

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

**IN THE MATTER OF PROPOSED  
AMENDMENT TO THE COMMISSION’S  
RULES TO ADDRESS CHEMICAL DISCLOSURE AND  
THE USE OF PERFLUOROALKYL AND  
POLYFLUOROALKYL SUBSTANCES AND  
IN OIL AND GAS EXTRACTION,  
19.15.2, 19.15.7, 19.15.14, 19.15.16, AND 19.15.25 NMAC**

**Case No. 23580**

**WILDEARTH GUARDIANS,**

**PETITIONER.**

**NEW MEXICO OIL & GAS ASSOCIATION’S MOTION IN LIMINE TO EXCLUDE  
THE TECHNICAL TESTIMONY AND EXHIBITS OF KRISTEN HANSEN**

The New Mexico Oil and Gas Association (“NMOGA”) hereby moves to exclude the direct technical testimony and exhibits of Kristen Hansen submitted on behalf of New Energy Economy in the above-captioned matter before the Oil Conservation Commission (“Commission”). In support of this motion, movant states as follows:

**I. BACKGROUND**

Ms. Hansen’s testimony does not meet the criteria for technical testimony as governed by Rule 19.15.3.7(B) because Ms. Hansen lacks the requisite specialized technical expertise. Her professional experience with Per- and polyfluoroalkyl substances (“PFAS”) does not relate to oil and gas operations, but rather, consumer products. Moreover, her testimony is also not relevant to the purpose of the proposed rule because it relates to impacts by PFAS used in consumer products and not oil and gas operations. For these reasons, movant is requesting Ms. Hansen’s technical testimony and exhibits be excluded from the record.

## II. LEGAL STANDARD

The admissibility of technical testimony in Commission rulemaking proceedings is governed by Rule 19.15.3.7(B) NMAC. 19.15.3.7(B) defines technical testimony as: “[s]cientific, engineering, economic, or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.” Rule 19.15.3.7(B) NMAC. To qualify as technical testimony, the testimony must be provided by an individual with specialized knowledge, skill, experience, training, or education in a relevant technical field, offering expert insights beyond general observations or publicly accessible information. *See* Rule 11-701(A); *see also State v. Smith*, 2024-NMCA-068, ¶13 (“Expert testimony ‘is neither the kind of personal observation that a lay person is capable of making nor common knowledge within the general public’”(internal citations omitted); *accord State v. Duran*, 2015-NMCA-015, ¶ 16, 343 P.3d 207 (“Information not known by the general public includes ‘[k]nowledge contained in treatises and understood by practitioners in their particular field, as well as knowledge that is beyond personal observation’ and ‘a product of . . . specialized training and experience not possessed by the average person’”(internal citations omitted)).

In addition to the requirements of Rule 19.15.3.7(B), expert testimony should also be relevant under Rule 11-402 NMRA. *See* Rule 11-402 (Evidence must be relevant to be admitted). Evidence is relevant if it is probative and “material to the particular case.” *State v. Alberico*, 1993-NMSC-047, ¶¶ 43-45, 116 N.M. 156.

## III. ARGUMENT

### A. **Ms. Hansen lacks the necessary specialized technical expertise to opine on PFAS in oil and gas hydraulic fracturing operations, which is the scope of the present rulemaking.**

Ms. Hansen lacks the requisite technical expertise in fields relevant to the matters in issue for several reasons, but primarily because her experience with PFAS relates to PFAS in consumer

products through her experience working at 3M. Moreover, Ms. Hansen states herself that “[she] do[es] not have experience in the oil and gas industry.” New Energy Economy (“NEE”) Exhibit A (Hansen Testimony) at pg. 8, line 4; *see also* Exhibit KH-2 (only discussing use of PFAS in consumer products, which are in issue in the present rulemaking and over which the Commission has no regulatory authority).

