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

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

Goodnight Midstream Permian, LLC ("Goodnight") (OGRID No. 372311) hereby responds in opposition to Empire New Mexico, LLC ("Empire")'s Motion to Quash Goodnight Midstream Permian, LLC's February 21, 2025 Subpoena ("Motion").

I. Introduction

One of the principal issues before the Oil Conservation Commission in this hearing is whether there is communication between the Grayburg and San Andres formations within the Eunice Monument South Unit ("EMSU"). Goodnight is prepared to demonstrate that there is not. The Commission heard evidence from Empire's witnesses the week of February 24, 2025,

including from its reservoir modeling expert, Dr. James L. Buchwalter. The hearing is scheduled to continue the week of April 7, 2025.

In addition to Goodnight and Empire, three interested parties have intervened in these proceedings, namely Rice Operating Company ("Rice"), Permian Line Service, LLC, and Pilot Water Solutions SWD, LLC. These intervening parties operate saltwater disposal wells ("SWDs") near and around the EMSU. In addition to having a vested interest in the outcome of this hearing, particularly whether third parties will be permitted to continue injecting disposal water into the San Andres formation, these intervening parties are necessarily in possession of relevant information about the geology in the area. In particular, Rice has been operating SWDs in the area for more than six decades. As such, it has information about the San Andres formation that predates the start of water floods in the 1980s. Along with the other parties, Rice filed a prehearing statement on February 10, 2025, confirming its intention to attend the hearing and introducing evidence through cross-examination of witnesses.

Goodnight also filed a prehearing statement on February 10, 2025. In addition to identifying the witnesses that it intends to present at the hearing, Goodnight expressly disclosed its anticipated request of the Commission to issue subpoenas for witness attendance at the hearing for, among other parties, Rice. *See* Goodnight's Consolidated Pre-Hearing Statement at 24. Unlike the deadline for the issuance of discovery subpoenas imposed by the Commission's Amended Pre-Hearing Order, and later extended, the Commission imposed no such deadline for subpoenas for witness attendance at the hearing. *See* Order Granting Empire New Mexico LLC'S Motion for Four-Day Extension of Time to File Requests for Subpoenas, para. 10 issued December 30, 2024, attached as **Exhibit A** ("As a final point of clarification, paragraph 3 of the Amended Pre-trial Order is a deadline applicable to discovery only, and does not bar anyone

from seeking subpoenas to compel the attendance of witnesses at the scheduled February hearing in this matter." (Emphasis added)).[1]

By email dated February 20, 2025, and in accordance with 19.15.4.16.A NMAC, Goodnight submitted a proposed hearing subpoena for the attendance of Rice's general manager, Scott Curtis. As explained in the body of the email transmitted by undersigned counsel to the Commission, "[o]nce the subpoena issues, we will serve all counsel and will coordinate with counsel for Rice Operating to confirm the date of the witness's appearance at the hearing based on his availability." A true and correct copy of the email correspondence exchanged between undersigned counsel and the Commission related to the issuance of the subject subpoena, is attached hereto as **Exhibit D**. The Commission issued the subject subpoena for Mr. Curtis's appearance by email dated February 21, 2025, and Goodnight served a copy on all counsel of record that same day. *See* **Exhibit E**.

Four days later, on February 25, 2025, Empire filed the pending Motion, seeking to quash the subpoena and prevent Mr. Curtis from testifying at the hearing. Later that same evening, Goodnight circulated a document recently received from Rice—Bottom Hole Pressure Survey Report for the EME H-20 SWD well, dated July 25, 1959—which it intends to introduce into evidence at the hearing, most likely through the testimony of Mr. Curtis. True and correct copies of the email exchanged and the Bottom Hole Pressure Survey Report are attached hereto as **Exhibit F** and **Exhibit G**, respectively. Rice informally provided the document to Goodnight approximately one week before the start of the hearing, and once Goodnight had had an

[1] It should be noted that the Commission entered an order ratifying all the Hearing Officer's prehearing orders, *see* **Exhibit B**, and Empire expressly disclaimed any objections to the Hearing Officer's prehearing orders. *See* **Exhibit C**.

opportunity to review the document, it promptly disclosed the relevant document to Empire and all counsel.

As will be explained more fully below, the subpoena for the appearance of Mr. Curtis is both procedurally proper and timely issued, and the anticipated testimony of Mr. Curtis is relevant and will substantially assist the Commission on its final determination that there is no communication between the Grayburg and San Andres formations. Further, the appearance of Mr. Curtis is not prejudicial to Empire because it will have an opportunity to cross-examine Mr. Curtis and has at least five weeks to prepare for such cross-examination. In addition, any potential risk of prejudice is substantially outweighed by the relevance of the expected testimony. For all of these reasons, Empire's Motion should be denied.

