

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS -21528
01-06-21 AFTERNOON

APPLICATION OF OIL CONSERVATION DIVISION
TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC, AND
TO AMEND 19.15.7 NMAC, 19.15.18 NMAC, AND
19.15.19 NMAC; STATEWIDE.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
AFTERNOON SESSION
RULEMAKING HEARING
JANUARY 6, 2021
Via Webex Platform
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
FELICIA ORTH: HEARING EXAMINER
CHRIS MOANDER, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on January 6, 2021, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241

1 APPEARANCES

2 FOR THE APPLICANT:

3 ERIC AMES
Assistant General Counsel
4 1220 S. St. Francis Drive
Santa Fe, NM 87505

5
FOR NMOGA:

6
MICHAEL FELDEWERT
7 ADAM RANKIN
HOLLAND & HART
8 110 North Guadalupe, Suite 1
Santa Fe, NM 87501
9 505-954-7286

10 FOR ENVIRONMENTAL DEFENSE FUND:

11 ELIZABETH PARANHOS
DELONE LAW, INC.
12 155 Jennine Place
Boulder, CO 80304
13 303-442-0610

14 FOR CENTER FOR CIVIC POLICY,
CONSERVATION VOTERS NEW MEXICO,
15 DINE C.A.R.E., EARTHWORKS, NATURAL
RESOURCES DEFENSE COUNCIL, SAN JUAN
16 CITIZENS ALLIANCE, SIERRA CLUB, and
350 NEW MEXICO:

17
TANNIS FOX
18 ERIK-SCHLENKER-GOODRICH
WESTERN ENVIRONMENTAL LAW CENTER
19 208 Paseo Del Pueblo Sur, 602
Taos, NM 87571
20 505-629-0732

21 and

22 DAVID R. BAAKE
2131 North Main Street
23 Las Cruces, NM 88001
575-343-2782

24

25

1 FOR STATE LAND OFFICE:

2 ARI BIERNOFF
 3 GENERAL COUNSEL
 310 Old Santa Fe Trail
 Santa Fe, NM 87501

I N D E X

5 REPORTER CERTIFICATE 247

W I T N E S S E S

7 MATT LEPORE

8 Cross by Mr. Feldewert 131
 Cross by Ms. Fox 179
 9 Cross by Ms. Paranhos 194
 Commissioner Questions 196

10 JAMES L. BOLANDER

11 Direct by Mr. Ames 222

12 PUBLIC COMMENT 234

13 E X H I B I T I N D E X

14 Admitted

15 Exhibit 31 226

16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 HEARING EXAMINER ORTH: We are back after a lunch
2 break. And when we broke, Mr. Ames had finished his direct
3 examination of the witness, Mr. Lepore. And we turn now to
4 Mr. Feldewert for his cross-examination of Mr. Lepore.

5 CROSS-EXAMINATION

6 BY MR. FELDEWERT:

7 Q. Thank you, Madam Hearing Officer. Mr. Lepore,
8 good afternoon. Can you hear me okay?

9 A. Good afternoon, Mr. Feldewert. Yes, I can.

10 Q. Can I have the ability to share the screen,
11 please? I think that would be the most efficient way to go.

12 Mr. Lepore, can you see the, on the screen,
13 Section 27.8?

14 A. Yes, I can.

15 Q. Okay. And just for the record, and pretty much
16 following in the notebook, it's on Page 2 of the Division's
17 Exhibit 2A. Okay? This is the redline strikeout version
18 that we received from the Division. Mr. Lepore, I want to
19 focus on this paragraph because I appreciate your testimony
20 on it and I want to explore a little bit further with you.
21 This language here that have I highlighted, which is the,
22 again, this rule it says that there is a general duty by
23 operators to maximize the recovery of natural gas. Do you
24 see that?

25 A. I do.

1 Q. Okay. That's what I want to focus on in this
2 waste rule. Okay, first off, Mr. Lepore, it sounds like
3 you're familiar with the Oil & Gas Act because you've
4 testified a little bit about it. Are you aware of any such
5 requirements imposed on operators by the Oil & Gas Act? And
6 I'm speaking specifically here to maximize the recovery of
7 natural gas.

8 A. I am not aware of a requirement in the Oil & Gas
9 Act to maximize the recovery of natural gas. I would also
10 tell you that I would represent that I am intimately
11 familiar with the New Mexico Oil & Gas Act.

12 Q. Fair enough, fair enough. I think you, when you
13 were in this section in referencing this provision, you were
14 -- you indicated that no one means to implicate in this
15 waste rule the broader duty when it comes to oil and gas
16 production. Do you recall that?

17 A. I recall my testimony about what -- how I would
18 interpret that phrase.

19 Q. Do you agree with me that it could be read
20 incorrectly and out of context here to require operators to
21 engage in production activities that would be not related to
22 the minimization of waste?

23 A. I, I guess my answer is that, no matter what we
24 write where, someone can take it out of context and
25 misinterpret its intent.

1 Q. Okay. So you, you can see my concern, right?

2 A. I, I think I see your concern, and I think I
3 tried to address your concern in my direct testimony by
4 saying that the interpretation that this imposes a duty
5 unrelated to minimizing waste would not withstand scrutiny.

6 Q. Okay. Now, on that point and trying to get to
7 that goal, okay, I want to flip down to 27.8E(1), okay? So
8 I'm going to I'm going to move down here to Subpart E,
9 performance standards, E(1).

10 Now, we see a similar phrase here, "maximize
11 hydrocarbon recovery and minimize waste." Do you see that?

12 A. I do.

13 Q. And the Division has proposed and has, in the
14 redlines, stricken "maximize hydrocarbon recovery"?

15 A. Yes.

16 Q. Okay. In order to minimize, eliminate the
17 language concern we're talking about, wouldn't it -- don't
18 you think it would appropriate to likewise, up here in
19 27A.82 [] eliminate that same language, "maximize the
20 recovery of natural gas," and leave it at "the duty to
21 minimize waste," which is what this rule is all about?

22 A. My response is that the intent here is to ensure
23 that operators appreciate that if they bring hydrocarbons to
24 the surface, when they bring hydrocarbons to the surface, to
25 me that's what imposes, triggers, a duty to maximize the

1 recovery of the hydrocarbons brought to the surface and to
2 minimize the venting and flaring. So it's different sides
3 of the same coin, from my perspective. And, again, I don't
4 believe the Division intended to suggest or impose a broader
5 thou shalt go produce hydrocarbons regardless of the
6 economics, I don't think that's implicit in this. I think
7 if you bring hydrocarbons to the surface, you have a duty to
8 maximize their recovery and minimize the waste.

9 Q. But wouldn't that same goal be reached if the
10 Division does what they did in E(1), that is, indicate,
11 look, when you bring hydrocarbons to the surface, you have a
12 duty to minimize waste, isn't that what we're talking about
13 here?

14 A. Yeah, and I think the wordsmithing of it at this
15 point can be left to the Commission's impression.

16 Q. Okay. All right. Now, I want to talk to you
17 about, you mentioned in subparagraph D-4, so I think it's
18 right above here, so we're in Subpart D on Page 3 of the
19 Division's Exhibit 2A and it carries over in Page 4. These
20 are -- this is a general prohibition against venting and
21 flaring, and then there is exceptions. Right?

22 A. Yes, sir.

23 Q. Okay. And we're down here in what is now D-4,
24 what used to be D-5, going over to Page 4, and we see a
25 number of references to normal operations. And I think you

1 correctly characterized these as unavoidable losses?

2 A. Excuse me, I probably did use that phrase and
3 that is, I believe, a fair way to characterize the
4 exceptions.

5 Q. Okay. So these would be instances whereas I
6 think you said it's infeasible to capture and attempt to put
7 into a sales (unclear)?

8 A. That is my understanding, with the caveat that
9 there are engineers who will testify on behalf of the
10 Division after me who probably are smarter and more
11 articulate in these areas than I am.

12 Q. Fair enough, fair enough. And I think you also
13 characterized these as instances that did not constitute
14 waste?

15 A. I think that is fair as well.

16 Q. Okay. Let me ask you this: When we get to the
17 accounting, gas capture accounting, so I want to go down
18 here to Subpart 27.9, okay, and we're now in the Division's
19 methodology of accounting, B.1, and we see it has three
20 subparts, (1), (2), and (3), that's how they're doing their
21 accounting for the gas capture percentage; right?

22 A. Yes.

23 Q. And as part of that, they're attempting to --
24 they start with the purchase of gas, and then you calculate
25 the lost gas, and you use that to determine your gas capture

1 percentage. Is that probably how it works?

2 A. Yes.

3 Q. Okay. Here's my question: Those losses, those
4 releases, those emissions, whatever you want to call them,
5 that we just talked about related to normal operations that
6 are unavoidable that do not constitute waste, how are they
7 excluded from this calculation? Or put another way, how are
8 they -- how is it structured so that it's not -- so that
9 that unavoidable loss is not counted against operators?

10 A. Not all of the categories above are excluded from
11 being calculated as lost gas in the accounting sections
12 here. The exclusions are specified and articulated. They
13 are in those three subparts.

14 Q. So they're not, they're not -- they're not
15 excluded from the, from the calculation of lost gas?

16 A. That is correct.

17 Q. Even though they're unavoidable and they don't
18 constitute waste?

19 A. They are low volume, low pressure, difficult to
20 get captured, but they are still being vented and the
21 Division's decision was to have those count.

22 Q. Against operators?

23 A. Against their captured percentage, yes.

24 Q. Even though it's unavoidable?

25 A. And unavoidable, yeah, there are ways to keep

1 those losses to a minimum, which I think are -- those
2 efforts to minimize those losses are emphasized throughout
3 the rule. But for now, you are correct, that the Division's
4 position is that those count against an operator's lost gas
5 calculation.

6 Q. I want to switch over now, I'm going to try this
7 and I think it will work, I want to switch over to your
8 slides that you went through, okay?

9 A. Sure.

10 Q. So I'm going to click this. Does it show up
11 okay?

12 A. I can see it, I can read it, yes.

13 Q. Okay, great. Thank you. All right. So I am in
14 slide 52 of what has been marked as Division Exhibit 4A.
15 These are the slides you just went through, Mr. Lepore.

16 A. Yes. I'm sorry.

17 Q. And you see here, you've got a statement that the
18 first bullet point, and I believe this is a mistake and I
19 just want to make sure we're both on the same page. You say
20 the operators must submit a monthly V and F report beginning
21 in June of 2021. Now, I believe when you look at G2 that's
22 not correct.

23 A. You are, you are correct that in June of 2021, we
24 anticipate that the Form C-115-B may not be completed or
25 ready, and that is the form on which this monthly reporting

1 will occur. So for the latter half of 2021, the Division
2 will require quarterly reporting in a format that they will
3 advise, and a monthly reporting will begin in January of
4 2022. So you are -- that is not a correct statement on the
5 slide.

6 Q. Okay. Then we are on the same page, I just
7 wanted to make sure. And that assumes, right, Mr. Lepore,
8 that the systems are in place, the operators have knowledge
9 that they need to be able to implement the monthly reporting
10 beginning in January of 2022?

11 A. Yes.

12 Q. Because at this point, operators don't even know
13 what they are going to have to report on yet. Okay?

14 A. Yeah, maybe I, maybe I spoke too quickly. I
15 think they know -- they will know if they have to report on
16 when the Commission adopts the rules.

17 Q. Bingo. Bingo. And then they have to start
18 implementing their systems, as they can, to be able to meet
19 this ambitious January of 2022 monthly reporting obligation.

20 MR. AMES: Objection. The witness did not
21 testify to whether something was ambitious or not. That's
22 an editorial comment by Counsel.

23 MR. FELDEWERT: Well, he just shook his head yes.

24 HEARING EXAMINER ORTH: All right, Mr. Feldewert,
25 no more editorials.

1 BY MR. FELDEWERT:

2 Q. I want to go to, back to Exhibit 2A, okay, Mr.
3 Lepore?

4 A. Yes, sir.

5 Q. And I want to look at G2 reporting. Give me a
6 moment here to get to the right spot. These are the
7 categories that are being considered, okay, you and I just
8 talked about, right, the monthly categories -- or the
9 monthly reporting categories?

10 A. (No response.)

11 Q. Are you with me?

12 A. Yes.

13 Q. Okay. And there was even some changes by the
14 Division to what these reported categories may or may not be
15 since they filed their rule?

16 A. That didn't sound like a question to me. It
17 sounded like a statement.

18 Q. Is that correct?

19 A. Yes.

20 Q. All right. Now, I want to talk about this new
21 language here we see in Subpart G.2.H. Now, you testified
22 about this and you pointed out that there are now four
23 listed contaminants that would result in gas not meeting
24 pipeline specs, that being two, that's nitrogen, right, Mr.
25 Lepore?

1 A. Yes.

2 Q. H²S is hydrogen sulfide?

3 A. Yes.

4 Q. CO² is carbon dioxide?

5 A. Yes.

6 Q. And then O² down there in H, Roman numeral two,
7 is oxygen?

8 A. Yes.

9 Q. In your practice as an attorney and as the
10 director of the Colorado Oil and Gas Commission, would you
11 agree with me that there are, when you look at these
12 gathering agreements and the pipeline specifications that
13 are involved, that there are more potential contaminants
14 that would result in not meeting pipeline specs beyond just
15 the four listed here?

16 A. I will say, Mr. Feldewert, that that is actually
17 beyond my subject matter knowledge and I cannot answer that
18 question.

19 Q. Would you agree with me that if there are other
20 reasons, like gas would not meet pipeline specifications
21 that that is not addressed here?

22 A. I will certainly agree that what the Division has
23 proposed are four specific contaminants or impurities that
24 would allow an operator to vent or flare, actually not vent,
25 but flare gas until it meets the gathering pipeline quality

1 standards for those four impurities.

2 Q. Now, the Division has suddenly decided to break
3 out and treat separately oxygen from the other three that
4 they have listed here; right?

5 A. Correct.

6 Q. Okay. Did -- and you testified about this, but
7 had you, Mr. Lepore, done any study on how or why oxygen
8 gets introduced into the gas stream?

9 A. I personally have not.

10 Q. Are you aware of any study that the Division did
11 in examining how or why oxygen gets introduced into the gas
12 stream?

13 A. I do not have any specific knowledge of a
14 specific study that the Division did or that Mr. Powell or
15 Mr. Bolander may have done or have knowledge of in the past.

16 Q. You're not aware of anything that they did, Mr.
17 Bolander or Mr. Powell?

18 A. That is correct.

19 Q. Or anything that anyone at the Division did?

20 A. I am not aware of what they did or did not do.

21 Q. Okay. Are you aware, therefore, that there may
22 be valid reasons why oxygen gets introduced into the gas
23 stream that is not the result of any kind of operator
24 negligence?

25 A. You asked if I'm aware and I previously testified

1 that I don't have knowledge about this at this level of
2 detail, so I'm not aware one way or the other.

3 Q. Okay. When there is a commissioning of
4 equipment, Mr. Lepore, when there is a commissioning of
5 equipment, okay, doesn't that sometimes involve the
6 introduction of air to assist in getting the equipment
7 prepared for use safely?

8 MR. AMES: Objection. The witness has already
9 said he's not aware of any studies one way or the other
10 regarding oxygen. And he referred Counsel to ask those
11 questions to the witnesses who could answer those questions.

12 MR. FELDEWERT: Well, I didn't ask him about a
13 study; I asked him about their commissioning. So let's see
14 if he knows the answer, okay?

15 Mr. Lepore, are you --

16 MR. AMES: Madam Hearing Officer, can you rule on
17 the objection, please?

18 HEARING EXAMINER ORTH: Yes, hold on. Mr.
19 Feldewert, I have heard now Mr. Lepore demur a few times
20 when you reached the extent of his knowledge, the knowledge
21 he can speak from. So it's unclear to me why you're
22 proceeding on this path still.

23 MR. FELDEWERT: I think I'm on a different -- I'm
24 asking about commissioning of equipment, that's all I'm
25 asking. I'm asking about commissioning of equipment.

1 HEARING EXAMINER ORTH: Commissioning of
2 equipment, all right. Mr. Lepore, if you can answer the
3 question, go ahead.

4 THE WITNESS: Thank you, Madam Hearing Officer.
5 If I can ask Mr. Feldewert to repeat the question, please.
6 BY MR. FELDEWERT:

7 **Q. Mr. Lepore, do you have knowledge about**
8 **commissioning of oil and gas equipment?**

9 A. I have very limited knowledge about commissioning
10 of oil and gas equipment, most of which I expressed during
11 my direct testimony, being an understanding that prior to
12 bringing that equipment onto production, it may be prudent
13 and appropriate for safety reasons to purge the equipment
14 with, with what is not clear to me, but to purge it so that
15 it is clean and able to flow the hydrocarbons effective.

