

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 NOS: 21726, 21593

APPLICATION TO REOPEN CASE 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

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS  
EXAMINER HEARING  
APRIL 8, 2021  
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before  
the New Mexico Oil Conservation Division, HEARING OFFICER  
WILLIAM BRANCARD and TECHNICAL EXAMINER DEAN McCLURE on  
Thursday, April 8, 2022, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253  
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A P P E A R A N C E S

For Sozo:

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I N D E X

CASE CALLED	
MOTION HEARING	03
TAKEN UNDER ADVISEMENT	26
REPORTER CERTIFICATE	28

1 HEARING EXAMINER BRANCARD: So we have one last  
2 little matter here, and we will combine it into two cases,  
3 21726 and 21593. Originally Sozo Natural Resources  
4 application followed by application by Targa Midstream. And  
5 first let's have some entries of appearance. Sozo?

6 MR. BRUCE: This is Jim Bruce representing Sozo.

7 HEARING EXAMINER BRANCARD: Are you okay, Mr.  
8 Bruce? Do you need a break?

9 MR. BRUCE: I think I'm okay if the court  
10 reporter is okay.

11 HEARING EXAMINER BRANCARD: Okay. Targa  
12 Midstream, Holland & Hart?

13 MR. RANKIN: May it please the Division, Adam  
14 Rankin with Holland & Hart appearing on behalf of Targa.

15 HEARING EXAMINER BRANCARD: Okay. Are you okay,  
16 Mr. Rankin?

17 MR. RANKIN: I'm fine to proceed if the court  
18 reporter is fine to proceed.

19 HEARING EXAMINER BRANCARD: Okay. So the way I  
20 see it is we have three separate matters here. One, we had  
21 a brief -- I don't know what you would call it -- semi  
22 hearing on this matter back in January which originally was  
23 stated for a status conference but we did provide for some  
24 testimony from Sozo in that matter.

25 At that point, the case was left open. There was

1 a request for further legal briefing in the matter, and we  
2 were wondering why Targa was not present. We had then an  
3 application to reopen this case filed by Targa. And then we  
4 had a motion to dismiss the original case from Targa, the  
5 motion to dismiss 21593. And finally we had a motion to  
6 dismiss the second case, 21726, from Sozo.

7 I'm guessing the parties have not gotten together  
8 and agreed on how they want to proceed today?

9 MR. BRUCE: Mr. Examiner, no, we haven't, but I  
10 think the first motion to be filed was was by Targa. So I  
11 would -- if Mr. Rankin is agreeable, I would ask him to go  
12 first.

13 HEARING EXAMINER BRANCARD: And that would be the  
14 motion to dismiss or the application to reopen?

15 MR. BRUCE: I think he -- which was filed first,  
16 Adam?

17 MR. RANKIN: We filed first the application to  
18 reopen requesting a status conference before we understood  
19 that the original case under Sozo's application had not yet  
20 been taken under advisement.

21 So procedurally it's a bit long. We did have a  
22 status conference on March 4 in which we talked about, for  
23 purposes of proceeding, just consolidating the matters. We  
24 didn't resolve or address any of the issues raised by any of  
25 the applications, motions or, you know, cross motions.

1           So we -- I guess, Mr. Brancard, I guess I will  
2     leave it to you about how you want to proceed. Do you want  
3     to address what logically makes sense, you know, to address  
4     in sequence, or if you want to do it chronologically based  
5     upon when things were filed and asked the case to be  
6     reopened and then go from there.

7           HEARING EXAMINER BRANCARD: Why don't we -- so,  
8     yeah, why don't we move ahead with Targa's motion to  
9     dismiss. Obviously in response to Targa's motion to  
10    dismiss, Sozo has raised a number of points which it then  
11    put into its motion to dismiss. So maybe we can do this all  
12    as one series of arguments here because we are sort of  
13    overlapping issues with the two motions. It's not a  
14    question of whether --

15           MR. BRUCE: I think that's Sozo's motion to  
16    dismiss is, you know, is the simpler one, but either way  
17    it's simpler, but whatever you desire.

