State of New Mexico Oil Conservation Commission Moderated by Dylan Fuge (by videoconference) Thursday, May 9, 2024 8:59 a.m. Pecos Hall, Wendell Chino Building 1220 South Saint Francis Drive Santa Fe, NM 87505 Reported by: James Cogswell JOB NO.: Page 1

1	APPEARANCES
2	List of Attendees:
3	Greg Bloom, Commissioner, Oil Conservation Commission
4	Dr. William Ampomah, Commissioner, Oil Conservation
5	Commission
6	Daniel R. Rubin, Attorney, Oil Conservation Commission
7	Adam G. Rankin, Attorney, Holland & Hart LLP
8	Michael H. Feldewert, Attorney, Holland & Hart LLP
9	Jesse K. Tremaine, Attorney, Oil Conservation Division
10	Christopher L. Moander, Attorney, Oil Conservation
11	Division
12	Sharon T. Shaheen, Attorney, Montgomery & Andrews P.A.
13	Ernest L. Padilla, Attorney, Padilla Law Firm, P.A.
14	Dana S. Hardy, Attorney, Hinkle Shanor LLP (by
15	videoconference)
16	Timothy M. Davis, Attorney, WildEarth Guardians
17	Sheila Apodaca, Law Clerk, Oil Conservation Commission
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1	PROCEEDINGS
2	MR. FUGE: Good morning, everyone. I
3	think we'll go ahead and get started. The May 9th
4	meeting of the Oil Conservation Commission.
5	For the record, Dylan Fuge, acting OCD
6	Director, acting Chair for Oil Conservation
7	Commission. I am on official work travel, which is
8	why I am not at the meeting in person and am
9	participating remotely.
10	But I see from the room I have
11	conferred with counsel on that matter and I also see
12	from the room that we have a few commissioners present
13	in person. And so I think we can begin. Can the
14	clerk confirm that the meeting is being recorded?
15	MS. APODACA: Yes, we are recording.
16	MR. FUGE: Perfect. And we will move
17	to the first item on the agenda, which is the approval
18	for the agenda for the May 9, 2024, meeting of the Oil
19	Conservation Commission. As for my fellow
20	commissioners, are there any comments or changes to
21	the agenda?
22	MR. BLOOM: Mr. Chair, there was some
23	discussion in the room today about moving the JITC
24	case number 23655 to the top of the agenda so we could
25	let about half of the lawyers here go home. Or rather
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1	back to work. We could discuss that or I could just
2	ask for a second.
3	MR. FUGE: I would second moving that
4	up. We'll call it a motion to be nice to lawyers I
5	guess.
6	MR. BLOOM: Who wouldn't want to do
7	that? So
8	MR. FUGE: Right.
9	MR. RUBIN: And so we'll need a roll
10	call vote as one of the members of the public body is
11	appearing virtually.
12	MR. FUGE: Yeah.
13	Mr. Bloom?
14	MR. BLOOM: Approve.
15	MR. FUGE: Dr. Ampomah?
16	DR. AMPOMAH: Approved.
17	MR. FUGE: Let the record reflect that
18	Commissioner Bloom, Dr. Ampomah who are present in
19	person voted affirmatively and I voted affirmatively
20	remotely. And we'll revise the
21	Can I get a motion to approve the
22	agenda as revised?
23	MR. BLOOM: I so move.
24	DR. AMPOMAH: I second.
25	MR. FUGE: Roll call vote.
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1 Mr. Bloom? MR. BLOOM: Approve. 2 3 MR. FUGE: Dr. Ampomah? 4 DR. AMPOMAH: Approved. MR. FUGE: Let the record reflect the 5 motion was approved unanimously with Chair Fuge voting 6 7 remotely. 8 The next item on the agenda is approval 9 of the minutes from the April 11, 2024, meeting. Ι know they were circulated in advance by the Commission 10 11 clerks. Do my fellow commissioners have any 12 amendments or edits to those minutes? 13 MR. BLOOM: No, Mr. Chair. I would 14 move to approve the minutes. 15 DR. AMPOMAH: Mr. Chair, I'll second. 16 MR. FUGE: Roll call vote. 17 Commissioner Bloom? 18 MR. BLOOM: Approved. 19 MR. FUGE: Dr. Ampomah? 20 DR. AMPOMAH: Approved. 21 Again, let the record MR. FUGE: 22 reflect the minutes were approved unanimously with 23 Chair Fuge voting remotely. 24 Moving on to pending cases and 25 consistent with our amendment to the motion, we will Page 6

1 hear first case 23655, application of the Joint 2 Industry Technical Committee to amend Order R-111-P, Lea and Eddie Counties New Mexico. 3 And the purpose of the status here was 4 5 to present what the parties had represented at the last meeting were consensus edits to the Commission's 6 proposed order, which I did circulate to Commissioner 7 8 Bloom and Commissioner Ampomah this morning via e-9 mail, which has the red lines. 10 Mr. Feldewert, would you like to 11 provide any comments on those red lines? 12 No, I appreciate the MR. FELDEWERT: 13 opportunity. I've looked at what the Division had 14 submitted, which are really amendments that appear to 15 conform with the state archives in formatting. And 16 I've looked at those. 17 We have no objection to those red lines. And we had submitted some proposed red lines 18 to the form of the order as needed. I can discuss the 19 20 reason for those, but I understand that counsel's reviewed them and they don't have a problem with them. 21 22 So I leave it up to the Chair. 23 MR. RUBIN: Mr. Chairman, with the 24 Commission I have reviewed the proposed order and it 25 certainly leads to legal sufficiency. Page 7

1	MR. FUGE: And just for clarity, I
2	circulated two documents that were received by the
3	Commission clerk. Are they Mr. Feldewert or
4	Counsel for the OCD, are those consolidated or are
5	they separate or is the proposal that the Commission
6	clerk and counsel need to merge those red lines?
7	MR. TREMAINE: Mr. Chair, this is Jesse
8	Tremaine for the Oil Conservation Division. My
9	understanding was that well, I submitted through
10	the clerk combined edits.
11	So I took the JITC's proposed
12	formatting edits, the recent ones, and primarily
13	focused on that finding section and then added OCD's
14	edits, a number of edits for clarity, just in terms of
15	phrasing, some minor technical edits, such as the
16	designation indications of, like, feet and
17	measurements, et cetera.
18	Those kind of edits and a couple
19	others. So those are combined in the latest document
20	shared through Ms. Apodaca.
21	MR. FUGE: And so
22	MR. TREMAINE: And we do not oppose
23	those edits proposed by Mr. Feldewert and the JITC.
24	So this is intended as combined but I wanted to leave
25	them all as visible for the Commission.