16 **Q. Are you aware that some of that purging may**
17 **involve the introduction of air?**

18 A. I wouldn't say that I am aware of that in a --
19 yeah, it certainly seems logical to me. It is not knowledge
20 that I walk around with in my head.

21 **Q. Okay. And you'll agree with me, though, that**
22 **it's normal to introduce air during the purging, that you**
23 **then have oxygen in it; right? We can agree with that? You**
24 **and I know that.**

25 A. It seems reasonable to me.

1 Q. Okay, all right. Now, this idea here about
2 treating oxygen separately from these other limited lists of
3 impurities is important to the gas capture and lost gas
4 reporting; isn't that right, Mr. Lepore?

5 A. It's a factor in the calculation, yes.

6 Q. And in fact, if I go down to Subpart G.2 -- I'm
7 sorry, let's get the right spot here. Subpart B.2, the
8 accounting, in Subparagraphs 1, 2, and 3.

9 A. Yes, sir.

10 Q. Okay? At 27.8.9.B, that when you look at what
11 the Division has listed here, you'll see down here in B.3
12 that their new language -- and this is something that they
13 just did, so we haven't had a chance to look at it long, but
14 you see it now. You see that they have allowed the removal
15 of produced gas, the volumes that are vented or flared
16 pursuant to subparts, can you see H.I?

17 A. Yes, I do.

18 Q. That would be the paragraph that you and I just
19 looked at that involved nitrogen, CO², and what was the
20 other one?

21 A. Hydrogen sulfide.

22 Q. Thank you.

23 A. This is a memory test.

24 Q. Well, it's confusing.

25 I think what we just -- what's not readily

1 apparent, you have to read a little bit, is that when they
2 go ahead into the next subparagraph, (I), they're not
3 talking about H Roman numeral two where oxygen is listed.

4 A. No, they're not talking about oxygen. They're --
5 they, "they," we, are talking about -- yeah, it's just -- it
6 was a funny coincidence of small letters being used to mean
7 different things. Let me get to that part.

8 Q. Subpart (I), I think here is pneumatics.

9 A. Yes.

10 Q. Okay. So by not including here H, Roman numeral
11 two, and let's go back up to it. I've got to remember where
12 I'm at here. Gee. Thank you. All right, here we are.
13 They've listed H.1 as being removed from the operators'
14 produced gas; right?

15 A. Yes, sir.

16 Q. But the Division has not listed H.2, oxygen.

17 A. That is correct.

18 Q. Which means that if oxygen (unclear) are flared
19 because oxygen being in the system, it's counted against
20 operators, they're penalized?

21 A. It is part of their lost gas, that is true.

22 Q. Okay. Even though the introduction of oxygen
23 into the system may be valid?

24 A. I am not in a position to say yes or no to that
25 question.

1 Q. Okay. You mentioned there in your discussions or
2 your testimony what's going on in North Dakota.

3 A. Yes.

4 Q. Were you aware that North Dakota a number of
5 years ago attempted to implement a lower gas capture
6 percentage than what is being proposed here?

7 A. Yes.

8 Q. And the operators there and the Commission up
9 there has been attempting since that time to meet that lower
10 gas capture percentage?

11 A. Could you be more specific about what you're
12 terming the lower gas capture percentage as well as the time
13 frame that we're talking about?

14 Q. What did North Dakota start with, Mr. Lepore?

15 A. Oh, my gosh, what did they start with? I would
16 probably really be best to look at one of the references
17 that is in our exhibits and that I cited, but it was in the
18 neighborhood of 70, maybe 75 percent if we go back to 2014.

19 Q. And then what happened after that?

20 A. That's a very broad question.

21 MR. AMES: I mean, is Counsel asking what
22 happened after 2014 until the present? That could take a
23 while for the witness to answer.

24 BY MR. FELDEWERT:

25 Q. Mr. Lepore, the North Dakota Commission adjusted

1 **that gas capture percentage.**

2 A. I'm sorry, Mr. Feldewert, I did not actually hear
3 all of your question. Could you ask again?

4 **Q. Did North Dakota adjust that gas capture**
5 **percentage?**

6 A. To the best of my knowledge the answer to that
7 question is no. I don't think they have ever actually
8 changed the target capture percentage that they established,
9 which, for the record, were those proposed by the North
10 Dakota Oil and Gas Trade Association. I don't think they
11 have changed those.

12 What has happened is that, particularly following
13 the 20', late '14, early '15 downturn in prices, the
14 expansion of gathering capacity that had been fairly robust
15 slowed down dramatically because of the economics. Once
16 production began to ramp up again as the oil prices
17 recovered, they, "they," North Dakota, North Dakota
18 operators were far outstripping the gathering capacity with
19 the associated gas from the oil and, thereby, not coming
20 very close to those agreed-upon capture targets.

21 As a consequence of that, this will be my
22 characterization, the North Dakota Industrial Commission
23 added a number of provisions to the order that resulted in
24 operators being allowed to exclude from the lost gas
25 category a large number of -- a large volume of the gas they

1 were losing.

2 But what under our rule would be considered lost
3 gas, what under their rule previously had been considered
4 lost gas, exceptions were created. That's my understanding
5 of it. There are documents in the record that would maybe
6 add more specific details of that. But that's my
7 understanding of what happened and the target percentages
8 were changed, as I pointed out in my direct testimony, those
9 target percentages were set in 2014, not 2020.

10 **Q. Do you know what those target percentages are**
11 **now?**

12 A. Again, I, to the best of my knowledge, they have
13 not been changed and they capped out at 91 percent effective
14 November 2020. That was the original plan.

15 **Q. 91 percent?**

16 A. Yes, sir.

17 **Q. Okay. And are you aware of whether or not Dakota**
18 **operators and the North Dakota Commission has been able to**
19 **obtain since 2014 a 91-percent gas capture?**

20 A. So I'm going to ask that you allow me a couple of
21 minutes to find the documents that I have reviewed and
22 relied on in the past in preparation, because those
23 documents do shed light on that. Without looking at those
24 documents, my memory is that they came very close to 90
25 percent prior to the 2015 downturn. Again, I think there

1 were documents in the record that graph that out for us.

2 Q. But not 98 percent or anything close to 98
3 percent?

4 A. Depending on your definition of "close," no, they
5 did not obtain 98 percent capture that I'm aware of.

6 Q. And they've been working on this since 2014?

7 A. 2014 was the year in which the North Dakota
8 Industrial Commission issued an order requiring natural gas
9 management plans and establishing the target gas capture
10 percentages.

11 Q. Okay. Now, Mr. Lepore, I want to get into
12 27.9.B.5. Okay?

13 A. Yes, sir.

14 Q. I'm going to go to Exhibit, Division Exhibit 2A,
15 Page 10, I believe it is. And I want to talk about these
16 provisions, okay?

17 A. Yes, sir.

18 Q. And I'm trying to understand how this works, and
19 I believe you have clarified this in your testimony but I
20 want to make sure that I properly understood it. When you
21 talked about Subpart D.4, now, first off, this is when an
22 operator is submitting a natural gas management plan with an
23 APD, right, an application to drill?

24 A. That is correct.

25 Q. So D.4 or 5 is when the operator is sitting down,

1 putting together its application to drill, and as a result
2 of these rules will be coming up with a gas management plan
3 to accompany the submission of that application to drill?

4 A. Is that a question?

5 Q. Yes.

6 A. That is correct.

7 Q. Thank you.

8 A. Also the same when the North Dakota Industrial
9 Commission did it.

10 Q. And as you, I think, aptly put it, when you get
11 to the requirement under D.4, this is the moment of truth,
12 right? This is when the operator goes through many steps
13 and certifies whether there's going to be adequate takeaway
14 at the time that it submits the APD?

15 A. That is correct.

16 Q. That at the time it submits its APD, if there's
17 going to be adequate takeaway when the well is spud; right?

18 A. That is correct.

19 Q. Okay. Then under 4.B, if it's not -- anticipates
20 not being able to connect to a gathering system when it
21 submits its APD, then you get bumped into D.5?

22 A. Correct.

23 Q. Okay. And what was confusing to me at this point
24 is both in D.4 and in D.5, there's been no decision made on
25 the APD, there's been no application to drill issued yet?

1 MR. AMES: Objection. Form of question.

2 MR. FELDEWERT: Did you understand the question,
3 Mr. Lepore?

4 MR. AMES: Well, objection, it was not a
5 question.

6 CHAIRWOMAN SANDOVAL: It actually looks like --

7 UNIDENTIFIED SPEAKER: What happened to the
8 Hearing Officer?

9 CHAIRWOMAN SANDOVAL: Yeah, I think she got
10 kicked off.

11 MR. FELDEWERT: Well, then we better wait.

12 MR. GARCIA: Madam Chair, I have Felicia on the
13 phone and she is having (unclear).

14 CHAIRWOMAN SANDOVAL: Oh, good. All right, let's
15 give her a couple of minutes. We'll just -- okay. Why
16 don't we take a quick break and give her five minutes to get
17 back. So let's come back at 1:45.

18 (Recess taken.)

19 HEARING EXAMINER ORTH: It is 1:45, do we have
20 everyone we need? Thank you, John, for helping me through
21 that terrifying moment. Do we have Mr. Lepore and Mr. Ames?

22 SPEAKER: Mr. Lepore is here.

23 HEARING EXAMINER ORTH: I see Mr. Ames. And,
24 Irene, how are we doing?

25 THE REPORTER: All good.

1 HEARING EXAMINER ORTH: Okay, thank you very
2 much. I'm sorry for that interruption. Thank you, Madam
3 Chair, for taking a break there.

4 Mr. Feldewert will rephrase his last question to
5 Mr. Lepore. Go ahead, Mr. Feldewert.

6 BY MR. FELDEWERT:

7 Q. Sure. And Mr. Lepore, just to help, what I'm
8 focused on here is the added phrase in Subpart 5, that says
9 "The operator shall either shut in the well," okay, do you
10 see that?

11 A. Nobody is sharing a screen anymore.

12 Q. That's my bad. Hold on. Can you see it now?

13 A. Not yet. Now it's coming out.

14 Q. Can you see it?

15 A. Yes, I can see it now.

16 Q. Okay. So we're on Subparagraph 5, and I'm trying
17 to focus in on this, what I found to be confusing and maybe
18 I'm missing something, but this phrase "the operator shall
19 either shut in the well," that has been added?

20 A. Yes. Yes.

21 Q. Now, as I understand it, in 4.B, if you can't
22 identify and take away the passage of time that you were
23 submitting your APD, you move into Subparagraph 5; is that
24 correct?

25 A. I think that's a fair characterization, yes.

1 Q. Okay. And it used to say that when you got into
2 that scenario, the operator shall submit a vent -- without
3 that added phrase it says, "the operator shall submit the
4 venting and flaring plan to the Division that evaluates,"
5 and then there's a list of, right, things to evaluate?

6 A. Yes.

7 Q. Okay. And then, as I understand it, that gets
8 submitted under Subparagraph 7 to the Division, and at that
9 time they make a decision whether to deny the APD
10 application to drill or conditionally approve the
11 application to drill?

12 A. I don't think it's small, accurate enough.
13 (unclear).

14 Q. Okay. So what's confusing to me is that at this
15 point in time, the application to drill is not yet an issue
16 when we're up here in Subpart 5; is that fair?

17 A. Yes. Yes.

18 Q. So when it says -- I was trying to figure out how
19 a shut-in of the well occurs, because there is no well yet
20 drilled; is that correct?

21 A. Correct.

22 Q. All right. And I think you said that at this
23 point, when you're in Subparagraph 5, what the operator is
24 supposed to do is I think you added the word "consider,"
25 shall consider either the shut in of the well until the

1 operator submits the certification or submits a venting and
2 flaring plan?

3 A. Is that the question? You want me to answer a
4 question now?

5 Q. Do you think the word "consider" is appropriate
6 there?

7 A. So I'll answer a couple of questions, I think
8 probably against advice of counsel, but I don't know if I
9 said "consider" or not, I do not recall the words that came
10 out of my mouth. I will tell you what I believe the intent
11 is.

12 Q. Okay.

13 A. Really what we intended was to provide an
14 operator an alternative to the venting and flaring plan
15 because it seems reasonable to us that the operator may
16 prefer simply to, and I'm with you on the timing on the
17 sequencing if we're saying shut in a well that hasn't been
18 permitted, much less drilled. So it was in anticipation
19 when that well is spud, if you don't have gathering
20 capacity, the operator could say I will shut in this well as
21 soon as it is capable of producing until I have gathering
22 capacity, as an alternative to this venting and flaring
23 plan, because maybe ultimately the operator looks at the
24 venting and flaring plan and says I can't generate power for
25 the lease, I can't generate power for the grid, I can't

1 generate for storage, you know, blah-blah-blah, I still want
2 my APDs because I think I'm going to have gathering capacity
3 six months after they come on line, so let me go ahead and,
4 you know, if I've got a rig schedule, I'm going to drill
5 them and then, you know, I don't have to hold a lease so
6 it's okay if I don't produce them, that's what was in our
7 minds.

8 Q. So I think, I mean as I look at this, what the --
9 what was confusing to me and I believe others when they
10 looked at it, is it says the operator shall either shut-in
11 or submit, and it sounds like what it should say is the
12 operator shall consider either shut in or these other
13 beneficial uses.

14 A. And I am in agreement that there could be some
15 words that they could clean this up. I would not support
16 "consider." I would support "may agree to," or, you know,
17 something a little bit more affirmative than "consider."
18 They've got to consider a lot of things, they should
19 consider a lot of things. I think what the Division is
20 looking for is something that is solid enough that we are
21 not going to end up with an operator that has to vent and
22 flare a bunch of gas if they don't have takeaway capacity.

23 Q. Understand, understand. And even I think your
24 language would be helpful. And of course, this is all part
25 of the process of the Division determining whether to issue

1 the APD or conditionally approve it?

2 A. I think that's absolutely right and, you know, in
3 my mind in this conversation an operator who said sort of
4 the hypothetical I just said, look, you know, we've now been
5 told the pipeline is delayed by six months. We have a
6 drilling rig schedule, the drilling rig is going to be here,
7 I don't want to turn it away, I want to drill the wells, I
8 don't have the availability of all of these other
9 alternatives, so let me drill the wells, I will shut them in
10 until I have gathering capacity. To me that's a viable
11 situation, the Division can conditionally approve the APD on
12 that basis and everybody goes off to the races.

13 Q. Thank you for the clarification. I think I
14 understand it now. The other clause that is confusing to me
15 here, okay, is down here in Subpart 7. And when I say me, I
16 shouldn't say me, to NMOGA and its operators, okay? There
17 is this last clause that says, "Or if the Division
18 determines that the operator will not have adequate takeaway
19 capacity at the time the well will be spud," okay? Now,
20 NMOGA has proposed to strike that clause because we couldn't
21 figure out how it would come up or how it would be done.
22 Okay, Mr. Lepore? So that's the background of my question.

23 A. I understand your premise.

24 Q. All right. And the reason it comes up is because
25 we get back up here into Subpart (4), okay? Are you there?

1 A. Yes. Yes.

2 Q. The operator has to be in a position to certify
3 to the Division that at the time that the well will be spud,
4 there's going to be adequate takeaway capacity.

5 A. Right.

6 Q. So my question is, I don't understand how clause
7 7 would arise, because -- and here is why, because are you
8 saying that where the operator certifies it's going to have
9 takeaway capacity, that the Division is going to do an
10 analysis that would question that, or how is that done?

11 A. I feel, Mr. Feldewert, that I would be
12 speculating to formulate an answer to your question as to
13 under what circumstances the Division might or might not
14 agree with an operator's certification or sufficiency,
15 adequacy of the venting and flaring plan.

16 To me, this is a scenario of the Division wanting
17 to have discretion under a totality of the circumstances
18 kind of analysis to say we don't see it. You know, we hear
19 what you're saying but we don't see it. My, you know, again
20 I probably should stop talking and stop speculating, but I
21 will speculate that that wouldn't happen without a robust
22 conversation between the Division and the operator, but I --
23 I'm certainly going to stop now.

24 Q. Well, let me ask you this: If we look at clause
25 7, okay, it says, "If the operator does not make a

1 certification." Now, that would be under C.4; right?

2 A. Yes.

3 Q. So in other words, if the operator doesn't say,
4 for example, whether, whether they are or whether they are
5 not going to have takeaway capacity, they haven't done the
6 right certification, and so the Division is not in a
7 position to address the APD?

8 A. I think absent the certification, 7.A would
9 apply.

10 Q. Okay. Then the next clause says, "Or fails to
11 submit an adequate venting and flaring plan." Now, that
12 would be C.5; right?

