of hiring additional.

5 Q. And how many OCD lawyers are assigned to
6 undertake enforcement actions?

7 A. Right now, Mr. Ames. And we have just
8 hired an additional lawyer.

9 Q. And those two lawyers have other
10 responsibilities in addition to enforcement actions,
11 correct, including this -- hearings like this,
12 permitting, generally advising the OCD?

13 A. Yes.

14 Q. So you have about 15 enforcement personnel
15 for the 50,000 wells -- 50,000-plus wells?

16 A. That's a good estimation.

17 Q. OCD recently obtained statutory authority
18 to bring its own administrative and judicial
19 enforcement actions, correct?

20 A. Correct.

21 Q. And that was during the 2019 legislative
22 session?

23 A. Correct.

24 Q. And effective January 1, 2020?

25 A. I believe so.

1 Q. And let me see if I can -- if I understand
2 your newly-acquired enforcement authority.

3 And that's under 7231.

4 Is that correct, or do you know that
5 statutory cite?

6 A. I don't know that cite. I'm sorry.

7 Q. That's fine.

8 So as I understand it, if OCD identifies a
9 violation of the act or the rule, OCD can issue a
10 notice of violation or it can file suit in State
11 District Court.

12 Is that correct?

13 A. Correct.

14 Q. And then if the respondent, the operator,
15 is not -- and after the OCD -- if OCD issues a
16 notice of violation, the operator, the respondent,
17 has an opportunity for a hearing before the
18 division.

19 Is that correct?

20 A. Correct.

21 Q. And then if the respondent is not
22 satisfied with the decision of the division, the
23 respondent has an opportunity for what's called a
24 hearing de novo before the commission.

25 Is that correct?

1 A. Yes.

2 Q. And that hearing de novo means that you
3 put on -- it's not a record review. You -- each
4 party must put on witnesses, evidence, exhibits, for
5 a second time.

6 Is that correct?

7 A. Correct.

8 Q. And then if the respondent is not
9 satisfied with the commission's decision, the
10 respondent has a statutory availability of
11 requesting a rehearing before the commission.

12 Is that correct?

13 A. I believe so, yes.

14 Q. And then if the respondent isn't satisfied
15 with the commission's decision, or its decision on
16 rehearing, the respondent can go to State District
17 Court on appeal, correct?

18 A. Correct.

19 Q. And then, if the respondent isn't
20 satisfied with the State District Court decision,
21 the respondent can appeal to the State Court of
22 Appeals.

23 Is that correct?

24 A. Correct.

25 Q. So that's a lot of steps and a lot of

1 **process for enforcement actions, correct?**

2 A. That is correct.

3 Q. And each of those steps requires a great
4 **deal of agency resources, correct?**

5 A. Yes.

6 Q. And since OCD has acquired this
7 **enforcement authority, approximately how many**
8 **notices of violation has OCD issued?**

9 A. Estimate, 10.

10 Q. And in your experience, would it be
11 **accurate to say that OCD does not have the resources**
12 **available to adequately pursue all violations of the**
13 **Oil and Gas Act, of which you're aware?**

14 A. I will never turn down the opportunity to
15 redress more resources for the OCD.

16 However, with each of those notices of
17 violation, we never got to the phase where we went
18 to hearing. We were able to work that out with the
19 operators, and we were able to manage with the
20 resources we had.

21 Q. So my question was: Given your limited
22 **resources, isn't it accurate to say that OCD doesn't**
23 **have the resources available to adequately pursue**
24 **all violations of the Oil and Gas Act of which**
25 **you're aware?**

1 MR. AMES: Objection, asked and answered.

2 MS. FOX: She didn't answer that question.

3 HEARING OFFICER ORTH: I believe she
4 answered in a way that indicated they were able to
5 pursue all of them through NOB negotiations.

6 MS. FOX: She answered -- Madam Hearing
7 Officer, she answered the questions about the -- the
8 enforcement actions she's taken.

9 I'm asking her a different question, and
10 that has to do with whether they have the resources
11 to pursue all violations of which they are aware
12 adequately.

13 HEARING OFFICER ORTH: Oh, I see. All
14 right.

15 Mr. Ames, I think that's a legitimate
16 question.

17 Go ahead, Ms. Polak.

18 A. "All" is a very absolute term. I would
19 love to have more resources. But we are, right now,
20 working on processes to put in place that will help
21 us achieve all, through IT automations, et cetera,
22 that will help us do things without people, but with
23 process.

24 Q. (By Ms. Fox) So I take it your answer is
25 you don't have enough resources to adequately pursue

1 **all enforcement actions of which you are aware?**

2 MR. AMES: Objection, asked and answered.

3 MS. FOX: I think the witness,
4 Madam Hearing Officer, is evading the question, but
5 I need a direct answer.

6 HEARING OFFICER ORTH: Hold on.

7 You reverted to the earlier question. It
8 would be violations of which she was aware, not
9 enforcement actions for which she was aware.

10 Ms. Polak, can you answer that question?

11 THE WITNESS: Okay. Which one, violations
12 or enforcements?

13 HEARING OFFICER ORTH: Violations.

14 THE WITNESS: Okay. I believe that we
15 have adequate staff to enforce violations.

16 Q. **(By Ms. Fox) Thank you.**

17 **Ms. Polak, you're familiar with the policy**
18 **regulations of waste in the Oil and Gas Act, aren't**
19 **you?**

20 A. I am.

21 Q. **And you're familiar with the definition of**
22 **waste in the Oil and Gas Act under 70-2-3, which**
23 **says that waste is defined and includes its**
24 **quote/unquote ordinary meaning, aren't you?**

25 A. Yes.

1 Q. Okay. Just for clarification, let me read
2 that to you.

3 "As used in this act" -- this is 70-2-3 --
4 "the term 'waste,' in addition to its ordinary
5 meaning, shall include," and then there's a list of
6 sort of sub definitions -- underground waste,
7 surface waste, et cetera.

