

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE APPLICATION OF THE
NEW MEXICO OIL CONSERVATION DIVISION
TO CONSIDER PROPOSED RULES TO REGULATE THE
VENTING AND FLARING OF NATURAL GAS FROM
OIL AND NATURAL GAS PRODUCTION AND GATHERING FACILITIES**

CASE NO. 21528

HEARING OFFICER REPORT

Introduction

Applicant New Mexico Oil Conservation Division ('OCD' or 'Division') submitted to the Oil Conservation Commission ('OCC' or 'Commission') on October 15, 2020, an application to consider proposed rules regulating the venting and flaring of natural gas from oil and natural gas production and gathering facilities. OCD proposed two new rules: *19.15.27 NMAC—Venting and Flaring of Natural Gas*, and *19.15.28 NMAC—Natural Gas Gathering Systems*; and three amended rules: *19.15.7 NMAC—Forms and Reports*, *19.15.18 NMAC—Production Operating Practices*, and *19.15.19 NMAC—Natural Gas Production Operating Practice*.

On November 4, 2020, the Commission agreed to set the Application for hearing beginning in January 2021 and began its discussion of the timing and design of that hearing. Subsequent events included the entry of a procedural order on November 10, and an amended procedural order on November 19; the certification by the Commission Clerk of compliance with all public notice requirements on November 30; entries of appearance by the New Mexico Oil and Gas Association (NMOGA), the Commissioner of Public Lands and New Mexico State Land Office (NMSLO), Sierra Club, the Environmental Defense Fund (EDF), and several other nonprofit organizations dedicated to environmental protection and addressing climate change (Climate Advocates); Commission approval during a meeting on December 9 of a scheduling

order agreed to by all parties; appointment of the undersigned hearing officer on December 18; and a motion hearing before the Commission and hearing officer on December 30, 2020.

Beginning January 4, continuing through January 15, 2021, the Commission and hearing officer accepted testimony and public comment on Webex, a virtual platform, in compliance with Executive Orders and other directives issued to prevent the spread of COVID-19. OCD Engineering Bureau staff rotated as Webex technical hosts; audiovisual and connectivity issues experienced by some of the participants were brief or relatively minor.

The hearing was conducted pursuant to Section 19.15.3 NMAC, the Commission's Rulemaking rules. Public comment was accepted each day of the hearing, with the entirety of the first day and the morning of the second day dedicated solely to accepting public comment; additional opportunities were offered to the general public at 8:30 a.m. and 4:30 p.m. each subsequent day of the hearing. Written public comment was also invited and submitted.

All technical testimony and other testimony offered by the parties was taken under oath and subject to questioning by the other parties and by the Commission. All exhibits offered by all parties were admitted. In addition to the Webex video recording of the hearing, the hearing was transcribed by Paul Baca, Irene Delgado, and Mary McFarlane of Paul Baca Reporting. The hearing began each day between 8-8:30 a.m., and ended each day between 5-6 p.m. The number of participants on each day of the hearing fluctuated between 60-85 persons. All transcripts and exhibits are in the case file.

Two motions relating to the presentation of evidence were filed, argued and denied by the hearing officer: NMOGA filed a motion to strike Section 19.15.27.8.G(4) from OCD's proposed Part 27, and later filed a motion to exclude evidence pertaining to Section

19.15.27.8.C(1) proposed by EDF and Climate Advocates. The hearing officer invited the parties to present their evidence without limitation on these two sections, and noted that the Commission would consider the questions of legal authority for Section 19.15.27.8.G(4) and proper notice/logical outgrowth for Section 19.15.27.8.C(1) as part of their deliberations. The motions, responses, and all other pleadings are in the case file.

The Parties, Their Counsel and Witnesses

OCD was represented by Eric Ames, Assistant General Counsel of the Energy, Minerals and Natural Resources Department. OCD's witnesses included Tiffany Polak, OCD's Deputy Director; Matthew Lepore, principal and founder of Insight Energy Law, LLC; James Bolander, registered professional engineer and president of JLB Engineering; and Brandon Powell, chief of OCD's Engineering Bureau.