13 A. Yes.

14 Q. Okay. So I guess my question is, and I
15 understand your inability to answer, and that is, you know,
16 everyone is looking ahead and the operator has looked ahead,
17 and the operator has said yes, we can certify that we're
18 going to have adequate takeaway capacity at the time that we
19 submit our APD. I'm trying to figure out what the Division
20 would examine or what the process would be for the Division
21 then under this last clause to determine if the operator
22 will not have adequate takeaway capacity?

23 A. Okay. You know, like I've answered that question
24 and I would like to politely decline to try to do so again.

25 Q. Gotcha, okay. Okay, now I want to go back up

1 **here --**

2 A. And I'm sorry, Mr. Feldewert, to interrupt. I
3 don't see Mr. Ames on my screen. Is he still with us?

4 HEARING EXAMINER ORTH: I can see him.

5 THE WITNESS: You can, okay. I apologize, go
6 ahead.

7 MR. FELDEWERT: That's okay. I want to make
8 sure, Mr. Ames, you're not muted, you are able to
9 participate; right?

10 MR. AMES: So my prior objection was not heard,
11 apparently. I objected to that last statement because it
12 wasn't a question, but Matt handled it and we can move on.

13 MR. FELDEWERT: Now, Mr. Ames, I didn't object to
14 any of your questions, just remember that, okay? I want to
15 move up.

16 BY MR. FELDEWERT:

17 Q. I want to move up here to the definition of
18 **emergency. I think you testified about that briefly; right,**
19 **Mr. Lepore?**

20 A. Yes, sir.

21 Q. Okay. And I want to address one of the
22 **exceptions to an emergency. Okay?**

23 A. Yes.

24 Q. And that is the one in Subpart 4 that talks about
25 **venting or flaring of natural gas for more than four hours**

1 after notification that is caused by an emergency,
2 unscheduled maintenance, or malfunction of a natural gas
3 gathering system.

4 A. I see it.

5 Q. All right. Now, would you agree with me that
6 when -- this is a circumstance where the malfunction, or
7 emergency, or upset is outside the control of the operator,
8 in other words, this is something that happens downstream
9 that the operator, upstream operator has to address?

10 A. That is correct.

11 Q. Okay. And under the Division's language, if they
12 don't address it within four hours, that any venting and
13 flaring that occurs as a result of that downstream event is
14 counted against the operator?

15 A. That is correct.

16 Q. And so operators you can -- all right. We'll
17 just leave it at that. Are you -- did you conduct,
18 Mr. Lepore, any analysis to come up with this four-hour time
19 frame?

20 A. I did not conduct any analysis to come up with
21 that four-hour time frame. I feel compelled to point out
22 that there is no similar exception whatsoever in the BLM
23 rule that we copy or that we model our rule under, so the
24 four hours is four hours that you don't have under BLM's
25 rule.

1 **Q. And my question to you is I think you answered my**
2 **first question, are you aware of any study by the Division**
3 **to come up with this four-hour time frame?**

4 MR. AMES: Objection. Asked and answered.

5 HEARING EXAMINER ORTH: I believe he has, Mr.
6 Feldewert.

7 MR. FELDEWERT: I think I asked whether he had
8 done any study and he said no. My question is whether he is
9 aware of any study by the Division to come up with a
10 four-hour time frame.

11 HEARING EXAMINER ORTH: All right. Mr. Lepore,
12 do you know?

13 THE WITNESS: I am not aware that the Division
14 did a study, no.

15 BY MR. FELDEWERT:

16 **Q. Is the, is the goal here to provide a reasonable**
17 **time for operators to take action after notification without**
18 **taking unnecessary risks in the field?**

19 A. I can agree generally with your characterization,
20 Mr. Feldewert. I think there is an acknowledgement, as you
21 said as a predicate to your question, that this is a
22 circumstance that the operator, upstream operator did not
23 cause. We have obligated midstream operators to provide
24 notice. Our expectation might be too strong, but what we're
25 aiming for is that the upstream operators would respond with

1 alacrity to that notification, and there is some window of
2 time that should not be counted against them as they respond
3 to that notification. There is a different period of time
4 after which we feel it's reasonable to count it against them
5 for not responding with the urgency that perhaps is
6 required. I'll stop there.

7 Q. And you recognize, Mr. Lepore, particularly when
8 you get down into the Permian, that there are some
9 substantial distances that would have to be covered after
10 notification for person (unclear) into the sites; right?

11 A. I will say that I do not know that based on
12 personal experience. Mr. Bolander and Mr. Powell might be
13 better able to respond to that question. What you're saying
14 does not seem unreasonable.

15 Q. Okay. All right. The other exception here I
16 want to touch on is the Division has the language here in
17 Subpart 6, "three or more emergencies," and then they've
18 added within a single reporting area (unclear), experienced
19 by an operator within the preceding 60 days. Do you see
20 that?

21 A. I do. I do.

22 Q. Okay. Now, that three or more emergencies within
23 the preceding 60 days is not limited to a particular site,
24 for example?

25 A. That is correct. Yes.

1 Q. It says "by the operator."

2 A. Yes.

3 Q. Okay. And it's not limited to any particular
4 cause?

5 A. That is correct.

6 Q. Do you know what analysis or study went into this
7 decision to pick three or more emergencies by an operator as
8 a whole within the preceding 60 days?

9 A. The -- this rule is, again, modeled on BLMS for
10 its (unclear) CFR 3179, I think it is, I've referenced it
11 previously. It's very similar language. I understand the
12 nature of your questions to seek a narrower application
13 within a single reporting area does narrow the scope of the
14 application, and as does, I guess maybe it doesn't narrow
15 the scope, but the Division's discretion after consultation
16 with the operator to understand that, and I think the
17 Division does understand, unrelated isolated incidents that
18 happen.

19 I think I described it in my testimony as like
20 one off circumstances as opposed to a pattern of repeated
21 similar incidences. So the Division has retained discretion
22 to make that determination on a case-by-case basis. But
23 right now, the default is as you have read it.

24 Q. Let me ask you about that. I want to get to the
25 last clause that you referenced and I appreciate that. Let

1 me ask you this: The way it's written, Mr. Lepore, if there
2 was a storm that rolled through the Permian Basin, okay, a
3 big storm like they have down there sometimes and you have
4 lightning strikes at four sites, different sites but they're
5 operated by the same operator, okay, and the systems go down
6 and there is a venting and flaring event at each of those
7 four sites. Okay, do you understand me?

8 A. I do.

9 Q. As written, only the venting and flaring from two
10 of those four sites would be authorized or excused?

11 A. By the black letter of that rule without
12 consultation with the Division to explain that circumstance
13 to the Division and ask that they understand that you could
14 not, the operator could not reasonably have anticipated four
15 lightning strikes in relatively short succession at four
16 different locations, then you're correct.

17 Q. Now, what is the process for this, unless the
18 Division determines the operator could have reasonably
19 anticipated, what's the process?

20 A. I guess it would be fair to say that there is not
21 an explicit process written into the rule. And so maybe I'm
22 best to stop there and say that I would expect operators and
23 the Division to be able to work out a process.

24 Q. Currently, though, we have no idea how long --
25 what the process is or how long the process would take to

1 **make that determination; right, Mr. Lepore?**

2 A. I think that's an accurate, fair, fair
3 characterization. It seems to me that what you're getting
4 at is you have these four lightning strikes. They all
5 result in venting and flaring. You look at the rule and
6 say, gosh, we're not going to be able to say that two of
7 these were emergencies.

8 **Q. Right.**

9 A. You call your EHS person to call the Division to
10 say, guess what, there was a thunderstorm, they all happened
11 almost simultaneously, we reacted quickly, can we get a
12 determination on this.

13 **Q. And then you hope the Division gets back to you;**
14 **right?**

15 A. Maybe you do, and maybe you don't, I guess.

16 **Q. And then in the midst of all that, you have your**
17 **monthly reporting obligations?**

18 A. Yes, sir, that's fair, I understand your point.

19 **Q. And so can you understand the point of an**
20 **operator trying to meet their monthly reporting obligations**
21 **if there's no determination, what are they to do with two of**
22 **the four sites, with that venting and flared (unclear)?**

23 A. I understand your point.

24 **Q. I want to talk to you about in 40 (unclear) under**
25 **G.2 again, okay? I apologize for skipping around. Down**

1 here in Subpart G.2, reporting of vented or flared natural
2 gas, 27.8.G.2.

3 A. Yes. Are you G.1.A little two?

4 Q. Yeah, give me a minute here.

5 A. Okay.

6 Q. Good clarification. I'm under Subpart G.2.

7 A. Gotcha.

8 Q. Monthly reporting, which starts off as quarterly.

9 This provision here indicates that we provide
10 this information in G.2 operators initially quarterly and
11 then monthly; right?

12 A. Yes.

13 Q. And then the last opening clause here at G.2 says
14 the operator shall make and keep records of their
15 measurements and estimates, including records showing how it
16 calculates, calculates the estimates, no less than five
17 years, do you see that?

18 A. I do.

19 Q. And make such records available for inspection by
20 the Division upon request.

21 A. Yes, I see it.

22 Q. Okay. And then the Division takes this data and
23 under their G.3 they are now going to compile that and
24 publish it on an operator both on a vented and flared basis
25 on a volumetric and gas captured percentage basis under the

1 revised language.

2 A. That is what Number 3 says.

3 Q. Okay. And then are they publishing that,
4 Mr. Lepore, on the Division's -- yeah, it says it's going to
5 publish it on its website, I guess; right? Is that how
6 they're going to publish it?

7 A. It does say publish. It doesn't say website.
8 I'm with you. I would -- I shouldn't say that. My
9 assumption is also that they would publish it on their
10 website.

11 Q. Do you have information on how that's going to be
12 done and what it's going to show? Or is that the better
13 witness?

14 A. Yeah, I'm sorry, I don't have that information.

15 Q. Who would be -- would Mr. Powell be the right
16 witness for that?

17 A. That's where I would start, yes, sir.

18 Q. Okay. All right. Then you mentioned that, in
19 addition to this submission of the information, admission to
20 the fact that it's going to be published on their website,
21 that the Division has proposed that the operator shall
22 report this same vented and flared gas. I'm onto G.4, okay?

23 A. Yes, sir.

24 Q. Under G.4, "The operator shall report the same
25 vented and flared natural gas on, again, a volumetric and

1 percentage basis to all royalty." Do you see that?

2 A. I do.

3 Q. Okay. Now, it says on a monthly basis?

4 A. Yes.

5 Q. When does that, when does that -- I'm talking
6 about the mechanics here. Are you the right person to talk
7 about the mechanics of this reporting to royalty owners that
8 the Division is proposing?

9 A. Well, I will say you ask the question and I'll do
10 my best to answer or tell you that I don't feel capable.

11 Q. Do you understand how this is to be done?

12 A. What I believe to be true is that operators
13 provide royalty owners monthly statements related to
14 production. I think one payment where there has been
15 production that entitles the royalty owner to their royalty
16 payment, and perhaps there are statements that say there was
17 no production and therefore there is no payment. Okay? An
18 underlying assumption here is that operators have an ongoing
19 business relationship with their royalty owners and that
20 adding this nugget of information to those ongoing reports
21 would not be unduly burdensome.

22 Q. And your understanding of this process and this
23 reporting, and your suggestion it would not be unduly
24 burdensome, is based on did you talk to someone within the
25 Division about how this is supposed to work?

1 A. So yes, there were discussions in the Division
2 about how this was supposed to work. Mr. Bolander may be
3 able to shed some additional light on this based on his many
4 years in the industry how it works. I think intentionally
5 there was not a prescriptive process here to allow operators
6 to make this work in a way that is best for them.

7 **Q. So is Mr. Bolander the best person to ask about**
8 **the mechanics of this and how it's to be done and when it**
9 **starts?**

10 A. Again, I think that I'll leave it at
11 Mr. Bolander, because of his years in the industry, may have
12 some better insight than I do. I, I feel like the answer to
13 your question is the operator should be asking themselves
14 how they're going to get this information disseminated to
15 their royalty owners, the same way they get royalty checks
16 disseminated to their royalty owners, and cost of operation
17 and production and all the other information they provide to
18 their royalty owners. Now there's a new category to
19 provide.

20 **Q. So when I see on a monthly basis here, when is**
21 **that supposed to start, Mr. Lepore, given the quarterly**
22 **reporting that is to be done to the Division, given the time**
23 **that's going to be required to get a case line?**

24 I'm sorry, let me be more specific. If I go up
25 here to G.1 or G.2, the monthly reporting doesn't even start

1 **until apparently it's January 2022; right?**

2 A. That is correct.

3 **Q. Does the Division anticipate the ability to do**
4 **this reporting under G.4 before the reporting under G.2?**

5 A. I think that's a fair question for the Division
6 to consider, and I also think that there is nothing stopping
7 operators right now from providing this information,
8 assuming they have it, which might not be a safe assumption,
9 but assuming they have it, there is nothing stopping
10 operators from providing royalty owners this information
11 today.

12 **Q. And how are they to provide it to them,**
13 **Mr. Lepore?**

14 A. I feel like you've been asking me that question
15 for the last ten minutes.

16 **Q. Are you saying it's somehow part of the monthly**
17 **production reporting?**

18 A. Providing the information to the royalty owners?

19 **Q. Yes. What information?**

20 A. The --

21 **Q. If you had not answered, you can.**

22 A. My answer was a question. My answer is what
23 information are we now talking about?

24 **Q. The information that the Division anticipates**
25 **being required to be sent to royalty owners on a monthly**

1 **basis under G.4.**

2 A. And your question is how is that to be provided
3 to the royalty owners?

4 **Q. Yes, how. Let's start with how.**

5 A. I'm sorry, Mr. Feldewert, I think that's what I
6 have been trying to answer for the last ten minutes. I
7 think that's the same question you asked at the beginning.

8 **Q. Are you saying by mail?**

9 A. Oh, yes, how do they provide the current royalty
10 checks to the royalty owners?

11 **Q. Now, I believe one of the Division's attorneys,**
12 **when we were talking about giving the motions, said all they**
13 **would have to do is just check a box. Do you know what they**
14 **were referring to or what that attorney was referring to?**

15 A. I do not.

16 **Q. Now, in terms of the information, what is to be**
17 **provided? Is it the same information that is provided to**
18 **the Division under G.1?**

19 A. To me the language of Subpart 4 which says the
20 operator shall report vented and flared natural gas on a
21 volumetric and percentage basis is pretty clear. It was
22 right on your screen.

23 **Q. Is it the same that we see under G -- sorry, it's**
24 **the same as we see under G.2?**

25 A. So my, my understanding, at the risk of being

1 corrected later by my attorney or others, is the expectation
2 of what is provide to royalty owners does not include a
3 breakout by category in the same way that this monthly
4 reporting to the Division requires.

5 And again, I may be speaking out of turn, but I
6 think that we vented this much gas, volumetric quantity
7 which amounted to this percentage of the gas that we
8 produced and we flared, I don't know if I said that we
9 flared first preventing one from flaring, total volume,
10 total percentage, in my perspective would satisfy the
11 requirement of the Subsection B.4 -- sorry, G.4, G like
12 George.

13 Q. You've got it, G.4. So it would be similar to
14 what the Division is going to publish on G.3?

15 A. I don't know, because I don't know whether or not
16 the Division intends to publish all of the categories or
17 not.

18 Q. Okay. Mr. Lepore, I want to ask you about this
19 definition of venting that we see here in 27.8.7 and 4.

20 A. Yes.

21 Q. Okay. I understand that you were involved in the
22 Colorado Commission rulemaking efforts?

23 A. I -- yes, I was.

24 Q. And are you familiar with the definition of
25 venting that came out of that process?

1 A. I could not quote it to you as I sit here without
2 looking.

3 Q. Okay, let me help you out. I believe this is in
4 Division Exhibit 12. Are you familiar with that exhibit?

5 A. I am familiar that we submitted the 900 series
6 rules as an exhibit, yes.

7 Q. And this Exhibit 12 purports to be the final
8 rules that were adopted by the Colorado Oil Conservation
9 Commission?

10 A. If you'll scroll down and let me look at the date
11 I would confirm that for you.

12 Q. Okay, hold on. There we go.

13 A. Yes, I think that is correct.

14 Q. Okay.

15 A. That is the final draft as I understand it.

16 Q. And this is then the final definition of
17 "venting"?

18 A. Yes.

19 Q. Did you support, Mr. Lepore, the adoption of this
20 definition?

21 A. Two part answer to the question, Mr. Feldewert.
22 As I mentioned in my direct testimony, I represented a
23 coalition of local governments for whom the definition of
24 venting was not particularly relevant. And secondarily I
25 recused myself from any consideration of Rule 903 because of

1 my involvement with the OCD in this rulemaking.

2 So I did not pay close attention throughout the
3 COGCC (unclear) process to Rule 903 at all or to the
4 definition of venting. That said, I clearly had an interest
5 in how that all turned out. And I understood that the
6 definition was of a significant interest.

