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

OIL CONSERVATION DIVISION'S CLOSING STATEMENT

PRELIMINARY STATEMENT

New Mexico faces a truly substantial problem of current externalized oil and gas well plugging and abandonment liability. This problem has the potential to grow over time due to numerous factors outside the state's control, including the inevitable decrease in productivity and profitability of thousands of currently productive and compliant wells. As recognized by the New Mexico Legislative Finance Committee ("LFC"), plugging liabilities for the State of New Mexico currently (and in the near future) could exceed $1.5 billion. *See* Apps' Ex. 4. This problem requires a multi-faceted approach that addresses all of financial assurance updates; improved well transfer oversight; improved well-plugging enforcement mechanisms; revisions of the approved temporary abandonment structure; and potential updates to the Oil and Gas Reclamation Fund, which acts as a safety net for plugging liability where existing regulatory mechanisms and operator responsibility fails. This hearing and proposed rulemaking is an effort to reduce those impacts on the State and for industry to bear more responsibility for the orphan wells that arise from oil and gas operations in the State (even if the majority of operators are compliant and good citizens of New Mexico). The proposal is intended to address all facets of the problem which are within the Division's statutory authority. Proposals to address specific

parts of this problem through mechanisms outside the Division or Commission's control – specifically updates to the Oil and Gas Reclamation Fund – do not, and should not, obviate the clear need to update the various regulatory mechanisms reflected in the Petition.

After the hearing on this matter, several of the parties participated in extended negotiations and were able to reach compromises on several aspects of the proposed rules. These proposals are compromises of the preferred positions of the agreeing parties, and the negotiated rules are a complex network of agreements that, if fundamentally changed, would require the parties to withdraw those agreements and revert back to their pre-hearing proposals. OCD greatly appreciates that industry, regulators, and NGOs were able to find considerable common ground in this important rulemaking. The compromises reflect proposed changes to core aspects of the multi-faceted approach to this orphan well problem, which when taken together as a 'package' are preferable to adoption of the various party proposals.

However, the parties were unable to reach agreement on several important aspects of the rules, and, thus, it is important that the Commission consider the evidence presented (or not presented) in support of the parties' respective positions. The Applicants and OCD provided the Commission with extensive evidence in support of their proposed rules. The industry parties, for the most part, failed to do so, or, in the case of several industry witness, agreed with Applicant's and OCD's witnesses in several pivotal areas.

Applicants' final proposed amendments are reflected in Applicants' Exhibits 89 and 90, which are attached by OCD and incorporated by reference. Due to alignment between Applicants and OCD in the final proposal, OCD collaborated with Applicants to present consistent structure and language in this closing argument to facilitate and simplify the Commission's review. OCD respectfully prays that the Commission adopt the proposed amendments in full.

CLOSING ARGUMENT

I. APPLICABLE LEGAL STANDARD

OCC rules will be set aside only if (1) arbitrary, capricious or an abuse of discretion, (2) not supported by substantial evidence in the record, or (3) not in accordance with law. NMSA 1978, § 70-2-12.2(C).

II. SUBSTANTIAL EVIDENCE SUPPORTS OCD AND APPLICANTS' PROPOSALS

All amendments offered by Applicants and OCD are supported by substantial evidence, as set forth more thoroughly herein and in Applicants' Proposed Statement of Reasons. Said proposed rules are supported by the State Land Office ("SLO") and substantially supported by OXY USA, Inc. ("Oxy").

Where consensus is absent, there is little or no evidence to support the alternate proposals made by New Mexico Oil and Gas Association ("NMOGA") and the Independent Petroleum Association of New Mexico ("IPANM") in closing.

III. INDUSTRY'S LEGAL CHALLENGES HAVE NO MERIT

A. Applicants' and OCD's Proposals at 19.15.8.9 NMAC Are Consistent with the Act's Authorization to Establish Categories of Financial Assurance

The Oil and Gas Act ("Act") requires operators to furnish financial assurance to P&A their wells and states that the OCC "shall establish categories of financial assurance after notice and hearing." NMSA 1978, § 70-2-14(A). Among the factors to be considered (but not necessarily dispositive) are "the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant." *Id.*

In addition to requiring categories of financial assurance, the Act identifies some specific

categories including "a blanket plugging financial assurance" no greater than $250,000; blanket plugging financial assurance for temporarily abandoned ("TA") wells of not less than $50,000; "*a one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells*;" and a one well financial assurance for wells held in TA more than two years. *Id.* (emphasis added).

Applicants' and OCD's proposed financial assurance categories include the categories required by the Act and new categories that are authorized by and comport with the Act. Applicants' financial assurance proposals are one well plugging financial assurance of $150,000 or blanket plugging financial assurance capped at $250,000 for active wells at 19.15.8.9.C(1) and (2) NMAC, which follows the Act's requirement for blanket plugging financial assurance and the Act's allowance of one well financial assurance (in the amount of $150,000 for low producing wells).

This proposal establishes an additional category of one well financial assurance for "low producing wells" (sometimes described as marginal wells during the hearing and in previous iterations of Applicants' and OCD's proposed rules), which are wells that produce less than 1,000 barrels of oil equivalent ("BOE") and less than 180 days over 12 months. Specifically, the proposal calls for one well plugging financial assurance of $150,000 for all wells of an operator with 20% or more of their wells in inactive, approved TA, expired TA, or a combination thereof at 19.15.8.9.E(1) NMAC[1], which may be (but is not required to be) furnished in a single instrument, rather than a separate bond for each individual well**.**

Additionally, the proposed rules require one well financial assurance for "high risk portfolios." Specifically, the proposed rule calls for plugging financial assurance of $150,000 for

[1] Formerly proposed at 19.15.8.9.D(3) NMAC in Applicants' Exhibit 72-C.

all wells in inactive, approved TA, or expired TA or a blanket bond equal to an average of $150,000 per well at 19.15.8.9.F(1) and (2) NMAC.[2]

The proposal at 19.15.8.9.C(2) NMAC provides for "a blanket plugging financial assurance in the amount of $250,000" for all active wells (that are not low producing wells). The proposed rule is similar to OCC's current rules which authorize blanket bonds ranging from $50,000 to $250,000 for active wells depending on the number of an operators' wells. Applicants' proposal for a $250,000 blanket bond fully complies with the Act's requirement to establish a category for "a blanket plugging financial assurance in the amount of $250,000." Importantly, the Act does not apply the blanket bond cap to all active wells. In fact, the Act makes no distinction between active and inactive wells for purposes of the blanket bond cap. *See* NMSA 1978, § 70-2-14(A). As a result, the proposed rule's exclusion of low-producing wells from coverage under the $250,000 blanket bond comports with the enabling statute and the categories of financial assurance allowable thereunder.