8 That's the definition of waste that you're
9 familiar with, correct?

10 A. That is correct. I appreciate you for
11 reading that.

12 Q. And so you know, Mr. Feldewert asked you a
13 line of questions, essentially, whether OCD
14 interprets the term "waste" to import operator
15 economic viability into the definition of waste.

16 Do you remember that line of questioning?

17 A. I do.

18 Q. And so I take it, from your answers, that
19 OCD does not interpret the term "waste" in the Oil
20 and Gas Act to require that each and every operator
21 and each and every circumstance of capturing
22 methane, of capturing gas waste, is required to make
23 a profit when they capture that waste.

24 Is that correct?

25 A. Correct.

1 Q. Also -- let's see.

2 Ms. Polak, Mr. Feldewert asked you a line
3 of questions about the provision in your proposed
4 rules that require flaring over venting, as long as
5 it's technically feasible and not unsafe, correct?

6 Do you remember that line of questioning?

7 A. I do.

8 Q. And part of your justification for that
9 provision was that it was intended for safety
10 reasons, correct?

11 A. Correct.

12 Q. And are you familiar with other places in
13 your rules where OCD requires flaring over venting
14 for safety reasons?

15 A. I believe throughout the rule we set forth
16 the general thought that flaring is preferred over
17 venting. I could not cite you specific sections.

18 Q. Can -- let's see. I can share this with
19 you, or I can read this to you.

20 But I was wondering if you're familiar
21 with 19.15.11.11D.

22 I'm guessing not off the top of your head.

23 A. No. They all muddle at this point.

24 If you can screen share, that would be
25 very helpful.

1 Q. I can. If I have screen sharing
2 authority, I can share that.

3 (Discussion off the record.)

4 Q. (By Ms. Fox) So if you'll look down, this
5 is 19.15.11.11D. It's at the end of this first
6 page, flare system.

7 And if you could read that provision, and
8 then tell me if that's one example of a provision in
9 OCD's regs, regulations, where flaring over venting
10 is required for safety reasons?

11 A. Yes.

12 I have read it, and I agree.

13 Q. Thank you.

14 MS. FOX: Those are all the questions I
15 have.

16 Thank you, Ms. Polak.

17 THE WITNESS: Thank you, Ms. Fox.

18 HEARING OFFICER ORTH: Thank you, Ms. Fox.

19 Ms. Paranhos, do you have questions of
20 Ms. Polak?

21 MS. PARANHOS: I have no questions for
22 Ms. Polak.

23 HEARING OFFICER ORTH: All right. Thank
24 you.

25 Madam Chair, do you have questions of

1 Ms. Polak?

2 CHAIRWOMAN SANDOVAL: I do.

3 Commissioner Kessler, do you want to go first or
4 would you like me to?

5 COMMISSIONER KESSLER: I have just sort of
6 a very general question, so if I might go first, I
7 think your questions might be more specific.

8 CHAIRWOMAN SANDOVAL: Yes, go ahead.

9 EXAMINATION

10 BY COMMISSIONER KESSLER:

11 Q. Ms. Polak, thank you for your testimony.

12 And I would like to also refer to
13 Mr. Feldewert's line of questioning regarding
14 economics and importing economic analysis into the
15 regulation.

16 I would like sort of a general discussion
17 of what the underpinning for that economic analysis
18 is, or where it's coming from in the rule -- or in
19 the statute, I should say.

20 What in the Oil and Gas Act are you -- is
21 the OCD relying on to import economic components
22 into the analysis of waste under the proposed rules?

23 That's a big question. Let me break it
24 down or rephrase as necessary.

25 But I'm just trying to understand.

1 **Where are the economic tests coming from?**

2 A. Thank you, Commissioner Kessler.

3 Madam Chair, I actually don't believe, in
4 the statute, it specifies economics.

5 However, we also recognize that there are
6 situations where it doesn't make sense for us to
7 impose a regulation based off economics.

8 That would not give us the results in
9 reducing the waste that we're looking for.

10 So while we are not required to take
11 economics into account, I'll give you the stripper
12 example, the stripper well example, as a reference
13 point.

14 We stood back and said, You know, it's not
15 going make economic sense for a company to come in
16 under a time line into a very costly retrofitting
17 program that is not going to be putting their focus
18 towards the areas that have the most waste, if that
19 makes sense.

20 And so it's really along that line of
21 intent that we have indirectly put economics into
22 the rule, but we don't have a test.

23 I would also refer to some of the -- if
24 you remember Mr. Feldewert's questions around some
25 of the accounting categories, where we have

1 referenced that they are too small or inaccurate to
2 measure.

3 Through stakeholder conversations, it
4 became a little bit of a risk/reward/benefit of it
5 not being achievable for us to chase that, and maybe
6 we needed to focus towards other areas of bigger
7 waste.

8 So that is a very long answer for your
9 very long question, but I hope that it's clear.

10 Q. (By Commissioner Kessler) Do you have an
11 obligation of performing economic analysis --

12 HEARING OFFICER ORTH: Could you please
13 repeat your question? You froze for a moment.

14 And, Mr. Ames, would you mute yourself,
15 please?

16 Q. (By Commissioner Kessler) Conversely,
17 there is no obligation for the OCD to require an
18 economic analysis of waste in their rule.

19 Is that correct?

20 A. Correct.

21 COMMISSIONER KESSLER: Those are my
22 questions. Thank you.

23 HEARING OFFICER ORTH: Thank you very
24 much, Commissioner Kessler.

25 Madam Chair?

1 CHAIRWOMAN SANDOVAL: Thank you. I have a
2 couple of questions, starting off with just a really
3 simple one.

4 EXAMINATION

5 BY CHAIRWOMAN SANDOVAL:

6 Q. Ms. Polak, do you support this rule
7 making?

8 A. Madam Chair, yes, I do.

9 Q. Thank you. Where to start here.
10 Just a couple of housekeeping items.
11 Could you go to Slide 9, please, of your
12 presentation?

