

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

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

Case No. 21593

Application of Sozo 1, LP and Sozo Natural  
Resources, LLC, to require a common purchaser  
to ratably take gas from a gas well on  
reasonable terms, Lea County, New Mexico

THURSDAY, JANUARY 7, 2020

This matter came on for hearing before the  
New Mexico Oil Conservation Division, William  
Brancard, Hearing Examiner, Dylan Rose-Coss,  
Technical Examiner, Dean McClure, Technical  
Examiner, via Cisco Webex Virtual Meeting Platform

Reported by: Mary Therese Macfarlane  
New Mexico CCR No. 122  
PAUL BACA PROFESSIONAL COURT REPORTERS  
500 Fourth Street NW, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

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A P P E A R A N C E S

For the Applicant: James Bruce, Esq.  
Post Office Box 1056  
Santa Fe, NM 87504  
(505) 982-2043  
jamesbruc@aol.com

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1 HEARING EXAMINER BRANCARD: Okay. So we  
2 have the covered next case, then. So -- I think we've  
3 covered on through No. 37. Is that correct?

4 EXAMINER ROSE-COSS: I believe so, Mr. Brancard.

5 HEARING EXAMINER BRANCARD: All right. So  
6 here's an interesting one.

7 Case No. 38, 21593, Sozo Natural.

8 MR. BRUCE: Mr. Examiner, Jim Bruce representing  
9 the Applicant and I thought, you know, since this is  
10 your first hearing back, I thought I'd give you a good  
11 one.

12 HEARING EXAMINER BRANCARD: Yeah. So do we have  
13 any other entries of appearance in this case?

14 MR. BRUCE: I never received an entry of  
15 appearance from anyone, and so when I saw that it was set  
16 for status conference yesterday afternoon I was kind of  
17 surprised. I did check the case file, and there's no  
18 other Entry of Appearance.

19 HEARING EXAMINER BRANCARD: Well, I think our  
20 folks would like to hear sort of a little more about what  
21 this case is about so we can get a better sense of what is  
22 needed for a hearing.

23 MR. BRUCE: Okay. And, by the way, I did submit  
24 exhibits, and my witness Britt Pence is on the line if you  
25 have any questions.

1                   But in a nutshell it's this: The subject  
2 well, the Caleb State Well No. 1 over in Lea County was  
3 producing a fairly decent amount of gas, and has been  
4 since 2006, all under a Gas Purchase Agreement.

5                   And last summer Targa -- or Sozo, my  
6 client, took over operations of the well last March, and  
7 the same gas contract has been in effect. And they  
8 decided to -- they wanted to increase the fees. And  
9 actually what they wanted to do was increase them by  
10 almost triple the fees that would be paid for production  
11 from the well for gathering the gas and purchasing the  
12 gas, and that makes the well uneconomic.

13                   And this is in a area where there's no  
14 other gathering system, and so Sozo is left holding the  
15 bag. They have a well producing a decent amount of gas  
16 that was -- they were making money on it, and the royalty  
17 owner, the State Land Office has a 1/6 royalty on that  
18 lease, and they were getting income. But if Targa won't  
19 bend -- well, right now the well is shut in because its  
20 uneconomic to produce at Targa's rates, and if it can't  
21 get put back online because it's uneconomic, even under  
22 Division rules it will either have to -- Sozo will either  
23 have to temporarily abandon or permanently abandon the  
24 well. And it's a deep gas Well, Atoka, over 10,000 feet  
25 deep. And, you know, the plugging costs are going to be

1 essential, plus if it's plugged those reserves that that  
2 well was proceeding will be wasted: Physical waste of  
3 gas.

4 So it's -- as I discussed with my client,  
5 it is an unusual case, but there are statutes and  
6 regulations regarding a common purchaser like Targa to  
7 take gas on reasonable terms.

8 And those are the only statutes and regs I  
9 could find that apply. I looked elsewhere in the  
10 statutes, and the Public Regulation Commission has some  
11 jurisdiction, but it has to be for intrastate gas  
12 transport produced in New Mexico and used in New Mexico.  
13 And so that does not apply, because this gas heads  
14 eastward, I believe, into another state.