18           HEARING EXAMINER BRANCARD: So why don't you move  
19    ahead, Mr. Rankin, with your motion to dismiss, but feel  
20    free to respond to the issues that Targa has raised. And in  
21    response, Mr. Bruce, I expect you to be raising issues that  
22    you also raised in your motion to dismiss.

23           MR. BRUCE: Okay.

24           HEARING EXAMINER BRANCARD: How is that? I guess  
25    what I would like to hear a little bit at the end of each of

1 yours is, if we deny the motions to dismiss, where do we go  
2 from here? If we reopen the hearing, what's going to  
3 happen?

4 MR. RANKIN: Thank you, Mr. Hearing Officer. I  
5 will go ahead and outline our motion to dismiss and try to  
6 address Sozo's issues as well. Essentially there are two  
7 issues for two grounds to -- by which the Division should  
8 grant our motion to dismiss.

9 First is that Sozo when it filed its complaint,  
10 its application, failed to state a cognizable claim for  
11 discrimination under the statute. Simply stated, Sozo  
12 referred its old 14-year-old contract that survived two  
13 prior well operators and entered into before Targa was  
14 operator of the gathering system, and they are trying to use  
15 this procedure to force Targa to keep those original terms  
16 in place which are outdated.

17 Essentially Sozo is trying to fit a square peg  
18 into a round hole here by looking to this discrimination  
19 statute to seek relief under what is essentially a dispute  
20 over contract terms.

21 Sozo's claim isn't really a claim for  
22 discrimination as defined under the statute. That requires  
23 Sozo to allege that Targa is treating producers of similar  
24 gas differently. That's not what Sozo is alleging. Sozo  
25 has alleged it should get a better deal at its gas gathering

1 than Targa simply because it has, in its view, better  
2 quality and superior gas that, in its view, benefits Targa.

3 That's not -- that's not discrimination under the  
4 statute or the Division's rules. It's simply a dispute over  
5 the terms that Targa has offered to Sozo. So Sozo is  
6 transparent about this in its correspondence with Targa and  
7 its filing with the Division and its testimony it provided  
8 back in January.

9 Sozo alleges it should be treated differently  
10 from other operators because of the quality of volume of  
11 gas, essentially that it should get special treatment. But  
12 to make a discrimination claim Sozo has to allege what I've  
13 already said, which is that there has to be unreasonable  
14 discrimination on the price paid based on gas quality and  
15 quantity relative to other producers of similar gas status.  
16 That is completely missing not only from the application,  
17 but from the evidence presented.

18 So the fact that those allegations are missing  
19 here essentially belies the fact that Sozo's allegations are  
20 simply not a discrimination claim, but are really just a  
21 complaint over how it's being treated relative to its prior  
22 original contract.

23 Again, this is an issue where, in our view, it's  
24 a private dispute between the producer and gas gathering  
25 system and is not a situation in which the Division should

1 insert itself. For the reason stated in our briefing,  
2 it's -- the discrimination statute was created as a shield  
3 by which operators -- producers who are being unjustly,  
4 unreasonably discriminated against with respect to similar  
5 gas on the system can seek the agency's intervention.

6 Here, Sozo is attempting to turn that provision  
7 into a sword to help it negotiate a more favorable term  
8 under its contract with Targa having not alleged any  
9 discrimination relative to any other producers with the same  
10 or similar quality gas.

11 So, you know, missing those allegations, Sozo  
12 nevertheless went ahead with its evidentiary presentation,  
13 and the evidence presented again is missing those critical  
14 elements of a discrimination claim. Having failed to  
15 present evidence in support of those, those necessary  
16 elements of discrimination, the second basis for dismissal  
17 is that they, they failed to meet their evidentiary burden  
18 and should be dismissed on that ground.