PFAS used in oil and gas operations are different from PFAS used in consumer products. As Ms. Hansen mentions, PFAS is estimated to include more than 14,000 compounds, many of which have not been fully characterized. *See* NEE Exhibit A at pg. 6, line 5. PFAS used in oil and gas operations that the Commission is addressing in this rulemaking differ from those in consumer products, each with unique properties, uses, and potential environmental and health impacts. *See id.*

Oil and gas operations and consumer product use have different applications and exposure risks, regulatory frameworks, fate and transport, and mitigation and cleanup processes. These differences mean that the risks associated with PFAS use, as well as the strategies for managing these risks, require different approaches in the consumer product than the oil and gas industry.

The PFAS for which Ms. Hansen is familiar, and has studied fate, transport, and health effects of, are PFAS in consumer products. *See id.* at pg. 9, lines 11-13 (describing work on consumer products, such as “food packaging” and “degradation of PFAS-coated textiles”); *see also* NEE Exhibit KH-1 (demonstrating experience *only* with consumer products-related PFAS and no oil and gas experience). She does not know nor appear to understand what, if any, PFAS substances are used in oil and gas operations, nor their environmental and health impacts. She lacks specialized knowledge to provide expert technical testimony in this hearing and her testimony should be excluded.

**B. Ms. Hansen’s testimony regarding the use of PFAS in consumer products is also irrelevant to the proposed rulemaking that addresses PFAS in oil and gas hydraulic fracturing operations.**

The purpose of the proposed rule is to prohibit the use of PFAS *specifically* in oil and gas hydraulic fracturing operations. *See e.g.* Proposed 19.15.7.16 NMAC (proposing amendments to oil and gas well completion or recompletion regulations); *see also e.g.*, Proposed 19.15.16.17 NMAC (addressing completions, shooting, and chemical treatment of oil and gas wells) (emphasis added). Ms. Hansen concedes she has no experience in oil and gas; that her only knowledge about oil and gas hydraulic fracturing industry customs and practices regarding PFAS derives from the *singular* exhibit she included in her testimony, NEE Exhibit KH-3; and her knowledge, education, experience, and training related to PFAS in *consumer products* is irrelevant to what, if any, PFAS is used in oil and gas hydraulic fracturing operations and whether such use is “necessary”. *See* NEE Exhibit A, at pg. 9, line 3-4 (Ms. Hansen conceding her only knowledge about oil and gas hydraulic fracturing constituents use comes from article included as NEE Exhibit KH-3); *see also id.* at pg. 9, lines 11-13 (describing PFAS use in food packaging and textiles); *see also id.* at pg. 10, lines 21-24 (summarizing PFAS use in dental floss, food and industrial emulsifiers, and other *non-oil and gas* related applications). Such evidence is, therefore, neither “probative” of nor “material to the particular case,” regulating certain constituents in oil and gas hydraulic fracturing operations. *Alberico*, 1993-NMSC-047, ¶¶ 43-45.

Ms. Hansen’s testimony does not address PFAS’s use in oil and gas operations. Her testimony centers on general studies of PFAS-containing consumer product impacts on health. The makeup and uses of PFAS in consumer products and the oil and gas industry are different, which may lead to distinctions in relevance for several reasons mentioned previously. Therefore, her testimony is not relevant to the specific issues the Commission is considering in this rulemaking proceeding.

#### IV. CONCLUSION

Ms. Hansen lacks the requisite specialized technical expertise to provide admissible technical testimony, and her testimony is irrelevant under *all* applicable standards: 19.15.3.7(B); Rule 11-701(A); and New Mexico caselaw addressing the same. Therefore, Ms. Hansen's testimony and exhibits should be excluded from the record.

**WHEREFORE**, NMOGA moves the Commission to exclude the direct technical testimony and exhibits of Ms. Hansen on behalf of New Energy Economy from the record of this proceeding, and for other such relief as is deemed just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Motion in Limine was e-mailed to the following on October 28, 2024:

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