

**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 NOS. 21593, 21726**

**TARGA’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS CASE NO. 21593**

Targa Midstream Services LLC<sup>1</sup> (“Targa”) submits this reply in support of its Motion to Dismiss the application filed by Sozo I LP and Sozo Natural Resources, LLC (collectively, “Sozo”) in Case No. 21593. For the reasons stated below and in Targa’s Motion, Sozo’s application should be dismissed.

**INTRODUCTION**

Dismissal is required for two independent reasons. First, Sozo has failed to allege a cognizable claim of discrimination by Targa against Sozo under NMSA 1978, Section 70-2-19(D) and 19.15.24.12 NMAC over which the Division has jurisdiction. At most, Sozo has alleged a dispute over a private contractual matter that is outside the authority of the Division to decide. Second, Sozo has failed to submit evidence necessary to sustain a discrimination claim. Sozo’s response does not offer a valid rebuttal for either basis for dismissal. Targa’s motion should be granted.

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<sup>1</sup> 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 also contends that Targa has no standing in the case because it entered its appearance one day after a status conference on Sozo's application was held on January 7, 2021. That argument is not supported by the facts or the Division's regulations, which require parties to file an entry of appearance and a prehearing statement in advance of a hearing. Because Sozo's application was set as a status conference, not a hearing, its entry of appearance was 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.

### **ARGUMENT**

**A. Sozo's Claim is a Contract Dispute Disguised as a Gas Gathering Discrimination Claim and Should be Dismissed.**

1. Sozo makes no response to Targa's motion to dismiss. Targa's motion demonstrated that Sozo failed to allege a cognizable claim of discrimination under Section 70-2-19(D) and 19.15.24.12 NMAC and that the Division has no jurisdiction or authority over such private contract matters. Sozo offers no rejoinder to the motion on the legal sufficiency of its allegations because none can be made.

2. Sozo was required to allege under Section 70-2-19(D) that Targa's gas purchase terms resulted in unreasonable discrimination in favor of other producers against Sozo, taking into consideration such factors as "the quality and the deliverability of the gas, the pressure of the gas at the point of delivery, acreage attributable to the well, market requirements in the case of unprorated pools, and other pertinent factors." § 70-2-19(E).

3. Sozo alleges instead that Targa should be required to offer Sozo a break in its gas purchase agreement because its well has "no H2S" and would "alleviate[] Targa's problem."<sup>2</sup>

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<sup>2</sup> See Sozo Resp. at 2, ¶ 9.

But Sozo’s subjective belief that it should be treated more favorably by Targa due to the quality and volume of its gas is not the same as alleging Targa favors other producers over Sozo in the price paid on the basis of gas quality and quantity and other factors.

4. Without alleging that Targa treats other producers more favorably with respect to price or any other valid element of a discrimination claim, Sozo simply alleges that Targa’s proposed gas purchase agreement makes Sozo’s well uneconomic based on the well’s operating costs and gas prices. *See* Sozo Application at ¶¶ 4-5. That is not an allegation of discrimination. It is simply an allegation that Sozo believes it deserves a better deal. *See also* Targa Mot. Ex. A at 3 (Sozo states “Sozo felt that Targa would find the Caleb well’s gas favorable because of the relative high volumes of sweet gas that can be used to blend with the sour gas from other wells that is produced into Targa’s system. Therefore, Sozo was surprised that Targa would terminate the gas purchase agreement on the Caleb State #1 gas, because it’s one of the best wells in the area producing into Targa’s system. . . . Sozo believes that the proposed replacement agreement is not just and reasonable.”).

5. But that complaint is a private-right dispute between parties in a relationship governed by a contractual agreement. *Cf. Hartman v. El Paso Nat. Gas Co.*, 1988-NMSC-080, ¶¶ 29-31, 763 P.2d 1144 (recognizing the distinction between “public rights vs. private rights” with respect to the Division, which has authority to decide “public right” issues regarding conservation of waste and protection of correlative rights) (citing *Tenneco Oil Co.*, 687 P.2d 1049 (Okla. 1984)). Thus, it sounds in contract—if anything—over which the Division has no jurisdiction or authority. *See* Order No. R-12790, ¶ (15); *see also* Order No. R-13789, at ¶ (16). It is not a cognizable discrimination claim under Section 70-2-19(D) and 19.15.24.12 NMAC.

