

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

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
SPECIAL COMMISSIONER HEARING
December 30, 2020
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.
SALLY MALAVE, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on December 30, 2020, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

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1 CHAIRWOMAN SANDOVAL: Well, good morning,
2 everybody. It is 8:14, and today is a special meeting of
3 the New Mexico Oil Conservation Commission. I am Adrienne
4 Sandoval. I am Chair of the Oil Conservation Commission and
5 Director of the Oil Conservation Division.

6 Also with me today are the two other
7 Commissioners. Would you please introduce yourselves for
8 the record, starting with Dr. Engler, please?

9 COMMISSIONER ENGLER: Yes, this is Dr. Tom
10 Engler, and I'm the secretary designate.

11 COMMISSIONER KESSLER: Good morning, Jordan
12 Kessler, designee of the State Land Office Commission.

13 CHAIRWOMAN SANDOVAL: Also with us today is Chris
14 Moander and Sally Malave from the New Mexico Attorney
15 General's Office, and hopefully joining us shortly is
16 Florene Davidson, Clerk to the Commission.

17 On today's docket we just have one item in Case
18 Number 21528. And with that, I will introduce Felicia Orth
19 who will be acting as the -- as the hearing examiner for
20 this case on behalf of the Oil Conservation Commission.

21 HEARING EXAMINER ORTH: Good morning, everyone.
22 Madam Chair, can you hear me?

23 CHAIRWOMAN SANDOVAL: You are a little quiet on
24 my end.

25 HEARING EXAMINER ORTH: All right. Let me turn

1 it up. Is that better?

2 CHAIRWOMAN SANDOVAL: Yeah, I can hear you.

3 Court Reporter, are you good?

4 (Discussion with reporter regarding sound.)

5 CHAIRWOMAN SANDOVAL: Felicia, hold on a second.

6 I'm sorry, if everybody would make sure to try to mute when
7 you are not speaking so there is not any background noise,
8 that would be helpful.

9 Okay. Go ahead, Felicia, thank you.

10 HEARING EXAMINER ORTH: Good morning. My name is
11 Felicia Orth. My task this morning in Case Number 21528,
12 the application of the Oil Conservation Division to adopt
13 19.15.27 and 19.15.28 NMAC, to amend 19.15.27 and 19.15.28
14 and 19 statewide is a motion hearing, the motion of the New
15 Mexico Oil & Gas Association to strike Section 19.15.7 --
16 27.8.G4 from the proposed Part 27 Rule on the venting and
17 flaring of natural gas.

18 That motion was filed timely under the amended
19 procedural order entered earlier in the status. We had
20 replies filed, oh, about 36 hours ago from the New Mexico
21 Oil Conservation Division, from the Commissioner of Public
22 Lands, from the New Mexico State Land Office and from a
23 group regarded Climate Advocates.

24 If I might please have appearances from each of
25 the counsel. Will the movant please begin.

1 MR. FELDEWERT: Yes. This is Michael Feldewert
2 with the Santa Fe office of Holland & Hart. With me is
3 Mr. Adam Rankin and we are appearing on behalf of the New
4 Mexico Oil & Gas Association.

5 HEARING EXAMINER ORTH: All right. Thank you.
6 Mr. Ames?

7 MR. AMES: (Inaudible.)

8 HEARING EXAMINER ORTH: I can't hear you if
9 you're speaking.

10 MR. AMES: That was a -- start.

11 Good morning, Ms. Orth. Good morning, Madam
12 Chair, Members of the Commission. My name is Eric Ames.
13 I'm an assistant general counsel in the Office of General
14 Counsel for the Energy, Minerals and Natural Resources
15 Department here today on behalf of the Oil Conservation
16 Division.

17 HEARING EXAMINER ORTH: Thank you. Mr. Biernoff?

18 MR. BIERNOFF: Good morning, Madam Hearing
19 Officer and Commission Members and fellow Counsel. This is
20 Ari Biernoff for Commissioner of Public Lands, Stephanie
21 Garcia Richard, and the New Mexico State Land Office.

22 HEARING EXAMINER ORTH: And Ms. Fox?

23 MS. FOX: Hello, Commissioners, and Madam Hearing
24 Officer. My name is Tannis Fox. I'm here today with David
25 Baake trying to manage the technology and appearing on

1 behalf of eight nonprofit organizations that we're calling
2 climate advocates.

3 HEARING EXAMINER ORTH: Thank you. I've studied
4 the motion and all three of the responses. I know that the
5 amended procedural order did not allow, there was no time to
6 allow for a written reply, so I had thought that this
7 morning the best use of our time would be to hear a reply to
8 the three responses and believe that we can move
9 expeditiously through this motion hearing.

10 Mr. Feldewert or Mr. Rankin?

11 MR. FELDEWERT: (Inaudible.)

12 HEARING EXAMINER ORTH: If you are speaking, I
13 cannot hear you.

14 MR. FELDEWERT: There we go. Can you hear me
15 now?

16 HEARING EXAMINER ORTH: Yes.

17 MR. FELDEWERT: Sorry about that. So, Madam
18 Examiner, Members of the Commission, the Division, as you
19 all have gleaned, has submitted a package of proposed rules
20 that seek to address surface waste, and in particular,
21 venting and flaring. And surface waste is defined as the
22 unnecessary or excessive surface loss without beneficial
23 use.

24 So now venting and flaring is surface waste, that
25 which is unnecessary or excessive or doesn't provide a

1 beneficial use. So as part of the effort to address the
2 unnecessary and excessive venting, the Division has proposed
3 a Subpart G.

4 And is there a way that I can share my screen?

5 CHAIRWOMAN SANDOVAL: Give me a second, and I
6 should be able to give you permission.

7 MR. FELDEWERT: Thank you, because trying to say
8 all of these letters and numbers gets a little confusing.

9 CHAIRWOMAN SANDOVAL: You should be able to now.
10 There should be a share little box on the bottom of your
11 screen.

12 MR. FELDEWERT: Can you see OCD Exhibit 2?

13 CHAIRWOMAN SANDOVAL: Yes.

14 MR. FELDEWERT: Okay. Great. Great. So as part
15 of this effort the Division has -- and I'm using their
16 Exhibit 2, which is their modifications to what's been
17 filed -- they have proposed down in Subpart 27.8G(2) that
18 operators are to report to the Division the volume and
19 percentage of vented and flared gas. It's initially going
20 to be done quarterly, and then as the systems come online,
21 monthly.

22 And the information, as we understand it, is
23 going to be posted on the Division's website for anyone to
24 see, whether you are the State Land Office, you are a
25 working interest owner, you're a royalty owner, an override

1 or any member of the general public, in a format, much like
2 we are doing now, that everyone can access and understand.