1	MR. FUGE: So thank you for that
2	explanation, Mr. Tremaine. I'm sharing on the
3	screen I just want to make sure that the Commission
4	is acting on the correct version the document
5	referred to as "Red Lines Draft Commission Order
6	31967970.10CC" [ph] that has red lines to the
7	header. Order edits to the finding and then a handful
8	of more parted edits to the body of the document.
9	Is that what the parties are proposing
10	the Commission adopt as the final order?
11	MR. TREMAINE: No, Mr. Chair. This is
12	Jesse Tremaine again. The document the latest
13	version of the document is labeled as "Combined OCD
14	JITC Red Lines to Draft Commission Order" with today's
15	date.
16	MR. BLOOM: I have that pulled up in
17	front of me. I think we received it just a little bit
18	ago.
19	MR. FUGE: Okay. Let me just make
20	sure
21	MR. BLOOM: 8:02 a.m.
22	MR. FUGE: Yeah, okay.
23	Okay. So this all right. I see a
24	separate I'm just pulling it up on the screen.
25	This is the file, "Combined OCD JITC Red Lines Draft
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1 Commission Order" version is not popping up because I 2 minimized it. But this is the file you're referring 3 to, Mr. Tremaine? V2592024? 4 MR. TREMAINE: That is correct. 5 MR. FUGE: Okay. Yeah, I had I think all of them collectively open. So thank you for that 6 7 clarification. 8 I'm going to turn it over to my fellow 9 commissioners to see if they have any comments, questions, or edits to those red lines. 10 11 MR. BLOOM: Mr. Chair, I do not. 12 DR. AMPOMAH: Mr. Chair --13 MR. FUGE: Dr. Ampomah? 14 Can I get a motion to accept --15 MR. FELDEWERT: Mr. Chair, may I 16 interrupt? 17 MR. FUGE: Yep. 18 MR. FELDEWERT: One minute. Т 19 apologize. I just noticed -- and this is my fault --20 if you look at page 2, paragraph 6 and 7, they have a date of May 14th. The hearing was actually March 21 22 14th. 23 MR. FUGE: All right. Hold on. Let me 24 just scroll down. Paragraph 6 and 7. I'm sharing 25 March 14th. Page 10

1 MR. FELDEWERT: Yes, sir. I apologize 2 for the error. That was mine. 3 MR. FUGE: All right. And then that is two -- I'll just real quick search -- yeah -- okay. 4 5 All right. We've -- those two scrivener's errors, 6 which I will send to the Commission clerk. 7 Can I get a motion to recommend 8 Commission approval of the combined party edits to the draft order in case number 23655? 9 10 MR. BLOOM: I so move. 11 DR. AMPOMAH: I second. 12 MR. FUGE: Roll call vote. 13 Mr. Bloom? 14 MR. BLOOM: Approve. 15 MR. FUGE: Dr. Ampomah? 16 DR. AMPOMAH: Approved. 17 MR. FUGE: Let the record reflect the 18 motion was approved unanimously and Chair Fuge was 19 voting remotely. 20 Commissioners, we will get this cleaned 21 up and likely circulate it to you for signature 22 remotely. Although, if we're able to get someone to 23 do it while we're still here we may collect your 24 signatures today and I will sign it upon my return. 25 MR. BLOOM: Very good. Thank you. Page 11

1 MR. FUGE: I believe that concludes 2 matter -- case number 23655. And we will return to 3 other items on the agenda. 4 And the next case up is case number 5 23580. Parties ready to proceed? 6 MR. BLOOM: I believe we have everyone 7 in place, Mr. Chairman. 8 MR. FUGE: All right. Again, coming over from the last one, I believe the Commission's 9 expectation was that we were going to have a joint 10 11 updated scheduling order for this matter, which we had 12 tentatively set for hearing at the April meeting with the Oil Conversations Commission. 13 14 Is there an update from parties? 15 MR. TREMAINE: Mr. Chair, this is Jesse Tremaine for Oil Conservation Division. 16 I have 17 circulated this morning an updated version with several proposed edits. Thank you to Mr. Davis for 18 getting the first version of this rolling. 19 20 As is the running theme, I noticed some 21 edits due to some changes with the schedule and 22 staffing and points of contact that needed to be made. 23 So there was a revised version circulated to the 24 Commission about half an hour ago. 25 And my understanding is that the --Page 12

1 that is in tracked changes. The parties are
2 essentially in agreement generally to the changes.
3 Pretty much everything is a modification to the
4 previous order to update dates for the revised hearing
5 schedule; however, we did propose a deadline for the
6 parties currently entered in the case to propose any
7 revisions.

8 Based on the discussion of the parties 9 we do believe that there will be a revised petition 10 that in certain aspects will look quite different than 11 the edition currently before the Commission. So we 12 wanted to provide ample time for all notice and filing 13 deadlines and were proposing a deadline at the end of 14 this summer for the parties to submit any revised 15 editions.

I threw out the September 6th date. I think the parties probably want to move that up to earlier in the summer due to some scheduling potential conflicts. And other than that, there were just minor updates and dates.

21 MR. FUGE: Mr. Tremaine, I don't have a 22 copy of that in my e-mail. I don't know if my fellow 23 commissioners do.

24MR. BLOOM: We do not.25MR. FUGE: Can we ask the clerk to

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1	circulate that?
2	MS. APODACA: I don't have it either.
3	MR. FUGE: Okay.
4	MS. APODACA: If someone could send it
5	to me I'd be happy to circulate it.
6	MR. BLOOM: In the dead air here, Mr.
7	Chair, I am working on that right now.
8	MR. TREMAINE: Mr. Chair, the previous
9	e-mail that I had sent I just forwarded to Mr. Rubin,
10	Ms. Apodaca, yourself, and Mr. Bloom. I don't believe
11	I have Commissioner Ampomah's e-mail.
12	MR. FUGE: I just forwarded it along.
13	Okay. So Mr. Tremaine, just waiting.
14	Can I confirm my fellow commissioners have that
15	document?
16	MR. BLOOM: Thank you.
17	MR. RUBIN: Mr. Chair, Mr. Tremaine. I
18	haven't received it yet on my screen. If someone
19	could resend it to me.
20	MR. FUGE: Because it went to a State
21	Personnel Office address. Here you go, Counsel Rubin.
22	I just sent it to you.
23	MR. RUBIN: I know our e-mail changed
24	from NMAG to NMDOJ at some point. That might have
25	been the issue. I guess this passes for suspense.
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1 I'm still waiting to get it. 2 Okay. I just lost the internet. That 3 was my fault. 4 Dr. Ampomah, can I just take a look at 5 yours? 6 DR. AMPOMAH: Sure. 7 MR. RUBIN: It's taking a while. Thank 8 you. 9 MR. FUGE: Did you get it, Mr. Rubin? I am reviewing Dr. 10 MR. RUBIN: 11 Ampomah's laptop right now just --12 Mr. Chair, members of the Commission. 13 Yes, I've reviewed it and it is certainly meets legal lines. 14 15 Thank you, Mr. Rubin. MR. FUGE: 16 So Mr. Tremaine, now that we have the 17 order up I will just go ahead and share for clarity. 18 Walking through the edits that you explained, Mr. Tremaine, obviously, Commission clerks will provide 19 20 Webex information for those dates. 21 And Mr. Tremaine, is it paragraph 1 22 that you were explaining before we -- which was the 23 revised petition and the parties proposals that there 24 may be a revised petition coming and that it would be 25 submitted no later than September 6?

