

**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
RESPONSE TO APPLICANT’S MOTION TO EXCLUDE SPORICH REBUTTAL
TESTIMONY**

The New Mexico Oil and Gas Association (“NMOGA”) files this Response to Applicants’ Motion to Exclude Sporich Rebuttal Testimony. Applicants’ motion should be denied because it is (1) untimely, (2) misreads the Prehearing Order’s requirements, and (3) incorrectly characterizes the nature and scope of Mr. Sporich’s testimony.

I. Argument

A. Applicants’ Motion to Exclude is Untimely

The Commission should deny Applicant’s Motion to Exclude because it is untimely. According to Paragraph 6 of the Amended Prehearing Order, “[d]ispositive motions and motions to exclude evidence shall be filed and served by September 15, 2025 at 5:00 pm.” Am. Prehearing Order ¶ 6. Applicants filed their Motion to Exclude Sporich Rebuttal Testimony on October 14, 2025, almost a month after the deadline for motions to exclude evidence. This alone warrants denial.

New Mexico law firmly establishes that prehearing orders control the subsequent course of hearings. The principle is well-established that a prehearing order, made and entered without objection, and to which no motion to modify has been made, controls the subsequent course of the prehearing and hearing process. *See Ortega, Snead, Dixon & Hanna v. Gennitti*, 1979-NMSC-056, ¶ 142, 93 N.M. 135, 597 P.2d 745. This fundamental rule ensures orderly proceedings and prevents

parties from unilaterally disregarding established deadlines. Although the Amended Prehearing Order does not allow for late motions for any reason, Applicants do not even attempt to explain the reason for their untimely motion. The Amended Prehearing Order was jointly negotiated and entered without objection, and Applicants themselves have relied upon it to enforce deadlines earlier in this proceeding. Having benefited from those procedural protections, they cannot now disregard them.

The Commission has consistently enforced such deadlines to maintain fairness and efficiency in complex, multi-party rulemakings. Applicants' untimely motion, filed after all parties had relied on the established schedule, is procedurally barred. Applicants themselves put it aptly: "If the requirements of the Procedural Order are to mean anything," such improper, untimely motions should be denied.

B. Applicants' Expert Witness Peter Morgan Incorporated and Relied Upon Mr. Sporich's Rebuttal Testimony

During the October 21st hearing, Applicants' counsel Ms. O'Grady expressly prompted expert witness Peter Morgan to respond to the rebuttal testimony of Mr. Sporich, referencing pages 14 through 17 of that testimony. Specifically, Ms. O'Grady stated:

*"NMOGA witnesses Ms. Felix on pages 65-67, Mr. Sporich on pages 14-17, and Mr. Arthur on page 104, of their respective rebuttal testimony...."*¹

By evoking and eliciting Mr. Sporich's rebuttal testimony into the evidentiary record on its own via expert witness Peter Morgan's testimony as provided, Applicant effectively waives any argument that would prevent Mr. Sporich's testimony from being admissible into evidence.

¹ EMNRD OCC, OCC Rulemaking Hearing Part 5 10 21 25, beginning at 3'49''; <https://www.youtube.com/watch?v=9fPrDb755Y>,

Resultingly, Mr. Sporich's rebuttal testimony is therefore properly part of the evidentiary record and should remain admitted.

C. Sporich's Testimony Falls Squarely Within the Amended Prehearing Order's Requirements for Rebuttal Testimony

Even if the Commission decides to consider the merits of Applicants' Motion despite its untimeliness, the Motion should be denied because Mr. Sporich's testimony falls squarely within the Prehearing Order's requirements that "a party that filed direct testimony and exhibits may request to introduce surrebuttal testimony and exhibits *at hearing*, which may be allowed at the discretion of the Hearing Officer." Am. Prehearing Order ¶ 4.G. At its heart, Applicants' direct testimony is an advocacy for their proposed amendments. In his rebuttal testimony, Mr. Sporich addresses all of the direct testimony that he reviewed and identifies which of Applicants' arguments he opines.

Applicants assert that Mr. Sporich's testimony does not identify a specific witness whose testimony he is rebutting. The Amended Prehearing Order, which Applicants quote in their motion, does not require identification of specific witnesses. In fact, it requires rebuttal testimony to "identify the direct testimony it intends to rebut." Am. Prehearing Order ¶ 4.G. Mr. Sporich's rebuttal testimony does exactly that. For example, Paragraph 3 of Mr. Sporich's rebuttal testimony lists the specific proposed amendments to which he opines. Sporich Rebuttal ¶ 3. Paragraph 5 states that "in response" to Applicants' proposed rules, he will address Applicants' testimony about "proposed changes to New Mexico's oil and gas financial assurance regime." *Id.* ¶ 5. He challenges the Applicants' testimony regarding financial assurance authority "in Applicants' proposed amendments to 19.15.8.9 NMAC." *Id.* He addresses jurisdictional concerns with regard to Applicants' revisions to 19.15.9.8(B), (C), and (E) NMAC and 19.15.9.9(B) NMAC. *Id.* Mr. Sporich therefore identifies several areas of testimony to which he is responding. That he does not

identify a single witness is inconsequential, as it is not required by the Amended Prehearing Order.

