

**From:** [Daniel Rubin](#)  
**To:** [Moander, Chris, EMNRD](#); [ripharwoodrbhpc@gmail.com](mailto:ripharwoodrbhpc@gmail.com); [Apodaca, Sheila, EMNRD](#)  
**Cc:** [Jaclyn McLean](#); [Adam Rankin](#); [Nathan R. Jurgensen](#); [Ernest Padilla](#); [Shaheen, Sharon](#); [Matthew M. Beck](#); [Miguel Suazo](#); [Dana Hardy \(dhardy@hinklelawfirm.com\)](mailto:dhardy@hinklelawfirm.com)  
**Subject:** [EXTERNAL] RE: Goodnight/Empire - Positions on OMA issues.  
**Date:** Friday, February 21, 2025 10:38:05 AM

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Dear Rip,

Please include the email below (and this one) in the administrative record to document the parties' waiver of any notice deficiencies. For proper context, I will forward you the email on February 6, 2024, that this one responds to, as it expressed my concern regarding notice pursuant to 19.15.4.9 NMAC, not OMA. Please include my email of February 6, 2024 as well.

If I am misinterpreting the intent of Mr. Moander's email, I respectfully ask the parties to notify me immediately.

Sincerely,



Daniel Ross Rubin  
Assistant Attorney General  
Litigation Division  
**State of New Mexico Department of Justice**  
505-537-4477  
[drubin@nmdoj.gov](mailto:drubin@nmdoj.gov)

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**From:** Moander, Chris, EMNRD <[Chris.Moander@emnrd.nm.gov](mailto:Chris.Moander@emnrd.nm.gov)>  
**Sent:** Friday, February 7, 2025 1:41 PM  
**To:** Daniel Rubin <[drubin@nmag.gov](mailto:drubin@nmag.gov)>  
**Cc:** [Jaclyn McLean <JMclean@hinklelawfirm.com>](mailto:JMclean@hinklelawfirm.com); [Adam Rankin <AGRankin@hollandhart.com>](mailto:AGRankin@hollandhart.com); [Nathan R. Jurgensen <NRJurgensen@hollandhart.com>](mailto:NRJurgensen@hollandhart.com); [Ernest Padilla <PadillaLawNM@outlook.com>](mailto:ErnestPadilla@outlook.com); [Shaheen, Sharon <sshaheen@spencerfane.com>](mailto:sshaheen@spencerfane.com); [Matthew M. Beck <mbeck@peiferlaw.com>](mailto:mbeck@peiferlaw.com); [Miguel Suazo <msuazo@bwenergyllaw.com>](mailto:msuazo@bwenergyllaw.com); [Dana Hardy \(dhardy@hinklelawfirm.com\) <DHardy@hinklelawfirm.com>](mailto:DHardy@hinklelawfirm.com)  
**Subject:** Goodnight/Empire - Positions on OMA issues.

Dan,

All Parties conferred this morning and agreed to waive the OMA issues presented by you. The Parties also agreed to proceed with the hearing schedule as memorialized in the Third Amended Prehearing Order, Paragraph 1 (attached hereto).

Regards,  
Chris

**From:** [Daniel Rubin](#)  
**To:** [Dana Hardy](#); [Moander, Chris, EMNRD](#); [ripharwoodrbhpc@gmail.com](mailto:ripharwoodrbhpc@gmail.com); [Apodaca, Sheila, EMNRD](#)  
**Cc:** [Jaclyn McLean](#); [Adam Rankin](#); [Nathan R. Jurgensen](#); [Ernest Padilla](#); [Shaheen, Sharon](#)  
**Subject:** [EXTERNAL] RE: Goodnight/Empire cases - conflicting Amended PHO and OCC notice.  
**Date:** Friday, February 21, 2025 10:39:08 AM  
**Attachments:** [image001.png](#)

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Rip,

..and here is my email from 2/6 as referenced a few moments ago.

Thanks again,

Dan



Daniel Ross Rubin  
Assistant Attorney General  
Litigation Division  
**State of New Mexico Department of Justice**  
505-537-4477  
[drubin@nmdoj.gov](mailto:drubin@nmdoj.gov)

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**From:** Daniel Rubin  
**Sent:** Thursday, February 6, 2025 11:23 AM  
**To:** [drubin@nmag.gov](mailto:drubin@nmag.gov); Dana Hardy <[DHardy@hinklelawfirm.com](mailto:DHardy@hinklelawfirm.com)>; Moander, Chris, EMNRD <[Chris.Moander@emnrd.nm.gov](mailto:Chris.Moander@emnrd.nm.gov)>  
**Cc:** Jaclyn McLean <[JMcLean@hinklelawfirm.com](mailto:JMcLean@hinklelawfirm.com)>; Adam Rankin <[AGRankin@hollandhart.com](mailto:AGRankin@hollandhart.com)>; Nathan R. Jurgensen <[NRJurgensen@hollandhart.com](mailto:NRJurgensen@hollandhart.com)>; Ernest Padilla <[PadillaLawNM@outlook.com](mailto:PadillaLawNM@outlook.com)>; Shaheen, Sharon <[sshaheen@spencerfane.com](mailto:sshaheen@spencerfane.com)>  
**Subject:** RE: Goodnight/Empire cases - conflicting Amended PHO and OCC notice.