13 A. Madam Chair, would you like me to share
14 the screen?

15 Q. That may be helpful, just so we make sure
16 that everybody sees what we're talking about.

17 A. Okay. Hold on, everyone.

18 (Discussion off the record.)

19 Q. (By Chairwoman Sandoval) I just wanted to
20 ask a clarifying question.

21 So at the top, you have methane strategy,
22 and the two arrows coming off of it for NMED's side,
23 then you've got ozone.

24 For OCD's EMNRD, it says methane.

25 Is that really more appropriately waste?

1 A. That is correct, Madam Chair.

2 Q. Okay. I just wanted to clarify that.

3 Thank you.

4 In your experience, both with the OCD,
5 with previous companies, are there operators out
6 there right now that are routine flaring due to
7 pipeline capacity issues?

8 A. Absolutely.

9 Q. Let me rephrase that.

10 Is that often, sometimes, due to
11 economics? It's cheaper for them to vent and/or
12 flare than it is to put it in a pipeline?

13 A. Sometimes. There's also other reasons as
14 well.

15 Q. Okay. I think that's helpful.

16 And then sort of talking a little more in
17 the realm of safety issues.

18 Again, either from your operational
19 experience or your experience here with the OCD, do
20 you think it could be a real safety issue if
21 operators vented all of the gas on site instead of
22 flaring it?

23 A. I do.

24 Q. In your previous capacity, or in your
25 capacity now, were field operation staff equipped

1 with what is commonly called as a 4-gas monitor?

2 A. Yes.

3 Q. One of the components -- so 4-gas monitors
4 are -- they're named because they look at four
5 different gases, you know, typically something like
6 O2, H2S, CO? They're really aimed at making sure
7 that inspectors see -- I mean, would it surprise you
8 that the 4-gas item, there's lower explosive levels
9 to make sure that there's not, you know, high levels
10 of gas in the area that an operator is in?

11 Were you aware of that?

12 A. Yes.

13 Q. So it is common practice in the industry
14 to make sure that their inspection staff, or
15 operators, are safe and not in areas where maybe too
16 much gas was vented, and there's much -- there's a
17 risk of explosion in the area?

18 A. Agree.

19 Q. Okay. Thank you.

20 So it sounds like venting large volumes
21 could be a real safety issue on site?

22 A. Correct.

23 Q. I'm going to read you a citation. Again,
24 it's -- we have a binder full of rules. I don't
25 expect you to know all of these offhand.

1 And I think Ms. Fox hit on this earlier.

2 But are you aware that OCC already has rules in
3 place, longstanding rules in place, that require
4 operators to flare, as opposed to vent?

5 For example, the rule that is being
6 retracted and replaced with this rule --

7 HEARING OFFICER ORTH: When you turn your
8 head, it's very difficult to hear you.

9 CHAIRWOMAN SANDOVAL: All right. I'll
10 move the mic.

11 HEARING OFFICER ORTH: And if you would
12 start from the beginning of that question, please.

13 CHAIRWOMAN SANDOVAL: Okay.

14 Q. (By Chairwoman Sandoval) So are you
15 aware -- and I will read this to you, one of our
16 rules 19.15.18.12F, that requires operators to flare
17 instead of vent.

18 Part of it reads:

19 "The operator shall burn all gas produced
20 and not used and report the estimated volume on a
21 C 115."

22 A. So I'm aware of that. I could not have
23 cited you the rule. I could not have cited you the
24 numbers and letters.

25 Q. That is fair.

1 Do you think it is fair to assume, or to
2 think that burning means flaring?

3 A. Yes.

4 Q. Okay. So there are already rules in
5 place, and longstanding practices based off of OCD
6 rules, that require operators to flare and not vent?

7 A. Correct.

8 Q. Thank you. So thinking a little bit more
9 on the economics -- let's see.

10 In your daily life, do you accumulate
11 trash? You know, it could be a container that you
12 use, or you bought -- you bought food in, something
13 like that?

14 Do you accumulate trash?

15 A. I have two children. I absolutely
16 accumulate trash.

17 Q. Okay. Is your practice to just leave it
18 out in your house in hope that it disappears?

19 A. Absolutely not. Especially in New Mexico,
20 with the rodent problem.

21 Q. Okay. Do you pay the city to manage your
22 waste? For example, do you pay the city, or
23 wherever you live, to come pick up your trash?

24 A. I do.

25 Q. So it's a natural part of daily life that

1 sometimes in order to, you know, manage
2 appropriately waste, you have to pay for it?

3 A. Correct.

4 Q. Okay. Thank you.

5 During this entire process, do you feel
6 like it was a collaborative process?

7 A. Absolutely.

8 Q. Starting from the beginning, you know,
9 when -- your time line, when we started engaging
10 two years ago up through now, you believe it's been
11 very collaborative?

12 A. I do. I was on the operator side and saw
13 the collaboration on that side, and joined the OCD,
14 and have seen the collaboration on this side as
15 well.

16 Q. And do you feel like OCD has drawn, you
17 know, as best a balance as possible with this rule
18 making, balancing the statutory requirements, the
19 charge of the governor and, you know, working to not
20 impose undue burden on the industry where not
21 necessary?

22 A. I agree.

23 Q. Back to some of the data questions that
24 came up.

25 So that map report that you talked about

1 was, you know, a collaboration of 27 companies.

2 In that report, was there general
3 consensus by all parties, both environment and
4 industry, that OCD's reporting was inadequate?

5 A. Yes.

6 Q. In terms of -- in order to ensure that
7 operators are meeting the 98 percent gas capture
8 requirement at the end of five years, or each annual
9 target, is there a way that OCD could do that
10 without requiring robust reporting?