Similarly, Applicants' proposal for one well financial assurance for "low producing wells" is authorized as a category for active wells that the OCC may (but is not required to) establish. In support of that category, Applicants and OCD produced an abundance of evidence that low producing wells are at high risk for abandonment and should be bonded at an "amount[] determined sufficient to reasonably pay the cost of plugging the wells," as required for single well bonding under the Act. Apps' Ex. 30 at 0739-40 [Purvis Dir. Test.][3]; Apps' Ex. 15 at 0331-34 [Morgan Dir. Test.]; Apps' Ex. 57 at 0880-91 [Peltz Dir. Test.]; Apps' Ex. 74 at 1069-72 [Purvis Reb. Test.]; 10/24/25 Tr. 214:9 to 216:1. To establish different categories, the OCC may

[2] Formerly proposed at 19.15.8.9.E(1) and (2) NMAC in Applicants' Exhibit 72-C.
[3] Page numbers for Applicants' exhibits refer to the Bates stamped numbers on the exhibits.

take into consideration "factors [it] deems relevant." NMSA 1978, § 70-2-14(A).

Applicants' and OCD's proposal at 19.15.8.9.F(1) NMAC, requiring one well financial assurance for wells in TA less than two years, does not violate the blanket bond cap. The OCC is authorized to establish FA requirements for wells in TA less than two years, including one well financial assurance for such wells. Relatedly, the Act allows the proposed rules at 19.15.8.9.D NMAC and 19.15.8.9.F NMAC, since the Act explicitly authorizes the Commission to establish different categories of financial assurance and one well financial assurance that covers the cost for OCD to plug wells. There is no limitation therein prohibiting the OCC from establishing one well financial assurance for wells in TA less than two years **and** establishing other categories of one well financial assurance, like the low producing wells category.

A great deal of expert testimony and data supporting the proposition that non-producing wells are at greatest risk of orphaning because they generate no revenue to cover plugging and remediation obligations, while at the same time incurring maintenance and administrative costs. *See, e.g.*, Apps' Ex. 15 at 0337-45; Apps' Ex. 30 at 0756-57; Apps' Ex. 57 at 0892-99. As with low producing wells, the risk of orphaning is an appropriate factor to consider in establishing one well financial assurance for wells in TA.

Similarly, substantial evidence was introduced at hearing that the $150,000 one well financial assurance amount is based on the statutory factors. Apps' Ex. 15 at 0329. Applicants proposed $150,000 based on the average cost to OCD to plug wells which, as discussed below, is $163,000. Apps' Ex. 4 at 0117. Basing the one well financial assurance amount on OCD's actual average cost of plugging inherently incorporates the factors the OCC must consider including the depth of a well, the length of time since a well produced, and the cost of plugging similar wells. Apps' Ex. 81 at 1142 [Morgan Reb. Test.]. Additionally, Applicants and OCD presented

substantial evidence that well depth is not a reliable indicator of the cost to plug well. 10/24/25 Tr. 226:2-7, 232:8 to 233:23; Apps' Ex. 74 at 1066-69. Rather, OCD staff testified that a well's downhole condition is a major factor in plugging costs and, by the time OCD plugs an orphan well, years of operator neglect typically caused the well's downhole condition to deteriorate significantly. OCD Ex. 13 at 0005; OCD Ex. 4 at 0003; 10/24/25 Tr. 211:25 to 213:7. According to OCD Deputy Director Brandon Powell, well depth is not a "driving factor." 10/24/25 Tr. 233:22-25.

Substantial evidence was presented at hearing that $150,000 reflects OCD's average cost to plug. *See, e.g.*, Apps' Ex. 15 at 0314-17, 0328-29. Indeed, LFC reports OCD's average cost to plug a single orphaned well is $163,000, Apps' Ex. 4 at 0117, rendering $150,000 a reasonable—even low—approximation of OCD's cost of plugging wells.

Finally, NMOGA's argument that industry costs to plug should be relied upon is unavailing. Sporich Reb. Test. at 6-7. The cost to operators is beside the point because FA will only be called upon if an operator orphans a well that OCD must pay for and plug. Apps' Ex. 81 at 1155; OCD Ex. 30 at 2. Only OCD costs are relevant. Even Mr. Sporich conceded this during cross-examination. 10/30/25 Tr. 311:14-25. Similarly, IPANM's own witness, Mr. Ezzell, begrudgingly admitted that the enabling statute was written in a way that bonding needs to cover OCD's plugging costs, rather than those of the oil and gas industry. 11/4/25 Tr. 70: 21-24. As Deputy Director Powell put it, operator costs and OCD costs are comparing "apples to oranges." 10/27/25 Tr. 202:8 to 204:1.

B. Applicants' and OCD's Proposed Rules Comport with the Act's Goal to Prevent Waste

Economics factors play heavily into operators' decisions of whether or not to stop producing a well, plug the well, and leave hydrocarbons in the ground. Operators do not consider

this "waste." While IPANM witness Calder Ezzell claimed that "zero waste" is allowed under the Act, 1/4/25 Tr. 40:22-25, he walked back that claim during cross-examination:

> **Q.** [Fox] Then under your formulation, that waste means zero waste, does that mean that the operator must produce a well to the very last hydrocarbon that that operator can produce without regard to well economics, that is physically possible, technologically possible to produce?
> **A**. [Ezzell] No. There is an economic limit, and we all know that.
> **Q.** [Fox] And what's that economic limit?
> **A.** [Ezzell] When a well is no longer capable of producing in paying quantities. And of course that varies from operator to operator.

11/4/25 Tr. 46:13-24 (emphasis added). According to Mr. Ezzell, each operator can decide when to stop production and leave the resource in the ground based on their own economic calculus. Part of that calculus includes the costs of doing business, which includes bonding for P&A.

The proposed rules are drafted in a manner that will minimize impact to statewide production, while also providing more protection for the State in the event an operator fails to plug its own well and that responsibility ultimately falls on the State. For example, Applicants' expert, Dwayne Purvis, P.E., modeled the extent to which wells in New Mexico would be categorized as low producing wells subject to single well financial assurance. He found 3,900 wells would qualify, representing 6.6% of the statewide well population and only 0.048% of total state production. Apps' Ex. 40.

The evidence at hearing shows that orphan wells can cause waste. Over 60% of the orphaned wells plugged by OCD cause waste by leaking natural gas. 10/24/25 Tr. 214:4-10; OCD Ex. 13 at 0004 [Powell Dir. Test.]. Even wells in approved TA that have met mechanical integrity testing requirements in OCC rules can nonetheless emit and leak natural gas because equipment can fail over time. Apps' Ex. 3 at 0091-92 [Alexander Dir. Test.].

C. OCC Has Authority to Regulate Operator Registration and Change of Operator

The OCC has the legal authority to regulate registration of operators and change of operators as proposed by Applicants at 19.15.9 NMAC. The Commission has authority under the Act to "make and enforce rules . . . reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section thereof." NMSA 1978, § 70-2-11. The proposed changes to operator registration and change of operator requirements are reasonably necessary to protect the State against high risk, noncompliant operators that may walk away from their obligation to plug the wells they operate. In fact, the OCC has already exercised this authority: the existing rules authorize OCD to deny operator registrations and change of operator based on an operator's noncompliance. *See* [existing] 19.15.9.8.B(1)-(3) NMAC; 19.15.9.9.C, -D NMAC.

PROPOSED STATEMENT OF REASONS

I. PROCEDURAL BACKGROUND

1. On June 24, 2024, Applicants filed their Application for Rulemaking.

2. On August 15, 2024, the OCC voted to proceed with the rulemaking. 8/15/24 Tr. 102:18 to 103:24.

3. On September 23, 2024, with concurrence of all parties, the OCC scheduled the hearing to begin April 14, 2025. 9/23/24 Tr. 5:23 to 6:8, 10:4-9.