19 The evidence laid out in our briefing, what Sozo  
20 has presented is that -- the facts that Sozo has presented  
21 are that negotiations have failed, Targa's efforts to reach  
22 agreement with Sozo were not fruitful, the term of the  
23 contract expired, and Sozo -- rather, Targa terminated the  
24 contract providing opportunities for Sozo to continue to  
25 produce its gas, Sozo refused and shut in its well, and the



1 parties had some limited discussions going forward from that  
2 point, but nothing fruitful.

3           The issue there is that, you know, none of those  
4 facts support discrimination. It's simply a dispute between  
5 two, two parties over what the terms of the contract are or  
6 should be. So without evidence of other producers, the  
7 quality of their gas, the price they are paying or the fees  
8 they are being charged, it is impossible on the facts  
9 currently before the agency to make a determination of  
10 discrimination. There simply isn't the evidence to make  
11 such a finding, and it's not there, and for that reason, the  
12 matter should be dismissed.

13           All the evidentiary record shows is that Sozo  
14 believes its well will be uneconomic under the proposed  
15 replacement contract relative to its original 14-year-old  
16 contract, and that evidence simply does not fit within the  
17 elements required to make a prima facie case of  
18 discrimination of the statute before the Division's rules.

19           So for that reason, those reasons, we ask that  
20 the application that we filed, which I think is actually,  
21 you know, since the case hasn't been taken under advisement,  
22 I don't know if it's proper to rephrase it as an application  
23 for a rehearing other than an application to reopen, but in  
24 the event that the Division denies Targa's application to  
25 dismiss, we ask that, in order to have a full and fair

1 hearing on the facts, that Targa be provided the opportunity  
2 to present evidence and cross-examine Sozo's witnesses on  
3 the allegations and evidence that Sozo has presented.

4 As I understand from the Division's statements  
5 during the transcript of the January 7th hearing, the intent  
6 of the Division was to hold a status conference, it was not  
7 set for a hearing, so that we could hear from both parties  
8 on whether or not and how to proceed.

9 And unfortunately Targa, given the timing of the  
10 notice during Covid and the holidays, did not actually  
11 receive the notification of the hearing and application from  
12 Sozo. We don't deny the green card receipt was signed for.  
13 What we are saying is that the company itself was not aware  
14 of the application and only became aware of the application  
15 when the matter was presented to the Division on January 7  
16 and immediately thereafter filed an entry of appearance on  
17 January 8, and immediately shortly thereafter notified the  
18 Division that the matter was contested and that Targa was  
19 going to be proceeding to request to reopen the case so that  
20 it could present evidence and testimony in opposition to  
21 Sozo's requested relief.

22 So unlike the cases that Sozo has cited, that  
23 particular case involving Matador and Savage -- I'm blocking  
24 on the name of the entity -- in that case, the entities  
25 filed, after the case was taken under advisement, which did

1 not happen here, the entity filed, 22 days later an entry of  
2 appearance in order to preserve its right to a de novo  
3 appeal.

4           It took no further action to contest the Division  
5 case. It did not ask for a rehearing. And the Commission,  
6 in making its decision, cited some of those factors as a  
7 basis for denying their requested relief to have a de novo  
8 hearing. Here we want the case to be heard at the Division.  
9 We are not simply trying to preserve our rights to appeal.  
10 We believe it's important if the Division determines it has  
11 jurisdiction and that the case should be heard on an  
12 evidentiary basis, that a full, fair hearing should be heard  
13 and Targa should have an opportunity to present witnesses  
14 and evidence and cross-examine Sozo's witnesses on the  
15 evidence it has presented it.

16           But as I said, our view is that the allegations  
17 are failed to state a claim, and to the extent they have  
18 already presented their evidence, they have failed to make a  
19 prima facie showing and therefore their case should be  
20 dismissed.