NMOGA was represented by Michael Feldewert, Adam Rankin, and Kaitlyn Luck of Holland & Hart, LLP. NMOGA's witnesses included John Smitherman, petroleum engineer; Paul Thompson, petroleum engineer and president of Walsh Engineering and Production Corp. and Epic Energy, LLC; Morgan Iannuzzi, Chevron air team lead in Midland, Texas; Paul Reinermann, field environmental manager for Enterprise Field Services; Joseph Leonard, P.E., facilities and design engineer for Devon Energy; Jeffrey "Ryan" Davis, production engineer and operations manager for Merrion Oil & Gas Corporation; David Greaves, facilities engineering manager for XTO Energy; Zachary Craft, in-house counsel for Enterprise Products Company; Yolanda Perez, chair of NMOGA's Regulatory Practices Committee and senior regulatory affairs consultant for Occidental Oil & Gas; and Michael Smith, co-chair of NMOGA's Environmental Affairs Committee and an environmental professional for Devon Energy.

The Commissioner of Public Lands Stephanie Garcia Richard and NMSLO were represented by Ari Biernoff, NMSLO General Counsel. NMSLO's witness was Danny Martinez, Division Director, Royalty Management Division.

The Climate Advocates included Sierra Club, represented by Tannis Fox and Erik Schlenker-Goodrich of the Western Environmental Law Center (WELC) and David R. Baake of Baake Law Office. Climate Advocates also included Conservation Voters New Mexico, Earthworks, San Juan Citizens Alliance, Center for Civic Policy, Dine C.A.R.E., Natural Resources Defense Council, and 350 New Mexico, represented by Ms. Fox and Mr. Schlenker-Goodrich of WELC. Climate Advocates' witnesses included Dr. Brenda Ekwuzel, Director of the Climate and Energy Program for the Union of Concerned Scientists; Alexandra J. Teitz, J.D., principal at AT Strategies; Dr. David McCabe, senior scientist with the Clean Air Task Force; Don Schreiber, ranch owner who leases land from the Bureau of Land Management in the San Juan Basin; Lesley Fleishman, M.M.P., senior analyst with the Clean Air Task Force; Dr. Thomas Singer, senior policy advisor with WELC; Charles de Saillan, J.D., staff attorney with the Environmental Law Center; Nathalie Eddy, J.D., field advocate for New Mexico and Colorado with Earthworks; Mario Atencio, director on the Dine C.A.R.E. board of directors; Kendra Pinto, who works with Dine C.A.R.E.; and Adella Begaye, R.N., president of Dine C.A.R.E. who was a public health nurse.

EDF was represented by Elizabeth Paranhos of deLone Law, Inc. EDF's witnesses included Jon Goldstein, EDF's Director of Regulatory and Legislative Affairs and former EMNRD cabinet secretary; Dr. David Lyon, EDF employee experienced in methane science and emissions inventories in the oil and gas sector; and Tom Alexander, EDF technical consultant and oil and gas industry expert in unconventional resource development.

Public Commenters during the Hearing

Oral public comment was invited at least twice every day of the 10-day hearing, and offered on nine of those days. Comment was accepted from Celerah Hewes, Nicholas King, Emily Wolf, Douglas Meiklejohn, Penny Aucoin, Camilla Feibleman, Amy Maki, Robyn Jackson, Jeff Thrope, Sister Joan Brown, Sister Marlene Perrotte, Sandra Ely, Ruth Striegel, Kyle Fiore, David Patterson, Pat Belleto, Anita Amstutz, Rev. David Wilson Rogers, Yvonne Pesquera, Gloria Lehmer, Representative Tara Lujan, Representative Joanne Ferrary, Wendy Atcitty, Regina Nordquist, Lari Tiller Howell, Sister Rose Marie Cecchini, Stacie Slay, Denton McCullough, Hazel James, Linda Burchfiel, Susan Selbin, Gary Oakley, Cristopher Moore, Patricia Sheeley, Penelope Mainz, Jacqueline Groveas, Nancy Weeks Singham, Liliana Castillo, Teresa Seamster, Dr. Clyde T. Williams, Dr. Beverly Singer, June Parsons, Stephen Robertson, and Jim McKenzie on Day 1.