1	MR. TREMAINE: That is correct, Mr.
2	Chair. It's the Division's position that due to
3	expected changes in the current petition that we do
4	need to set a date certain for any at least any
5	core revised petitions.
6	Certainly the Commission could consider
7	any amendments were parties not currently entered in
8	appearance and any proposals that they would make at a
9	later date. But to make sure that we have replied
10	with all notice requirements we're proposing at the
11	latest that September 6th deadline for these parties.
12	MR. FUGE: Okay. And then otherwise,
13	Mr. Tremaine, as I'm looking through this, aside from
14	changing personnel that have shifted over and other
15	similar edits, that this appears identical to the
16	prior scheduling order in this case except for the
17	revised petition revision in paragraph 1.
18	MR. TREMAINE: That is correct.
19	MR. FUGE: Do my fellow Commissioners
20	have any questions?
21	MR. BLOOM: No, Mr. Chair.
22	DR. AMPOMAH: No, Mr. Chair.
23	MR. FUGE: And I'm going to ask Counsel
24	Rubin because I've got a question. I think we had
25	discussed assigning a hearing examiner in this case
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1 and the other ones, the other matter we're discussing. 2 Mr. Rubin, do you believe that needs to 3 be listed in the procedural order or can we do that 4 separately? 5 MR. RUBIN: Mr. Chair, members of the 6 Commission, we could. It's really at the pleasure of 7 the Commission. I think best practice would have the 8 hearing officer referenced in the procedural order 9 though. 10 MR. FUGE: Okay. I'm going to float a 11 potential motion for consideration or float a 12 potential concept for consideration by my fellow 13 commissioners. The New Mexico Energy Minerals and 14 Natural Resources has two hearing officers under, you 15 know, sort of longer term contract, Ms. Felicia Orth 16 and Mr. Rip Harwood. They were already under contract both in this fiscal year and next because it's a 17 multiyear contract. 18 19 Would the Commission be comfortable 20 moving to authorize me as the chair to finalize the 21 procedural order with the hearing clerk to fill in the 22 missing information and then designate a hearing 23 officer for the final order by selecting from either 24 Mr. Orth or Mr. Harwood based on their availability to support this hearing date? 25

1 Yes, Mr. Chairman. So MR. BLOOM: 2 moved. 3 Mr. chair, second. DR. AMPOMAH: MR. FUGE: Roll call vote. 4 Commissioner Bloom? 5 6 MR. BLOOM: Approve. 7 MR. FUGE: Dr. Ampomah? 8 DR. AMPOMAH: Approved. 9 MR. FUGE: Let the record reflect the 10 motion was approved unanimously with Chair Fuge voting 11 remotely. 12 Parties, we will get this cleaned up and issued shortly. 13 14 MR. DAVIS: Mr. Chair, if I may? 15 MR. FUGE: Yes. 16 MR. DAVIS: Just a few quick issues. 17 I'm actually looking at this draft on my phone, but I noticed in the first paragraph -- I believe the 18 19 original February hearing dates are still in that 20 opening paragraph. 21 MR. FUGE: Yeah, I will highlight that 22 as an update to the appropriate hearing date. 23 MR. DAVIS: And then the deadline for 24 technical testimony in this draft is October 21st. Τn 25 the original order that the Commission entered for the Page 18

February hearing dates, it was actually a four week
 time period between the start of the hearing and the
 deadline for technical testimony. That's been moved
 to three.

5 Guardians would prefer four just to give us a little extra time. But, you know, I don't 6 know what the position of the other parties is on 7 8 that. But the original deadline that I've circulated 9 was actually based on the order that the Commission entered for their February hearing dates, which was a 10 11 four week lead in time. I have no other issues with 12 any of the other dates.

13 The only other issue I'd like to raise 14 is the deadline for the revised petition. We agree 15 that that's needed. The scheduling conflict in early 16 September, that is my scheduling conflict. And I 17 would just ask that that deadline be entered no later 18 than the week of August 19th through 23rd to avoid any conflict in my schedule. And that's all I have. 19 20 Thank you, Mr. Chair. 21 MR. FUGE: Any other parties have 22 comments on those? 23 MR. TREMAINE: Mr. Chair, this is Jesse 24 Tremaine. Apologies to Mr. Davis.

That is correct. I did leave that edit

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25

1 in from the proposed 14th to the 21st. OCD does not 2 oppose either three or four weeks on that, at the Commission's preference and discretion. So the 14th 3 or the 21st for that technical testimony is fine, and 4 5 the August dates for the revised petition deadline are 6 also acceptable to the Division. 7 MR. FUGE: Mr. Feldewert? 8 MR. FELDEWERT: I'm actually the one 9 that proposed the October 21st only because it seemed to me -- I couldn't understand why we needed over a 10 11 month before the hearing to file the exhibits and the 12 witness statements, which is a substantial 13 undertaking. So that's -- our preference would be 14 15 the 21st, recognizing that normally, if you look at 16 the Commission's rules, you don't file your exhibits 17 and witness prehearing statements sooner than 10 days before the hearing. I understand we'd like to have a 18 little more time, but it seems to be like a month 19 20 before the hearing is an unusually long period of 21 time. 22 MR. FUGE: I'm looking at my fellow 23 commissioners to see if they have comments. 24 MR. BLOOM: I don't, Mr. Chairman. 25 MR. FUGE: Dr. Ampomah? Page 20

1 DR. AMPOMAH: No, Mr. Chair. 2 I would propose hearing MR. FUGE: it -- entertain a motion on the first revised petition 3 date to adjust that back to Friday, August 23rd. And 4 5 I'm inclined to leave the technical testimony date as currently proposed for October 21st. 6 7 MR. BLOOM: That would work. Mr. 8 Chair? You looking for a motion? 9 MR. FUGE: Yes. MR. BLOOM: Then I would so move. 10 11 DR. AMPOMAH: I second. 12 MR. FUGE: Roll call vote for Mr. 13 Bloom? 14 MR. BLOOM: Approve. 15 MR. FUGE: Dr. Ampomah? 16 DR. AMPOMAH: Approved. 17 MR. FUGE: Let the record reflect the 18 motion was approved unanimously with Chair Fuge voting 19 remotely. 20 Parties, we will go ahead and -- just make that -- so have it opened -- third -- we will get 21 22 the order cleaned up and issued shortly. Thank you. 23 MR. FELDEWERT: Thank you. 24 MR. BLOOM: Thank you, Mr. Chair. 25 MR. FUGE: All right. We will go to Page 21

1 the last case -- series of cases. Case number 24277, 2 24278, 2413123, and the associated Division cases that were before us. 3 And again, this is a status conference 4 5 to discuss the scheduling order in these matters which we set for hearing at the last meeting of the Oil 6 Conservation Commission and there were also subpoenas 7 8 and motions filed in advance of this hearing. And 9 absent contrary feedback from the parties, the Chair's inclined to start with the scheduling order and then 10 11 move into a discussion of the subpoenas. 12 MR. RANKIN: Good morning, Mr. Chair. 13 Good morning, Commissioners. This is Adam Rankin 14 appearing on behalf of Goodnight Midstream Permian LLC 15 the Santa Fe office of Holland and Hart. I have no 16 objection to proceeding with items that we agree on in 17 the initial case. MR. FUGE: Sounds good. Okay. 18 Ι 19 believe we got a scheduling -- well, we -- the 20 commissioners received a scheduling order prior to as 21 part of packets. 22 Is that a consensus scheduling order or is there discussion needed and can the parties please 23 24 provide some feedback on that order that was included in our materials? 25

1 MS. SHAHEEN: Good morning, everyone. 2 Sharon Shaheen, Empire Petroleum. We did circulate an agreed scheduling order I believe, Mr. Rankin, it was 3 Monday evening; is that right? 4 5 MR. RANKIN: Probably about right when 6 it was effectively circulated because I circulated it 7 wrong -- the wrong link. But yes, I think it was 8 Monday evening when we circulated it. 9 MS. SHAHEEN: And we're happy to discuss the provisions of this scheduling order if you 10 11 like. But as Mr. Rankin has emphasized, we did agree 12 on the dates that are in here. 13 I would note that with respect to 14 paragraph 2, those dates regarding the motion on the 15 scope of the hearing, those dates correspond with the 16 Commission's previous indication that it would hear 17 that motion on the -- at the June 20th scheduled 18 hearing. 19 MR. FUGE: Okay. I'm just opening it 20 up. 21 Mr. Chair and MR. MOANDER: 22 Commissioners, Chris Moander on behalf of OCD. Just 23 by way of a bit of background, this was generated at a 24 multiple meetings between counsel. 25 So this -- there was real substantive Page 23