15 So as far as I can tell the only agency  
16 with any jurisdiction is the Division.

17 I filed the application. If you would like  
18 me to submit a memo on some of this stuff, that's fine,  
19 but Sozo would like the matter heard within a reasonable  
20 time.

21 HEARING EXAMINER BRANCARD: Thank you.

22 Did Targa receive Notice of this  
23 application?

24 MR. BRUCE: Yes, and that's in the exhibit  
25 package.

1 HEARING EXAMINER BRANCARD: Okay. I'd like to  
2 give the examiners an opportunity to ask questions, or if  
3 there's other information they think they need to discuss  
4 this now.

5 EXAMINER ROSE-COSS: Good morning, Mr. Bruce.

6 So I think the reason we set this up as a  
7 status conference is because it's become the practice of  
8 the Division to not hear a case, a contested case kind of  
9 on the first time it comes up, so we wanted to hear a few  
10 details about the case from both parties involved, and  
11 then set a status conference has been the practice.

12 So that's why we set this one that way.

13 And, uhm, that -- uhm, that there hasn't  
14 been anything on the record, that there hasn't been a  
15 response made by Targa to this case. So I think that was  
16 another reason that we were hesitant here. And the  
17 novelty of the case.

18 And they might not respond if you have  
19 given them timely notice, and so that's another novel  
20 situation for us.

21 MR. BRUCE: Yes. They received Notice about  
22 over three weeks ago.

23 EXAMINER ROSE-COSS: Okay.

24 EXAMINER McCLURE: Looks like 12-21-20, looking  
25 at the exhibit.

1 MR. BRUCE: Correct.

2 EXAMINER McCLURE: Did you have more questions,  
3 Dylan?

4 EXAMINER ROSE-COSS: No. I'll give it to you,  
5 Dean.

6 EXAMINER McCLURE: Okay. I guess something I  
7 was wondering Mr. Bruce, is I guess what are you actually  
8 asking the Division to do here, I guess.

9 MR. BRUCE: Well, whatever the Division thinks  
10 is fair and reasonable. It is -- uh, as I said, the  
11 reason for the Division is to prevent waste and protect  
12 correlative rights, and since it does have statutes and  
13 regulations in place, you have to look at that.

14 Now, admittedly they don't really set forth  
15 any specific type of remedy, except -- and I did include,  
16 you know, the statute I cited -- you know, what is it,  
17 70-2-19 -- regarding common purchaser. Subparagraph C  
18 does give the Division jurisdiction. Section E talks  
19 about common purchasers "shall take ratably under the  
20 rules and regulations promulgated by the Division."

21 You know, it's almost like an enforcement  
22 action, to me, where you compel Targa to take gas on  
23 reasonable terms.

24 EXAMINER McCLURE: Did Targa, I guess,  
25 communicate -- in your communications with Targa, did they

1 give an indication as to why they are increasing  
2 transportation rates for this well or not?

3 MR. BRUCE: If I could, the person who conducted  
4 the discussions, such as they were, with Targa is on the  
5 line, and I'd rather have him asked.

6 But pretty much they just said, "Hey, we're  
7 increasing rates, and if you don't agree, too bad."

8 Mr. Pence, could you confirm that?

9 MR. PENCE: Can you hear me now?

10 EXAMINER ROSE-COSS: I can hear you.

11 MR. PENCE: Okay. Good. Yeah.

12 HEARING EXAMINER BRANCARD: I'm sorry. Mr.  
13 Bruce, this is your witness, Mr. Pence?

14 MR. BRUCE: Yeah. And I didn't know if you  
15 wanted me to qualify him. I can. He's -- let's just do  
16 an introduction.

17 Mr. Pence, could you identify who you work  
18 and are in what capacity.

19 (Note: Reporter inquiry. Discussion off the  
20 record.)