6. Sozo’s attempt to fit a dispute over a replacement contract into a statutory and regulatory framework designed to protect against discrimination as between producers in gas purchases is misplaced and should be rejected. *See also* Mot. at ¶ 23.

**B. Sozo Proffered no Evidence of Discrimination Under Section 70-2-19(D).**

7. Sozo’s response also fails to identify specific evidence that supports a finding on any of the essential elements of a claim that Targa unreasonably discriminated against Sozo “in the price paid” relative to other producers “for gas of like quantity, quality and pressure.” Because Sozo cannot establish a prima facie case of discrimination, its case must be dismissed. *See* Rule 1-056(C) NMRA; *Goradia v. Hahn Co.*, 1991-NMSC-040, ¶ 18, 810 P.2d 798; *Katcher v. Johnson Controls World Servs.*, 2003-NMCA-105, ¶ 19, 75 P.3d 877.

8. Sozo points to two categories of evidence that purportedly support its claim; however, none of the evidence supports finding discrimination.

9. First, Sozo identifies evidence Targa submitted with its motion. *See* Sozo Resp. at 2, ¶ 8 (stating Targa accepted Sozo as successor operator of the well, approved the existing contract, and later terminated the contract). That evidence does not go to an element of a discrimination claim because it does not show that Targa favored other producers over Sozo in terms of price paid. Contrary to Sozo’s response, Targa’s evidence also does not support Sozo’s contention that Targa terminated Sozo’s contract due to high operating costs associated with hydrogen sulfide. *See* Sozo Resp. at 2, ¶ 8.

10. Targa’s evidence shows instead that Targa was seeking to cover its operating expenses from producers because it is “costly to operate this particular low pressure system/plant and therefore, we have to make sure we are covering those costs.” Targa Mot. Ex. A at 2. Not only does this evidence not go to an element of a discrimination claim—that Targa is

discriminating against Sozo “in the price paid” relative to other producers “for gas of like quantity, quality and pressure”—but it also contradicts Sozo’s unsubstantiated assertion that Targa has a “problem” with high hydrogen sulfide levels and that Targa “has refused to negotiate a reasonable agreement with Sozo.” *See* Case No. 21593, Sozo Ex. B, ¶ 7. Because Targa’s “problem” is not high hydrogen sulfide levels in its system, this evidence also contradicts Sozo’s contention that its gas is somehow a benefit to Targa that must result in a cost break to Sozo or it is being discriminated against in terms of price. It also shows that Targa made a good-faith effort to reach agreement by offering an “alternate Amendment” to the replacement agreement that would use “the majority of the existing terms” in the original agreement, but with a slightly higher fee. *See* Targa Mot. to Dismiss, Ex. A at 1.

11. Second, Sozo points to its own hearing testimony that its well produces no hydrogen sulfide, “which alleviated Targa’s problem.” *See* Sozo Resp. at 2, ¶ 9. Sozo suggests that because Targa continues to take gas from other producers whose gas is high in hydrogen sulfide demonstrates that Targa “simply wanted extra revenue from Sozo, which shows discrimination.” *See* Sozo Resp. at 2, ¶ 9.

12. Sozo’s evidence, and its logic, fails to support the evidentiary elements of the claim. As demonstrated above, Targa’s “problem” is not high levels of H<sub>2</sub>S in its system. But even if Targa does benefit from Sozo’s low-hydrogen sulfide gas, such evidence does not demonstrate that Targa is discriminating against Sozo “in the price paid” relative to other producers “for gas of like quantity, quality and pressure.” Sozo has presented no evidence on what prices other producers of similar gas quality and quantity are paid or that the price Targa proposed to Sozo unreasonably discriminates against Sozo relative to other producers.

13. Even if accepted as true, Sozo's evidence—which Targa disputes—simply establishes that Sozo is being asked to pay more for its low-hydrogen sulfide than it had to pay under a contract more than 14 years old and that Sozo believes the increase is unreasonable and unfair. It does not establish that it is being asked to pay more relative to other producers of any gas in the same pool or area—let alone relative to gas of the same quality and quantity—and it does not establish that the difference in price for Sozo relative to other producers is unreasonable under the various statutory factors. In any event, Targa's proposed replacement agreement would tier gas gathering fees based on hydrogen sulfide content. If Sozo's gas contains no hydrogen sulfide based on a gas analysis it would not be charged a fee for hydrogen sulfide content.