II. Argument

As a preliminary matter, there is nothing procedurally improper about how Goodnight obtained the issuance of the subject subpoena. Section 19.15.4.16(A) of the New Mexico Administrative Code addresses subpoenas in adjudications before the Commission, and it expressly provides, in relevant part, as follows:

> The commission or its members and the director or the director's authorized representative have statutory power to subpoena witnesses…in a proceeding before the commission or division. **The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request**….The director or the division examiner assigned to hear the case may consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing pursuant to Subsection C of 19.15.4.16 NMAC or to reserve such matters for consideration at a hearing on the merits.

(Emphasis added). The issuance of a subpoena for attendance at hearing is mandatory, not discretionary. In accordance with this, Goodnight properly submitted its proposed subpoena to the Commission by email dated February 20, 2025, and the Commission issued the subpoena by

email dated February 21, 2025. By its own conduct, Empire acknowledges that this is the correct procedure because it is precisely the same procedure it employed in obtaining issuance of its mandatory subpoenas "for production of books, papers, records, other tangible things or electronic data in advance of the hearing." *See* 19.15.4.16.A NMAC. Further, contrary to its suggestion, Empire has not been deprived of an opportunity "to review or respond to the subpoena." *See* Mot. 3. Rule 19.15.4.16.A. NMAC provides that opposition to subpoenas will be in the form of "motions for protection or quashing of subpoenas," and Empire has availed itself of that opportunity here.

Further, the issuance of the subject subpoena was timely and in accordance with the Commissions' orders and deadlines, and Empire has failed to demonstrate otherwise. In its Order Granting Empire New Mexico LLC'S Motion for Four-Day Extension of Time to File Requests for Subpoenas, the Commission confirmed that the December 16, 2024 deadline at Paragraph 3 of the Amended Pre-trial Order applied only to discovery subpoenas. In fact, the Commission expressly confirmed that the "Amended Pre-trial Order…does not bar anyone from seeking subpoenas to compel the attendance of witnesses at the scheduled February hearing in this matter." Finally, Goodnight expressly communicated in its Consolidated Pre-Hearing Statement, filed February 10, 2025, that it anticipated requesting subpoenas for witness attendance as

follows:

> Goodnight anticipates it may request the Commission to issue a subpoena or subpoenas for witness attendance at the hearing in these matters pursuant to 19.15.4.16.A NMAC with respect to one or more of the following:
>
> - Pilot Water Solutions SWD, LLC
> - Permian Line Service, LLC
> - Rice Operating Company
> - Empire New Mexico LLC

Goodnight timely and appropriately disclosed its intention to request subpoenas for the appearance of witnesses, including for witnesses with Rice. Therefore, the subpoena to Mr. Curtis is no more "last minute" or "ad hoc," Resp. 4, than Empire's designation of new "rebuttal witnesses" and production of "rebuttal testimony" approximately two weeks before the hearing.

Contrary to Empire's assertion, the subpoena was not obtained *ex parte*. The Commission's rules expressly define *ex parte* communications as "advocat[ing] a position with respect to the issues the application involves to a commissioner or the division examiner appointed to hear the case[.]" 19.15.4.26.A NMAC. And the prohibition against *ex parte* communications "does not prohibit communications between the division's attorney or other division staff and the director that are essential to a case's management." 19.15.4.26.C NMAC. Here, counsel for Goodnight did not advocate for a position, let alone to a commissioner or even the hearing officer; rather, counsel simply submitted a request for issuance of a witness subpoena as provided in Rule 19.15.4.16.A NMAC. Goodnight's request for issuance of a mandatory witness subpoena is simply a case management issue and no different than what Empire counsel

has done with respect to requesting its own prehearing subpoenas that are mandated under 19.15.4.16.A NMAC.

Most importantly, Mr. Curtis' testimony is highly relevant to these proceedings and will be helpful to the Commission in evaluating the evidence, understanding the issues, and eventually ruling on the competing applications between Goodnight and Empire. Mr. Curtis is not being called as an expert witness, but rather as a company representative of Rice, who can speak to Rice's history in the area, identify and explain company records, and testify regarding the company's experience drilling and operating disposal wells in the San Andres disposal zone within the EMSU. In particular, Goodnight intends to question Mr. Curtis about Rice's Bottom Hole Pressure Survey Report, dated July 25, 1959, *see* **Ex. G**. This document is significant, in Goodnight's estimation, because it shows historical pressure data for the San Andres disposal zone outside, but nearby, the EMSU. The fact that the data point is outside the EMSU is critical because it means that it was not influenced by primary production in the EMSU. This pressure report, and any corresponding testimony about Rice's historical operations and experiences in the area, is relevant for, among other things, rebutting and giving context to Dr. Buchwalter's proffered expert testimony.