21           HEARING EXAMINER BRANCARD: Thank you. Mr.  
22 McClure, any questions?

23           TECHNICAL EXAMINER McCLURE: Yes, Mr. Brancard, I  
24 guess the only question I would have for Mr. Ranking is,  
25 without the opportunity, I guess, to hear from Targa's

1 witnesses, and for the chance of cross-examination, how are  
2 we supposed to make a determination of whether  
3 discrimination actually did occur in this instance, I guess?  
4 And the basis, I guess, upon what your motion is to dismiss  
5 is that the discrimination did not occur; is that correct?

6 MR. RANKIN: Right, so Examiner McClure, so it's  
7 kind of a legal argument, but essentially what I'm saying is  
8 Sozo made an allegation of discrimination, but what  
9 they're -- because they are trying to use the statute as a  
10 basis to get -- to get relief before the Division. But what  
11 they are arguing is not truly discrimination as a legal  
12 matter. It's not -- no discrimination has been conducted  
13 against Sozo, and they failed to make a correct legal  
14 allegation of discrimination, number one.

15 Number two, even to the extent that they have,  
16 the evidence that Sozo has presented fails to meet the  
17 elements required to make out a case for discrimination.  
18 What they have simply presented is that they have -- they  
19 think they have good gas, and they think they should get a  
20 better deal in their contract. And the current contract  
21 that Targa has proposed they say makes this well uneconomic.

22 That is not discrimination. That is simply a  
23 dispute over whether or not they think Targa's contract is  
24 fair, and that issue is something that the Division does not  
25 have jurisdiction or authority to decide. That's simply a

1 matter between two prior parties over the elements or  
2 provisions and terms of the contract.

3 So the evidence presented, if you look at what  
4 they have presented, they don't do any pricing or quality of  
5 gas or any facts or evidence relating to any of the other  
6 producers on the system other than Sozo. And so for that  
7 reason, even considering whether -- even assuming, you know,  
8 properly alleged discrimination, they have failed to present  
9 evidence that the Division would need to have to make a  
10 finding of discrimination. So even without Targa presenting  
11 anything, Sozo can't make out a case, and the case should be  
12 dismissed.

13 TECHNICAL EXAMINER McCLURE: I think I understand  
14 where you are coming from. Thank you, Mr. Rankin. I have  
15 no other questions, Mr. BranBrancard.

16 HEARING EXAMINER BRANCARD: Mr. Rankin, let me  
17 just ask one dumb question here. Are gas pipelines entirely  
18 deregulated at this point?

19 MR. RANKIN: I don't think that's a dumb  
20 question, but this is a gathering system, so it's not an  
21 interstate pipeline. So I'm going to say that I'm not 100  
22 percent sure, but I believe they are deregulated. I believe  
23 that's the case, but I would have to confirm that. I  
24 believe so, and Mr. Bruce can probably opine on that as  
25 well, but I believe that's the case. They are not regulated

1 other than for certain, you know, matters within the  
2 Division's jurisdiction.

3 HEARING EXAMINER BRANCARD: So the agreement  
4 about taking the gas and the price of the gas is entirely a  
5 private matter, a private contract?

6 MR. RANKIN: That's my understanding.

7 HEARING EXAMINER BRANCARD: Okay. Thank you.  
8 Mr. Bruce?

9 MR. BRUCE: (Inaudible.)

10 HEARING EXAMINER BRANCARD: Mr. Bruce, are you  
11 muted?

12 MR. BRUCE: Yes, I am. Not now.

13 First, of all, Sozo filed its application, and  
14 you know, the afternoon, the Wednesday before the hearing  
15 date, which the hearing date was January 7, I believe, I  
16 looked at the updated docket and saw that it was set for  
17 status conference which I didn't understand because I never  
18 asked for a status conference, so that's why at the hearing  
19 Sozo asked to present its case.

20 Now, going to a couple of issues, one thing  
21 Mr. Rankin raised is failure to state a claim. Well, first  
22 of all, just like in court, this is notice pleading and Sozo  
23 did reference the appropriate statute, the appropriate  
24 regulation.