1 work done behind this, and I do believe per Ms. 2 Shaheen that it's probably the only thing that I would bring the Commission's attention to is that paragraph, 3 2, which I do believe is consistent after having 4 5 looked at the record. 6 MR. RANKIN: If it's helpful, Chair, --7 we can, kind of, just briefly summarize the elements 8 and the thinking behind it if it would be helpful as 9 you peruse it. But essentially, we have agreed on the dates previously for the hearing, which is September 10 11 23rd to the 27th, which we've indicated. 12 MR. FUGE: Yep. 13 MR. RANKIN: As previously noted, we've 14 agreed pursuant to the Commission's request -- a 15 briefing schedule to address the scope of the 16 hearings. We've also agreed to disclose each of the parties' witnesses, their area of expertise, and the 17 subject matter on which they will be testifying by 18 date in advance of the technical testimony. 19 20 In addition, we've identified the last day for discovery, essentially the last day for 21 22 issuance of subpoenas, including subpoenas for witness depositions, which would be towards the end of July. 23 24 We've also agreed on a deadline for discovery; rather, a deadline for emotions to compel in advance of the 25

1	deadline for discovery in August and briefing on
2	those any disputes that may arise.
3	Also, you'll see that we've agreed to
4	submit written technical testimony as we discussed
5	previously four weeks in advance of the hearing date.
б	In addition, in order to help streamline discovery and
7	disputes over information that's being relied upon,
8	we've and this was to Empire's credit.
9	They provided provisions that would
10	require the parties to provide information that they
11	rely on or reference in their testimony, both in the
12	direct testimony and the rebuttal testimony, within a
13	week upon request without issuance of a subpoena. And
14	then also deadlines for dispositive motions will be
15	towards the end of August in advance.
16	I think that's the same date that the
17	testimony is due initial direct testimony is due.
18	And then provide at the Commission's discretion that
19	arguments on those dispositive motions would be heard
20	at its regularly scheduled September 19th hearing
21	date.
22	MR. FUGE: Okay.
23	MR. RANKIN: We've also provided that
24	at the time prehearing statements are filed that the
25	parties would provide their list of issues they
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1 believe are common to all the applications or cases 2 and then issues that are unique to a specific 3 application to help sort through issues that may be contested. I'm trying to think. Those are sort of 4 5 the highlights. Anything to add, Dana or Ernie or Chris 6 7 or Sharon? 8 MR. MOANDER: I -- Mr. Chair and 9 Commissioners, I think that -- not to put too fine a point on it, but there's been discussion about the 10 11 concerns about discovery, and I use the discovery in 12 an administrative case. And this is the party's best 13 efforts to streamline that, remove obstacles that 14 might delay the hearing. 15 Parties are eager to get this hearing 16 moving forward. So there was some creativity in this. 17 But I do think it meets the needs of each party having 18 discussed the anticipated needs pretty thoroughly in the prior meetings. 19 20 MS. SHAHEEN: I would just add to Mr. 21 Rankin's description of the provisions that the last 22 couple of provisions relate to rebuttal testimony and 23 exhibits, and those will be filed in advance of the 24 hearing as well. And objections will be filed no later than Monday, September 16th. So we should be 25

1	able to settle any issues prior to the beginning of
2	the Commission hearing that last week in September.
3	MR. FUGE: Thank you.
4	I don't have any substantive questions
5	on the procedural order. I appreciate the
6	comprehensive thought that went into this.
7	In looking at it, the only amendments
8	that we would make our administrative in nature. You
9	know, as the parties know, or at least that I would
10	propose, the Commission hosts its meetings with a
11	virtual format.
12	So we would add those at least for
13	those dates that weren't already normal Commission
14	meetings. You know, for this special hearing, we
15	would add those dates for the procedural items to the
16	agenda.
17	And I believe too that the Commission
18	should designate a hearing examiner and as in the
19	prior matter, we will look at selecting from one of
20	the two that are already under contract with the
21	Energy, Minerals, and Natural Resources Department.
22	But I wanted to see if my fellow
23	commissioners had any comments or questions on the
24	scheduling order.
25	MR. BLOOM: No, Mr. Chair.
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1	DR. AMPOMAH: No, Mr. Chair.
2	MR. FUGE: I then would seek a similar
3	motion as I did in the prior case with respect to the
4	scheduling order, approval from the Commission to
5	issue any scheduling order under my signature as Chair
6	with the only edits from what's presented by the party
7	are information necessary to facilitate remote
8	participation in those hearings and designation of a
9	hearing examiner selected from either Mr. Rip Harwood
10	or Ms. Felicia Orth Based on their availability.
11	MR. BLOOM: Mr. Chair, I would so move.
12	DR. AMPOMAH: Mr. Chair, second.
13	DR. AMPOMAH: Roll call vote.
14	Commissioner Bloom?
15	MR. BLOOM: Approve.
16	MR. FUGE: Dr. Ampomah?
17	DR. AMPOMAH: Approved.
18	MR. FUGE: Let the record reflect the
19	motion was approved unanimously and Chair Fuge was
20	voting remotely.
21	Thank you, everyone for coming in with
22	a detailed scheduling order here. I think the next
23	item and we alluded some of the parties and their
24	comments alluded to this are a couple of are
25	discovery related. And the first well, I
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1 MR. RANKIN: Mr. Chair, sorry to 2 interrupt. But I'm wondering. I just wanted to bring 3 up one other housekeeping matter to address -- sort of a procedural nature before we get into the substance 4 5 of discovery disputes. 6 The Division may or may not be -- or 7 the Commission and the Chair may not -- may or may not 8 be aware yet, but Empire has filed eight additional 9 applications to revoke the injection authority for other operators in the unit and outside the unit 10 11 boundaries with the Division. 12 So I just wanted to bring that to your 13 attention. As you are well aware and Empire's well aware, it's been our position that all the injection 14 15 operations within the unit ought to be heard together. 16 So in terms of procedural issues, I 17 just wanted to make sure the Commission and the Chair were apprised of that fact. Since our last status 18 19 conference those cases have been filed and are pending 20 before the Division. Each of them, I believe at this 21 point, have been objected to proceeding by affidavit before the Division. 22 23 I believe counsel has been retained for 24 each of those operators, but I think they're still sorting out the facts and how they want to respond or 25 Page 29

1 handle those applications. But I did just at least 2 want to apprise the Commission to that fact. MR. FUGE: Mr. Rankin, just to make 3 sure I'm following, these are objections filed by 4 5 Empire against other SWD operators in the same unit 6 that is at issue here? 7 MR. RANKIN: Mr. Chair, there -- yes. 8 There are actually two units now at issue. 9 One is the Eunice Monument South Unit, which is the one at issue with Goodnight Midstream. 10 11 And there are additional disposal wells in the 12 Arrowhead Grayburg Unit, which is also operated by 13 Empire to the southeast. In addition, there are wells 14 in between the two that Empire's seeking to revoke 15 authority for that are not Goodnight's. 16 So it's, you know, helpful to look on a 17 map perhaps. I haven't mapped out exactly which ones 18 they're seeking to revoke, but I do have a map that shows them all. 19 20 There are some in between that aren't 21 yet subject to applications to revoke. But 22 nevertheless, that's the status. There are two units now at issue, the Arrowhead Grayburg and the EMSU, 23 24 which is the one at issue with Goodnight's cases. And 25 then some SWDs in between.

