

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 21528

APPLICATION OF THE OIL CONSERVATION DIVISION
TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC,
AND TO AMEND 19.15.7 NMAC, 19.15.18 NMAC AND
19.15.19 NMAC, STATEWIDE.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING
Agenda Item 5
November 4, 2020
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
CHRIS MOANDER, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, November 4, 2020, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

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APPEARANCES

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INDEX

Case Called	03
Reporter Certificate	87

1 CHAIRWOMAN SANDOVAL: All right. Moving on to
2 Agenda Item Number 5, which is case Number 212 -- I'm
3 sorry -- 21528, which is the application of the New Mexico
4 Oil Conservation Division to consider proposed rules to
5 regulate the venting and flaring of natural gas from oil and
6 natural gas production and gathering facilities.

7 To begin with, there are a couple different
8 parties who entered appearances in this case, and to begin
9 with, Mr. Ames, would you like to make a statement regarding
10 the Division's application?

11 MR. AMES: I would, Madam Chair, thank you.

12 My name is Eric Ames. I'm counsel for the Oil
13 Conservation Division. The Division has filed an
14 application for a rulemaking proceeding. We request that
15 the Commission set a public hearing for January 5 to hear
16 OCD's proposal to adopt rules to regulate the waste of
17 natural gas by venting and flaring in the production and
18 gathering sectors of the oil and gas industry.

19 These proposed rules are the combination of an
20 extensive public process initiated by Governor Lujan
21 Grisham. In January of 2019, Governor Lujan Grisham issued
22 an executive order establishing the state's goal to reduce
23 greenhouse gas emissions by 45 percent below 2005 levels.

24 Methane is a potent greenhouse gas, and it
25 accounts for one-third of the state's greenhouse gas

1 emissions. And 60 percent of this methane is natural gas
2 vented and flared by oil and gas during production and
3 processing.

4 Now, the executive order specifically tasked OCD
5 to take action to reduce the waste of natural gas. To carry
6 out that task, OCD, along with the New Mexico Environment
7 Department, convened a methane advisory panel also known as
8 the MAP. The MAP consisted of industry, environmental and
9 community representatives.

10 The MAP reviewed data practices and technology
11 producing the waste of natural gas in the oil and gas
12 industry and produced a report, a technical report with
13 recommendations on actions that OCD could take.

14 Now, OCD has carefully reviewed that report. It
15 looked at the efforts and experiences in other states, and
16 it's applied the guiding principles in the governor's
17 executive order, which are, use the best available science,
18 employee creative engineering and technological solutions,
19 engage with stakeholders and ensure meaningful compliance.

20 And after all OCD drafted a set of proposed
21 rules. We then released those proposed rules for public
22 comment for nearly 45 days. And we met with industry trade
23 groups and representatives of the environmental community
24 groups, as well as individual operators in the state.

25 We then revised the draft rules, and these are

1 the rules that we are proposing to the Commission today.
2 OCD respectfully request the Commission schedule this
3 hearing for January 5. If the hearing is set for January 5,
4 OCD plans to publish notice in the New Mexico Register on
5 November 24. The public will then have another 40 days or
6 so to submit comment in writing or at the hearing itself.

7 OCD also requests that the Commission set a
8 deadline of December 18 for persons to file prehearing
9 statements in order to present technical testimony at the
10 hearing.

11 Now, with respect to prehearing statements, I
12 need to correct an inadvertent error in our application and
13 draft notice. The application calls for prehearing
14 statements to be filed by December 22. Our draft notice
15 said January 5. Neither is right.

16 Per OCD rules, in Part 3, Section 11(B)2,
17 prehearing statements must be filed ten business days prior
18 to the hearing, which, by my calculation, is December 18,
19 which is the date we request here today.

20 OCD also requests that the Commission adopt
21 additional procedures in order to ensure an efficient
22 hearing process. Those procedures are outlined in our
23 application, but I will very briefly review them here.

24 First, OCD requests that the Commission establish
25 a deadline for prehearing motions and require counsel to

1 consult and state the position of other parties regarding
2 those motions.

3 OCD also asks the Commission to appoint a hearing
4 examiner to hold a prehearing conference to decide
5 procedural matters and other non-dispositive prehearing
6 motions before the hearing.

7 Third, OCD requests that the Commission schedule
8 time either at its December meeting or a special meeting if
9 necessary to hear and decide any dispositive motions. OCD
10 is particularly interested in avoiding bogging down the
11 start of the hearing with dispositive motions that are late
12 filed.

13 And then, finally, the OCD requests that the
14 Commission authorize a party to present its witnesses as a
15 panel for the purpose of cross-examination. We understand
16 that this is not a, a practice that OCC -- that the
17 Commission has used before, but the Commission would not be
18 the first to do it.

19 It's been used successfully by the Environmental
20 Improvement Board, for instance, in the context of
21 rulemaking. And in the context of rulemaking this approach
22 is particularly appropriate because it fits the objective of
23 a rulemaking, which is for the Commission to gather the best
24 available information in order to make a decision.

25 We think that cross of a panel rather than

1 individual witnesses works better than the traditional
2 approach because if one witness doesn't have specific
3 information, another can provide it and there is no need to
4 then recall a witness in order to gather that specific
5 information. That is a very -- can result in a very
6 disjointed and inefficient process.

7 Finally, I would like to mention that the Western
8 Environmental Law Center filed a motion on Monday requesting
9 that parties file post hearing briefings or post hearing
10 submittals. And I only mention that now because the motion
11 did not indicate that OCD told -- well, that it opposes that
12 request. We're not sure exactly what's being requested. We
13 also believe the request is premature and that the
14 Commission rules clearly state that such a request is better
15 posited at close of the hearing. I won't go any further,
16 but I would request an opportunity to be heard again when
17 that motion is considered.

18 So to recap, OCD requests that the Commission set
19 a hearing on January 5 on the pending application, set the
20 date for prehearing statements for December 18, and adopt
21 the additional procedures proposed by OCD in its
22 application. Thank you.

23 CHAIRWOMAN SANDOVAL: Thank you, Mr. Ames.
24 Commissioners, do you want to go through the remainder of
25 the parties and ask questions, or do you have a preference

1 about asking them now or later?

2 COMMISSIONER KESSLER: I'm happy to hear from all
3 the parties, but I will defer to you, Director.

4 COMMISSIONER ENGLER: I agree.

5 CHAIRWOMAN SANDOVAL: Okay. Mr. Feldewert, NMOGA
6 has also entered its appearance. Do you have any comments?

7 MR. FELDEWERT: Yes, Madam Chair, Members of the
8 Commission, Michael Feldewert of the Santa Fe office of
9 Holland & Hart on behalf of the New Mexico Oil and Gas
10 Association. I have visited briefly with both counsel on
11 some of these issues. I have not had a chance to visit with
12 Mr. Ames much about this panel approach. I do have some
13 thoughts on that.

14 But saving that for a moment, the appointment of
15 a hearing examiner to hold the prehearing conference to
16 decide non-dispositive motions or procedural matters, I
17 don't -- I'm not sure the Commission has ever done that.
18 I'm not sure what types of issues would be addressed.

19 I know the Commission chair has the authority to
20 decide the order of testimony, for example, if you look at
21 the Commission's rules to hold prehearing conferences, there
22 are a variety of issues as needed. I guess if you had,
23 examiner questions would arise whether the examiner is going
24 to issue a recommended decision or going to make a decision,
25 and if the party doesn't like the decision, do they get to

1 appeal to the Commission? I'm not sure we have time for all
2 of that if we are going to have a hearing on January 5.

3 So that's the thoughts I have there. I don't
4 disagree necessarily with the deadline for pretrial
5 dispositive motions if the parties intend to file some,
6 that's up to the Commission. I don't know if the Commission
7 is going to have time in advance of January 5 to hear those
8 motions or whether you would rather have those motions at
9 the end if we are going to have any post hearing
10 submissions.

11 The panel approach to cross-examination is
12 trouble. It's really seeking delayed cross-examination of
13 not only a panel of witnesses rather than requiring each
14 witness to stand alone on the subject of that witness'
15 testimony.

16 I have never been involved in a proceeding where
17 you didn't question the witness at the close of the direct
18 testimony. The Commission has never authorized that
19 different approach in an adjudicatory or a rulemaking
20 proceeding, and, in my opinion, it should not be for a
21 couple of reasons.

22 In my mind the parties should remain entitled to
23 question a particular witness on the subject of that
24 witness' direct testimony immediately after it is given when
25 it's all fresh in our minds. That's what's contemplated by

1 the Commission's rules.

2 Mr. Moander, welcome, but when I look at the
3 Commission rules, 19.15.3.12(B), which relate to the
4 rulemaking, states that a person who testifies at the
5 hearing is subject to cross-examination by the
6 Commissioners, Commission counsel or a party on the subject
7 matter of the person's direct testimony.

8 Now, prior Commissions have always required each
9 witness to address questions from the parties and the
10 Commission on the subject of their direct testimony at the
11 time it's given for the reason being it's still fresh in
12 everyone's minds. And I think it's -- I know Mr. Ames, I
13 guess, disagrees, but I think it's the more effective way to
14 proceed because in a case, matter like this, we are going to
15 have multiple days of testimony by various parties.
16 Parties -- neither the parties nor the Commission should
17 have to wait hours or even days until all witnesses have
18 testified and then try to remember who testified to what and
19 on what subject.

20 I mean, it's hard to keep track with notes and
21 who testified on what when have you a single witness.
22 Imagine the difficulty here if you have days of witnesses,
23 days of testimony from different witnesses on different
24 topics before any questions can be asked by other parties.

25 I think it's also going to create difficulty with

1 the transcript and the court reporter. Right now when we
2 get a transcript you have a list of witnesses in the order
3 in which they are presented. And that list of witnesses in
4 the transcript has sequential page numbers. It has the
5 direct testimony, the cross-examination, the questions from
6 Commissioners, and then any rebuttal or redirect, all in a
7 nice block, all in sequential page numbers so you can see
8 when a witness testified in a certain portion of the
9 transcript.

10 I'm afraid that under this panel approach, the
11 testimony of a particular witness on a particular subject is
12 going to be hard to find and follow because it's going to be
13 disjointed throughout days of testimony. I also understand
14 that the panel approach has sometimes, not always, but
15 sometimes been used by other agencies. Mr. Ames referenced
16 the HIB, I think he said. That's done in circumstances
17 where you had prefiled direct testimony and you have
18 prefiled rebuttal. That is not done here with this
19 Commission.

20 And finally, it seems to me that this panel
21 approach unnecessarily raises due process concerns. We have
22 that rule I just read to you that allows parties to
23 cross-examine the witness on the subject matter of that
24 witness' testimony. And due process affords each party an
25 opportunity to question the credibility and the knowledge of

1 a witness on the subject matter of their direct when it's
2 offered. When it's offered. In other words, the right to
3 question a witness on what that witness said at the time
4 it's said, when everyone remembers what that witness said.

5 This delayed panel approach to cross-examination
6 infringes on that right, and, quite frankly, I think it
7 helps to cover a witness who may not be particularly strong
8 in the area in which that witness testified.

9 So I look at this, this virtual rulemaking
10 hearing is going to be new. It's a departure from past
11 practice, it's going to have inherent difficulties and
12 challenges that we are all going to have to meet, and I
13 don't think we want to compound those difficulties and
14 challenges with the uncertainty and the novelty of a panel
15 approach to cross-examination which has never been used by
16 this Commission, and which, in my opinion, infringes upon
17 effective examination of a witness on that witness'
18 testimony by parties and the Commission.

19 So we would ask that you deny the request to
20 delay cross-examination until all witnesses have testified,
21 and then the suggestion that they should be allowed to be
22 presented as a panel rather than stand-alone on the subject
23 on which that particular witness testified.

24 The occasion -- well, I will comment later on the
25 motion that was filed by Ms. Fox once I hear a little bit

1 more about what she is proposing because I'm like Mr. Ames,
2 I'm not sure what they are suggesting should be done here,
3 but thank you.

4 CHAIRWOMAN SANDOVAL: Thank you, Mr. Feldewert.
5 Ms. Fox, would you like to make a statement?

6 MS. FOX: Yes, I would. Thank you, Madam Chair,
7 Members of the Commission. My name is Tannis Fox. I'm here
8 today with Eric Schlenker-Goodrich. We are the Western
9 Environmental Law Center, and we are here today representing
10 Conservation Voters New Mexico, Earthworks and San Juan
11 Citizens Alliance.