3 That, NMOGA's motion is not directed at that
4 provision. NMOGA's motion is directed at a subsequent
5 provision, which is -- I will call it 28 -- 27.8G(4), which
6 requires the same information to be reported monthly to all
7 royalty overriding royalty interest owners in a well spacing
8 unit.

9 Now, by definition, royalty owner in here means
10 overriding royalty interest owner the only way I'm aware of
11 that you report or could report is mailing. So we are
12 talking about mailing the same information, the same
13 reports, to all royalty interest owners and overriding
14 royalty interest owners.

15 As you know, I know Ms. Orth knows and some
16 members of the Commission knows from pooling cases, royalty
17 overriding royalty interest owners and overriding royalty
18 interest owners can be very numerous. And when you are in
19 these municipalities and other areas, sometimes there can be
20 hundreds of them for each spacing unit.

21 And many times, as we know, an operator does not
22 have contact information, particularly for overriding
23 royalty interest owners, so you pool by notice in the
24 newspaper.

25 This proposed duplicative monthly mailing to all

1 of these royalty overriding royalty interest owners and
2 overriding royalty interest owners may not be possible in
3 some circumstances and is a burden that is simply not
4 warranted here.

5 When you think about spacing units where a well
6 is going to be located there are at times multiple working
7 interest owners in that spacing unit. Each of those working
8 interest owners have related royalty or overriding royalty
9 interest owner that burden their working interest by
10 contract.

11 So when you account, when you create a spacing
12 unit and you account for a particular working interest
13 owner's share of that spacing unit, the net percentage for
14 these royalty interest owners or overriding royalty interest
15 owners in the production from that spacing unit can be very,
16 very small. Sometimes, a lot of times less than one
17 percent.

18 We also know that there is no dispute, the
19 respondents don't dispute, and you all know this, royalty
20 interest owners and overriding royalty interest owners have
21 no correlative rights. They have given up the right to
22 produce and sell the oil and gas to the working interest
23 owners. They have given up control of operations.

24 They have no authority to direct how oil and gas
25 is produced, saved and sold, or when venting and flaring is

1 or is not necessary for things like safety, beneficial use,
2 efficiency, or other justifiable reasons because not all
3 venting and flaring constitutes waste.

4 So it is this added, this added, duplicative
5 monthly mailing burden to all of these small interest owners
6 with no operating rights that NMOGA takes issue with.

7 HEARING EXAMINER ORTH: I'm sorry to interrupt
8 you. I really did study the motions, so if you would focus
9 this morning on your reply to the responses, and, in
10 particular, on their essential methods that this is -- these
11 are the factual statements that you are making about the
12 burden of mailing and whether there is a benefit associated
13 with that burden, but that's the sort of thing we ought to
14 be hearing next week as part of the evidentiary hearing.

15 MR. FELDEWERT: Well, I think you need to
16 understand the background, and maybe this helps. When we
17 inquired into the basis for this proposal, okay, all we
18 heard is that it might assist in the prevention of
19 unnecessary and excessive venting and flaring.

20 And we said, "How? We're dealing with interest
21 owners with no operating rights."

22 And when you look at the responses, the
23 proponents of this provision still have not articulated or
24 demonstrated how or why with this monthly mailing, how or
25 why a monthly mailing to a Mr. Jones or a Mr. Smith or some

1 of these estates that you see with these overrides, how that
2 is going to assist in the prevention of unnecessary or
3 excessive venting and flaring.

4 They simply state that sending the same
5 information filed with the Division to all of these hundreds
6 of royalty and overriding royalty interest owners, first
7 they say its appropriate. They say it falls under the
8 provisions of statutory authority to do whatever is
9 reasonably necessary to prevent surface waste -- and I'm
10 going to try to move my screen here. I guess I stop sharing
11 first. So bringing up the response -- am I still allowed to
12 share? Yes. Can you all see the response?

13 CHAIRWOMAN SANDOVAL: Yes.

14 MR. FELDEWERT: Thank you. So what they site is
15 down here on Page 3, and they site the Division statutory
16 authority. I'm very well familiar with this. You all are
17 well familiar with this, 72-2-11, it says you can do
18 whatever may be -- and this is key here -- reasonably
19 necessary, reasonably necessary to prevent surface waste and
20 here address venting and flaring. You have to rely on the
21 statutory authority they still do not explain the how or why
22 this monthly mailing obligation is somehow reasonably
23 necessary to the prevention of unnecessary or excessive
24 venting and flaring. They just offer pure speculation.

25 I go down here to Page 4. NMOGA argues that

1 OCD's proposal does nothing to further the conditions to
2 prevent surface waste, never focused on unnecessary venting
3 or flaring.

4 OCD disagrees and intends to present testimony
5 that requires operators to disclose their waste from natural
6 gas to working interest owners. I don't know why they
7 reference them. This provision only goes to royalty
8 interest owners and overrides.

9 They say if we send it to royalty overrides, it
10 is more likely than not to encourage operators to prevent
11 mass waste. That's pure speculation. More likely than not
12 is not even a statutory test. A statutory test is whether
13 it's reasonably necessary to prevent unnecessary and
14 excessive surface lost, and that cannot be met here.

15 Any royalty interest owner, overriding royalty
16 interest owner, any Mrs. Jones, any Mr. Smith, any estate
17 that hold these interests who aren't even interested in
18 vented and flared volumes will be able to go to the
19 Division's website and review all of this information on
20 venting and flaring provided to the Division in a format
21 understandable to the public.

22 Nothing is gained, nothing further is gained by
23 sending that same information monthly by mail to hundreds of
24 royalty interest owners and overriding royalty interest
25 owners who have small interests in the gas that's produced,

1 saved and sold, who have no control over operations, and
2 who, for the most part, have no interest in operations.

3 So my point here is, they are relying on that
4 statutory provision, reasonably necessary, but they don't
5 even attempt to demonstrate why this duplicative monthly
6 mailing is reasonably necessary to prevent unnecessary and
7 excessive venting and flaring because that test cannot be
8 met here for royalty owners and overriding royalty interest
9 owners, and that's why our motion should be granted.

10 HEARING EXAMINER ORTH: Thank you, Mr. Feldewert.
11 Mr. Ames, do you have anything to add?

12 MR. AMES: Yes, I do, Ms. Orth.

13 Now that Mr. Feldewert has reprised his entire
14 motion, I think that we ought to be allowed to reflect to a
15 few key points in ours as well as respond to the arguments
16 he has just made.

17 First the motion is not supported by the statute,
18 it's not supported by the case law, and it is not supported
19 by any evidence because there is none yet. I won't
20 reiterate the case law, which is -- or the statute or the
21 case law which is fully explained in our response, and which
22 Mr. Feldewert appears to concede is applicable here,
23 specifically Section 72-2-11A.