7 I don't -- well, I know for certain that this
8 definition was not the definition that the COGC staff
9 originally proposed and I don't know when this definition in
10 the many iterations of the rules actually was first
11 proposed. It was quite late in the process.

12 I have now told you almost everything I know.
13 When this definition came out, I looked at it. I believe
14 Mr. Bolander and I had a conversation about it, and I'll
15 stop there.

16 **Q. So you're familiar with this definition?**

17 A. I have some familiarity, yes.

18 **Q. Is it fair to say that this definition focused on**
19 **high pressure venting?**

20 A. I am not prepared to say that it does or does not
21 based on staring at it right now.

22 **Q. Is it fair to say that it excluded low pressure**
23 **emissions, excluded low pressure emissions?**

24 A. Well, based on what I see on the screen right
25 now, I don't see the word low pressure or high pretty

1 anywhere.

2 Q. Okay, let's go to Subpart A.

3 A. Okay.

4 Q. It says, "Excluded from venting is the emission
5 of gas from devices such as," so now we're just into
6 examples; right?

7 A. Sure.

8 Q. "Pneumatic devices and pneumatic pumps that are
9 designed to emit as part of normal operations," and then it
10 goes on to say if they're not otherwise prohibited. Do you
11 see that?

12 A. I -- you read it correctly.

13 Q. Okay. Now, these would be the normal operations
14 that you previously identified as being unavoidable losses?

15 A. I think that's a fair characterization with
16 respect to pneumatic devices and pneumatic pumps, again,
17 excluding probably (unclear) versions of those things.

18 Q. And then it says, from devices such as, so by
19 that, would it be fair to assume that they're talking about
20 low pressure emissions from normal operations of devices?

21 A. I mean I don't, I really don't mean to play word
22 games with you. I don't see low pressure in there. I am
23 not an engineer. I don't want to say that this is low
24 pressure and that that's all that was meant by this rule or
25 not. I think you are reading words into it that are not

1 there, so, you know, I'm sorry, that's as much as I can give
2 you.

3 I will tell you that we -- in my estimation, the
4 Division's rule, the OCD's rule does exactly the same thing
5 the Commission's, the COGCC's rule does in a different way.
6 We said venting is --

7 **Q. We can debate that. My question is to you, under**
8 **venting, Subpart --**

9 MR. AMES: Objection. Let the witness finish his
10 answer.

11 MR. FELDEWERT: I have a question. My question
12 is --

13 HEARING EXAMINER ORTH: Hold on. Mr. Lepore was
14 going further than the original answer. Go ahead, Mr.
15 Feldewert.

16 MR. FELDEWERT: Thank you.

17 BY MR. FELDEWERT:

18 **Q. Mr. Lepore, when you look at, when they say**
19 **emission of gas from devices such as pneumatic controllers**
20 **and pneumatic pumps, aren't those normally low pressure**
21 **emissions that result from normal operations?**

22 A. My best understanding as I'm not an engineer is
23 that they are low pressure devices. Those two things.

24 **Q. Now, we go to Subpart B. Unintentional leaks**
25 **that are not the result of inadequate equipment design, do**

1 you know what they are talking about there?

2 A. I do not.

3 Q. Subpart C, natural gas escaping from or
4 downstream of a tank unless there is no separation occurring
5 at the equipment upstream of a tank, and then it goes on
6 with some other exceptions. Okay? Now, am I correct in
7 reading this that they're talking about tanks that are
8 downstream of separation equipment?

9 A. Mr. Feldewert, the best I'm going to be able to
10 do here is read those words and repeat them back to you.

11 Q. So you don't have a lot of knowledge about what
12 the COGC -- what the Colorado Commission did with these
13 rules?

14 A. I think that's a bit of an overstatement. I will
15 answer the answer that I was interrupted in answering
16 before.

17 Q. Well, this is a fundamental -- this is a
18 definition. You're telling me that you don't understand the
19 meaning of this definition?

20 A. I don't understand it well enough from an
21 engineering perspective to sit here and joust with you over
22 it, no.

23 Q. Well, I'm talking about what do you understand,
24 what do you understand of this definition?

25 A. My understanding from this definition is that

1 there was a category of venting, that what I would call
2 venting, that the COGCC determined to exclude from its
3 definition of venting, whereas the Division chose a broader
4 definition of venting and specifically excluded very, very
5 similar operations, and equipment, and venting through its
6 Subpart 27.8.B, C, and D.

7 **Q. And those would be emissions from normal**
8 **operations?**

9 A. I'm not going to agree with your
10 characterizations.

11 **Q. All right.**

12 HEARING EXAMINER ORTH: Mr. Feldewert, this is
13 Felicia. Would you please estimate for me your remaining
14 cross-examination of Mr. Lepore?

15 MR. FELDEWERT: Well, that's going to be very
16 easy because I'm finished. Thank you.

17 MR. AMES: No objection.

18 CHAIRWOMAN SANDOVAL: I needed to try that trick
19 a little earlier. Okay. Thank you very much, Mr.
20 Feldewert. Let's see, we would then typically turn to
21 Mr. Biernoff, but we are saving him for last. I will note
22 for the record that Commissioner Engler has joined us this
23 afternoon. I will turn to Ms. Fox.

24 MS. FOX: Thank you, Madam Hearing Officer. Can
25 we just take a five-minute break before my cross begins?

1 MR. AMES: Can we take ten?

2 CHAIRWOMAN SANDOVAL: Actually, yeah, let's do
3 take a ten-minute break. Thank you.

4 (Recess taken.)

5 HEARING EXAMINER ORTH: If you would, please, Ms.
6 Fox.

7 MS. FOX: Thank you, Madam Hearing Officer.

8 CROSS-EXAMINATION

9 BY MS. FOX:

10 Q. Good afternoon, Mr. Lepore.

11 A. Good afternoon, Ms. Fox.

12 Q. Thank you for your testimony today. I have a few
13 questions for you. During your direct examination, when you
14 were referring to Section 27.8.G on reporting of vented or
15 flared natural gas, you, you said something like -- I'm not
16 going to get this quite right because I didn't write it down
17 and I don't have a transcript in front of me -- something to
18 the effect, though, that it's widely known or widely
19 understood that the reporting that is currently undertaken,
20 venting and flaring is not problematic or not adequate. Do
21 you remember that testimony?

22 A. I think I remember the testimony to which you
23 were referring, yes.

24 Q. Why don't you remind us of more specifically what
25 you said.

1 A. I think that my testimony on that point is
2 grounded in the map reports, particularly the section on
3 venting and flaring in which there were many comments about
4 the lack of confidence perhaps is one way to say it in the
5 data that is being reported to the agency, to the lack of
6 specificity of that data in terms of (unclear) and so forth.

7 **Q. Do you recall the other issues with the, with**
8 **respect to the inadequacy of the reporting of the venting**
9 **and flaring data?**

10 A. Without referring back to the map report, I don't
11 want to speculate about what others might have been.

12 **Q. Do you recall, do you recall any information with**
13 **respect to whether flaring and -- whether there was concern**
14 **that the reporting of venting and flaring data was not**
15 **occurring from operators?**

16 A. Just flat out not occurring?

17 **Q. Correct.**

18 A. I do not specifically recall that, no.

19 **Q. Do you remember if there was a concern about**
20 **operators misreporting data?**

21 A. I would say that what I, again, remember without
22 looking back is that there was a general concern about the
23 reliability of the data and, and if we're going to take a
24 public lens, I would say there was probably a lack of
25 confidence in the vigor of the data.

1 Q. And is that because the data lacks specificity?

2 A. Yeah, and I don't think I want to say much more
3 about why I think, you know, what contributed to the lack of
4 confidence in the data.

5 Q. Okay. Thank you. Let me put the OCD's proposed
6 rule up for us to refer to. So Mr. Lepore, you see,
7 Exhibit 2A, Part 27?

8 A. I do.

9 Q. Okay. And so I'm going to refer to the provision
10 that has to do with acquired wells.

11 A. Okay.

12 Q. Which is up on the screen. And the way this
13 reads is that if an operator acquires one or more wells, the
14 -- the purchasers gas capture requirements that then apply
15 to those acquired wells, unless the OCD has good cause,
16 finds good cause to modify the purchaser's gas capture
17 requirements. Is that how that works?

18 A. I believe that's correct.

19 Q. What are the circumstances that OCD would
20 consider to be good cause? That's a broad term.

21 A. And it's a broad question with respect to -- I, I
22 suspect that there are more than one circumstances that
23 would cause, do good cause, and I don't know that I want to
24 speculate about what all of them might be.

25 In a very broad sense, I think one could envision

1 a scenario where the Division's view was that the new
2 operator might ultimately be a more responsible operator and
3 an operator who would work diligently and in good faith for
4 meeting the gas capture requirement for all of the newly
5 acquired wells, so that from the Division's perspective, the
6 new operator is a win. And if it took a little extension of
7 time or a little relaxation of the annual capture
8 requirements to achieve the ultimate goal of more wells on
9 being, you know, less venting for more wells, to me that
10 would be good cause and it might be something (unclear).

11 **Q. Do you think it would be helpful to put more**
12 **specificity into that to make sure that the acquired wells**
13 **come into compliance with the purchaser's gas capture**
14 **requirement within a certain period?**

15 A. So in as precise a way as I can, I guess what I'm
16 inclined to do is tell you the history of this rule a little
17 bit. Without telling you the history of the rule, I'll just
18 tell you that I think the default position of this rule is
19 exactly what you just said.

20 Without expressed leave from the Division, the
21 default is the acquired operator is under the same
22 obligation it was before, regardless of the new wells, to
23 increase its gas capture percentage by whatever percentage
24 as you hit 98 percent by the end of 2026.

25 So to me, this is a very conservative rule. And

1 let me pause there and see if you want to ask more.

2 Q. No, that's -- thank you very much. Turning to
3 third-party verifications in 27.9.C, let me scroll down
4 here. Do you see the third-party verification language
5 that's up before us?

6 A. Yes, ma'am.

7 Q. We are a little confused as to -- in this
8 provision who, whether the operator or the third-party
9 verifier, is expected to take certain actions, and we'd just
10 like clarification of that. So what happens here is the
11 Division can ask an operator to obtain a third-party
12 verifier?

13 A. Yes.

14 Q. And -- thank you. And then that third-party
15 verifier is to verify any damage or information collected or
16 reported pursuant to this part. So presumably, it is a
17 third-party verifier who is doing that verification;
18 correct?

19 A. That is, yes, I believe that you're correct.

20 Q. The next undertaking is to make recommendations
21 to correct or improve the collection and reporting of the
22 data; correct?

23 A. Yes, ma'am.

24 Q. Is it the verify -- the third-party verifier or
25 operator who would be making those recommendations?

1 A. The intent is that that is the third-party
2 verifier.

3 Q. Okay. That makes sense. I'm not sure the, you
4 know, object and the verb conform to each other, such as the
5 point to note to (unclear) and there is a requirement to
6 submit a report of the verification and the recommendations
7 to the Division. I think this one we're most interested in.
8 Would that report come from the third-party verifier or the
9 operator?

10 A. So my, my understanding is that the intent was
11 for all of the requested information to come from the
12 third-party verifier if the third-party verifier was
13 ultimately engaged.

14 Q. Okay. So they would submit the report. And then
15 the next action to be undertaken is implementation, which
16 would be conducted by the operator; correct?

17 A. That's right.

18 Q. Okay. Thank you for that clarification. We may
19 propose language just to clarify which requirement is on
20 which party. Let's see. Going to -- if we could go to the
21 venting and flaring plan, which is 27.D.5. Do you see that
22 language up there? We already talked a lot about this --

23 A. Yes, I see it.

24 Q. -- with Mr. Feldewert. So what Subsection 5
25 requires is that if the operator, you know, can't certify

1 that it has a hundred percent takeaway capacity, then the
2 operator, you know, shuts in when it gets its APD or submits
3 what you all call a venting and flaring plan to the
4 Division, and this language is going to evaluate the
5 potential alternative beneficial uses for the gas, and then
6 there's a series of potential uses for the gas that they
7 would be evaluating; correct?

8 A. Yes, ma'am.

9 Q. And then when you go down to Subsection 7, it
10 says that the operator -- if the operator doesn't make the
11 certification for the takeaway or doesn't submit an adequate
12 venting -- flaring and venting plan, the Division has a
13 couple of options. So my first question is, I think this
14 provision (unclear) implies that the operator will submit to
15 the Division for approval the venting and flaring plan; is
16 that correct?

17 A. I understand that one could either infer that
18 connection or, or see that one is a bridge to the other.
19 And I understand that it may not be explicit in the rule
20 language. I think that Part 7 gives the Division the
21 discretion that it needs without approving or denying the
22 venting and flaring plan to approve or deny the APD.

23 So there is a determination by the Division which
24 I might characterize as slightly more broad than the
25 adequacy of the venting and flaring plan, because the

1 ultimate question really is does the Division believe that
2 the wells the operator is seeking will, will or will not
3 contribute to venting and flaring, or I can only say it
4 differently, will or will not contribute to waste of
5 hydrocarbon resources.

6 To me, that's the evaluation, the assessment that
7 the Division is making in determining whether or not to
8 grant that APD or to conditionally approve that APD.

9 **Q. If the Division is not making a determination**
10 **whether the certification is valid or whether an adequate**
11 **flaring and venting plan has been submitted?**

12 A. In a formalistic way I don't see that that's what
13 this rule requires. So I don't see, you know, and maybe I'm
14 reading too much into your question, but if you're asking is
15 a step in the process that Division must give a thumbs up or
16 a thumbs down to the venting and flaring plan, you know,
17 with a stamp that says approved or not, I don't see that
18 imbedded in the rule.

19 What I see is the Division evaluating what I just
20 said, whether these wells are likely or not to contribute to
21 waste and then making a decision on granting the APDs on
22 that basis.

23 **Q. Do you think that's what the language reflects in**
24 **terms of what your understanding of the rule is?**

25 A. I do. You want to disagree with me, but that's

1 what the language says.

2 **Q. So but what you're -- are you saying that an**
3 **operator does not have to submit an adequate venting and**
4 **flaring plan or a certification in order to get its APD?**

5 **A. Clearly the operator has to certify one way or**
6 the other. If it does not think it will have adequate
7 gathering capacity, they have to submit a venting and
8 flaring plan. The Division then evaluates that plan. And
9 this is where I think you and I maybe are diverting on how
10 we read or interpret this. I guess I think if the Division
11 looked at the venting and flaring plan and says, "Yeah, this
12 isn't going to cut it, and they don't have gathering
13 capacity, why would we approve an APD."

14 **Q. I'm wondering what your authority is under this**
15 **regulation?**

16 MR. AMES: Objection, form of question.

17 MS. FOX: Well, he asked the question.

18 **Q. Mr. Lepore, you just testified that the operator**
19 **had to submit a plan, venting and flaring plan for approval**
20 **for OCD. But, you know, in Subsection 5, it says that the**
21 **operator has to submit a venting and flaring plan to the**
22 **Division that evaluates certain options. That's an**
23 **evaluating options; it's not a plan submitting to implement**
24 **those options would you agree with me on that?**

25 **A. I would agree with you that is the correct**

1 reading of the explicit language.

2 Q. And so then it sounds like the language that says
3 the rule does not reflect at least what you just told me
4 about what the regulation intends, which is for an operator
5 to submit a plan, to the Division --

6 MR. AMES: Objection, mischaracterizes the
7 witness' testimony.

8 MS. FOX: Oh, I don't think I did. He just
9 testified that operators had to submit a plan, it's exactly
10 what he said.

11 THE WITNESS: So I'm waiting for the Hearing
12 Officer to rule here, and apparently she can't be unmuted.

13 HEARING EXAMINER ORTH: I'm unmuted, thank you.
14 I'm not sure what happened there. Would you repeat the
15 question, Ms. Fox?

16 MS. FOX: My question is, Mr. Lepore testified
17 that, to my recollection I confirmed this with him, that the
18 obligation of the operator is to submit a venting and
19 flaring plan, but the rule language only requires the
20 operator to submit a venting and flaring plan that evaluates
21 certain potentials.

22 And so I'm asking him, isn't it inaccurate that
23 the rule language is not consistent with what he told me the
24 regulation was supposed to do, and that is that the operator
25 is supposed to submit a specific plan, not, not an

1 evaluation of alternatives. Those are two different things.

2 HEARING EXAMINER ORTH: And what was the
3 objection?

4 MR. AMES: Well, now, the objection now is there
5 is no question.

6 HEARING EXAMINER ORTH: Well, perhaps it agrees
7 that there is a difference between the venting and flaring
8 plan and the document in which alternatives are evaluated,
9 that sounds like a (unclear).

