

**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 MELISSA
TROUTMAN**

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

I. INTRODUCTION

Ms. Troutman’s testimony does not meet Commission criteria for technical testimony and she lacks the requisite specialized technical expertise to provide technical testimony. Her testimony addresses rudimentary internet searches using basic database filters, and her professional background is in advocacy, journalism, and filmmaking, not in any technical or scientific fields. *See* WG Ex. 91 (Troutman Testimony) at pg.4, lines 6-9 (describing her English Literature and Language Arts education, and environmental activist experience but no technical, scientific, or engineering experience related to oil and gas operations); *see also* WG Ex. 90

(Troutman curriculum vitae)(identifying no scientific, technical, or specialized experience or education in oil and gas operations). Furthermore, her testimony is not relevant to the specific purpose of the proposed rule. For these reasons, NMOGA is requesting her “technical” testimony and exhibits be excluded from the record. In the alternative, if the Commission will not wholly exclude Ms. Troutman’s testimony and exhibits, NMOGA requests that her testimony and exhibits be admitted only as non-technical testimony and exhibits, to the extent, if any, that they are relevant.

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.” *Id.* 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. Troutman’s testimony about simple internet searches regarding spills is irrelevant to the present rulemaking specifically addressing constituents in hydraulic fracturing fluids and chemical registry disclosures in FracFocus.**

In this rulemaking, the Commission is addressing PFAS in hydraulic fracturing fluids in oil and gas operations and disclosure requirements for chemical constituents in FracFocus. *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). Ms. Troutman’s testimony does not address PFAS in hydraulic fracturing fluids. *See generally* WG. Ex. 91 at pgs. 1-3 (discussing only the spills and incidents databases and alleging 99 spills—with no reference to PFAS—from oil and gas operations). Her testimony talks about databases that list oil and gas spills in New Mexico, without a single reference to PFAS. *See id.* This rulemaking hearing does not address oil and gas spills; nor is general oil and gas spill data “probative” or “material to” to what, if any, PFAS may be used in hydraulic fracturing fluids and disclosure of the same. *See Alberico*, 1993-NMSC-047, ¶¶ 43-45 (requiring evidence to be both probative and material to be admissible).

Moreover, as analyzed below, Ms. Troutman would not be qualified to opine on the presence or absence of PFAS in hydraulic fracturing fluids, and the significance of any such finding(s). *See* WG Ex. 90 (Troutman curriculum vitae). Further, Ms. Troutman’s testimony neither mentions any logical connection between the spills and the FracFocus disclosure requirements being addressed in this rulemaking. *See generally* WG. Ex. 91 at pgs. 1-3. Thus such data is neither “probative,” nor “material” to the hearing. *See Alberico*, 1993-NMSC-047, ¶¶ 43-

45. Accordingly, her testimony is irrelevant to the specific issues the Commission is reviewing in this rulemaking proceeding and should be excluded.

B. Ms. Troutman wholly lacks *any* technical expertise.

Ms. Troutman’s testimony should be excluded because her expertise does not meet the standard of technical expertise required for technical testimony. *See* 19.15.3.7(B) (“Technical testimony” requires “[s]cientific, engineering, economic, or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position”). Her experience is in English literature, journalism, and advocacy. *See* WG Ex. 1. Ms. Troutman has *no experience whatsoever* in a technical field, lacking any “scientific, engineering, or other specialized” experience. *See id.*; *accord* (“Expert testimony ‘is neither the kind of personal observation that a lay person is capable of making nor common knowledge within the general public’”). Instead, the methodology she addresses in her testimony involves simple internet searches, data retrieval, and basic filtering techniques that do not require specialized knowledge or skills. *See id.*; *see also* WG Ex. 91 at pg.2, lines 1-22.

To be qualified as an “expert,” an individual must have the necessary experience, knowledge, and training, to provide technical testimony. *See Duran*, 2015-NMCA-015, ¶ 16. (“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’”). In her testimony, Ms. Troutman simply explains how she ran an internet search(es) and applied filters to exclude certain categories of data. Such general information and techniques by no means meets the definition of “specialized training and experience not possessed by the average person.” *See id.* Thus, Ms. Troutman’s testimony and exhibits should be excluded as non-technical testimony.

IV. CONCLUSION

Ms. Troutman does not possess the specialized technical expertise necessary to provide technical testimony in this proceeding. Additionally, her testimony is not relevant nor technical. Therefore, her technical testimony and exhibits should be excluded from the rulemaking record. In the alternative, the Commission could consider admitting her testimony and exhibits as strictly non-technical testimony.

WHEREFORE, NMOGA moves the Commission to exclude the direct technical testimony and exhibits of Ms. Troutman from the record of this proceeding; or in the alternative, that Ms. Troutman's testimony and exhibits be admitted only as non-technical testimony, to the extent it is relevant; and for other such relief as is deemed just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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