24 What, what Mr. Feldewert fails to do is address
25 the fundamental issue that this is not an evidentiary

1 proceeding. The evidentiary proceeding is going to happen
2 next. And that is where evidence will be presented
3 regarding the arguments being made.

4 Mr. Feldewert suggests that the Division has not
5 properly articulated or demonstrated the evidentiary basis
6 for its rationale, but of course our demonstration is to the
7 OCC, not to a party, and we don't need to do it here in the
8 context of a motion prior to the hearing which is being held
9 for the express purpose of taking evidence.

10 OCD simply explained its rationale in the motion
11 or in its response to the motion in order for the Commission
12 to have a better understanding of its -- its intended
13 testimony.

14 As Mr. Feldewert quoted accurately from OCD's
15 response, OCD intends to present testimony. That is the
16 purpose of the hearing. That is not the purpose of this
17 motion practice today.

18 As to the burden issue, I think it's fairly
19 interesting. As Mr. Feldewert acknowledged, operators send
20 royalty statements to royalty owners all the time. They
21 explain quite a bit of information in there. These
22 statements are readily available on the website. Many of
23 the operators publish guides on how to read their
24 statements. All OCD is proposing is to add another data box
25 to the statement.

1 NMOGA claims this will be too hard for it to do,
2 too burdensome, too hard for OCD to accept the oil and gas
3 industry has perfected hydraulic drilling. It sends
4 wellbores through rock miles below the surface of the earth.
5 It's learned to drill in the most extreme environments on
6 earth, the ocean, the arctic, the desert.

7 The industry is asking the Commission for
8 performance standards, rather than prescriptive regulations.
9 OCD has acknowledged that in its proposals, because the
10 industry standards as engineers are creative and innovative
11 and adapted to solving technical challenges. OCD agrees.
12 We see it every day.

13 All we are asking is that the industry import
14 some additional data that it's already going to be required
15 to report to OCD on a statement it already issued to royalty
16 owners.

17 Now upfront, NMOGA will present compelling
18 evidence or testimony to show that this is too hard to do
19 and that royalty owners won't care if their gas is being
20 leaked and they're not getting paid for it. But we haven't
21 had the hearing yet.

22 The hearing is the place where all the evidence
23 will be heard. Arguments of counsel are not evidence.
24 Everyone knows that, and certainly arguments now by counsel
25 are not evidence when we have not even had the evidentiary

1 proceeding.

2 So given that there is no real dispute regarding
3 the statutory authority on which OCD rests its proposal,
4 given that there is no evidence to refute OCD's opportunity
5 to make its proposal and present evidence in support of it,
6 the Division respectfully requests that the motion be
7 denied.

8 HEARING EXAMINER ORTH: Thank you, Mr. Ames.

9 Mr. Biernoff, I did read your response, and, in
10 particular, your statement that the State Land Office is a
11 royalty owner in many of these areas.

12 Would you have anything to add to what you have
13 already written?

14 MR. BIERNOFF: Thank you, Madam Hearing Officer.
15 All I would add to what Mr. Ames has, I think, very
16 eloquently explained in his response to the Association's
17 argument, I look forward to learning from the Association
18 during the hearing a little bit more about why this
19 additional reporting requirement that's in the proposed rule
20 is so onerous.

21 I heard Association counsel say that snail mail
22 is the only way to report, and that certainly is foreign to
23 my agency's practice. We receive a lot of information
24 electronically, and I'm sure that the Association members
25 are, along with the Land Office, living in the 21st century

1 using e-mail, using electronic documents. So that's, that's
2 a reflection that I have for the Association and for this
3 tribunal.

4 The Land Office does have an interest as a
5 royalty owner in receiving this information, and given that
6 adding the land office in this case or other royalty owners
7 to an existing report seems like a negligible burden.
8 Having that information readily acceptable and having it
9 guaranteed and not dependent on a third party to mediate is
10 something that's important to us.

11 And for that reason, we would support the
12 existing requirement, but really this is getting into the
13 merits, which is something that we hope we will be during
14 the hearing. I think Association counsel made it abundantly
15 clear in his presentation that there is no jurisdictional
16 argument. There is apparently an efficiency argument or a
17 burden argument, and that is well suited for testimony over
18 the next few weeks, but certainly not worth considering in a
19 dispositive motion.

20 HEARING EXAMINER ORTH: Thank you, Mr. Biernoff.

21 Ms. Fox, I've read your response, and wondered if
22 you have anything to add to what has been said or to any
23 other counsel this morning.

24 (Audio difficulties.)

25 MS. FOX: David Baake is going to respond.

1 HEARING EXAMINER ORTH: Thank you. Mr. Baake?

2 MR. BAAKE: Thank you, Madam Examiner, and thank
3 you, Counsel and the Commission. We don't have a lot of
4 additional points to make, I think that you're probably
5 least familiar with the, the procedures that are currently
6 in place of the parties here.

7 We do think that it's -- it's not a good
8 precedent to -- for any language to be, to be struck on the
9 basis of a motion practice when it turns on evidentiary
10 consideration. And we would, we think that the, the
11 argument that was presented by NMOGA quite clearly presents
12 factual questions, and as a participant in this hearing, we
13 think that that evidence should be presented by testimony.

14 And then we and other parties should have the
15 opportunity to cross-examine and if we choose to put on
16 rebuttal evidence. Just like any other proposed change to
17 the rule, we have -- copious red lines, as do all the other
18 parties, but no other party has decided that one of their
19 red lines be allowed to -- to short circuit the evidentiary
20 hearing and have that red line adopted based on a motion.

21 So we, we would join the Division and the State
22 Land Office in opposing the motion, and frankly not, not
23 certain where we would end up on the merits. I mean, NMOGA
24 may have good arguments if indeed there is a regulatory
25 requirement that these statements be mailed, we, you know,

1 understand why, why that requirement should -- could be
2 changed and allow for e-mail service, so until we understand
3 more what's going on here, we think the motion should be
4 denied. Thank you.

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

6 Mr. Feldewert, I'm going to invite you and your
7 client to put on the evidence you have to support the
8 factual statement that you made in order to support your
9 argument, that's Section 19.15.27.8G(4) would not be a wise
10 decision to adopt based on the other parties and they can
11 put on their own evidence about that section, the motion is
12 denied.

13 Madam Chair -- Mr. Feldewert?

14 MR. FELDEWERT: May I be heard on just one point
15 here?

16 HEARING EXAMINER ORTH: All right. Please go
17 ahead, and keep it short. Again --

18 MR. FELDEWERT: Sure.

19 HEARING EXAMINER ORTH: -- I invited your reply
20 earlier.

21 MR. FELDEWERT: And the Commission invited
22 motions, that's why we filed them.

23 So we look at this provision and we ask, okay,
24 what's the statutory authority?

25 And they say, "Well, the statutory authority we

1 are relying upon is that it's reasonably necessary to
2 prevent surface waste."