Comment was accepted from Carolyn Pruet, Ann McCartney, Nicholas Knorr, Lucas Herndon, Barbara Webber, Trish Foschi, Greg Petty, and Dr. David Tsosie on Day 2; from Bill Midcap, Ward McCartney, Stefi Weisburd, Las Cruces City Councilor Gabriel Vasquez, Judy Traeger, Donna House, Mark LeClair, and Michael Swearingen on Day 3, from Carol Davis and Karen Maria Weber on Day 4; and from Duane Yazzie on Day 5.

Comment was accepted from Crawford MacCallum and Santa Fe County Commissioner Anna Hansen on Day 6; from Glenn Schiffbauer and Mara Matteson on Day 7; from Teresa Pasquale on Day 9; and from Neomi Martinez Parra and Victor Snover on Day 10.

Written Public Comment

Several public commenters offered their full statements in writing, and many who did not wish to speak submitted their comments in writing. All comments are in the case file,

including one that was submitted belatedly by the Carlsbad Department of Development.

Those who wrote to support the proposed rules, to say they are overdue, critical to addressing environmental protection, climate change, or environmental injustice, or as needing to be strengthened consistent with the proposals by Climate Advocates and EDF, included Patricia Keefe, Neal Jones, Sheila Gibbens, Charles Clements, Flora L. Martinez, Judy Crawford, John Thayer, Barbara Boehms, Michael Lawler, John Wood, Marilyn Lohr, Kristina Fisher, Nicholas King, Susan Peirce, Lisa Bowdey, James Goodbar, David Rockwell, Cris Moore, Madison McClintock, Lucy Smith, Melissa Haslam, Jon Klingel, Chemen Ochoa, Margo Wyse, Rebecca Gentry, Liliana Castillo, Sarah Stout, Patricia Sheeley, Brent Thompson, Sheryl Roller, Leland Bowen, Timothy Peterson, Clara Sims, Marty Stribling, David Schlessinger, Noreen Perlmutter, Patty Navarrete, Kathryn Kaffer, Anne Petrokubi, Joann Bethel, Ada Rippberger, Margaret Bell, Scott Oury, Mary Palmer, Kathleen Corbett, Dawn Foster, Jan McCreary, Robert Gilman, Rogene Henderson, Les Roberts, Karen Milstein, Susan Friend, Halli Bourne, I. Engle, George Ginsberg, Steven Burr, Diana Zelnio, Lawrence Bothern, Sally Bryan, Delcie Dobrovolny, Nancy King, Janice Abrams, Nelda McLaughlin, Marianne Lappin, Samuel Bensonhaver, Lynn Allen, Paula Atkinson, Sarah Parker, Rebecca Walding, Victoria Wallington, Jill Joseph, Don Parsons, Roger Southward, Georgia Sinclair, J. Koepke, Martha Rivas, Sandra Lambert, Megan Holder, Debra Cameron, Gail Hull, Deanna Dyke, Jessica Jakubanis, Elena Yoder, Carol Courtney, Candace Duran, Mary Bissell, William Riker, Malcolm Macpherson, Lura Brookins, Nancy Bush, Joleen RoqueFrank, Arabelle Luckhardt, Deborah Riley, Camilla Feibleman, Jacqueline Groveas, Catharine Stringfellow, Barbara Korbal, Mrs. Antonio Leija, J. Hauer, Todd Monson, Kathleen Talbot, Kimberly Martinez, Isaac Brown, Mrs. James Lawell, Sai Rollins, Aleema McLauchlin, Karen Kornbau, Ida Campos,

Teresa Seamster, Freedom Lucero, Kylie Page, Jeff Thrope, Jay Carroll, Van Beachment, Eric Puckett, Jacob Clemens, Rachel Reynolds, Raian Harris, Oscar Simpson, Shannon Slinkey, Emily Wolf, Trish Martin, Ireland Kelley, Patricia Dunaj, Douglas Meiklejohn, Barbara Webber, Alfred Bennett III, Debora Agee, Therese and David Patton, and 299 members of the Sierra Club Rio Grande Chapter.

