

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

**APPLICATION TO RE-OPEN CASE NO.
21593: APPLICATION OF SOZO I LP AND
SOZO NATURAL RESOURCES, LLC TO
REQUIRE A COMMON PURCHASER TO
RATABLY TAKE GAS ON REASONABLE
TERMS UNDER THE TERMS OF NMSA 1978,
§ 70-2-19.D AND NMAC 19.15.24.12, LEA
COUNTY, NEW MEXICO.**

CASE NO. 21726

TARGA’S RESPONSE TO SOZO’S MOTION TO DISMISS CASE NO. 21726

Targa Midstream Services LLC¹ (“Targa”) submits this response to Sozo I LP and Sozo Natural Resources, LLC’s (collectively, “Sozo”) *Motion to Dismiss* (“Motion”). For the reasons stated, the Motion should be denied.

INTRODUCTION

Sozo suggests that Targa’s *Application to Re-open Case No. 21593* (the “Application”) should be dismissed because Targa received notice of the January 7, 2021 setting in Case No. 21593. This point does not support dismissal of the Application. Division’s regulations require parties to file an entry of appearance and a prehearing statement in advance of a hearing. But Sozo’s application was set as a status conference, not a hearing. Targa’s entry of appearance is therefore timely. Moreover, Sozo’s case has not been taken under advisement, the record remains open, and the Division retains broad discretion to hear Targa’s objections to ensure a full and fair hearing on this matter.

¹ Targa notes that the gas gathering relationship is between Versado Gas Processors, L.L.C. and Sozo. Versado Gas Processors, L.L.C. is a wholly owned subsidiary of Targa Midstream Services LLC which is operator of the subject gas gathering system for Versado.

Sozo's motion should be denied. If the Division denies Targa's motion to dismiss Case No. 21593 and determines that it has jurisdiction and authority to hear Sozo's application, it should allow Targa to contest Sozo's application with evidence and testimony, and to cross-examine Sozo's witnesses, to ensure a full and fair hearing.

I. INTRODUCTION AND BACKGROUND

1. In Case No. 21593, Sozo filed an application seeking a Division order requiring Targa to take Sozo's gas on "reasonable terms," alleging that Targa is a common purchaser under Section 70-2-19(D) and 19.15.24.12 NMAC, and that these provisions require Targa to "ratably take" gas from its Caleb State Well No. 1 (API No. 30-025-37497) ("Caleb well") "under non-discriminatory terms."

2. On January 7, 2021, the Division heard Sozo's application in Case No. 21593 (the "January 7 hearing") at which Sozo presented its witness, Britt Pence, along with exhibits to determine whether or how to proceed with the case. *See* Case No. 21593, Sozo's Exhibits A-F; *see also* generally, Tr. Jan. 7, 2021, attached as **Exhibit A**; *id.* at Tr. 3:19-22; 6-6:11.

3. Notably, the Division Examiners set the case for a status conference—not for a hearing—due to the novel and contested nature of the proceedings and to hear from both parties in advance of a hearing. *See* Exhibit A at Tr. 6:6-17.

4. After the status conference, the Division's Hearing Examiner kept the record open, continued Case No. 21593, and requested that Sozo submit a legal memorandum addressing the Division's authority and Sozo's requested relief to help the Division determine whether or how to proceed. *See* Exhibit A at Tr. 27:6-28:15; *see also* 3:19-22; 6:6-17; 18:10-15; 25:16-19.

5. Critically, the Division did not take Case No. 21593 under advisement. *See* Exhibit A at Tr. 28:13-15. To date, Sozo has not yet submitted its legal memorandum, the record remains open, and the Division has made no determination about whether or how to proceed with the case. *Id.*

6. Targa did not appear at the January 7 setting because it was not actually aware of Sozo's application or that it had been set for a status conference.² *See* Targa's Application in Case No. 21726. Upon learning of the application and the status conference, Targa immediately entered an appearance in Case No. 21593 the next day on January 8, 2021. *See id.*

7. Following its entry of appearance, Targa began preparing its Application and notified the Division and counsel for Sozo on January 19, 2021, that it intended to file its Application, would request a status conference to schedule a contested hearing on Sozo's application, and asked that no action be taken on Sozo's case until Targa had been heard. *See* Email from A. Rankin to Division Hearing Examiner, dated January 19, 2021, attached as **Exhibit B**. Targa filed its Application on January 20, 2021, requesting a status conference at the next available hearing docket on March 4, 2021.

8. The Division accepted Targa's Application, assigned it Case No. 21726, and set the matter for a status conference on March 4, 2021.

9. In advance of the March 4 status conference, Targa moved to dismiss Case No. 21593 on February 24, 2021, on the grounds that Sozo has not met its burden to make or sustain a claim of discrimination under NMSA 1978, Section 70-2-19(D) and 19.15.24.12 NMAC, and that the Division does not have authority to hear such private contractual disputes.