3 So the next question is then, and what they have
4 to show, is why it's reasonably necessary. That's why we
5 filed the motion.

6 HEARING EXAMINER ORTH: I understand. I
7 understand. And if you had not filed the motion, perhaps
8 there might have been an argument that you had waived such
9 an argument. I understand that the counsel in this matter
10 have a number of different aspects of the proceedings to
11 consider, including the strength of, you know, their posture
12 on appeal, for example.

13 Having said that, I truly believe you need to put
14 on the evidence that would support the statement you made in
15 your motion, and that is for a hearing next week, and --

16 MR. FELDEWERT: Understand. And my point is, the
17 steps are, what's the statutory authority? They finally
18 told us in the motion and the response. They say it's
19 reasonably necessary. They had the burden to demonstrate
20 why it's reasonably necessary.

21 And my point that I was going to make is that in
22 the normal course of process, when you file a motion like
23 this, it's in the form of a summary judgment motion, and
24 parties are required by due process and the rules that
25 govern those to make a prima facie case meeting their

1 burden. That's what the case law requires.

2 Now, I know I'm going to hear that it doesn't
3 apply here, but that's normally what happens. And so the
4 reason we filed the motion is to understand the statutory
5 authority, and, in the normal course of events, they should
6 have demonstrated, at least made a prima facie showing as to
7 what they were going to present and how it's going to
8 demonstrate it's reasonably necessary. They did not. And I
9 understand you want to leave that for the hearing.

10 HEARING EXAMINER ORTH: Yes.

11 MR. FELDEWERT: Okay.

12 HEARING EXAMINER ORTH: Thank you very much. Now
13 the motion hearing is adjourned, and Madam Chair, I will
14 return the virtual gavel to you.

15 CHAIRWOMAN SANDOVAL: Thank you, Ms. Orth. I
16 believe that was the last item on today's agenda. So with
17 that, it's 8:47 on --

18 MS. FOX: Madam Chair, I have a few
19 preliminary matters, procedural matters. Are you hearing my
20 echo?

21 (Audio echo interference.)

22 CHAIRWOMAN SANDOVAL: Yes.

23 MS. FOX: If I unhook my earphones, does that
24 work?

25 COMMISSIONER ENGLER: A little better.

1 CHAIRWOMAN SANDOVAL: Yeah, it's a little better.

2 MS. FOX: I can't hear you. In any event, I have
3 a few procedural matters that I would like to raise at this
4 point if I could then.

5 CHAIRWOMAN SANDOVAL: Okay. Go ahead.

6 MS. FOX: Thank you. First, one of our witnesses
7 Adella Begay has a conflict protected by -- because she has
8 a new job, and she also has to travel in order to secure
9 reliable internet, and she's available to testify the
10 morning of January 8.

11 And I consulted with both counsel and everybody
12 is agreeable to allow her, if that's, if we're not in our
13 case at that point to go out of () and present Ms. Begay the
14 morning of January 8.

15 CHAIRWOMAN SANDOVAL: I believe that Ms. Orth is
16 going to be -- and Felicia, please correct me if I'm wrong
17 here -- but working and contacting all of the different
18 counsel to sort of develop that scheduling in the next
19 couple of days. Is that correct, Ms. Orth?

20 HEARING EXAMINER ORTH: Yes, certainly in any
21 long proceeding, and I think this qualifies as a long
22 proceeding, we do make accommodations for the schedules of
23 certain witnesses. I plan to have a conversation with all
24 counsel when we talk whereby we talk about the order of
25 presentation.

1 I'm hopeful that the parties, obviously the
2 Division will proceed first as the rulemaking petitioner,
3 I'm hopeful that the other parties can reach some agreement
4 as to their arrangement, otherwise, I will set out that
5 arrangement myself. And we do accommodate certain
6 witnesses' scheduling conflicts, and I'm happy to put ()
7 discuss that with other counsel.

8 MS. FOX: Thank you very much, Madam Hearing
9 Officer. But one of the other points I wanted to bring up
10 was the order of presentation. But if we are going to do
11 that through a conference call or what makes it work for me,
12 then we can talk about that at that time.

13 One other point I wanted to ask about was the
14 date by which the public has to make requests to provide
15 oral public comment. Some partners were told by the EMNRD
16 public information officer, that members of the public had
17 to make a request to, to provide oral public comment by
18 January 3, but that is not in the instructions or the
19 procedural order.

20 Is that true, that you have to, even if the
21 hearing lasts for the next two weeks, for two weeks, that
22 the public needs to request to make oral public comment by
23 January 3?

24 CHAIRWOMAN SANDOVAL: Yes. And I'm trying to
25 pull up the scheduling order or procedural order and that

1 was specified in there. You have to make your request for
2 written public comment -- I'm sorry, you have to make your
3 request to make a public statement at the hearing by 5
4 o'clock on the 3rd. You can submit your written public
5 comments at the end of the day on the 8th.

6 And so there are two dates that are moving, one
7 is the oral public comment at the hearing which you schedule
8 with the Commission Clerk, and two was the written, which is
9 the end of the day, I think it's Friday the 8th, to do that.

10 MS. FOX: Madam Chair, maybe I'm missing
11 something, but I do not recall that there was anything in
12 the orders that required people to make those requests by
13 January 3rd. Certainly there's a -- it's in the orders
14 that they have to submit written comment by January 8.

15 I'm just a little worried that -- because the
16 hearing begins January 4, public comment is taken through
17 the 15th, I'm worried that we might unnecessarily cut off or
18 public oral comment.

19 CHAIRWOMAN SANDOVAL: I'm trying to pull up --
20 Mr. Moander, do you recall this offhand?

21 MR. MOANDER: Let me pull up -- I just got kicked
22 off my server and I'm signing back in, so give me a moment
23 to look at that.

24 CHAIRWOMAN SANDOVAL: Because I know the
25 Commission discussed it at the hearing in November that

1 everybody needed to sign up prior to the hearing, and I
2 believe that is on the record. They can sign up any time
3 during these times, so on January 3rd you can sign up for
4 the 8th or the 12th. And there is time reserved each day.

5 MR. MOANDER: I'm sorry about having -- but my
6 internet just took a flying leap off a cliff except for this
7 application where I can talk to you guys. Give me a minute.
8 I'll be right back.

9 MR. FELDEWERT: Madam Chair and Members of the
10 Commission, I'm looking at the amended procedural order,
11 R-121540. Is that what you are looking at, Ms. Fox?

12 MS. FOX: Yes. Am I missing something there?

13 MR. FELDEWERT: I don't think so. I would have
14 to agree with you, I don't see -- I see a date for written
15 comment, the deadline for that, but I don't see one for any
16 restrictions for deadlines for public comment at the
17 hearing.