25 And it did present evidence that I consider

1 evidence of discrimination and that is, Targa had a  
2 contract, they ended it, they had a right to do that, Sozo  
3 doesn't deny that. But when Sozo asked them why they  
4 wanted, they said, "Oh, our operating costs at the Saunders  
5 Gas Plant are really high, and in large part, substantial  
6 part, at least, due to a lot of the gas coming into the  
7 plant is high in hydrogen sulfide content."

8 Well, Sozo is producing 230 MCF per day of sweet  
9 gas which would minimize the H<sub>2</sub>S, but Targa didn't care. It  
10 seems like they should get a plus for making Targa's  
11 operations less expensive. So I think a case was made at  
12 the hearing for discrimination. Targa simply wanted a new  
13 contract, okay, then I would point out that Sozo is amenable  
14 to entering into a new contract, but if that's going to  
15 cause the well to be -- to lose several thousand bucks a  
16 month, well, that's ridiculous. Because then, as of right  
17 now, of course, starting in late September, the well has  
18 been shut in, and it will have to go on a PA status.

19 It will have to eventually be plugged and  
20 abandoned. Now, this is a deep gas well, an Atoka gas well,  
21 plugging costs are substantial. So the gas will be lost.  
22 The reserves, not just potential, the reserves will be lost,  
23 and therefore waste will occur, and therefore, the  
24 jurisdiction of the Division is there.

25 Now, with respect to evidence of other producers,

1 since Targa never showed up, I didn't -- but going back to  
2 our prior argument, I don't think Sozo is afraid of a full  
3 hearing both sides showing up and testifying, but Sozo would  
4 consider doing some discovery. I mean, how many other  
5 operators -- so, you have to realize there was a monopoly  
6 situation. Targa has nowhere else to go with its gas and  
7 for those other operators, but it would be interesting to  
8 know how many other operators are selling gas into the  
9 Saunders Gas Plant, how many, during the appropriate time  
10 period, how many contracts there were, how many contracts  
11 were terminated, things like that, what was the age of the  
12 contracts.

13 Yes, the contract that Sozo had was 14 years old,  
14 yeah, it I would probably say there is a lot of changes in  
15 gas contracts over that time period and Sozo is willing to  
16 work with that, but to just flat out cause waste and impair  
17 correlative rights by inability to produce under reasonable  
18 costs, I think prevention of waste and protection of  
19 correlative rights is inherent in this action.

20 Insofar as Sozo's motion to dismiss, you know,  
21 everything at the Division is on a short time. You file 30  
22 days ahead of the hearing date, send out notice 20 days  
23 ahead of the hearing date and you get going down the road.

24 Well, on this one, Targa did receive actual  
25 notice on December 21, 17 days before the hearing. In the



1    OCD, 17 days is a couple of lifetimes.  Their internal  
2    problems are not Sozo's problem, and so they are waiving  
3    their hands, saying, "We actually received notice, but we  
4    didn't actually know what was going on."  Well, that just  
5    doesn't cut it.

6                    So what we are left with here is what you do,  
7    grant one motion to dismiss, grant and deny the other, grant  
8    both motions to dismiss, deny both motions to dismiss.  As I  
9    said, Sozo is not afraid of going to a hearing and we would  
10   like to flesh out more facts on what Targa is actually  
11   doing.

12                   For instance, my client just informed me  
13   yesterday that Targa -- he received information that Targa  
14   has recently stopped processing gas at the Saunders Gas  
15   Plant.  And why is this important?  After Mr. Pence, my  
16   witness at the hearing, questioned Targa about Targa's \$1.70  
17   per MCF operating cost, Targa told them they had plans to  
18   reduce their operating costs, which you would think be  
19   reducing operating costs at the Saunders Gas Plant.

20                   But they are closing the Saunders Gas Plant,  
21   therefore Targa's operating costs should go down  
22   significantly, and their high operating cost is no longer an  
23   excuse for -- for imposing such a burdensome contract on  
24   Sozo.