4. At Applicants' initiation, the parties notified the OCC on February 20, 2025, they agreed to reschedule the hearing to consider amendments proposed by OCD. Apps' Ex. 6 [correspondence among counsel] at 0234; 2/20/25 Tr. 8:16 to 9:12. On April 7, 2025, with concurrence of all parties, the OCC rescheduled the hearing to begin October 20, 2025. 7/7/25 Tr. 24:25 to 25:2.

5. On April 25, 2025, Applicants filed their Revised Application for Rulemaking.

6. All notice requirements for the hearing were met, including publication of notice of the rulemaking in the New Mexico Register. NM Register, vol. XXXVI, issue 10 (May 20, 2025); OCC's Certificate of Compliance with Notice Requirements (Aug. 7, 2025).

7. The following parties entered appearances: EOG Resources, Inc., IPANM, New Energy Economy, NMOGA, Nick Maxwell, OCD, OXY, and SLO.

8. As required by various orders of the Hearing Officer, parties filed Prehearing Statements with direct testimony and exhibits on August 8, 2025, and rebuttal testimony and exhibits on September 19, 2025.

9. The hearing was held October 20-24, October 27-31, and November 3-6, 2025, with Hearing Officer Felicia Orth presiding.

10. Opportunity for public comment was provided on October 20, 2025, at 4:00 pm and each day thereafter at 9:00 am and 4:00 pm. A Spanish interpreter was available on October 20, 21, 27, and November 3, 2025.

II. PARTIES' ENGAGEMENT

11. Prior to filing the Application, Applicants' counsel and experts met with OCD and SLO staff to discuss Applicants' proposals. Apps' Ex. 3 at 0061.

12. Prior to filing, Applicants' counsel reached out to NMOGA and IPANM to inform them they would file an application for rulemaking and wanted to work with them. *Id.*

13. After filing, Applicants' counsel worked to meet with OCD and industry counsel. The parties scheduled four meetings in October 2024, but just prior to the meetings, industry counsel said they could only attend the first meeting, which was not substantive. *Id.*

14. During the second meeting, OCD staff informed the parties they were working on red line proposals to present prior to year's end. However, due to resource constraints, OCD

didn't provide its proposals until February 12, 2025. *Id.*; *see* Apps' Ex. 5 [OCD Redline].

15. OCD counsel invited the parties to discuss the proposals in April 2025. Applicants' counsel agreed, but no industry party responded to OCD's invitation. Apps' Ex. 6.

16. NMOGA witness Andrea Felix, Vice-President of NMOGA Regulatory Affairs, testified NMOGA didn't engage in negotiations with Applicants' counsel in fall 2024 because it was waiting for OCD's proposals. However, Ms. Felix admitted that NMOGA did not engage in discussions with OCD or Applicants after OCD put forth its proposals in February 2025. 10/31/25 Tr. 119:13 to 120:16, 123:19 to 124.:11, 127:11 to 128:7.

17. After OCD sent its proposals, Applicants' counsel and their experts met with OCD staff, and Applicants adopted major OCD proposals including for "marginal wells," operator level FA, and PNBU. Apps' Ex. 3 at 0061-62.

18. OXY responded to overtures from Applicants' counsel, and counsel for both parties met during the summer of 2024 and again in July 2025. In August 2025, Applicants' and OCD met with OXY. As a result, the parties reached agreement on a number of provisions reflected yellow highlight in Applicants' Exhibit 72. Apps' Ex. 3 at 0062.

19. As a result of Applicants' work with OCD and SLO, Applicants' and OCD's amendments proposed at hearing were essentially the same, and SLO "strongly support[ed]" all amendments. *Compare* Apps' Exs. 1, 72 [Apps' proposals and revised proposals] and OCD's Ex. 15 [Powell PowerPoint]; OCD PHS at 1 ("OCD supports the Revised Petition"); SLO PHS at 1.

20. During the hearing, OCC members encouraged the parties to negotiate to reach common ground and narrow differences. As requested, beginning in November 2025 and continuing through February 2026, Applicants' and OCD counsel began meeting regularly with NMOGA, IPANM, and OXY counsel and representatives. According to the parties, the

discussions and negotiations were substantive and constructive. 1/15/26 OCC Tr. 14:12 to 24:15; Joint Stipulation (filed Mar. 20, 2026).[4]

21. As a result, Applicants and OCD revised their proposals significantly to address industry concerns. Revisions to Applicants' and OCD's proposals as a result of negotiations are highlighted in blue in Applicants' Exhibit 89. SLO supports all such proposals. OXY supports all such proposals with two minor exceptions. IPANM and NMOGA generally agreed not to challenge the changes based on substantial evidence but reserve all other challenges. Industry's positions on Applicants' final proposals are outlined in the parties' Joint Stipulation and attached chart.

22. The revisions agreed to by Applicants and OCD represent a carefully crafted, integrated "package" that Applicants request the OCC to adopt as a whole.

III. DIVISION'S WITNESSES AND DATA

Justin Wrinkle

23. Mr. Wrinkle is currently OCD engineering bureau chief, 10/24/25 Tr. 122:15-15, and is responsible for "the permitting for oil and gas wells in the state." 10/24/25 Tr. 135:5-8. Mr. Wrinkle previously held positions as "lead field operator, production supervisor, [and] production technician," and prior to his time at OCD worked for several oil and gas operators. 10/24/25 Tr. 122:17-20. Mr. Wrinkle's testimony is based on his experience and identifies the many variables and spectrum of different costs associated with lease operating expenses for marginal wells. 10/24/25 Tr. 123:4-10.

24. Mr. Wrinkle identifies specific variables for marginal wells that result in

[4] SLO was informed of the negotiations but did not participate. Applicants' counsel kept SLO counsel informed of the status of the negotiations.

increased operating expenses and environmental problems, such as inoperable wellhead valves, tanks with standing fluids and corrosion, production vessel issues, and some wells having H2S mitigation and hazards. 10/24/25 Tr. 127:20 to Tr. 129:9.

25. Mr. Wrinkle in his direct testimony states that "[d]ue to age and sometimes neglect, marginal wells are in need of general retrofitting…[and] the costs of these activities can become very high compared to revenue and are normally avoided completely if the well is not a lease holding well." OCD Ex. 07-005.

26. Mr. Wrinkle identified that "marginal wells are definitely higher risk," 10/24/25 Tr. 143:18-19, and such risks changed the level of investment an operator was willing to make in the well. 10/24/25 Tr.3-9. Mr. Wrinkle states that it is his opinion that "[a] marginal well holds little value if its revenue does not cover its operating expenses." 10/24/25 Tr. 152:9-13.

27. Mr. Wrinkle identified that "the rule would allow the actual costs of plugging to be covered, whereas currently…the actual costs [of well plugging] are not effectively covered by the financial assurance." 10/24/25 Tr. 193:1-5.

Brandon Powell

28. Mr. Powell is OCD deputy director and oversees the Department's engineering and environmental groups. 10/24/25 Tr. 206:22-25.