1 MR. FUGE: Mr. Rankin, as you're 2 suggesting that either the Division or Empire may send those filed cases up to the Commission, and I would 3 like to hear from Ms. Shaheen to get Empire's 4 5 perspective on that question after you respond, Mr. 6 Rankin. 7 MR. RANKIN: Mr. Chair, as you may well 8 expect, I think when we prepare and submit our motion 9 to address the scope of the hearing. We'll be making the argument that wells that Empire is seeking to 10 11 revoke within the Eunice Monument South Unit, the EMSU 12 unit, ought to be heard together. And our view is that those wells and 13 14 cases should be heard separately in the initial 15 instance because those are most directly at issue with 16 the unitized interval. As you look at the scope of 17 these cases and the distance, I think you'll quickly understand that these are maybe becoming unwieldy and 18 19 we all to focus initially on the unit itself, the 20 EMSU. 21 MR. FUGE: Ms. Shaheen? 22 Thank you, Mr. Chair. MS. SHAHEEN: 23 I believe our position at this time is 24 that those cases should be stayed in the Division 25 pending conclusion of the hearing on the Goodnight Page 31

1 related applications; however, I'll note that I have 2 not yet had the opportunity to confer with other 3 counsel. I'm actually not aware of counsel for 4 5 OWL yet, but I was planning to speak with counsel for 6 Rice in that regard. So I think any decision about 7 what should happen with those cases should await the 8 status conferences that we anticipate in the Division 9 a week from today. 10 MR. FUGE: Okay. 11 MR. RUBIN: Mr. Chair? 12 MR. FUGE: Counsel Rubin? 13 MR. RUBIN: Yeah, if I could ask the parties, just for my own edification, these additional 14 15 objections, Mr. Rankin, do they -- would they involve 16 additional parties to those that are presently in 17 force? 18 MR. RANKIN: Counsel Rubin, yes, there are three different operators at issue in those eight 19 20 other cases before the Division. Six of the cases involve Rice Operating. One involves OWL or Pilot. 21 22 And another case involves Permian Mine Service [ph], 23 which I believe is a related entity to Rice Operating. 24 So there will be additional parties with those additional cases. I don't disagree with 25 Page 32

1	Ms. Shaheen. I have been in contact with counsel for
2	these other parties.
3	But I they don't yet have a
4	position. They want to handle those cases.
5	So I don't want to represent where they
6	stand at this point. I bring it to your attention
7	because Mr. Commissioner, I don't want there to be a
8	delay if at all possible or for us to be accused of
9	causing a delay where we our position has been
10	clear from the beginning that these cases and these
11	disposal wells should be heard together.
12	MR. FUGE: And this is potentially a
13	question in part for Counsel Rubin, but it sounds to
14	me like we don't have all the parties in those cases,
15	so there's really nothing dispositive for us to do
16	there.
17	Appreciate the note for the record that
18	there may be related interests that the Commission
19	needs to consider, but it sounds like there are
20	additional near term proceedings before the Division
21	that may resolve some of those questions, and I'm not
22	sure the Commission's in a position to do anything
23	beyond noting there may be potentially related cases
24	pending before the Division but that are not currently
25	before the Commission.

1 MR. RUBIN: And Mr. Chair and members 2 of the commission, the reason I asked the question, I 3 was just thinking in terms of administrative efficiency that if we had all the parties here, the 4 5 fact that other cases were not joined but they were involved the same parties is a good argument as to 6 7 estoppel. 8 But if there's additional parties where 9 they think the Commission is to balance is hearing the same technical testimony, deciding the same 10 11 substantive issues in two separate cases versus 12 consolidation and of course being mindful of the 13 delays in the current cases. I think that's what the Commission has 14 15 to consider. Thank you. 16 MR. FUGE: Would the suggestion then 17 be, Counsel Rubin, that we act -- direct those parties 18 to appear at the next hearing and provide us with 19 their perspective on these matters? 20 MR. RUBIN: Mr. Chair, I think that 21 would be advisable. 22 MR. FUGE: Okay. 23 MR. RUBIN: Can't force anyone to show 24 up, of course. But I think it would behoove them to do so so that the Commission could make a -- and also, 25 Page 34

1 we could see what the parties can consent to with 2 respect to consolidation and -- the parties would balance the delays. We'd probably want to know that 3 4 before our next meeting. 5 MS. SHAHEEN: Mr. Chair? 6 MR. FUGE: Ms. Shaheen? 7 MS. SHAHEEN: And commissioners, I 8 would offer that Mr. Rankin and the rest of us could 9 confer after the status conference next week and 10 perhaps provide you with a status update on those 11 cases. 12 MR. FUGE: I would be amenable to that. 13 MR. RANKIN: I think that's fair. Ι don't -- I mean, I think my concern is well stated by 14 15 Mr. Rubin that there's concerns about estoppel or 16 collusion if parties don't have an opportunity to 17 state their case in matters that directly implicate 18 their operations. 19 I think it's important to have 20 everybody at the table. So that's my view. 21 MR. MOANDER: And Mr. Chair and 22 Commissioners, OCD would agree with that. If we're bringing in -- there's a potential to bring in other 23 24 parties due process estoppel as Mr. Rankin said, doing that should protect everybody's rights and make sure 25 Page 35

1 we get the case is tuned up for hearing. 2 MR. FUGE: Counsel Rubin, do you think 3 we need a motion here or just the direction to the parties that they should provide us with an update no 4 5 later than May 17th, which should follow the status 6 conference in the next scheduled Division hearing? 7 MR. RUBIN: Mr. Chair, members of the 8 Commission, what's before the Commission today is 9 approval of the scheduling order in the current case. I don't have a full grasp as to whether this 10 11 scheduling order should be approved and we continue 12 along this track for now or if we should just hold 13 that approval of the current scheduling order in advance in light of the new developments to the 14 15 parties. 16 As it was submitted by the parties, do 17 they have a preference as to whether we continue with at least considering perhaps approving what's before 18 19 us today? MR. RANKIN: Counsel Rubin and 20 21 Commission members and Chair Fuge, I'm okay with 22 approving where we are today. I do not want to be 23 seen as delaying any of these proceedings. 24 I do have some grave concerns about 25 doing so where we know that there are other parties Page 36

similarly situated who have the same claims and defenses not being part of the matter. So I think it's important to -- I think at the earliest opportunity -- bring those partners in.

The Commission Chair has -- director 5 6 has previously directed matters to be presented before 7 the Commission when they implicate substantive policy 8 matters or important matters that should be heard by 9 the Commission in the first instance. We had already made that decision with respect to disposal of the 10 11 unit in and around the unit with respect to these 12 cases, so I don't see any reason why these cases before the Division shouldn't be directed to the 13 14 Commission, referred to the Commission, to be heard 15 with these Goodnight matters.

So I think, you know, obviously, I haven't filed a motion to do so. I was deferring to the ability to communicate with counsel and other parties. With that said, I do have concerns about the current posture of these cases procedurally. I just want to make that known.

Commissioners, Mr. Chair, I think that the scheduling order before the Commission at this stage only concerns cases that involve at this point Goodnight, Empire, and the Division. I do think it

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would be appropriate to get that entered so we have
 some structure and we can get moving.

