

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

October 14, 2021

9:00 a.m.

APPEARANCES:

Adrienne Sandoval: Chairwoman
Estevan Baca: Commissioner
Terry Warnell: Commissioner
Greg Bloom: Commissioner

REPORTED BY: Barbara Jean Morgenweck, RPR, CCR
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Also Present:

Florene Davidson, Commission Clerk
Darin Savage

1 CHAIRWOMAN SANDOVAL: Good morning
2 everybody. It is 9:05 a.m. on October 14th.
3 This is a regularly scheduled meeting of the Oil
4 Conservation Commission. I am Adrienne Sandoval
5 Chair of the Oil Conservation Commission and
6 director of the oil conservation division.

7 Also today would the other commissioners
8 introduce themselves for the record, please.

9 COMMISSIONER BLOOM: Thank you. Good
10 morning. I'm Greg Bloom. I'm the
11 representative of the commissioner of public
12 lands.

13 COMMISSIONER WARNELL: Terry Warnell
14 representing --

15 (Court reporter requests
16 clarification.)

17 COMMISSIONER BLOOM: Sorry. I'll lean
18 in more when I speak. I just introduced myself
19 as the designee of the commissioner of public
20 lands.

21 CHAIRWOMAN SANDOVAL: Also with us today
22 is counsel to the commission Chris Moander and
23 clerk to the commission Florene Davidson.

24 First item of the agenda is an approval
25 of the agenda. I want to note several

1 modifications that have been made to the agenda.

2 In agenda Item Number 6 which is De Novo
3 case No. 21744 that has been continued to the
4 November docket, and in case No. 21324 which was
5 agenda Item Number 7 that was also continued to
6 the January 13, 2020, meeting.

7 So we will -- the commission will be
8 hearing agenda Item No. 4 and taking final
9 action on agenda Item No. 5 with 6 and 7
10 continued to a later date.

11 With that, is there a motion to adopt
12 the agenda?

13 COMMISSIONER BLOOM: I move to adopt the
14 agenda.

15 CHAIRWOMAN SANDOVAL: Is there a second?

16 COMMISSIONER WARNELL: I second that
17 motion.

18 MR. MOANDER: Commissioner Bloom?

19 COMMISSIONER BLOOM: Approved.

20 MR. MOANDER: Commissioner Warnell?

21 COMMISSIONER WARNELL: Approved.

22 MR. MOANDER: Madam Chair.

23 CHAIRWOMAN SANDOVAL: Approved.

24 MR. MOANDER: Motion passes.

25 CHAIRWOMAN SANDOVAL: Next item on the

1 agenda is approval of the September 28, 2021,
2 minutes.

3 Is there a motion to adopt and approve
4 the minutes from September 28th?

5 COMMISSIONER BLOOM: I move to adopt and
6 approve the minutes from the previous meeting.

7 COMMISSIONER WARNELL: I second that
8 motion.

9 CHAIRWOMAN SANDOVAL: Mr. Moander?

10 MR. MOANDER: Yes, Madam Chair.
11 Commissioner Bloom?

12 COMMISSIONER BLOOM: Approved.

13 MR. MOANDER: Commissioner Warnell?

14 COMMISSIONER WARNELL: Approved.

15 MR. MOANDER: Madam Chair?

16 CHAIRWOMAN SANDOVAL: Approved.

17 MR. MOANDER: The motion passes.

18 CHAIRWOMAN SANDOVAL: Thank you. The
19 next item on the agenda is Case No. 22225, lots
20 of twos there. Application of the Energy,
21 Minerals and Natural Resources Department Oil
22 Conservation Division, for Proposed Amendments
23 to 19.15.28, and the commission will be
24 reviewing the request to grant a hearing on this
25 rule making.

1 Do we have a representative from the
2 division?

3 MS. BADA: We do, Madam Chair. Cheryl
4 Bada with the Oil Conservation Division.

5 CHAIRWOMAN SANDOVAL: Are there any
6 other parties in this matter?

7 MR. FELDEWERT: My name is Michael
8 Feldewert with the Santa Fe Office of Holland
9 and Hart appearing on behalf of the New Mexico
10 Oil and Gas Association.

11 CHAIRWOMAN SANDOVAL: Thank you. Any
12 other parties? Okay. Ms. Bada, would you like
13 to make a statement about the petition?

14 MS. BADA: The Oil Conservation Division
15 filed the application to propose technical
16 corrections 19.15.28, specifically, Section 8,
17 Subsection F to correct an incorrect natural gas
18 calculation and to amend Section 10 B to correct
19 an internal citation and clarify provisions
20 application to gathering systems.

21 CHAIRWOMAN SANDOVAL: Thank you.
22 Mr. Feldewert, do you have any comments you wish
23 to make?

24 MR. FELDEWERT: Madam Chairman, the
25 commission NMOGA does not oppose the technical

1 corrections that Ms. Bada outlined.

2 CHAIRWOMAN SANDOVAL: Thank you. Do any
3 of the commissioners have questions for
4 Ms. Bada?

5 COMMISSIONER WARNELL: No questions.

6 COMMISSIONER BLOOM: No questions, Madam
7 Chair.

8 CHAIRWOMAN SANDOVAL: I guess the next
9 piece of this is going to be setting the date
10 and lining out the procedures for the rule
11 making hearing.