29. In describing New Mexico's orphan well problem, Mr. Powell states: "Typically the wells that OCD gets are by operators who are failing in their business. So what happens is they take the well's production to failure and once that reaches failure, they leave that well sitting there until the next well gets to failure and then they leave that well there. And they do that until OCD takes enforcement action or there's no wells left. So there's times where those

wells sit for years before OCD takes action. And then once OCD takes action, then OCD puts those on that MOSS [master orphan spread sheet] list for plugging in the future…. [D]epending on budgets, OCD could take years to get to those wells to plug it. So by the time OCD gets to those wells, there are potentially years and years and years of neglect of those wells because they were taken to failure before OCD ever got to those wells." 10/24/25 Tr. 212:8 to 213:1.

30. In direct testimony, Mr. Powell states that "as wells degrade over time, they generally have lower returns and more liabilities, so larger companies commonly divest these wells to smaller companies, which have fewer resources and capitalization to properly repair and plug the wells at the end of their productive life." OCD Ex. 13-0003:8-11.

31. Mr. Powell refers to the *Legislative Finance Committee Policy Spotlight: Orphan Wells* for its characterization of the orphan well problem in New Mexico, the risk to the state, and as support for OCD's endorsement of the proposed rules. OCD Ex.13-0003:11 to 13-0004:18.

32. Mr. Powell states that "there is not a defined regulatory process for OCD to perform an analysis for whether a well needs to be plugged until that well is inactive for 15 consecutive months. This means that operators may avoid 'inactive' wells status, which requires the well to be plugged within 90 days, by reporting any volume of production." OCD Ex. 13-0005:20-23. Mr. Powell recognizes that currently "[o]perators are able to remain in compliance by producing and reporting volumes that are very likely uneconomic." OCD Ex. 13-0006:5-6.

33. Mr. Powell states that currently "if an operator fails to plug and abandon a well that has been inactive for 15 months… OCD must issue a NOV [notice of violation] to compel the operator to plug the well or alternatively allow OCD to plug the well. In most cases, bringing an enforcement action once an operator's wells have been inactive for 15 months is simply too

late and inefficient." OCD Ex. 13-0006:9-14. Mr. Powell also recognizes that "issuing an NOV is unlikely to result in compelling the operator to plug and abandon the wells." OCD Ex. 13-0007:2-6.

34. Mr. Powell further testified that MOSS is "not a tool that's looking at future enforcement action." It is a list where OCD has already taken enforcement action. 10/27/25 Tr. 24:16-20. OCD also maintains a list of operators that have not submitted C-115's (OCD Ex. 17) as well as for wells that aren't reporting production (OCD Ex. 16). "So when you add up all of this, this is a far greater number than what we included even in MOSS… In this list, we've got 113 operators that aren't even reporting production in the state." 10/27/25 Tr. 27:4-11; Tr. 28:15-23. "What that looks like as far as wells that are totally out of compliance is 2,318 that include state private and federal wells." 10/27/25 Tr. 29:4-6. "[I]f there's 20 operators on MOSS, we've got roughly another 90 operators to go as far as compliance just with the production." 10/27/25 Tr. 33:5-7. "[P]roduction reports are due 45 days after the end of the month. Those operators haven't reported any production since August of 2024. That would have been an extreme failing" if those operators failed to report monthly production by error. 10/27.25 Tr. 144:21-24.

35. Regarding reporting of well production as it relates to the proposed PNBU—which is 90 BOE and 90 days of production—Mr. Powell states that "90 BOE is extremely low threshold; its less than one barrel of oil per day. So I think that would be a hard threshold to make if an operator was really utilizing their well." 10/27/25 Tr. 178:7-24. Mr. Powell further recommends that "removing the days provision of the 90 BOE would probably be sufficient," shifting "from an OCD threshold and enforcement tool to an operator required threshold." 10/27/25 Tr. 179:1-8. This would address the issue that OCD sees where "some wells that have very, very low production, like just a few barrels, but are showing 2-, 300 days of production. I

think unless there's an issue with that well, that's probably just an operator filling a box without looking into it further." 10/27/25 Tr. 179:16-21.

36. Mr. Powell's rebuttal testimony states that "financial assurance should be in an amount determined sufficient to reasonably pay the cost of plugging wells covered by the financial assurance" and that "industry plugging costs is irrelevant." OCD Ex. 30-0002:1-2.

37. Mr. Powell describes that while OCD currently has $118 million in FA—which is about 10 percent of the state's liability—that total is comprised of bonds tied to specific operators and specific wells. "So [OCD] can't use [a large operator's] bonding to plug a smaller company's [wells]." 10/24/25 Tr. 220:22 to 221:7.

38. In speaking about the costs for OCD to plug a well, Mr. Powell states that the "depth of a well, again, I don't think it's a driving factor. Length of time since the well was produced, well we can't plan for how long it's going to sit there before it goes orphan." 10/24/25 Tr. 233:22-25.

39. When asked about OCD's mission to prevent waste, Mr. Powell stated that proposed rules "prevents underground waste [by] requiring operators to utilize their wells properly. A well that's out there not producing isn't providing any tax or royalties to the State of New Mexico, versus a well that's operating 50 percent of the time is providing tax and royalties to the state." 10/27/25 Tr. 117:12-17. OCD has the duty to regulate the venting of natural gas as a waste, and approximately sixty percent of wells being monitored for methane or natural gas venting or emissions are part of OCD's orphaned well program. 10/27/25 Tr. 177:21 to 178:6. It is also the OCD's job to manage the reclamation fund and to use available fund to plug orphan wells. 10/27/25 Tr. 177:2-8. OCD also has the obligation to regulate and require the remediation of releases and environmental contamination. 10/27/25 Tr. 177:9-12.

40. Throughout his testimony, Mr. Powell identified specific areas where he anticipated industry to engage with elements of the proposed rules, based on their experience, numbers and cost data, and industry failed to do so. 10/24/25 Tr. 217:11-19; 10/24/25 Tr. 225:3-9; 10/24/25 Tr. 228:15-22.

Rosa Romero

41. Rosa Romero is OCD's Environmental Bureau Chief, 10/24/25 Tr. 22:11-16, and oversees the Division's Environmental Permitting, Incidents, Special Projects, and Field Compliance programs. OCD Ex. 10 at 1.

42. Ms. Romero presented examples of the environmental impacts and risks from orphaned oil and gas wells that her program addresses through orphan well remediation and reclamation, including soil contamination, orphan well proximity to groundwater and surface playas, and reports that children have been drawn to abandoned oil and gas infrastructure located near residential areas. 10/24/25 Tr. 26:19 to 29:21.

43. Ms. Romero testified that basic surface investigation and reclamation costs OCD approximately $36,000 per site. *Id.* 29:19-21.

44. Ms. Romero testified that the estimated costs for OCD wellbore plugging do not encompass OCD's environmental cleanup costs associated with remediation, reclamation, and revegetation. *Id.* 26:6-8.

45. Ms. Romero testified that it is common for her Bureau to find operators with environmental compliance issues that have not saved enough money to satisfy their remediation requirements. *Id.* 34:11 to 35:8.

