

**STATE OF NEW MEXICO
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

APPLICANTS' MOTION TO EXCLUDE SPORICH REBUTTAL TESTIMONY

Applicants move to exclude rebuttal testimony offered by New Mexico Oil and Gas Association (“NMOGA”) witness Clayton Sporich on the ground that it is not properly within the scope of rebuttal. In support of this motion, Applicants state:

1. The Amended Prehearing Procedural Order (“Procedural Order”) in this matter both defines the scope of rebuttal testimony and requires rebuttal testimony to specifically identify the direct testimony to which it responds:

Rebuttal evidence counters, contradicts, or disproves another party’s evidence and is **limited to directly** addressing points raised in the direct testimony. Rebuttal testimony **shall** identify the direct testimony it intends to rebut.

Prehearing Order, ¶ 4 (emphasis added); *accord El Paso Elec. Co. v Real Estate Mart, Inc.*, 1982-NMCA-117, ¶ 5, 98 N.M. 570 (rebuttal witnesses are witnesses whose testimony reasonably cannot be anticipated before trial).

2. This requirement was placed in the Procedural Order to prevent free-ranging testimony in rebuttal that should have and could have been presented in a party’s direct case.

3. Nowhere in Mr. Sporich’s 18 pages of rebuttal testimony does he identify a single witness of Applicants or any other party whose testimony he is rebutting, let alone identify specific testimony he is rebutting.

4. Instead, Mr. Sporich, a lawyer and legal expert, uses the whole of his rebuttal **not** as an opportunity to rebut direct testimony but as an opportunity to opine generally on many of Applicants’ **proposed amendments** he believes the Oil Conservation Commission

(“Commission”) is without authority to adopt. *See, e.g.*, Sporich Reb. Test., ¶ 4 (there are “many portions of Applicants’ proposed rules that exceed statutory authority, propose regulatory overreach on the part of OCD, or are otherwise unlawful”); ¶¶ 10-14 (summarizing purpose of testimony is to explain how Applicants’ proposed amendments exceed the Commission’s statutory authority). Mr. Sporich could have and should have provided his legal opinion in his direct testimony on the legality of the proposed amendments, which Applicants filed April 25, 2025.

5. Indeed, in direct, Mr. Sporich did provide an abundance of testimony why he believes Applicants’ proposed amendments are outside the scope of the Commission’s authority. *See, e.g.*, Sporich Dir. Test., ¶ 5 (“Overall, I am concerned that WELC’s proposals . . . exceed the authority actually granted by the New Mexico Legislature under the Oil and Gas Act . . .”); ¶¶ 6, 12, 62-65, 68-69, 75, 85-90, 91-110, 115-116, 129-132, 139-140, 144. While Applicants disagree with his legal opinions, this testimony – introduced in NMOGA’s direct case – is fair game. However, his opinion on the lawfulness of the proposals is improper for rebuttal.

6. Introducing rebuttal testimony outside the scope is not fair, unduly lengthens the hearing, and is expressly prohibited by the Hearing Officer’s Procedural Order.

7. If the requirements of the Procedural Order are to mean anything, such improper rebuttal testimony should be excluded.

8. NMOGA is not prejudiced by excluding Mr. Sporich’s rebuttal testimony; NMOGA is free to make its legal arguments in its post-hearing brief.

For the foregoing reasons, Applicants request the Hearing Officer to exclude the rebuttal testimony of NMOGA witness Sporich.

Respectfully submitted,

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Certificate of Service

I certify that on October 14, 2025, I served by a copy of this pleading to the following via email:

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