18 MR. MOANDER: And in looking at this I think that
19 is right. It says that is not specifically addressed.

20 MS. FOX: And Madam Hearing Officer, there is an
21 instruction on the website for how to submit public comment,
22 and those are dated November 24, and those instructions
23 don't have a final date.

24 And so I'm wondering if there is -- can be some
25 kind of accommodation for this in the event that people want

1 to submit, want to request to provide oral public comment
2 after January 3rd.

3 CHAIRWOMAN SANDOVAL: Mr. Moander, I believe that
4 we discuss this at the hearing on the 3rd. Before we make
5 some sort of decision here, that transcript needs to be
6 reviewed and make sure that whatever the Commission's intent
7 at that meeting is fulfilled.

8 MR. MOANDER: Yes. I'm looking at that to see if
9 that was something that was overlooked, so --

10 CHAIRWOMAN SANDOVAL: Would it be better to reach
11 out to the parties, not on this forum, Mr. Moander?

12 MR. MOANDER: Yes, I think it will, because I
13 want to go back through the transcripts again and see if I
14 can find the basis for that, if it was actually discussed in
15 a way that it said it's being described.

16 All right. So I can take a look at that. I
17 think we still have enough time -- we will see what we can
18 do about that because I think there should be something that
19 can be accomplished. I will turn right to this topic and
20 get this addressed.

21 MS. FOX: Thank you, Mr. Moander and Madam Chair.
22 I have a number of other sort of very kind of logistical
23 things, like -- and I wonder if this is better for the
24 discussion if we are going to have a discussion with the
25 hearing officer over the next couple of days, but things

1 like, we will want to present documents or testimony of a
2 few of the witnesses to the Commission and Counsel, and
3 normally in a hearing we would just hand it out, you know,
4 in hard copy to everybody, we are not going to be able to do
5 that. So I'm wondering if we can develop a procedure to
6 make sure that all the Commissioners and Counsel and court
7 reporter get the documents we would like them to see.

8 And specifically I'm thinking of several of the
9 witnesses will have their written testimony that they would
10 like Commission and Counsel to have, and I wonder if that
11 can be maybe an e-mail procedure in order to accomplish
12 that.

13 And, you know, another issue is what just
14 happened to Mr. Moander. What happens if somebody gets
15 kicked off the internet? I know at the very first meeting,
16 at the very end of that meeting, I got kicked off my
17 internet, and I didn't have co-counsel then. And so luckily
18 it was at the very end, so I was () kicked off. And so I'm
19 wondering if there needs to be some kind of a procedure
20 where we need to alert somebody if we get kicked off.

21 But there is things like that that I don't know
22 if you want to discuss now or if it would be preferable for
23 us to discuss it with the hearing officer in a couple of
24 days.

25 CHAIRWOMAN SANDOVAL: I think it would probably

1 make more sense to have that discussion offline with the
2 hearing officer and make sure that we have all of those
3 kinds of procedures set. I think we also at that November 4
4 hearing discussed how to distribute exhibits and things like
5 that because we had issues with that at the last rulemaking
6 hearing and wanted to make sure that process went smooth
7 this time.

8 So I believe we did have some discussion of that
9 during that hearing, and so also, Mr. Moander, you might
10 review that transcript for that information as well so that
11 discussion can be had with counsel and the hearing examiner.

12 MR. FELDEWERT: I guess I have one question. I
13 mean, I'm not sure what Ms. Fox is referencing. I mean, I
14 know everybody painstakingly prefiled what they intended to
15 use as exhibits. Are you talking about rebuttal exhibits,
16 Ms. Fox?

17 MS. FOX: No, Mr. Feldewert. I'm just talking
18 about our witnesses getting up, giving their presentations,
19 and their presentations are in writing, so they will be
20 giving them orally, and then the Commission and Counsel have
21 the benefit of those presentations in writing. No knew
22 exhibits.

23 HEARING EXAMINER ORTH: So let me ask, let me ask
24 because I was fairly recently appointed. When would be a
25 good time? I had thought we would discuss, for example, at

1 the beginning of the hearing some of the logistical things
2 based on Commission's discussions that they've already had,
3 but I'm happy to have a discussion before that with all of
4 you.

5 Among other things, for example, my phone number,
6 my only phone number is in the bar directory, so it's no
7 secret. It's 505-695-8944. I want you all to know that if
8 in fact you're abruptly kicked off the internet, that if you
9 reach out to me by text, I will almost certainly see it
10 immediately and will be able to take whatever action might
11 be appropriate at that point.

12 So we are all together now. I know that this
13 motion hearing was ostensibly scheduled to proceed from 8
14 all the way to 1, I believe, and we didn't need that much
15 time. Let me just ask then if this is a good time to let
16 the Commissioners go and perhaps take a five-minute break
17 and come back and visit with the matters. Is this a good
18 time to do that?

19 MR. FELDEWERT: Madam Examiner, it works for me.

20 MR. AMES: Madam Chair, it works for me as well,
21 though I do have one issue that may require the Commission
22 to weigh in. It's a logistical issue in regards to the
23 necessity to qualify witnesses as experts in this
24 proceeding. If you are comfortable making the decision on
25 that, I'm fine with it. If you think the Commission ought

1 to participate in that decision, then they would need to
2 hear my argument on that.

3 HEARING EXAMINER ORTH: All right. Madam Chair,
4 let me ask, as to that point specifically, would the
5 Commission want to be part of that discussion?

6 CHAIRWOMAN SANDOVAL: Yes.

7 HEARING EXAMINER ORTH: So, Ms. Fox, are you and
8 Mr. Baake still available to have this discussion at least
9 at this point?

10 MS. FOX: Yes, we are.

11 MR. AMES: Ms. Orth, Ms. Paranhos is also on the
12 call for EDF.

13 HEARING EXAMINER ORTH: Okay, thank you. Ms.
14 Paranhos, are you available to proceed with a logistical
15 discussion this morning?

16 MS. PARANHOS: I am, Madam Hearing Officer, thank
17 you.

18 HEARING EXAMINER ORTH: Thank you. And
19 Mr. Biernoff?

20 Mr. Biernoff, are you still with us?

21 MR. BIERNOFF: I'm here, Madam Hearing Officer

22 HEARING EXAMINER ORTH: In that case, Mr. Ames,
23 why don't you bring up, while we have the Commissioners with
24 us, why don't you bring up the point about qualifying
25 experts.

1 MR. AMES: Thank you, Ms. Orth. The Division
2 requests clarification that the parties will not qualify
3 witnesses as experts in order to present their testimony,
4 specifically their opinions.

5 The rules don't require it. It's not been
6 historically done by the Commission in rulemaking. There is
7 no need for it, and in our view it could bog down the
8 proceedings unnecessarily.

9 In general, under the rules of evidence that
10 apply in state and federal courts, to present an opinion by
11 a witness, that witness has to be qualified as an expert
12 based on their education, training and experience. That is
13 not required by OCC's Rulemaking Rule 19.15.3 NMAC.