12 Let's see, with respect to -- let me first
13 address Mr. Ames' proposals, and then if -- if it is all
14 right with the Commission, with the Chair, I'll address our
15 procedural motion.

16 CHAIRWOMAN SANDOVAL: Please proceed.

17 MS. FOX: Thank you. With regard to Mr. Ames'
18 proposals, we support his proposals, I guess, with the
19 caveat that the prehearing hearing on motions obviously
20 doesn't preclude motions from being filed after that. We
21 support a prehearing hearing on dispositive motions, that's
22 fine.

23 With respect to having a panel for cross-
24 examination, we do not object to that request. I have been
25 involved in a number of proceedings where that procedure has

1 been used in a rulemaking, and I understand Mr. Feldewert's
2 concerns because he hasn't used that procedure before and he
3 is probably used to a lot of the adjudicatory proceedings
4 where you cross a witness right after the witness is up.

5 But, in my experience, using this panel approach,
6 especially in a rulemaking, whereas Mr. Ames points out, the
7 point is to get before the Commission the best evidence
8 available. It's really proven to be a pretty effective and
9 also efficient procedure.

10 One of Mr. Feldewert's concerns was that you
11 can't -- you are not going to be able to question a witness
12 on their testimony if you've got this panel approach, and in
13 my experience that's not the case. You can in undertaking
14 cross-examination drill down on a particular witness and
15 insist that that witness answer your question about their
16 direct testimony. So I don't think that that's a concern,
17 you don't have to defer to another witness to answer a
18 question.

19 But where this procedure I think becomes
20 invaluable in terms of time efficiency and giving the
21 decision-making body a lot of information is when one
22 witness can't answer a question but another can. So we do
23 not object to that procedure. I have seen it used, and I
24 have seen it used effectively and efficiently.

25 With regard to our motion, we are asking for a

1 couple of things. First we are asking for the Commission to
2 build into its procedural order the opportunity for parties
3 who have presented technical testimony in their direct case
4 an opportunity to present rebuttal testimony.

5 And, second, we are requesting the Commission to
6 build into its order the opportunity for the parties to file
7 post hearing statements.

8 The Western Environmental Law Center has been a
9 very active participant in the development of these methane
10 rules. We are members of the Methane Advisory Panel. We
11 submitted extensive comments on OCD's draft rules issued in
12 July, so we are very aware of how complex this proceeding
13 promises to be, and we anticipate that the parties direct
14 cases will be extremely complex from a technical standpoint,
15 and it's for that reason we are requesting an opportunity to
16 present rebuttal testimony in response.

17 We understand that the Commission rules do
18 provide for rebuttal testimony, but as I read those rules,
19 that is allowed on a case-by-case basis. The Commission has
20 a lot of discretion whether to allow rebuttal or not.

21 We would like rebuttal built into the procedural
22 order and to be allowed as a matter of course. Of course
23 rebuttal should not be used as a way -- it should go
24 toward -- it should squarely meet parties' direct
25 testimony. It should not be used as a vehicle to introduce

1 evidence that should have been in a party's direct case.

2 But with those caveats, we believe that should be
3 built into the order as a matter of fairness to the parties,
4 and we believe that evidence will provide the Commission
5 with a more full evidentiary record and the best evidence
6 upon which to base its decision.

7 Second, we are allowing -- we are requesting
8 that the Commission allow us to submit post hearing
9 statements. Those post hearing statements would be an
10 opportunity for the parties to submit its full legal and
11 technical arguments, really like a written closing
12 statement. There is nothing, you know, magic or unknown
13 about it.

14 And again, we believe that due to the complexity
15 of these proceedings, it is only fair to the parties that
16 they have an opportunity to evaluate the entire record and
17 put their positions before the Commission. We believe the
18 Commission will benefit from that kind of very full
19 briefing.

20 We understand that the goal is to get these --
21 there is a goal to get these rules into place as quickly as
22 possible. We support that goal, but we also believe that
23 that goal must be balanced against providing full and fair
24 opportunity for the parties to present their case,
25 especially in this rulemaking which is just so complex and

1 which is quite frankly so important to the state and the
2 public use.

3 And with that, I want to thank the Commission for
4 considering our request, and I stand for any questions.

5 CHAIRWOMAN SANDOVAL: Thank you. In order to --
6 I think there was some things that were left open-ended
7 based on what the parties were going to do. I'm going to
8 give each party one more brief statement, and then the
9 Commissioners can commence with questions. Mr. Ames, do you
10 have anything additional to say?

11 MR. AMES: (No audible response.)

12 CHAIRWOMAN SANDOVAL: I think you're muted.

13 MR. AMES: Thank you, Madam Chair. Thank you for
14 the opportunity to, to address the issues again. I do have
15 a couple of very brief comments. First I would like to note
16 that there is no opposition to the application, and
17 therefore we ask that, that the Commission schedule this
18 hearing for January 5 as requested with prehearing
19 statements to be filed on December 18.

20 We also note there are certain aspects of our
21 request that have not been addressed and apparently are not
22 in dispute. We would ask that y'all proceed with those as
23 well.

24 With respect to the panel approach, I'll address
25 that first. I think Ms. Fox's statement was right on. I

1 agree with it 100 percent. Our objective is to try and
2 establish an efficient process that promotes the -- the
3 delivery of the best available information to the Commission
4 so it can make a good, sound, reasoned decision as required
5 by law.

6 We believe that the panel approach is consistent
7 with the rule. Parties will be able to ask witnesses
8 questions about their testimony. That's what the rule
9 requires. The panel approach doesn't abridge that.

10 We don't think -- the three arguments that I
11 heard raised by Mr. Feldewert, of those the first is that
12 parties would have to wait for days to examine witnesses.
13 We really don't foresee that happening. Parties can
14 cross-examine the witnesses after the party completes its
15 direct testimony, not until all parties have completed all
16 of their testimony.

17 Secondly, Mr. Feldewert suggested that the panel
18 approach only is used when parties have prefiled testimony,
19 and that's actually not accurate. In my experience the
20 panel approach has been used in, in exactly the way that the
21 Commission would be proceeding with this -- in this
22 hearing.

23 And then, finally, the due process argument is
24 just a red herring. Due process is notice and opportunity
25 to be heard, and everyone is going to get that at the

1 hearing. There is no due process issue with delaying cross
2 slightly to enable a more efficient gathering of information
3 by the Commission.

4 With respect to WELC's proposal for rebuttal, OCD
5 does not object generally to the notion of rebuttal. It's,
6 I think, a fairly standard process. It's not -- it may not
7 be expressly addressed in the rules and any details, but
8 it's a normal process. It happens in all hearings that I
9 have been involved in before the Commission over my short
10 tenure with the department.

11 The question, though, is whether it should be
12 allowed formally by the -- or whether it should be
13 determined at the time that the request for rebuttal is made
14 in the hearing itself. And I think we don't object to the
15 idea of rebuttal, but we would want to be -- want the
16 Commission to retain the ability to say yes or no when
17 rebuttal testimony is requested.

18 I think that same general principle applies with
19 respect to the post hearing submittals. We are still not
20 entirely clear what those are. The motion referred to post
21 hearing briefing, also to post hearing submittals, and now
22 Ms. Fox referenced post hearing statements. We are not sure
23 if those are actually all the same things. The motion
24 doesn't explain, and we don't get any more detail now. Is
25 it a closing statement? Is it findings of fact and

1 conclusions of law? Is it a statement of reason or
2 statement of reasons? Is it legal argument? What about new
3 evidence? All these, all of these issues raise concerns.

4 We also think it's premature. The Commission
5 does not need to decide now whether to allow post hearing
6 submittals. The right time to ask for post hearing
7 submittals is at the end of the hearing.

8 And, in fact, the Commission's rules expressly
9 provide for that opportunity at the end of the hearing, Part
10 3, the Commission's rulemaking rules with Section 12 A(2)G
11 reads, "At the close of the hearing the Commission shall
12 determine whether to keep the record open for written
13 submittals."

14 So clearly the Commission can allow post hearing
15 submittals, but the rule reserves to the Commission the
16 right to make that decision at the close of the hearing.
17 And the reason the rule sets out is very clear, if the
18 Commission in a rule continues -- if the Commission keeps
19 the record open, the Commission chair shall announce at the
20 hearing conclusion the subjects on which the Commission will
21 allow submittals and deadlines for filing those submittals.

22 The objective of the rule is to preserve to the
23 Commission the right to decide what it wants to hear after
24 the hearing. And in that way the Commission can decide with
25 greater definition what type of pleading, what format, how

1 many pages, what level of detail, what topics it wants
2 addressed.

3 That preserves to the Commission the right to
4 keep the process moving and not let it get bogged down,
5 which is very possible if the Commission were to allow a
6 very open-ended right to post hearing submittals at this
7 time.

8 Post hearing briefs have the very real
9 possibility of delaying deliberations significantly. In
10 order to file post hearing briefs, the parties first will
11 need the transcript. So this hearing goes a week or two
12 weeks or more, we may not have a transcript, depending on
13 the length of the hearing for weeks or even more than a
14 month.

15 Then the parties will need some time to prepare
16 their submittals, that could take a couple of weeks.
17 Whatever the deadline, there is always the possibility for a
18 motion to extend time, and then there might be disputes
19 regarding what has been filed.

20 In my experience parties file motions to strike
21 when they see new arguments or attempts to smuggle in new
22 evidence through post hearing briefs, and then the
23 Commission would have to have a meeting and maybe even
24 hearing to decide all of that.

25 So it's conceivable that post hearing submittals,

1 unless carefully circumscribed, could lead to a significant
2 delay in the OCC's deliberations and possibly affect our
3 ability to implement any rule that comes out of this
4 process.

5 So suffice it to say that OCD has a very dim view
6 of post hearing submittals generally, but certainly if the
7 Commission were inclined to allow them, we think it should
8 wait until the end of the hearing as provided by its own
9 rules. Thank you.

10 CHAIRWOMAN SANDOVAL: Thank you, Mr. Ames. Mr.
11 Feldewert, would you like to have a follow-up?

12 MR. FELDEWERT: Sure. Thank you, Madam Chair. I
13 have to agree with Mr. Ames on the motion issues, I do think
14 it's premature. I think the Commission should retain the
15 flexibility as to whether to allow rebuttal testimony and
16 whether to allow post hearing submissions, particularly the
17 ability to determine perhaps on what subjects they would
18 post hearing briefings for clarification.

19 You know, it seems to me it's difficult now to
20 determine whether you should allow rebuttal testimony
21 because you don't have any context. The reason it's always
22 done and determined throughout the rule is to give you the
23 context to address the request so you can ascertain whether
24 it's truly rebuttal, in other words, what are they going to
25 do and is it truly rebuttal, and for what purposes, what

1 they are going to address. You can only make that
2 determination in the context of the hearing, so I would not
3 make that decision now.

4 Secondly, post hearing submissions, you know,
5 again that's up to the flexibility of the Commission what
6 they feel they need. It seems to me that the problem with
7 post hearing submissions, as Mr. Ames pointed out, is it
8 creates an opportunity, even if you tell them not to, for
9 people to add stuff to the record that's new without an
10 opportunity then for the parties to respond.

11 So if you allow post hearing submissions, you
12 have to avoid the circumstance where parties are seeking to
13 put something additional into the record, attachments to
14 their brief, things of that nature that would not afford the
15 parties the opportunity to respond. So you need some very
16 strong side boards on your post hearing submission, and, if
17 anything, they should be more in the nature of closing
18 arguments on particular issues on where you decide it's
19 appropriate.

20 So, in my mind, it's premature to grant this
21 motion at this time, and instead retain your flexibility as
22 we go through this multiple reach hearing to determine
23 whether it's rebuttal and then whatever post hearing
24 submissions you would want.

25 The panelists, I know I'm outnumbered here, but

1 everybody agrees this is going to be weeks of hearings. You
2 are going to have parties presenting multiple days of
3 witnesses in a very complex manner in which we are going to
4 be jumping around between different portions of the rules
5 with different witnesses on different subject matters.

6 And their suggestion that we should sit there and
7 wait for -- even if you get two or three witnesses it's
8 going to take you a day or more -- before you get to ask any
9 questions on a particular subject, you have wait until all
10 their witnesses -- that's going to be very hard in a case
11 like this. It's going to be so lengthy with multiple
12 subjects, and we are not -- to me the most effective
13 questioning of a witness is when, right after they have
14 testified, when you remember what the heck they said.