46. Based on her experience as Environmental Bureau Chief, it is Ms. Romero's

opinion that Applicants' proposed rules will incentivize operators to do their diligence and plan for the inevitable closure of each of their wells. *Id.* 35:9-16. In addition, Ms. Romero testified that to the extent OCD can rely less on the Reclamation Fund to cover orphan well plugging costs and more on operator bonds that fully cover the cost of plugging, that will save money in the Reclamation Fund that can be used to cover the remediation and reclamation costs of orphan wells. *Id.* 35:17-22.

47. Ms. Romero testified that for all the orphan wells plugged by OCD, over 60% percent of these wells leaked methane. She further testified that methane can contaminate groundwater and pose long-term environmental health risks. *Id.* 35:23 to 36:8.

48. Ms. Romero testified that conducting environmental remediation of orphaned wells requires a significant amount time from the Environmental Bureau, and that operator-led remediation and reclamation would be more efficient. *Id.* 111:24 to 112:15.

Loren Diede

49. Mr. Diede is a Petroleum Specialist with OCD and focuses almost exclusively on working with orphaned wells and forced plugging. 10/23/25 Tr. 60:21 to 61:2.

50. Mr. Diede testified that "[m]ost of the difficulties that we have and encounter [with plugging orphan well] are downhole conditions of the well that cannot be estimated with any degree of certainty before the operations begin." *Id.* 65:8-17, 92:4-8. Mr. Diede further testified that the primary factors that determine the difficulty and cost of plugging a well are casing access and conditions of the wellbore. *Id.* 139:2-20.

51. Mr. Diede testified that in his experience that the mechanical integrity and conditions downhole of most of the orphaned wells make it such that reactivation of the well is

not a viable option. *Id.* 66:16 to 67:4.

52. Mr. Diede presented examples of two wells, the Cato San Andres Number 150 and 164, that were wells that were by and large the same in terms of depth, location, age, drilling and casing methods, and operator. Despite the similarities, Mr. Diede explained that the Number 164 well took seven workdays to plug and the Number 150 well was far more complex and took 35 days to plug. *Id.* 69:19 to 72:10; OCD Ex. 6 at 0012.

53. With another example of orphan well plugging, Mr. Diede explained that well depth is not always a determinative factor for estimating well plugging costs. *Id.* 88:22-24. Indeed, Mr. Diede testified that the Buckskin Number 1, a well a little over 6,000 feet deep, was plugged with little issue, while the Buckskin Number 2, a well approximately 4,000 feet deep, was significantly more complex and took seven times the number of days to plug, as it took for the Buckskin Number 1. *Id.* 79:1 to 88:24; OCD Ex. 6 at 0023.

54. Mr. Diede testified that in his experience orphaned wells tend to have deteriorated longer than wells owned by operators, who are proactive and maintain and plug wells before they deteriorate. *Id.* 141:23 to 142:13.

E. The Record Reflects A Data-based Case

55. Applicants' experts developed a wealth of data to help inform the OCC about the trends in oil and gas development, operations, and production in New Mexico; the adequacy – or rather inadequacy – of the current bonding structure; the widespread extent of noncompliance of inactive wells; the impact of Applicants' proposals on operators; and much more. Applicants relied on solid, verifiable data to support their Revised Application, along with state government reports and peer-reviewed articles.

56. Industry parties did not seriously contest the validity of Applicants' data and generally supported their case with generalized allegations devoid of hard data.

IV. OVERVIEW OF ORPHAN WELL PROBLEM

The Division largely concurs with the statement of reasons proffered by the Applicant in describing the scope of the orphan well problem. For the reasons described in the Division's summary of its witness testimony, the Division's experience in enforcing production, plugging, financial assurance, and well transfer rules, and the Division's knowledge and data regarding the challenges and costs of plugging and abandoning orphaned wells, the final proposed amendments are warranted and supported by substantial evidence.

V. APPLICANTS' PROPOSALS

The Division largely concurs with the statement of reasons offered by Applicant in support of Exhibits 89 and 90. The Division supports adoption of the final proposal Rules in their entirety.

VI. PARTY OPPOSITION TO THE PETITION FAILED TO PROVIDE SUBSTANTIAL EVIDENCE UPON WHICH TO PROMULGATE ANY RULE OTHER THAN THOSE PROPOSED BY APPLICANTS AND SUPPORTED BY OCD

57. In general, NMOGA and IPANM witnesses did not meaningfully dispute Applicants' data; did not develop data on their own; and did not offer alternative proposals to address the orphan well crisis identified by LFC, OCD, and the SLO.

58. NMOGA and IPANM witnesses presented the Commission with negative position statements, but did not provide any affirmative information or analysis which the

Commission could rely upon as substantial evidence.

Andrea Felix

59. Ms. Felix, Vice President of Regulatory Affairs for NMOGA, generally did not develop her own testimony, but relied upon or cite the testimony of other NMOGA witnesses. 10/31/25 Tr. 91:17 to 22.

60. In her direct testimony, Ms. Felix stated that the presumptions of no beneficial use don't allow for individualized evaluation of wells. NMOGA Ex. B at 5. However, she admitted during cross-examination that submission of well-specific information to OCD to rebut the presumption is authorized and allowed for individualized well evaluations. 10/31/25 Tr. 94:21 to 96:10.

61. Relying on Mr. Arthur's direct testimony, Ms. Felix claimed that Applicants' "marginal well" category (now termed "low producing wells") includes 81% of gas wells and 54% of oil wells in New Mexico. NMOGA Ex. B at 13. Mr. Arthur, however, wildly miscalculated the percentages because he believed that "stripper wells" were a subset of "marginal wells" under Applicants' proposed definition. NMOGA Ex. C at 28.

62. Marginal wells, of course, are not a subset of stripper wells: marginal wells are wells that produce less than 1,000 BOE and less than 180 days during a 12-month period, while stripper wells produce less than 10 BOE per day over a year or less than 3,650 BOE during a year. NMSA 1978, § 7-29B-2(L); 19.15.6.7.M NMAC.

63. Ms. Felix did not know what a stripper well was or the difference between marginal wells, as proposed by Applicants, and stripper wells. Nor did she dispute Mr. Purvis's analysis in Applicants' Exhibit 40 that, excluding PNBU wells, there are approximately 2,200

marginal wells, representing only 3.7% of all wells and 0.045% of total production. 10/31/25 Tr. 99:2 to 105:22.

64. Similarly, Ms. Felix relied on Mr. Sporich's mistaken testimony that Applicants' proposal that single well FA be set at $150,000 was based on P&A **and** remediation costs to OCD. Felix Reb. Test. at 6-8 (citing Sporich Reb. Test. at 2-3). Applicants' direct testimony was clear that the $150,000 was based only on P&A costs to OCD, not remediation costs. *E.g.*, Apps' Ex. 15 at 0314-15, 0328-29 (relying, among other data, on the LFC report). During cross-examination, Ms. Felix conceded her testimony was incorrect. 10/31/25 Tr. 107:8 to 111:1.