This Commission has an abundance of 3 flexibility within its jurisdiction and authority, and 4 5 if there become issues down the road, then I would 6 anticipate discussions about revising the scheduling order may well be had. But this order in and of 7 8 itself would not necessarily at this stage impact these other parties, and OCD would like to see some 9 10 quardrails put on the cases so we can get things 11 moving on at least these.

And if other parties come in, they're not likely involved in some of the subject or the specifics of these cases. So OCD would prefer to get an order entered now, and we can easily revisit as needed down the road depending on what happens with the lingering cases Mr. Rankin referenced.

18 MR. FUGE: And just so as I'm following 19 proposed scheduling order that we did move to 20 authorize, adopt -- adoption of -- with the noted 21 amendments. If other parties have interests but as I'm reading through it and I just want the parties to 22 confirm this under paragraph 2, there'll the motions 23 24 filed regarding the scope of the hearing no later than the end of this month. You know, sort of with 25

1 conclusion of briefing by June 13th. 2 But that motion actually wouldn't be 3 decided until later -- until September 19th. Is that the proposal? And what I'm getting at is just how it 4 5 would impact parties who might come in and might want 6 to adjust it. 7 Obviously, we can put a scheduling 8 order in place for the cases before us and if we have 9 to add additional ones we can change our scheduling 10 orders, but I wanted to get a little perspective. And 11 I'm just thinking to prejudice and administrative 12 efficiency to other parties who might or might not 13 appear before us. 14 MS. SHAHEEN: Mr. Chair, Commissioners, 15 Counselor Rubin, with respect to paragraph 2, those 16 dates were set so that the motion could be heard on 17 the June 20th regularly scheduled hearing date. 18 And what I would suggest is that those 19 motions address these additional applications and 20 those parties could be -- appear at the June 20th 21 hearing and the Commission could consider the scope of the hearing including whether the Rice applications 22 23 and the OWL application should be heard as well in the 24 same proceeding. 25 MR. FUGE: Got it. And Ms. Shaheen, Page 39

1 Mr. Rankin, it is your representation that there will 2 be a status conference in those Division cases next 3 week? MS. SHAHEEN: That is correct. 4 Ι 5 believe the Rice attorneys have already requested a status conference. I anticipate that Rice attorneys 6 7 will enter an appearance and do the same. And if not, 8 we'll be requesting the status conference on that. 9 MR. FUGE: Okay. Mr. Chair, if I could. 10 MR. RUBIN: Ι 11 just want to be clear with Mr. Rankin that there was 12 consensus before the Commission and this order with 13 your caveats. I don't think that rose to a level of 14 withdrawing consent; correct? 15 MR. RANKIN: Mr. Rubin, I'm not 16 withdrawing consent. 17 MR. RUBIN: Okay. 18 MR. RANKIN: I do, however, strongly believe that it's within the power of the Commission 19 20 to refer those cases to the Commission directly, and I 21 think it's appropriate to do so. And I don't -- you 22 know, I don't want to delay that. And I may, you 23 know, do something, you know, if the Commission won't 24 decide on its own. I may, you know, take action to file a motion sooner than later. I don't want to do 25 Page 40

1 so at the opposition of those parties necessarily, but 2 I do think for -- it's important for them all to be at the table. 3 4 So no, I'm not withdrawing consent on 5 the order, but I do -- I think I have done so --6 expressed my view on the importance of having them all Empire counsel has made the argument 7 together. 8 repeatedly that all the Goodnight cases should be 9 heard together because they're all similarly situated, similar issues, similar technical issues. 10 11 Their experts will address the same 12 issues with respect to all of our cases, no matter 13 whether they're in the unit or outside the unit. I 14 don't see why, on that basis, these cases should be 15 stayed at the Division level. 16 They made the very clear case that --17 when I moved to stay cases outside of the unit boundary at the Division so we could focus on the unit 18 that they took the position that all the cases must be 19 20 heard together and must be heard rapidly to avoid 21 impact to Empire's operations. 22 So I -- on that basis, I don't see why 23 there's this distinction here with these other cases. 24 So I've had my say, and I believe after conferring 25 with other counsel and with Empire counsel, we can

hopefully provide you a report after the status
 conference at the Division, and then we'll go from
 there.

MR. FUGE: Okay. Again, I continue to 4 5 be of the view -- those parties are not before us at 6 the moment, but duly noted. And we will wait -- the Commission will wait for the update following to the 7 8 conclusion of that status conference. And otherwise, we'll proceed to finalize the scheduling order as 9 proposed by the parties with the additional 10 11 information noted in the approved motion.

12 Moving on to the other items in this 13 matter that were included in the agenda for potential action by the Commission, there was a proposed 14 15 subpoena filed by Empire New Mexico, LLC through its 16 attorneys for issuance by the Commission. And then 17 there was a motion to quash a Goodnight Midstream subpoena that was issued by the Division filed by 18 19 Empire. A response was there. Appreciate that these 20 are two separate filings in two separate matters.

I have a general question. Obviously, this relates to discovery questions that are part of the proposed scheduling order that we will be finalizing and issuing. Is there a reason these should still be heard today and not just follow the

1 procedures under that order? 2 MS. HARDY: Mr. Chair, Commissioners. 3 Dana Hardy with Hinkle Shanor on behalf of Empire New Mexico. I think it would be appropriate for the 4 5 Commission to address these matters today or soon 6 thereafter to allow the parties to continue preparing 7 for the hearing. 8 I think that the procedural order sets 9 out deadlines in the expectation that we are able to 10 resolve issues by certain dates and time for the 11 hearing. But I think if we can resolve them earlier 12 that would be preferable. 13 And I think these matters, at least the 14 motion to quash, has been fully briefed. We did 15 submit a reply late yesterday for the Commission's 16 consideration that summarizes the issues and also 17 addresses the documents that have already been 18 produced. 19 So I think that's important for the 20 Commission to consider. But I do think it's 21 appropriate for these issues to be addressed 22 expeditiously. 23 MR. RUBIN: Mr. Chair, members of the Commission, I do have -- I have not had a chance to 24 review the reply filed by Ms. Hardy for today. So if, 25 Page 43

1	in the interest of having advising the Commission
2	properly, I would like the time to review the reply
3	and not rule on the motion today. If okay.
4	MR. FUGE: Duly noted, Counsel Rubin.
5	I think now that we have a scheduling order in place
6	and I think we are having a substantive hearing in
7	June on motions under the scheduling order that was
8	just put in place my proposal would be that that would
9	be an appropriate time to make a decision on the
10	subpoenas and the motions.
11	Mr. Rankin?
12	MR. RANKIN: Thank you, Chair Fuge,
13	Commissioners, Mr. Rubin. I don't disagree with Ms.
14	Hardy that these matters should be heard and resolved
15	expeditiously.
16	Part of the reason is that the
17	discovery that Goodnight is seeking in this subpoena
18	that's currently being disputed has been pending now
19	for some time, in part because the subpoena was
20	submitted to the Commission or the Division director
21	for a period of time and we were waiting for it to be
22	returned so we could issue it.
23	And then we waited a month for Empire
24	to respond, and instead of responding they filed a
25	motion to quash and responded at the same time to some
	Page 44
	Page 44

1 of the requests. The requests for information that 2 we're seeking in this subpoena is critical to our 3 ability to prepare for the hearing and for our experts 4 and our witnesses to review information that may be 5 contradictory to Empire's positions and testimony that 6 they've already submitted.