Those who submitted public comment expressly supporting the rule with modifications presented by NMOGA, with a focus on exemption or special consideration for stripper wells, less onerous AVO inspection documentation, and flexibility in such areas as proximity during manual liquids unloading, included Rory McMinn, Jerry McHugh, Lori Walters, Nick McClelland, Dugan Production Corp., Ray Willis, Clayton Hamilton, Ashley Bates, Thomas E. Mullins, Fredrick Proctor, Phelps White, Mike Hoyl, Representative Gregory Nibert, Steve Nelson, Lynne Anderson for NAIOP, Jay Paul McWilliams, Representative Gay G. Kernan, Ronald D. Hillman, Lovington Mayor David Trujillo and City Commissioners Bernard Butcher, Scott Boldt, Scotty Gandy, and Paul Campos, Jimmy Carlile, Jim Winchester of IPANM, Jamie Church, Dave Brown, and Ben Shepperd

Those who submitted public comment encouraging the adoption of a “balanced and flexible” rule that would address climate change while supporting economic growth included Farmington Mayor Nate Duckett, Farmington Chamber of Commerce; Rob Black; Chris Hunter; Artesia Mayor Raye Miller; Hispano Chamber of Commerce , Ernie C de Baca and J.P. Espinoza; Albuquerque Chamber of Commerce; Carlsbad Mayor Dale Janway; Paul Gessing; Bloomfield Mayor Cynthia Atencio, Mayor Pro-Tem Ken Hare and City Manager George Duncan; Matthew E. Gonzales of Consumer Energy Alliance; Jal Mayor Stephen Aldridge; Carla Sonntag of the NM

Business Coalition; Andrea Moore for the Roswell Chamber of Commerce; Jessica Sanders, Mary Beth Weeks, Machele Crawford, and the Carlsbad Department of Development.

Two comments did not resemble any other: Robert Kester of Honeywell encourages the Commission to permit operators and manufacturers to seek pre-approval of ALARM technologies, and to require the Division to make public a list of approved technologies; they include specific regulatory language for the Commission’s consideration in Sections 27.7.A, 28.7.A, 27.9, and 28.10. The New Mexico Attorney General, through Cholla Koury, Director of Consumer and Environmental Protection, commends the Commission for its thorough and deliberative process, does not take a position on specific rule provisions, and writes to provide comment on recent litigation involving analogous federal rules. The AG is aware that the vacatur by the District of Wyoming of a 2016 federal rule has been cited by NMOGA to support a narrow definition of “waste” centered on the economic interests of the operator, but states that it should not be relied upon as persuasive authority. For several reasons, the decision in *California v. Bernhardt* is a more well-reasoned case.

Commission Deliberations

Having attended the hearing in its entirety, or very nearly its entirety, and having otherwise reviewed the transcripts, public comment, and other documents in the case file, the Commissioners may find it helpful to have certain documents immediately at hand while deliberating:

1. the proposed rules in their final form, filed by OCD on January 20, with additional changes filed February 5; OCD’s closing statement; and OCD’s Exhibits 4C and 4D,

sent to you in an email early on January 15, which shows OCD's justifications, section by section, for declining to include certain of other parties' proposals.

2. NMOGA's closing statement and proposed changes to OCD's final proposed rules, shown in legislative format with justification for the changes beneath each section.
3. Climate Advocates and EDF's closing statement and proposed changes to OCD's final proposed rules, shown in legislative format with justification for the changes beneath each section.

The Commission may wish to simply proceed section by section through the proposed rules; if so, please note that the only proposed new definition in Section 19.15.27.7 suitable for a stand-alone discussion is NMOGA's proposed changes to the word "emergency." NMOGA's other proposed changes to the definitions relate to venting and flaring. Climate Advocates and EDF's proposed definitional changes relate to their proposals in Section 19.15.27.8.C., also on venting and flaring.

In the event the Commission chooses to begin its deliberations discussing the major controversies before stepping through the rules section by section, OCD has aptly identified them as low pressure equipment and practices, reporting forms, royalty owner reporting, emergencies, and APD auto-denial.

Respectfully submitted,



Felicia L. Orth, Hearing Officer