15 Otherwise, we are all going to be taking notes
16 that's going to last for hours or days on what a particular
17 witness said without any opportunity to ask questions. And
18 I don't see where that's efficient, and I don't see that it
19 affords the parties to effectively question a witness on the
20 subject matter in which that witness testified.

21 We are doing this hearing virtually. It's going
22 to be hard enough, hard enough. Why are we going to add the
23 complexity, the uncertainty, the novelty of a panel approach
24 that's never been used by this Commission, and I don't see
25 the benefit of that here.

1 So I would ask that you deny that request and
2 allow the parties and yourselves, if you feel like you need
3 to, but at least allow the parties to question the witnesses
4 after they have testified.

5 If you want to wait for your questions and do it
6 as a panel approach, you can do that, you can even do both,
7 if you like yourselves and the parties to ask questions of a
8 witness, and if at the end you feel like there is issues you
9 want to address and have a panel approach to address your
10 remaining issues, that's fine, but don't impinge upon a
11 party's rights to question a witness at the time that the
12 witness testified when everybody remembers what the heck the
13 witness said. Thank you.

14 MS. FOX: Madam Chair, may I just address a
15 couple of points that were brought up by Mr. Ames and Mr.
16 Feldewert on our motion very briefly?

17 CHAIRWOMAN SANDOVAL: Absolutely. Please go
18 ahead.

19 MS. FOX: Thank you very much. With respect to
20 inserting rebuttal into the procedural order, I understand
21 Mr. Feldewert's argument to be that the Commission retains
22 the right to not admit the rebuttal, and, I guess, and
23 therefore that procedure shouldn't be built into the
24 procedural order.

25 But of course if rebuttal is built into the

1 procedural order, of course the Commission retains its
2 authority to deny admission of rebuttal that is not
3 appropriately rebuttal that doesn't rebut another party's
4 case that should have been presented in their direct
5 testimony. So, so I don't see that as a reason not to build
6 in rebuttal as a right as long as it's in the procedural
7 order as long as it's appropriate rebuttal.

8 With respect to the post hearing submittals, we
9 are proposing that parties be able to present proposed
10 findings of fact and legal argument based on the entire
11 record. And I don't think that we need to go through the
12 hearing to appreciate that the Commission would benefit from
13 these kinds of post hearing submittals given the complexity
14 of this hearing.

15 It gives the parties the opportunities to review
16 the entire record and make their arguments cogently and
17 comprehensively and present that to the Commission, and
18 that's a benefit to the Commission.

19 I think, if I understand the concern about delay,
20 and I think that's a legitimate concern that should be met.
21 I think the way that that is met is that if this is, for
22 example, a two- or three-week hearing, I think if the court
23 reporter understands from the beginning of the hearing that
24 the transcript needs to be expedited, then in my experience
25 that transcript can be completed within a couple of weeks of

1 the hearing. And during that time parties can also be
2 working on those post hearing submittals.

3 We have requested in our motion the post hearing
4 submittal be filed within 14 days of completion of the
5 transcript of proceedings, so I think that the time line
6 would be about one month between the time at the close of
7 hearing and the time of the post hearing submittals.

8 Now, obviously you can't submit, if the record is
9 closed, you obviously cannot submit new evidence in a post
10 hearing submittal. And if somebody, a party attempts to
11 include a new attachment that is a new document or a new
12 exhibit to their post hearing submittal, that is obviously
13 not going to be allowed, and that is not something that is
14 going to tie up the Commission or tie up these proceedings
15 to be lengthy.

16 And so I think that right now, we can say that it
17 it would be important for the parties to be given this
18 opportunity, for the Commission to have the benefit of that
19 briefing, and if the Commission at the end of the hearing
20 has specific issues it wants to particular briefing on, the
21 Commission still has that opportunity and flexibility to
22 request that. Thank you.

23 CHAIRWOMAN SANDOVAL: Thank you, Ms. Fox. All
24 right. Commissioners, do you have any questions for any of
25 the parties?

1 COMMISSIONER KESSLER: Madam Chair, I do have a
2 few questions. Maybe we can just go through point by point
3 and see where we have -- if I can -- if I can go ahead and
4 go through my questions, would that be okay?

5 CHAIRWOMAN SANDOVAL: Yeah, go ahead.

6 COMMISSIONER KESSLER: Mr. Ames, a couple of
7 questions. Can you just describe the panel approach? It's
8 not something I'm familiar with, so I don't feel like I have
9 a good understanding of it.

10 MR. AMES: Sure, Commissioner Kessler, be happy
11 to. In my experience a party would call its witnesses one
12 at a time for direct examination, and then they would be --
13 would be excused temporarily.

14 When all the witnesses have completed their
15 testimony, all the witnesses would be recalled and then the
16 board or commission or members of the board or commission
17 and parties would be able to cross-examine the panel.

18 When questions are asked, they're, in my
19 experience, usually directed first to the person who
20 testified on the topic. Or I have seen attorneys ask, say,
21 "I have a question, you know, who can -- who is best, who is
22 best to answer this question?"

23 What often happens is a -- one person, one
24 witness will answer the question, and that will perhaps
25 elicit information from another one of the witnesses on the

1 same topic that will flesh out the answer, provide some
2 additional information.

3 Often what happens is a witness may be asked a
4 question, and they will be like, "I actually don't know the
5 answer. I think the right person to ask is the, you know,
6 this other witness," and that other witness then can answer
7 the question.

8 And the result is that more information is
9 elicited from the witnesses than otherwise would be obtained
10 efficiently. You can imagine a situation where a witness is
11 asked a question, as we have seen in prior proceedings,
12 where a witness is asked a question, they are like, "Well,
13 really the right person to ask that question is somebody
14 else."

15 "Well, it's sort of related to what you said."

16 "Well, I don't really know the answer," and then
17 you have the whole back and forth regarding who knows the
18 answer to a question.

19 And then you have to, if the person on the stand
20 doesn't know the answer, the, the party has to recall that
21 person to answer that question. So everyone has to wait for
22 an answer to that question as opposed to moving through the
23 subject matter in a more holistic way.

24 So it -- it's -- it's a little less constrained
25 than your traditional adjudicatory direct and cross

1 approach, and as a result it has the benefit of providing
2 the Commissioners with the opportunity to get more complete
3 answers to their questions in real time, as opposed to a
4 more vulcanized approach where you proceed witness by
5 witness and, and only get as far as that witness is able to
6 respond.

7 COMMISSIONER KESSLER: Thank you. I have a
8 better understanding now. Thanks.

9 Again, my question for Mr. Ames, in terms of
10 pretrial dispositive motions, do you have a recommended
11 deadline in advance of the hearing that you would propose?
12 Would it be in conjunction with prehearing statements, would
13 you then propose -- I believe I heard you say that a
14 special meeting of the OCC might be necessary to decide
15 those dispositive motions. Can you discuss that a little
16 bit more, please?

17 MR. AMES: Yes. Thank you, Commissioner Kessler.
18 I think the, the filing deadline for prehearing statements
19 might be a good deadline for filing predispositive motions.
20 That would necessitate the Commission having some meeting
21 between December 18 and January 5 in order to address them.

22 I had suggested that perhaps the Commission's
23 regular-scheduled meeting on December 10 would be an option,
24 but that would require parties to file dispositive motions a
25 bit earlier, and I would not want to, to prejudice any party

1 by requiring them to make those kinds of decisions too early
2 in the process.

3 So I'm -- I'm loathed to suggest to the
4 Commission how it should schedule its meeting. I know the
5 Commissioners' availability is, it's difficult to coordinate
6 meetings. So that's why I suggested December 10, but I do
7 have reservations about that, and I will -- given the
8 limitations that would impose on the parties.

9 COMMISSIONER KESSLER: Also parties would need to
10 respond to other parties' dispositive motions, so December
11 18 to allow for a response would be compressed, but we can
12 discuss that, you know, as --

13 MR. AMES: Commissioner Kessler, you are exactly
14 right. That would impose some hardship on the parties, but
15 it's -- it's, given the nature of the process, I think it
16 would be appropriate to provide a short window for response
17 and no reply, for instance, and still allow the parties a
18 sufficient opportunity to brief the issues such as the
19 Commission could at a hearing to make a decision.

20 What I'm concerned about is the -- about
21 postponing that, that consideration until the morning of
22 January 5, if the Commission chooses to schedule a hearing
23 for January 5, and then having us spend a day or so first
24 arguing dispositive motions before we even get to the
25 witnesses, many of whom are coming in -- they are not coming

1 in from out of state in this context, but would simply be
2 pending their testimony waiting for us to resolve those
3 issues.

4 COMMISSIONER KESSLER: Okay. Thank you. Again,
5 Mr. Ames, what authority do you have supporting the
6 Commission's ability to appoint a hearing examiner for
7 procedural motions, non-dispositive motions?

8 MR. AMES: Commissioner Kessler, I don't have the
9 rules open in front of me, but I believe it's right in the
10 rules. There is actually a provision in the rules that says
11 that the Commission can appoint a hearing examiner to
12 address non-dispositive issues.

13 COMMISSIONER KESSLER: Thank you.

14 MR. AMES: I do not have the citation at my
15 fingertips. I'm sorry.

16 COMMISSIONER KESSLER: That's fine.

17 Ms. Fox, I believe that you addressed the
18 question I had related to your motion for a post hearing
19 briefing. Were you -- it sounds like you are not limiting
20 your proposal to closing argument but rather to findings of
21 fact and to additional types of briefing; is that correct?

22 MS. FOX: That's correct.

23 COMMISSIONER KESSLER: Okay. Madam Chair, those
24 are the only questions I have. I do have some additional
25 items to discuss with members of the Commission, but those,

1 those conclude my questions.

2 CHAIRWOMAN SANDOVAL: Thank you. So let's go
3 through Commissioner questions and then the Commissioners
4 can discuss how we want to address each of these issues, and
5 if we have issues or things we can discuss regarding
6 procedural order. Dr. Engler, do you have any questions?

7 COMMISSIONER ENGLER: Yes, Madam Chair, I do.
8 Mr. Ames, good morning. Can you hear me? You are still
9 muted.

10 CHAIRWOMAN SANDOVAL: I muted people because
11 there was background noise, so just be warned.

12 MR. AMES: Thank you. Good morning, Doctor.

13 COMMISSIONER ENGLER: I guess a couple of quick
14 follow-up for me, again kind of follow-up on what
15 Commissioner Kessler said. January 5 is your proposed
16 starting date; correct?

17 MR. AMES: Yes.

18 COMMISSIONER ENGLER: I have heard so far today
19 everything from two to three weeks. Do you got a rough idea
20 how long this is going to take? You don't want to go on the
21 record on that one, do you?

22 MR. AMES: I do not. I anticipate we'll -- we
23 have ourselves maybe a day of direct, but cross is
24 unpredictable, and I have no idea what other parties intend
25 to present or even how many other parties there will be.

1 COMMISSIONER ENGLER: Yeah, I was just trying to
2 get a feel for this. You also proposed -- Commissioner
3 Kessler talked about this meeting to hear and decide
4 dispositive motions. I'm a little worried, again, as you
5 mentioned, it's about providing sufficient time. But I
6 don't see over the holidays how we are going to fit that in.
7 I guess that's kind of my concern. I don't know what to do
8 for that. I guess we'll talk about that later.

9 I do have a question about the, again, the whole
10 question about this panel. Obviously, it's been a big
11 thought. I guess, is it possible where, again -- again,
12 because this is going to be complex, it's going to be a
13 party and it could have a number of witnesses. Is it
14 possible to go through direct and cross individually and
15 then bring everybody together for a final panel to do a
16 final cross? In other words, I'm kind of hybriding both
17 together.

18 MR. AMES: So, Doctor, you are suggesting that
19 parties would be allowed to have two sets of cross?

20 COMMISSIONER ENGLER: Possibly, because of the
21 complexity number of possible witnesses, it may turn out
22 that we have individual cross directly, you can then have a
23 panel such that if you have additional cross it would be
24 able to address that proceeding.

25 I'm worried -- I guess, I really appreciate the

1 idea of to be efficient in this, this system by having a
2 panel. I have a tendency to be willing to ask questions of
3 individuals immediately, and so I'm kind of worried -- I
4 guess I'm agreeing a little bit with Mr. Feldewert, I hate
5 to say that, but I am, you know, I would rather have a
6 chance to ask questions early and then maybe at the end of a
7 party's set of witnesses have a final wrap up. Any comments
8 on that, sir?