12 Mr. Moander, I am just thinking of what
13 is the -- so there is a public register deadline
14 of today. Ms. Bada, is the Oil Conservation
15 Division prepared to submit today to be
16 published on the 26th?

17 MS. BADA: That depends if there is a
18 WebEx link by the check with the division and
19 there is a P.O. so I think the only thing that
20 we would need to be inserted unless counsel or
21 the commission has other thoughts as to the date
22 for the hearing and the WebEx link would need to
23 be inserted into the notice.

24 MR. MOANDER: One question I have got.
25 This is Chris Moander. This stuff always makes

1 the attorneys nervous with the register
2 deadlines.

3 Have you brought to the attention of
4 anyone over at the register that this notice and
5 so on may be forthcoming?

6 MS. BADA: I do not know if the OCD has
7 sent it over. My understanding is the next
8 hearing that would be possible would be
9 December 9th, and I was looking the other day.
10 It looks like we may have one other opportunity
11 to submit.

12 MR. MOANDER: I am a little confused,
13 Ms. Bada, so right now Madam Chair is focused on
14 -- the issue will be is that if things can't be
15 submitted today such that they're published on
16 the 26th, then that sets us back into mid
17 December for the hearing, and, Madam Chair, that
18 might be something else to look at here is if we
19 are talking about I am assuming we are going to
20 stick with 30-day notice and probably comment
21 period because this is not a big rule making,
22 and the question would be like if we don't get
23 -- if we get a post on the 26th, that is going
24 to set us probably around Thanksgiving if we
25 kept the deadlines real tight.

1 Let's just say for the sake of argument
2 that the publication date ends up being
3 November 9th, then that pushes us into mid
4 December.

5 I can tell you that in terms of what's
6 going on with a lot of rule making across the
7 state right now and it is voluminous that even
8 mid December, that will be a busy time, but I
9 think it will be better than trying to shoehorn
10 this in.

11 We could get it in the last week of
12 November I think would be doable or last week of
13 -- yeah, last week of November. We want to
14 know. Actually I am wrong. It would be the
15 29th through December 3rd would be the week we
16 probably end up having the hearing. That is not
17 terrible, but I just want to get this out there
18 for discussion because this two-week turn around
19 frequently jams things up, and I don't want that
20 to happen here.

21 So really the question is: What is the
22 realistic chance that this -- the notice and
23 everything gets submitted to the register today,
24 and it sounds like for Ms. Bada we just need the
25 dates of the hearing and then would need a WebEx

1 link. Who is going to generate the WebEx link?

2 Is that going to be feasible for you today?

3 CHAIRWOMAN SANDOVAL: Yes, absolutely, I
4 could do it. Assuming the commission makes the
5 decision today, I could do it at the conclusion
6 of today's meeting.

7 MR. MOANDER: Let me run just a quick
8 calculation here because if we are wrong on this
9 it could just set this back even further like if
10 there is an error or an issue in getting this
11 stuff to the register, we are going to end up
12 having to come back, do a reschedule and no one
13 is going to be happy with that.

14 CHAIRWOMAN SANDOVAL: Well, you're
15 looking at dates for the other commissioners.
16 Are we interested in -- so the normal scheduled
17 OCC date is for the 9th.

18 I guess, I am wondering, I believe, we
19 have a couple other items at the moment on that
20 docket. There will be potentially the Cimarex
21 De Novo case, and then, Ms. Davidson, are you on
22 the line and could you remind the commission
23 what is currently on that December 9th docket?

24 MS. DAVIDSON: (Zoom inaudible.)

25 CHAIRWOMAN SANDOVAL: I caught the

1 Colgate Cimarex. Was there any other? It
2 sounds like we have another compulsory hearing
3 on December 9th. Okay.

4 I guess, thoughts from the commissioner.
5 Sometimes those compulsory cases can take awhile
6 so we might want to potentially look at a
7 special date.

8 COMMISSIONER BLOOM: I would be fine
9 with that, pulling this out doing it on a
10 special date. It would make the December 9th
11 regular schedule that much lighter. I am
12 absolutely fine with that.

13 CHAIRWOMAN SANDOVAL: Okay.

14 COMMISSIONER WARNELL: I am good.
15 Either way I am good.

16 CHAIRWOMAN SANDOVAL: Mr. Moander, how
17 are the potential dates looking?

18 MR. MOANDER: So just going through the
19 quick math on this. Assuming publication -- and
20 I am really proud of the fact I am doing math as
21 a lawyer. It always makes me feel good.
22 October 26th publication date gets us 30 days on
23 November 25th.

24 If there is a November 9th publication
25 date, that sets us to the 30-day runs on 12-9 on

1 December 9th.

2 So I think the risk we are running here
3 is that if for some reason -- I think everyone
4 acknowledges these things can and do happen --
5 they don't get the publication stuff in by close
6 of business today and we try to set a hearing
7 before essentially December 10th or then that's
8 going to -- allow us to come back and reschedule
9 this.

10 In an abundance of caution, I am going
11 to suggest we need to look at 12-10 or later
12 just to be on the safe side.

