

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

**IN THE MATTER OF  
PROPOSED AMENDMENTS TO  
19.15.2, 19.15.5, 19.15.8, 19.15.9,  
AND 19.15.25 NMAC**

**CASE NO. 24683**

**NEW MEXICO OIL AND GAS ASSOCIATION'S AND  
INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S  
JOINT REPLY TO NEW ENERGY ECONOMY**

The Western Environmental Law Center (“WELC”) initially filed an application for rulemaking on June 25, 2024. On April 25, 2025, WELC filed a Revised Application for rulemaking with further substantive modifications to its initial application. Almost six (6) weeks after the filing of its Revised Application, WELC is attempting to introduce additional, substantive changes under a filing captioned “Notice of Errata,” which New Mexico Oil and Gas Association (“NMOGA”) and Independent Petroleum Association of New Mexico (“IPANM”) jointly moved to strike. New Energy Economy (“NEE”) filed its *Response* in opposition to the Joint Motion to Strike on June 13, 2025. In its *Response*, NEE agrees that WELC seeks to amend its proposed regulations and to do so substantively, beyond mere typographical corrections. *Response*, 2 & 3. NEE does not respond to the substantive changes proposed by WELC, nor does it cite any binding authority over Commission proceedings. Instead, NEE references generically to the rulemaking process and iterates broad policy arguments in support of WELC’s so-called “errata”.

If the Commission accepts WELC’s revisions as errata at this late stage, it would introduce a moving target which prejudices and hamstring industry organizations like NMOGA and IPANM, collectively comprised of over 480 corporate and individual members, from complete review of the complex effects of WELC’s proposed substantive changes.

## I. REPLY ARGUMENT TO NEE RESPONSE

### A. NEE *Response* Summary

NEE asserts that because rulemaking is an “iterative” process, *Response*, 3 & 4, there can be no procedural cut-off for modifications or revisions to proposed rules, and that enforcing pre-hearing orders or deadlines would improperly “handcuff” the parties. *Id.* NEE also claims in its *Response* that neither NMOGA nor IPANM has demonstrated prejudice or procedural harm. But these positions, much like NEE’s discussion of the recent *Marathon* opinion from the New Mexico Court of Appeals, are misapplied and fail to address the core questions now before the Commission: (1) whether WELC’s Notice of Errata, submitted without leave of the Commission, materially amends WELC’s Revised Application; and (2) whether WELC should be allowed through an errata to substantively modify its rulemaking application just weeks prior to looming hearing deadlines. NEE conflates the Commission’s discretion to consider alternate proposals after evidence has been presented and notice has been provided to all parties with WELC’s unilateral attempt to revise its application mid-process—after notice and deadlines but before the development of any evidentiary record. The distinction is critical and underscores why WELC’s filing is improper at this stage.

### B. NEE Concedes that WELC’s “Errata” Materially Amends the Revised Application.

Under the New Mexico Oil and Gas Act, a pending application—like WELC’s Revised Application—before the Commission is “materially amended” if made for any purpose other than the correction of typographical or clerical errors. NMSA 1978, § 70-2-39(B) (1999). Here, NEE’s *Response* supports NMOGA and IPANM’s Joint Motion to Strike because WELC’s proposed changes constitute a material amendment by exceeding mere correction of clerical errors. “WELC’s Notice of Errata may be technically incorrect because it seeks to amend the form of

regulation WELC has proposed...” *Response*, 2. In fact, notwithstanding NEE’s lengthy string citation of irrelevant and disparate cases, NMOGA and IPANM agree with NEE that titles are “fundamentally immaterial” where the content of a filing seeks to substantially revise proposed regulations. At bottom, NEE provides no legal basis under the Oil and Gas Act or otherwise that support WELC’s attempt to substantively modify its amended rulemaking application.<sup>1</sup>

### **C. WELC’s Late-Filed Errata Prejudices Multi-Member Organizations like NMOGA and IPANM**

NEE’s *Response* fails to engage with even a single example of the substantive changes introduced in WELC’s Errata. By ignoring the actual content of those revisions, NEE attempts to argue—without basis—that no procedural prejudice or harm exists simply because six weeks remain before direct testimony is due. However, NEE is not the party that will bear the practical and technical burdens imposed by WELC’s newly introduced substantive changes. Those changes include, among other things, shortening the triggering time period for untested administrative presumptions and adding a new requirement for nationwide compliance certification. Unlike NEE, NMOGA and IPANM must respond to these revisions with fact-based and technical testimony.