Dr. Buchwalter testified over the course of two days on February 27 and 28, 2025. As Dr. Buchwalter explained, both in his pre-filed testimony and on the stand, he prepared a reservoir model that purports to show that the San Andres is in hydraulic communication with the Grayburg through natural fractures. Yet, on cross-examination, Dr. Buchwalter conceded that he only had available two early San Andres data points used in his modeling—one data point is an assumed San Andres pressure at the start of primary production in 1929 and the other is at the start of waterflood operations in 1986. Goodnight vehemently disputes that the data points Dr.

Buchwalter relies on, and that are critical to his model, reflect reservoir pressures in Goodnight's San Andres disposal zone. By contrast, it is undisputed that the data points reflected in Rice's Bottom Hole Pressure Survey Report are from an interval that correlate to Goodnight's San Andres disposal zone. As Dr. Buchwalter testified on cross examination, pressure data from Rice's EME H-20 well collected prior to injection would be relevant to his analysis. For this reason alone, Mr. Curtis' testimony and the Bottom Hole Pressure Survey Report are relevant and helpful to the issues before the Commission.

More critically, Dr. Buchwalter testified that his model predicts an increase in the San Andres reservoir pressure of approximately 4 psi per 1 MMBBLS of produced water injected. Rice's Bottom Hole Pressure Survey Report for the EME H-20 well completely upends his analysis and conclusions. It shows that in 1959 the pressure gradient in the San Andres disposal zone at a depth of 5,000 feet was 0.36 psi per foot (1,800 psi/5,000 feet = 0.36 psi/ft). In 2024, Goodnight's data shows that the average pressure gradient for the same approximate interval is only 0.381 psi/ft. *See* Goodnight Exhibit B-21. That means after 65 years and hundreds of millions of barrels of produced water injection, the pressure in the San Andres disposal zone has increased only approximately 0.02 psi/ft. *See* Goodnight Exhibit B-47 (identifying SWDs and cumulative volumes injected within 5 miles of EMSU). This important additional data point strongly supports Goodnight's analysis and conclusions and substantially undermines Empire's testimony and claims that Goodnight's disposal is over-pressuring the San Andres and that the San Andres disposal zone is communicating with shallower zones. It is readily apparent why Empire would want to prevent the Commission from considering this important and highly relevant evidence.

Finally, Mr. Curtis' testimony is not unfairly prejudicial to Empire. Goodnight did timely disclose its intention to request subpoenas, including of Rice's witnesses, and it has disclosed the subject of Mr. Curtis's testimony herein. Empire has not had an opportunity to depose Mr. Curtis, but neither has Goodnight. Even Goodnight cannot be certain of Mr. Curtis' testimony, although all of the parties, including Empire, are aware that Rice generally supports Goodnight's position in these proceedings. Mr. Curtis's testimony will assist the Commission, and Empire will have an opportunity to cross-examine Mr. Curtis on his narrow testimony. These proceedings should be decided on the merits, rather than through procedural jockeying. As counsel for Empire recently stated to the Commission when arguing in favor of allowing the rebuttal testimony of Empire's witnesses, Mr. Bailey and Mr. Birkhead, that all relevant evidence should be admitted because the Commission is not bound by the rules of evidence or procedure. Therefore, the Commission should favor inclusion of this highly relevant evidence, particularly about historical conditions in the San Andres formation, in and around the EMSU.

III. Conclusion

For the reasons stated above, the Commission should deny Empire's Motion to Quash Goodnight's February 21, 2025 Subpoena of Scott Curtis, allow Goodnight to call Mr. Curtis as a witness in these proceedings, particularly to address, among other topics, the document attached as **Exhibit G**, and to grant such further relief as it deems appropriate.

Respectfully submitted,

HOLLAND & HART LLP

/s/ Adam G. Rankin

By: _____

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ATTORNEYS FOR GOODNIGHT MIDSTREAM PERMIAN, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2025, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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Adam G. Rankin
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EXHIBIT A

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

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO
CASE NO. 24123 ORDER No. R-22869-A

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

ORDER GRANTING EMPIRE NEW MEXICO LLC'S MOTION
FOR FOUR-DAY EXTENSION OF TIME TO FILE REQUESTS FOR SUBPOENAS

This matter is before me on Empire New Mexico LLC's (hereafter "Empire"), motion to extend the Amended Pre-trial Order deadline for subpoena issuance from December 16, 2024 to December 20, 2024. Having reviewed the Motion, Response, and related communications, I find and order as follows:

1. Goodnight Midstream Permian, LLC's (hereafter "Goodnight") contention that the subpoena deadline extension it proposed was a limited extension is at best obtusely referenced in its December 16th email. Goodnight's counsel initiated this

proposal and it was incumbent on him to make clear that he intended nothing more than a mutual Rule 1-045.C(2) extension. No such limitation is expressed in the emails.