Dear All,

In the hopes of preserving the current hearing schedule on the 20<sup>th</sup> and 24-28<sup>th</sup>, I am asking one more time for a waiver – specifically, of any notice deficiencies as required by 19.15.4.9 NMAC. The Commission would like to hear this matter as scheduled, hence my second request.

Thank you in advance for your courtesy and consideration.

On a related note, I anticipate that the Director may decide the pending non-dispositive pre-hearing motions pursuant to 19.15.4.17.C NMAC: “...If the case is pending before the commission, the

director shall rule on a motion...”

Sincerely,

Dan



Daniel Ross Rubin  
Assistant Attorney General  
Litigation Division  
**State of New Mexico Department of Justice**  
505-537-4477  
[drubin@nmdoj.gov](mailto:drubin@nmdoj.gov)

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**From:** Daniel Rubin <[drubin@nmag.gov](mailto:drubin@nmag.gov)>  
**Sent:** Wednesday, February 5, 2025 4:50 PM  
**To:** Dana Hardy <[DHardy@hinklelawfirm.com](mailto:DHardy@hinklelawfirm.com)>; Moander, Chris, EMNRD <[Chris.Moander@emnrn.nm.gov](mailto:Chris.Moander@emnrn.nm.gov)>  
**Cc:** Jaclyn McLean <[JMcLean@hinklelawfirm.com](mailto:JMcLean@hinklelawfirm.com)>; Adam Rankin <[AGRankin@hollandhart.com](mailto:AGRankin@hollandhart.com)>; Nathan R. Jurgensen <[NRJurgensen@hollandhart.com](mailto:NRJurgensen@hollandhart.com)>; Ernest Padilla <[PadillaLawNM@outlook.com](mailto:PadillaLawNM@outlook.com)>; Shaheen, Sharon <[sshaheen@spencerfane.com](mailto:sshaheen@spencerfane.com)>  
**Subject:** RE: Goodnight/Empire cases - conflicting Amended PHO and OCC notice.

Thank you Dana, for the clarification. I understand the PHO to not exclude the possibility of additional days if necessary. As a practical constraint, the commissioners can only block out so much time in advance. If the hearing needs to proceed after the 28<sup>th</sup>, we will need to schedule new hearing dates while we are all together on the 28<sup>th</sup>, which again, may not require the full 20 day's notice if the parties agree. Such agreement could result in continuing on 3/1, if schedules allow.

So, please advise as to the waiver of notice issue. OCD staff should be getting out a new notice reflecting the 20<sup>th</sup> and 24-28, consistent with the 3<sup>rd</sup> amended PHO.



Daniel Ross Rubin  
Assistant Attorney General  
Litigation Division  
**State of New Mexico Department of Justice**  
505-537-4477  
[drubin@nmdoj.gov](mailto:drubin@nmdoj.gov)

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**From:** Dana Hardy <[DHardy@hinklelawfirm.com](mailto:DHardy@hinklelawfirm.com)>

**Sent:** Wednesday, February 5, 2025 4:29 PM

**To:** Daniel Rubin <[drubin@nmag.gov](mailto:drubin@nmag.gov)>; Moander, Chris, EMNRD <[Chris.Moander@emnrd.nm.gov](mailto:Chris.Moander@emnrd.nm.gov)>

**Cc:** Jaclyn McLean <[JMcLean@hinklelawfirm.com](mailto:JMcLean@hinklelawfirm.com)>; Adam Rankin <[AGRankin@hollandhart.com](mailto:AGRankin@hollandhart.com)>;

Nathan R. Jurgensen <[NRJurgensen@hollandhart.com](mailto:NRJurgensen@hollandhart.com)>; Ernest Padilla

<[PadillaLawNM@outlook.com](mailto:PadillaLawNM@outlook.com)>; Shaheen, Sharon <[sshaheen@spencerfane.com](mailto:sshaheen@spencerfane.com)>; Dana Hardy

<[DHardy@hinklelawfirm.com](mailto:DHardy@hinklelawfirm.com)>

**Subject:** RE: Goodnight/Empire cases - conflicting Amended PHO and OCC notice.

Dan,

I think we're hoping to confirm that the hearing will proceed until it concludes (as stated in the pre-hearing order) rather than terminate on 2/28 (as stated in the notice).