Critically, NMOGA and IPANM have already invested significant time and resources analyzing three prior iterations of the proposed rules: (1) WELC’s original Application, (2) the OCD’s proposed amendments, and (3) WELC’s Revised Application. If the Commission accepts WELC’s Errata at this late stage, NMOGA and IPANM will again need to consult extensively with their member companies—who must now evaluate the potential operational, financial, and

---

<sup>1</sup> *See, e.g.*, NMSA 1978, §§ 70-2-6, & 70-2 -7, and NMAC 19.15.3.3 Statutory Authority (“adopted pursuant to the Oil and Gas Act, Section 70-2-6 NMSA 1978, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and Section 70-2-7 NMSA 1978, which provides that the division shall prescribe by rule its hearing procedures.”)

administrative impacts of WELC's changes not only in New Mexico, but potentially nationwide. This is a material shift in scope and burden, and one that undermines the integrity of the rulemaking process.

**D. Notice and Fairness Weigh Against Allowing Substantive Changes Through WELC's Errata.**

While the Commission retains significant discretion in the conduct of its hearings, it is ultimately created and limited by statute. Because its authority and jurisdiction rest upon the expressly enumerated duty to prevent waste and protect correlative rights, the Commission may not act arbitrarily, unlawfully or capriciously in carrying out administrative functions. *See generally Sims v. Mechem*, 1963-NMSC-103, ¶¶10-11, 72 N.M. 186, 382 P.2d 183; N.M. Att'y Gen., No. 59-186 (Nov. 12, 1959) (opinion regarding OCC authority); NMSA 1978, § 70-2-6. This is the Commission's "statutory...mandate," not "evolving legal precedent," *Response*, 3, or protection of public funds. *Response*, 5.

Part and parcel of any rulemaking is ensuring adequate notice and opportunity to interested parties to meaningfully participate, as set forth under the Oil and Gas Act and adopted regulations, NMAC 19.15.3 *et seq.* WELC's Errata raises the issue of whether the responding parties will be provided a reasonable opportunity to be heard. *See Rayellen Res., Inc. v. New Mexico Cultural Properties Review Comm.*, 2014-NMSC-006, ¶ 51, 319 P.3d 639, 654 ("[T]he fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense.") (quoting *TW Telecom of N.M.*, 2011-NMSC-029, ¶ 17, 150 N.M. 12, 256 P.3d 24, emphasis omitted). The cornerstone of notice and due process in administrative rulemaking hearings is that the notice must be reasonably calculated "to apprise interested parties of the pending action and afford them an opportunity to present their case." *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-

013, ¶ 21, 148 N.M. 21, 229 P.3d 494 (emphasis added). Here, the time afforded to NMOGA and IPANM to prepare for and present their cases in response to WELC's Revised Application has been cut in half by the late filed Errata, from 3 months to 6 weeks.

## II. CONCLUSION

NEE's *Response* supports NMOGA's and IPANM's request that the Commission strike WELC's Errata from the record, and order that the Parties move forward with rulemaking as proposed in the Revised Application filed April 25, 2025.

In the alternative, if the Commission is inclined to adopt and incorporate WELC's Errata as a Second Revised Application, IPANM and NMOGA respectfully request the Commission either (1) reschedule the Rulemaking Hearing to allow the initial response time between Application Filing and Direct Testimony Deadlines, or (2) Amend the Notice of Hearing and Pre-hearing Order to afford the same, making Direct Testimony due September 2, 2025, and Rebuttal Testimony due October 14, 2025.

Respectfully submitted,

By: /s/ Miguel A. Suazo

Miguel A. Suazo

James P. Parrot

James Martin

Jacob L. Everhart

500 Don Gaspar Ave.,

Santa Fe, NM 87505

(505) 946-2090

[msuazo@bwenerylaw.com](mailto:msuazo@bwenerylaw.com)

[jparrot@bwenerylaw.com](mailto:jparrot@bwenerylaw.com)

[jmartin@bwenerylaw.com](mailto:jmartin@bwenerylaw.com)

[jeverhart@bwenerylaw.com](mailto:jeverhart@bwenerylaw.com)

*Attorneys for New Mexico Oil and Gas  
Association*

By: /s/ Ann Cox Tripp

Andrew J. Cloutier  
Ann Cox Tripp  
Hinkle Shanor LLP  
P.O. Box 10  
Roswell, NM 88202-0010  
[acloutier@hinklelawfirm.com](mailto:acloutier@hinklelawfirm.com)  
[atripp@hinklelawfirm.com](mailto:atripp@hinklelawfirm.com)

*Attorneys for Independent Petroleum  
Association of New Mexico*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 23 day of June 2025, as follows:

Tannis Fox  
Senior Attorney  
Morgan O'Grady  
Staff Attorney  
Western Environmental Law Center  
409 East Palace Avenue, #2  
Santa Fe, New Mexico 87501  
505.629.0732  
[fox@westernlaw.org](mailto:fox@westernlaw.org)  
[ogradey@westernlaw.org](mailto:ogradey@westernlaw.org)