Dan Arthur

65. Mr. Arthur, NMOGA's chief witness, failed to offer specific proposals for the OCC's consideration. 10/28/25 Tr. 175:20-21; 10/29/25 Tr. 98:3-15. Mr. Arthur did not use "any independent data or statistical analysis," in developing his testimony, nor did he include "any independently prepared tables or graphics or calculations." 10/28/25 Tr. 259:2-13. Mr. Arthur also acknowledged that he characterized each section of the revised petition as unworkable. 10/29/25 Tr. 21:22-25.

66. Mr. Arthur's testimony suggests that "the 12-month timeframe to determine cumulative production days and production volume should be extended to multiple years, at least three years." 10/29/25 Tr. 40:20-24. Mr. Arthur also suggested that "If the 90-day criteria are retained, I recommend using consecutive five-year periods to determine cumulative production days and production volume." 10/29/25 Tr. 41:6-10. In offering these modifications to the 90-day criteria for the PNBU, Mr. Arthur's justification rests on entirely separate provisions dealing with temporary abandonment. 10/29/25 Tr. 41:16 to 42:4. Mr. Arthur did not provide testimony

raising concerns with the 90 BOE criteria. 10/29/25 42:20 to 43:12.

67. Although Mr. Arthur claimed to have used Applicant's definition of marginal well, his testimony repeatedly conflated marginal and stripper wells—categories of wells with very different production thresholds. 10/29/25 Tr. 16:16-20:14. Mr. Arthur's testimony relies on a definition of 'marginal well' that is up to 15 BOE per day, which is vastly different than the 'marginal well' threshold in the proposed rule, which is 1,000 BOE per 12 months and 180 days of production. 10/29/25 Tr. 19:2-9.

68. Mr. Arthur also fundamentally misunderstood the proposed PNBU provisions, as demonstrated by his recommendation of a timeframe for the presumption that aligned with temporary abandonment status. 10/29/25 Tr. 41:4-42:4.

69. Mr. Arthur repeatedly failed to grasp the magnitude of the problem before the OCC, framing orphan wells as an "opportunity," characterizing the continued operation of low-volume wells as "buy[ing] time" for operators, and—despite evidence put forward during hearing about the problem of well orphaning—proposing to *extend* the current period of inactivity before an operator is required to plug a well from one year to three. 10/28/25 Tr. 268:14-15; 10/29/25 Tr. 69:11-17, 39:20-41:3.

70. Without any supporting evidence, Mr. Arthur falsely implied that the OCD's plugging costs for horizontal are inflated by unnecessary procedures. 10/29/25 Tr. 22:11-25:13.

71. While suggesting that OCD employ "risk-based bonding," neither Mr. Arthur nor any other witness offered any "specific framework that would increase existing financial assurance to account for enumerated risks." 10/28/25 Tr. 278:11-25; 10/29/25 Tr. 98:3-9.

72. Mr. Arthur objected to the proposed requirement that wells in temporary abandonment maintain an isolation device downhole, despite this being an established

requirement for wells on federal land. 10/29/25 Tr. 43:14-2.

Clayton Sporich

73. Mr. Sporich is NMOGA's legal expert but acknowledged that he is not an expert in New Mexico law. 10/30/25 Tr. 304:7-12.

74. Mr. Sporich confirmed that NMOGA witnesses failed to present "industry cost statistics, profiles, or bonding market conditions." 10/30/25 Tr. 300:24-301-12.

75. Mr. Sporich conceded that under the current rules, waste could occur. 10/31/25 Tr. 32:13-33:44.

76. Mr. Sporich recognized that for purposes of FA, it is the cost to OCD to plug a well, not the cost to industry, that matters. 10/30/25 Tr. 311:14-25.

77. Mr. Sporich acknowledged that increasing FA for marginal wells creates an incentive for operators to increase production. 10/30/25 Tr. 290:1-6.

78. Mr. Sporich conceded the legislature conferred authority upon the OCC and OCD to establish categories of FA after notice and hearing. 10/30/25 Tr. 294:12-21.

79. Mr. Sporich acknowledged that the FA $250,000 statutory cap applies to blanket plugging FA—not the entirety of the section. 10/30/25 Tr. 293:14-25. Mr. Sporich further acknowledged that NMOGA's proposal for a "risk based" FA framework relying on blanket bonds set according to the number of wells an operator has is not risk-based. 10/30/25 Tr.297:9 to 298:4.

80. Mr. Sporich conceded that his proposal that the current rules be maintained and reevaluated in 2-10 years was to "just slow down the process." 10/30/25 Tr. 298:19-299:25.

81. Mr. Sporich alleged that OCD staff might disclose confidential information in

exchange for payment, despite his admission that he had no knowledge of this ever having occurred. 10/30/25 Tr. 280:10-281:10.

82. Mr. Sporich mistakenly agreed that the striking of the noncompliant well allowance in NMOGA's proposal indicated their support for the proposal, demonstrating his lack of familiarity with the rules. 10/30/25 Tr. 288:4-17.

83. Mr. Sporich concedes that NMOGA's recommendation that the rebuttable PNBU should apply the definition of inactive wells creates a conflict between provisions. 10/30/25 Tr. 283:10-16, 286:9-20.

84. Mr. Sporich concedes that noncompliance should "always be a barrier" to change of operatorship, 10/30/25 Tr. 315:8-11, and he acknowledges that registering changes in operator is a necessary function of the OCD, 10/30/25 Tr. 314:3-11.

85. Mr. Sporich concedes that the OCD's costs of plugging—not industry's—should be considered when FA. 10/30/25 Tr. 311:14-25. Mr. Sporich also assumed, incorrectly and without any evidence in support, that the OCD's average plugging costs included and were inflated by reclamation costs. 10/30/25 Tr. 306:3-307:12.

86. Mr. Sporich conceded that the term "such as" in the definition of beneficial use does not indicate the following set of examples is exhaustive. 10/30/25 Tr. 276:7-23. Mr. Sporich further acknowledged that his proposed changes to the definition of beneficial use are essentially regulatory in nature, 10/30/25 Tr. 278:25-279:4, and that his proposals regarding the rebuttable PNBU and inactive wells conflict. 10/30/25 Tr. 284:20-286:14.

87. Mr. Sporich was unable to explain how his proposal of a multi-tiered blanket FA based on the number of wells was "risk-based." 10/30/25 Tr. 297:17-298:4.

Douglas Emerick

88. Mr. Emerick failed to propose specific language or redlines with his proposals. Many of his proposals lacked accompanying testimony explaining why they were needed, failing to provide the OCC justification for adopting them, and several of his proposals would have required statutory changes to be permissible. 10/29/25 Tr. 168-69, 202-03, 169-74.

89. Mr. Emerick conceded that although non-cancelable bonds are "hazardous" to a surety company, they are the exact opposite to the state. 10/29/25 Tr. 185.

90. Mr. Emerick relied on the W&T case considerably in his rebuttal testimony. Emerick Reb. Test. at 9-15. Despite the case's several antitrust claims, Mr. Emerick testified that the case was "not an antitrust case." 10/29/25 Tr. 167-68, 134:13. Regardless of his familiarity with that case, it is not illustrative of bonding in New Mexico—as Commissioner Bloom stated, onshore and offshore bonds are essentially "apples and oranges." 10/29/25 Tr. 201-02.