11 A. No.

12 Q. So reporting is absolutely necessary in
13 order for this rule to be effective?

14 A. Absolutely. That's why I talked about it
15 being the number one phase in our -- the way that
16 we've outlined this rule is to set the reporting
17 structure first.

18 Q. And you feel as if the OCD has balanced
19 that well, you know, going between not enough
20 reporting, which I think sounds like where we are
21 now, and what the map-up report assessed, but not
22 going too far?

23 A. I -- I do. I think in our preproposal --
24 I alluded to it in my direct testimony. We were a
25 little overzealous, got a little excited by the

1 reporting.

2 We have clawed it back with -- by hearing
3 all of the stakeholders, both industry and on the
4 environment side, to make sure that we have
5 streamlined that, right set that, and tried to make
6 that non duplicative, but yet is still enough that
7 we feel like we can set meaningful targets and
8 actionable results.

9 Q. Okay.

10 CHAIRWOMAN SANDOVAL: I think that's all
11 the questions I have.

12 Thank you for your time today.

13 THE WITNESS: Thank you, Madam Chair.

14 HEARING OFFICER ORTH: Thank you, Madam
15 Chair.

16 Mr. Ames, do you have any followup with
17 Ms. Polak?

18 MR. AMES: Thank you, Madam Hearing
19 Officer. I just have a couple of questions.

20 FURTHER EXAMINATION

21 BY MR. AMES:

22 Q. Tiffany, I think you testified that in
23 some cases flaring natural gas is waste.

24 Is that right?

25 A. Yes.

1 Q. And you also said in some cases venting
2 natural gas is waste, right?

3 A. Yes.

4 Q. So do you think that the OCD has the
5 authority under the statute, when it decides that
6 something is waste, to decide how that waste should
7 be disposed?

8 A. Yes.

9 MR. AMES: Nothing further. Thank you.

10 HEARING OFFICER ORTH: All right. Thank
11 you.

12 If there's nothing further with Ms. Polak,
13 we will excuse her.

14 Thank you very much, Ms. Polak.

15 THE WITNESS: Thank you.

16 HEARING OFFICER ORTH: Mr. Ames, I don't
17 believe we have a 4:30 public comment session today,
18 because we spent the first half of the day in public
19 comment, so I believe we can go straight to 5:00.

20 Would you call your next witness, please?

21 MR. AMES: The OCD calls Matt Lepore.

22 HEARING OFFICER ORTH: Thank you.

23 Mr. Lepore.

24 THE WITNESS: Good afternoon,
25 Madam Hearing Officer.

1 HEARING OFFICER ORTH: If you would,
2 please raise your right hand.

3 (Witness sworn.)

4 HEARING OFFICER ORTH: And if you would,
5 please spell your first and last name.

6 THE WITNESS: My first name is Matthew,
7 spelled M-A-T-T-H-E-W. Last name, Lepore,
8 L-E-P-O-R-E.

9 HEARING OFFICER ORTH: Thank you.
10 Mr. Ames, go ahead.

11 MATTHEW LEPORE,
12 after having been first duly sworn under oath,
13 was questioned and testified as follows:

14 EXAMINATION

15 BY MR. AMES:

16 Q. Good afternoon, Matt.

17 A. Good afternoon, Mr. Ames.

18 Q. Mr. Lepore, are you an attorney by
19 profession?

20 A. I am. I've been a licensed attorney in
21 the state of Colorado since 1993.

22 Q. Can you describe a little bit of your
23 legal background?

24 A. Yes. My early career was in private
25 practice in Colorado, a fairly large law firm. My

1 practice emphasis was environmental law.

2 Over time that morphed to include a fair
3 bit of natural resources law.

4 After about 16 years in private practice,
5 I transitioned to the Colorado attorney general's
6 office. I took that job specifically to represent
7 the Colorado Oil and Gas Conservation Commission and
8 was at the AG's office for two years.

9 I did a year back in private practice
10 after that.

11 And then I had the opportunity to become
12 the director of Colorado's Oil and Gas Conservation
13 Commission.

14 **Q. So you represented the commission as**
15 **counsel, as general counsel for a couple of years.**

16 **Is that right?**

17 **A.** I was -- I think our structure -- the
18 Colorado structure is a little bit different than
19 New Mexico's. But I was an assistant attorney
20 general at the AG's office, in their department of
21 natural resources, or environment and natural
22 resources, and the COGCC was my only client.

23 **Q. Did you have an opportunity, during the**
24 **two years you served as counsel, to work on some**
25 **interesting oil and gas issues?**

1 A. Oh, certainly. I worked on, you know,
2 both regulatory and litigation matters. The primary
3 reason -- I'll say it differently.

4 The primary thing I worked on when I was
5 hired was in the wake of a very significant rule
6 making in 2008 in Colorado.

7 The trade association, the industry trade
8 association, Colorado Oil and Gas Association,
9 otherwise known as OGA, sued the commission over
10 those 2008 rules.

11 And one of my primary jobs, as the
12 assistant attorney general, was defending the
13 commission in that rule making.

14 We also did, of course -- sorry.

15 We also did rule making and what have you.

16 **Q. Okay. When you left the commission, you**
17 **said you went back into private practice.**

18 **Did you focus on oil and gas in your**
19 **private practice?**

20 A. That is correct. I spent two years at an
21 OG, oil and gas firm, called Beatty & Wozniak. And
22 my practice during those two years was heavily
23 focused on engagement with the COGCC and the
24 regulatory processes.

25 And that -- for those two years, on behalf

1 of industry clients.

2 **Q. And so you said you went back to the**
3 **commission, but this time you were the appointed**
4 **director?**

5 A. That's correct. In Colorado, the director
6 is an employee under the department of natural
7 resources. The department of natural resources head
8 there is called an executive director. It would be
9 equivalent in New Mexico to the secretary, who -- of
10 course that's an appointed position by the governor.