13 CHAIRWOMAN SANDOVAL: How do we feel
14 about two days of hearings or I guess the
15 regularly scheduled OCC on the 9th and the
16 special meeting on the 10th. I am available on
17 the 10th.

18 COMMISSIONER BLOOM: Madam Chair, we
19 could consider December 16th the following
20 Thursday. I know we are getting a little closer
21 to the holidays there, but that is another
22 option, but I could make the 10th work as well.

23 CHAIRWOMAN SANDOVAL: Hold on. Let me
24 look. I have something that spans sort of mid
25 that week.

1 MR. MOANDER: I am in another agency's
2 rule making on the 10th. I will not be
3 available.

4 CHAIRWOMAN SANDOVAL: I guess one
5 question if I can for Ms. Bada: Are there any
6 -- because this is a technical change with some
7 of the calculation methods, are we -- are there
8 any time implications that the commission needs
9 to be aware of in scheduling this?

10 MS. BADA: Not that I am aware of. I
11 think it would just depend if the OCD witness is
12 available those days.

13 CHAIRWOMAN SANDOVAL: Okay. So you're
14 in something the 10th, Mr. Moander?

15 MR. MOANDER: Yes, I have got another
16 rule making. I literally was just scheduled
17 yesterday.

18 CHAIRWOMAN SANDOVAL: I should be back
19 for the 16th so that would work for me.
20 Commissioner Warnell.

21 COMMISSIONER WARNELL: Madam Chair, the
22 16th works just fine for me.

23 CHAIRWOMAN SANDOVAL: I think we got
24 ourselves a date.

25 MR. FELDEWERT: Madam Chair, this is

1 Michael Feldewert. The only thing I'd note is
2 the 16th is a division hearing assuming that is
3 not going to be a problem with court reporters.

4 MR. MOANDER: Thank you for pointing
5 that out, Mr. Feldewert.

6 MR. FELDEWERT: I have to do something
7 today.

8 MR. MOANDER: Madam Chair, I am open
9 that whole week the 15th through the 19th.

10 CHAIRWOMAN SANDOVAL: The week of the
11 15th through the 19th?

12 MR. MOANDER: Sorry. I am looking at --
13 damn it wrong one. 13th through the 17th I am
14 available and God forbid we end up looking at
15 it, I can make myself available early the
16 following week.

17 CHAIRWOMAN SANDOVAL: The 16th or the
18 17th that week would be better for me.

19 COMMISSIONER WARNELL: 17th will work.

20 CHAIRWOMAN SANDOVAL: 17th it is. Okay.
21 So now that we have dates which I think gives
22 OCD some cushion in case it cannot get filed
23 today, let's then -- I am fine since -- I guess,
24 this is a question. Mr. Moander, if it does get
25 filed today, is it like the comment period would

1 be extended or do we need to set a hard
2 timeframe today, don't we?

3 MR. MOANDER: Yes, I would recommend we
4 set that stuff at least on paper today. That
5 would be prudent, and I think it will be helpful
6 in managing this because in either case the
7 commission could open -- well, the issue will be
8 public comment could be open all of the starting
9 today even if the commission wants.

10 The issue will be the public won't
11 necessarily have notice of this but so long as
12 we hit the 30 days, anything greater than that I
13 think should be fine. The key is to have the
14 30 days preserved.

15 CHAIRWOMAN SANDOVAL: Okay.

16 COMMISSIONER BLOOM: One question I have
17 a save the date on December 2nd for the same
18 purpose, but I want to make sure it wasn't
19 something else. I don't know if anyone else
20 there has a calendar or if you have anything on
21 your calendar, otherwise, I will get rid of
22 that.

23 CHAIRWOMAN SANDOVAL: I don't think we
24 have anything on the second. I don't.

25 COMMISSIONER BLOOM: Then we are fine.

1 I will get rid of that. I don't know why it was
2 on there. I reserved that for this --

3 MR. FELDEWERT: Commissioner Bloom, this
4 is Michael Feldewert. I looked at the file on
5 line for this case. There was a notice -- I
6 guess, it looked like it was a draft notice of
7 hearing that had the December 2nd on there so
8 that may be why you had it on your calendar.

9 I am not sure how the draft got into the
10 division file. Maybe, Cheryl, it was attached
11 to your application or what, but that is in the
12 division file. Actually after we entered an
13 appearance so it was separately placed in the
14 file subsequent to that.

15 MS. BADA: At some point the -- Madam
16 Chair, commissioners, do you recall whether it
17 was proposed that the hearing be on the second?

18 CHAIRWOMAN SANDOVAL: I don't recall
19 that. I guess that is why I was asking. Are
20 there any dates we need to keep in mind in terms
21 of like are there implications down the line if
22 this gets -- if we wait too long to have it
23 because it is a calculation methodology. In
24 that rule, are there any dates that come into
25 play.

1 I mean I can do the second but that
2 would mean that we have to get things filed
3 today.

4 MS. BADA: Right.

5 MR. MOANDER: It increases the risk that
6 we end up having to come back at this special
7 meeting or November meeting to reschedule all
8 this.

9 CHAIRWOMAN SANDOVAL: Which would push
10 it back even further.

11 MR. MOANDER: Correct which is why I am
12 encouraging the December 17th to make sure we
13 have some play in the joints here if something
14 goes wrong.