25                   So there is additional evidence that has come up.

1 If the Division would like it set it for a full hearing, but  
2 Sozo has rights under the statute and under the Division's  
3 rules and regulations, and I think it should be -- at the  
4 very least, at the very least, if Targa wants a full  
5 hearing, let's do it.

6 HEARING EXAMINER BRANCARD: Thank you. Mr.  
7 McClure, any questions of Mr. Bruce?

8 TECHNICAL EXAMINER McCLURE: Thank you,  
9 Mr. Brancard. Mr. Bruce, in the original application filed  
10 it was based solely upon discrimination; correct?

11 MR. BRUCE: Yeah, they couldn't figure out why --  
12 why Targa was really tripling its costs against Sozo when  
13 Sozo was selling a product that helped Targa. And so there  
14 is an allegation in the complaint or the application, sorry,  
15 that Targa unreasonably discriminated against Sozo, and I  
16 believe Mr. Pence's testimony supported that.

17 TECHNICAL EXAMINER McCLURE: Just to remind us  
18 all, Mr. Pence's argument and the evidence provided, it  
19 mostly related to the fact of discrimination in as it was a  
20 change of operator, and the argument is that Targa is now  
21 discriminating against Sozo as the new operator, which is  
22 the original operator, rather than discrimination of Sozo  
23 now which is other operators selling gas into this gas line;  
24 is that correct?

25 MR. BRUCE: I think you could infer that.

1           The original -- the well was originally drilled  
2   in 2006 Bold B-o-l-d Energy, and produced under this gas  
3   contract from Targa. And Bold sold out to I believe it was  
4   Oxy, and Oxy operated the well for I forget how long, 10, 12  
5   years. And Targa bought gas under that contract and so to  
6   Sozo, a small start-up company, and, whammo.

7           And Sozo met with Targa to discuss gas contracts,  
8   gas purchase contracts, and Targa had no problem with the  
9   contract, and then a couple of months later, wham, they  
10   terminate the contract. You can understand Targa wouldn't  
11   do that against Oxy because Oxy has so many properties they  
12   don't want to rile up Oxy. But, Sozo, just a man in the  
13   street.

14           So I think there is adequate evidence of  
15   discrimination, but now especially with the Saunders Gas  
16   Plant going the way of the dinosaur, maybe the parties can  
17   come to terms on something, but some type of remedy,  
18   especially in a situation like this, there has to be some  
19   type of remedy for Sozo.

20           TECHNICAL EXAMINER McCLURE: If this case were to  
21   go forward, do you feel that that is the likely avenue for  
22   demonstrating discrimination is the discrepancy between the  
23   prior operator, or what's your kind of thought if we move  
24   forward with this?

25           MR. BRUCE: I would like at, you know, why

1 didn't -- when they were purchasing this, these assets from  
2 Oxy, Sozo met with Targa, wanted to get approval for these  
3 contracts. They didn't want Targa to say, no, we are not  
4 going to take any of your production. Targa agreed to take  
5 it, and then, like I said, whammo.

6 So you are looking at, why didn't they terminate  
7 it for Oxy? Why didn't they tell Sozo early on that they  
8 were terminating it so that Sozo didn't buy the well and  
9 spend lots of money and can't produce it and recover its  
10 investment.

11 How many other operators are there selling gas,  
12 and what are the contracts? And I don't think we need to  
13 know the contract terms, but just the number of contracts.  
14 And how many, during the period of July through August, how  
15 many of those contracts were terminated for other operators,  
16 because if only this one for Sozo is terminated, I think  
17 that's discriminatory.

18 TECHNICAL EXAMINER McCLURE: My only other  
19 question would be, you kind of added in this protection of  
20 correlative rights, prevention of waste as an additional  
21 component of the case going forward. Is that an argument  
22 that you would bring in as well as thought process?

23 MR. BRUCE: The waste is this: If Sozo can't  
24 sell its gas, like I said, the well is going to eventually  
25 have to be plugged and abandoned, permanently plugged and

1 abandoned while it's capable of producing 230 mcf of gas per  
2 day, and it was producing at a pretty flat rate. So there  
3 would be a lot of gas left in the ground, and at this point,  
4 nobody is drilling or going back in to do these Atoka Morrow  
5 gas wells anymore, so that would cause waste, period.