9 MR. AMES: Sure. First I would say, I often
10 agree with Mike, so there is nothing unusual with that, but
11 I do think he is wrong here. As to your proposal, I really
12 do think that we -- that the Commission ought to choose one
13 or the other approach, either the traditional approach that
14 the Commission has been using of direct followed by cross or
15 a panel approach.

16 If the -- if the Commission chooses the
17 traditional approach, then there may be an opportunity for
18 cross again, a second cross of witnesses, but it probably
19 would occur in the context of rebuttal. If a party called
20 presents a witness for direct, that witness is then crossed,
21 for example, and then -- and then stands for redirect and
22 then can be crossed again and then possibly could even be
23 recalled for rebuttal and crossed again.

24 So there would be multiple opportunities to cross
25 a witness, but I don't see how a panel approach would, a

1 second cross would improve the efficiency of the process any
2 more than the traditional approach already, already is. Our
3 proposal is to supplant the traditional approach with a
4 different approach to cross that would eliminate that
5 necessity of recalling witnesses sequentially to address
6 issues that couldn't be addressed by other witnesses during
7 their cross.

8 COMMISSIONER ENGLER: Do you think -- I think
9 that's a good point. Do you think that to be able to
10 cross-examine somebody with a question that they can't
11 answer is a valuable information in itself other than the
12 fact that they -- that someone else can answer it?

13 MR. AMES: Yes. Depending on the context, I
14 think that is the key point. In an adjudicatory proceeding,
15 witnesses are testifying principally to facts, and
16 credibility is a critical issue, you know, "What did you
17 see? Well, I saw this. Well, did you really see that,"
18 those questions are very important in the context of
19 eliciting and pinning down facts for the trier of facts.

20 Here the Commission is making not just a factual
21 decision, it's making a policy determination, and in the
22 context of a policy determination the Commission needs to
23 have the best information available in a complete package so
24 it can decide whether these rules will reduce waste, protect
25 correlative rights, protect public health and the

1 environment.

2 You're not -- I would suggest the Commission is
3 not trying to determine whether a particular witness knows a
4 specific fact. If you get that fact from a different
5 witness you have the fact under oath, and that is the key
6 difference between a rulemaking and an adjudicatory
7 proceeding.

8 This is -- rulemaking is not about gotcha, it's
9 not about catching people out and prove they told a lie.
10 The objective here is to gather evidence to make the best
11 possible decision, and if that requires a panel approach or
12 if that calls for a panel approach, then the Commission
13 should feel free, as I believe it has the right to do under
14 the rules, to use that approach.

15 COMMISSIONER ENGLER: I appreciate. Thank you
16 Mr. Ames. Always enjoyable to talk to you.

17 MR. AMES: Thank you, Doctor. And if I might
18 interject one point for Commissioner Kessler, we did find
19 the reference. It's in the authority of the hearing
20 examiner to make decisions on non-dispositive motions, it's
21 going to be Part 3, Section 8(C) at the very end prior to
22 the hearing, the chair or other hearing officer appointed by
23 the Commission shall have the authority to schedule or
24 continue a hearing, hold a prehearing conference and rule on
25 any non-dispositive motions.

1 And of course we are focusing on the prehearing
2 part of the non-dispositive motions, not the continuing the
3 hearing part.

4 COMMISSIONER KESSLER: I appreciate (inaudible)
5 thank you.

6 COMMISSIONER ENGLER: Madam Chair, I have no
7 other questions.

8 CHAIRWOMAN SANDOVAL: Okay. Thank you. I just
9 have a couple. Mr. Ames, could you just clarify why you are
10 asking for the 5th and not the 4th since the 5th is a
11 Tuesday?

12 MR. AMES: Madam Chair, the decision to choose
13 the 5th or the 4th, I think, is lost in the midst of time.
14 I do not know why -- I do not know why. Perhaps because I
15 wanted another day between the holidays and the hearing
16 start, but I -- if the -- I can't think now of a reason
17 why to choose the 5th over the 4th if it's the Commission's
18 pleasure to choose the 4th.

19 CHAIRWOMAN SANDOVAL: Okay. And then I just want
20 to also make sure I understand. So if the, if the Division
21 chooses to set a rulemaking hearing, notice would be posted
22 on November 24; is that correct? That would be like day
23 one?

24 MR. AMES: Yes, notice, Madam Chair, noted we
25 intend to publish notice in the New Mexico Register.

1 CHAIRWOMAN SANDOVAL: Okay.

2 MR. AMES: I think we will probably publish in
3 the newspaper even earlier than that because there is no
4 specific time frame. The publication in the register is our
5 go date, that's the statutory requirement.

6 CHAIRWOMAN SANDOVAL: All right. Thank you. I
7 just wanted to make sure that was clear. And then just
8 cross, you addressed some of this earlier, I believe, you
9 mentioned that this, this rulemaking process, there was what
10 was called a methane advisory panel. Would you say that in
11 general there is an unprecedented -- unprecedented amount of
12 public engagement prior to this rulemaking hearing?

13 MR. AMES: Well, I can only speak to my
14 experience, but -- and with the, with OCD and previously
15 with the Environment Department, but I would say that this
16 is the most expansive public process that I can recall being
17 involved in in my legal career.

18 CHAIRWOMAN SANDOVAL: Okay. Thank you, Mr. Ames.
19 I do not have any more questions. Commissioners, anything
20 else before we discuss how we want to handle this?

21 COMMISSIONER KESSLER: I don't have any more
22 questions. I do have -- I do have some observations, but
23 you know, if we just go through point by point.

24 I guess the first suggestion I would have is if
25 we have -- if the Commission has January 4 open, that seems

1 like a logical time to be able to have a hearing on the, on
2 prehearing briefings. And so I guess, you know, let's go
3 through, but just sort of take some time that might be
4 available.

5 CHAIRWOMAN SANDOVAL: Okay. All right. Dr.
6 Engler, do you have any more questions, or should we move
7 into kind of discussing a procedure of this.

8 COMMISSIONER ENGLER: No, I have no further
9 questions. I think we can discuss.

10 CHAIRWOMAN SANDOVAL: All right. I believe we
11 should go through point by point because there are a lot of
12 them.

13 Maybe first in terms of date, the Division had
14 proposed the 5th, and I might suggest we start on the 4th
15 just so we have that extra day and schedule this from the
16 4th to the 15th, which would be two full weeks.

17 COMMISSIONER ENGLER: Yeah, this is Tom Engler.
18 I have no problem starting the 4th, and since, you know, the
19 4th or 5th was lost in the midst of time, I'm okay with the
20 4th. I am -- I have set aside two weeks. I guess, I'm
21 little worried if it goes three weeks because that's the
22 beginning of semester for me.

23 CHAIRWOMAN SANDOVAL: It would be the beginning
24 of session for, I think, the other two Commissioners, so,
25 yeah, it's going to be concern, you know, we would have to

1 kind of address it. I think, as it goes, looking at, you
2 know, whether we schedule two days of hearing the next week
3 or how we want to manage that.

4 But I think, you know, I think there is a real
5 possibility it could go long, but I'm not sure how -- it
6 seems like the 4th may be the soonest. Otherwise, it would
7 be beginning over that holiday time frame.

8 COMMISSIONER ENGLER: I'm good with the 4th for
9 starting.

10 CHAIRWOMAN SANDOVAL: Okay. All right. Well,
11 then, Commissioner Kessler, does that work for you, the 4th
12 through the 15th?

13 COMMISSIONER KESSLER: It does, yes.

14 CHAIRWOMAN SANDOVAL: Okay. So that would be the
15 day -- let's see. Deadlines, do we want to do deadlines
16 for pre -- just kind of go through the OCD's request, and
17 then we can go onto some of the other questions?

18 COMMISSIONER ENGLER: Sure.

19 CHAIRWOMAN SANDOVAL: All right.

20 So 4A, OCD requests establish a deadline for
21 prehearing motions, I believe what Mr. Ames proposed was
22 December 18. I don't have any objections to that time line,
23 and I didn't hear any comments from any of the other parties
24 regarding that time line.

25 COMMISSIONER KESSLER: I think that would be

1 fine, and then Mr. Engler had suggested an abbreviated or
2 somewhat truncated response time frame, so deadline is
3 December 18 with Thanksgiving -- well, I don't know if it's
4 worth to include that, the holiday in there, but giving
5 other parties, You know, four or five days to respond to the
6 28th, 29th, and then we can hear those briefs either -- set
7 aside most of January 4 to hear those briefs or trying to
8 squeeze something in on the 30th or 31st, but, you know, I'm
9 not sure how well that would work.

10 CHAIRWOMAN SANDOVAL: Yeah, it would be
11 virtually, so I could make the 30th or 31st happen if need
12 be. Okay. So do we want to do responses by either the 28th
13 or 29th?

14 COMMISSIONER KESSLER: Yeah, I'm fine with it.

15 CHAIRWOMAN SANDOVAL: Okay.

16 COMMISSIONER KESSLER: And then we would also
17 need to specify, you know, probably no reply or, you know,
18 the reply would be the opportunity for oral argument.

19 CHAIRWOMAN SANDOVAL: Okay. So do we -- I think,
20 are we looking at also in terms of 4C, the schedule
21 meetings -- I'm sorry, not schedule meetings, but do we want
22 dispositive motions also due by that same time frame, the
23 18th?

24 COMMISSIONER KESSLER: Yeah, that would be --
25 that would be my preference, to hear all motions. All

1 motions due at the same time, have a response date all at
2 the same time, and then we'll need time to sift through
3 those before they are heard.

4 COMMISSIONER ENGLER: When do you propose to do
5 that?

6 COMMISSIONER KESSLER: It's really up to you two.
7 I have flexibility in my schedule, so it's a question of
8 whether we set aside January 4, the first day of the
9 hearing, to hear all of those motions, or whether we try to
10 schedule something before then.

11 CHAIRWOMAN SANDOVAL: Do you have any experience
12 with like how long that portion might take? Were you
13 talking like an hour or are we talking like a day?

14 COMMISSIONER KESSLER: You know, I think that the
15 length of this rulemaking is going to be -- I think the Pit
16 rule is the only thing in recent memory that would be
17 comparable.

18 We can ask Mr. Feldewert how long dispositive
19 motions took in that set of hearings, but we -- I want to,
20 I want to pretty -- I would recommend to the Commission that
21 we pretty strictly limit the amount of time for oral
22 argument from parties if there's going to be a number of
23 parties, if there's going to be a number of motions, so, you
24 know, I think it could easily take a day.

25 CHAIRWOMAN SANDOVAL: Well, it also sounds

1 like -- so there would be the dispositive motions and then
2 some of the other motions; correct? Then you if you wanted
3 to appoint a hearing examiner, a hearing examiner could hear
4 those, the regular motions and not the dispositive motions.

5 COMMISSIONER KESSLER: That's right, yeah, but I
6 think it would be -- I don't think that procedural motions
7 are going to be the ones that are time consuming.

8 CHAIRWOMAN SANDOVAL: Okay.

9 COMMISSIONER KESSLER: I agree that, you know,
10 there is -- there is -- Mr. Ames and Commission counsel
11 establishes their support for a hearing, for the
12 Commissioner appointing a hearing examiner for procedural
13 issues, I think that's a great idea. I don't think that
14 that's going to carve out, you know, that much of a chunk of
15 time for us, but I think it's a great idea to the extent it
16 does take up some time.

17 CHAIRWOMAN SANDOVAL: And then I have
18 flexibility, you know, around those holiday time frames.
19 But, I think, Dr. Engler, you have some plans, I don't know
20 if virtually would change that. It seems like if we hear
21 them on the 4th, maybe I'm wrong, but we are just robbing
22 Peter to pay Paul in the sense that we are probably going to
23 need that day for the actual testimony, public comment, all
24 of those things, so that means we have to put another day on
25 the back end, it just kind of depends on where we can

1 balance out.

2 Dr. Engler, what is your potential scheduling
3 around, I guess -- well, really, it would probably have to
4 be 30 or 31. If we got them in on the 28th, you would need
5 a day to digest them at a minimum, so it would have to be
6 the 30th or 31st.

7 COMMISSIONER ENGLER: How long -- are you
8 expecting this is going to take a day to go through?

9 CHAIRWOMAN SANDOVAL: Yes. Ms. Malave, is there
10 any reason we can't ask Mr. Feldewert how long it took in
11 the Pit rule?