2. Goodnight's communication induced reliance by other parties upon Goodnight's representation that it would seek (and honor), a mutual four-day extension of the Amended Pre-trial Order subpoena deadline.

3. In light of its failure to clearly delineate its apparently limited intentions, Goodnight's opponents' reliance on Goodnight's communication and representations was reasonable.

4. Goodnight's communications and representations may have induced Empire to delay seeking a deposition subpoena for witness, Preston McGuire, from December 16, 2024 to December 20, 2024. Even if viewed by Goodnight as tactical chicanery, it is still an unintended consequence of communications that Goodnight should have made clearer.

5. Empire may have detrimentally relied on Goodnight's communications and representations and would be prejudiced by Goodnight's claim that the December 16, 2024 subpoena deadline should be enforced.

6. The doctrine of equitable estoppel bars Goodnight's claim that the December 16, 2024 subpoena deadline should be enforced as to Empire's subpoena. *Cont'l Potash, Inc. v. Freeport-McMoran, Inc.*, 1993-NMSC-039, ¶ 28.

7. Empire's Motion is granted with respect to Preston McGuire. Empire may request a subpoena to depose this witness, which subpoena may be dated December 20, 2024 regardless of its actual date of issuance and will be deemed valid and binding for all Rule 1-045 purposes.

8. Initiating communications seeking to extend the subpoena issuance deadline and then purporting to renege on a mutual agreement between the parties to extend that deadline resulting from those communications because Goodnight determined it no longer needed the extension would be a deceptive and bad faith practice but for Goodnight's explanation, which finds some support between the lines of its initiating December 16th email. Accordingly, no sanctions are appropriate. Goodnight's failure to adequately communicate is balanced out by the possibility that Empire took advantage of an unintended opportunity.

9. All is fair in love and war. Goodnight may request a subpoena to depose Dr. Lindsay, which subpoena may be dated December 20, 2024 regardless of its actual date of issuance and will be deemed valid and binding for all Rule 1-045 purposes.

10. As a final point of clarification, paragraph 3 of the Amended Pre-trial Order is a deadline applicable to discovery only, and does not bar anyone from seeking subpoenas to compel the attendance of witnesses at the scheduled February hearing in this matter.

IT IS SO ORDERED.

Respectfully Submitted,

RIPLEY B. HARWOOD, P.C.

/s/ Rip Harwood

By: _____

Ripley B. Harwood, *Hearing Officer*
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Ripharwoodrbhpc@gmail.com

EXHIBIT B

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 ERMIAN MIDSTREAM, LLC FOR APPROVAL OF A SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.

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

ORDER ON PREHEARING MATTERS

This matter, having come before the Oil Conservation Commission ("Commission") on several pre-hearing issues raised by the parties or otherwise *sua sponte* considered by the Commission, and the Commission, being fully advised at its public meeting on January 16, 2025, as attended by all parties to the above-captioned case, and having consulted with Commission counsel, hereby orders as follows:

1. The parties have stipulated to the authority of the hearing examiner appointed by the Commission to issue the following pre-hearing procedural orders: *Order on Goodnight/Empire Motion to Quash Deposition Subpoenas* dated August 18, 2024; *Order Granting Goodnight's Expedited Motion For Issuance of Expert Deposition Subpoenas* dated August 22, 2024; *Order on Goodnight Expedited Motion to Compel*, dated August 22, 2024; *Prehearing Order* dated December 5, 2024; *Order Granting Empire New Mexico LLC's Motion for Four-Day Extension of Time To File Requests For Subpoenas* (undated);

2. In addition to the aforementioned stipulation, the Commission hereby ratifies said orders.

3. A quorum of the Commission shall, either personally or virtually, attend and hear all matters and evidence to be presented by the parties in this adjudication. Additionally, the hearing examiner will attend this adjudication and run the hearing, subject to any contemporaneous direction by the Commission.

4. At the close of the evidentiary hearing but prior to Commission deliberations, Commission counsel shall advise the Commission by privileged written communication. The hearing examiner shall not make any post-evidentiary recommendations or reports to the Commission but will be available to the Commission and to its counsel to provide additional administrative support.