6 TECHNICAL EXAMINER McCLURE: Thank you, Mr.  
7 Bruce. Thank you, Mr. Brancard, I have no more questions at  
8 this particular juncture.

9 HEARING EXAMINER BRANCARD: Thank you. Mr.  
10 Rankin, do you have any rebuttal on here?

11 MR. RANKIN: I think I do have a couple of points  
12 to make in response. Mr. Bruce has raised the concern that  
13 maybe Sozo is somehow being treated differently than any  
14 other operators on Targa's system, and that perhaps Targa is  
15 singling out Sozo and has terminated only its contract.

16 Well, it's just not the case. Sozo's contract  
17 was 14 years out of date, it was out of market. Targa has  
18 been routinely updating -- terminating and updating contract  
19 with its producers including many for Oxy. So it's not that  
20 Sozo is being singled out here, not at all, and those  
21 allegations that Mr. Bruce is raising now in argument were  
22 not presented either in its application or in its evidence.  
23 Those are simply speculative argument of counsel, and  
24 nevertheless would be refuted.

25 But the bigger question here is, is again whether

1 or not the agency has jurisdiction of this case, of the  
2 claims brought by Sozo. And based on what they are, what  
3 their allegations are and the evidence presented, that  
4 they -- Targa is somehow -- should somehow be treating Sozo  
5 differently or more favorably because its gas, in Sozo's  
6 subjective view, benefits Targa's operations. That's simply  
7 not a discrimination case. That's not a discrimination  
8 claim under the statute. A discrimination claim requires a  
9 demonstration or allegation that Targa is somehow treating  
10 other operators of the same or similar gas differently in  
11 terms of price. That has not been demonstrated here either  
12 as to the allegations or the evidence.

13 It's important to consider from the Division's  
14 prospective that if it were to allow Sozo's case to proceed,  
15 there are going to be many more cases of this nature where  
16 operators are making claims of discrimination with respect  
17 to their gathering contracts that, that under, you know,  
18 under the statute of non-valid or legal claims of  
19 discrimination.

20 And so what's going to happen is the Division is  
21 going to turn what was meant to be a shield to protect  
22 operators in unique circumstances where there truly is a  
23 discrimination, into a sword that producers will be seeking  
24 to use on a regular basis to facilitate the negotiations  
25 with their gathering systems.

1           Now on that point I want to make clear it's  
2       Sozo's sole decision to have its well shut in and to have it  
3       be continued to be shut in. The correspondence that Targa  
4       submitted with its motion to dismiss and summary judgment  
5       make very clear that Targa made every effort to reach  
6       agreement with Sozo on a reasonable basis for gathering its  
7       gas, including going back to the standard terms of the  
8       original contract with some changing in pricing to make the  
9       gathering more reasonable for Targa.

10           And you will see by that correspondence that Sozo  
11       refused to negotiate and simply said, "If you do not go back  
12       to our original agreement, we will go to the Division."

13           And so that's what happened, and they are seeking  
14       to use, essentially, a statutory provision that was intended  
15       again as a, as a shield here to, to gain leverage against  
16       Targa, to gain a more favorable beneficial contract for a  
17       subjective relief that Sozo's gas is somehow benefiting  
18       Targa.

19           So I think that's an important thing for the  
20       Division to consider, not just the legal issues here, but  
21       the legal issues coupled with the, the impact such as  
22       (unclear). If these cases were to go to hearing, obviously  
23       there is going to be -- I think it sounds like from Sozo's  
24       perspective some significant discovery, and I think from  
25       ours as well.

1           So again, this is not, not -- and in discovery  
2 around the relationship between the two parties, and it's  
3 not again something that should be permitted to go to that  
4 stage when they have not and cannot make a proper allegation  
5 of, of discrimination. It would be unfair and unreasonable  
6 to impose that circumstance on Targa when it's simply a  
7 contractual dispute over the terms of an agreement between  
8 the two parties.