² Targa does not dispute that the notice of Sozo's application and hearing sent by certified mail was signed for and received; however, because of COVID and the holidays, no one at Targa became aware of Sozo's application until after the January 7 status conference. *See* Aff. of M. Edwards attached as Exhibit A to Targa's Application in Case No. 21726.

10. At the March 4, 2021 status conference, the Division Hearing Examiner issued a pre-hearing order setting a briefing schedule in Case Nos. 21593 and 21726 and oral argument on the motions for April 8, 2021, if it is deemed necessary.

II. ARGUMENT

A. **There are No Grounds for Dismissal of Targa's Application Because Case No. 21593 Was Set for a Status Conference, Not a Hearing, and the Record Remains Open.**

11. Sozo's Motion fails to state a valid basis for dismissal of Targa's Application. Contrary to Sozo's arguments, Targa has not waived its rights in Case No. 21593 for failure to appear at the January 7 status conference, under the plain language of the Oil and Gas Act, or the Division's rules, which require parties intending to present evidence to file an entry of appearance and a prehearing statement before an adjudicatory hearing, not a status conference, and give the Division broad discretion to accept parties and hear evidence.

12. Division rules expressly provide, "[a] person entitled to notice may enter an appearance at any time by filing a written notice of appearance[.]" 19.15.4.10.B NMAC (emphasis added); *see also* 19.15.4.10.C NMAC (giving the Division discretion to accept filings for good cause shown).

13. Division rules provide that a party who intends to present evidence is required to file an entry of appearance one day before the prehearing statement is due. *See* 19.15.4.10.C NMAC. But prehearing statements are due before evidentiary hearings, not status conferences. *See* 19.15.4.13.B(1) NMAC. The Division set Sozo's application for a status conference on January 7, 2021, because of the novelty of the case and to hear from both parties before proceeding to a hearing. *See* Exhibit A at Tr. 6:6-17; *see also* OCD Hearing Docket, 1/7/2021

(setting Case No. 21593 for a “status conference”), attached as Exhibit A to Targa’s Reply in Support of Motion to Dismiss.

14. After the status conference on January 7, the Division continued Case No. 21593 and kept the record open. *See* Exhibit A at Tr. 27:6-28:15.

15. Immediately upon learning of Sozo’s application in Case No. 21593 and the January 7 setting, Targa entered an appearance on January 8, 2021. *See Targa’s Application to Re-Open Case No. 21593.*

16. Sozo relies on Commission Order No. R-14097-A for its contention that Targa’s application should be dismissed. The facts of that case, which involved a de novo appeal of a pooling proceeding to the Commission, are wholly distinguishable.

17. In that case, Amtex Energy Inc. “offered no excuses for its late filing and did not request the record be reopened or offer to submit any new evidence.” *See* Order No. R-14097-A, at Finding ¶15. Amtex Energy also waited 22 days after the Division took the case under advisement and closed the record before appearing, failed to state any basis for opposing the application, and did not request that the record be reopened for further evidence.

18. In Order No. R-14097-A, the Commission explained that Amtex’s failure to timely appear in the Division proceedings, in conjunction with other factors, precluded a right to a de novo hearing at the Commission, because “the Act and the Commission rules intend for a full and fair proceeding before the Division hearing examiners and the Division Director, including notice to all affected parties, in the hopes that the issues will be fully developed and addressed by the Division.” *See id.* at Finding ¶ 16.

19. Conversely, here in Case No. 21593, the Division originally set the matter for a status conference—not a hearing—and then continued the case, has not yet taken the matter

under advisement, and has kept the record open. Accordingly, Targa's entry of appearance is not late because Sozo's application still has not been set for hearing by the Division. *See* 19.15.4.13.B(1) NMAC.

20. Targa also entered its appearance immediately upon learning of the January 7 setting, not simply as an attempt to preserve its rights as a party of record for purposes of making a de novo appeal to the Commission, but to challenge Sozo's application in a full and fair contested proceeding at the Division. In addition, Targa provided a good-cause basis for its entry of appearance, even if it is deemed to be late. Moreover, in its filings to date, Targa has outlined its basis for opposition to Sozo's application.

21. Unlike Amtex Energy in Case No. 15366, Targa did not wait 22 days after the January 7 setting to enter an appearance. It also seeks a full and fair proceeding before the Division so that the issues may be fully developed and decided at the Division level.

22. Sozo is not prejudiced by Targa's entry after the January 7 setting because Case No. 21593 was not formally set for a hearing, the matter was continued by the Division, the record remains open, and Sozo has not yet filed the legal memorandum requested by the Division. *See* Case No. 21593 at Tr. 27:6-28:15.