11 At that point -- it was 2012, summer of
12 2012 -- oil and gas development along the front
13 range in Colorado had gotten fairly controversial
14 and fairly high profile from a political point of
15 view.

16 So I did interview with the governor
17 before being hired by the executive director.

18 **Q. How many years did you serve as director**
19 **of the commission?**

20 A. I was director from summer of 2012 until
21 March of 2018. So about five and a half years.

22 **Q. What kind of issues did you have to**
23 **resolve as the director of the commission?**

24 A. A great many. We did -- I think in my
25 tenure, we undertook 13 separate rule makings. Some

1 of those were fairly significant.

2 Very early in my career as director, we
3 did a new setback rule making, so the distance
4 between new proposed oil and gas locations and
5 existing homes, schools, and other structures. A
6 very controversial rule making for a lot of reasons.

7 We also did a groundwater monitoring rule,
8 almost coincident with the setback rule making. In
9 that rule making, Colorado became the first state in
10 the country to require groundwater sampling prior to
11 drilling, and post drilling sampling and monitoring.

12 In the course of my tenure, several local
13 jurisdictions sought to prohibit different aspects
14 of oil and gas development within their
15 jurisdictions. Most notably, sought prohibitions on
16 hydraulic fracturing. Those cases, of course,
17 presented both legal challenges and political
18 challenges. Some of those cases went to the
19 Colorado Supreme Court, so there were many, many
20 issues around that.

21 I don't know, I could probably go on for a
22 long time.

23 **Q. I won't ask you any more questions. If**
24 **any of the other counsel want to, they can go**
25 **deeper.**

1 **As director of the commission, were you**
2 **involved in any interstate groups involved in the**
3 **oil and gas industry regulation and development?**

4 A. I was. I was appointed by Governor
5 Hickenlooper as Colorado's official representative
6 to the interstate oil and gas compact commission.
7 The IOGCC is essentially an organization primarily
8 made up of directors of oil and gas commissions
9 around the country and oil and gas producing states.
10 It's not a prerequisite that you be the director; it
11 just happens that that is the case mostly so.

12 It is a national organization dedicated
13 to -- you know, understanding oil and gas regulatory
14 schemes and so forth.

15 As I said, I think I spent five years as
16 the official rep.

17 I served on the regulatory committee of
18 IOGCC for two years, and I was chair of the steering
19 committee for one year.

20 And now I've told you about that I think
21 you might have asked me about, international
22 experience. So maybe I'll answer that question, if
23 that's the question.

24 **Q. Please. Please continue.**

25 A. I did -- during my tenure as director, I

1 had the opportunity to be part of delegations
2 sponsored by the United States Department of State
3 and/or Interior, to go to countries around the globe
4 who were considering development of nonconventional
5 natural resources, including Chile, Argentina,
6 Colombia, Indonesia, to engage with those companies,
7 or those jurisdictions, at sort of the national
8 level, the state level, and sometimes the local
9 level, around the challenges and potential benefits
10 of unconventional development.

11 And more recently, I had the opportunity
12 to serve as a consultant to the Western Cape
13 Provincial government in South Africa, under
14 somewhat similar circumstances.

15 There, the -- there is a large
16 unconventional shale formation under South Africa.
17 And the federal government there is considering
18 development of that shale, and the Western Cape
19 government was concerned about what the impacts to
20 them would be if that development went forward.

21 It's a very rural part of the state -- of
22 the country, undeveloped, and not a lot of
23 infrastructure. And they were concerned about the
24 potential hazards of that development. So we were
25 engaged in helping them think through that.

1 **Q. Since leaving the directorship of the**
2 **Colorado Oil and Gas Commission, have you stayed**
3 **involved in oil and gas issues?**

4 A. I have. I've been in the -- on the
5 private consulting side, since leaving the COGCC,
6 continuously since then.

7 I worked for a little over two years for a
8 consulting agency called Adamant Energy. Most of my
9 work there was -- involved -- and continued
10 engagement with the oil and gas development in
11 Colorado on a number of different sides.

12 So at various times I was consulting to
13 local governments, to environmental NGOs, including
14 some who are parties here today, as well as the
15 regulated community.

16 And then in June of this year I started my
17 own practice, my own consultant agency, which is
18 Insight Energy Law.

19 So the answer -- the short answer is very
20 involved.

21 **Q. Were you involved in the recent rule**
22 **making in Colorado?**

23 A. I was. My primary client was a coalition
24 of local governments that went under the banner of
25 the Western and Rural Local Government Coalition.

1 It was a group of 23 local governments. As the name
2 implies, mostly located either west of the
3 continental divide of Colorado or out on the eastern
4 plains.

5 Those jurisdictions tend to enjoy the
6 benefits that oil and gas development brings to
7 those communities in the form of jobs, and certainly
8 in the form of revenue from severance tax and such,
9 that help support those rural communities.

10 So they were quite active in the rule
11 making. The rule making was very, very broad in
12 scope. It began with some legislation in 2019 that
13 rewrote Colorado oil and gas law in very, very
14 substantial ways.

15 So yes, I was -- I represented that group
16 heavily for the entirety of the ruling.

17 **Q. Did that rule making involve issues**
18 **surrounding the venting and flaring of natural gas?**

19 A. It did. In Colorado's rule making scheme,
20 they have a different series of rules from the 100
21 to the 1200 series. The 900 series involves -- I am
22 blanking on the actual name of the 900 series. But
23 it involves the operational aspects, many of the
24 operational aspects, as well as environmental
25 aspects, such as management of exploration and

1 production waste, spill reporting, hits, et cetera.

