

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

**APPLICATIONS OF GOODNIGHT MIDSTREAM
PERMIAN, LLC FOR APPROVAL OF
SALTWATER DISPOSAL WELLS
LEA COUNTY, NEW MEXICO**

CASE NOS. 23614-23617

**APPLICATION OF GOODNIGHT MIDSTREAM
PERMIAN LLC TO AMEND ORDER NO. R-22026/SWD-2403
TO INCREASE THE APPROVED INJECTION RATE
IN ITS ANDRE DAWSON SWD #1,
LEA COUNTY, NEW MEXICO.**

CASE NO. 23775

**APPLICATIONS OF EMPIRE NEW MEXICO LLC
TO REVOKE INJECTION AUTHORITY,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24018-24020, 24025

**APPLICATION OF GOODNIGHT PERMIAN
MIDSTREAM, LLC FOR APPROVAL OF A
SALTWATER DISPOSAL WELL, LEA COUNTY,
NEW MEXICO.**

**DIVISION CASE NO. 24123
ORDER NO. R-22869-A**

**MOTION TO QUASH GOODNIGHT MIDSTREAM PERMIAN, LLC'S
FEBRUARY 21, 2025 SUBPOENA OF SCOTT CURTIS**

Empire New Mexico, LLC ("Empire") moves to quash Goodnight Permian Midstream, LLC's ("Goodnight") February 21, 2025, subpoena to Scott Curtis, General Manager of Rice Operating Company and Permian Line Service, LLC ("Rice"). For the reasons discussed below, the Oil Conservation Commission ("Commission") should issue an order quashing the subpoena.

ARGUMENT

This proceeding arises from Goodnight's current and proposed injection of produced water into the San Andres formation within and surrounding the 14,189.84-acre Eunice Monument South Unit ("EMSU") operated by Empire. The Commission limited scope of the evidentiary hearing in this proceeding to "the existence, extent of[,] and possible interference with a residual oil zone the [EMSU] by produced water injection activities undertaken by [Goodnight]." ¹ The Commission specifically excluded from this proceeding any dispute over Rice's injection applications, which Goodnight had sought to consolidate for hearing.

Notwithstanding that the parties have already litigated and obtained a decision from the Commission on the scope of this proceeding, and that witness disclosure deadlines have all passed, Goodnight now seeks – at the eleventh hour – to subpoena Mr. Curtis, Rice's general manager, to support Goodnight's case in chief. For the reasons that follow, the subpoena flouts the Commission's Rules governing witness testimony, is unreasonable and oppressive, and amounts to an abuse of process. Additionally, Goodnight has failed to meet its burden of establishing that Mr. Curtis's testimony would be relevant or admissible. *See* Trial Handbook for New Mexico Lawyers § 19:2 ("The burden of satisfying the court of the relevancy of the demonstrative evidence is on the proponent of the evidence."). Accordingly, the subpoena should be quashed.

As has already been briefed and argued in this proceeding – during the witness disclosure and vetting stage – quashing subpoena is appropriate when the subpoena constitutes an abuse of process. *See Poorbaugh v. Mullen*, 1982-NMCA-141, ¶ 18, 99 N.M. 11. A subpoena that is

¹ *See Joint Order on Goodnight Midstream Permian LLC's Motion to Limit Scope of Hearing On Cases Within the Eunice Monument South Unit and the Oil Conservation [Division's] Motion Concerning the Scope of the Evidentiary Hearing Set for September 23-27, 2024* (Jul. 2, 2024) (the "Scope Order").

unreasonable or oppressive should be quashed. *See Blake v. Blake*, 1985-NMCA-009, ¶ 21, 102 N.M. 354. Additionally, Rule 19.15.4.17 of the Commission's Adjudication Rule states that the Commission may "admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable." *See* 19.15.4.16 NMAC. Thus, to be admissible, subpoenaed evidence must, at a minimum, be "relevant". The New Mexico Rules of Evidence define "relevant" evidence to mean evidence that tends to make a fact more or less probable, so long as that fact is "of consequence in determining the action." *See* Rule 11-401.² Applying these principles here, Goodnight's subpoena is procedurally improper, seeks unknown, unvetted testimony from Mr. Curtis that Goodnight has not established as relevant, and should be quashed.

As an initial matter, Goodnight requested the subpoena *ex parte*, without any formal filing or notice to the parties. Empire consequently did not have the opportunity to review or respond to the subpoena request before the Commission issued the subpoena. This untimely, covert process violates basic principles of procedural fairness.