15 MS. BADA: The correction needs to be in
16 place for the gas capture reporting date.

17 CHAIRWOMAN SANDOVAL: What is that date?

18 MS. BADA: Don't know off the top of my
19 head.

20 CHAIRWOMAN SANDOVAL: Is that for the
21 baseline?

22 MS. BADA: That is the baseline.

23 CHAIRWOMAN SANDOVAL: You have to --
24 your baseline is going to come after the second
25 quarterly report. The second quarterly report

1 is due May 15th'ish.

2 COMMISSIONER BLOOM: Beginning
3 October 1st operator shall gather data submit by
4 February 15, 2022.

5 CHAIRWOMAN SANDOVAL: That is going to
6 be your first quarterly report. The second
7 quarterly report is going to be due in May, and
8 those two quarterly reports together are going
9 to be your baseline so I think the baseline is
10 going to be due in May.

11 MR. MOANDER: May.

12 COMMISSIONER BLOOM: May 15th.

13 CHAIRWOMAN SANDOVAL: I think if we have
14 a hearing in December, Mr. Moander, depending on
15 an appeal or any of those components, we should
16 have this published and finalized well in
17 advance of May.

18 MR. MOANDER: Yes, I think that is a
19 safe assumption because we will have this
20 finalized because -- let me ask -- this will
21 have an impact. Does the commission wish to
22 proceed directly to the deliberation upon
23 completion of the parties cases in chief?

24 Well, let me rephrase that. The closing
25 of the evidentiary record.

1 CHAIRWOMAN SANDOVAL: That is
2 traditionally how the commission has done rule
3 makings with the exception of the original waste
4 rule making which was a behemoth.

5 MR. MOANDER: That shortens the time and
6 then orders can be entered. I never say
7 anything never could happen because that's
8 inviting disaster, but that May is a pretty
9 easily accommodated deadline for publication.

10 CHAIRWOMAN SANDOVAL: So then the order
11 would be taken into consideration, a final order
12 in that January date.

13 MR. MOANDER: Right and then at that
14 point everything gets funneled over for
15 publication and entry which I think we should be
16 okay even if there is a 30-day turnaround there.

17 Also the thing to keep in mind is the
18 commission's rules have a 20-day rehearing,
19 petition for rehearing window so whatever we
20 have we have the 20 days plus maybe another 30
21 to get them published depending on the issue so
22 that still puts us way ahead of schedule for the
23 May reporting deadline.

24 CHAIRWOMAN SANDOVAL: Okay. Great.
25 Well, I think it sounds like the 17th is the

1 best date so now we need to line out the rules
2 of engagement. It does appear to be a pretty
3 minor technical change. I would be fine with
4 like the standard 30-day comment period but I
5 guess if it did -- Mr. Moander, so if it does
6 get published, so let's just assume that it gets
7 published on -- there is so many days here
8 moving. It gets published on November 9th, how
9 many days would that be to the...

10 MR. MOANDER: I have got this website
11 that does all this stuff for me which is kind of
12 funny. So you want to determine if you get a
13 publication date of November 9th how many days
14 would that be to the hearing?

15 CHAIRWOMAN SANDOVAL: Yep.

16 MS. BADA: Madam Chair, Commissioners,
17 if I am calculating right, 8th of December is
18 30 days.

19 MR. MOANDER: So we got two options. I
20 think Ms. Bada is right. If we just say -- I
21 like putting a few extra days and I recommend
22 those to the comment period just to be on the
23 safe side.

24 If the hearing is on December 17th and
25 35 days before to allow a little room there

1 because of the holidays I think that is
2 reasonable and would recommend that.

3 Comment period could open Friday
4 November 12th. The total days between
5 publication date of the 9th, the latest of the
6 two, and December 17th would give 38 days which
7 is roughly the same.

8 So I figure start opening comments on
9 11-9 and then closing on the 16th or the 17th
10 that would be enough. Of course, the issue is
11 -- I would have to look back at the rules. I
12 don't think public comments period has to go
13 into the first day if it is a single day rule
14 hearing. We could close it off on the 16th.

15 CHAIRWOMAN SANDOVAL: I think we want
16 written comment to close on the 16th because we
17 have had this problem before.

18 MR. MOANDER: Yes, we have.

19 CHAIRWOMAN SANDOVAL: Written comment we
20 probably want to close on the 16th, but we will
21 take verbal public comment on the 17th.

22 MR. MOANDER: Correct. So to recap, the
23 written public comment period will initiate on
24 11-9-21 and close at 5:00 on 12-16-21.

25 CHAIRWOMAN SANDOVAL: Commissioners,

1 does that make sense to you? Or that is above
2 the standard 30 days but if it is already
3 published, I think it makes sense to give the
4 extra time with the holiday in there.

5 COMMISSIONER BLOOM: Yes, that make
6 sense. I just want to be absolutely sure on
7 this point: I remember when we were doing the
8 bill rule I believe it was -- had to keep the
9 written comment period open until the beginning
10 of the proceedings on that day if I recall
11 correctly.