2 Within that 900 series rule, Colorado
3 adopted, in November, a rule 903, that is specific
4 to venting and flaring.

5 Q. So if I understand correctly, you worked
6 both in private practice and in government service.

7 You have represented industry groups,
8 communities, and environmental groups in oil and
9 gas-related issues.

10 Would it be fair to say that you have
11 developed perspective from all of those different
12 angles?

13 A. I think that's a fair characterization.

14 I'm guessing -- I'm pretty -- I'm proud --
15 I don't know what else to say. I'm proud of that
16 fact. And I do think it gives one, you know, a
17 different and varied perspective. And I appreciate
18 having had the opportunity to do that and represent
19 those different sides.

20 Q. Thank you.

21 Is your CV OCD Exhibit 10?

22 A. Yes, it is.

23 Q. And that is an accurate copy of your CV, I
24 assume?

25 A. It is, yes.

1 **Q. Thank you.**

2 MR. AMES: I move admission of OCD
3 Exhibit 10.

4 HEARING OFFICER ORTH: I will pause a
5 moment, in the event there are objections.

6 Exhibit 10 is admitted.

7 (Exhibit admitted, 10.)

8 MR. AMES: Thank you, Madam Hearing
9 Officer.

10 **Q. (By Mr. Ames) Now, Mr. Lepore, have you**
11 **prepared a presentation for today's hearing?**

12 A. Yes, I have.

13 **Q. Is it a continuation of the PowerPoint**
14 **presentation that Ms. Polak began, and it is**
15 **Exhibit 4A?**

16 A. Yes, it is. We've had a sneak preview of
17 some of it already.

18 **Q. Well, I know we are all dying to dive in,**
19 **and others are dying to ask you questions about it.**
20 **So please continue.**

21 A. Okay. Very good.

22 I believe Ms. Polak is going to share her
23 screen again, and I'll advance the slides.

24 (Discussion off the record.)

25 THE WITNESS: Okay. So you know who I am,

1 and I think we can go to the next slide.

2 So, Commissioners, I think I would
3 describe my job today is to walk you through both
4 parts 27 and part 28, that you've already heard
5 about at some level of detail.

6 I'll give a little bit greater level of
7 detail than Ms. Polak did.

8 Before we get there, I want to give you
9 this little legend, if you will.

10 We have used different font colors to
11 indicate some specific things, kind of an effort to
12 be expedient and efficient.

13 So when you see orange text, it's not --
14 none of this is a mistake. We weren't just being
15 creative.

16 The orange text shows changes that have
17 been made since the October draft of the rules until
18 the present draft of the rules.

19 We've used kind of a dark blue text to
20 show things that are specific to part 28.

21 A purple text that -- for items that are
22 specific to part 27.

23 And green text for things that relate to
24 stripper wells, which we don't actually call
25 stripper wells, but everybody else does, so they're

1 stripper wells.

2 And there's some blue highlight just for
3 emphasis.

4 Next slide, please.

5 So the venting and flaring rule, the
6 New Mexico proposed venting and flaring rule, that's
7 part 27, which is specific to exploration and
8 production, so upstream operations, as they're
9 commonly called.

10 And the objectives here are to reduce the
11 waste of natural gas by regulating venting and
12 flaring from wells and production equipment, to
13 obtain complete and accurate measurements and
14 reports of the volumes of natural gas being vented
15 or flared.

16 We've already talked about that to some
17 extent.

18 And to require operators to capture at
19 least 98 percent of the total volume of natural gas
20 that they produce not later than December 31, 2026.
21 I would emphasize "at least 98 percent." I think
22 that's the target, not an ultimate end.

23 The next slide.

24 Part 28 is very similar. The objectives
25 are essentially similar, the same. Part 28 does

1 apply to industry and operations. My colleague at
2 Insight Energy Law, Jim Bolander, is going to focus
3 on part 28. And Mr. Bolander is an industry
4 engineer with more than 30 years' experience. And
5 he's the man we are going to turn to for technical
6 explanations of some of these issues that cover 27
7 and 28 as well.

8 Next slide, please.

9 In an effort to help -- help you navigate,
10 as we go through rule 27 -- part 27 has three parts
11 to it.

12 Part 7, definitions that apply
13 specifically to either rule 27 or 28, as the case
14 may be.

15 Part 8 of both rules pertain to venting
16 and flaring, with a prohibition on venting and
17 flaring that constitutes waste, as defined in
18 19.15.2.

19 And then with parts that allow specific
20 limited exceptions to that prohibition, both part 27
21 and part 28 under specific circumstances.

22 Part 28 has its own special part 9, which
23 relates to location requirements. That relates to
24 where the gathering system is located, relates to
25 mapping those systems and so forth.

1 Again, Mr. Bolander will spend his time
2 focused on part 28 and that particular requirement.

3 But the numbers diverge a little bit
4 because of that.

5 And then part 9 of 27 and part -- excuse
6 me -- part 10 of 28 are the gas capture requirements
7 that you've heard about with the 98 percent target
8 of -- at least 98 percent target.

9 And on the exploration and production
10 side, there is also a requirement that operators
11 file a natural gas management plan with their APDs
12 starting in June of this year, so that there is a --
13 an active and proactive planning around having
14 sufficient takeaway capacity at the time APDs are
15 submitted.

16 I want to take a detour just briefly from
17 the rule language itself to reference this document.

18 This is the Methane Guiding Principle,
19 which is exhibit -- OCD Exhibit 49. And what I'm
20 referencing here can be found at pages 2 and 5 of
21 Exhibit 49.

22 The Methane Guiding Principle is an
23 organization, not a thing. It's a coalition of
24 industry international institutions, NGOs, and
25 academics.

1 They have developed a series of best
2 practices for reducing methane emissions for the oil
3 and gas sector.

4 This slide shows a summary of the best
5 management practices for reducing emissions from
6 flaring. These are practices that many operators
7 are doing today voluntarily. They are practices and
8 methodologies that are relatively easy to implement
9 and are economically practicable.

10 So as you look at that list -- I think
11 you've already heard about some of those. But I
12 wanted to highlight this, because I believe you will
13 find that the proposed rules touch on each and every
14 one of these best management practices and
15 incorporate them in some way.