10 A. I think this is just semantics, and so I'm happy
11 to try to clear it up.

12 Q. That, I think that would be a good idea, if we
13 can clear up this language, that's the first issue because I
14 don't think it's --

15 A. May I finish my thought? I am not suggesting
16 that the language needs clearing up. I am suggesting there
17 is a misunderstanding and a miscommunication between you and
18 I at this moment, Ms. Fox.

19 The language says submit a venting and flaring
20 plan to the Division. That's what I said, they have to
21 submit a plan. It goes on to say that the plan will
22 evaluate alternatives. I didn't characterize that one way
23 or the other. That's the language, that's what it says, the
24 plan must evaluate alternatives.

25 The Division then gets to evaluate the plan

1 itself and decide whether it's adequate or not. That's what
2 I said, that's what I think the rule says. And based on its
3 evaluation, based on the Division's evaluation of the plan
4 that the operator must submit, they can decide whether or
5 not to grant an APD, deny an APD, or approve the APD with
6 conditions. The conditions might be, beef up your venting
7 and flaring plan, actually tell us what you're going to do
8 with the gas you have gathered.

9 **Q. What does the -- thank you for that**
10 **clarification. What's the basis for determining whether the**
11 **venting and flaring plan is adequate?**

12 A. I would say that the fundamental baseline is, is
13 the Division satisfied that if the wells are drilled, the
14 well will not contribute to waste of the hydrocarbons, that
15 either the gas will be gathered and sold and put to
16 beneficial use, or one of the alternatives is that the wells
17 can be shut in that we've already talked about.

18 And they will evaluate that based on the
19 information provided by the operator. If the operator
20 provides a mere evaluation to, I think, your point, if they
21 merely say, "Yeah, we evaluated it, and this is possible and
22 this is not possible," and don't say how they're going to
23 deal with it, I would think that would be likely to lead to
24 a less than a full approval of an APD.

25 **Q. Thank you. And so could the Division approve a**

1 venting and flaring plan that would capture, that would use
2 less than 100 percent of the gas produced?

3 A. So, again, not wanting to battle semantics, I
4 don't think that there is any requirement for the Division
5 to approve or deny a venting and flaring plan, just so we're
6 clear.

7 What I think is that the Division decides what
8 you just asked, are they going to capture 100 percent, or 50
9 percent, or something in between. And I think they have
10 discretion to do the things that 7.A and B say they have the
11 discretion to do.

12 Q. So if the plan captures 50 percent, that could be
13 an approvable -- that could be an adequate plan?

14 A. In a theoretical philosophical black letter
15 reading of the rule, yes.

16 Q. And in Subsection 7, when it gives the authority
17 to the Division to deny the APD or conditionally approve the
18 APD, I have just a couple of questions on that. When it
19 says the Division may deny or may conditionally approve,
20 what -- are there other options besides denial and
21 conditional approval, I suppose approval?

22 A. Correct.

23 Q. Are there any other options?

24 A. You know, and I guess I will say, in my
25 experience, there is always an option to say to the

1 operator, "We need more information. If you're, if you're
2 operator, if this is all you're going to submit to us, it is
3 very unlikely for you to get your APDs. Would you like to
4 go try and do a better job?" That's always an option. I
5 will stop.

6 Q. So you did say that -- that the Division could
7 approve the APD even if it fails to submit an adequate
8 venting or flaring plan or even if the Division determines
9 that the operator doesn't have adequate takeaway capacity?
10 Could the Division approve that APD without conditions?

11 A. Yeah, if I read 7.A and B quite literally, I
12 would say the answer is no.

13 Q. That the only two, the only two actions that the
14 Division could take would be denial or conditional approval?

15 A. Yes, if they made those determination, the
16 predicate parts of 7.

17 Q. Well, but would it help that instead of giving
18 the Division discretion in the word "may," would it help if
19 the language were changed to say that the Division shall
20 deny, conditionally approve?

21 A. I do not personally see the ways in which that
22 would help.

23 Q. And in terms of the conditional approval, could
24 the Division conditionally approve the APD without making
25 sure that the operator will either have adequate takeaway

1 **capacity or submit an adequate venting and flaring plan?**

2 A. Would you, I'm sorry, would you repeat the
3 question, please?

4 Q. **Could the Division conditionally approve an APD**
5 **that did not have the certification for adequate takeaway**
6 **capacity or submit an adequate venting and flaring -- could**
7 **it conditionally approve an APD that doesn't meet those two**
8 **conditions above, those two circumstances above?**

9 A. So I feel like you are asking me a pretty
10 speculative hypothetical, and with that caveat, I think the
11 black letter of the rule is they could. The conditions
12 could say any number of things. The conditions could be
13 before you spud the well, you must demonstrate you have 100
14 percent takeaway capacity. Before you spud the well, you
15 must provide a venting and flaring plan that accounts for
16 100 percent of the capacity of the gas you expect to
17 produce.

18 Q. **And I believe you testified that the venting and**
19 **flaring plan -- well, let me ask you this, is the venting**
20 **and flaring plan to an operator enforceable by OCD?**

21 A. Not as I understand the intent and purpose of the
22 venting and flaring plan.

23 Q. **Is the gas management plan an enforceable**
24 **document by OCD?**

25 A. I probably should think about that more and

1 reread the natural gas management plan obligations. I think
2 what is enforceable by the Division is an operator's failure
3 to come into compliance and remain in compliance with its
4 gas capture requirements.

5 MS. FOX: Thank you, that's all I have.

6 HEARING EXAMINER ORTH: Thank you, Ms. Fox. Ms.
7 Paranhos, do you have questions of Mr. Lepore?

8 MS. PARANHOS: I do. I'm unmuting my video right
9 now.

10 HEARING EXAMINER ORTH: Thank you.

11 CROSS-EXAMINATION

12 BY MS. PARANHOS:

13 Q. Good afternoon, Mr. Lepore.

14 A. Good afternoon, Ms. Paranhos.

15 Q. Mr. Lepore, you testified that OCD will require
16 operators to provide certain information in several
17 provisions of the venting and flaring rule such as, for
18 example, the requirement that an operator submit a report
19 certifying compliance with its gas capture requirements,
20 which is contained in 19.15.27.9.B. Is that correct?

21 A. The last letter, is it B like boy, or D like dog?

22 Q. B as in boy. I'm happy to put -- it's the
23 accounting provision.

24 A. I see it. You're referring to the provision B,
25 accounting, no later than February 15 each year beginning in

1 2023 the operators will submit a report certifying
2 compliance with statewide gas capture requirements.

3 Q. That is exactly what I'm referring to, yes.

4 And please correct me if I missed it, but I
5 believe that you did not elaborate on what OCD means by
6 certify; is that correct?

7 A. I don't think that there has been an elaboration
8 of that.

9 Q. Thank you. And am I correct that OCD has not
10 proposed a definition of "certify"?

11 A. I do not believe there is a definition of
12 "certify" in the rule.

13 Q. And Mr. Lepore, do you have a sense of what OCD
14 means by the word "certify" or what it means by a
15 certification as those terms are used in the rule?

16 A. My understanding is that OCD uses the term
17 certify or certifying in a number of different rules within
18 its (unclear) category and does that usually within the
19 context of the form that is to be submitted, and within that
20 form specifies requirements for the certification. And my
21 understanding, based on conversations during the development
22 of these rules, is that that is OCD's intent with respect to
23 the certifications that are referenced in Parts 27 and Part
24 28.

25 MS. PARANHOS: Thank you, Mr. Lepore, that's

1 helpful. I have no further questions.

2 HEARING EXAMINER ORTH: All right. Thank you,
3 Ms. Paranhos. I'm looking to see if Mr. Biernoff is with
4 us. I don't believe I see him. Let me call, though.
5 Mr. Biernoff.

6 (No audible response.)

7 HEARING EXAMINER ORTH: Mr. Ames, how would you
8 like to handle this? I don't know if Mr. Lepore is
9 available to be recalled in the event the State Land Office
10 has cross-examination or if you would like to have him
11 excused now?

12 MR. AMES: Well, Madam Hearing Officer, I think
13 the Commission may have questions for Mr. Lepore, so they
14 may want to proceed, and if Mr. Biernoff returns after
15 they're done, I think we need to give him an opportunity to
16 ask questions of Mr. Lepore. I will have a few questions on
17 redirect, so I'm not prepared to excuse the witness yet.

18 HEARING EXAMINER ORTH: All right, thank you.
19 Commissioner Kessler, do you have questions of Mr. Lepore?

20 COMMISSIONER KESSLER: I do, thank you. Organize
21 my notes a little bit. Good afternoon, Mr. Lepore.

22 (Audio difficulties.)

23 HEARING EXAMINER ORTH: Commissioner Kessler, we
24 didn't really catch any of that.

25 (Audio difficulties.)

1 HEARING EXAMINER ORTH: That's fine. Let's try
2 that.

3 COMMISSIONER KESSLER: Am I coming in any clearer
4 now?

5 HEARING EXAMINER ORTH: It's clearer, but I don't
6 know if it's sufficiently clear enough. There seems to be a
7 lot of background information, or noise, excuse me.

8 (Audio difficulties.)

9 CHAIRWOMAN SANDOVAL: Why don't you try to mute
10 yourself and then see if Jordan is clearer.

11 HEARING EXAMINER ORTH: Okay, sure, I do mute
12 myself.

13 COMMISSIONER KESSLER: How about now?

14 CHAIRWOMAN SANDOVAL: That is better.

15 COMMISSIONER KESSLER: Maybe just wave at me if
16 I'm not coming in clear.

17 Okay. Mr. Lepore, what I would like to talk
18 about is definition of waste the Division is relying on to
19 allow for categorizing two things, venting and flaring as
20 accessible or I think you used term that the BLM used, being
21 authorized versus non-authorized waste something to that
22 effect. That's what I would like to understand better.

23 THE WITNESS: Thank you, Commissioner. I believe
24 that the Division is relying on the statutory definition of
25 surface waste, which I don't have in my hand right now.

1 What I do have in my hand is the regulatory definition found
2 at 19.15.2 under W and waste, surface waste. I could read
3 it to you, but it includes things like the unnecessary or
4 excessive surface loss or destruction without beneficial
5 use.

6 COMMISSIONER KESSLER: The term without
7 beneficial use that we are trying to define better.

8 THE WITNESS: I think I would say that slightly
9 differently that with respect to some of the exceptions that
10 are part of Subparts 27.8.B, C and D that we have talked
11 about in terms of -- I think the word I used was unavoidably
12 lost, I think that's the BLM's words, the low pressure, the
13 low volume, that those would fit within not excessive or not
14 unnecessary. So maybe I will try to say that in the
15 affirmative, that in some sense those losses are necessary
16 and not excessive.

17 COMMISSIONER KESSLER: And therefore would not be
18 considered?

19 THE WITNESS: Would not be considered waste, yes,
20 ma'am.

21 COMMISSIONER KESSLER: I would like to make sure
22 we get clear parameters on that so we're not working with an
23 arbitrary line of when venting and flaring is waste and when
24 it's not waste. I think I'm still a little bit fuzzy there,
25 but -- but I don't know that there is a way around that.

1 Okay.

2 There's a definition of paying quantities, and I
3 believe that that paying quantity definition is only used
4 with respect to what was formerly a delineation that is now
5 expectation loss (unclear).

6 THE WITNESS: I agree with you, that is the only
7 context in which paying quantities has been used.

8 COMMISSIONER KESSLER: In coming up with that
9 definition, does it (unclear) BLM and State Land Office as
10 paying quantities to make sure that their wells are
11 (unclear).

12 THE WITNESS: So, Commissioner, I'm looking at
13 the 27.7 definitions -- oh, there it is, producing and
14 paying quantities, thank you. I'm going to -- I have to go
15 on my memory which is an unreliable thing. My best
16 recollection is that we did, in fact, look at the State
17 Office of Land definition, but I would look to my colleagues
18 to confirm that for me.

19 We certainly were aware that this is a term of
20 art in the industry that has different definitions in
21 different applications, and we have, I think, generally been
22 aware of State Office of Land, you know, concerns around
23 these issues. So I think we did, but I don't want to swear
24 to it.

25 COMMISSIONER KESSLER: Thank you. I do have

1 concerns about that. I don't see anywhere in the definition
2 that these definitions are not applicable outside of this
3 particular portion of the law so that there couldn't, in the
4 future, be some sort of statement to import the OCD's
5 definitions into other pieces of law. So perhaps there can
6 be some clarification that it doesn't apply outside of,
7 outside of the venting and flaring rules.

8 The reporting, are you aware of any other
9 provisions in the Oil Conservation Division rules that
10 require reporting to royalty owners?

11 THE WITNESS: Madam Commissioner, your question
12 was hard for me to hear and follow that time. And so I know
13 what you're asking is about other entities reporting to
14 royalty owners, but I'm not sure of the scope of what you
15 asked, what -- yeah. I lost the beginning.

16 COMMISSIONER KESSLER: Are you aware of anywhere
17 else in the Division where operators are required to report
18 anything to royalty owners?

19 THE WITNESS: So I think your question is, is
20 there anywhere else in the Division's requirements that
21 operators report to royalty owners?

22 COMMISSIONER KESSLER: That's correct.

23 THE WITNESS: I am not aware that there is, but
24 as I responded I think at one point to Mr. Feldewert, I
25 would not hold myself out as completely familiar with all of

1 OCD's rules and regulations. Mr. Powell might be better.
2 Mr. Ames might also be able to shed some light. So I will
3 stop there.

4 COMMISSIONER KESSLER: I will (unclear) I'm aware
5 of three (unclear) in the rule where operators report or
6 provide notice to the BLM, the Land Office or tribal
7 entities, but I'm not aware of other requirements for
8 reporting to royalty interest owners, so I would like to
9 have that question answered that I've asked.

10 My other set of questions is related to --
11 Division's Subpart 27.F.5 and I'm looking at Exhibit 2A.

12 So it says, "If metering is not practicable due
13 to circumstances such as low flow rate or low pressure
14 venting and flaring, the operator may estimate the volume of
15 vented and flared natural gas using a methodology that can
16 be independently verified."

17 THE WITNESS: Yes, ma'am.

18 COMMISSIONER KESSLER: Who determines whether or
19 not metering is practicable, and would the Division -- how
20 would the Division enforce that?

21 THE WITNESS: So, again, with apologies for
22 deferring yet another of your questions, I think
23 Mr. Bolander would be better equipped to answer even what
24 the circumstances are that, you know, sort of dictate or
25 define the practicality of metering.

1 I think, secondarily, there's a bit of a
2 backstop. If you look at Subpart 7 just below where we are
3 on Subpart 5, this says that the Division has the
4 discretion, the authority to require the operator to install
5 additional metering equipment if it determines the existing
6 measurement for GOR is insufficient. So that's a bit of a
7 backstop there. And I think I've answered your question.

8 COMMISSIONER KESSLER: I think my question is
9 this: Would an operator be able to say that metering is not
10 practicable due to circumstances for a six-month period of
11 time on a well that really ought to be metered? I mean,
12 what -- you know, how -- and the Division has a lot of
13 things to do, if there's not a mechanism in place in the
14 rules to prevent operators from just saying that they don't
15 want to install meters, you know, I don't know that the
16 Division is going to be able to, to step in and enforce that
17 on a routine basis, so I would like to have the rule
18 affirmatively say that, and then I have concerns about this
19 provision.

20 THE WITNESS: Yeah, so I will tell you what I
21 understand to be true and then again, ask Mr. Bolander to
22 elaborate when he, when he testifies.

23 What I think is true is that it's fairly well
24 understood within the industry based on flow volume and
25 pressure whether metering is feasible. So -- and I don't

1 think, in your specific hypothetical, an operator would be
2 able to say in a circumstance, you know, that metering is
3 just not possible for these six months, these first six
4 months, I don't think that would sort of pass muster.

5 So from an enforcement point of view, you know,
6 with deference to Mr. Bolander, I would think that it is a
7 brighter line than it might seem as to when metering
8 equipment really is feasible and really should be in place,
9 and if it's not, then there's a problem.

10 COMMISSIONER KESSLER: That concludes my
11 questions then. Thank you.

12 THE WITNESS: Thank you.

13 HEARING EXAMINER ORTH: Thank you, Commissioner
14 Kessler. Commissioner Engler, do you have questions of
15 Mr. Lepore?

16 COMMISSIONER ENGLER: Can you hear me?

17 HEARING EXAMINER ORTH: Yes, quite clearly. I'll
18 mute myself now.

19 COMMISSIONER ENGLER: Okay, thank you. My
20 bandwidth is low, so I'm not putting on my video.
21 Mr. Lepore, I apologize for missing your testimony, but I
22 caught you in mid-cross with Mr. Feldewert, so that was
23 interesting, and I appreciate your efforts.

24 Now, to be honest, I have no questions. I just
25 wanted to say thank you very much for, for providing us

1 information. So that's all I have.