23. In filing its Motion, Sozo is attempting to preclude Targa from presenting evidence in opposition to Case No. 21593 that will result in unfair prejudice to Targa and will prevent the Division from having a full and fair proceeding on which to make a determination.

24. If allowed (and if Targa's motion is denied), Targa intends to present evidence that Targa is not discriminating against Sozo in favor of other producers, and that Sozo rejected Targa's reasonable offers, and now improperly seeks a Division determination over a private contractual dispute.

25. Under Division rules, Targa's entry of appearance was timely. Even if it is deemed late, Targa should be given the opportunity to present evidence contesting Sozo's application because Targa has provided a good-cause basis and the Division should exercise its discretion to hear Targa's objections to ensure a full and fair hearing.

WHEREFORE, Targa respectfully requests that the Division deny the Motion to dismiss filed by Sozo.

Respectfully submitted,

HOLLAND & HART LLP



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ATTORNEYS FOR TARGA MIDSTREAM SERVICES LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2021, I served a copy of the foregoing document to the following counsel of record via electronic mail:

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Santa Fe, New Mexico 87504
505-982-2043
jamesbruc@aol.com

**ATTORNEY FOR SOZO I LP AND SOZO
NATURAL RESOURCES, LLC**



Adam G. Rankin

EXHIBIT A

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

IN THE MATTTTER 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

EXHIBIT A

1 A P P E A R A N C E S

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

5

6 C O N T E N T S

| | |
|-----------------------------------|------|
| 7 CASE NUMBER 21593 | PAGE |
| 8 CASE CALLED | 3 |
| 9 OPENING STATEMENT BY MR. BRUCE: | |

10 I N D E X O F W I T N E S S E S

11 SOZO 1, LP and SOZA NATURAL RESOURCES WITNESSES:

12 BRITT PENCE

13 ACCEPTED AS AN EXPERT: 9

14 DIRECT EXAMINATION BY MR. BRUCE: 8

15 CROSS EXAMINATION BY EXAMINER McCLURE: 18

16 CASE CONTINUED: 29

17 E X H I B I T I N D E X

18 SOZO NATURAL, LLC EXHIBIT

19 A Application and Proposed Ad 18

20 B Affidavit of Britt Pence 18

21 C Definition of Gas Contracts 18

22 D Notice Affidavit 18

23 E NMSA 17-2-19 18

24 F NMSA 19.15.24.12 18

25

EXHIBIT A

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.

EXHIBIT A

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.

EXHIBIT A

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.

EXHIBIT A

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**

EXHIBIT A

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**

EXHIBIT A

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

EXHIBIT A

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.

EXHIBIT A

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.)

20

21

22

23

24

25

EXHIBIT B

Adam Rankin

From: Adam Rankin
Sent: Tuesday, January 19, 2021 5:24 PM
To: Hearings, OCD, EMNRD
Cc: Michael Feldewert; Kaitlyn A. Luck; Julia Broggi; Carla S. Garcia; jamesbruc@aol.com; bill.brancard@state.nm.us
Subject: Sozo Case No. 21593: Targa Midstream Services LLC motion to re-open the case and set a status conference

Dear Examiners,

Upon learning of the application and hearing in this matter, Targa filed a entry of appearance on January 8, 2021. We understand that the case was presented at hearing on January 7, 2021, and has been taken under advisement. We also understand that the Hearing Examiner instructed Sozo counsel to prepare a legal memorandum addressing the points and authorities that support Sozo's requested relief. Targa intends to file a motion to re-open the case and to set a status conference to schedule a contested hearing in this matter. I have conferred with Mr. Bruce and understand that Sozo will oppose the motion. We ask that no action be taken on a final order until Targa's motion has been ruled on.

We appreciate the consideration.

Very best,
Adam

Adam G. Rankin

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From: Carla S. Garcia <CSGarcia@hollandhart.com>
Sent: Friday, January 8, 2021 10:46 AM
To: Hearings, OCD, EMNRD <OCD.Hearings@state.nm.us>; jamesbruc@aol.com
Cc: Michael Feldewert <MFeldewert@hollandhart.com>; Adam Rankin <AGRankin@hollandhart.com>; Kaitlyn A. Luck <KALuck@hollandhart.com>; Julia Broggi <JBroggi@hollandhart.com>
Subject: ENTRY OF APPEARANCE by Targa Midstream Services LLC re Application of Sozo I LP and Sozo Natural Resources, LLC Case No. 21593

Good Afternoon,

Please file into the record the attached *Entry of Appearance* on behalf of Targa Midstream Services LLC in regard to the application by Sozo I LP and Sozo Natural Resources, LLC in Case No. 21593

EXHIBIT B

Thank you,

Carla S. Garcia

Carla Garcia

Legal Secretary, Holland & Hart LLP

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