21 BRITT PENCE,  
22 having been duly sworn, testified as follows:

23 MR. BRUCE: Okay. Thank you. Yeah.

24 DIRECT EXAMINATION

25 BY MR. BRUCE:



1 Q. Who do you work for and in what capacity?

2 A. Okay. I work for Sozo Natural Resources, and I  
3 am the president and CEO.

4 Q. And by profession what are you?

5 A. By profession I'm a petroleum engineer.

6 Q. Have you previously testified before the  
7 Division?

8 A. Yes, sir.

9 Q. And were your credentials as an expert petroleum  
10 engineer accepted as a matter of record?

11 A. Yes, sir.

12 Q. And are you the person who had communications  
13 with Targa regarding this situation?

14 A. Yes.

15 MR. BRUCE: Mr. Examiner, I tender Mr. Pence as  
16 an expert petroleum engineer and someone knowledgeable  
17 with the case at hand.

18 HEARING EXAMINER BRANCARD: Thank you.  
19 Mr. Pence is accepted as an expert in Petroleum  
20 engineering.

21 Q. As president and CEO you're also in charge of  
22 operations of this well, are you not, overall?

23 A. Yes, sir.

24 Q. So could you explain to the examiners what  
25 the -- how this came about with Targa.

1           A.    Yes.  We -- you know, we submitted a packet of  
2 exhibits.  I don't know if the examiners have that in  
3 front of them, but we tried to lay out a timeline of how  
4 the -- you know, what transpired.

5                         But the first exhibit shows, you know --

6           MR. BRUCE:  Mr. Examiner, this would be  
7 Exhibit B in the exhibit package, the Affidavit of Britt  
8 Pence.  Then the affidavit is a few pages long, and then  
9 there's some attachments.  And Attachment 1 is --  
10 Attachments 1 and 2 are kind of the timeline of what  
11 occurred.

12          A.    Yes.  And so as Jim Bruce mentioned earlier, you  
13 know there was a gas agreement in place for 14 years, and  
14 then after we took over, Sozo took over the operations in  
15 March of 2020 -- you know, Targa had, uh, agreed to,  
16 consented to, agreed to transferring the agreement over  
17 into Sozo's name.

18                         And then we actually had a video  
19 conference, Sozo and Targa, on June 25th with one of  
20 Targa's directors, Steve Bingham, and we went over the  
21 agreement.  And at that time Targa did not want to change  
22 any of the agreements, they wanted to keep them as-is.

23                         And then I received on July 29th, from  
24 Misty Edwards, another director over at Targa, that they  
25 were terminating the gas agreement and it was going to be

1 effective, let's see, at the end of August.

2                   And then I didn't hear anything back from  
3 them until right at the end of August, early September,  
4 and they decided to extend the termination one month, so  
5 to the end of September. And they proposed, uh, on  
6 September 3rd a replacement agreement, which increased the  
7 fees by 171 percent, and, as Jim said, that's almost three  
8 times what the fees were before.

9                   Now, the bottom line is it made the well  
10 uneconomic, and so we, at the end of September we shut the  
11 well in.

12                   We did try to counter with another proposal  
13 to see if that might -- if we could work something out  
14 with Targa. And so the first -- sozo was fine with the  
15 original agreement. You know, we -- we really wanted to  
16 keep the original agreement in place, but with Targa  
17 wanting to change it, we, uh -- they wanted to change the  
18 type of agreement. The original agreement was a fee-based  
19 type of agreement, where there's a fee charged, and they  
20 pay you at the wellhead on an nmbtu basis -- you know, the  
21 market rate -- and then they wanted to replace it with a  
22 POP agreement, a Percent of Proceeds type of agreement.

23                   So when they proposed that, they increased  
24 the fees but they also provided a Percent of Proceeds to  
25 us, 77 percent.

1                   But the bottom line is, and I have it in  
2 the attachment, it's uneconomic.

3                   So when we went back the next day on  
4 September 4th to counter, we said -- I recommended:  
5 Okay. Let's go back to the original agreement, but if  
6 Targa is insisting on having a POP agreement rather than a  
7 fee-based agreement, Soza will work with you.