12 MS. MALAVE: No.

13 CHAIRWOMAN SANDOVAL: Okay. Mr. Feldewert, do
14 you have any recollection of how long this -- that process
15 took for the Pit rule, because that's probably the most
16 analogous for rulemaking?

17 MR. FELDEWERT: No. I'm sorry to tell you, but I
18 don't.

19 CHAIRWOMAN SANDOVAL: Did you block it from your
20 memory?

21 MR. FELDEWERT: I think my memory tends to fade
22 over time, unfortunately, particularly as I get older, or
23 runs together. As you recall we had multiple Pit pool
24 proceedings.

25 CHAIRWOMAN SANDOVAL: This is true.

1 MR. FELDEWERT: So I don't recall specifically.
2 I do know in the past I think the way that prior commissions
3 would manage something like this, you get the briefs and
4 then you would limit the time that counsel has to present
5 oral argument, otherwise we'll talk forever.

6 So you just limit the time to present oral
7 argument, focus on the main points and then they're
8 available to answer whatever questions you have. But that's
9 the way you can manage the time to address these motions.

10 MS. MALAVE: And if I may, there also are some
11 motions made where you can decide them just on the briefs,
12 you don't necessarily need to hear oral argument if you
13 don't think you need it, and you can decide them just on the
14 briefing, you know, on the actual motions and briefs
15 submitted, you don't need to hear oral argument on every
16 single motion.

17 COMMISSIONER KESSLER: I guess the morning of one
18 of those days, the 30th or 31st, time limit it to just the
19 morning and see where that gets us.

20 CHAIRWOMAN SANDOVAL: I mean, we could finish it
21 on the 4th if need be.

22 COMMISSIONER KESSLER: In the afternoon.

23 CHAIRWOMAN SANDOVAL: Dr. Engler, where are you
24 at with that? I know -- I think you probably have a tighter
25 schedule.

1 COMMISSIONER ENGLER: Well, you know, I will give
2 you half a morning of the 30th, but like Mr. Feldewert said,
3 I believe, I want it to be to the point and keep these --
4 keep the discussion to the point because I guess the 28th
5 these motions will be due, which means the 29th we are going
6 to have to read through them; correct?

7 CHAIRWOMAN SANDOVAL: Yeah.

8 COMMISSIONER ENGLER: And then the 30th, like Ms.
9 Malave said, we may or may not hear some of them. So I
10 don't -- yeah, so I will give you the morning of the 30th,
11 so whatever happens it better be -- otherwise it's going to
12 spill into the 4th.

13 CHAIRWOMAN SANDOVAL: Okay. Happy New Year.

14 COMMISSIONER ENGLER: Yeah. Yeah.

15 CHAIRWOMAN SANDOVAL: Okay. Well, that addresses
16 some of it. So all prehearing motions and dispositive
17 motions will be due on the 18th, a response is due on the
18 28th. OCC will meet the morning of Wednesday the 30th to
19 hear the motions. All right, we got through that part.

20 So in 4B of the Division's request, it's to
21 appoint a hearing examiner to hold prehearing conference to
22 decide procedural matters, non-dispositive prehearing
23 motions before the hearing. I do like the idea of a
24 hearing -- you know, I think this is, one, going to be
25 long, two, it's going to be virtual which adds some

1 challenges, so I think the extra support is never bad.

2 What I might ask, because OCD, I believe, is
3 going through a procurement process right now to find and
4 get on contract somebody in order to address these needs, it
5 might be good for the Commission to delegate authority to me
6 to select the hearing examiner today so that once we have
7 finished that procurement process, I can make the decision
8 on the hearing examiner and who is most qualified without
9 having to re-meet for OCC.

10 COMMISSIONER KESSLER: I would delegate authority
11 to the director to select a hearing examiner to deal with
12 the (inaudible).

13 COMMISSIONER ENGLER: This is Tom Engler. I
14 concur.

15 CHAIRWOMAN SANDOVAL: How about -- is that a
16 second, Dr. Engler?

17 COMMISSIONER ENGLER: Second. All yours,
18 Adrienne.

19 CHAIRWOMAN SANDOVAL: Ms. Malave, would you do a
20 roll call vote on that motion?

21 MS. MALAVE: Sure. Commissioner Kessler?

22 COMMISSIONER KESSLER: Approve.

23 MS. MALAVE: Commissioner Engler?

24 COMMISSIONER ENGLER: Approved.

25 MS. MALAVE: Commissioner Sandoval?

1 CHAIRWOMAN SANDOVAL: Approved. The motion
2 carries. I have been delegated authority to select a
3 hearing examiner for the purposes of this rulemaking.

4 (Motion passes unanimously.)

5 MS. MALAVE: Commissioner Sandoval, can I ask for
6 some clarification? I'm not understanding the appointment
7 of a hearing officer and the discussion that you just had
8 about the, the December 30 hearing on motions.

9 So who is going to hear what? Is it the
10 Commission that's going to hear those and then you decide at
11 some other point other stuff that you might want to delegate
12 to, you know, in terms of assigning to the hearing officer?

13 I'm not sure I'm understanding what it is that
14 you are contemplating in terms of the role of the hearing
15 officer.

16 CHAIRWOMAN SANDOVAL: So I think that they can
17 hear the norm -- the other motions. The dispositive motions
18 would have to come in front of the Commission.

19 MS. MALAVE: Dispositive?

20 CHAIRWOMAN SANDOVAL: In addition, I guess I was
21 contemplating the hearing examiner would help with the
22 process of the hearing.

23 MS. MALAVE: The 4th day hearing?

24 CHAIRWOMAN SANDOVAL: The 4th through the 15th,
25 that time as well to add some assistance to the Commission,

1 and since this is going to be a very long hearing and also
2 and virtual, so it adds a little more complication.

3 MS. MALAVE: Okay. Thank you.

4 CHAIRWOMAN SANDOVAL: No problem. So the next
5 item on the list for the Division was Item 4B, require
6 persons to -- wait, we did that one. Sorry.

7 C, would authorize a party after presenting each
8 witness individually for direct examination to present its
9 witnesses on the panel for further cross-examination.

10 So, okay, I want to make sure that I -- I think
11 we all maybe have the same understanding of what was asked
12 is each one would be available after the testimony, but then
13 at the end we would have an opportunity for everybody as a
14 panelist. Is that what everybody else's --

15 COMMISSIONER KESSLER: I thought that was Mr.
16 Ames was against. My understanding was that he basically
17 told us to pick one, that we should either do cross-
18 examination as we are accustomed to doing, or a panel
19 approach which would would be to gather up all the witnesses
20 after the direct and cross them together.

21 I can understand there are benefits to that.
22 This hearing will be so technical that I, you know,
23 personally, as a decision-maker, would benefit more from
24 individual cross-examination closer to when the, the witness
25 has testified and being able to answer what immediate

1 questions I have, understanding that my background is legal
2 as opposed to technical. So my preference would be to have
3 an individual cross-examination approach, but I'm happy to,
4 to discuss that with the Commission.

5 CHAIRWOMAN SANDOVAL: Commissioner Engler?

6 COMMISSIONER ENGLER: This is Tom Engler. I
7 really agree with Commissioner Kessler, and as I said
8 earlier, you know, I'm on the technical side and not the
9 legal, but it -- I would prefer to be able to ask questions
10 or have cross as a normal procedure when it's fresh in
11 everybody's minds. I would probably lose my train of
12 thought if I waited to the end for a panel.

13 I actually appreciate the idea of a panel
14 discussion, and I think it was a good idea for efficiency,
15 but I just feel like I would -- I would probably get lost.
16 So I would rather have that chance and others have a chance
17 to cross immediately.

18 COMMISSIONER KESSLER: I agree, and I think it's
19 something we should keep in mind for future cases. I have
20 some personal concerns for this particular hearing.

21 CHAIRWOMAN SANDOVAL: I don't have a strong
22 opinion either way, so I'm comfortable continuing in the
23 normal path. So I think, with that, we decided we are not
24 going to approve 4E in terms of a panel. That's the extent
25 of the Division's. Do we want to move on to what WELC had

1 presented on behalf of their --

2 COMMISSIONER KESSLER: Well, if I could make a
3 couple additional observations to the Commission. I think,
4 first, I wanted to -- Mr. Ames had expounded on the
5 extensive public engagement, and I just want to reinforce
6 that beginning with the Division's listening to outreaches,
7 at least in my tenure working with the Division and
8 Commission, this is the most public engagement I have seen
9 and the most opportunity for input that I have seen, I think
10 that's a great thing. I'm happy that we -- that folks have
11 had that opportunity to weigh in.

12 With respect to the allowing witnesses and
13 particularly, in particular, technical testimony, I would
14 like to reinforce that the witnesses need to be identified
15 on prehearing statements. I think that the Commission does
16 have some discretion about what witnesses are ultimately
17 allowed kind of, you know, as the opportunity arises, but we
18 are trying to figure out who -- how long this hearing is
19 going to be, sort through some very difficult technical
20 testimony. And to the extent that, that parties can and
21 should identify their witnesses in advance of the hearing,
22 even if a particular name isn't available, the fact that a
23 witness will be presented is going to be -- I think it's
24 critically important as we move forward with this hearing.

25 CHAIRWOMAN SANDOVAL: I would maybe add to that

1 that if they think there is even the possibility of
2 rebuttal, they should add those rebuttal witnesses to that
3 list as well so it's comprehensive.

4 COMMISSIONER KESSLER: Both in terms of, you
5 know, I think -- I think that the Commission has
6 flexibility. I think that we certainly want to continue the
7 Division opportunities that they provided for public input,
8 but, but understanding that at some point there is going to
9 need -- the hearing will need to be concluded, that the
10 amount of input will, you know, need to, to be limited at
11 some point, so folks that are trying to introduce last-
12 minute witnesses, I would just, you know, say that we are
13 going to need to limit that to some extent.

14 CHAIRWOMAN SANDOVAL: I would agree. That's a
15 great point. That sort of goes into WELC's requests.
16 Regarding rebuttal witnesses, I mean, I think that OCC's
17 rules already allow for rebuttal witnesses, I think, and I
18 am not quite seeing the benefit of making this change. I
19 think it's already contemplated within the rules, and I,
20 I -- I don't necessarily see the benefit of it.

21 COMMISSIONER ENGLER: Madam Chair, this is Tom
22 Engler. So I guess, what is, what is the rebuttal -- the
23 rule for rebuttal in there? Do you know or does counsel
24 know?

25 MS. MALAVE: Commissioner Kessler, the rule

1 actually does -- the rules already allow for rebuttal, and
2 it's contemplated at the time that counsel believes that
3 it's necessary, they would make, you know -- they would
4 actually ask for leave from the Commission to present
5 rebuttal testimony on a particular point.

6 So I would agree with Commissioner Sandoval
7 that -- that rebuttal is already built into the, the rule
8 and that counsel -- that any counsel at this point during
9 the course of the proceedings has the ability to raise the
10 point of needing to present rebuttal. And, and the
11 Commission, you know, and state the purpose for which it's
12 needed.

13 COMMISSIONER ENGLER: Thank you. I think
14 that's -- I think since it's already there, and it's
15 directly related to the context or the point at hand, I
16 think we are covered then within our rules.

17 CHAIRWOMAN SANDOVAL: I would agree with that.
18 Commissioner Kessler?

19 COMMISSIONER KESSLER: I don't have strong
20 feelings one way or another.

21 CHAIRWOMAN SANDOVAL: Okay. So in terms of the
22 request for rebuttal, again, I think it's already
23 contemplated within the rules, and it's already pretty clear
24 there, this addition does not seem necessary.

25 Their second ask was for a post hearing written

1 briefing from the parties on legal and technical issues
2 which Ms. Fox and the other two counsel -- counselors
3 addressed. Commissioners, do you have any thoughts on that?

4 COMMISSIONER KESSLER: I have thoughts on this.
5 I think that submitting closing arguments in the form of a
6 post hearing brief can be very helpful. I am very reluctant
7 to open it up to anything more than that, and specifically I
8 share concerns about trying to sort of shoehorn new evidence
9 or arguments into post hearing briefs which would then
10 necessitate a response, you know, because -- and beyond due
11 process issues, just raise concerns from the Commission that
12 we want to have addressed or that we would require a witness
13 to provide testimony on. So that's -- those are my
14 concerns related to anything beyond closing arguments,
15 first, in the form of a post hearing brief.