16 Understanding that these best management
17 practices were written sort of from an industry
18 perspective, we are taking that and bringing it into
19 the regulatory side; and, where appropriate,
20 encouraging or mandating that these best management
21 practices be incorporated.

22 Although I don't have a separate slide for
23 it, there is a similar sort of checklist, or set of
24 criteria, to be found in the international energy
25 agency's paper on methane emissions from oil and

1 gas, that's Exhibit 25, OCD Exhibit 25.

2 At page 7, you will find a summary that
3 emphasizes data gathering, setting, and overall
4 emissions reduction goal, fostering innovation, and
5 technological development deployment, maximizing
6 transparency, and ensuring widespread engagement
7 during the design of the regulations.

8 Again from my perspective, the draft rules
9 in front of you today, and the process that led to
10 those, has really checked all of those boxes. So I
11 wanted to call those out for you and let you know
12 that those are part of the exhibits from OCD.

13 Next slide, please.

14 Okay. So now, I'm going to get down a
15 little bit to the paragraph level.

16 So we have part 27, subpart 8. Paragraph
17 A prohibits venting or flaring that constitutes
18 waste, including routine flaring of associated gas.

19 The red text indicates there that we
20 changed that language between October and December,
21 in response to stakeholder feedback.

22 And Eric has touched on this, and
23 Ms. Polak touched on this.

24 The division is not asserting that every
25 single example of flaring or venting is waste. A

1 lot of them are, and those that are, are prohibited
2 by this rule.

3 And yes, that does include, in our
4 estimation, routine flaring of associated gas.

5 And I'll hold off for later as to how one
6 might define the chief flaring.

7 Subparts B through G set forth exceptions
8 specific to different phases of oil and gas
9 operation.

10 So subpart B deals with drilling.

11 C, completions.

12 And D, production operations.

13 In each of those the division has
14 identified specific circumstances of venting and
15 flaring that are allowed. They're allowed either
16 because they don't constitute waste, because they're
17 part of beneficial use, or because they are -- I
18 would -- I would phrase it unavoidably lost through
19 normal operations.

20 And we can talk about that and give some
21 examples of that.

22 Subpart E of part 8 is performance
23 standards for production equipment. So equipment
24 like separators and flares and dehydrators and
25 storage tanks.

1 There are some requirements there that are
2 intended to minimize waste and minimize the need for
3 either flaring or venting.

4 Subpart F, detailed measurement
5 requirements.

6 And subpart G, related daily reporting
7 requirements for the hydrocarbons that have been
8 mentioned that are being vented or flared.

9 Next slide, please.

10 With respect to 28, on the administrative
11 side, part 8 is similar. I won't go into much
12 detail here. The same general prohibition on
13 flaring and venting that causes waste.

14 A general exception, Section B.

15 C is unique to 28. C does require
16 operators to generate operations plans, which is a
17 plan intended, again, to ensure that the need to
18 vent or flare is minimized.

19 And the other sections there are similar
20 to part 27.

21 Moving on now to 27 subpart 9, and 28
22 subpart 10, this is the gas capture requirement.

23 As of January 1, 2022, operators shall
24 reduce the annual volume of vented and flared
25 natural gas in order to capture no less than

1 98 percent of the natural gas produced from its
2 wells in the case of exploration production, or
3 gathered, in the case of the gathering side.

4 And that will happen in two parts of the
5 state. A north part -- a north half and a south
6 half.

7 So that's -- Part A is that fundamental
8 requirement of 27-9 and 28-10.

9 Part B is the accounting process for the
10 annual gas capture rate. That includes a
11 requirement to notify royalty owners of the amount
12 of gas that a given operator is venting or flaring.
13 That is intended both for transparency and as an
14 incentive for operators to minimize their flaring
15 and venting.

16 Part C of 27-9 and 28-10 relates to
17 third-party verification.

18 The division has chosen a path where the
19 division can request third-party verification if it
20 believes that an operator is not being as robust as
21 it might be, or it has questions about the reporting
22 methods or the data being reported.

23 And finally in part D, for exploration and
24 production, there is the natural gas management plan
25 requirement that, again as I said, beginning in June

1 of this year, with an APD. An operator must file a
2 natural gas management plan that sets forward how an
3 operator intends to meet the requirements of part A,
4 to minimize its venting and flaring, to reduce
5 waste, to capture the gas that it brings to the
6 surface.

7 And that -- we'll get into that in greater
8 detail. But there are sanctions available to the
9 division for operators who neglect to certify that
10 they have sufficient takeaway capacity for the wells
11 that they are planning.

12 Next slide.

13 This is the part 9 of 28. This is the
14 location requirements that is unique to part 28 that
15 Mr. Bolander will cover in greater detail.

16 But the four subparts you can see there,
17 the requirement for digital format and as-built map,
18 or new, existing, and future gathering pipelines,
19 some data about the pipeline size and material,
20 annual updates to the GIS map provided by the
21 operator, and then a provision that allows the
22 operator to assert confidentiality over some of that
23 GIS information, pursuant to the statute that is
24 cited there.

25 Next side.

1 So here, we are going to dive into the
2 separate subparts. This is part 7, so the
3 definitions.

4 I am not going to belabor you or bore you
5 and belabor all the definitions, but there are some
6 key ones that we wanted to highlight for you.

7 These definitions are specific to parts 27
8 and 28. They are terms that are used within these
9 rules, and they are not necessarily found in other
10 parts of 19.15. They're not likely applicable.

11 So the first of these is the term "ALARM".
12 ALARM is an acronym, and it stands for advanced leak
13 and repair monitoring. And it is applied to
14 technology that is not required by applicable state
15 or federal law, that the division has approved.

16 And the intent here was to encourage
17 operators to use advanced or emerging technologies
18 to try to identify leaks or releases, to minimize
19 the loss of natural gas.