5. The two petitioning private parties have stipulated that the Commissioners may review any pre-filed exbibits and testimony as soon as practicable to prepare for the hearing, and that to the extent that any Commissioner reviews any pre-filed exhibit or testimony subsequently excluded, those parties have stipulated that the Commission will be able to disregard any consideration of same without prejudice to any party.

6. The Commission shall rule on all pre-hearing motions, including motions *in limine,* at or prior to the evidentiary hearing.

7. At the hearing of this matter, the order of presentation of evidence shall be as follows: (1) Empire New Mexico L.L.C., (2) Goodnight Midstream Permian L.L.C., and (3) the Oil Conservation Division. Additional rebuttal evidence may be allowed thereafter as deemed appropriate by the Commission.

SO ORDERED.

Gerasimos Razatos, Acting Chairman
New Mexico Oil Conservation Commission

EXHIBIT C

From: Shaheen, Sharon
To: Daniel Rubin; Adam Rankin; Moander, Chris, EMNRD
Cc: Dana Hardy (dhardy@hinklelawfirm.com); Ernest Padilla; "Apodaca, Sheila, EMNRD"; Michael Feldewert; John C. Anderson
Subject: RE: Questions RE: procedure for Goodnight/Empire.
Date: Friday, January 10, 2025 1:55:27 PM

External Email

Dan,

Empire does not challenge any of the hearing examiner's previous rulings.

Thanks,
Sharon

Sharon Shaheen Partner
Spencer Fane LLP

325 Paseo De Peralta | Santa Fe, NM 87501-1860
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From: Daniel Rubin <drubin@nmag.gov>
Sent: Friday, January 10, 2025 12:56 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Cc: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; 'Apodaca, Sheila, EMNRD' <Sheila.Apodaca@emnrd.nm.gov>; Michael Feldewert <MFeldewert@hollandhart.com>; John C. Anderson <JCAnderson@hollandhart.com>
Subject: [EXTERNAL] RE: Questions RE: procedure for Goodnight/Empire.

[Warning] This E-mail came from an External sender. Please do not open links or attachments unless you are sure it is trusted.

Thank you Adam.

In support of your position, I did previously notice that the rules at 19.15. 4 tend to refer to division examiners, not commission examiners. However, it seemed to be accepted past practice and/or the parties' acquiescence in this case. As a general proposition, perhaps appointment of a hearing examiner

lies within a public body's inherent authority. Also 19.15.4.6 refers to "the division or the commission" and 19.15.4.17A refers to "the commission or division examiner," which could be read several ways.

Yet I remain confused as to your position - which may be my fault. What do you contend that an OCC hearing examiner can do in an adjudication? It seems you are asserting Rip can do whatever he did so far (several procedural rulings) and run the hearing as long as the OCC is there too. Please explain your distinction. Depending on how the OCC resolves this issue, we may need to let Rip go rather than have him run the hearing, and leave the drafting of a recommended decision likely to me.

Do the other parties share Adam's position that Rip's rulings to date have been proper at least with respect to his authority? Please feel free to chime in. I appreciate this colloquium so I can better prepare for next week's meeting.

Sincerely,

Dan

Daniel Ross Rubin
Assistant Attorney General
Government Counsel & Accountability
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From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Friday, January 10, 2025 12:26 PM
To: Daniel Rubin <drubin@nmag.gov>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Cc: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; 'Apodaca, Sheila, EMNRD' <Sheila.Apodaca@emnrd.nm.gov>; Michael Feldewert <MFeldewert@hollandhart.com>; John C. Anderson <JCAnderson@hollandhart.com>
Subject: RE: Questions RE: procedure for Goodnight/Empire.

Daniel,

None of us understood that Mr. Harwood might be hearing the entire case without the Commission until he sent us an email on 12/5 stating that he was going to "handle all procedural and substantive matters in these consolidated matters from here through trial." We were in the middle of multiple depositions, etc. I brought this matter up with OCD counsel before the holidays and with all counsel within the last week.

It has never been the practice of the Commission to be absent from cases before the Commission so none of us thought that was going to happen here.

I am not concerned about the procedural orders that have been entered in the cases to date.

Adam Rankin
Partner, Holland & Hart LLP

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From: Daniel Rubin <drubin@nmag.gov>
Sent: Friday, January 10, 2025 12:20 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Cc: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; 'Apodaca, Sheila, EMNRD' <Sheila.Apodaca@emnrd.nm.gov>; Michael Feldewert <MFeldewert@hollandhart.com>; John C. Anderson <JCAnderson@hollandhart.com>
Subject: RE: Questions RE: procedure for Goodnight/Empire.

External Email

Yes, Adam, please follow up with an email explaining the Commission's lack of legislative authority to appoint a hearing examiner to make recommendations on dispositive issues and to rule on procedural matters.