16 CHAIRWOMAN SANDOVAL: Dr. Engler?

17 COMMISSIONER ENGLER: I agree with Commissioner
18 Kessler, and I think Mr. Ames stated it quite clearly that,
19 again, it's premature. We can do this during the, during
20 the hearings to be able to better define its post hearing
21 statements, so I think it's -- I agree with that.

22 CHAIRWOMAN SANDOVAL: That would be kind of where
23 I am as well. I think this is entirely premature. If the
24 Commission gets to the end of testimony before we close the
25 record and move to deliberation and decide that we need

1 more, I think that's the time to, to identify some of these
2 additional aspects. I think it's hard to contemplate where
3 we are going to be at that point, and -- and add things when
4 we are not sure it would actually be beneficial until we
5 have gone through the testimony and we are at that point.

6 So I would be hesitant to allow any of that,
7 understanding that we can, we could, you know, we will get
8 there again after we finish all of the testimony and say,
9 "Okay. This would be super helpful," and that's the time to
10 do it, not right now.

11 COMMISSIONER ENGLER: I agree.

12 COMMISSIONER KESSLER: I'm fine with that
13 approach.

14 CHAIRWOMAN SANDOVAL: Okay. So that walks
15 through all of the items here. I did see a note from
16 Mr. Ames that I guess if we are starting on the 4th, you
17 would have to have the prehearing statement one day previous
18 which would put it on the 17th. Would that also mean that
19 we need responses a day earlier or just that?

20 MS. MALAVE: Well, I think we are
21 taking (inaudible) so it doesn't really make a difference.

22 CHAIRWOMAN SANDOVAL: Okay. So we will just need
23 to move that day up. I do think there are some other issues
24 that we need to address here and maybe a couple of
25 conceptual lessons learned from the released water hearings

1 that we had previous.

2 So, one, we need to figure out the public -- the
3 formal public comment period. So as Mr. Ames stated, that
4 will be posted in the New Mexico Register on the 24th. It
5 will likely be posted in the paper before that. I -- so I
6 think there is maybe two things here, but the formal public
7 comment period, which would start on the 24th, but I don't
8 see a reason why we would not also take into consideration
9 any comments received between now and the 24th and take
10 those into account as well.

11 So I don't have an issue with, you know, taking
12 into account any public comment that we receive basically
13 between now and the 24th, with the 24th being the official
14 starting day. I would say that, I was just doing some very
15 basic math here, if we were to start the hearings on the
16 4th, the 24th through the 4th would be 41 days. We are only
17 required to give 30. 41, I think, is good.

18 What I think should be potentially taken into
19 consideration, and I would advocate for, is that we set
20 aside a day and a half, maybe the 4th until noon on the 5th
21 just for public comment. I think, you know, we potentially
22 are going to have that much public comment, and we set aside
23 those times, and that's when public comment is.

24 I do know that the rules also require I think we
25 hear public comment or have the opportunity to hear public

1 comment every day. So I would then suggest that maybe the
2 first half hour of every day is spent on public comment
3 before we continue into testimony. But I think we need --
4 I would advocate structuring this rule time wise so that
5 it's easier for the public to engage.

6 COMMISSIONER KESSLER: I agree with the
7 (inaudible) the fact that we heard from the produced water
8 hearing was that it was challenging for members of the
9 public to be available for basically, you know, the duration
10 of the rulemaking if they wanted to make public comment.

11 I think if we can pick up, you know, office hours
12 for public comment either first thing in the morning or from
13 4 to 5 in the afternoon or whatever, whatever works best
14 with our schedule, I am fine with that. I'm fine with that,
15 assuming it conforms with the rule.

16 MS. MALAVE: I would also suggest that part it
17 may depend on, in terms of the public comment, on how much
18 you leave, you know, in terms of set aside time will depend
19 on how many people you actually have, you know, because you
20 will have people who will sign up, and so that will also
21 give you a gauge and so, perhaps, you know, you don't need
22 to limit it to half an hour in the morning, you might want
23 to consider whether or not you want to have, you know, a
24 morning opportunity as well as an afternoon opportunity
25 depending on the number of people that you have so that you

1 don't, you know, once the half hour is up, you don't leave
2 people in line.

3 And, you know, they might also have the
4 opportunity (inaudible) I have participated in other
5 hearings where they basically designate a morning session as
6 well as an afternoon session so that people, you know, can
7 accommodate, you know, choose in terms of what's better for
8 their schedule, and that optimizes the opportunity for
9 public comment.

10 CHAIRWOMAN SANDOVAL: Yeah, I think that would be
11 good. I think what we ran into in the produced water
12 hearing is we had asked -- actually we had said in the
13 procedural order that everyone had to sign up for public
14 comment through the Commission clerk, and then during the
15 hearing we allowed for more because more people were there
16 and we wanted to allow for as much public comment as
17 possible.

18 But I guess, in my mind, if we structure at least
19 like the first day and a half, that will give, hopefully,
20 you know, the majority of people time. I do think we need
21 to figure out some sort of system on line -- I'm not quite
22 sure how this will work -- where people literally sign up
23 for time slots, you are from 2 to 3, and then, you know,
24 beyond 2 to 3 -- I understand it's hard with this structure
25 to do that, but it seems like we need to have some sort of

1 orderly mechanism, or it's going to be a mess, and I think
2 people are going to be unhappy.

3 So I'm open to whatever option gives us, you
4 know, the public engagement option, but, in my mind, if we
5 put some structure around it that could help. I also am
6 inclined particularly if we are having public engagement
7 every day, to allow for a written public comment all the way
8 through the 8th, January 8.

9 That would give a solid 45 days from November 24
10 to January 8 to provide written public comment, so they
11 would have 45 days of written public comment, and then they
12 would still have the opportunity to do public comment at the
13 hearing, the remainder of our next week.

14 COMMISSIONER KESSLER: Director, what if we do
15 something like announce at the beginning of the hearing and
16 then every, you know, every day of the hearing, that the
17 first day and half is for public comment.

18 We can put that on the website, too, you know,
19 and we can be available -- the Commission is open for public
20 comment between 8 and 8:30 and 4:30 and 5, or something like
21 that, and that goes on the website, and the folks that wish
22 to give public comment can get in touch with Florene or with
23 the hearing officer that you appoint who can sort of direct
24 traffic on that.

25 But just keeping in mind that I think some of the

1 concerns that we heard were that folks were not available
2 all day, they couldn't sort of like hang on all day to be to
3 able to give their comment. And also keeping in mind that
4 given that this is a virtual hearing, there are more
5 opportunities in some respects than what otherwise might be
6 afforded if the hearing, if somebody had to drive to
7 Santa Fe and sit there all day. So there is certainly
8 trade-offs with this forum, and I think as long as we let
9 people know how to plan and let people know in advance what
10 that plan is, that we will have satisfied what the rules
11 contemplate for public engagement.

12 CHAIRWOMAN SANDOVAL: I would agree. And I think
13 it would be helpful and to figure this out in the next week
14 before we would have to get that notice ready to put in the
15 Register, that we can find a way, you know, where we sign up
16 say ten people per hour times ten or 15 people who is --
17 give everybody two minutes to make their statement.

18 So we could sign people up maybe between time
19 slots, particularly on the first two days, to give -- so
20 that they have something to plan on. They are not holding
21 from 9 and going, "Well, shoot my time -- my name came up at
22 3:30, and I literally sat here all day waiting."

23 I think we can find a way to do that. I want to
24 structure it as much as possible. How does that first day
25 and a half sound? Does that sound reasonable to both of

1 you?

2 COMMISSIONER ENGLER: This is Tom Engler. I'm
3 fine, whatever -- I'm flexible on that. Whatever is best
4 for the public is fine with me.

5 CHAIRWOMAN SANDOVAL: I'm not sure whether --
6 you know, it's hard to predict how many people we are going
7 to get. I would say maybe the counselors need to be ready,
8 whoever entered appearances, be ready on that Tuesday to
9 start, but also understanding that half of that day is for
10 public engagement.

11 COMMISSIONER KESSLER: I think that's fine.

12 CHAIRWOMAN SANDOVAL: And then allow written
13 comment through the 8th, and that will give us a solid 45
14 days, which I think is really good, on top of all the robust
15 public engagement that's already happened.

16 And then we can set time slots each day. It
17 might be good in the morning at like 8:30 to 9 if we wanted
18 to start a little bit earlier in the day, and then 4:30 to 5
19 or something, and if we have people sign up, great. If we
20 don't have people sign up, then we'll just continue with
21 testimony through those times.

22 COMMISSIONER KESSLER: That sounds good to me.

23 And before we move on from sort of the produced water
24 hearing, I would like to also discuss, there were concerns
25 about exhibits that came up kind of at the 11th hour in that

1 hearing, and I would like to discuss how we want to handle
2 that before we call it a day.

3 CHAIRWOMAN SANDOVAL: No, that's important. That
4 was an issue for sure.

5 COMMISSIONER KESSLER: As part of that I would
6 just like to remind counsel that there is an obligation to
7 prefile exhibits and to circulate to counsel and to provide
8 confirmation to the Commission that those exhibits have
9 indeed been circulated.

10 So I don't think it was -- it was Commission
11 counsel who was having to download and circulate all of
12 those exhibits really during the hearing, and there is --
13 Ms. Malave, please correct me if I'm wrong -- I don't
14 believe there is an obligation that exhibits be public in
15 advance of the hearing or that they be provided to the
16 public in any particular way in advance of the hearing. Is
17 that correct?

18 MS. MALAVE: I don't -- I'm not -- I would have
19 to look back at the, at the state rules and the Commission's
20 rule. I'm not certain about that. I will get back to you.

21 COMMISSIONER KESSLER: Okay. Thank you. Yes,
22 certainly if there is, then we want to have some sort of
23 system that we can point to to tell the folks that are
24 providing public comments or comment here that exhibits are
25 available in a certain place. But I don't, you know, it

1 shouldn't be Commission counsel's obligation to be e-mailing
2 those, downloading and e-mailing those out when they are
3 also trying to conduct a hearing, provide counsel to the
4 Commission.

5 CHAIRWOMAN SANDOVAL: I agree. I think, one, I
6 agree it should be the obligation of the parties to make
7 sure that all the other parties have those exhibits, and it
8 should not be the obligation of Commission counsel.

9 What else I would say, if I'm recalling correctly
10 from that produced water hearing, there is not an obligation
11 to provide those to the public, but I think that it can only
12 be helpful in terms of transparency. It is on the hearing
13 portal, you can find them there. People still complained.

14 What I might suggest is we started with our
15 public engagement page on the OCD website, and I think we
16 either need to pick that page or usually the rules, but I
17 think public engagement might be better where all of those
18 exhibits are posted on the website prior to the rulemaking
19 times and they are labeled. So maybe we should do that and
20 require that as well.

21 COMMISSIONER KESSLER: So at least we can provide
22 a link to the, to the -- online engagement page, provide a
23 link that would take you directly to the page where all of
24 the documents are posted, I think that that would be
25 optimal.

1 Mr. Ames just pointed out, and I know this, too,
2 that all of the hearings, the prehearing statements and
3 exhibits have to be prefiled. I think what happened, part
4 what happened with the produced water rule is that there
5 were sort of late appearances, and just if I'm recalling
6 correctly, there were a series of exhibits from other
7 parties that were either not circulated to all the parties
8 or that were not timely filed. I would just suggest
9 strongly to counsel on this that the Commission may take a
10 narrower view of what exhibits are allowed after exhibits
11 are -- after the date for prefiled exhibits has passed.

12 And certainly in the interest of transparency,
13 that the purpose of that is to advance transparency to the
14 public and to, with this bizarre forum that we're in, make
15 sure that we have all of the exhibits in advance, not only
16 for the Commission's review, but also for the -- to serve
17 the better interest of the public.

18 MS. MALAVE: Commissioner Kessler, I would add, I
19 just looked at the rule. And so the rule on rulemaking
20 actually requires posting of public comment and prehearing
21 statements, but it doesn't require posting of actual
22 exhibits. Although, and correct me if I'm wrong, I
23 understand that the practice is that it's posted on the
24 website in that OCD imaging as they come in so that they
25 would be available, you know, right now. And all of the

1 pleadings that have been submitted in this particular matter
2 are already posted on OCD imaging if they know to look under
3 the case number.