2 THE WITNESS: Thank you, Commissioner.

3 HEARING EXAMINER ORTH: Thank you, Commissioner
4 Engler. Madam Chair, do you have questions of Mr. Lepore?

5 CHAIRWOMAN SANDOVAL: Yeah. I know you have had
6 a long day so far, and I'm going to try to decipher all of
7 my notes here. Just for a little bit of simple questions to
8 start out with, Mr. Lepore, do you support this rule?

9 THE WITNESS: Very, very much.

10 CHAIRWOMAN SANDOVAL: Do you, from either your
11 past experience at COGCC or previous jobs believe that this
12 was a very collaborative process?

13 THE WITNESS: I do. There, I think, it's
14 apparent from the redlines and the eleventh-hour changes
15 that were made that it has been a significant amount of back
16 and forth between the Division and all of the stakeholders.
17 I could, I could elaborate and spell all of that out for
18 you.

19 I think Ms. Polak did some of that during her
20 testimony, but there was a draft, an October draft, a
21 December draft, a December 17th draft, and December 30th
22 draft, so we're through four drafts. All of those have been
23 substantive. All stakeholders had input into the changes
24 that were made at each step.

25 CHAIRWOMAN SANDOVAL: And you believe it was a

1 collaborative process for, I believe you said all
2 stakeholders involved, does that mean both industry and
3 environmental groups?

4 THE WITNESS: Absolutely.

5 CHAIRWOMAN SANDOVAL: Okay, thank you. I'm
6 trying to decipher the things that I found in my notebook.

7 THE WITNESS: I'm sorry, I cannot help.

8 CHAIRWOMAN SANDOVAL: I know. It's all right.
9 Okay. So I think there were a handful of questions earlier
10 about low pressure venting, how maybe they shouldn't be
11 counted. I guess my question would be, if we don't count
12 all of the sources, if everything doesn't go into the
13 roll-up, could we end up where 98 percent isn't really 98
14 percent, it's more like 90, 95, 97, 97 and a half, because
15 that, you know, what we're counting off of, the whole isn't
16 actually the whole. Does my question make sense?

17 THE WITNESS: Yes, I do think your question makes
18 sense, and I agree with your hypothesis, your supposition
19 there. Again, I think from the get-go what we want is a
20 very robust, very vigorous accounting and measurement in
21 reporting along with an acknowledgement that there are
22 circumstances when lost gas is unavoidable and that
23 shouldn't be counted against operators. And the rest is,
24 you know, the rest that we get to 98 percent and there is a
25 little bit of room in there for some of the unavoidable

1 stuff, I think that would be a terrific achievement.

2 CHAIRWOMAN SANDOVAL: Okay. But ultimately if we
3 don't count all of the molecules of gas, then that hundred
4 percent which we're dividing off of isn't really going to
5 give us a hundred percent?

6 THE WITNESS: That's correct.

7 CHAIRWOMAN SANDOVAL: Okay. I think there was a
8 little bit of concern at some point from Mr. Feldewert about
9 bringing equipment online. And going back and sort of
10 reviewing some of the language in D -- let's see, D.4.L, it
11 sounds like we give an exemption for commissioning of
12 pipelines, equipment, or facilities as long as necessary to
13 purge, introduce impurities from the pipeline or equipment.
14 Do you think that provision covers some of Mr. Feldewert's
15 concerns about, you know, introducing oxygen during the
16 purging and things like that?

17 THE WITNESS: I think that it appears to me that
18 it would address Mr. Feldewert's concern about oxygen
19 introduced as a function of the purging process.

20 CHAIRWOMAN SANDOVAL: Okay, maybe he just forgot
21 about that. All right. So there was a lot of talk about
22 North Dakota. Is North Dakota New Mexico?

23 THE WITNESS: I have to think about that one for
24 a second. No.

25 CHAIRWOMAN SANDOVAL: Okay, great. Are you, you

1 know, even with your I think background in Colorado, would
2 you think that the conditions of the oil and gas industry
3 are exactly the same in North Dakota as they are in New
4 Mexico?

5 THE WITNESS: No, not at all.

6 CHAIRWOMAN SANDOVAL: So maybe it isn't the most
7 accurate to say that what can't be done in North Dakota
8 can't be done in New Mexico?

9 THE WITNESS: I agree with that, and I -- yeah,
10 I'll just say I agree with that.

11 CHAIRWOMAN SANDOVAL: Okay. Would, you know,
12 kind of along those lines, I think you stated actually that
13 from, you know, a basic analysis and knowing that there are
14 some issues with the data, et cetera, that most operators
15 were actually venting and flaring at four percent. Was that
16 correct, or do you recall saying that?

17 THE WITNESS: I do recall saying that and I know
18 what the reference was, as a reference from the map report
19 itself, Page 155, and if you give me a second, I'll tell you
20 what years that covered. So that, that data is from Q1 of
21 2016 to Q2 of 2019. It is based on C-115 reports, and the
22 combined venting and flaring, those two numbers together, as
23 I think I said averages -- looking up and down the table
24 here from 2.6 percent to 6 percent, and the overall average
25 is approximately 4 percent.

1 CHAIRWOMAN SANDOVAL: Okay, thank you.

2 THE WITNESS: Four years.

3 CHAIRWOMAN SANDOVAL: All right. I don't recall
4 the exact number, I don't know if you had time to look this
5 up between, you know, your five-minute breaks here and
6 there, I believe North Dakota's percentage may be 95
7 percent, and it sounds like from what Mr. Feldewert said
8 earlier, you know, operators were struggling to meet that.
9 But what you are saying today is that it sounds like a lot
10 of the operators in New Mexico would already be meeting that
11 98 percent -- or 95 percent that's required in North Dakota?

12 THE WITNESS: So the highest percentage North
13 Dakota aimed for was 91 percent.

14 CHAIRWOMAN SANDOVAL: 91.

15 THE WITNESS: And yes, I mean on, you know, on a
16 broad average based on the data on Page 155, New Mexico
17 statewide is at about 4 percent, 96 percent capture right
18 now.

19 CHAIRWOMAN SANDOVAL: So I think that right there
20 demonstrates -- or do you agree that that right there
21 demonstrates that New Mexico and North Dakota have very
22 different operating conditions, and asserting the challenges
23 in North Dakota may not -- on New Mexico may not be the most
24 appropriate?

25 THE WITNESS: I think that's a fair statement,

1 yes.

2 CHAIRWOMAN SANDOVAL: Thank you. During all of
3 this collaborative process, it sounds like four or five
4 drafts that have happened back and forth, et cetera, was
5 there a lot of concern from the oil and gas industry
6 representatives on the 98 percent, was that one of their big
7 concerns, 98 percent was too high?

8 THE WITNESS: To the best of my recollection, no
9 stakeholder expressed an inability to get there that it was
10 unfair, that it wasn't a good number, that we needed to
11 change that number. I don't think there was a single
12 suggestion to provide a different target.

13 CHAIRWOMAN SANDOVAL: Were there suggestions on
14 other pieces of the rule draft that they were like, this is
15 not workable, we can't do this?

16 THE WITNESS: There were. There were a lot of
17 suggestions.

18 CHAIRWOMAN SANDOVAL: So that would -- I mean
19 would that make you think that 98 percent wasn't one of
20 their real issues, that that was okay because that was not
21 one of the things that was of concern during all of those
22 meetings?

23 THE WITNESS: Yes, again, a fair
24 characterization. I actually can remember some of the
25 operators we engaged with told us straight up they were

1 already there, which was obviously great to hear. We heard
2 a lot of concerns from operators as one example of the
3 difficulty of the 20-odd categories for reporting that we
4 had in the original draft. So that concern, from my
5 perspective, seemed to greatly overshadow any concerns they
6 had of 98 percent.

7 CHAIRWOMAN SANDOVAL: Okay, thank you. So we
8 want to go, I guess, up or whatever to the emergency
9 definition.

10 THE WITNESS: Yes.

11 CHAIRWOMAN SANDOVAL: Let's see, so G.4, it talks
12 that's where venting and flaring of natural gas for more
13 than four hours after notification that is caused by
14 emergency, unscheduled maintenance, or malfunction of
15 natural gas gathering system.

16 So I think one of Mr. Feldewert's concerns seemed
17 to be or that these were causes that were uncontrollable to
18 the operator, and so why are we having these things against
19 them. But I think what I'm recalling from your testimony is
20 that you said, basically, the regulation gives them four
21 hours to react and then take a step in which they can
22 control something. Is that true?

23 THE WITNESS: Yes, I think that's correct. Yes,
24 the four hours is, you know, it's a free pass, it's a free
25 pass for four hours. The expectation is that they respond

1 to notice and take the steps necessary to avoid venting and
2 flaring.

3 CHAIRWOMAN SANDOVAL: And something that is
4 within operators control is if they shut in wells (unclear);
5 correct?

6 THE WITNESS: Yes.

7 CHAIRWOMAN SANDOVAL: Okay. So then that action
8 would be within their control, and this four hours gives
9 them a pass to, to take those actions?

10 THE WITNESS: That's correct.

11 CHAIRWOMAN SANDOVAL: Okay. Unlike, I think you
12 said BLM, which does not give that pass?

13 THE WITNESS: That is my understanding, that
14 there is no free pass.

15 CHAIRWOMAN SANDOVAL: Okay. There seemed to also
16 be some concerns with this about, you know, the three or
17 more emergencies. Was that written in there -- when this
18 was written, was there a concern that the use of an
19 emergency could, you know, people -- let me rephrase this.
20 I'm trying to think of how to say this.

21 I guess when this was written, was that, that
22 three times written in there so that people didn't take
23 advantage of emergencies so that venting and flaring would
24 not count against them? Or would -- yeah, would not count
25 against them.

1 THE WITNESS: Right. I mean, fundamentally, yes.
2 I think there's, there's sort of two pieces to that. One
3 piece of this is that elsewhere in the rules it says --
4 well, back in the definition of emergency, so up in Part G
5 before you get to the subparts, it says that an emergency
6 must include an immediate and substantial -- a risk of an
7 immediate and substantial opportunity. So one of the things
8 the industry asked us to do was to strike "substantial."
9 Well, no, they don't want to strike "substantial" because,
10 to your point, we don't want, you know, a hangnail to be an
11 emergency. We want things that really have consequence to
12 be emergencies. So that's one aspect of it.

13 The other aspect of it here with the three is
14 just what you would say, that if this pattern emerges that
15 you have a problem with the way you're doing something or a
16 piece of equipment and it's happened to you twice before,
17 the expectation is that you, you, the operator, figures that
18 out and responds to it. Mr. Feldewert provided the example
19 of a thunderstorm. I think there are distinguishable
20 circumstance that I think the Division has the wherewithal
21 to make those decisions and make those decisions.

22 CHAIRWOMAN SANDOVAL: Okay. So on Mr.
23 Feldewert's concern about the lightning storms, under
24 definition 6, so again, we talk about that three or more
25 emergencies, it says unless the Division determines the

1 operator could reasonably anticipated the current event and
2 it was beyond the operator's control, do you think that
3 mother nature is probably beyond an operator's control?

4 THE WITNESS: I do. (Unclear) anything that a
5 stakeholder once said to me, but let me give an example that
6 would clarify, you know, if, if thunderstorms are common in
7 the Permian and you know that they can knock out your
8 facilities and so forth, there are mitigation measures that
9 can be taken around that, grounding rods and so forth and
10 things that, you know, other people know more than I do
11 about, but if you had a thunderstorm that knocked out four
12 of your facilities, as Mr. Feldewert hypothesized, and you
13 don't do anything to mitigate that threat, the next time you
14 have a thunderstorm that knocks out four of your facilities
15 and you did nothing in between, that's what we are talking
16 about. That's not an emergency; that's your failure to take
17 appropriate mitigating actions.

18 CHAIRWOMAN SANDOVAL: That makes sense. All
19 right. Let's see. I think -- so I think there is a lot of,
20 it sounds like there is concern about the royalty owner
21 reporting and that the information is already, quote,
22 available on OCD's website, et cetera. And you may not be
23 the best person to ask not living in New Mexico, but would
24 it surprise you to know that there are large swaths of New
25 Mexico that don't have access to the internet or reliable

1 and consistent internet?

2 THE WITNESS: I would take you at your word
3 certainly, Madam Chairman.

4 CHAIRWOMAN SANDOVAL: So if there are large
5 swaths of New Mexico that don't have access to the internet,
6 would it make it challenging to go onto OCD's website and
7 find that information?

8 THE WITNESS: It certainly sounds like it, and I
9 will go one step farther and say that in Colorado, I will go
10 so far to say I was very proud of the COGCC's database and
11 website, an amazing treasure trove of information that was
12 very hard for a layperson to sort through and actually find
13 out what they were looking for.

14 CHAIRWOMAN SANDOVAL: Would it shock you to hear
15 that our website is likely very similar to that?

16 THE WITNESS: Not at all.

17 CHAIRWOMAN SANDOVAL: And probably, we wouldn't,
18 you know, I think, be surprising for you to hear that we get
19 a lot of requests each and every week from members of the
20 public asking how to find data X, Y, or Z because our system
21 is so cumbersome?

22 THE WITNESS: No surprise whatsoever. I've
23 walked that path.

24 CHAIRWOMAN SANDOVAL: So might it be easier to
25 send that to a royalty owner, you know, however the company

1 decides to do that, via mail, maybe it's an e-mail, I don't
2 know if rule specified nor do I know really a point of
3 contention on how, but would it be easier for them to
4 receive that information via, you know, an e-mail or a
5 letter?

6 THE WITNESS: Yes, I have been baffled from the
7 very beginning about the industry's reluctance and pushback
8 on this provision. But to the best of my knowledge, they
9 are providing information to their royalty owners routinely,
10 and I don't understand, other than that their wish to avoid
11 transparency, why there is the reluctance to report this
12 information.

13 CHAIRWOMAN SANDOVAL: I believe you said that
14 COGCC put in their rule a requirement to report information
15 to royalty owners, is that true?

16 THE WITNESS: That is correct.

17 CHAIRWOMAN SANDOVAL: Do you know if anything
18 like that is in North Dakota at all?

19 THE WITNESS: I do not know. As far as I know,
20 the COGCC provision was the first, but I, by no means, have
21 done an exhaustive survey.

22 CHAIRWOMAN SANDOVAL: Okay. Let's see, next
23 topic. I guess I had a couple questions on the gas
24 management plan. There's been a lot of talk of the 100
25 percent if you don't capture beneficial use a hundred

1 percent. Is it the Division's intent for it to be 100
2 percent I guess -- well, I'll stop there, maybe that's the
3 first question.

4 THE WITNESS: I don't think that a hundred
5 percent every single time on every single well is what is
6 contemplated. And I think I tried to say this in response
7 to Ms. Fox's questions, that the operator is under an
8 obligation to comply with its statewide gas capture
9 requirements, and there's two percent in there for lost gas.
10 And it, it seems conceivable to me that a small number of
11 new wells coming online that for some period of time might
12 not be 100 percent capture could happen within that two
13 percent.

14 CHAIRWOMAN SANDOVAL: Okay, I think that's
15 helpful. I wanted to clarify that. I was a little confused
16 by the 100 percent. So the intent more is that, for
17 example, maybe if an operator is at 99.5 percent and they
18 are proposing to bring on five wells, and I'm not doing that
19 accurate, I'm just making this up, if they're proposing to
20 bring on five wells at 90 percent but those five wells at
21 90, or 80, or whatever percentage isn't going to pull their
22 overall statewide gas capture percentage under 98, does that
23 seem still like it is within the intent of this rule?

24 THE WITNESS: It does, it does.

25 CHAIRWOMAN SANDOVAL: Okay. I think that

1 likely -- I mean is that trying to recognize the operational
2 complexities that, you know, maybe some wells may always be
3 able to be a hundred percent captured and some wells may
4 always be at 90 percent, I mean is that sort of trying to
5 take into account some of those operational intricacies?

6 THE WITNESS: Yes, absolutely. And, you know,
7 there are so many variables and so many solutions to the
8 variables. So you posited a very appropriate one. Yes, so
9 I think, I mean, a bright line insistence on a hundred
10 percent capture of all the new wells that have ever come
11 online, probably not really aligns with the variables that
12 exist out there. So I'll stop.

13 And I think, you know, the Commission -- sorry,
14 the Division and the Commission still have an interest in
15 allowing the industry to function at an economic level and
16 to produce these resources for the benefit of all New
17 Mexicans and that's part of the objectives here, too.

18 CHAIRWOMAN SANDOVAL: Thank you. I only have
19 couple more questions. I think another on the gas
20 management planning. It sounded like there was a question
21 as to whether or not it's enforceable. And just scanning
22 through, for example, what is it, D.5, I mean it definitely
23 seems like there are pieces of the plan that are
24 enforceable. 5 talks about basically like if the operator
25 determines it will not be able to connect to the gathering

1 system, and all of that, then it has to -- I think it was D.
2 I'm looking at the wrong one. I think there is some
3 20-day -- or maybe it's not 5. Oh, no, maybe I lost it. I
4 feel like there was a 20-day thing, if you found out it
5 actually wasn't going to connect.