14 19.15.3 NMAC specifically says, the rules of
15 evidence do not apply, and there is no other requirement to
16 qualify witnesses. The only specific reference to witnesses
17 is in the prehearing statement provision which says that you
18 need to explain their qualifications.

19 Historically, or at least in the last -- at least
20 as far back when Bill Brancard was serving as Commission
21 counsel, the Commission did not qualify witnesses as experts
22 in order for them to offer opinions.

23 In my personal experience, the two rulemakings
24 that the Commission did in 2020, the Compliance Rule and
25 Produced Water Hearing, there was no qualification of

1 witnesses. It is not needed.

2 In a rulemaking anyone can give an opinion, and
3 it will be considered as long as it's relevant. The
4 Commission is fully capable of giving the weight appropriate
5 to that opinion based on the qualifications of the witness
6 as presented during the introduction of their testimony and
7 their credibility, so, frankly, during direct and
8 cross-examination.

9 And then finally, in our view, having to qualify
10 witnesses has a real potential of slowing down the process.
11 The parties here have 30 plus witnesses. It should be
12 enough for us to introduce our witnesses without having to
13 explain their qualifications and introduce their CVs which
14 have been distributed by the parties to everyone else and
15 then proceed with the testimony.

16 Qualifying witnesses is a potentially hazardous
17 area for us to enter. It invites side disputes over
18 qualifications. It invites objections during the testimony
19 to the scope of the opinion being offered, whether it's
20 really within the scope of the qualifications of the
21 witness, and frankly, if one party does it, then all the
22 parties will have to do it in order to protect themselves in
23 the event of an appeal.

24 So in our view qualification of witnesses is not
25 required by the rule. It's not historically done in

1 rulemaking. It is not needed, and it could potentially
2 waste a considerable amount of time in what is anticipated
3 to be an otherwise already lengthy proceeding.

4 Thank you.

5 HEARING EXAMINER ORTH: All right. Thank you.
6 Mr. Biernoff, do you have comments on this issue?

7 MR. BIERNOFF: Thank you, Madam Hearing Officer.
8 I think Mr. Ames' point is well taken, that the time
9 allotted for the hearing would be better spent developing
10 testimony and asking questions of the various witnesses.
11 And given that the qualification process is not necessary, I
12 don't see a need for that to take place during the hearing.

13 HEARING EXAMINER ORTH: Thank you. Ms. Fox?

14 MS. FOX: Madam Hearing Officer, Members of the
15 Commission, I don't think we have anything to add to what
16 Mr. Ames said. I think he articulated the bases for not
17 qualifying witnesses very well. I would just reiterate that
18 we believe that the Commission would be fully capable of
19 hearing the direct testimony of witnesses, weigh their
20 credibility, qualifications and after hearing
21 cross-examination, of giving the weight of the testimony of
22 in their minds.

23 HEARING EXAMINER ORTH: Thank you. Ms. Paranhos,
24 anything to add?

25 MS. PARANHOS: Thank you, Madam Hearing Officer.

1 I would just agree and support what Mr. Ames has said. I
2 would just add, in addition, I don't practice normally in
3 New Mexico, but I do practice in Colorado before multiple
4 different regulatory bodies here, and in rulemaking in
5 Colorado it is not common to qualify witnesses. So just as
6 a side note, just wanted to let you know that.

7 HEARING EXAMINER ORTH: Thank you for that. And
8 Mr. Feldewert or Mr. Rankin?

9 MR. FELDEWERT: Yes, I mean, the only thing I can
10 add to what has been said is I recognize the time
11 constraints. I do know that certainly when Ms. Jane Bailey
12 was the Commissioner and they had rulemakings, they would
13 qualify witnesses as experts. I know they did so in the PIC
14 rule proceedings a number of years ago, but Mr. Ames is
15 correct, there have been more recent rulemakings where there
16 has not been a requirement.

17 So you know, I think it's up to the Commissioners
18 as to whether they think it's worth the time and effort. I
19 do say -- I do agree that normally if you are going to have
20 someone offer an opinion, they do so after being recognized
21 as an expert in a particular area.

22 HEARING EXAMINER ORTH: All right. Thank you,
23 Mr. Feldewert. Mr. Moander or Ms. Malave, do you have
24 guidance for the Commissioners on this point?

25 MR. MOANDER: I've actually got a question, and

1 this may just reflect my own ignorance and I need to learn.
2 In order to present technical testimony, I'm thinking of
3 the -- just looking at this from a trial lawyer's
4 perspective, which is probably part of the problem.

5 But, in order to have technical testimony, it
6 seems to me that you would need to somehow qualify a witness
7 for that purpose. And I just -- that's my instinct. Now
8 maybe that's a misplaced one, but the parties maybe educate
9 the Commission as well as me who opposed qualifications,
10 because it's my experience, unless there's a strident
11 objection, qualification of an expert usually doesn't take
12 too long. It's fairly straightforward with background,
13 training and experience approach that most lawyers prefer.

14 So I'm sort of curious as to why that would be a
15 problem here, given the scientific nature of the evidence
16 that's going to be presented.

17 HEARING EXAMINER ORTH: Mr. Ames, would you like
18 to respond?

19 MR. AMES: Sure. I will try to answer
20 Mr. Moander's question. He is right that in court,
21 qualification is required for a witness to offer an opinion
22 based on something other than their five senses. But we are
23 here in a rulemaking under the Commission's rules which
24 expressly state that the rules of evidence do not apply.

25 As for the -- and as for the issue of whether or

1 not it will be a problem, I would hope that Mr. Moander is
2 correct that it would not be an issue and that parties would
3 not object to the qualifications of other witnesses -- of
4 other party's witnesses or would not object to testimony
5 when it's offered on the grounds that it exceeds the scope
6 of their qualifications as, as accepted by the Commission,
7 there is no guarantee of that at all.

8 And given that there is no guarantee, then the
9 parties will have to lay the foundation specifically for the
10 qualification of the their witnesses. Normally it should --
11 it should suffice for a party to introduce its witness, ask
12 a few questions regarding their background, their current
13 position and their experience, and we proceed to allow them
14 to testify.

15 The CVs are already in the record. The
16 Commissioners and other parties can look at those CVs and
17 evaluate them and ask questions on the basis that they want.
18 But if we have to qualify -- if it's a free-for-all
19 qualification, we are going to have to do a lot more ground-
20 laying up front because there is no way that any party can
21 predict that another party will, whether another party will
22 challenge the qualification.

23 And then finally I would say it's a bad precedent
24 for us to be setting in a rulemaking. Rulemakings are
25 inherently or essentially legislative functions. It is the

1 Commission's obligation during rulemaking to take all the
2 evidence and evaluate the evidence based on their
3 perspective of the credibility of the witness.