8                   So we proposed an agreement that had -- it  
9 was a POP agreement, a counter, a POP agreement where the  
10 fee was reduced down -- still higher than what the current  
11 fees, but the POP was an 87 percent POP. And that  
12 equates -- the numbers equate roughly to the same kind of  
13 profits as the original agreement. So it's just a  
14 different, you know, type of agreement. Well, their  
15 response was basically that their first offer was their  
16 final offer.

17                   So they weren't willing to negotiate at  
18 all. They were just going to basically try to force us to  
19 accept this increase in fees, and because they have a  
20 monopoly, there's no other option out there, as Jim Bruce  
21 had mentioned. And so being that this is, you know, a  
22 monopoly situation, I felt that this is something that the  
23 OCD has the authority to regulate, and so I reached out to  
24 Bruce to help me out on this matter.

25                   And so we -- you know, we've been trying

1 to get this in front of the OCD since that time.

2                   And we had to shut the well in, and then in  
3 October 26th, I did receive a call from Targa, and they  
4 wanted -- they said: How about we use the fee-base  
5 agreement with higher fees? And it was -- they basically  
6 said, you know -- it wasn't a formal offer but it was --  
7 you know, it was an informal offer, but, you know, it was  
8 an offer.

9                   And I looked at the numbers, and it still  
10 was uneconomic, because they had increased that fee-based  
11 agreement, the fees on it, to -- increased it by 68  
12 percent higher than what, you know -- basically, you know,  
13 almost twice what they ever had before.

14                   So it just -- you know, we just can't --  
15 this well makes 230 mcf a day, and being an engineer and  
16 in the business as long as I have, some 37 years, it's  
17 just unbelievable that a 230-mcf-a-day well is uneconomic,  
18 even with the current prices.

19                   And it's -- Targa's trying to kind of  
20 squeeze such as possible out of us. I think they -- if  
21 you go over the last 14 years, there's been times in this  
22 industry in the last 14 years where the prices dropped  
23 while OXY was operator, and Targa didn't try to increase  
24 fees on OXY.

25                   Well, why -- you know, that's because OXY

1 is a big operator. Sozo Natural Resources, we are not so  
2 big, and so Targa, who is, you know, advertised as being a  
3 \$13 billion market enterprise company, is basically, you  
4 know, trying to force us, because they got this monopoly  
5 and they are the big dogs around here, and they are just  
6 trying to force us. And I think they want to see how we  
7 respond, and I think they want to see how the OCD  
8 responds, because this is -- you know, they could go  
9 really wild on this increase in fees where there's no --  
10 there's no -- there's a monopoly.

11 So I did have a conversation on October  
12 26th whenever they came back with the second proposal. I  
13 was like, "What are you-all doing? This is a bad business  
14 model, because I got to shut the well in. You're going to  
15 lose your revenues from your fees plus any revenues from  
16 your natural liquid (inaudible.)

17 And their response was, they said that  
18 their operating costs were running like over a \$1.70 an  
19 mcf. And I personally doubt that, I think that's not  
20 accurate, because that's very, very high. I'm not sure  
21 what kind of accounting they were using in that number; I  
22 never audited it or anything, so I don't really know the  
23 accuracy of it. But typically -- and in talking to Misty  
24 over at Targa, I told her, I said, "Really, that's not  
25 right. It can't be. It's too high. It should be closer

1 to around 40 cents mcf, you know, operating cost."

2 And she said that, yes, we do have places  
3 where we operate for 40 cents. But she said, "This is not  
4 here. In this situation it's a \$1.70."

5 I said, "You know, it sounds like what --  
6 rather than trying to squeeze more out of the operators,  
7 you-all should be trying to solve your problem of your  
8 high operating fees."

9 And she admitted yes, we are working on  
10 that.

11 Why are you trying to, you know, squeeze  
12 all the money out of the operators when you have a plan to  
13 reduce your costs?

14 So she didn't have an answer for that.

15 But that was -- I was trying to answer  
16 Mr. Jim Bruce's kind of question before I came online as  
17 to, you know, what -- why would Targa want to increase the  
18 fees. And what they told me, their excuse was their  
19 operating costs were really high.