Applicants cite *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1982-NMCA-117, ¶ 5, 98 N.M. 570, 651 P.2d 105, for the proposition that “rebuttal witnesses are witnesses whose testimony reasonably cannot be anticipated before trial.” Mot. ¶ 1. Applicants mischaracterize this case and, even if it stood for the proposition it posits, its application here is nonsensical. First, if all rebuttal testimony was intended only for testimony not anticipated before trial, then it would only be admissible *at or after* trial. This is nonsensical in light of the procedure of this rulemaking hearing and the Prehearing Order that specifically provides for rebuttal testimony prior to “trial,” or hearing in this case. Am. Prehearing Order ¶ 4 (“In the event a party wishes to present rebuttal testimony, the full written rebuttal testimony and exhibits shall be filed and served no later than 5:00 pm on September 19, 2025.”). This highlights the inapplicability of this case.

In *El Paso Electric Co.*, the New Mexico Court of Appeals was considering whether a plaintiff witness who was not listed in the pretrial order could nonetheless testify after the defense presented its case. 1982-NMCA-117, ¶ 5. The statement that “rebuttal witnesses are witness whose testimony cannot be anticipated at trial” therefore makes sense: a rebuttal witness at trial is necessary only after testimony has been presented by the other side which the party offering the rebuttal witness could not anticipate until after that unexpected testimony was elicited. The functional equivalent in the rulemaking hearing context as we have here is that NMOGA presented testimony in a prehearing statement, then Applicants’ presented testimony in its prehearing statement which NMOGA wishes to rebut.

Applicant also argue that Mr. Sporich’s testimony about the “lawfulness of the proposals” is improper. Applicants admit that Mr. Sporich’s testimony about “why he believes Applicants’ proposed amendments are outside of the scope of the Commission’s authority” in his direct

examination are proper, but claim that “his opinion on the lawfulness of the proposals are improper for rebuttal.” Mot. ¶ 5. Applicants do not explain nor offer case law explaining why legal conclusions by a lawyer are acceptable on direct but not as rebuttal testimony. The Prehearing Order does not place a limitation on the type of testimony presented, beyond that it must respond to direct testimony. To the extent Mr. Sporich disagreed with direct testimony according to his legal opinion, such rebuttal evidence is not “outside the scope.” *Id.* ¶ 6. Applicants seem to argue that new arguments cannot be presented in rebuttal. This is simply untrue. If rebuttal was meant to be a rehashing of direct, it would be meaningless.

D. Excluding Mr. Sporich’s Rebuttal Would Prejudice NMOGA and Undermine a Complete Hearing Record

Applicants assert that exclusion of Mr. Sporich’s rebuttal testimony would not prejudice NMOGA because it can raise legal issues in briefing. That argument ignores the OCC’s consistent emphasis on developing a complete evidentiary record before post-hearing briefing. Mr. Sporich’s testimony provides context and analysis necessary for the Commission’s evaluation of legal authority and statutory consistency—core issues in this rulemaking. Applicants have had his rebuttal testimony since September 19 and have ample opportunity to cross-examine him or address his statements in their own filings.

By contrast, exclusion would deprive the Commission of relevant, responsive evidence directly tied to the record of direct testimony and would unfairly disadvantage NMOGA.

E. Applicants Apply an Inconsistent Double Standard to Mr. Sporich’s Rebuttal Testimony

In its motion to exclude, Applicants state Mr. Sporich’s rebuttal testimony does not identify, with enough direct specificity, the party whose testimony he is rebutting. Apps’ Mot. To

Exc. ¶ 3. Applicants overlook similar deficiencies within their own rebuttal submissions. For instance, Mr. Purvis's rebuttal testimony offers precisely the sort of "free-ranging" and uncited narrative that Applicants attribute to Mr. Sporich. Between pages 2 and 7, Mr. Purvis advances broad commentary, conclusory assertions, and self-styled "themes" without a single pinpoint citation to opposing testimony. Apps' Ex. 74 Pg. 1037-42. Rather, Applicants retroactively add citations supporting Mr. Purvis's rebuttal testimony through the submission of demonstrative exhibits. Apps' Reb. Purvis Slide 33. Applicants cannot selectively decide when the pre-hearing order's requirements apply. Allowing such an ad hoc, sliding-scale standard would prejudice NMOGA by holding its witnesses to a higher evidentiary bar while excusing identical deficiencies in Applicants' own testimony.