4 A witness being qualified should not, in and of
5 itself, elevate that testimony more than, more than it is
6 worth as a matter of credibility. And so I think it's, it's
7 inappropriate in a rulemaking to qualify witnesses, and
8 given, as Mr. Feldewert agrees, as we all agree, this
9 hearing is going to take long enough. And if we have to
10 layer in the necessity to qualify, then we are imposing on
11 ourselves an obligation as counsel to do a complete and full
12 job. And that has this significant potential for
13 protracting this proceeding.

14 MR. MOANDER: Thank you, Mr. Ames. I appreciate
15 that.

16 MS. MALAVE: If I may, this is Sally Malave. I
17 would add that in the actual rulemaking, in the rules, the
18 technical testimony, the prehearing statement already
19 includes the witness' qualifications, including a
20 description of the witness' education and experience.

21 So I would say that, you know, that's -- that's
22 already in the record, and unless a party has a reason to
23 dispute that, that there is no additional need to go further
24 than to, you know, for the additional qualification because
25 it's already included in the prehearing statement as to what

1 their qualifications are.

2 HEARING EXAMINER ORTH: All right. So do any of
3 the Commissioners have a question about what is being
4 proposed and apparently agreed upon by really all counsel,
5 counsel for all parties in this matter?

6 Just speaking as a hearing officer, I would say
7 that it would be different for me not to have the
8 qualifications for those providing technical testimony in an
9 administrative proceeding. But even the Court of Appeals'
10 unpublished opinions involving the Water Quality Control
11 Commission a long time ago, I think Ms. Fox was in that
12 action as well, involving LES, which is () Energy Services,
13 in which, for example, Ms. Fox objected to a man with a
14 geography degree offering expert geological testimony, and
15 I, I agreed with her, and so did the Commission, and then
16 ultimately so did the Court of Appeals.

17 So certainly I'm going to be looking at the
18 testimony that's offered in a way that assures that when a
19 statement of reason is prepared for the Commission to adopt
20 after it's made its decision, that in fact that statement of
21 reason is supported by reliable evidence in that, you know,
22 the reliability of the evidence supporting the decision
23 would include, among other things, whether that evidence was
24 offered by folks who are competent to give it.

25 So I do think that there's a certain aspect of it

1 here that is not going to go away and can't be disregarded,
2 which is, the Commission needs to be able to make its
3 decision based on reliable evidence.

4 Having said that, I -- there is some communities
5 in which the qualification of experts goes to () and others
6 in which folks like to get down in the weeds, mostly a
7 matter of harassment. And, but that's never fun. I become
8 impatient when that sort of thing happens. So do the
9 Commissioners have questions about any of this?

10 COMMISSIONER KESSLER: I do have one observation,
11 and I guess I would just say that I have concerns, given the
12 technical nature of certain portions of this rule and the
13 involvement of extensive number of witnesses or the public
14 in this about the ability -- how do I phrase this -- about
15 about the time that would be spent on potential testimony
16 from non-experts related to opinions on technical matters,
17 weighed against the time that would be spent qualifying
18 technical witnesses.

19 So that's just a consideration that I'm trying to
20 think through, whether or not it would take more time to
21 hear all testimony, whether or not it was back from a
22 technical expert which is qualifications time frame.

23 So, Mr. Ames, perhaps you could discuss that or
24 help me think through that.

25 MR. AMES: I thank you, Commissioner Kessler.

1 Looking through the testimony of the witnesses of
2 the various parties, it does not seem to me like there are
3 many witnesses who will likely be offering technical opinion
4 that they are not qualified to offer or that they would not
5 be qualified as an expert to offer. So I don't perceive
6 there would be a significant amount of wasted time in that
7 regard, but -- and then I -- then I would contrast that
8 with the necessity for the counsel to lay a very strong
9 foundation to qualify their witnesses in order for the
10 record to accurately reflect the basis for the Commission
11 accepting them as experts.

12 So I'm looking at a known versus an unknown, but,
13 in my view, the known is, is fairly significant, but the
14 unknown seems to me to be less significant. So that's the
15 best I can offer on such short notice.

16 COMMISSIONER ENGLER: Ms. Orth, I have a few
17 comments. This is Tom Engler.

18 HEARING EXAMINER ORTH: Yes.

19 COMMISSIONER ENGLER: Thank you. I guess I
20 actually do agree with Mr. Ames' request. I guess my
21 viewpoint here is my definition of expert is probably a lot
22 different from everybody else, and where I find the CVs are
23 sufficient, I don't want to get into this discussion of
24 what's qualified as an expert because we all have different
25 ideas what that is, and I know mine is significantly

1 different from everyone else.

2 I think the CVs are sufficient. I think Counsel
3 will prepare a good system and testimony for us, and so I
4 would agree with Mr. Ames' request. That's my comment.

5 HEARING EXAMINER ORTH: Thank you, Madam Chair.
6 Anything from to add or ask a question?

7 CHAIRWOMAN SANDOVAL: I don't know if it's a
8 question, per se, I do see a difference between when you're
9 providing what people are terming here as an opinion,
10 versus, you know, talking about some very technical subject,
11 I -- while I see the -- I see the validity in not
12 requiring each expert to be certified, I also somewhat
13 struggle with is this person actually qualified to make
14 these opinions, and maybe that's just something the
15 Commissioners have to weigh on each and every basis when
16 they are testifying, we have to review their CVs and decide
17 whether or not their testimony is valid, you know, I
18 don't -- and weigh those options, but I somewhat struggle
19 with this a little bit.

20 MS. MALAVE: This is Sally. I think during the
21 hearing, if, if the Commission has concerns about a
22 particular individual and their qualifications to make
23 certain statements, upon reviewing the, their CVs and the
24 like, they can certainly ask questions to further, you know,
25 to make -- to be comfortable about accepting their, you

1 know, their testimony in terms of, of how, how expert they
2 are.

3 HEARING EXAMINER ORTH: That's () proper
4 cross-examination always includes questions about someone's
5 qualifications.

6 CHAIRWOMAN SANDOVAL: And that makes sense. I
7 mean, ultimately I see the reason to go this direction.
8 Those are just some of my concerns upfront, so maybe Counsel
9 can keep that in mind when you're presenting a technical
10 witness.

11 HEARING EXAMINER ORTH: All right. Is there
12 anything else on this topic?

13 (No audible response.)

14 HEARING EXAMINER ORTH: No? All right. Thank
15 you for raising that, Mr. Ames, and I'm happy to put that
16 into a prehearing order if you think that's important to do
17 before Monday.

18 MR. AMES: Ms. Orth, I don't believe so. I think
19 that -- I may be shooting myself in the foot, but I imagine
20 all counsel around the table have heard the Commission's
21 perspective, and it's probably unnecessary to commit it to
22 paper unless, of course, you are going to be issuing a
23 prehearing order, anyway, to deal with other issues, in
24 which case it's probably appropriate.