6 THE WITNESS: I think it came up, Subpart 6,
7 Madam Chair?

8 CHAIRWOMAN SANDOVAL: Yes, A, there it is. I
9 mean it would seem like in a scenario where an operator
10 didn't do that, didn't report within 20 days, I mean
11 wouldn't that be an enforceable provision of this gas
12 management?

13 THE WITNESS: Yes, I absolutely agree that it
14 would, yes.

15 CHAIRWOMAN SANDOVAL: Okay. And then I think my
16 last question, or last round of questions. Maybe it's just
17 one. So the definitions were -- so there is a list of
18 definitions in Part 27.

19 THE WITNESS: Yes.

20 CHAIRWOMAN SANDOVAL: Under the 19.15.27, OCD
21 also has definitions in 19.15.2, I think it is.

22 THE WITNESS: Yes.

23 CHAIRWOMAN SANDOVAL: Where all their main
24 definitions, do you know whether or not if you put
25 definitions within an individual part, if they only apply to

1 that part, whereas definitions in Part 2 apply throughout?

2 Do you know if there is a distinction?

3 THE WITNESS: So my understanding is the way you
4 just phrased it is correct. And I think that that is
5 clarified to some extent by the language of 15.27.7 where it
6 says definitions shall have the meaning specified in 19.15.2
7 NMAC except as specified below. So I think that the
8 definitions in Subpart 7 here are specific to -- specific
9 here and that phrasing in 19.15.2 supercedes anything here.

10 CHAIRWOMAN SANDOVAL: Okay, got it. That's
11 helpful, thank you.

12 THE WITNESS: I hope that's right, and I hope Mr.
13 Ames will correct me if I'm wrong.

14 CHAIRWOMAN SANDOVAL: I suspect Mr. Powell will.

15 THE WITNESS: Excellent.

16 CHAIRWOMAN SANDOVAL: I think that is my last
17 question. Thank you, Mr. Lepore.

18 THE WITNESS: Thank you, Madam Chair.

19 HEARING EXAMINER ORTH: Thank you, Madam Chair.
20 I'm wondering if it would not be wise to try to push all the
21 way to 5, based on the fact that we have been going for
22 awhile, if we can take a short break and come back for Mr.
23 Ames' follow-up. Would that work, Mr. Ames?

24 (No audible response.)

25 HEARING EXAMINER ORTH: You're on mute, I

1 believe.

2 MR. AMES: Thank you, Madam Hearing Officer. Has
3 Mr. Biernoff rejoined us?

4 HEARING EXAMINER ORTH: I don't see him in the
5 panelist forum. Mr. Biernoff?

6 (No audible response.)

7 HEARING EXAMINER ORTH: No.

8 MR. AMES: Madam Hearing Officer, what I propose
9 is that we take a short break and I'll text Mr. Biernoff and
10 see if he will be available shortly. If he is, we can hear
11 his cross. I will have little or no redirect, and so it's
12 entirely possible we will be able to conclude by 4:30.

13 HEARING EXAMINER ORTH: Terrific, thank you.
14 Let's just take ten minutes.

15 (Recess taken.)

16 HEARING EXAMINER ORTH: So let's go back on the
17 record. It's 4:17 p.m. While we were on the break, a few
18 conversations were had. Among other things, we know that we
19 will need to have a conversation around trying to build some
20 extra time into the days somehow so that we hopefully can
21 finish this hearing by January 15 or very shortly after
22 that.

23 And Mr. Lepore, we have not been able to make
24 contact with Mr. Biernoff, and Mr. Ames indicated that the
25 Division would be willing to recall you for his examination.

1 Okay. So Mr. Ames, if you would, please, your
2 redirect.

3 MR. AMES: Madam Chair, I have no redirect except
4 to the extent I may need to redirect after Mr. Biernoff's
5 cross-examination.

6 HEARING EXAMINER ORTH: Okay. Thank you for that
7 then. So I see that your next two witnesses are estimated
8 at an hour apiece. Will you be taking them in the order in
9 which you identified them in the prehearing statement?

10 MR. AMES: Yes.

11 HEARING EXAMINER ORTH: Okay. We, we do need to
12 take these four public comments which would be approximately
13 two minutes apiece. These folks may or may not have joined
14 us already. I don't want to waste that last, you know, half
15 hour or so of the day. Do you have a proposal? I can see
16 those folks are already with us.

17 MR. AMES: Madam Hearing Officer, I think if
18 Mr. Bolander is online, I think we can begin with his
19 introduction and start in on his testimony. And the slides
20 are, as you've seen, a continuation of the slides that Ms.
21 Polak and Mr. Lepore have done. So there is ample
22 opportunity to break between slides. So we could start now.

23 HEARING EXAMINER ORTH: Thank you very much for
24 that, Mr. Ames. If you would then, please, Mr. Bolander, if
25 you can turn on your camera. Thank you. Would you raise

1 your right hand, please. Do you swear or affirm that the
2 testimony you are about to give will be the truth, the whole
3 truth, and nothing but the truth?

4 THE WITNESS: Yes, I will.

5 HEARING EXAMINER ORTH: And would you please
6 spell your name for us.

7 THE WITNESS: It's James L. Bolander, last name
8 is spelled B-o-l-a-n-d-e-r.

9 HEARING EXAMINER ORTH: Thank you. Mr. Ames,
10 please go ahead.

11 MR. AMES: Thank you, Ms. Orth.

12 JAMES L. BOLANDER

13 (Sworn, testified as follows:)

14 DIRECT EXAMINATION

15 BY MR. AMES:

16 Q. Good afternoon, Jim.

17 A. Good afternoon.

18 Q. Let's start with a brief introduction. First,
19 your full name for the record, please?

20 A. James L. Bolander.

21 Q. And Mr. Bolander, what do you do? What has been
22 your career in, in the working world for the last 30 or 40
23 years?

24 A. I am a degreed petroleum engineer and have been
25 working in the oil and gas industry for 35-plus years, most

1 of it on the upstream side working with two large
2 independent oil and gas companies.

3 **Q. So can you give us a sketch of some of the key**
4 **positions you have held over your career in petroleum**
5 **engineering?**

6 A. Yes. I started my career with Mitchell Energy
7 and Development, working all three phases of oil and gas,
8 started my career as a drilling engineer, then moving into
9 production engineering, which also included completions at
10 the time. And then reservoir engineering. I spent
11 approximately 15 years with Mitchell Energy in various roles
12 across the United States, primarily operations in Texas,
13 East Texas, South Texas, also operations in Louisiana,
14 Mississippi, and then West Texas and the Permian Basin.

15 In addition to that, during a time working as a
16 reservoir engineer working our North Texas Region, which is
17 the home of the Barnett Shale.

18 In addition to time at Mitchell Energy I worked
19 at Columbia Gas Transmission, worked as a senior storage
20 engineer for gas storage wells in the northeast,
21 specifically in Ohio.

22 And then I spent the bulk of my career at
23 Southwestern Energy, was with Southwestern for a little over
24 15 years. Started with Southwestern as a production
25 engineer over the company's East Texas asset, became team

1 leader of that operation.

2 In addition to team leader over all of our East
3 Texas assets, when the company discovered the Fayetteville
4 Shale, it moved over to our Fayetteville Shale operations as
5 one of two team leaders over the development, exploration
6 and development of Fayetteville Shale, which is a clay of
7 over 900,000 acres. It is a shale clay in Arkansas.

8 I became vice president of operations of the
9 Fayetteville Shale over drilling and completion operations
10 as well as leading three development teams in the
11 development of the Fayetteville Shale, which we were able to
12 take the production from a little under a hundred million a
13 day to over half a BCF per day in less than two years.

14 I became the company's chief operations engineer,
15 working with all engineers within the company, within our
16 drilling completion and production group on engineering
17 development and technical solutions.

18 The next phase, which was an interesting phase
19 and a move that like companies have made to strengthen their
20 Helsinki environmental departments, I became vice president
21 of our Helsinki environmental team and oversaw operations
22 over the entire company over those areas.

23 I then had the opportunity of taking a position
24 as senior vice president of resource development. What that
25 was is I still led our Helsinki environmental team, as well

1 as a special engineering project management team within the
2 company, which led our efforts around sustainability. We
3 were one of the first companies and our team led that in
4 becoming fresh water neutral in our operations, as well as
5 leading our company in all of our efforts around methane
6 mitigation.

7 Part of that was Southwestern's involvement in
8 three of the industry BDF methane studies in which I was a
9 steering committee lead on the upstream study. Our
10 participation in the new end Climate Clean Air Coalition,
11 the oil and gas operators, which was a coalition of eight
12 operators, multinational, and developing technical guidance,
13 documents on methane mitigation, as well as setting goals to
14 meet criteria. I was our company's steering committee lead
15 on that program.

16 In addition to that, Southwestern was one of the
17 founding companies of the ONE Future Coalition on methane
18 reductions, which currently has over 32 companies across the
19 value chain in oil and gas in the United States, which
20 includes both upstream, midstream, transmission, all the way
21 through the system. In addition to that, I was able to lead
22 all of our teams across that.

23 I retired from Southwestern in 2016, formed an
24 engineering consulting firm. One of my first positions was
25 back with Southwestern Energy to continue to work on some of

1 the programs that we had started. In addition to that,
2 worked with Environmental Defense Fund as one of my science
3 primarily around work that we started in Southwestern Energy
4 on wellbore integrity. And there worked with EDF and
5 industry partners on their recently promulgated rule in
6 Colorado on wellbore integrity, which became official in
7 2019, and then worked with a small independent standards
8 company on evaluating oil and gas companies on their
9 operations performance. And currently working with Inside
10 Energy on this particular project.

11 Q. Thank you. Thank you for that detailed
12 explanation of your background. It's quite extensive. Is
13 your background further described in your curriculum vitae,
14 which is OCD Exhibit 31?

15 A. Yes, it is.

16 MR. AMES: Move the admission of OCD Exhibit 31.

17 HEARING EXAMINER ORTH: I will pause for a moment
18 in the event there are any objections.

19 (No audible response.)

20 HEARING EXAMINER ORTH: Exhibit 31 is admitted.

21 (Exhibit 31 admitted.)

22 BY MR. AMES:

23 Q. Mr. Bolander, did you participate in developing a
24 PowerPoint presentation or the PowerPoint presentation that
25 the Division has been using in this hearing?

1 A. Yes, I have been.

2 **Q. And I believe your presentation begins at Slide**
3 **64. Are you ready to present the slides?**

4 A. Yes, we can begin.

5 **Q. All right.**

6 A. What I would like to do is kind of first kind of
7 give a little background on my testimony that you heard from
8 my counterpart, Mr. Lepore, and, you know, really delved
9 into Part 27 overall as well as key parts to Part 28.

10 What I'll be doing, you'll be seeing a lot of,
11 you'll be seeing a lot of the same slides that you saw in
12 Mr. Lepore's testimony, but I'll look at it more from a
13 technical perspective, specifically in Part 27. And then
14 Part 28 I'll highlight some of the more nuance sections that
15 aren't in Part 27 that are found in Part 28.

16 From a time perspective, I will -- for areas that
17 Matt covered in great detail, I'll make sure that I, you
18 know, touch base on them but not spend a lot of time on them
19 since they've been covered in great detail as well as in
20 detailed cross.

21 On this particular slide, which you've seen
22 before, I just wanted to highlight, you know, basically that
23 Part 28 has the exact same objectives in terms of methane
24 reduction or natural gas waste reduction as in Part 27. You
25 know, the three objectives are reduce waste by regulating

1 venting and flaring activities, obtain complete and accurate
2 measurement and reporting of venting and flaring volumes.
3 This we heard much in detail as well as in the map report
4 which highlighted this particular section of our rule as
5 being a key to getting waste reductions as making it
6 possible.

7 As far as midstream operations, we're holding
8 them to a similar 98-percent gas capture rate by December
9 31st, 2026. What you need for Part 28 is midstream
10 operations are currently not operated or regulated by the
11 Division. But what we have attempted to do is make sure
12 that they are able to follow through, have the same
13 opportunity to have the same exceptions, that we'll talk
14 about, that they are aligned, you know, with Part 27 in
15 terms of measurement and reporting, as well as meeting the
16 same guidelines.

17 Can you move to the next slide, please? Thank
18 you.

19 Similar to Part 27, we have a lot of the same
20 main sections within the rule. The first one is
21 definitions, which I'll highlight, is similar to Matt, I'll
22 highlight just four or five definitions, not the complete
23 list. And you know, My scope here is to define key terms
24 and operations within the natural gas gathering system that
25 defines the scope for this rule.

1 The venting and flaring of natural gas will
2 provide context of the venting and flaring prohibitions as
3 waste is defined and the rule which is found in 19.15.2,
4 which is also consistent within the statute.

5 (Unclear) the rule is certain operation
6 performance standards that are designed from an operating
7 and management practices and performance to reduce waste.
8 Where necessary within our rule, we'll refer back to Part 27
9 on the equipment -- the equipment requirements as not to
10 bring the extra set of rules over.

11 As mentioned, provide robust measurement
12 reporting to aid the Division in determining the current gas
13 lost within midstream operations.

14 And then lastly, an operational component that
15 requires notification, planned and unplanned events that
16 upstream operators, that will allow upstream operators the
17 ability to minimize their venting and flaring that may have
18 been affected by this midstream event. This was discussed
19 in the emergency definition on the upstream side and will
20 have a counterpart section within the emergency definition
21 on the midstream part that links these two together.

22 Next slide, please. Thank you, Tiffany.

23 The first section is new to Part 28. This is our
24 location requirement section. And what's unique about it is
25 it provides the Division with the location and operational

1 status of the gathering pipeline and its associated
2 facilities.

3 As we move through the PowerPoint presentation,
4 this section will be highlighted in greater detail on what's
5 required, what is expected, and why we're wanting this
6 information. The last section in the overview is a
7 statewide natural gas requirements. This section was
8 described in detail by Mr. Lepore in his presentation and
9 testimony, and it encloses three main sections within that
10 rule.

11 One is the requirements to meet the 98 percent
12 gas capture, the separation of the two regions, what happens
13 when a midstream operator acquires another operator's
14 assets, the accounting section and how that is handled, what
15 gets counted, what gets accepted, and how is the alarm
16 credits treated. And then third within that is the
17 third-party verification process, which mimics Part 27.

18 Next slide, please.

19 HEARING EXAMINER ORTH: Mr. Bolander?

20 THE WITNESS: Yes?

21 HEARING EXAMINER ORTH: I'm sorry to interrupt
22 you. I just wanted to say to the folks who may be on the
23 line waiting to give public comment that I will take your
24 public comment in several minutes. We are trying to get to
25 a good stopping place with a technical witness before we do

1 that. And I also see Mr. Biernoff on the line.

2 Mr. Biernoff, Mr. Ames has agreed to recall
3 Mr. Lepore, so Mr. Lepore would still be available after the
4 public commenters, we could turn to that.

5 So please go ahead, Mr. Bolander, and if you
6 would come to a good stopping place in about five minutes or
7 so.

8 THE WITNESS: All right. Thank you.

9 A. As mentioned in the overview, we'll start going
10 into more detail of the individual sections, and this is the
11 first section, Rule 19.15.28.7 on definitions. And I'll
12 highlight just a few of the definitions that we've got in
13 here.

14 The first definition is custody transfer point,
15 and I'll let you read the definition itself. We did make
16 some changes from the October draft, as you can see. And
17 the primary reason for that is for clarity on what we're
18 trying to accomplish for this definition.

19 And the primary point in the definition of
20 custody transfer point is, for lack of a better way, is the
21 ownership change of ushering and midstream operations as it
22 relates of venting and flaring of natural gas. In other
23 words, things responsible for the venting and flaring and at
24 what point does that transfer of ownership occur.

25 Next slide, please.

1 Here is our definition of emergency. And as you
2 can see in the definition itself, it's very similar to the
3 definition that you found in Part 27. We have six
4 exceptions as defined.

5 The one difference that we have here is in Part
6 28, and this would be that, and I'd like to address it here,
7 it would be in Exhibit 3A under the definitions. And in
8 here it is definition 28.7.D and it's 4, and D.4 is
9 unscheduled maintenance or malfunction that results in
10 venting or flaring of natural gas by an upstream operator
11 for which the operator fails to comply with Paragraph 2 of
12 Subsection D of 19.15.28.8.

13 And what that section is, that's the reporting
14 section to upstream operators, which we'll go into in more
15 detail in a few slides. And I wanted to highlight, this is
16 how those two definitions, between Part 27 and Part 28 are
17 linked. And that is also an important change from the
18 October draft. At that time we added this, this exclusion
19 based on reporting from the, you know, in the October draft.
20 So we wanted to make that key as well.

