

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**APPLICATION OF SOZO I LP AND SOZO NATURAL RESOURCES, LLC
TO REQUIRE A COMMON PURCHASER TO RATABLY TAKE GAS
ON REASONABLE TERMS UNDER THE TERMS OF
NMSA 1978 §70-2-19.D AND 19.15.24.12 NMAC,
LEA COUNTY, NEW MEXICO.**

CASE NO. 21593

APPLICATION TO RE-OPEN CASE NO. 21593

CASE NO. 21726

ORDER NO. R-21720

ORDER ON MOTIONS TO DISMISS

This matter comes before the Director of the New Mexico Oil Conservation Division (“OCD”) on a Motion to Dismiss filed by Targa Midstream Services LLC ("Targa") to dismiss Case No. 21593 filed by Sozo I LP and Sozo Natural Resources, LLC (collectively “Sozo”), and on a Motion to Dismiss filed by Sozo to dismiss Case No. 21726 filed by Targa. The Director, having heard this matter through a Hearing Examiner on January 7 and April 8, 2021, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. Summary of Proceedings. Sozo filed an application with the OCD on December 8, 2020 (“Application”) seeking an order requiring Targa “to ratably take gas from a well on reasonable terms to keep the well economic”.
2. OCD placed the case on the January 7, 2021 hearing docket as a status conference. Sozo appeared but Targa did not. The Hearing Examiners allowed Sozo to present certain evidence in order to better understand the nature of its claims. The Examiners requested that Sozo prepare a legal memorandum detailing its claims. On the day after the January 7 hearing, Targa entered an appearance in Case No. 21593. On January 20, 2021, Targa filed a motion to reopen Case No. 21593 and requested a status conference to schedule a hearing. OCD created a new case number for Targa’s motion (Case No. 21726).
3. Targa filed a Motion to Dismiss (“Targa Motion”) on February 24, 2021. After a status conference on March 8, 2021, OCD set a schedule for briefing on the Motion. On March 19, 2021, Sozo filed a Motion to Dismiss Targa Case No. 21726 (“Sozo Motion”).

4. The Targa Motion seeks dismissal of the Application either for failure to state a discrimination claim or for summary judgment based on the lack of any evidence to support a discrimination claim under the Oil and Gas Act or under the rules of the Oil Conservation Commission. In its response, Sozo moved to strike the Targa Motion on the grounds that Targa did not have standing.

5. In its response to the Motion and in its own Motion to Dismiss Case No. 21726, Sozo argues that Targa could not become a party by entering an appearance after a hearing and therefore lacked standing to file its motion. Sozo seeks to have Targa's entry of appearance and motion stricken from the record and Case No. 21726 dismissed.

6. On April 8, 2021, oral arguments on both motions to dismiss were presented to the OCD.

7. Legal Background. Sozo cites to the Oil and Gas Act, NMSA 1978, §70-2-19 ("Act"), and the rules of the Oil Conservation Commission, 19.15.24.12 NMAC ("Rules") for the authority of OCD to act on its Application. These laws place certain limitations on persons who purchase oil or gas from wells.

8. The Act provides that a common purchaser of gas "shall purchase gas" from the pool that is either produced from wells connected to its transportation facilities or delivered to its facilities, and the common purchaser is prohibited from discriminating in favor of one producer over another:

Such purchases shall be made without unreasonable discrimination in favor of one producer against another in the price paid, the quantities purchased, the bases of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from such wells.

NMSA 1978, §70-2-19(D).

9. The Act also provides that:

reasonable differences in prices paid or facilities afforded, or both, shall not constitute unreasonable discrimination if such differences bear a fair relationship to differences in quality, quantity or pressure of the gas available or to the relative lengths of time during which such gas will be available to the purchaser.

Id.

10. The Act allows the agency to develop rules governing ratable take that a common purchaser must follow. §70-2-19(E). The Rules largely restate the language of the Act but add an exemption for hardship wells, 19.15.24.12(C)(3) NMAC, and a further limitation that nothing in the Rules requires "a common purchaser to purchase gas of a quality, under a pressure or under other condition by reason of which the common purchaser cannot economically and satisfactorily use the gas by means of the common purchaser's gas transportation facilities then in service."

19.15.24.12(E). The Rules also provide that a common purchaser is subject to any special pool orders governing ratable take. 19.15.24.12(D).

11. The Act does not provide a specific process for enforcing a violation of the ratable take provisions. In general, the Act allows the Division to seek compliance for any violation through a notice of violation or an action in district court, NMSA 1978, §70-2-31, and allows a private party affected by a violation to file suit in district court. NMSA 1978, §70-2-29.