Kyle Tisdell  
Managing Attorney  
Western Environmental Law Center  
208 Paseo del Pueblo Sur, #602  
Taos, New Mexico 87571  
575.613.8050  
[tisdell@westernlaw.org](mailto:tisdell@westernlaw.org)

Matt Nykiel  
Staff Attorney  
Western Environmental Law Center  
224 West Rainbow Boulevard, #247  
Salida, Colorado 81201

Jesse Tremaine  
Chris Moander  
Assistant General Counsels  
New Mexico Energy, Minerals, and Natural  
Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
[jessek.tremaine@emnrd.nm.gov](mailto:jessek.tremaine@emnrd.nm.gov)  
[chris.moander@emnrd.nm.gov](mailto:chris.moander@emnrd.nm.gov)  
*Attorneys for Oil Conservation Division*

Michael H. Feldewert  
Adam G. Rankin  
Paula M. Vance  
P.O. Box 2208  
Santa Fe, New Mexico 87504  
[mfeldewert@hollandhart.com](mailto:mfeldewert@hollandhart.com)  
[agrarkin@hollandhart.com](mailto:agrarkin@hollandhart.com)  
[pmvance@hollandhart.com](mailto:pmvance@hollandhart.com)  
*Attorneys for OXY USA Inc.*

Andrew J. Cloutier  
Ann Cox Tripp  
Hinkle Shanor LLP

720.778.1902  
[nykiel@westenlaw.org](mailto:nykiel@westenlaw.org)  
*Attorneys for Applicants Western  
Environmental Law Center, Citizens Caring  
for the Future, Conservation Voters New  
Mexico Education Fund, Diné C.A.R.E.,  
Earthworks, Naeva, New Mexico Interfaith  
Power and Light, San Juan Citizens Alliance,  
and Sierra Club.*

Felicia Orth  
Hearing Officer  
New Mexico Energy, Minerals, and Natural  
Resources Department  
Wendell Chino Building  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
[Felicia.l.orth@gmail.com](mailto:Felicia.l.orth@gmail.com)  
*Oil Conservation Commission Hearing  
Officer*

Zachary A. Shandler  
Assistant Attorney General  
New Mexico Department of Justice  
P.O. Box 1508  
Santa Fe, New Mexico 87504  
[zshandler@nmdoj.gov](mailto:zshandler@nmdoj.gov)  
*Oil Conservation Commission Counsel*

Mariel Nanasi  
Lead Attorney and Executive Director  
New Energy Economy  
422 Old Santa Fe Trail, Santa Fe, NM 87501  
505-469-4060 (cell)  
[MNanasi@NewEnergyEconomy.org](mailto:MNanasi@NewEnergyEconomy.org)  
*Attorney for New Energy Economy*

P.O. Box 10  
Roswell, New Mexico 88202-0010  
[acloutier@hinklelawfirm.com](mailto:acloutier@hinklelawfirm.com)  
[atripp@hinklelawfirm.com](mailto:atripp@hinklelawfirm.com)  
*Attorneys for Independent Petroleum  
Association of New Mexico*

Jennifer L. Bradfute  
Matthias Sayer  
Bradfute Sayer P.C.  
P.O. Box 90233  
Albuquerque, New Mexico 87199  
[jennifer@bradfutelaw.com](mailto:jennifer@bradfutelaw.com)  
[matthias@bradfutelaw.com](mailto:matthias@bradfutelaw.com)

Jordan L. Kessler  
EOG Resources, Inc.  
125 Lincoln Avenue, Suite 213  
Santa Fe, New Mexico 87501  
[Jordan\\_kessler@eogresources.com](mailto:Jordan_kessler@eogresources.com)  
*Attorneys for EOG Resources, Inc.*

Sheila Apodaca  
New Mexico Energy, Minerals, and Natural  
Resources Department  
Wendell Chino Building  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
[occ.hearings@emnrn.nm.gov](mailto:occ.hearings@emnrn.nm.gov)  
*Oil Conservation Commission Clerk*

Miguel A. Suazo  
James P. Parrot  
James Martin  
Jacob L. Everhart  
500 Don Gaspar Ave.,  
Santa Fe, NM 87505  
(505) 946-2090  
[msuazo@bwenergylaw.com](mailto:msuazo@bwenergylaw.com)  
[jparrot@bwenergylaw.com](mailto:jparrot@bwenergylaw.com)  
[jmartin@bwenergylaw.com](mailto:jmartin@bwenergylaw.com)  
[jeverhart@bwenergylaw.com](mailto:jeverhart@bwenergylaw.com)  
*Attorneys for New Mexico Oil and Gas  
Association*

**HINKLE SHANOR LLP**

/s/ Ann Cox Tripp \_\_\_\_\_  
Ann Cox Tripp