9           So with that, we ask that Targa be granted the  
10 opportunity to have an entry in this case, and in the event  
11 that Targa's motion to dismiss be denied, that we have the  
12 opportunity to present evidence and cross-examine Sozo's  
13 witnesses only in the event that Targa's case -- rather  
14 motion to dismiss be denied.

15           HEARING EXAMINER BRANCARD: Mr. Bruce, I'll allow  
16 you a last word or two if you have it.

17           MR. BRUCE: Just one is that Sozo --  
18 Targa terminated the old contract and said, "This is what  
19 we'll do. Here is a new contract."

20           Sozo said, "Hey, that's going to be too  
21 expensive. We would like to go back to something along the  
22 terms of the old one."

23           And Targa said, "Nope, that's our final offer,"  
24 wouldn't even discuss. Targa did present -- targa didn't --  
25 Targa is not voluntarily shutting in its well. It has no or



1 route, otherwise they would be absorbing thousands of  
2 dollars of losses every month.

3 But they did go back to Targa and said, "How  
4 about these terms?"

5 Targa didn't change -- did make another offer  
6 reducing its costs slightly, but it would have led to the  
7 well losing thousands of dollars a month. So there was  
8 negotiation, but Sozo cannot just go flip on the switch,  
9 turn that well on unless its interested in bearing thousands  
10 of dollars a month in losses.

11 So -- and, you know, insofar as all of a sudden  
12 the jurisdiction becoming -- the OCD becoming the arbiter of  
13 gas contracts, I think you would have to go back four years  
14 to find something similar to this OCD case. This is type of  
15 stuff is going to come up rarely. I haven't had a gas  
16 contract dispute, other than that Energen case I just told  
17 you about in ten years, and before that it was 20, 25 years  
18 before that. This is not that common. It's not going to  
19 occur over and over again. But if the Division wants to  
20 hear more, Sozo is ready.

21 HEARING EXAMINER BRANCARD: Thank you. Mr.  
22 McClure, any final questions or comments?

23 TECHNICAL EXAMINER McCLURE: Thank you,  
24 Mr. Brancard I was going to say, I don't think I have any  
25 questions for the, for the counsel at this time.

1 HEARING EXAMINER BRANCARD: Thank you. I will  
2 just rule right now that if there is a question about  
3 whether Targa is a party, Targa is a party. This case was  
4 not over, and Targa still had an opportunity to intervene.

5 That doesn't mean that we get to start it all  
6 over. They certainly sat on their rights and missed the  
7 first hearing in this matter, so I don't think we can start  
8 over again. But other than that, we will take these two  
9 other motions to dismiss under advisement and hopefully get  
10 you an answer quickly because, you know, gas contracts,  
11 unitization agreements, we are getting lots of really  
12 exciting issues these days.

13 MR. BRUCE: I wouldn't call them exciting, Mr.  
14 Examiner.

15 HEARING EXAMINER BRANCARD: Novel. Novel.

16 MR. BRUCE: That sounds better. Didn't we just  
17 make it a record for the longest first hearing of the month?

18 HEARING EXAMINER BRANCARD: Is that right?

19 MR. BRUCE: Well, thank you gentlemen for your  
20 time.

21 HEARING EXAMINER BRANCARD: Thank you.

22 MR. RANKIN: Thank you.

23 HEARING EXAMINER BRANCARD: Any more comments for  
24 the greater good today?

25 MR. FELDEWERT:

1 HEARING EXAMINER BRANCARD: Mr. Feldewert?

2 (Discussion off record.)

3 HEARING EXAMINER BRANCARD: With that, we are off

4 the record.

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REPORTER'S CERTIFICATE

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

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

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

Dated this 8th day of April 2021.

/s/ Irene Delgado  
\_\_\_\_\_  
Irene Delgado, NMCCR 253  
License Expires: 12-31-21