20 And again, I'll talk later about what
21 those incentives are. But that was the intent, and
22 that is what ALARM is.

23 And the -- again, the reddish text there
24 indicates to you that our definition changed between
25 October and December, largely in response, again, to

1 stakeholder comments, who wanted it clearer that the
2 real intent here is for technologies that are
3 better -- better cutting edge.

4 This is not audiovisual, auditory
5 inspection language. This is for things -- what we
6 all had in mind was fixed-wing aircraft, flyovers,
7 where those aircraft are equipped with very
8 sensitive methane detection equipment, and cover a
9 lot of area in a relatively short time.

10 That is a technology that exists today
11 that is not being widely used. But we thought if we
12 could incent that in some way, to encourage updating
13 of that technology, we would try to do so.

14 It is open-ended enough to allow for other
15 technologies as they emerge.

16 Next slide, please.

17 Okay. So this one will take a little bit,
18 because this is brand-new. This is -- this is a
19 world premiere. No one has really seen this
20 language before. It was developed, literally, in
21 the last 24 or 36 hours, and the final tweaks were
22 made today, this morning.

23 So what we have are the definitions of
24 average daily well production and average daily
25 facility production.

1 Where this is going to come into play are
2 in those stripper well -- I am using air quotes for
3 stripper -- stripper well exceptions, or different
4 treatment.

5 And what we were getting at here was a
6 recognition that low-producing wells or
7 low-producing facilities may need some additional
8 time, a longer runway, if you will -- and I think
9 Tiffany described it similarly -- for some of the
10 rules.

11 But what we didn't want was an exception
12 that swallowed the rule, that let these
13 low-producers completely off the hook.

14 So a back and forth with -- with industry
15 representatives, as I said over the last several
16 days, and we've arrived at this definition.

17 I think -- I think there are some slight
18 differences in the actual language, which I will
19 show you here in a little bit. But we are not going
20 to consider -- or we're only going to consider gas
21 for purposes of these definitions.

22 So a real threshold is, is there an
23 average daily production of greater than
24 60,000 cubic feet of natural gas, either at that
25 well or at that facility.

1 Q. (By Mr. Ames) Matt, may I break in here
2 for a minute?

3 Will Mr. Bolander and Mr. Powell provide
4 more testimony about these definitions and how they
5 work for stripper wells?

6 A. Yes, they certainly can and will. And I
7 think I will have a little bit more to say about
8 these as we get into rules that contain that
9 language in a substantive way.

10 But yes, I certainly want to make sure
11 that everybody understands, you know, the intent and
12 the application of the rules.

13 HEARING OFFICER ORTH: Mr. Ames, and
14 Mr. Lepore, we have a hard stop of 5:00 p.m. today.
15 So if you have another slide that would fit within
16 five minutes, that's great.

17 THE WITNESS: I promise I can do one more
18 slide in five minutes.

19 HEARING OFFICER ORTH: Thank you.

20 THE WITNESS: So the next definition I
21 will call out for you are the definitions of flare,
22 or flaring, and venting for, I think, obvious
23 reasons. They are so integral to the rule itself.

24 And all I'll say about these is that our
25 intent here was to add definitions that were broad

1 enough to cover all we are really talking about.
2 And we want to be sure that we capture, within the
3 regulatory framework, the various circumstances
4 under which natural gas might be flared or vented.

5 There are, as I think we've alluded to,
6 some circumstances in which flaring or venting will
7 not be considered waste and won't count against an
8 operator for purposes of their natural gas capture
9 rate. I want to be clear about that.

10 But again, we'll get a little bit deeper
11 in that as we get to the substantive provisions.

12 We have two more definitions to cover. I
13 am willing to try. Let's go quickly and see if we
14 can do this.

15 **Q. (By Mr. Ames) I think it might be a good**
16 **idea to break here. Emergencies has many subparts.**
17 **It's a fairly complicated definition, and there's**
18 **some questions around it. So rather than rush in**
19 **and then have to stop, why don't we just stop right**
20 **here?**

21 A. Very good.

22 HEARING OFFICER ORTH: All right.

23 Mr. Ames and Mr. Lepore, let me mention
24 just two things.

25 One, I was remiss in not mentioning that

1 the commission's counsel from the attorney general's
2 office were part of this session all afternoon.

3 That was Sally Malave and Chris Moander.

4 And finally, I'll mention that we will be
5 having public comment at 8:30 a.m.

6 And we will begin with the technical case
7 at 9:00.

8 We'll see you tomorrow.

9 Thank you very much.

10 We are adjourned.

11 CHAIRWOMAN SANDOVAL: Please, I have one
12 really quick question.

13 If -- if the public comment closes before
14 9:00, if we finish at 8:50, do we pick up testimony
15 at that point or do we wait until 9:00?

16 HEARING OFFICER ORTH: Well, so I have
17 said to the lawyers that we would start at 9:00.

18 Let me ask the lawyers if they would be
19 willing to get on a little earlier, in the event we
20 could squeeze an extra ten minutes out of the day.

21 Is there an objection to that?

22 MR. AMES: No objection.

23 MR. FELDEWERT: No objection,
24 Madam Hearing Officer.

25 HEARING OFFICER ORTH: All right.

1 So at this moment, we know that we have
2 six commenters. My introductory comments take just
3 a minute or so at the beginning. We'll take the six
4 commenters, who are typically going between two and
5 three minutes apiece.

6 So probably a good guess, just to be safe,
7 maybe get on at 8:45.

8 Thank you all very much.

9 (Proceedings concluded at 4:58 p.m.)

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CERTIFICATE

I, Paul Baca, RPR, CCR in and for the
State of New Mexico, do hereby certify that the
above and foregoing contains a true and correct
record, produced to the best of my ability via
machine shorthand and computer-aided transcription,
of the proceedings had in this matter.

/s/ Paul Baca

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