Arscott

91. Dr. Arscott is an economist for IPANM and began providing economic and financial consultation related to the oil and gas industry two years ago. 11/5/25 Tr. 44:13 to 45:2.

92. Dr. Arscott acknowledged that his testimony was a broad overview of oil and gas industry economics, but that he "did not do a full review of the market dynamic of the oil and gas industry in this state [New Mexico]." 11/5/25 Tr. 45:6-20.

93. Dr. Arscott recognized that an oil and gas well is a depreciating asset that has a decline curve, and that "a well could be termed economic provided the cash generated from operations exceeds the costs of operating the well." 11/5/25 48:3-20. The point when "net inflows will drop below the level of fixed costs … the well becomes unprofitable and the

operator has a strong economic incentive to plug and abandon the well." 11/5/25 Tr. 49:2-8.

94. Dr. Arscott admits that the cost of plugging and abandonment costs are not included as fixed costs or outflow in his analysis of well economics, and do not factor into a paying quantities determination. 11/5/25 Tr. 51:23 to 52:15.

95. Dr. Arscott provided in his direct testimony that "large operators"—which he qualifies as have 51 or more wells—are "likely to be well-capitalized and better able to adapt to the proposed rules by plugging marginal and inactive wells." IPANM Ex. (x) at 19.

96. According to Dr. Arscott's analysis of vertical wells in New Mexico, the proposed rules would generate $1.9 billion of additional FA coverage. That is not inclusive of horizontal wells and, accordingly, Dr. Arscott states: "I would characterize almost all of that $1.9 billion as unreliable in terms of an estimate." 11/5/25 Tr. 61:12 to 62:17.

97. Dr. Arscott acknowledges that "we have firms that have limited liability. This creates a moral hazard where firms potentially, could engage in fairly risky behavior. The costs of those risks could be borne by the public." 11/5/25 Tr. 65:13-16. Mr. Arscott also acknowledged that there are "bad actors" which he describes as "financially distressed firms operating assets that would not be economically viable, but for the failure to fully internalize the costs of their actions." 11/5/25 Tr. 74:13-17.

98. Dr. Arscott accepted that an average surety premium of between 2.5% and 5%, resulting in an annual premium of between $3,750 and $7,500 per year on a $150,000 level of FA, and that this amount could "wipe out the economic incentive to continue operations for many wells." 11/5/25 Tr. 69:11-24.

Representative Murphy

99. Mr. Murphy is a member of the New Mexico House of Representatives and serves as president of Strata Production Company. 11/4/25 Tr. 128:14-19.

100. The dominant influence guiding Mr. Murphy's testimony is the belief that "New Mexico does not have an orphaned well problem." 11/4/25 Tr. 174:23 to 175:3. After evaluating the Legislative Finance Committee report and being directed to the finding that there are approximately 5,000 wells in New Mexico at risk of becoming orphaned, Mr. Murphy dismisses those numbers as "pure speculation." 11/4/25 Tr. 166:16-23.

101. Mr. Murphy advocates for the use of New Mexico's reclamation fund to cover all of OCD's costs for the plugging and abandonment of orphaned wells, but admits that he does not know "to a percentage or number of wells that, after the necessary enforcement action, end up getting plugged by the Oil Conservation OCD." Nor did Mr. Murphy know "the number or percentage of wells after necessary enforcement action that are plugged by a third party, pursuant to a plugging demand made by another agency, such as the State Land Office or BLM." 11/4/25 Tr. 178:2-15.

102. Mr. Murphy agrees that pursuant to the term of the reclamation fund, OCD may use those funds "to plug and abandon both wells and associated production facilities" as well as "used for surface reclamation and remediation activities." 11/4/25 Tr. 181:19-25. Mr. Murphy also acknowledged that reclamation funds can be used and that "OCD may order wells plugged, regardless of their surface or mineral type," within the geographical boundaries of New Mexico, including on federal lands. 11/4/25 182:4-20. Mr. Murphy further acknowledged that proposed FA does not cover reclamation or remediation costs, nor have those costs been factored into OCD's average wellbore plugging costs. 11/4/25 Tr. 182:21 to 182:17.

103. Mr. Murphy acknowledges that New Mexico has "113 operators and 2,318 wells for which there is no production reported for over a year" and that "100 percent of these wells are out of compliance." 11/4/25 Tr. 180:1-9.

104. Mr. Murphy acknowledges that OCD has a duty to prevent waste, that "60 percent of inactive wells in New Mexico leak methane," and that proper plugging stops methane leakage and waste." 11/4/25 Tr. 227:11 to 228:9. Mr. Murphy also acknowledges that the "OCC is charged with protecting the environment, water and public health." 11/4/25 Tr. 230:2-7.

Kyle Armstrong

105. Mr. Armstrong is president and CEO of Armstrong Energy Corporation, an independent operator in New Mexico, currently operating 70 wells. 11/3/25 Tr. 97:18-21, 98:21. Mr. Armstrong acknowledged that two Armstrong Energy wells would fall within the marginal well definition in the proposed rules." 11/3/25 Tr. 137:15-23.

106. Mr. Armstrong stated that the higher producing wells create more revenues than marginal wells and that, "at such point that we can't make money on them, we tend to plug them." 11/3/25 Tr. 129:5-11. Mr. Armstrong stated that "[w]e pay for plugging out of cash flows and existing cash on hand. But we have not designated fund for plugging purposes." Mr. Armstrong acknowledged that this is fairly typical across the industry. 11/3/25 Tr. 129:22 to 130:2.

T. Calder Ezzell, Jr.

107. Mr. Ezzell is an attorney with Hinkle Shanor LLP and invests in oil and gas projects as a non-operational investor and through other entities. 11/3/25 Tr. 213:8 to 215:14.

108. Mr. Ezzell testified on behalf of IPANM and conceded he was profiting as a partner in Hinkle Shanor LLP and as a witness in this matter. 11/4/25 Tr. 62:8 to 63:2.

109. Mr. Ezzell opposes Applicants' proposed financial requirements for marginal wells and supported his position, stating that "even if you [] have one well and it's making three barrels a day, you're feeding your family and probably making a living. And a $150,000 bond will make you set it, plug it or walk away from it." 11/3/25 Tr. 224:21-25. In the example described by Mr. Ezzell, a well producing three barrels of oil per day would not be subject to Applicants' proposed FA requirements for what low-producing wells (formerly termed "marginal wells"), which apply to wells that produce less than 2.7 BOE per day and less than 180 days annually. Apps' Ex. 89-C.

110. Mr. Ezzell claimed that zero waste is allowed under the Oil and Gas Act. 11/3/25 Tr. 223:24 to 224:3. However, Mr. Ezzell conceded that to comply with the standard of zero waste does not mean an operator must produce a well to its very last hydrocarbon. 11/4/25 Tr. 46:1-9. Mr. Ezzell clarified that there is an economic limit to each well, meaning the point at which a well is no longer capable of producing in paying quantities. *Id.* 46:13-24.

111. Mr. Ezzell claimed that OCD does not have the authority to implement Applicants' proposed rules at 19.15.9.8 NMAC and 19.15.9.9 NMAC because the OCD has no authority to require other states to divulge their violation history. 11/3/25 Tr. 266:14-24. However, Mr. Ezzell conceded that Applicants' proposed rule requires an authorized official from the operator to provide this information to OCD, not another state. 11/4/25 Tr. 46:25 to 49:2.