21 **Q. Jim, why did you propose to do that?**

22 A. Well, we wanted to, the original language was
23 that midstream operator was held accountable based on
24 upstream operator venting and flaring. And just as
25 explained in Part 27, where, you know, one effect does not

1 mean that the other effect is, you know, has any effect on
 2 it, and, you know, mentioned you're not -- sometimes is
 3 trying to affect this, but what we are trying to do here is
 4 that just because an upstream operator vents or flares
 5 during an emergency does not mean that midstream should
 6 count, automatically count theirs against themselves.

7 However, if they fail to notify upstream
 8 operators, we felt like that was the more appropriate
 9 approach for linking the two emergency definitions together.

10 **Q. Was this change in response to some comments from**
 11 **NMOGA regarding the appropriateness of the exclusion of, as**
 12 **it was currently written?**

13 A. Yes, thank you, Eric, it was at their, from their
 14 comment period as well as some of their recommended language
 15 that we used to try to link the two emergency definitions
 16 together.

17 **Q. Thank you.**

18 HEARING EXAMINER ORTH: Is this a good stopping
 19 point, gentlemen?

20 MR. AMES: Yes.

21 THE WITNESS: Yes. Well, I've got one more slide
 22 that I can do in probably 30 seconds, if that helps, and
 23 then we're through with this section.

24 HEARING EXAMINER ORTH: Go ahead.

25 A. All right. This is the last slide on definitions

1 and it's for gathering pipeline and natural gas gathering
2 system. And the main goal here with both of these
3 definitions, even with some of the redline, which I'll
4 explain shortly, is to define the components which are
5 regulated under this part, Part 28.

6 The redlines in the gathering pipeline were
7 removed primarily since they're a main component within the
8 natural gas gathering system itself. So we did not feel
9 like we needed to define gathering pipeline in detail since
10 it is part of the overall system.

11 HEARING EXAMINER ORTH: All right. Thank you,
12 Mr. Bolander. And Mr. Ames, if you would, mute yourselves.

13 Now let's turn to public comment. I have four
14 names of folks who signed up to offer public comment between
15 4:30 and 5. I will read them in the order in which I will
16 call you. Judy Traeger, Donna House, Mark LeClair, and
17 Michael Swearingen. Please keep your remarks to two
18 minutes. I will ask you to wrap up if you exceed that, and
19 in the event you have more to say to the Commission for
20 their consideration on these proposed rules, I would invite
21 you to submit written public comment through Florene
22 Davidson. Her contact information, obviously, can be found
23 on the Division public engagement and outreach web page. So
24 we start with Judy Traeger.

25 MS. TRAEGER: Hi. Can you hear me?

1 HEARING EXAMINER ORTH: Yes, I can. Thank you.

2 MS. TRAEGER: Good. Thank you very, very much
3 for this time. My name is Judy Traeger, and I live in
4 Albuquerque. I'm a member of New Mexico Interfaith Power
5 and Light, and I really want to thank you for getting this
6 in tonight.

7 As a Christian, I believe God is reflected in all
8 that God has made, and I believe we are to be caretakers of
9 creation and of all light. That is why I'm asking you to
10 strengthen the Oil Conservation Division's proposed methane
11 waste rules to eliminate unnecessary methane waste.

12 As you know, methane waste is currently polluting
13 our air, harming our climate, and worsening people's health
14 by increasing asthma and emphysema. To me, it seem that
15 capturing methane emissions is a win-win option. Clearly,
16 the problems of pollution, climate change, and people's poor
17 health would be diminished, and in addition, methane is the
18 main component of natural gas.

19 If we required oil and gas companies to capture
20 and use 98 percent of methane emissions by 2026, I've been
21 told that our state education budget could be increased by
22 more than \$43 million from the royalties and tax revenues.
23 Some of this could be used for early childhood education.
24 As a retired elementary school teacher, I know how crucial
25 early childhood education is for success in school and life.

1 As one of the states with the highest poverty
2 levels in the US, we need to try harder to give our children
3 a leg up. So in conclusion, I am asking you to create
4 methane rules that would, one, ban routine venting and
5 flaring and only allow it when needed for health and safety;
6 two, require oil and gas companies to capture 98 percent of
7 methane emissions by 2026; and three, strengthen state
8 reporting and public notice requirements to improve
9 transparency and ensure accountability of oil and gas
10 operations.

11 It's high time that New Mexico joins other
12 populace and oil and gas states with requirements that
13 prohibit methane waste and associated pollution from
14 escaping.

15 Thank you for listening and thank you for your
16 very important role in promoting the health and well being
17 of New Mexico's natural environment and her living beings,
18 including us humans. Thank you.

19 HEARING EXAMINER ORTH: Thank you, Ms. Traeger.
20 Donna House, Ms. House?

21 Mr. Garcia, do you need to unmute the folks
22 calling in on the phone?

23 (Inaudible.)

24 HEARING EXAMINER ORTH: Ms. House, are you with
25 us? All right. In the event Ms. House joins us --

1 MS. HOUSE: Hello?

2 HEARING EXAMINER ORTH: Oh, hello, Ms. House.

3 MS. HOUSE: Yes, I'm here.

4 HEARING EXAMINER ORTH: All righty, great. Thank
5 you. Please go ahead.

6 MS. HOUSE: I'm hearing background noise.

7 HEARING EXAMINER ORTH: Let's see.

8 (Audio interference.)

9 HEARING EXAMINER ORTH: I'm sorry, Mr. Garcia?

10 MR. GARCIA: I have two call-in users that are
11 speaking. I don't know which one she is.

12 HEARING EXAMINER ORTH: Ms. House, would you
13 speak up again?

14 MS. HOUSE: Hello, this is Donna House.

15 HEARING EXAMINER ORTH: Okay. That appeared to
16 be call-in user 25. Can you speak up again, Ms. House, one
17 more time?

18 MS. HOUSE: Hello?

19 HEARING EXAMINER ORTH: Yes, please go ahead.

20 MS. HOUSE: My name is Donna House. I'm a
21 consultant and an advocate for protecting bio and cultural
22 diversity. I'm a citizen of the Navajo Nation and New
23 Mexico.

24 I want to thank and I do appreciate New Mexico
25 Governor Lujan Grisham's goal in creating this nationally

1 leading rules to reduce methane emissions and the work that
2 you all are doing in developing rules to reduce natural gas,
3 waste, leaks from oil and gas operations.

4 I'm here today to voice my concern, the lack of
5 rules addressing the protection of the well-being of all New
6 Mexicans to eliminate the unnecessary methane waste and
7 practice. In two minutes, actually less than two minutes
8 now, I'll be summarizing my concerns and I'll be sending
9 them, much more detailed concerns later on.

10 I have witnessed negative impacts of oil and gas
11 development on the health of ecosystems and the Navajo
12 people for decades from oil and gas development, from
13 volatile organic compounds, VOCs.

14 According to New Mexico oil and gas data, Rio
15 Arriba County residents are in a cloud of 106,900 tons of
16 methane and 25,000 tons of VOCs. That's totally outrageous.
17 And I would give you the rest of the data in the detailed
18 report.

19 New Mexico are exposed to hundreds of toxin
20 chemicals and pollutants associated with venting and
21 flaring. I would like to recommend midstream and upstream
22 private and independent drillers and companies to be
23 required to capture 98 percent of their natural gas by 2026.

24 I recommend an assessment and incorporate
25 environmental justice into oil and gas, including this

1 proposed rule, protect the rights of the people of color and
2 their ties to the surrounding environment and ecosystems,
3 and to protect tribal communities' well being and their
4 homelands.

5 The final rule must require public, tribal, and
6 indigenous communities' input throughout the permitting and
7 reporting process. And I recommend that the proposed rule
8 address neighboring cultural protocols, environmental
9 justice issues, and New Mexico cultural regs, regulations,
10 such as incorporating New Mexico cultural property --

11 HEARING EXAMINER ORTH: Would you wrap up, Ms.
12 House?

13 MS. HOUSE: Okay. Oh, dear, I didn't realize I
14 was going so slow. Final result, incorporate cultural and
15 community-based studies, research, and findings into the
16 safety standards. And I go into the safety standards quite
17 a bit as far as addressing a lot of the studies that I have
18 seen out there done by local communities and other NGOs that
19 play a role in research. So I will submit a detailed
20 write-up to you. And could you give me a deadline when --
21 for the write-ups?

22 HEARING EXAMINER ORTH: Yes, written public
23 comments are due by Friday at 5 p.m., that's January 8th.
24 Thank you very much. The next commenter is Mark LeClair.
25 Is Mark LeClair on the line?

1 MR. LeCLAIR: Yes. Hello?

2 HEARING EXAMINER ORTH: Hello. I can hear you.

3 MR. LeCLAIR: Good. Yeah, thanks for taking my
4 call. I'm a small farmer here in Albuquerque south valley,
5 I have been doing this for almost 20, 20 years now and you
6 know, I have got to just say in the time I have been doing
7 this, everything's changed pretty drastically.

8 You know, when I first started the hunting times
9 and everything, we were still using the guidelines that our
10 grandparents and our great grandparents had put forward.
11 But everything has changed now. Just in my lifetime what
12 I've seen is that the seasons have shifted over two months
13 in the spring and in the fall. And I want to make this call
14 because I'm well aware that these proposed rules leave 95
15 percent of wells exempt, and it just breaks my heart to hear
16 this because it erodes my confidence in my society. It
17 erodes my confidence the leadership. To hear that they make
18 a rule and then it doesn't apply to 95 percent of the wells
19 that they say they are going to regulate.

20 And I'm just begging you, all of you, to think
21 about climate change and how it's going to be affecting our
22 children. We're at the precipice right now. We all know
23 the west was burning all of 2020, 2018, 2019. Australia was
24 burning. We saw unprecedented floods. We have these storms
25 up in Iowa that have never been seen before in our

1 lifetimes, in anybody's lifetime that is hearing my voice
2 right now, they have never even seen those storm before.

3 It's just a matter of time going forward before
4 this terrible weather catches up to us and they start
5 disrupting our food supplies and they start causing real
6 suffering that we're going to see first hand right here in
7 our country and it's no longer going to be a third-world
8 problem; it's going to be our problem and we won't be able
9 to escape the suffering.

10 And I want to bring to your attention the fact
11 that we're not going to treat this problem by dealing with
12 CO². Everybody, the environmentalists and people have been
13 talking about CO² for 40 years. But we're too entrenched,
14 our economy is not going to be able to change fast enough.
15 But methane, we can do something about this. We have the
16 technology and we can do something about this, and it's our
17 responsibility to our children and our grandchildren to do
18 everything within our power.

19 HEARING EXAMINER ORTH: Thank you, Mr. LeClair.

20 MR. LeCLAIR: This debate goes all the way back
21 to Thomas Paine and what government is for, and it's really
22 for here to regulate the things that the market cannot
23 regulate. And I'm begging you all, strengthen these rules.
24 There should be no exemptions. 2026 is too far away. We
25 need to work together with our federal government and our

1 tribes, and we need to say that we're going to stop as much
2 methane as we possibly can starting tomorrow. That should
3 be our goal, and we should all be working together to see
4 how we can do that. Thank you.

5 HEARING EXAMINER ORTH: Thank you, Mr. LeClair.

6 Our final commenter this afternoon is Michael
7 Swearingen. Mr. Swearingen, are you with us?

8 MR. SWEARINGEN: Yes. Can you hear me?

9 HEARING EXAMINER ORTH: Yes, I can hear you
10 clear.

11 MR. SWEARINGEN: Okay. I'll do this quick in two
12 minutes. So I was on the call at 8:30 this morning. I can
13 see how the committee has been working very hard. Thank you
14 for this opportunity to speak.

15 My name is Michael Swearingen. I live in
16 Albuquerque, New Mexico. I have been a global warming
17 engineer for the past 15 years. I support the effort to
18 stop methane leaks, methane flaring, and I endorse
19 third-party oversight of oil and gas industry compliance, of
20 course.

21 This hearing is about making improvements to our
22 fracking techniques to stop burning off methane and to stop
23 the leaking of methane directly into the atmosphere. And as
24 we know, methane traps heat 80 times stronger than carbon
25 dioxide. However, we are in a new era of global warming,

1 and I want to remind people of this bigger picture.

2 Again, I live in New Mexico. Of the lower 48
3 states, which state is heating up the fastest during the
4 summertime? Our state, New Mexico. Road crews in our
5 nextdoor neighbor state of Arizona can no longer do road
6 repairs during the daytime in the summer months; it is
7 simply too hot. Concrete sets too fast, asphalt melts.
8 They can only work at night.

9 We here in the Southwest know all about the
10 droughts, fights over water, electricity brownouts, and wild
11 fires that (unclear) and this is going to get worse.
12 Climate scientists and climate models can now figure out the
13 eventual temperature rise on our planet depending on how
14 much carbon dioxide and methane we put into the air. From
15 this we can figure out what's called our carbon budget. In
16 looking at our carbon budget, we clearly need to stop using
17 coal, oil, and natural gas.

18 So what does the science say about how wide a
19 task we need to make these changes? How wide? Not just the
20 US; all the countries of the world. How fast? The
21 scientists say we have less than ten years to go towards
22 zero carbon; no coal, oil, or natural gas.

23 This doesn't mean we're going to hit 2 degrees C
24 in 2030, but it will be locked in by 2030. It's definitely
25 going to happen in the '40s if we don't move today.

1 Again, my name is Michael Swearingen. For those
2 interested, if you want scientific citations behind this
3 two-minute speech, please contact me. Thank you very much.

4 HEARING EXAMINER ORTH: Thank you very much,
5 Mr. Swearingen. Let's return now, Mr. Ames, if you would
6 let me know, again, we do have Mr. Biernoff on the line, and
7 last I looked, we also had Mr. Lepore on the line. Would
8 you like to see whether Mr. Biernoff has questions of
9 Mr. Lepore?

10 MR. AMES: Well, I think we can ask Mr. Biernoff.
11 Mr. Biernoff, would you like to ask some questions of
12 Mr. Lepore?

13 MR. BIERNOFF: Madam Hearing Officer and Mr.
14 Ames, I really appreciate the courtesy you're extending. I
15 do not need to ask Mr. Lepore anything that hasn't already
16 been covered, so thank you.

17 HEARING EXAMINER ORTH: Oh, well, thank you very
18 much. And in that case, let me ask, it's now just a moment
19 before 5 p.m., is it better, Mr. Ames, to go a little
20 further with Mr. Bolander, or to adjourn tonight and
21 reconvene in the morning?

22 MR. AMES: Well, first, Madam Hearing Officer, I
23 would like to say that the OCD has no redirect for
24 Mr. Lepore, and we ask that the witness be excused.

25 HEARING EXAMINER ORTH: Yes, that's right, you,

1 you did say earlier that you had no redirect. Thank you
2 very much, Mr. Lepore, and you are excused.

3 MR. AMES: And as far as proceeding with
4 Mr. Bolander, what did you have in mind in terms of -- in
5 terms of continuing with his testimony?

6 HEARING EXAMINER ORTH: I really suppose I'm
7 asking perhaps the Commissioners, and I guess I should check
8 really with the Commissioners first, and then with counsel.
9 Madam Chair?

10 CHAIRWOMAN SANDOVAL: I can stay on if need be,
11 but I am a flexible with whatever.

12 HEARING EXAMINER ORTH: Okay. And Commissioner
13 Kessler?

14 COMMISSIONER KESSLER: Hearing Officer and Madam
15 Chair, I'm a new parent, so I may need to go shortly. I
16 have to make arrangements in the next few days and next week
17 to be available after 5 if necessary, but not today.

18 HEARING EXAMINER ORTH: All right, thank you.
19 I'm not surprised. This would be short notice for
20 continuing a hearing after 5. Again, let me ask counsel, if
21 you would, please, to come tomorrow prepared to talk about
22 how we might be able to find some extra time (unclear) let
23 me know right now, but at the moment I have just three
24 commenters at 8:30. So if you would, please, be on the line
25 by 8:45 we'll get started then.

1 Is there anything else that we need to talk about
2 before we adjourn? Mr. Garcia did have one comment, he
3 would like to do a sound check before we get off the line,
4 but I wouldn't do that on the record. Is there anything
5 else we can do while we're on the record?

6 (No audible response.)

7 HEARING EXAMINER ORTH: No? All right. In that
8 case, thank you all very much. We'll reconvene for public
9 comment at 8:30 and the technical case at 8:45. Thank you
10 all.

11 MR. AMES: Thank you, Ms. Orth.

12 (Adjourned.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 6th day of January 2021.

18

/s/ Irene Delgado

19

Irene Delgado, NMCCR 253
License Expires: 12-31-21

20

21

22

23

24

25