20 The one excuse that she gave for the high  
21 operating costs, was that there's -- that this system has  
22 a lot of H2S in it. There's a lot of those old oil wells  
23 that, you know, go into this system and they have a high  
24 H2S content in the gas that they're gathering.

25 In fact we operate some oil wells that go

1 into the system that has high H2S, but that's not the case  
2 for this well. This is a sweet gas well, and it doesn't  
3 produce any H2S.

4 In fact, they're charging -- in this POP  
5 agreement they wanted to charge us -- for August it was  
6 going to be close to \$1,000 for blending fees in this POP  
7 agreement that we did not sign.

8 And, you know, my argument would be, you  
9 know: We ought to be getting a benefit from it. We will  
10 be able to provide sweet gas that will be blending down  
11 H2S in the system.

12 But, you know -- uh, I don't know.  
13 They're -- it's just, I think, the case of big company  
14 trying to bully a small company, and I think they're just  
15 sitting back seeing what's going to happen.

16 **Q. And, Mr. Pence, you talked about the economics**  
17 **in your exhibit, Attachment 3, 4 and 5, to set forth your**  
18 **calculations of economics under the varying scenarios?**

19 A. Yes, sir.

20 **Q. And then Attachment 6 is the actual August**  
21 **statement under the old agreement with Targa; is that**  
22 **correct?**

23 A. That's correct. The only change is that I  
24 annotated just to highlight the fees. You know, showing  
25 that the fees for that month were \$2,722 (inaudible).



1 So...

2 Q. They weren't really cheap way back then, were  
3 they.

4 A. No. No. I would like them to be lower, but I'm  
5 willing to accept that. You know, that's the original  
6 agreement, that's the original deal. And, yeah, they are  
7 pretty high, but, you know, it's -- I think it's  
8 reasonable.

9 Q. Okay. And was the exhibit, the affidavit and  
10 all the attachments prepared by you or under your  
11 supervision?

12 A. They were prepared by me, yes.

13 Q. And do you adopt that as your testimony in this  
14 matter?

15 A. Yes, sir.

16 Q. And then finally, Exhibit C I included in the  
17 package, is that just a little blurb which discusses  
18 different types of contracts, including Percent of  
19 Proceeds contracts?

20 A. Yes, it is.

21 MR. BRUCE: And, Mr. Examiner, Exhibit A is the  
22 Application and proposed ad.

23 Exhibit D is the Notice Affidavit.

24 And Exhibits E and F are the statutes and  
25 regulations cited in the that application.

1                   And if the examiners have any questions for  
2 Mr. Pence, I'd hand him over to you.

3                   HEARING EXAMINER BRANCARD: Okay. You're  
4 offering the exhibits?

5                   MR. BRUCE: Yes. I move the admission Exhibits  
6 A through F in this matter.

7                   HEARING EXAMINER BRANCARD: Okay. Are there any  
8 objections to these exhibits?

9                   Hearing none, we will admit the exhibits.

10                   And any other questions from the examiners,  
11 before we figure out how to proceed here?

12                   EXAMINER ROSE-COSS: I think this one is kind of  
13 in your hands to determine how the Division proceeds here.  
14 This is a novel case for the Division, at least in the  
15 past -- since the statutes were written.

16                   EXAMINER McCLURE: I guess -- uhm, I guess I do  
17 have a few questions. I don't know if you want to follow  
18 up with any more questions right away, Dylan, or you want  
19 me to go ahead and go.

20                   EXAMINER ROSE-COSS: All right, Dean.

21                   EXAMINER McCLURE: Okay.

22                   CROSS EXAMINATION

23 BY EXAMINER McCLURE:

24                   **Q. I guess what I'm wondering is: Targa, in your**  
25 **discussions with them, did they indicate that maybe there**

1 was some other wells that had ceased, production or some  
2 other reason for increasing their operating costs recently  
3 that would have caused this, or does it seem like they  
4 were just changing the format, I guess, of their  
5 contracts?

6 I guess what was the sense there, Mr.  
7 Price.

8 A. They didn't mention anything other than, you  
9 know, the reasons I mentioned earlier, that they said it  
10 was high H2S. And that was pretty much the excuse.