Thanks,

Dana



Dana S. Hardy  
Partner  
Hinkle Shanor LLP  
218 Montezuma  
Santa Fe, New Mexico 87501  
(505) 982-4554 telephone  
(505) 930-5702 direct  
(505) 982-8623 facsimile  
[dhardy@hinklelawfirm.com](mailto:dhardy@hinklelawfirm.com)

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**From:** Daniel Rubin <[drubin@nmag.gov](mailto:drubin@nmag.gov)>

**Sent:** Wednesday, February 5, 2025 4:06 PM

**To:** Moander, Chris, EMNRD <[Chris.Moander@emnrd.nm.gov](mailto:Chris.Moander@emnrd.nm.gov)>

**Cc:** Dana Hardy <[DHardy@hinklelawfirm.com](mailto:DHardy@hinklelawfirm.com)>; Jaclyn McLean <[JMcLean@hinklelawfirm.com](mailto:JMcLean@hinklelawfirm.com)>; Adam Rankin <[AGRankin@hollandhart.com](mailto:AGRankin@hollandhart.com)>; Nathan R. Jurgensen <[NRJurgensen@hollandhart.com](mailto:NRJurgensen@hollandhart.com)>; Ernest Padilla <[PadillaLawNM@outlook.com](mailto:PadillaLawNM@outlook.com)>; Shaheen, Sharon <[sshaheen@spencerfane.com](mailto:sshaheen@spencerfane.com)>

**Subject:** RE: Goodnight/Empire cases - conflicting Amended PHO and OCC notice.

Dear all,

Thank you for following up with the notice issue first raised on Monday. Without resolving whether giving overinclusive notice of the 20th-28th instead of the 20<sup>th</sup> and 24<sup>th</sup> through 28<sup>th</sup> sinks to the level of a due process violation, a new notice as of Monday would not have satisfied the 20-day requirement at 19.15.4.9(B) NMAC.

I do not see this as a jurisdictional issue. As such, it can be resolved by waiver rather than resolved at the administrative a legal opinion by my office, which I obviously prefer.

I thus ask for each of the partes to indicate whether they will waive the notice requirements at 19.15.4.9(B) NMAC. If I receive universal waiver, I'll simply include the emailed waivers in the admin record.

Thank you in advance for your courteous responses.

Sincerely,



Daniel Ross Rubin  
Assistant Attorney General  
Litigation Division  
**State of New Mexico Department of Justice**  
505-537-4477  
[drubin@nmdoj.gov](mailto:drubin@nmdoj.gov)

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**From:** Moander, Chris, EMNRD <[Chris.Moander@emnrd.nm.gov](mailto:Chris.Moander@emnrd.nm.gov)>

**Sent:** Wednesday, February 5, 2025 3:06 PM

**To:** Daniel Rubin <[drubin@nmag.gov](mailto:drubin@nmag.gov)>

**Cc:** Dana Hardy ([dhardy@hinklelawfirm.com](mailto:dhardy@hinklelawfirm.com)) <[DHardy@hinklelawfirm.com](mailto:DHardy@hinklelawfirm.com)>; Jaclyn McLean <[JMcLean@hinklelawfirm.com](mailto:JMcLean@hinklelawfirm.com)>; Adam Rankin <[AGRankin@hollandhart.com](mailto:AGRankin@hollandhart.com)>; Nathan R. Jurgensen <[NRJurgensen@hollandhart.com](mailto:NRJurgensen@hollandhart.com)>; Ernest Padilla <[PadillaLawNM@outlook.com](mailto:PadillaLawNM@outlook.com)>; Shaheen, Sharon <[sshaheen@spencerfane.com](mailto:sshaheen@spencerfane.com)>

**Subject:** Goodnight/Empire cases - conflicting Amended PHO and OCC notice.

Dan,

The Parties conferred today and identified a conflict between the most recent PHO and the current OCC Meeting notice (both are attached for reference with highlights).

The 3<sup>rd</sup> Amended PHO states the evidentiary hearing is to start on 2/24/2025 and is to continue for consecutive business days until complete, unless otherwise ordered.

The OCC meeting notice states that the evidentiary hearing will start on 2/20 and end on 2/28.

Obviously these documents directly conflict and, IMO, OMA governs and so the Notice would supersede the 3<sup>rd</sup> amended PHO insofar as scheduled hearing dates.

I think the best option is to revise the Notice to conform with the PHO, since there is still time under OMA. My understanding is the Parties prefer the same, although I am open to comment.

The sooner we can resolve this, the better.

Chris