4 CHAIRWOMAN SANDOVAL: So I think that was the
5 challenge is, one, people seemed to struggle with that. And
6 two, understanding that like, you know, that OCD imaging is
7 somewhat clunky at times, and each thing is not labeled,
8 people complained heavily. We met all of the obligations of
9 the rules and statute, that was not the question. I think
10 it's just how do we make it even easier for the public to
11 engage.

12 And so maybe that's where I'm thinking we put
13 something on the public engagement page that makes it easier
14 for people to find that information, even though it will
15 still be posted in OCD imaging.

16 MS. MALAVE: If I can say, I think that's a
17 discussion for you to have with, with IT in terms of how to
18 make the website more accessible to the public. I don't
19 know that it's something that you can decide, you know, as a
20 commission. It's probably, you know, something from IT, you
21 work with IT and say, "This is what we want and what the,
22 you know, what the goal is."

23 CHAIRWOMAN SANDOVAL: So I'm sort of thinking we
24 duplicatively post it. It doesn't have to go into OCD
25 imaging, that's kind of the formal, but we could also do

1 duplicative posting on the OCD public engagement page to
2 make it easier for people so they don't have that extra
3 step. I think an IT solution would take probably longer
4 than we have, would be my guess. But I don't disagree with
5 you.

6 Okay. So that kind of hits that point. What
7 else? I'm trying to recall any other lessons learned. I
8 believe those were some of the big things, how we did public
9 comment, the exhibits were a big issue.

10 COMMISSIONER KESSLER: Incorporating the chat was
11 something that became an issue, and as I understand it, the
12 forum that we are using, the chat is automatically included
13 in the record, so there is actually not an opportunity for
14 us to separate that out.

15 CHAIRWOMAN SANDOVAL: I believe I would have to
16 confirm, but I believe that there is a mechanism to turn off
17 the chat. The chat does not have to be. And I think there
18 is an option to turn it off for attendees versus panelists.

19 Right now it may only be possible for panelists
20 to type something which would limit it to say the
21 counselors, which, you know, I think there was some concern
22 about the chat previously. It actually got quite -- it got
23 quite violent and aggressive and derogatory and hateful, and
24 I could go on, so I'm inclined to not allow the chat
25 function, particularly for the rest of the attendees, only

1 allow the -- I would have to check, but only allow for the
2 participants, or -- I'm sorry -- the panelists to
3 participate in that and have that functionality.

4 COMMISSIONER KESSLER: If (inaudible) I think
5 that that, you know, not in a virtual setting, chatter in
6 the audience would not be part of the record, so the court
7 reporter would not be taking down notes from side
8 conversations or other comments directed towards the
9 Commissioners.

10 So folks can ensure they engage through the
11 public participation element of the hearing, but I, I would
12 agree with you, I don't think -- I would be supportive of
13 chat being limited -- the chat function being limited to
14 counsel and to the Commission members and not simply a
15 mechanism for the public to be able to take advantage of the
16 process.

17 CHAIRWOMAN SANDOVAL: I agree. There are so many
18 other places for public engagement here that are a better
19 mechanism than the chat function. Dr. Engler, where are you
20 on that?

21 COMMISSIONER ENGLER: I'm fine if you want to
22 basically limit it to the panelists; correct?

23 CHAIRWOMAN SANDOVAL: Yeah, which would be the
24 lawyers or Commissioner.

25 COMMISSIONER ENGLER: You have questions about

1 exhibits under the chat, by the way.

2 CHAIRWOMAN SANDOVAL: This is the other thing,
3 it's hard to look at this stuff.

4 COMMISSIONER KESSLER: Can we confer with counsel
5 after we sum up our many thoughts that we have for other
6 issues, you know, with how we conduct the hearing, then we
7 can open it up to counsel to address all of their questions,
8 questions, questions related to time lines, too, or --

9 CHAIRWOMAN SANDOVAL: Yeah, and there are a lot
10 of, there are a lot of things that we've got to discuss, so
11 I can sort of summarize where we are. One, we already did
12 do a motion giving me the ability to select a hearing
13 examiner.

14 We discussed the OCD's request, and so prehearing
15 motions and dispositive motions will be due on December 17.
16 Replies will be due on December 28. Or responses will be on
17 December 28, and there will be no replies to that; that
18 opportunity will be in oral argument.

19 The Commission will have a special meeting on the
20 30, morning of the 30th to go through the motions,
21 particularly the dispositive motions. We -- OCC is not
22 going to consider a panel, a panel witness situation.

23 Public comment will begin formally on the 24th,
24 and written public comment will be accepted through January
25 8, which will be a solid 45 days with the option of if

1 people would like to submit written public comments prior to
2 the 24th when it's posted in the Register, the OCC will
3 accept and consider that.

4 We will be setting aside the first day and a half
5 of the hearing so the 4th and part of the day of the 5th to
6 take into consideration public comment. Counselors should
7 be prepared to be ready on the 5th, but if there is
8 additional public comment, we will set aside enough time to
9 go through at least half that day. We will look at having
10 from 8:30 to 9 and from 4:30 to 5 every day of additional
11 public comment. And OCD is going to figure out a sign-up
12 mechanism for that.

13 We -- let's see. OCD is going to post, in
14 addition to everything in online imaging, things on the
15 public engagement page. So that prehearing statement and
16 any of those kind of items will be also posted on the public
17 engagement page, as well as I would expect any written
18 comments that are received, I would just note that all of
19 the comments that were received on the proposal of the rule
20 are already posted on that page, so there is a wealth of
21 information on there already.

22 We -- I think, as Commissioner Kessler said, we
23 will probably not be as flexible with people in terms of
24 late exhibits and things as we were with the produced water
25 hearing.

1 The chat function will not be an option to
2 attendees, only to the panelists and it will not be, I don't
3 think, a part of the formal record.

4 I think, you know, as we did before, if we have
5 things get unruly, we will unfortunately have to remove
6 people if things get unruly as it did with the produced
7 water hearing, but I would say that was somewhat limited.

8 All right. Did I miss anything, Commissioners?

9 COMMISSIONER KESSLER: The only thing I would
10 add, Director, is that perhaps we can sort of post some sort
11 of this discussion on the public engagement page so that
12 folks, you know, can find what to expect.

13 CHAIRWOMAN SANDOVAL: That's a great idea. And
14 then I -- we also discussed, well, motions for rebuttal
15 witnesses are, you know, kind of considered within the
16 rules, and we think that's adequate. And then the other
17 motion regarding the written testimony or whatever it -- I
18 can't remember what it was described as, but the after-
19 hearing written --

20 COMMISSIONER KESSLER: Post hearing.

21 CHAIRWOMAN SANDOVAL: Post hearing information
22 that, you know, I think it's too early to decide on that.
23 That's something that we can discuss after we get through
24 testimony and see where we are before we close the record
25 and move into deliberations.

1 All right. I think that's everything. Ms.

2 Malave, did I miss anything?

3 MS. MALAVE: No, I don't think you have, and I
4 know that Chris, I have been watching him, he is taking
5 notes, so we will have some sort of a scheduling order
6 that's going to memorialize all of this, and we will post
7 that as well, you know, for posting on the public engagement
8 page and distribute it to all the parties.

9 CHAIRWOMAN SANDOVAL: How do we formalize this?
10 Do we need to make a motion? Let's create a motion.

11 MS. MALAVE: I don't -- I think that based on the
12 discussion that you have had here, we can, we are going to
13 prepare the scheduling order that basically takes each of
14 the, you know, each of the points and possibly to ensure
15 that it -- that there is no challenge, you can propose that
16 scheduling order at the December 10 meeting and then we will
17 post it.

18 CHAIRWOMAN SANDOVAL: Does it need to be prior to
19 that?

20 MS. MALAVE: If you want, we can go back to
21 the -- go back to the -- to Mr. Ames' and Ms. Fox's request,
22 and then just go down the list and vote on them quickly.
23 You have already indicated that pretty much, and that way it
24 will just be clean. And then we will just post the hearing,
25 the scheduling order, you know, shortly after this.

1 CHAIRWOMAN SANDOVAL: Okay. I think that would
2 be good. Did we want to -- it looks like Mr. Ames and Mr.
3 Feldewert had a question. Do we want to hear that before we
4 do the orders? Mr. Ames?

5 MR. AMES: Thank you, Madam Chair. I have a
6 couple of quick points to make. First a question with
7 respect to public comment terminating on January 8, did you
8 want to set a time? Is it 5 p.m. on January 8?

9 CHAIRWOMAN SANDOVAL: Yeah, probably end of
10 business on January 8, and that's just written public
11 comment. There is still opportunity for participating in
12 the hearing.

13 MR. AMES: Thank you. Let's see, with respect to
14 the exhibits, I think I heard y'all clarify this, that
15 exhibits would be posted on the public engagement page. I
16 point out that OCD has been posting and posting its
17 application and the draft rules on the hearings, on, I
18 think, the hearings page.

19 CHAIRWOMAN SANDOVAL: The rules?

20 MR. AMES: Sorry, I'm sorry.

21 CHAIRWOMAN SANDOVAL: The rules page.

22 MR. AMES: On the rules page.

23 CHAIRWOMAN SANDOVAL: Yeah.

24 MR. AMES: We can certainly arrange to post all
25 filings, all pleadings onto that page as well, and that --

1 we could add that address to the public notice so that the
2 public would have advance notice of where to look for
3 filings, including prehearing statements, which, by
4 definition, have to include -- which by rule have to include
5 all exhibits.

6 So that may be one way of ensuring that the
7 public has knowledge and access to exhibits prior to the
8 hearing. I just want to confirm that. I will work with Ms.
9 Malave and Mr. Moander to finalize the public notice to
10 ensure that it reflects the decisions made here today
11 because I don't know that I captured all the nuances.

12 CHAIRWOMAN SANDOVAL: We did record this as well.
13 I am recording this hearing today.

14 MR. AMES: All right. Thank you. My question
15 had to do with -- I do have a question. It has to do with
16 demonstrative aids.

17 In prior OCC hearings and in, in other
18 administrative fora, I have prepared -- the witnesses have
19 prepared, not I, but the witnesses have prepared and I
20 presented PowerPoint presentations, and we typically have
21 not submitted those as exhibits.

22 At the conclusion of the testimony we might ask
23 that the PowerPoint be introduced into evidence, but not as
24 substantive evidence, but rather as demonstrative aid. And
25 what I'm wondering is whether the Commission expects parties

1 to submit PowerPoint presentations with their prehearing, or
2 whether they will be accepted into the record at the
3 conclusion of the testimony of the witnesses, and I think
4 that's important to clarify since the Commissioners have
5 emphasized that they are going to be more strict regarding
6 the admission of exhibits at the hearing itself.

7 MS. MALAVE: Commissioner Sandoval, if I may, I
8 would say anything that's presented to the Commission during
9 the course of the public rule hearing that will be used,
10 whether technical or not, all be part of the record.

11 MR. AMES: I concur. It's -- do we need to
12 submit it as a prehearing -- as part of the exhibits, or can
13 we introduce it at the hearing at the end of conclusion as a
14 demonstrative aid?

15 COMMISSIONER ENGLER: This is Tom Engler. If I
16 have my preference, I would like to have it early before the
17 testimony.

18 CHAIRWOMAN SANDOVAL: Thank you, Dr. Engler.
19 Commissioner Kessler, do you have any --

20 COMMISSIONER KESSLER: I agree. I think it's
21 going to be challenging for counsel to prepare that so far
22 in advance, and I can understand there are maybe changes to
23 that, that counsel would sequentially want to make changes,
24 but both in terms of the public process and understanding
25 that that -- that that would ultimately result as part of

1 the record, and also being admitted as evidence, I think
2 that -- I think it would be best to have it submitted with
3 the prehearing statements.

4 MR. AMES: Madam Commissioner, may I interject
5 one point of consideration? We are, in the prehearing
6 statements the parties have to disclose proposed
7 modifications to the draft rules. We will not have those
8 proposed modifications until the same day we have to submit
9 our own prehearing statements. If we have to submit our
10 PowerPoints at that time with our prehearing statements, we
11 won't be able to adjust our PowerPoints to -- and submit
12 them for the record to reflect our responses to the proposed
13 modifications of other parties that were submitted
14 concurrently, so --

15 CHAIRWOMAN SANDOVAL: Is it -- go ahead.

16 MR. AMES: Yes, thank you, Madam Chair. In my
17 experience the PowerPoints that we have submitted to guide
18 the discussion, to guide the testimony would include not
19 just the direct testimony in support of the party's own
20 proposal, but we would also reflect other thoughts regarding
21 the proposed modifications of other parties, and so there is
22 a timing problem that results by restricting the parties in
23 this manner.