My recollection is that the Commission did formally appoint Rip at an open meeting sometime last year. I am thus also concerned that Rip has already ruled on some such issues that you now contend were improper. Thus, please state your position with respect to both points. Of course, if your argument regarding lack of legislative authority is correct, there is no defense of waiver (or laches?) even though it would have been at least more sporting to raise this at least when we rescheduled back in September. But the OCC can at least ratify prior rulings by Rip next week that would hopefully fix that infirmity.

Sincerely,

Dan

Daniel Ross Rubin
Assistant Attorney General
Government Counsel & Accountability
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From: Adam Rankin <AGRankin@hollandhart.com>

Sent: Friday, January 10, 2025 10:53 AM
To: Daniel Rubin <drubin@nmag.gov>; Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Cc: Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; 'Apodaca, Sheila, EMNRD' <Sheila.Apodaca@emnrd.nm.gov>; Michael Feldewert <MFeldewert@hollandhart.com>; John C. Anderson <JCAnderson@hollandhart.com>
Subject: RE: Questions RE: procedure for Goodnight/Empire.

Mr. Rubin,

I will send a follow-up email copying the statute and regulations with highlighting that identifies the basis for my position that only the Commission can hear and decide adjudicatory matters pending before the Commission and cannot delegate that role to a hearing officer or examiner. The Division Director is authorized to appoint Division Examiners for division cases, which can be a non-technical lawyer, but only for Division cases or for motions pending before the Commission. But even for motions or non-dispositive matters pending before the Commission, only the Director can rule. The Commission must hear cases before the Commission, especially de novo cases (we have one of those in the mix). This makes sense because the Commission is the body with the expertise that justifies the deference appellate courts give to the Commission when reviewing Commission orders.

If the Commission is not present to hear the expert and technical testimony and ask questions probing the witnesses and their conclusions—as has always been the case for every Commission adjudication that I am aware of—then the basis for that deference is put in question.

I have serious concerns about this matter proceeding to hearing without a Commission quorum.

I believe Mr. Harwood was appointed as a hearing officer in these matters when the cases were still pending before the Division. His role must necessarily change now that the cases have been referred to the Commission for decision.

After I send around my follow up email I am happy to make myself available with the other counsel to have a call to discuss.

I appreciate getting this issue on the Commission docket for the next Commission meeting.

Adam Rankin
Partner, Holland & Hart LLP

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

From: Daniel Rubin <drubin@nmag.gov>
Sent: Friday, January 10, 2025 10:29 AM
To: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>

Cc: Adam Rankin <AGRankin@hollandhart.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>; 'Apodaca, Sheila, EMNRD' <Sheila.Apodaca@emnrd.nm.gov>
Subject: RE: Questions RE: procedure for Goodnight/Empire.

External Email

Dear all,

Chris,

We anticipate next week's OCC meeting to include an agenda item for "prehearing issues" on this case, which would include the two you raise in your email below. While I cannot offer any new information on whether the commissioners plan to attend the February hearing, 19.15.4.18 contemplates that the examiner be either a lawyer or have a technical background. Mr. Harwood is of the former, which tends to argue in favor of commission attendance, but the issue remains within Commission discretion.

In the interim, if you can email me back with more detail on any specific regulations that we may be running afoul of, I would be much obliged.

Sincerely,

Daniel Ross Rubin
Assistant Attorney General
Government Counsel & Accountability
State of New Mexico Department of Justice
505-537-4477
drubin@nmag.gov

From: Moander, Chris, EMNRD <Chris.Moander@emnrd.nm.gov>
Sent: Friday, January 10, 2025 9:25 AM
To: Daniel Rubin <drubin@nmag.gov>
Cc: Adam Rankin <AGRankin@hollandhart.com>; Shaheen, Sharon <sshaheen@spencerfane.com>; Dana Hardy (dhardy@hinklelawfirm.com) <DHardy@hinklelawfirm.com>; Ernest Padilla <PadillaLawNM@outlook.com>
Subject: Questions RE: procedure for Goodnight/Empire.
Importance: High

Dan,

I'm writing on behalf of all parties in the Goodnight/Empire cases that are slated for hearing in February.

We have two questions that we feel need clarification to avoid running afoul of both the OGA and OCD

regulations:

1. Does the OCC panel intend to appear for and participate in the hearing?
    a. Counsel agree we want them present
2. Will a technical examiner appear at the hearing, as well? We've looked at 19.15.4.16 NMAC, among other governing law and orders, and aren't clear if one will attend. It appears there may be a need for one so OCC guidance is critical.

If we need to file pleadings to get this addressed, time is of the essence – I don't mean to dogpile, but continuing this matter again would be the heigh of suboptimal.