11 Q. Yeah, because I was going to say \$1.70. Did I  
12 hear you correctly? Did you say their operating cost was  
13 \$1.70 mcf?

14 A. Yes, sir.

15 Q. That does seem -- well, I'm not going to comment  
16 on that, but I'm just wondering, I guess, how much other  
17 production is in there for them to be having operating  
18 costs of that.

19 A. And also I wanted to just clarify.

20 When I asked, I said, "Are you including  
21 like back office G&A and everything, or there was some  
22 sort of amortizing, some sort of investment in it?" You  
23 know, like (inaudible) in it? And she said, "No this is  
24 operating cost costs only."

25 Q. It would have been nice to hear from Targa, but

1 considering they declined, I guess, to take part or put in  
2 an Entry of Appearance we only have what's your testimony  
3 to go off of here.

4 And then from looking at this it looks like  
5 your exhibit, you have a gas analysis that looks like it  
6 came from Targa. Is this what they have on file for your  
7 production from this well, is that correct?

8 A. Yes, sir. And they did -- there's actually two  
9 of those types of statements for August, and the first one  
10 is the actual statement. This is actually, you know, what  
11 they -- the fees charged and the revenues paid for this  
12 month.

13 And then the second one is kind of a  
14 hypothetical with using their POP Agreement. And this  
15 hypothetical came from Targa. This is not my generation.  
16 The only thing I did was annotated with highlighting the  
17 fees. I apologize the font's terrible on it, but I  
18 didn't -- I just couldn't fix it; I was technically  
19 challenged on that.

20 But that's how it came from Targa.

21 Q. As I say, I'm having a little trouble reading  
22 it, but it looks like the mcf and the btu, they left it  
23 constant on both statements, it looks like.

24 A. Yes. That was the intent, is just to -- they  
25 wanted to show me, you know, what the impact that this POP

1 Agreement would have, you know, relative to the original  
2 agreement.

3 Q. I'm sitting here looking at it. There's a lot  
4 of information to take in in only a few minutes, for sure,  
5 but I'm definitely seeing the highlights that you have  
6 highlighted here.

7 Now, on your other wells that's going in  
8 this same system, are they charging similar transportation  
9 rates for those wells or is this one different?

10 A. Only -- all the other wells are oil wells, and  
11 they have high H2S. And they are under a totally separate  
12 agreement and it's a POP agreement.

13 Those -- those -- the fees are different  
14 because, you know, there's a different blending fee that's  
15 really high for those oil wells because of the H2S they  
16 produces, and so that calculates out to a high fee.

17 But the POP Agreement is 83 percent on the  
18 POP, so I guess, you'd say maybe it's a little better than  
19 what they have proposed, because they proposed a 77  
20 percent POP.

21 The blending, the fee, if you will, for  
22 having -- you know the H2S, Co2, nitrogen, is how the  
23 agreement is charging on the blending and gathering.  
24 There's an extra fee for that. That piece is really, like  
25 I was saying, really high for these oil wells, because of

1 the high H2S.

2 For the Caleb well it does have a little  
3 Co2, I don't know if you see that in the breakdown. It's  
4 less than 1 percent, I think it's .76 maybe, something  
5 percent. And it does have a little bit of nitrogen at the  
6 bottom there.

7 I'm even having a hard time reading this.  
8 It looks like 1.7 or something percent.

9 So there is a fee associated with those  
10 two, uh, those two products, because nitrogen, you know,  
11 is an inert gas, we briefed (phonetic) 78 percent last  
12 year. That's not -- it's not a -- not a corrosive gas or  
13 anything. Co2 can be very corrosive. H2S can be very  
14 corrosive and also very deadly. But -- the H2S is the one  
15 that usually pipelines have a problem with.

16 But, you know, the other thing to realize  
17 here is in the Caleb well, you know we don't make  
18 condensate, or we don't make much condensate, if any. We  
19 haven't really produced any condensate since we've taken  
20 over operations, because the pressure reservoir is, uh --  
21 continues to do drop and the yield kind of continues to  
22 drop off. So we are not really making any real  
23 condensate.