12 MR. MOANDER: I am not totally convinced
13 of that but I don't think it -- I recognize the
14 concern with the commission. Let's say 500
15 written comments come in from the opening of the
16 hearing through the close. It makes
17 adjudication impossible that day. I don't think
18 that is likely. I don't know that I agree with
19 that assessment of the rule, but if we want to
20 be cautious, we can certainly do that.

21 I can dig up the rule and take another
22 look if the commission wants to move on with
23 discussing technical testimony. That is fine as
24 well if you want to give me a minute just to
25 take one more look to be sure.

1 CHAIRWOMAN SANDOVAL: Sure. We can wrap
2 everything up with a motion at the end. We will
3 need to wrap everything up at the end anyway.

4 While he looks up that, we need to
5 determine -- I am looking at some of the old
6 procedural orders. What we have done in the
7 past is asked for people to sign up ahead of
8 time for times if possible.

9 This is, I think, a little bit smaller
10 of a rule making than the past, but I don't know
11 what there could still be significant public
12 interest. I guess what we have done, I think,
13 is ask people if they want to sign up for a
14 specific time and then we set aside specific
15 times to do that.

16 So we could do like at the beginning of
17 the hearing 9 to 9:30. We would probably want
18 to do it at the beginning of the date if we are
19 looking at deliberating potentially at the end
20 of the day.

21 We would want to have public comments
22 upfront. Then provide an opportunity maybe at
23 lunch or before we close the record as well.

24 COMMISSIONER BLOOM: Madam Chair, I
25 agree.

1 COMMISSIONER WARNELL: That sounds fine.

2 CHAIRWOMAN SANDOVAL: So maybe let's
3 start the day -- I think we should also -- if
4 they want to specify a time, sign up with the
5 commission clerk and we can try to accommodate
6 some specific times, but then we will hold it
7 open for anybody else who wishes to come.

8 So maybe let's set aside 9 to 10 a.m. on
9 the 17th, but I want to be clear that if there
10 are not enough people to fill that time slot,
11 that we can go ahead and start the technical
12 testimony, and we don't just sit there.

13 Okay. So 9 to 10 public comment; sign
14 up with commission clerk probably by 5:00 p.m.
15 on the 16th to try to accommodate specific time
16 slots. Then we will leave it open any other
17 time.

18 MR. MOANDER: Madam Chair, did you want
19 to give more time to people that sign up ahead
20 of time? We have done that in the past.

21 CHAIRWOMAN SANDOVAL: Yeah, I think that
22 makes sense so what -- if you sign up ahead of
23 time up to 5 minutes, 3 minutes if you come the
24 day of the hearing.

25 MR. MOANDER: Madam Chair, I have got

1 some thoughts to share when you're ready.

2 CHAIRWOMAN SANDOVAL: Go for it.

3 MR. MOANDER: The reason why I have had
4 some heartburn about that is the State Rules Act
5 doesn't require a written comment period to go
6 into the hearing. I don't want to --
7 Rule 19.15.3.10, second sentence: A person
8 shall provide written comments on the proposed
9 ruling change to the commission clerk not later
10 than the date of the scheduled hearing.

11 So I've tried to read this a variety of
12 ways. The State Rules Act is a piece of law to
13 the rules, but this requirement would seem to be
14 permissible under the State Rules Act so it
15 would mean we need to keep the record open for
16 written comment through the date of the
17 scheduled hearing.

18 I mean that is just the problem with
19 this is I think because I tried reading this
20 meaning that not later than would mean it would
21 have to be submitted before, but I don't think
22 -- before a scheduled hearing -- I don't think
23 that would work. I am still torn.

24 COMMISSIONER BLOOM: I agree with your
25 issue there. Perhaps what we could do is

1 receive some late or day of incoming written
2 comments. We could take a break and give
3 ourselves some time to review those before we
4 deliberate. Then go into deliberations that
5 day.

6 MR. MOANDER: I think that is a
7 reasonable approach, Commissioner Bloom.
8 Perhaps just this might be something to look at
9 deeper down the line to modify this verbiage,
10 but yeah, I think that would be sufficient
11 because it doesn't -- the OCC rules don't say
12 the written comment period has to extend to that
13 point. It just says that the commission needs
14 to accept written comments through the scheduled
15 hearing date.

16 CHAIRWOMAN SANDOVAL: Can we cap it at
17 like noon? Can we say the written comments need
18 to come in by noon of that date?

19 MR. MOANDER: We could. There would be
20 room for argument that the date, the day extends
21 at least until the close of business but
22 certainly would indicate based on reading the
23 rule that written comments could be received
24 that day, doesn't put a fixed timeline on it so
25 setting it at noon I think it is doable.

1 CHAIRWOMAN SANDOVAL: Doable or correct?

2 MR. MOANDER: The problem we have got
3 here is if we parse down this language and just
4 read it as it is black and white, the comment
5 period would need to extend all the way through
6 the close of the hearing, close of the day.
7 That poses a problem for deliberation, I think,
8 and would result in some difficulties.

9 Now, there is always the possibility of
10 scheduling the deliberations for the following
11 morning. That can be -- these hearings can be
12 continued as needed so if there was a need to
13 check this down the road a couple days, that
14 would also be doable as well.