14. Sozo has presented its evidentiary case in an uncontested proceeding but cannot establish a prima facie case of discrimination. Its case must be dismissed. *Goradia*, 1991-NMSC-040, ¶ 18.

**C. Targa Has Standing to Appear and Contest Sozo's Application**

15. Contrary to Sozo's arguments, Targa has standing to appear in Case No. 21593, to present evidence contesting Sozo's application, and to cross-examine Sozo's witnesses.

16. Division rules provide that a party to an adjudicatory proceeding 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* Targa Exhibit A, attached to Resp. to Sozo's Mot. to Dismiss, at Tr. 6:6-17; *see also* OCD Hearing Docket, 1/7/2021 (setting Case No. 21593 for a "status conference"), attached as **Exhibit C**.

17. Accordingly, Targa's entry of appearance on January 8, 2021, one day after the status conference does not preclude Targa from presenting its case in opposition to Sozo's application. Its entry of appearance is timely under the Division's rules.

18. Moreover, the Division has discretion to allow parties to present evidence at hearing for good cause. *See* 19.15.4.10.C NMAC. Targa provided a good-cause basis in its application. *See* Case No. 21726, Targa Application to Re-Open Case No. 21593.

19. In addition, Targa incorporates by reference its response to Sozo's Motion to Dismiss, contemporaneously filed herewith, as if fully set forth herein.

20. To ensure a full and fair hearing on this novel matter and to avoid unfair prejudice to Targa, Targa should have the opportunity to provide evidence, testimony, and argument contesting Sozo's application if the Division denies Targa's motion to dismiss and determines it has jurisdiction and authority to hear the case.

WHEREFORE, Targa respectfully requests that the Division dismiss Case No. 21593 for the reasons stated in this Motion and provide any additional relief determined to be just and proper.

Respectfully submitted,

HOLLAND & HART LLP



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**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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NATURAL RESOURCES, LLC**