7 So we -- the sooner we have access to 8 that information, the more expeditiously we can 9 prepare for hearing. Now, I have -- in discussions with Ms. Hardy and counsel for Empire, I have noted --10 11 and as well the scheduling order -- it's noted that 12 the Division director serving as Chair of the 13 Commission is authorized by rule to make decisions on 14 non-dispositive motions that are before the 15 Commission.

16 I do think it would be beneficial, 17 however, for the full Commission to hear the substance 18 of the disputes over the factual issues because I 19 think it would help the Commission, it would inform 20 the Commission on the nature of the arguments, the technical issues that they will be hearing in 21 22 September. 23 So while I think it's important -- I 24 quess what I'm trying to say is I think it's --

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there's an opportunity for an expeditious review and

1 decision by the Commission director and we can 2 potentially have a separate pre hearing conference to address arguments on the motion. But I also believe 3 it's important for the full Commission to hear and 4 5 understand the nature of the factual disputes because I think it will help them understand the nature of the 6 7 case that they're going to be hearing in September. 8 So I just wanted to, kind of, suggest 9 that maybe there's a way we could have a special hearing in advance of the June regularly scheduled 10 11 hearing to address this discovery issue. 12 Mr. Chair, Commissioners, MR. MOANDER: 13 and Counsel Rubin, I owe an apology here because I have had about a month to go through all of these 14 15 cases and I didn't get a response in on this. But I 16 did want to make a few points on the record. 17 Number one, I do agree with Mr. Rankin's view on this that I think that the 18 Commission -- this is a unique case where the 19 20 Commission would benefit a great deal from hearing 21 about each of the operators' cases. But I think more 22 importantly this is an attempt from both sides I think 23 to try to get a bit ahead on discovery, such that we 24 can get this information out sooner rather than later. 25 I'll represent that OCD is interested

1 in seeing what would be generated in response to all 2 the subpoenas because we don't have access to some of the particular information and data that's at issue 3 there and would be relevant to OCD's case. And so 4 5 that's -- it is a unique situation. It is slightly abnormal based on what 6 7 the rules would allow. It doesn't require that the 8 Chair sign. So OCD would like to have these heard as 9 well and would support that the subpoenas be issued. 10 MS. HARDY: Mr. Chair, may I? 11 MR. FUGE: Yes. 12 MS. HARDY: I think that the briefing 13 fully addresses the issues that have been raised by the subpoena issued by Goodnight and Empire's 14 15 response. I think it might be helpful for us to have 16 argument on the issue. 17 But I also think it would be acceptable for Mr. Chair, for you to rule on the motion to quash 18 based on the briefs. I think the briefs are thorough 19 and to address these issues. 20 21 With respect to Empire's request for a 22 subpoena, no motion has been filed on that. We're 23 just waiting for the subpoena to be issued. So on 24 that one, I think it would benefit everyone to have it 25 approved and issued so that motions can be filed if Page 47

necessary.

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2 MR. FUGE: And I -- my question, though -- and I'll restate it -- is the first set of 3 motions under paragraph 2 and 3 of the pending 4 5 scheduling order is to talk about the scope of the hearing. And as I reviewed -- well, on the subpoena 6 that's subject to motion, one of the issues are 7 8 relevance and scope of the discovery requests sought. 9 And so it seems tricky to resolve that if the Commission is going to narrow the scope of the 10 11 issues to be heard or potentially expand. You know, 12 either way. But to make a decision based on filings 13 from the parties, it seems a little hard to get at one of the core questions at least that jumped out to me 14 15 in the motion practiced on the subpoena and motion to 16 quash there was some questions about scope and, sort 17 of, relevance to the hearing. And it seems to me like if the 18 Commission's going to make a decision on that based on 19 20 briefing filed by the parties that we need to do that first before potentially resolving discovery disputes 21 22 that at their core do raise questions of relevance.

23 MR. RANKIN: Mr. Chair, I guess I would 24 respond by saying that at this point Empire's position 25 is that all the cases should be heard together at once

1 and that there should be no bifurcation or limitation 2 on the scope of the hearing currently before the Commission. 3 And so that -- on that basis I don't 4 5 see necessarily a reason to, you know, limit their -the assessment of the objections because there's --6 you know, it's -- Empire's position is that everything 7 8 should be heard at once. So that's one response. I 9 do appreciate, however, the concern about scope and relevance. 10 11 And it's a fair point. And I don't 12 think in my preparation for today that I duly 13 considered their -- the nature of their objections 14 visa vis considerations about scope of the hearing as 15 between matters in the unit boundary and outside the 16 unit boundary. 17 I do believe, however, in my view -and the reason I didn't give that consideration was 18 19 because I believe that their arguments about relevance 20 and scope are not germane to that issue. 21 Their arguments about relevance and 22 scope are more about the nature of the documents and 23 information sought being outside the nature of cases 24 as opposed to whether they relate to discovery matters outside the unit boundaries or the scope, you know, 25

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1 the proper scope of the hearing.

2 And counsel for Empire can certainly address that. But my impression of their arguments 3 around scope and relevance, or rather relevance and 4 5 burden, do not relate to weather the hearing includes 6 wells inside the unit or outside. 7 MS. HARDY: Mr. Chair? 8 MR. FUGE: Yes, Ms. Hardy? 9 MS. HARDY: That's correct. Our objections are based on our concerns generally 10 11 regarding the over-breadth and unduly burdensome 12 nature of the request. I don't think that they are 13 dependent on a final determination on scope. 14 I think generally we've raised the 15 issues that -- of relevance, such as matters 16 regarding, you know, surface agreements with a 17 landowner that have -- that has filed litigation against Goodnight. I mean, they've asked us to 18 produce communications with that surface owner and 19 20 we've told them in another case that we don't have any 21 and they have that information. It's attached to our 22 reply. So those are the types of things that are 23 addressed in our objections. 24 It's our position that their requests 25 go way beyond the scope of permissible discovery in a

1 Commission proceeding and largely even in a District 2 Court proceeding. So I don't think that evaluating those objections is contingent on a final 3 determination regarding the scope of this hearing. 4 5 MR. FUGE: I'm going to look to Counsel 6 Rubin for maybe some guidance here. In light of the Oil Conservation Commission rules that allow the Chair 7 8 to rule on non-dispositive motions, Mr. Rubin, should 9 we just take this under advisement and confer on these filings? I have reviewed in advance the motions 10 11 surrounding Goodnight's subpoenas except for Ms. 12 Hardy's reply. 13 Given its return I was not able to review that in advance. Should we just confer 14 15 separately on those procedural matters given the 16 Commission's rules? 17 MR. RUBIN: Mr. Chair, members of the 18 Commission, yes, you are correct that it's certainly a non-dispositive motion. I had presumed in fact 19 20 perhaps without making that presumption clear that the 21 whole Commission wanted to consider this. 22 But I think that is a -- it certainly would be within the -- it would leave both options 23 24 open, Mr. Chair, if we tabled this matter for today. And you could either rule upon it pursuant to the rule 25

or we could, after conferring with -- after you and I confer -- and I have then had a chance to review the reply -- it still leaves the option for setting a special meeting just for the sole purposes of this deliberation or perhaps oral argument. So in light of that, I think tabling would be appropriate at this time.

8 MR. FUGE: I'm going to look at my 9 fellow commissioners. If they have any concerns or 10 questions with that. We did include -- I worked with 11 the Commission clerk to include this on so the whole 12 Commission could hear about some of these discovery 13 questions.

But I do want to just ask if my fellow commissioners are comfortable with me and Mr. Rubin conferring on this under the OCC rules and making an assessment of what to do with these subpoenas? Which may include a special meeting if we determine it's necessary or appropriate.