Regards,
Chris

EXHIBIT D

From: Adam Rankin
To: Apodaca, Sheila, EMNRD; drubin@nmag.gov
Cc: Julia Broggi; Kari D. Perez; ripharwoodrbhpc@gmail.com
Subject: Goodnight/Empire - subpoena for witness attendance
Date: Thursday, February 20, 2025 4:17:38 PM
Attachments: image001.png
Goodnight_Empire- Subpoena for Witness Appearance -- Scott Curtis(34236522.1).docx
Goodnight_Empire- Subpoena for Witness Appearance -- Scott Curtis(34260686.1).pdf

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Ms. Apodaca and Mr. Rubin,

We respectfully request the Acting Director issue the attached subpoena for witness attendance at the upcoming hearing pursuant to 19.15.4.16.A NMAC ("The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request.").

Based on the prehearing statement and opening statement from Rice/Permian Line Service, we are requesting that the attached witness subpoena be issued for the appearance of Mr. Scott Curtis, Rice Operating's general manager.

Once the subpoena issues, we will serve all counsel and will coordinate with counsel for Rice Operating to confirm the date of the witness's appearance at the hearing based on his availability.

Please let me know if there are any questions we can address.

Thank you.

Holland & Hart

Adam Rankin

Partner

HOLLAND & HART LLP

110 North Guadalupe Street, Suite 1, Santa Fe, NM 87501

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

EXHIBIT E

From: Adam Rankin
To: Matthew M. Beck
Cc: dhardy@hardymclean.com; Shaheen, Sharon; Ernest Padilla; Miguel Suazo; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov); cwehmeyer@swenergylaw.com; drubin@nmag.gov; ripharwoodrbhpc@gmail.com; Apodaca, Sheila, EMNRD; Julia Broggi; Nathan R. Jurgensen
Subject: FW: [EXTERNAL] RE: Goodnight/Empire - subpoena for witness attendance
Date: Friday, February 21, 2025 6:57:06 PM
Attachments: image003.png
Goodnight_Empire- Subpoena for Witness Appearance -- Scott Curtis.pdf

Matt,

Please find attached a subpoena for the appearance of Mr. Curtis at the upcoming hearing. I've put in a tentative date/time for his appearance but we will work with you and Mr. Curtis on the actual date and time for his appearance at the end of Goodnight's presentation of its case. If he is not able to appear in person an appearance through the Teams platform will work.

Please let me know if you have any questions.

Thank you.

Adam Rankin
Partner, Holland & Hart LLP

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

From: Apodaca, Sheila, EMNRD <Sheila.Apodaca@emnrd.nm.gov>
Sent: Friday, February 21, 2025 3:17 PM
To: Rubin, Daniel <drubin@nmag.gov>; Adam Rankin <AGRankin@hollandhart.com>
Cc: Julia Broggi <JBroggi@hollandhart.com>; Kari D. Perez <KDPerez@hollandhart.com>; ripharwoodrbhpc@gmail.com
Subject: RE: [EXTERNAL] RE: Goodnight/Empire - subpoena for witness attendance

External Email

Dear Adam:

The issued Subpoena is attached.

Sheila Apodaca
Law Clerk
EMNRD-Oil Conservation Division
1220 South St. Francis Drive, 3rd Floor
Santa Fe, NM 87505
505-699-8358
sheila.apodaca@emnrd.nm.gov

From: Daniel Rubin <drubin@nmag.gov>
Sent: Thursday, February 20, 2025 5:39 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Apodaca, Sheila, EMNRD <Sheila.Apodaca@emnrd.nm.gov>
Cc: Julia Broggi <JBroggi@hollandhart.com>; Kari D. Perez <KDPerez@hollandhart.com>; ripharwoodrbhpc@gmail.com
Subject: [EXTERNAL] RE: Goodnight/Empire - subpoena for witness attendance

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Sheila, please have Gerry sign this subpoena and return it to Mr. Rankin for service. I edited it slightly from the last version sent by Mr. Rankin.

This obviously can wait until tomorrow, in the unlikely event that you are reading this email tonight.

Thanks!

Dan

Daniel Ross Rubin
Assistant Attorney General
Litigation Division
State of New Mexico Department of Justice
505-537-4477
drubin@nmdoj.gov

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, February 20, 2025 5:20 PM
To: Daniel Rubin <drubin@nmag.gov>; Apodaca, Sheila, EMNRD <Sheila.Apodaca@emnrd.nm.gov>
Cc: Julia Broggi <JBroggi@hollandhart.com>; Kari D. Perez <KDPerez@hollandhart.com>; ripharwoodrbhpc@gmail.com
Subject: RE: Goodnight/Empire - subpoena for witness attendance

Daniel,

Thank you. Attached is a revised subpoena setting the date and time for 2/28 at 9 a.m. subject to an updated data and time on the mutual agreement of the witness and Goodnight.