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Adam G. Rankin

# EXHIBIT C

1/7/2021

#	Case Number	Applicant	App Types	Well Name (Family)	Applicant's Counsel	Party	Party's Counsel	Entry Type	Pre Hearing Statement	Process	Disposition	Examiner
1	21561	COG OPERATING L	AMD	Green Bere					Applicant	Affidavit		
2	21562	COG OPERATING L	AMD	Momba Fed					"	"		
3	21563	DEVON ENERGY PR	AMD	Bora Bora	Holland & Hart LLP				Applicant	Affidavit		
4	21564	DEVON ENERGY PR	AMD	Bora Bora	Holland & Hart LLP				"	"		
5	21571	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
6	21581	SPUR ENERGY PAR	AMD	LEN MAYER,	Holland & Hart LLP				Applicant	Affidavit		
7	21582	SPUR ENERGY PAR	AMD	LEN MAYER,	Holland & Hart LLP				Applicant	Affidavit		
8	21583	SPUR ENERGY PAR	CP	Oasis	Holland & Hart LLP				Applicant	Affidavit		
9	21584	SPUR ENERGY PAR	CP	Radiohead	Holland & Hart LLP				Applicant	Affidavit		
10	21585	SPUR ENERGY PAR	CP	Radiohead	Holland & Hart LLP				Applicant	Affidavit		
11	21586	SPUR ENERGY PAR	CP	Smashing P	Holland & Hart LLP				Applicant	Affidavit		
12	21587	SPUR ENERGY PAR	CP	Smashing P	Holland & Hart LLP				Applicant	Affidavit		
13	21588	SPUR ENERGY PAR	CP	Trudy	Holland & Hart LLP				Applicant	Affidavit		
14	21594	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
15	21595	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
16	21596	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
17	21597	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
18	21598	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
19	21599	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
20	21600	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
21	21601	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
22	21602	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				"	"		
23	21603	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				"	"		
24	21604	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				"	"		
25	21605	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
26	21606	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				"	"		
27	21607	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				"	"		
28	21608	MARATHON OIL PE	AMD		Modrail Sperting Law Firm				Applicant	Affidavit		
29	21622	COG OPERATING L	AMD	Bedington	COG Operating LLC				Applicant	Affidavit		
30	21626	COG OPERATING L	CP	Coonskin	Cocho Resources				Applicant	Affidavit		
31	21627	COG OPERATING L	CP	Scout Stat	Cocho Resources				Applicant	Affidavit		
32	21568	TAP ROCK RESOUR	CP	Contest Fe	James Bruce Attorney at Law	COG	Rodriguez, M.	EOA	Applicant	Affidavit	Status Conference	
33	21572	TAP ROCK RESOUR	CP	Contest Fe	James Bruce Attorney at Law	COG	Rodriguez, M.	EOA	Applicant	Affidavit	Status Conference	
34	21573	TAP ROCK RESOUR	CP	Contest Fe	James Bruce Attorney at Law	COG	Rodriguez, M.	EOA	Applicant	Affidavit	Status Conference	
35	21609	TAP ROCK RESOUR	CP	Coonskin F	James Bruce Attorney at Law	MRC Permian	Holland & Hart	EOA	Applicant	Affidavit	Status Conference	
36	21610	TAP ROCK RESOUR	CP	Coonskin F	James Bruce Attorney at Law	COG	Rodriguez, M.	EOA	Applicant	Affidavit	Status Conference	
37	21625	COG OPERATING L	CP	Coonskin F	Cocho Resources	MRC Permian	Holland & Hart	EOA	Applicant	Affidavit	Status Conference	
38	21593	SOZO NATURAL RE	MISC	CALEB STAT	James Bruce Attorney at Law					Status Conference	Status Conference	
39	21628	COG OPERATING L	CP	Scout Stat	Cocho Resources				"	"		
40	21629	COLGATE OPERATI	CP	Meridian 3	Modrail Sperting	Proseperity Bank f/k/a American State Bank	Brent McDonald	PHS	Proseperity Bank f/k/a American State Bank	Status Conference	Status Conference	
41	20840	MARATHON OIL PE	CP	Shake-N-Ba	Modrail Sperting	Foran Oil Company	Mollenberg, D. L.	EOA	EOA	Status Conference	Status Conference	
42	20841	MARATHON OIL PE	CP	Shake-N-Ba	"	Ridms Runner Ressources	Hinkke Shanor	EOA	"	"	"	
43	20842	MARATHON OIL PE	CP	Shake-N-Ba	"	"	"	"	"	"	"	
44	20843	MARATHON OIL PE	CP	Cerberus 3	Modrail Sperting	Foran Oil Company	Mollenberg, D. L.	EOA	EOA	"	"	
45	20844	MARATHON OIL PE	CP	Cerberus 3	"	Ridms Runner Ressources	Hinkke Shanor	EOA	"	"	"	

# EXHIBIT C

 **OCD Hearing Docket**  
1/7/2021

46	<a href="#">20845</a>	MARATHON OIL PE	CP	Trojan Hor	Modrell Sperfling	Foran Oil Company Matador Ridde Runner Ressources	Mollenberg, D. L. Holland & Hart Hinkle Shanor				
47	<a href="#">20846</a>	MARATHON OIL PE	CP	Trojan Hor	"	"	"				
48	<a href="#">20847</a>	MARATHON OIL PE	CP	Trojan Hor	"	"	"				
49	<a href="#">20848</a>	MARATHON OIL PE	CP	Cerberus 3	"	"	"				
50	<a href="#">21383</a>	MATADOR PRODUCT	CP	Warrior Fe	Holland & Hart LLP	Foran Oil Company Marathon	Mollenberg, D. L. Holland & Hart				
51	<a href="#">21384</a>	MATADOR PRODUCT	CP	Warrior Fe	"	"	"				
52	<a href="#">21385</a>	MATADOR PRODUCT	CP	Warrior Fe	"	"	"				
53	<a href="#">21386</a>	MATADOR PRODUCT	CP	Warrior Fe	"	"	"				
54	<a href="#">21436</a>	MATADOR PRODUCT	CP	Gladiator	"	"	"				
55	<a href="#">21437</a>	MATADOR PRODUCT	CP	Gladiator	"	"	"				
57	<a href="#">21567</a>	EOG RESOURCES I	MISC	BROWN BEAR	Holland & Hart LLP	"	"	Applicant	Hearing	Gas Capture PP	