15 My concern is that if there is any
16 comment that comes in afternoon and somehow is
17 not part of the record, that upends the entire
18 rule making or could.

19 CHAIRWOMAN SANDOVAL: I don't think that
20 it like in the history of things that -- I am
21 just thinking of previous rule makings and we
22 have not done it that way. I mean, it seems
23 cutting it at noon still provides...

24 MR. MOANDER: I think there are colorful
25 arguments on all sides of this. If the

1 commission wants to try or accept the noon
2 deadline on the 17th of December, you know, I am
3 fine -- I can work with that.

4 CHAIRWOMAN SANDOVAL: Other
5 commissioners, how are you on comment, written
6 comments until noon on the 17th.

7 COMMISSIONER BLOOM: Madam Chair, I
8 believe there might be a little risk involved
9 with that as Mr. Moander has indicated, but
10 given the technical correction, it would be
11 unlikely to receive written comment after that
12 time anyhow.

13 CHAIRWOMAN SANDOVAL: And we are
14 providing more than the 30 day timeline. Not to
15 throw a wrench in things but my computer is
16 telling me it is going to restart itself in ten
17 minutes. I don't seem to have any control or
18 ability to tell it to not do that. I can --
19 Mr. Moander, I can make you host.

20 MR. MOANDER: Okay.

21 CHAIRWOMAN SANDOVAL: Can we take like a
22 ten-minute break and come back at like 9:55.
23 Mr. Moander, I am going to transfer the hosting
24 ability to you because otherwise everybody is
25 going to get kicked off.

1 MR. MOANDER: Understood.

2 CHAIRWOMAN SANDOVAL: I apologize. Can
3 we come back in ten minutes at 9:55?

4 (A recess was taken from 9:45 a.m. until
5 9:55 a.m.)

6 CHAIRWOMAN SANDOVAL: So I think where
7 we were was basically lining out the procedural
8 order. I think we agreed noon on the 17th for
9 written comment.

10 MR. MOANDER: I think that is correct,
11 Madam Chair.

12 CHAIRWOMAN SANDOVAL: Any other items
13 that we need to line out in this procedural
14 order that we are missing at this point.

15 MR. MOANDER: Madam Chair, I was looking
16 at some things. I am not sure what else was
17 discussed but we have got customarily the
18 technical testimony of procession and then the
19 -- I will need your help later on compiling the
20 info about public comments, but that leaves
21 non-technical testimony so really just the
22 witnesses at this point because the position
23 statements and all that are already -- I can put
24 those in as well, but I believe those are
25 contemplated by the rules so I don't know that

1 is necessarily needed, but I will leave that up
2 to you.

3 CHAIRWOMAN SANDOVAL: So we have
4 technical testimony. That would be the
5 witnesses and non-technical testimony and oral
6 public comment and then written comment. I
7 think we have done all of those.

8 MR. MOANDER: If that is the case, Madam
9 Chair, I will confer with you after the hearing
10 to collect all the -- I will collect that once
11 the motion is made. I will supplement with that
12 request if that is needed.

13 CHAIRWOMAN SANDOVAL: Do we need to
14 include all of those components in the motion?

15 MR. MOANDER: Yes. Madam Chair, we want
16 them put into an order.

17 CHAIRWOMAN SANDOVAL: Great. I might
18 make a motion that this -- let's see. Case
19 number.

20 MR. MOANDER: 22225.

21 CHAIRWOMAN SANDOVAL: Yeah, 22225, that
22 that is set for a special meeting on
23 December 17th starting at 9:00 a.m. Public
24 comment period will be open from November 9th
25 through noon on December 17th and those comments

1 will go to the commission clerk at either her
2 email address, the OCC email address, or the
3 Wendell Chino building from 9:00 a.m. to 10:00
4 a.m. on December 17th.

5 There will be a period of public
6 comment. Commenters are asked to sign up with
7 the commission clerk by 5:00 p.m. on the 16th.

8 If you sign up ahead of time for a
9 specific time during that 9 to 10 a.m. period,
10 then you can have up to five minutes for a
11 public comment.

12 Anyone who shows up day of will be
13 offered three minutes to make a public comment
14 and then public comments will be called once
15 again before the close of the record, and that
16 is my motion.

17 MR. MOANDER: Did we want to address
18 technical and/or residential non-technical
19 testimony?

20 CHAIRWOMAN SANDOVAL: Shoot, we didn't
21 set motion dates.

22 MR. MOANDER: Right and that's also -- I
23 am anticipating there won't be any here but
24 probably have to set those.

25 CHAIRWOMAN SANDOVAL: Yeah, you're

1 right. Scratch all that motion.

2 All right what -- we need probably a
3 prehearing statement and then response dates.

4 MR. MOANDER: The prehearing statement
5 is outlined or the requirements are for -- I
6 just lost it -- are set for in 19.15.3.11 B(1)
7 no later than ten business days before the
8 hearing, prehearing statement needs to be
9 submitted.

10 We can extend that out. It just has to
11 be ten days. It looks like we have done up to
12 two weeks to give parties a chance to do any
13 sort of -- I guess, you could motion or reply to
14 the prehearing statement so we have got options
15 here.