F. Excluding Mr. Sporich's Rebuttal Testimony Would Exacerbate the Imbalance of Legal Commentary Before the Commission

Applicants furnished two attorneys, but only one legal witness, thereby providing ambiguity and uncertainty toward the specific legal issues at question that Applicants intended to dispose of. Applicants provided Mr. Morgan, who served as a financial assurance policy subject matter expert rather than a legal expert, even though Mr. Morgan is an attorney by education but never worked as a surety nor issued financial assurance. Mr. Morgan's testimony was further proof that Applicants offered it as a financial assurance policy perspective, and not one of legal analysis, as evidenced by Mr. Morgan's lack of awareness of the Oil Conservation Division's two paramount duties to prevent waste and protect correlative rights. Additionally, Applicants provided testimony from Mr. Peltz, who admittedly stated his expertise is one of an expert in legislative policy regarding financial assurance for oil and gas wells, rather than a legal expert.

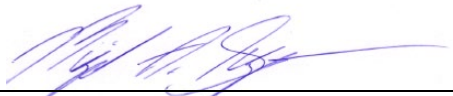
NMOGA, by contrast, presented a dedicated legal witness in Mr. Sporich whose testimony

directly addresses the legal issues in dispute between Applicants and NMOGA. Mr. Sporich's rebuttal testimony provides a focused legal analysis of Applicants' proposals, including their asserted statutory authority and the regulatory consequences of their adoption. NMOGA Reb. Test. Sporich ¶¶ 1, 4. These matters are inherently legal in nature and central to the Commission's decision-making. Excluding Mr. Sporich's testimony would remove the only explicit legal analysis from the evidentiary record and leave the Commission without a complete and balanced understanding of the legal implications of Applicants' proposals.

II. Conclusion

The Commission should deny Applicant's Motion to Exclude Sporich Rebuttal Testimony because it is untimely and it mischaracterizes both the content of Mr. Sporich's testimony and the requirements of rebuttal testimony under the Prehearing Order.

Respectfully submitted,

By: 

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
jparrot@bwenergylaw.com
jmartin@bwenergylaw.com
jeverhart@bwenergylaw.com

*Attorneys for New Mexico Oil and Gas
Association*

I hereby certify that a true and correct copy of the foregoing was served to counsel of record via email this 27th day of October 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
ogrady@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

Matt Nykiel
Staff Attorney
Western Environmental Law Center
224 West Rainbow Boulevard, #247
Salida, Colorado 81201
720.778.1902
nykiel@westernlaw.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,
WildEarth Guardians, and Sierra Club.*

Mariel Nanasi
Lead Attorney and Executive Director
New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
mnanasi@newenergyeconomy.org
Attorney for New Energy Economy

Jesse Tremaine
Chris Moander
Michael Hall
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
chris.moander@emnrd.nm.gov
michael.hall@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
agrarkin@hollandhart.com
pmvance@hollandhart.com

Aaron B. Tucker
555 17th Street, Suite 3200
Denver, CO 80202
(303) 293-8369
abtucker@hollandhart.com
Attorneys for OXY USA Inc.

Andrew J. Cloutier
Ann Cox Tripp
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-0010
acloutier@hinklelawfirm.com
atripp@hinklelawfirm.com
*Attorneys for Independent Petroleum
Association of New Mexico*

Nicholas R. Maxwell P.O. Box 1064 Hobbs,
New Mexico 888241
inspector@sunshineaudit.com

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
*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
Oil Conservation Commission Counsel

Ari Biernoff
General Counsel
Christopher Graeser
Richard H. Moore
Associate Counsel
New Mexico State Land Office
PO Box 1148
Santa Fe, New Mexico 87504-1148
abiernoff@nmslo.gov
cgraeser@nmslo.gov
rmoore@nmslo.gov
*Attorneys for Commissioner of Public Lands
and New Mexico State Land Office*

Jennifer L. Bradfute
Matthias Sayer
Bradfute Sayer P.C.
P.O. Box 90233
Albuquerque, New Mexico 87199
jennifer@bradfutelaw.com
matthias@bradfutelaw.com

Jordan L. Kessler
EOG Resources, Inc.
125 Lincoln Avenue, Suite 213
Santa Fe, New Mexico 87501
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@emnrd.nm.gov
Oil Conservation Commission Clerk



Rachael Ketchledge