Furthermore, Goodnight's subpoena violates a slew of Commission deadlines and requirements for pre-hearing witness disclosures and objections, subpoenas, pre-hearing statements, rebuttal testimony, and exhibits. Goodnight approved the Commission's January 30, 2025, Third Amended Prehearing Order, which required the parties to, among other things: request subpoenas by December 16, 2024; file rebuttal testimony disclosures by January 6, 2025; and file Prehearing Statements by February 10, 2025. *See* Third Amended Prehearing Order (Jan. 30, 2025). In addition, the Commission's Adjudication Rule specifically requires parties to include in their prehearing statements "the names of witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise." 19.15.4.13(B) NMAC. Here, Goodnight

² *See also* Rule 1-026(B)(1) (a party is entitled to seek information that is not privileged and is reasonably calculated to lead to the discovery of admissible evidence in the pending action).

never disclosed its intent to call Mr. Curtis as a witness. The foregoing, pre-hearing requirements do not permit this type of last-minute, ad hoc procedural gamesmanship after the hearing has already begun.

Besides being untimely and procedurally improper, Mr. Curtis's proposed testimony is irrelevant. As set forth in the Commission's Scope Order, the Rice wells and injection applications are not at issue in this proceeding. Rice is represented by separate counsel in this case, but Rice failed to identify any witnesses or file testimony. Counsel for Goodnight, in turn, did not identify any Rice witness in Goodnight's prehearing statement, or seek to obtain a subpoena for Mr. Curtis's deposition months ago, when the parties were still completing discovery. Accordingly, in addition to not disclosing the subject matter of Mr. Curtis's testimony, Goodnight has failed to meet its burden of establishing the relevance of that testimony, or how it would outweigh its prejudicial effect. *See* Rule 11-403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by the danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needless presenting cumulative evidence.").

Finally, the proposed subpoena unfairly prejudices Empire. Because Goodnight did not timely disclose Mr. Curtis as a witness, Empire has no idea of the subject of Mr. Curtis's testimony. Empire has had no opportunity to depose Mr. Curtis alongside the other parties' witnesses. Nor could Empire file a motion to limit or exclude Mr. Curtis's testimony, let alone prepare for cross-examination or identify rebuttal evidence or testimony. Sustaining the proposed subpoena at this late stage would be unreasonable and oppressive. Accordingly, the Commission should issue an order quashing the subpoena.

Respectfully submitted,

HARDY McLEAN LLC

By: /s/ Dana S. Hardy
 Dana S. Hardy
 Jaclyn McLean
 125 Lincoln Ave., Ste. 223
 Santa Fe, NM 87501
 Phone: (505) 230-4410
dhardy@hardymclean.com
jmclean@hardymclean.com

Ernest L. Padilla
 PADILLA LAW FIRM
 P.O. Box 2523
 Santa Fe, NM 87504-2523
 (505) 988-7577
padillalawnm@outlook.com

Sharon T. Shaheen
 SPENCER FANE LLP
 P.O. Box 2307
 Santa Fe, NM 87504-2307
 (505) 986-2678
sshaheen@spencerfane.com

Attorneys for Empire New Mexico, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record by electronic mail on February 25, 2025.

Michael H. Feldewert Adam G. Rankin Nathan R. Jurgensen Julia Broggi Paula M. Vance Holland & Hart LLP P.O. Box 2208 Santa Fe, New Mexico 87504-2208	Jesse K. Tremaine Christopher L. Moander New Mexico Energy, Minerals and Natural Resources Department 1220 South St. Francis Drive Santa Fe, New Mexico 87505 Tel (505) 709-5687 Jessek.tremaine@emnrd.nm.gov
---	--

Telephone: (505) 986-2678 mfeldewert@hollandhart.com agrarkin@hollandhart.com nrjurgensen@hollandhart.com jbroggi@hollandhart.com pmvance@hollandhart.com Attorneys for Goodnight Midstream Permian, LLC	chris.moander@emnrd.nm.gov Attorneys for New Mexico Oil Conservation Division
Matthew M. Beck PEIFER, HANSON, MULLINS & BAKER, P.A. P.O. Box 25245 Albuquerque, NM 87125-5245 Tel: (505) 247-4800 mbeck@peiferlaw.com Attorneys for Rice Operating Company and Permian Line Service, LLC	Miguel A. Suazo BEATTY & WOZNIAK, P.C. 500 Don Gaspar Ave. Santa Fe, NM 87505 Tel: (505) 946-2090 msuazo@bwenergylaw.com Attorneys for Pilot Water Solutions SWD, LLC

/s/ Dana S. Hardy
Dana S. Hardy