16 CHAIRWOMAN SANDOVAL: It looks like that
17 the prehearing statement would need to be due on
18 the 3rd of December.

19 MR. MOANDER: Let me -- I think that
20 sounds right. 17 minus 14, that would be two
21 weeks.

22 CHAIRWOMAN SANDOVAL: Okay.

23 MR. MOANDER: So we could set a
24 prehearing statement deadline of 12-3. We could
25 also have that set as a motions deadline as

1 well.

2 CHAIRWOMAN SANDOVAL: We can set both on
3 the same day.

4 MR. MOANDER: Sure. Then responses only
5 to those pleadings would be due on the 10th.

6 CHAIRWOMAN SANDOVAL: Yeah, that seems
7 reasonable.

8 MR. MOANDER: No replies.

9 CHAIRWOMAN SANDOVAL: Yeah, unless the
10 other commissioners have other thoughts.

11 COMMISSIONER BLOOM: No. Fine. Thank
12 you.

13 MR. MOANDER: One addition, 5:00 p.m. on
14 both of those dates will be hard a deadline.

15 CHAIRWOMAN SANDOVAL: We probably want
16 to indicate, I think as previously we have
17 asked, for prehearing statements should have a
18 summary of the testimony.

19 MR. MOANDER: We will address in part
20 the technical testimony.

21 CHAIRWOMAN SANDOVAL: Yeah, technical
22 testimony. For the non-technical testimony, we
23 have traditionally treated that and oral comment
24 the same.

25 MR. MOANDER: Yes. The only thing would

1 be -- this is sort of a caveat to normal oral
2 testimony or non-technical oral testimony. We
3 have requested in the past or ordered in the
4 past exhibits that would be offered in
5 conjunction with non-technical testimony be sent
6 to the clerk it looks like a day or two before
7 the hearings.

8 We could bump that out a little too or
9 we could stick with that.

10 CHAIRWOMAN SANDOVAL: It seems
11 reasonable if the hearing is on the 17th, maybe
12 have that due by the 15th.

13 MR. MOANDER: All right. At 5:00 p.m.?

14 CHAIRWOMAN SANDOVAL: Yeah.

15 MR. MOANDER: Okay. I think this covers
16 everything.

17 CHAIRWOMAN SANDOVAL: I think so. All
18 right. I am going to try this again. I make a
19 motion that this is set for hearing on
20 December 17th at 9:00 a.m. Testimony notice
21 period will be from 11-9 through 12-17 at noon
22 when the commission will accept -- will be the
23 end of accepting written comments from 9:00 a.m.
24 to 10:00 a.m. on the date of the -- sorry,
25 December 17th there will be an opportunity for

1 public comment.

2 Anybody who wishes to sign up for a
3 specific time during that 9 to 10 a.m. period
4 should sign up with the commission clerk by
5 5:00 p.m. on December 16th.

6 If you sign up ahead of time, you get
7 five minutes for public comment. If you do not
8 and you come the day of the hearing, you will
9 still be given an opportunity but there will be
10 three minutes per commenter.

11 Any exhibits that are in conjunction
12 with non-technical testimony need to be turned
13 in on December 15th by 5:00 p.m. to the
14 commission clerk.

15 Then all prehearing statements including
16 the high level summary of the testimony are due
17 on December 3rd at 5:00 p.m.; responses are due
18 on December 10th at 5:00 p.m.; and there will be
19 no replies.

20 Is there a second to that motion?

21 COMMISSIONER BLOOM: Madam Chair, I so
22 second.

23 CHAIRWOMAN SANDOVAL: Mr. Moander, will
24 you do a role call vote?

25 MR. MOANDER: Absolutely. Commissioner

1 Bloom?

2 COMMISSIONER BLOOM: Approved.

3 MR. MOANDER: Commissioner Warnell?

4 COMMISSIONER WARNELL: Approved.

5 MR. MOANDER: Madam Chair.

6 CHAIRWOMAN SANDOVAL: Approved.

7 MR. MOANDER: Motion passes. I will
8 prepare this order and submit it for entry
9 tomorrow so the parties should get this
10 hopefully some time tomorrow.

11 CHAIRWOMAN SANDOVAL: Okay. All right.
12 Well, that concludes I think matter No. 4 on the
13 agenda in case No. 22225.

14 Next item on the agenda is agenda Item
15 No. 5 case No. 21872, the application of Titus
16 Oil and Gas Production for approval of
17 production allocation which was taken up in a
18 special meeting by the OCC on September 28th.

19 All right. I believe that there has
20 been a final order that has been circulated
21 amongst the parties.

22 Mr. Moander, do we need to give an
23 opportunity to the parties to make any
24 statements?

25 MR. MOANDER: That is up to the

1 commission. There was only one -- it looked
2 like there was only one sticking point. I think
3 that the commission's in a position to make its
4 determination about that issue in the order of
5 that conflict and then proceed to enter the
6 order or you will enter the order.

7 CHAIRWOMAN SANDOVAL: Okay.

8 COMMISSIONER BLOOM: Commissioner Bloom
9 here. Just so our court reporter is aware, I am
10 going to step aside and Commissioner Baca, the
11 land office, will take my place.

12 MR. MOANDER: Commissioner Bloom, I will
13 pin you when this matter is over.

14 (Zoom is inaudible.)