20 MR. BLOOM: Mr. Chair, Mr. Rubin, I 21 would be comfortable with that. And at some point, I 22 may call Mr. Rubin and ask for a little guidance here. 23 I just might have a couple questions for him once I 24 dig into this. Thank you.

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MR. RUBIN: Mr. Chair, mister --

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1 Commissioner Bloom, we do have to be mindful of the 2 Open Meetings Act. And if I confer with you and then I confer with the Chair and that somehow affects the 3 decision, it would be a problem as it was at an open 4 5 meeting. 6 So it's certain you need to decide if 7 you're okay with the Chair and myself doing it or if 8 you'd want to have it earlier add a special meeting. 9 Or at least letting us decide that. MR. BLOOM: So Mr. Rubin, you would be 10 11 uncomfortable with just questions of a general nature 12 about the potential path for these? 13 MR. RUBIN: Oh, no. I mean, I would 14 certainly always listen to any question you have, 15 Commissioner Bloom. Just --16 MR. BLOOM: Yeah, I think we have to be 17 cognizant of a ruling course. MR. RUBIN: Yeah, that's all. 18 19 MR. BLOOM: -- repeating --20 MR. RUBIN: Okay. Thank you. 21 MR. RANKIN: Mr. Chair, if I may just interject one last thought here. I do think that, you 22 know, expedition and -- is key. 23 24 I do think, however, as I stated that one option may be, Mr. Chair, if in review of the 25 Page 53

1 reply brief and the briefing there are specific 2 questions or concerns, I do think it would be helpful 3 to have some argument from counsel. I don't think it necessarily needs to 4 5 be extensive, but I do believe that there are some 6 matters that can be more particularly articulated now that the briefing is complete, and it may help the 7 8 Commission understand the nature of the issues that --9 in dispute. 10 So I would just offer that, you know, 11 before making a summary determination, I would be 12 willing to set aside any other matters to have an 13 argument or a short conversation with Empire counsel and yourself or the full Commission to address any 14 15 questions that you all may have. 16 MR. FUGE: Thank you, Mr. Rankin. Ι 17 think as Counsel Rubin articulated, one of the things that he and I will discuss as we're reviewing things 18 under those rules is that question whether the matters 19 20 would benefit from argument or can be decided -- can 21 and should be resolved on the papers. So again, we'll 22 table both of these items and will be in touch with 23 the parties. 24 MS. SHAHEEN: Mr. Chair, one more 25 housekeeping matter, if I may. Page 54

1 MR. FUGE: Yes. MS. SHAHEEN: 2 There's a pending motion to dismiss in two of the cases. I believe they're 3 case numbers 24277 and 24278. And I believe that 4 5 motion has been fully briefed. It is -- relates to the scope of the hearing. So I would suggest, if 6 7 Counsel agrees, that that motion to dismiss also be 8 heard on the June 20th hearing, if not sooner. 9 MR. RANKIN: Mr. Chair, I would encourage the Commission to hear those dispositive 10 11 motions on the June 20th docket. I believe there will 12 be another set of motions similarly dispositive that I 13 think will also help inform the Commission again more fully around the issues that are at stake here. So I 14 15 agree with Ms. Shaheen. I think June 20th is an 16 appropriate date for consideration of those motions. 17 And Mr. Chair, if I could MR. MOANDER: have just one moment. I need to check on something 18 19 because I do have some thoughts on that. I apologize. 20 I do -- OCD got served a little late on 21 this motion. They will be filing something on it as 22 well. But I think the 6/20 would be good to have that 23 addressed as well because I think if I'm not mistaken, 24 that would be every motion that's outstanding thus far -- would be at that point determined or at least 25

1 be set to be heard, which would clarify a lot of the 2 muddy waters currently. 3 MR. FUGE: Mr. Moander, my view of paragraph 2 is that what we are teeing up -- yes. 4 5 Pending motions that go to the scope of the hearing 6 would be teed up for the June 20th hearing in my view under the scheduling order -- and they were not 7 8 noticed or set for hearing today because we needed a 9 scheduling order in place so we could decide how to orderly proceed with this matter. 10 11 Anything further from counsel in any of 12 these matters? 13 MR. PADILLA: Mr. Chair, Ernest 14 Padilla. I'm asking about the status of our pending 15 subpoena. As I understand it you're going to table 16 that for now? 17 MR. FUGE: Mr. Padilla, yes. Both 18 subpoenas will be tabled and I -- the Chair is going to confer with Counsel Rubin and make an evaluation 19 20 and decision how to proceed. 21 MR. PADILLA: Okay. 22 MR. FUGE: Anything further? 23 MR. RANKIN: Thank you for your time 24 and consideration. 25 MS. HARDY: Yes. Thank you. Nothing Page 56

1 further from Empire. 2 MR. MOANDER: Nothing further from OCD. MS. APODACA: Excuse me, Mr. Fuge. 3 I've been handed the final order on case number 23655, 4 5 accepting all of the tracked changes, and it's ready 6 for signature if you want me to present it to the commissioners. 7 8 MR. FUGE: Yes, if you could please 9 present it to the commissioners, Sheila, that would be 10 great. 11 MS. APODACA: Okay. 12 MR. FUGE: Walking through the last 13 item in the agenda, pending litigation. We didn't list it, but Mr. Rubin, we've had the Atencio [ph] 14 15 case on a number of the agendas, and I know there was 16 argument and substantive motions there. Have we 17 received a ruling from the Court? MR. RUBIN: Mr. Chair, members of the 18 Commission, no, there was extensive oral argument 19 20 several weeks ago and we are awaiting a decision from Judge Matthew Wilson [ph]. And I will circulate that 21 22 upon receiving it. 23 MR. FUGE: Perfect. Thank you. 24 Any other business? Hearing none, our next meeting is June 20, 2024, and the May 9th meeting 25 Page 57

1	of the New Mexico Oil Conservation Commission is
2	otherwise adjourned.
3	(Whereupon, the meeting concluded at
4	10:22 a.m.)
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1	CERTIFICATE
2	I, JAMES COGSWELL, the officer before whom
3	the foregoing proceedings were taken, do hereby
4	certify that any witness(es) in the foregoing
5	proceedings, prior to testifying, were duly sworn;
6	that the proceedings were recorded by me and
7	thereafter reduced to typewriting by a qualified
8	transcriptionist; that said digital audio recording of
9	said proceedings are a true and accurate record to the
10	best of my knowledge, skills, and ability; that I am
11	neither counsel for, related to, nor employed by any
12	of the parties to the action in which this was taken;
13	and, further, that I am not a relative or employee of
14	any counsel or attorney employed by the parties
15	hereto, nor financially or oth
16	outcome of this action.
17	JAMES COGSWELL
18	Notary Public in and for the
19	State of New Mexico
20	
21	
22	
23	
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25	
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1	CERTIFICATE OF TRANSCRIBER
2	I, CHRIS E. FLOYD, do hereby certify that
3	this transcript was prepared from the digital audio
4	recording of the foregoing proceeding, that said
5	transcript is a true and accurate record of the
6	proceedings to the best of my knowledge, skills, and
7	ability; that I am neither counsel for, related to,
8	nor employed by any of the parties to the action in
9	which this was taken; and, further, that I am not a
10	relative or employee of any counsel or attorney
11	employed by the parties hereto, nor financially or
12	otherwise interested in the outcome of this action.
13	Mit An
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15	CHRIS E. FLOYD
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[commissioner - course]

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