112. Mr. Ezzell testified that he disagreed with Applicants' witness, Tom Alexander's testimony that virtually all inactive wells were reactivated within eight years. 11/3/25 Tr. 269:21

to 270:16. However, Mr. Ezzell conceded that he has no data-backed evidence to dispute Mr. Alexander's testimony nor Applicants' data on inactive wells presented in Applicants' Exhibit 13. 11/4/25 Tr. 52:9 to 53:12.

113. Mr. Ezzell claimed that Applicants' proposed amendments to 19.15.8.9 NMAC would require FA according to these rules for federal wells in inactive and temporary abandonment status. 11/4/25 Tr. 53:13 to 55:1. However, Mr. Ezzell acknowledged that Applicants' proposed amendments to 19.15.8.9.A NMAC preserve the existing rule language, which provides that the OCC's FA requirements apply to wells in New Mexico "unless the well is covered by federally required financial assurance." *Id.* 55:2 to 56:5.

114. Mr. Ezzell claimed that bonds are not cancelable, absent the fulfillment of the act that is being bonded. 11/3/25 Tr. 276:22 to 277:11. However, Mr. Ezzell conceded that the OCD can release bonds during well transfers. 11/4/25 Tr. 80:14 to 81:13.

115. Mr. Ezzell presented extensive testimony on the different forms of oil and gas agreements that can govern the operations of a well. *E.g.*, 11/3/25 Tr. 228:12 to 231:20. However, Mr. Ezzell conceded that OCD is not a party to joint operating agreements, nor is OCD bound by the terms of joint operating agreements. 11/4/25 Tr. 85:13-25. Mr. Ezzell also conceded that OCD does not approve or disapprove joint operating agreements. *Id.* 85:19-21

116. Mr. Ezzell opposed Applicants' proposed rules, arguing that a risk-based approach is needed based on looking at individual operators. Ezzell Dir. Test. at 58. However, Mr. Ezzell opposes requiring small independent operators disclose their balance sheets and financial information to the public or OCD. 11/4/25 Tr. 105:25 to 106:14.

117. When asked by Commissioner Ampomah how he would recommend the OCC use the statutory factors to quantify one well plugging FA, Mr. Ezzell concedes that he has no

specific, evidence-backed proposal to recommend the OCC. 11/4/25 Tr. 110:23 to 113:2.

118. Mr. Ezzell conceded that his opinion on the impact of Applicants' proposed rules is not informed by any independent analysis conducted by himself. *Id.* 113:3-14.

Trevor Gilstrap

119. Mr. Gilstrap is a Senior Vice President and National Energy Practice leader within Assured Partners, an international insurance broker. 11/3/25 Tr. 164:10-13.

120. Mr. Gilstrap acknowledged that sureties underwrite each bond largely based on the financial strength and credit worthiness of a particular operator. 11/3/25 Tr. 183:9-12.

121. When asked by Commissioner Ampomah for alternatives solutions to addressing the orphan well problem, Mr. Gilstrap conceded that his testimony simply opposed Applicants' proposal and that he had no specific, evidence-backed alternative proposal to recommend for the OCC's consideration. 11/3/25 Tr. 205:15 to 206:6.

122. Mr. Gilstrap discusses his general support of well-specific plugging insurance policies and pre-funded pools at length but offered no specific, evidence-backed policy proposal for the OCC's consideration. 11/5/25 Tr. 173:1 to 178:8.

John Nabors

123. Mr. Nabors is the Executive Vice-President, Operations of Spur Energy Partners LLC, an independent operator in New Mexico, currently operating approximately 2,700 wells in New Mexico. 11/6/25 Tr. 106:13-25.

124. Mr. Nabors conceded that an exception for midstream takeaway capacity to the FA requirements for marginal wells could alleviate some of the concerns operators have about

Applicants' proposed rules. 11/6/25 Tr. 118:22 to 119:18.

125. Mr. Nabors presented an anecdote about the Electra 22 well and claimed that had Applicants' proposed rules been effective in 2023-24, it is very possible Spur Energy would have plugged the well rather than repair and produce the well. Nabors Reb. Test. at 5-6. However, Mr. Nabors conceded that when analyzing the economics of its wells, it is not simply a choice between producing or plugging a well – Spur energy can also transfer wells to other operators that may produce the well. 11/6/25 Tr. 116:22 to 117:3.

126. Mr. Nabors' conceded in his testimony about Spur Energy's Electra 22 well that the reason the well was not repaired at the time was not due to the lack of midstream takeaway capacity but rather because the well was uneconomic. 11/6/25 Tr. 112:10 to 113:24.

127. When asked how Applicants' proposed FA rules on marginal wells would affect Spur Energy's business strategy, Mr. Nabors testified that Spur Energy would abide the rules but acknowledged he did not know what the increased cost for the bonds would be, if any. 11/6/25 Tr. 111:2-16. Mr. Nabors' speculation on the potential impact of Applicants' proposed rules was not supported by any data or modeling. *See id.*

Jim Winchester

128. Mr. Winchester is the Director of the Independent Petroleum Association of New Mexico. 11/3/25 Tr. 18:1-7.

129. Mr. Winchester stated that IPANM agrees with Applicants and OCD about the scope of the current orphan well problem and agrees that it is a problem that needs a solution. *Id.* 20:5-8. Mr. Winchester testified that there are solutions that are out there but did not present the OCC any specific, data-backed proposals. *Id.* 45:11-12; *see also id.* 17:20 to 96:10.

130. Mr. Winchester made various claims about the existing FA rules and Applicants' proposals, including that bonding has historically been ineffective in New Mexico and that Applicants' rules proposing operators provide plugging and abandonment plans to OCD would not ensure that operators will have funds available in the future to P&A wells. *Id.* 26:18-20, 56:15 to 57:13. However, Mr. Winchester conceded that he is not a qualified expert in any subject area related to this rulemaking, including oil and gas operations, implementing regulations that affect oil and gas companies, and law. *Id.* 21:10-22. He also conceded he is not an expert in corporate finance or risk. *Id.* 56:12-14.

131. Mr. Winchester's testimony included opinions on Applicants' proposed rules that reflect feedback from IPANM member operators that he surveyed. *Id.* 22:5 to 23:3. Mr. Winchester that in some cases his testimony reflects the responses from only seven companies out of approximately 107 companies that make up IPANM's membership. *Id.* 53:21-54:20. Mr. Winchester admitted that neither he nor IPANM provided the survey responses he received. *Id.* 53:1-20.

132. Mr. Winchester claimed that under Applicants' proposed rules, increased bonding requirements would be unreasonable for "good" operators. When asked by Chair Chang whether it is possible for good actors to be unable to plug wells based on some misfortune outside their control, Mr. Winchester had no response. *Id.* 92:25 to 93:23.

CONCLUSION

Based on the complete record, OCD requests the OCC adopt Applicants' and OCD's final proposals, supported by SLO and OXY (with two minor exceptions), in their entirety.

Respectfully submitted,

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