25 HEARING EXAMINER ORTH: Okay, thank you. So what

1 other, are there any other -- I don't want to push the
2 Commissioners out of the discussion on these points, but
3 let's hear the other logistical issues that might be -- you
4 might benefit from talking about this morning.

5 I have to tell you, I have one I wanted to
6 mention. I was not part of the Produced Water hearing, but
7 I have read enough of that transcript and seen enough video
8 excerpts to know that there were some disruptions, including
9 some vile disruptions and wanted to say that the engineers
10 who will be controlling the platform this time, it won't be
11 me, it will be engineers, and controlling the setting, if
12 you will, have been instructed to expel anyone who begins to
13 engage in a vile, disruptive -- without repeated warning.

14 And part of my opening statement, if you will,
15 will be to say that if, in fact, you are expelled, I'm going
16 to invite you to submit written public comment, rather than
17 oral public comment.

18 Again, it will not be repeated, instructions, in
19 the event someone starts disrupting or otherwise behaving
20 clearly inappropriately. Mr. Feldewert, I saw your hand.

21 MR. FELDEWERT: I vote in favor of eliminating
22 the chat room.

23 HEARING EXAMINER ORTH: Well, so we talked about
24 that as well, and as I understand our agreement, we have had
25 some offline discussions, me and engineering staff

1 specifically around what functions will be enabled during
2 the hearing.

3 And the conclusion that we have come to so far, I
4 don't know that this will change before Monday, but our
5 conclusion right now is that the only chat that will be
6 allowed during the hearing is for someone to communicate
7 directly with the host. And I don't mean me, and I don't
8 mean Ms. Sandoval, I mean the engineer performing the host
9 function for the hearing.

10 That way the, the engineer can try to address,
11 you know, whatever issues someone might be having without
12 that chat being imposed on everyone else. Thank you for
13 that, Mr. Feldewert. Let's see.

14 CHAIRWOMAN SANDOVAL: Ms. Orth, can I just add
15 something that I think we maybe should -- so for the way
16 it's set up right now, and I think we talked about it
17 earlier, all of the Counselors and Commissioners and AG's
18 office have all been made panelists. Everybody should
19 have -- I know some of you have a couple of issues with the
20 that -- should get an invite to join as a panelist.

21 If for some reason you are struggling with that,
22 join as a participant, and then the host can push you over
23 when they see your name as a participant. So there is a
24 mechanism to do that.

25 I, I think, as much as possible, it would be

1 important during the hearing for myself and the other two
2 Commissioners and Ms. Orth to have the video on, I think, as
3 much as possible, understanding sometimes there are internet
4 issues, got it, you know.

5 You know, the other parties, it might be good if
6 you're not speaking to just turn your video off. It might
7 help with some of the bandwidth issues for people so it's
8 not being bogged down by a bunch of videos. But if you are
9 speaking, if you are presenting a witness, if your witness
10 is on, please have their video on. I think it will be much
11 more helpful than just someone calling in over the phone.

12 Understanding, again, there are limitations on
13 some things, you know, issues with internet, et cetera, and
14 maybe that's the only mechanism, but if at all possible, I
15 think whoever is speaking to try to have their video on. I
16 think it would be helpful for everybody during this hearing.

17 Does that make sense to everybody? Do people
18 have questions and concerns about that?

19 MR. FELDEWERT: I totally agree. I think it's
20 very important to be able to see the witness, and,
21 particularly, if that witness is going to present technical
22 testimony, I would hope that they would be available and can
23 be perceived by video.

24 CHAIRWOMAN SANDOVAL: Yeah, I think that's
25 important, you know, if -- for some people, too, if we have

1 issues with the sound or something, you can call in by
2 phone. I would still encourage you to try to use the
3 computer for the visual part of it. I do know that, you
4 know, internally when we're having staff meetings or things
5 like that, sometimes it is hard for people to use their
6 video because there are bandwidth issues if they have kids
7 who are on the computer as well all day.

8 So we understand that there will be situations
9 that, you know, may override, but as much as possible, I
10 think video would be good. But if you are not speaking, I
11 don't know that we need the video so we can preserve
12 bandwidth.

13 HEARING EXAMINER ORTH: All right. Thank you.
14 Ms. Fox, you mentioned other logistical issues. Do you have
15 other topics?

16 (Audio echo difficulties.)

17 MS. FOX: Thank you, Madam Hearing Officer. So
18 we dealt with Ms. Begay's scheduling, and I appreciate that.
19 Next on my list was the order of presentation for the
20 parties, which apparently is on your list, too.

21 So I hadn't had the chance to talk to Mr.
22 Feldewert about this, but I did consult with other counsel.
23 And the proposal that we had is for, obviously, OCD would go
24 first, and then the State Land Office can go because their
25 presentation is rather limited and short.

1 And then the WELC and EDF as participants more in
2 support, I would say, in OCD's proposal than NMOGA's, that's
3 offering a lot of change, not necessarily in opposition to
4 what OCD has done, but in some areas just to try to improve
5 or coordinate better.

6 But in any event, so then after State Land
7 Office, we propose that WELC go next and EDF and NMOGA last,
8 and then either that same order for rebuttal or reverse
9 order for rebuttal. We don't have an opinion on that.

10 So that would help us, if we could establish the
11 order, and we're not -- we had that order, but if we could
12 establish that order, that would give the audiences a little
13 bit better idea of when they need to be available to
14 testify.

15 HEARING EXAMINER ORTH: Thank you, Ms. Fox.

16 CHAIRWOMAN SANDOVAL: Ms. Orth, can I interrupt
17 for a second?

18 HEARING EXAMINER ORTH: Yes.

19 CHAIRWOMAN SANDOVAL: Would it be appropriate to
20 close the record for this meeting before we have this
21 discussion, and then I think the Commissioners can probably
22 go if they want.

23 HEARING EXAMINER ORTH: Absolutely.

24 CHAIRWOMAN SANDOVAL: Well, it is 9:34, and the
25 record for this hearing is now closed. And the line will be

1 kept open. So that I don't kick everybody off, I will
2 probably just stop my video and mute. I don't want to kick
3 everybody off of here.

4 So thank you, everybody, and hopefully we will
5 probably follow up on a couple of other items that were
6 raised today, shortly. Thank you, everybody.

7 (Clarification regarding closing stenographic
8 record.)

9 HEARING EXAMINER ORTH: I don't think we need a
10 transcript of this part of the discussion.

11 CHAIRWOMAN SANDOVAL: I agree. And I have the
12 recording, so thank you, Irene.

13 (Concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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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 30th day of December 2020.

18

/s/ Irene Delgado

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Irene Delgado, NMCCR 253
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