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**

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S RESPONSE TO APPLICANTS' MOTION FOR REHEARING

Applicants assert that the Commission's Proposed Final Rule Amendment concerning required financial assurance for inactive wells, approved temporary abandoned status wells, and expired temporary abandoned status wells is properly reflected in NMAC 19-15.8.9~~[D]~~ F,[1] rather than the Commission's Rule Making Order and Reasons for the Action Taken.[2] However, the language in Subsection F under the Proposed Final Rule Amendments urged by Applicants introduces ambiguity and absurdity in application. A side-by-side comparison, reflecting the formatting in the Commission's filings demonstrates the difference:

Rule Making Order at B(4)(i)	**Proposed Final Rule Amendments**
"**Wells that are in approved temporarily abandoned status for more than two years, inactive wells, and wells that are in expired temporarily abandoned status.** ~~Inactive wells and wells in approved and expired temporarily abandoned status~~. An operator shall provide financial assurance for wells that are ~~inactive and wells in approved and expired temporarily abandoned status,~~ in approved temporarily abandoned status for more than two years, in inactive status, or in expired temporarily abandoned status ~~or for which the operator is seeking approved temporary abandonment pursuant to 19.15.23.13 NMAC~~ in one of the following categories:"	~~[D]~~ **F.** ~~**[Inactive wells]**~~ **Wells that are in approved temporarily abandoned status for more than two years, inactive wells, and wells that are in expired temporarily abandoned status.** ~~[An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years]~~ An operator shall provide financial assurance for wells that are in approved temporarily abandoned status for more than two years, in inactive status, or in expired temporarily abandoned status or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories

[1] *See* Proposed Final Rule Amendments dated July 16, 2026, at page 8 of 17.
[2] *See* Rule Making Order and Reasons for the Action Taken dated July 16, 2026, at page 5 of 8.

Parsed, the categories of temporarily abandoned status wells requiring single well financial assurance at $150,000, under the Proposed Final Rule Amendment version, encompass ALL wells for which an operator is seeking to place the well in approved temporary abandonment pursuant to 19.15.25.13 NMAC:

> An operator shall provide financial assurance for wells that are in *{1} approved temporarily abandoned status for more than two years, {2} in inactive status,* or *{3} in expired temporarily abandoned status* or *{4} for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC* in one of the following categories:

Including the fourth clause identified above in the Final Rule language, which the Commission struck in its Rule Making Order and Reasons for the Actions Taken under Part B(4)(i), introduces two illogical results: First, that a well which is already in approved temporarily abandoned status is one in which the operator would seek "approved temporary abandonment" a second time. Second, the Commission's stated reason that the modification was necessary for operators with active wells which the operator wants to transition to approved temporarily abandoned well, Rule Making Order at B(4)(ii), in accordance with the two year time period referenced in NMSA 1978, § 70-2-14(A). *See* Rule Making Order at B(4)(iv). If a single well financial assurance is to be required for ALL wells to be placed into approved temporary abandonment, the fourth clause swallows the prior three limitations.

In order to comport with the Commission's stated reasons for modification, the fourth clause in 19.15.8.9(F) ("or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC") should be struck from the Proposed Final Rule Amendments.

Separately, Applicants' request for additional language as a "clarification" is misleading. Such language was never proposed as part of Applicants' first Application, its Revised Application, or its second revised amendment of proposed changes to the rules following the parties' post-hearing sixteen negotiation sections, *i.e.* Applicants' Exhibit 89. As IPANM has continued to assert and represent to the Commission, Applicants' focus on temporary abandoned wells as a solution to orphan wells simply does not bear out. First, only a handful of wells on the OCD's Orphan well spreadsheet were ever in TA status prior to abandonment. This is because an operator who invests time, planning, and funds in maintaining and monitoring a TA well in pressure-controlled status is <u>unlikely</u> to walk away from that investment and has demonstrated practices which align with responsible and prudent operatorship. Second, Applicants' own experts and analysis represent that 98% percent of TA wells are reactivated within the first 8 years, and overall TA wells are a very small population of wells.

Not only is Applicants' premise for the modification of 19.15.8.9(F) NMAC unsupported, the insertion of Applicants' highlighted and red underlined language[3] introduces an implementation logjam. The Commission has adopted amendments which set a delayed effective date as to low producing and high risk portfolio financial assurance at May 1, 2029, at 19.15.8.9(D)(2) and 19.15.8.9(E)(1) and a staggered roadmap for operators with wells in various lengths of temporarily abandoned status. *See* Proposed Final Rule Amendments at 19.15.25.13(E)(1)-(3), at pages 15-16. Further, as highlighted in IPANM's separately filed Motion for Rehearing, requiring a heightened bond level for TA wells in the first two years of TA status runs counter the statutory protections and legislative intent of the 2015 amendments. Because the Commission has elected to adopt Applicants' definitional changes in temporary abandonment,

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[3] *See* Applicants' Motion for Rehearing, ¶10 ("…<u>Notwithstanding the foregoing, a well that is subject to a one well plugging financial assurance pursuant to Subsection D or Subsection E of this Section immediately prior to being placed in approved temporarily abandoned status shall continue to be subject to the one well plugging financial assurance of $150,000 during the first two years in approved temporarily abandoned status</u>. …")

marking a sharp deviation from decades of industry and agency practice and policy, adding more layers to the existing proposed rule introduced by Applicants is ill-advised a this late juncture without full comprehension of each circumstance in which such a change creates follow-on consequences and possibly unintended effects. The goal of clarity in administrative rulemaking goes to the constitutional concept of due process, that a regulated party has fair notice of what conduct is required or prohibited. *United States v. Medeiros*, 647 F. Supp. 3d 1130, 1150 (D.N.M. 2022), *aff'd, United States v. Medeiros*, 2023 WL 8752921 (10th Cir. Dec. 19, 2023). Under the Uniform Statute and Rule Construction Act, rules are to be construed to give effect to the entirety of the language in the regulation. NMSA 1978, §12-2A-18 Applicants' position and requested "clarifications" introduce uncertainty and absurdity in applying the whole text advocated for by Applicants and should be rejected by the Commission.

WHEREFORE, IPANM respectfully requests that the Commission: (1) deny Applicants' Motion for Rehearing, (2) issue an Amended Proposed Final Rules that follows the modified language adopted by the Commission in its *Rule Making Order and Reasons for Action Taken* with respect to 19.15.8.9(F), and strikes the fourth clause of the same as indicated above; and (3) other and such further actions as the Commission deems necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Motion for Clarification was served to counsel of record by electronic mail this 5th day of August 2026, as follows:

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