24 COMMISSIONER KESSLER: Versus the proposed red
25 lines submitted as a rebuttal exhibit.

1 MR. AMES: Madam Commissioner, we would
2 anticipate responded to by other parties in our direct
3 testimony.

4 CHAIRWOMAN SANDOVAL: Could it be submitted
5 originally, you know, without addressing the other
6 prehearing statements, and then like submit a modified
7 version during -- you know, right after when you present
8 that?

9 MR. AMES: Madam Chair, that would be a solution,
10 providing the Commission gives us assurance that it would
11 allow us to do that. The way it was stated earlier, all
12 exhibits presented with the prehearing statement, which
13 would put a party that sought to provide some PowerPoint
14 slides responsive to proposed modifications at the hearing
15 at some risk whether they do submit it for the record.

16 CHAIRWOMAN SANDOVAL: So I guess where I'm -- we
17 have to balance two things. One, we want to make it as
18 transparent and easy for the public to follow as possible
19 and for them to engage, but, two, we also, I think, need the
20 the best information possible in order to help us make a
21 decision on this.

22 And so I think, you know, we might have to
23 balance those things, and I guess the way I'm thinking about
24 it, if you provide it in your prehearing statement and then
25 provide a revised version following testimony, then, you

1 know, that can be posted. One, it will probably go into the
2 imaging in the formal place, and then we can post it in the
3 public engagement portion of the website.

4 But, you know, coming from the technical side of
5 this, the Commissioners are going to need the best data
6 possible to make decisions, so in my mind that balances the
7 transparency portion and technical portion, but I would like
8 to hear the other Commissioners' and counsel's take.

9 MR. FELDEWERT: Madam Chair, if I may interject.

10 CHAIRWOMAN SANDOVAL: Go ahead, Mr. Feldewert.

11 MR. FELDEWERT: Couple of observations. I think
12 some of this is actually addressed by your existing rules on
13 rulemaking. If you look at Rule 19.15.3.11(B), which
14 addresses technical testimony, and B(2) addresses prehearing
15 statements.

16 What it requires is that the parties submit with
17 their prehearing statements the exhibits that they plan to
18 offer as evidence at the hearing, so based on what you plan
19 to offer as part of your case in chief at the hearing at the
20 time that this is due. Okay? Mr. Ames' point about being
21 able to respond to a post modification, et cetera, is a
22 valid one if it's addressed by the Commission's ability to
23 accept rebuttal exhibits in this case, it would be rebuttal
24 PowerPoint slides, I guess, that they were going to submit
25 as evidence, and that can be determined, you know, based on

1 the nature of the exhibit itself as to whether it's truly
2 rebuttal.

3 So I think your rules already address this in
4 requiring each party to submit with a prehearing statement
5 copies of exhibits that they plan to submit at that time,
6 and if they change some things or add additional exhibits as
7 rebuttal, the Commission can certainly authorize that when
8 it determines if they are rebuttal, if they are indeed
9 rebuttal.

10 CHAIRWOMAN SANDOVAL: You are muted.

11 MS. MALAVE: One thing I'm not appreciating is
12 the difference between an exhibit and what he talked about
13 as a speaking aid. Or, you know, in terms of, you know,
14 because if it's PowerPoint like an outline through the -- to
15 keep the witness on track, versus if it's technical, it's
16 already -- it needs to be presubmitted as technical
17 testimony, technical exhibit.

18 So what's the difference then, Mr. Ames? What do
19 you see in terms of you -- the PowerPoint slides that are
20 not exhibits?

21 MR. AMES: Ms. Malave, it's been my experience we
22 have used PowerPoint to allow the witness to, to present his
23 or her testimony, and in a -- in an orderly fashion. They
24 might reproduce, for instance, portions of the rule that are
25 being discussed along with some points that the witness is

1 making.

2 The evidence is the testimony that the witness is
3 providing, not what is presented on the PowerPoint. So the
4 PowerPoint is the demonstrative aid. With that said, I
5 appreciate what Mr. Feldewert said, and I think if the
6 Commission finds that acceptable, then I would feel -- I
7 think my concern is addressed.

8 We would submit the PowerPoint with our
9 prehearing statement, but we would be able to submit
10 rebuttal with the PowerPoint as a demonstrative aid. So if
11 that's the general understanding with -- the general
12 consensus that we have here now, then I feel like the issue
13 has been addressed.

14 CHAIRWOMAN SANDOVAL: Okay, go ahead. Mr.
15 Feldewert, did you have anything additional to add?

16 MR. FELDEWERT: My only other observation is the
17 question about rulemaking, it has a provision about exhibits
18 that you don't normally see, and it's actually a different
19 section of your rule, 19.15.3.12C, entitled exhibits, and
20 one of the unique things is when you normally have a
21 rulemaking hearing, you submit your exhibits to the
22 Commission, along with numerous copies to the parties, but
23 then there is also a requirement that you provide, it says,
24 provide additional copies for others who may attend the
25 hearing.

1 Now, this is all designed, obviously, for
2 in-person hearings, not a virtual hearing, it's my opinion,
3 but I would defer to your counsel, but posting them on your
4 website at the time of the -- at the time of the hearing or
5 even if you want to do that before that, you will have met
6 that requirement to provide five additional copies for
7 others who may attend the hearing. And that's my, that was
8 my observation.

9 CHAIRWOMAN SANDOVAL: Okay, that's a great point.
10 I would tend to agree that I think our mechanism of
11 providing them in kind of a second place that's more easily
12 accessible will meet that requirement in this virtual world
13 we live in at the moment. Would you agree, Ms. Malave, or
14 do you have any concerns?

15 MS. MALAVE: I think that the posting, the
16 contemporaneous posting would satisfy that.

17 CHAIRWOMAN SANDOVAL: Okay. All right. Ms. Fox,
18 I just want to give you an opportunity to say something
19 since the other parties talked, if you have anything.

20 MS. FOX: Nothing to add right now. Thank you
21 very much.

22 CHAIRWOMAN SANDOVAL: Thank you. Okay. Let's go
23 through this again, Commissioners, and let's vote kind of --
24 let's try to do it in chunks. Ms. Malave, is it okay if I
25 make the motion since I took all the notes and stuff?

1 MS. MALAVE: (No audible response.)

2 CHAIRWOMAN SANDOVAL: I think you are muted.

3 MS. MALAVE: Yes, yes.

4 CHAIRWOMAN SANDOVAL: Okay, great. That will
5 make it easier then, I think.

6 First I think we discussed the -- WELC motion and
7 the conditions and I move that the Commission not adopt the
8 provisions within that filing and that that be considered at
9 a later case during the hearing.

10 COMMISSIONER KESSLER: Second that motion.

11 CHAIRWOMAN SANDOVAL: Ms. Malave, would you do a
12 roll call vote, please?

13 MS. MALAVE: Commissioner Kessler?

14 COMMISSIONER KESSLER: Approve.

15 MS. MALAVE: Commissioner Engler?

16 COMMISSIONER ENGLER: Approved.

17 MS. MALAVE: Commissioner Sandoval?

18 CHAIRWOMAN SANDOVAL: Approved. The motion
19 passes unanimously.

20 (Motion passes unanimously.)

21 CHAIRWOMAN SANDOVAL: Now addressing some of the
22 other items, in terms of prehearing motions and dispositive
23 motions, I move that all prehearing statements are due on
24 December 17, all dispositive motions are due on December 17
25 and all responses are due by end of business, 5 o'clock on

1 December 28.

2 COMMISSIONER KESSLER: Second.

3 CHAIRWOMAN SANDOVAL: Is there a -- Ms. Malave,
4 will you do a roll call vote, please?

5 MS. MALAVE: Commission Kessler?

6 COMMISSIONER KESSLER: Approve.

7 MS. MALAVE: Commissioner Engler?

8 COMMISSIONER ENGLER: Approve.

9 MS. MALAVE: Commissioner Sandoval?

10 CHAIRWOMAN SANDOVAL: Approved. The motion
11 passes unanimously.

12 (Motion passes unanimously.)

13 CHAIRWOMAN SANDOVAL: And I move to set a special
14 hearing of the OCC on the morning of December 30 at 8
15 o'clock.

16 COMMISSIONER KESSLER: Second.

17 CHAIRWOMAN SANDOVAL: I'm not used to this. Ms.
18 Malave, would you do a roll call vote, please?

19 MS. MALAVE: Commissioner Kessler?

20 COMMISSIONER KESSLER: Approve.

21 MS. MALAVE: Commissioner Engler?

22 COMMISSIONER ENGLER: I approve.

23 MS. MALAVE: Commissioner Sandoval.

24 CHAIRWOMAN SANDOVAL: I approve. The motion
25 passes unanimously.

1 (Motion passes unanimously.)

2 CHAIRWOMAN SANDOVAL: A special meeting of the
3 OCC will be on the 30th. Public comment, I move that formal
4 written public comment will be begin on November 24 and will
5 span 45 days to January 8 and must be submitted by 5 o'clock
6 on January 8 to the Commission clerk, Florene Davidson,
7 however, the Commission will accept and consider written
8 public comment that is sent to Commission clerk, Florene
9 Davidson, prior to November 24 from today on.

10 Is there a second to the motion?

11 COMMISSIONER KESSLER: I will second that.

12 MS. MALAVE: Commissioner Kessler?

13 COMMISSIONER KESSLER: Approved.

14 MS. MALAVE: Commissioner Engler?

15 COMMISSIONER ENGLER: Approved.

16 MS. MALAVE: Commissioner Sandoval?

17 CHAIRWOMAN SANDOVAL: Approved. The motion
18 carries.

19 (Motion passes unanimously.)

20 CHAIRWOMAN SANDOVAL: Okay. I move the first day
21 and a half of the hearing, so January 4 and through noon on
22 January 5 be dedicated to public comment. And that from
23 8:30 to 9 and from 4:30 to 5 of every proceeding day of
24 hearing be dedicated to public comment for this rule.

25 COMMISSIONER KESSLER: I will second that. I'm

1 not sure we need a motion, but I will second it just in
2 case.

3 MS. MALAVE: Commissioner Kessler?

4 COMMISSIONER KESSLER: (Inaudible.)

5 MS. MALAVE: Did you vote?

6 COMMISSIONER KESSLER: (Inaudible.)

7 MS. MALAVE: Commissioner Sandoval?

8 CHAIRWOMAN SANDOVAL: Approved.

9 MS. MALAVE: Commissioner Engler?

10 COMMISSIONER ENGLER: Approved.

11 CHAIRWOMAN SANDOVAL: All right. The motion
12 carries.

13 (Motion passes unanimously.)

14 CHAIRWOMAN SANDOVAL: I think that is
15 probably -- are there any other items we need to do motions
16 on? I think some of the other things are regarding where we
17 are going to post things in terms of the public engagement
18 portal, et cetera, do we need motions on those or no?

19 MS. MALAVE: Well, didn't you decide that you
20 were not going to do -- in terms of the request that's
21 submitted by Mr. Ames about the panel testimony. Is that --

22 CHAIRWOMAN SANDOVAL: I'm sorry, we did not cover
23 that. I motion to deny the OCD's request to use a panel to
24 provide testimony on the hearings.

25 COMMISSIONER KESSLER: Second.

1 MS. MALAVE: Commissioner Kessler?

2 COMMISSIONER KESSLER: Approved.

3 MS. MALAVE: Commissioner Engler?

4 COMMISSIONER ENGLER: Approve.

5 MS. MALAVE: Commissioner Sandoval?

6 CHAIRWOMAN SANDOVAL: Approved. That motion
7 carries.

8 (Motion passes unanimously.)

9 CHAIRWOMAN SANDOVAL: Anything else we need to
10 make a motion on?

11 MS. MALAVE: I think that takes care of it for
12 purposes of your scheduling order.

13 CHAIRWOMAN SANDOVAL: Great, okay. Well, that, I
14 believe, concludes this agenda item. Why don't we take a
15 five-minute break before we move on to the next agenda item
16 regarding approval from WildEarth Guardians. Let's come
17 back at 11:45.

18 (Agenda Item 5 21528 concluded.)

19 (Recess taken.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 4th day of November 2020.

18

/s/ Irene Delgado

19

Irene Delgado, NMCCR 253
License Expires: 12-31-20

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