12. Sozo Motion. For the purposes of this Order, the claims in the Sozo's response to Targa Motion will be considered together with the Sozo Motion. Sozo argues that Targa entered the case too late to be a party and therefore has no standing and OCD must strike the entry of appearance and Targa Motion and deny the Targa Motion.

13. Sozo relies on a Commission order for the proposition that an entry of appearance after a hearing does not confer party status. *In re Matador Production Co.*, Order R-14097-A (March 10, 2016). The Commission Order discusses when a person can be a "party of record" who is able to seek de novo review of a Division order before the Commission. In that case, a person who filed an entry of appearance in a case after the record was closed and the case was taken under advisement was held not to be a party of record.

14. In this case, the matter was set for a "status conference" on January 7, 2021. (1-7-21 Tr. 3:15-16). The Hearing Examiners requested Sozo provide an explanation of its case "so we can get a better sense of what is needed for a hearing". (1-7-21 Tr. 3:21-22). The Examiners explained that for a unique case such as this one, the practice is to set up a status conference first before a hearing "to hear a few details about the case from both parties involved." (1-7-21 Tr. 6:9-10). As part of the explanation of the nature of the case, the Examiners allowed testimony from Sozo's witness.

15. At the end of the status conference, the record was not closed and the case was not taken under advisement. Instead, the Examiners explicitly continued the case and kept the record open for submittal of a legal memorandum from Sozo and would then determine the next steps. (1-7-21 Tr. 27-28).

16. The Commission's rules on adjudicatory proceedings provide that "A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division." 19.15.4.10(B) NMAC. Targa filed an entry of appearance one day after the January 7 status conference.

17. Targa Motion. For the purposes of this Order, OCD assumes certain facts alleged in the Application and in the testimony of Sozo's witness.

18. Sozo is the operator of the Caleb State No. 1 Well ("Well") in Lea County. The well was drilled and completed in 2006 and Sozo acquired the well in March 2020. Targa is the gas purchaser for the Well.

19. In the Application, Sozo alleges that Targa has terminated the current agreement with Sozo and offered a substitute agreement with a substantial increase in costs. Sozo's witness testified to the negotiations that have occurred between Sozo and Targa. (1-7-21 Tr. 16-21).

20. Sozo's evidence states that the well was "marginally economic" under the prior gas purchase agreement, which had been in effect for 14 years. (Sozo ex. B). Sozo claims the price increases under Targa's proposed new agreements would make the well uneconomic. Id. (1-7-21 Tr. 12:2).

21. There are no allegations in the Application or in the testimony that Targa is refusing to purchase gas from Sozo's well or that Targa is discriminating against Sozo in favor of another producer.

22. Sozo did not provide specifics on a remedy. The Application requests that OCD "enter an order requiring Targa to take Sozo's gas under non-discriminatory terms." Before the OCD, Sozo's counsel responded to the Examiner's question on a remedy was "whatever the Division thinks is fair and reasonable". (1-7-21 Tr. 7:9-10). The Examiners asked Sozo to provide a memorandum which included a potential remedy. (1-7-21 Tr. 27). Sozo has not provided the memorandum.

CONCLUSIONS OF LAW

23. OCD has jurisdiction over this matter and the parties pursuant to NMSA 1978, Section 70-2-19.

24. Targa's entry of appearance one day after a status conference, where the case was continued and the record kept open, made Targa a party in Case No. 21593. 19.15.4.10(A)(2) NMAC. The Commission's decision in the Matador Production case is inapplicable because, in this case, the record was not closed and the case was not taken under advisement. Order R-14097-A.

25. OCD assumes, for the purposes of this Order, that Targa is a common purchaser of gas and Sozo operates a well that is connected to Targa's transportation facilities. 19.15.24.12(A) NMAC.

26. As a common purchaser, Targa "shall purchase gas" produced from Sozo's well and must do so "without unreasonable discrimination" in favor of another producer "in the price paid, the quantities purchased, the bases of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from the wells". 19.15.24.12(B).

27. Sozo has failed to allege or present evidence that Targa is refusing to purchase gas from Sozo or that Targa is discriminating against Sozo in favor of another producer.

28. Therefore, Sozo's Application fails to state a claim on which relief can be granted and must be dismissed.

IT IS HEREBY ORDERED THAT:

1. The Sozo Motion is denied,
2. The Targa Motion is granted, and
3. The Application is dismissed.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



**ADRIENNE SANDOVAL
DIRECTOR
AES/bb**

Date: 6/07/2021