I've conferred with Mr. Beck and advised him of my intentions. He is willing to accept service and he has confirmed that Mr. Curtis does not oppose appearing.

Adam Rankin
Partner, Holland & Hart LLP

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

From: Daniel Rubin <drubin@nmag.gov>
Sent: Thursday, February 20, 2025 4:29 PM
To: Adam Rankin <AGRankin@hollandhart.com>; Apodaca, Sheila, EMNRD <Sheila.Apodaca@emnrd.nm.gov>
Cc: Julia Broggi <JBroggi@hollandhart.com>; Kari D. Perez <KDPerez@hollandhart.com>; ripharwoodrbhpc@gmail.com
Subject: RE: Goodnight/Empire - subpoena for witness attendance

External Email

Dear Mr. Rankin,

As you have drafted it, instructing the witness to appear at some mutually agreeable later date is fine, but (1) I will need a date and time as a placeholder so a complete subpoena can be issued, and (2) please add your contact information for determining a subsequent mutually agreeable time.

I am concerned about the short timeframe – hopefully this is a friendly subpoena.

Daniel Ross Rubin
Assistant Attorney General
Litigation Division
State of New Mexico Department of Justice
505-537-4477
drubin@nmdoj.gov

From: Adam Rankin <AGRankin@hollandhart.com>
Sent: Thursday, February 20, 2025 4:18 PM
To: Apodaca, Sheila, EMNRD <Sheila.Apodaca@emnrd.nm.gov>; Daniel Rubin <drubin@nmag.gov>
Cc: Julia Broggi <JBroggi@hollandhart.com>; Kari D. Perez <KDPerez@hollandhart.com>;

ripharwoodrbhpc@gmail.com
Subject: Goodnight/Empire - subpoena for witness attendance

Ms. Apodaca and Mr. Rubin,

We respectfully request the Acting Director issue the attached subpoena for witness attendance at the upcoming hearing pursuant to 19.15.4.16.A NMAC ("The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request.").

Based on the prehearing statement and opening statement from Rice/Permian Line Service, we are requesting that the attached witness subpoena be issued for the appearance of Mr. Scott Curtis, Rice Operating's general manager.

Once the subpoena issues, we will serve all counsel and will coordinate with counsel for Rice Operating to confirm the date of the witness's appearance at the hearing based on his availability.

Please let me know if there are any questions we can address.

Thank you.

Adam Rankin

Partner

HOLLAND & HART LLP

110 North Guadalupe Street, Suite 1, Santa Fe, NM 87501

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

EXHIBIT F

From: Adam Rankin
To: Dana Hardy; Shaheen, Sharon; Ernest Padilla; cwehmeyer@swenergylaw.com; Moander, Chris, EMNRD (Chris.Moander@emnrd.nm.gov); Miguel Suazo; Matthew M. Beck
Cc: jessek.tremaine@emnrd.nm.gov; Julia Broggi
Subject: Goodnight / Empire - EME H-20 Well Original Pressure data
Date: Tuesday, February 25, 2025 7:52:20 PM
Attachments: image001.png
Rice H-21 1959 BHP.pdf

All,

We recently received the attached document from Rice Operating. We plan to introduce it as evidence at the hearing. API 30-025-12800.

Holland & Hart

Adam Rankin

Partner

HOLLAND & HART LLP

110 North Guadalupe Street, Suite 1, Santa Fe, NM 87501

agrankin@hollandhart.com | **T:** (505) 954-7294 | **M:** (505) 570-0377

EXHIBIT G

BOTTOM HOLE PRESSURE SURVEY REPORT

OPERATOR Rice Engineering & Operating Inc.
LEASE
WELL NO. E. M. E. H-20 (Before injection)
FIELD
DATE July 15, 59 TIME 2:50 P. M.

STATUS Shut in — TEST DEPTH 5000
TIME S.I. — LAST TEST DATE Initial test
CAS. PRES. — BHP LAST TEST
TUB. PRES. 0 — BHP CHANGE
ELEV. — FLUID TOP 1050
DATUM — WATER TOP
TEMP — RUN BY B. T.
CLOCK NO. 2547 — GAUGE NO. 12434
ELEMENT NO. 14659-N

DEPTH	PRESSURE	GRADIENT
000	0	
500	7	.014
1000	26	.038
1500	247	.442
2000	462	.430
3000	905	.443
4000	1347	.442
5000	1800	.453