24 And so we don't make any revenue, you know,  
25 off of oil or condensate, which can be a big help for

1 theses oil wells. These oil wells, that's a main revenue  
2 stream.

3 So we can, you know, economically produce  
4 our oil wells even with these horrible gas terms, but, you  
5 know, that's probably pretty reasonable because it has  
6 high H2S.

7 But with the exclusive gas well, it  
8 shouldn't be -- I mean, there should be like a premium, if  
9 you will, for that gas, because it's sweet; it can be used  
10 to help blend things down. It's at a good high rate. I  
11 mean, 230 mcf a day, that's a pretty good well.

12 And, you know, that's -- just -- I'm just  
13 flabbergasted why Targa would take the position to -- that  
14 pushes this well into an uneconomic status. Just didn't  
15 make any sense to me.

16 EXAMINER ROSE-COSS: Because everybody loses.

17 A. (Continued) Everybody loses. Sozo loses, Targa  
18 loses because we shut the well in. They lose, you know,  
19 the fees and the NGOs off of it, because it does have a  
20 pretty good yield, mmbtu. And then the state loses, too,  
21 all the partners, royalties, severance taxes, services.

22 It just doesn't make any sense.

23 **Q. I guess are you aware at what point Targa starts**  
24 **charging a -- I guess an additional fee based off Co2**  
25 **concentration, or do you think they were trying to charge**

1     **you that fee in error?**

2           A.     I believe in the proposed replacement agreement,  
3     that POP Agreement, it was five -- let me think. It was  
4     five -- let me think about it. It was five cents times,  
5     uh, the -- uh, times volume of each product. Each of them  
6     were treated similarly.

7                     Well, in the proposed agreement for H2S  
8     they were trying to go up, but it was kind of a moot point  
9     because Caleb doesn't make any H2S, so really weren't that  
10    concerned about that.

11                    But the increase in the POP they proposed  
12    was just a flat gathering fee. They wanted -- it went up  
13    to -- on that piece of the puzzle they were proposing 85  
14    cents mcf on the gathering, and that's just crazy.

15           Q.     **I would say it looks like maybe they are**  
16    **charging you \$991 for blending, and I don't know if that's**  
17    **based off your Co2 concentration or what that's based off,**  
18    **I guess.**

19           A.     That's off the nitrogen and Co2.

20           Q.     **Oh, I got you. Okay. It's real hard to read**  
21    **this.**

22                    I guess something that we will want to see  
23    for sure would be maybe a higher quality of these  
24    statements here, especially this page 15, I think it is,  
25    so we can make it out a little better, for sure.



1           A.    I apologize for that.  I tried -- I don't know,  
2  I tried the best I could.  I just could never get -- I  
3  don't know, I just never good get, find somebody to help  
4  me out on that.  I couldn't get it to blow up enough to  
5  see more clearly the numbers.  I tried, believe me.

6           **Q.    Now, I'm sitting here looking through here.  Do**  
7 **you have the actual new contract itself and the old**  
8 **contract, as well, attached here?  I'm not seeing it, but**  
9 **I thought maybe Mr. Bruce made reference to it.**

10                           **Maybe I'm mistaken on that, though.**

11           A.    It's -- the contracts, the actual contracts are  
12 not attached.

13                           MR. BRUCE:  Would you like that?

14                           EXAMINER McCLURE:  I would think it may be  
15 beneficial.

16                           I mean, I -- I will have to bow a little  
17 bit to Mr. Brancard's and Mr. Coss's thought processes on  
18 how to proceed, and we will have to take it back on our  
19 end, I think, to see how we want to move forward, but I  
20 think those would be beneficial documents to have,  
21 depending upon how we proceed with this.

22                           MR. BRUCE:  Okay.  Well let me know later, and I  
23 can always get them to you.

24                           EXAMINER McCLURE:  Okay.

25                           THE WITNESS:  Excuse me.  I'm not sure -- uh, I

1 think if it's a request from the State, I'm pretty sure  
2 that we can provide that. I know that these agreements  
3 are held pretty confidentially, and so -- because Targa,  
4 you know any operator, doesn't don't want those agreements  
5 to be made public, because others can use it maybe for  
6 negotiation reasons.