15 CHAIRWOMAN SANDOVAL: Thank you. Mr.
16 Baca, are you there?

17 COMMISSIONER BACA: Good morning.

18 MR. BACA: Good morning, Madam Chair. I
19 am here.

20 CHAIRWOMAN SANDOVAL: Good morning.
21 Great. So in the final order circulated, I
22 believe that the only sort of sticking point
23 within this order was in paragraph 27 which
24 discussed basically what the schedule was for,
25 drilling and completing the well and when

1 production could commence. In the order as it
2 was drafted, it was originally stated that the
3 operator shall not commence production of Texas
4 minerals from the well. There was an additional
5 or shall not commence production from the well
6 until the interested parties have entered into a
7 MOU basically between New Mexico and Texas, and
8 so that did not exactly reflect what was in the
9 transcript from the hearing.

10 There really was no discussion about the
11 potential of placing a plug in order to just
12 produce the minerals from New Mexico.

13 Basically it was stated -- the
14 commission I think made it pretty clear within
15 the -- particularly on page 140 and 141 of the
16 transcript that this well should not produce
17 until an MOU has been entered by New Mexico and
18 Texas and there was not the discussion of
19 producing from just the Texas side and placing a
20 plug there.

21 So I believe that change was made to the
22 order before it was finalized to recognize the
23 commissions intent of not producing the well
24 until an order was executed -- I am sorry --
25 until an MOU was executed between New Mexico and

1 Texas.

2 Mr. Moander, is there anything
3 additional? Do we need to take a final vote?

4 MR. MOANDER: Yes, I believe you can. I
5 am going to advise you vote on the order with
6 paragraph 27 amended based on your description
7 and explanation.

8 CHAIRWOMAN SANDOVAL: Is there a motion
9 by the commissioners to approve the order with
10 the amendments to paragraph 27 to reflect that
11 the well should not produce until an MOU is
12 executed between New Mexico and Texas as was
13 indicated in the transcript on page 140 and 141
14 as to the commission's intent?

15 COMMISSIONER WARNELL: Madam Chair, I
16 make the motion that we accept the amended
17 paragraph 27 as stated.

18 CHAIRWOMAN SANDOVAL: Is there a second?

19 COMMISSIONER BACA: Madam Chair, I
20 second.

21 CHAIRWOMAN SANDOVAL: Mr. Moander,
22 please do a role call vote.

23 MR. MOANDER: Commissioner Baca?

24 COMMISSIONER BACA: Approved.

25 MR. MOANDER: Commissioner Warnell?

1 COMMISSIONER WARNELL: Approved.

2 MR. MOANDER: Motion passes. Madam
3 Chair, sorry. (Talking over one another) you're
4 right, Madam Chair.

5 CHAIRWOMAN SANDOVAL: I approve as well.

6 MR. MOANDER: Motion passes. My
7 apologies.

8 CHAIRWOMAN SANDOVAL: Thank you. Were
9 you going to circulate for signature?

10 MR. MOANDER: I circulated that with the
11 anticipated order, Madam Chair, to you. So if
12 that is satisfactory, I request you execute it
13 and have it entered into the record.

14 CHAIRWOMAN SANDOVAL: All right. Will
15 do. Thank you. With that, agenda Item No. 6
16 and 7 were continued. Item No. 6 is continued
17 to the November docket. Agenda Item No. 7 was
18 continued to the January 13, 2022, docket.

19 Next item is pending litigation. Are
20 there any updates to the commission, Mr.
21 Moander?

22 MR. MOANDER: Yes. Appellate case A1C A
23 39578 I mentioned it I think at the last regular
24 meeting but at this point we are waiting on
25 appellants brief in chief which would be filed

1 on or before November 15th at which time we will
2 draft our responsive pleading. Other than that
3 I am unaware of any additional litigation at
4 this time.

5 CHAIRWOMAN SANDOVAL: Thank you. Is
6 there any other business in front of the
7 commission today? Our next meeting is on
8 November 18th, and with that, it is 10:14 on
9 October 14th, and we will adjourn the meeting.
10 Thank you everybody.

11 (At 10:14 a.m. the matter was
12 completed)

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STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

October 14, 2021
9:00 a.m.

REPORTER'S CERTIFICATE

I, Barbara Jean Morgenweck, CCR # 526, DO
HEREBY CERTIFY that on October 14, 2021, the
above mentioned hearing, was taken before me at
the request of and sealed original thereof
retained by:

Ms. Florene Davidson
Commission Clerk

I FURTHER CERTIFY that the recoverable
cost of the original and one copy of the
Deposition, including exhibits, to _____ is
\$_____.

I FURTHER CERTIFY that I did report in
stenographic shorthand the questions and answers
set forth herein, and the foregoing is a true
and correct transcript of the proceeding had
upon the taking of this Deposition to the best
of my ability.

I FURTHER CERTIFY that I'm neither
employed by nor related to nor contracted with
(unless excepted by the rules) any of the
parties or attorneys in this case, and that I've
no interest whatsoever in the final disposition
of this case in any court.

/s/ Barbara Morgenweck
Barbara Morgenweck
Barbara Jean Morgenweck,
RPR, CCR
New Mexico CCR #526