7 So I may need to get Targa's approval. I  
8 don't know. I'm just throwing that out there.

9 EXAMINER McCLURE: Okay. We will have to  
10 discuss it, I guess at -- when we get there, once, you  
11 know, I guess, what you're looking at, maybe Mr. Brancard  
12 might have an idea if we can accept an exhibit on a  
13 confidential basis or not, I guess.

14 HEARING EXAMINER BRANCARD: Yeah, we can do  
15 that.

16 Mr. McClure, do you have any more  
17 questions? Otherwise we can try to wrap this up here.

18 EXAMINER McCLURE: Yeah. I have no further  
19 questions.

20 HEARING EXAMINER BRANCARD: Okay.

21 Mr. Bruce, did you have other witnesses or  
22 is everything by affidavit here?

23 MR. BRUCE: Everything is -- it's just Mr. Pence  
24 is the only exhibit.

25 HEARING EXAMINER BRANCARD: Okay. Excellent.

1                   So let me try to move this forward.

2                   Mr. Bruce, you offered, I think it's a  
3                   great suggestion, to prepare a memo to try to give us a  
4                   little bit of a road map.

5                   MR. BRUCE:    Sure.

6                   HEARING EXAMINER BRANCARD:   And I would see two  
7                   things, at minimum, in the memo:   One is, you know, what  
8                   is the legal authority for the Division to move forward on  
9                   this.   You know, consult the wisdom of the 1935  
10                  Legislature and what they put into the Act; and our rules,  
11                  too, because it's clear that looking at their statutory  
12                  provision that it sort of assumes we are doing some sort  
13                  of rules or Orders about these kinds of situations.

14                  And then the second issue, which was also  
15                  raised by the examiners, which is:   What is the remedy  
16                  here?   You know, given what our authority may be, what can  
17                  we do and what do you want us to do, and how does it  
18                  relate to the statutory authority?   So that's really the  
19                  two issues I see here.

20                  MR. BRUCE:    Okay.   My only request is that I  
21                  have at least until the end of the month, because I have a  
22                  lot of hearings and hearing prep within the last two  
23                  weeks, so I would just like a little extra time.

24                  HEARING EXAMINER BRANCARD:   Mr. Bruce, I think  
25                  the time frame is under your control.

1 MR. BRUCE: Okay. Thanks.

2 HEARING EXAMINER BRANCARD: Whenever you can get  
3 it to us.

4 So we will leave the record open, then, for  
5 that memo, and then I guess we'll also consult about  
6 whether we need any additional documentation --

7 MR. BRUCE: Okay.

8 HEARING EXAMINER BRANCARD: -- from your client.

9 MR. BRUCE: Thank you very much.

10 HEARING EXAMINER BRANCARD: And so I think -- I  
11 don't think there is anyone else here commenting on this  
12 case. I already asked once before. Let me try again.

13 Hearing none, we will continue this case  
14 and hold the record open for the memo, so we can consult  
15 our way forward on this.

16 MR. BRUCE: Thank you very much.

17 HEARING EXAMINER BRANCARD: Appreciate it.  
18 Thank you, Mr. Bruce.

19 (Time noted 10:35 a.m.)

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1 STATE OF NEW MEXICO )  
2 : SS  
3 COUNTY OF TAOS )

5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter  
7 CCR No. 122, DO HEREBY CERTIFY that on Thursday,  
8 January 7, 2021, the proceedings in the above-captioned  
9 matter were taken before me; that I did report in  
10 stenographic shorthand the proceedings set forth herein,  
11 and the foregoing pages are a true and correct  
12 transcription to the best of my ability and control.

13 I FURTHER CERTIFY that I am neither employed by  
14 nor related to nor contracted with (unless excepted by the  
15 rules) any of the parties or attorneys in this case, and  
16 that I have no interest whatsoever in the final  
17 disposition of this case in any court.

18 /s/ Mary Macfarlane  
19 \_\_\_\_\_

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