

**STATE OF NEW MEXICO
NEW MEXICO OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO 19.15.2, 19.15.5,
19.15.8, 19.15.9, AND 19.15.25 NMAC**

CASE NO. 24683

**APPLICANTS' MOTION FOR LEAVE TO FILE SURREPLY TO THE OIL AND GAS
ASSOCIATIONS' JOINT REPLY IN SUPPORT OF THEIR MOTION TO STRIKE**

Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club (collectively, “Applicants”) respectfully request leave to file a surreply in opposition to the New Mexico Oil and Gas Association and Independent Petroleum Association of New Mexico’s (collectively, “Oil and Gas Associations” or “Associations”) Joint Replies to Applicants’ and New Energy Economy’s Responses to the Associations’ Motion to Strike (collectively, “Replies”). In their Replies, for the first time, the Oil and Gas Associations request to delay the hearing and filing deadlines for testimony in this matter. Their request to delay is unfounded and Applicants request the opportunity to briefly respond.

In support of this motion, Applicants state:

1. On June 6, 2025, the Oil and Gas Associations filed a Joint Motion to Strike two amendments in Applicants’ Notice of Errata, filed June 2, 2025.
2. Applicants filed a Response on June 21, 2025. New Energy Economy filed a Response on June 13, 2025.
3. The Oil and Gas Associations filed Replies to New Energy Economy and the Applicants’ Responses on June 23, 2025 and July 3, 2025, respectively. Concluding their Replies, the Associations, for the first time, requested to delay the filing deadlines and hearing in

this matter. They made two alternate requests: one, to “reschedule the Rulemaking Hearing to allow the initial response time between Application Filing and Direct Testimony Deadlines” or, two, to amend the Notice of Hearing and Prehearing Order to make direct testimony due September 2, 2025 and rebuttal testimony due October 14, 2025. Joint Reply to NEE at 5¹; Joint Reply to Applicants at 12-13.

4. The Oil and Gas Associations did not request to push back the filing deadlines or hearing in their opening Joint Motion to Strike. *See* Joint Mot. to Strike, ¶ 16.

5. A motion for leave to file a surreply may be granted in the event new information is raised in a reply brief. *Mosaic Potash Carlsbad, Inc. v. Intrepid Potash, Inc.*, 16-cv-0808 KG-SMV, 2020 WL 1033172, at *1 (D.N.M. Mar. 3, 2020) (“When a moving party advances in a reply new reasons and evidence in support of its motion . . . the nonmoving party should be granted an opportunity to respond.” (citing *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998))).

6. For purposes of considering a motion for leave to file a surreply, new information or “material” includes both new legal arguments and new evidence. *Green v. New Mexico*, 420 F.3d 1189, 1196-97 (10th Cir. 2005).

7. On this basis, Applicants request the Hearing Officer to exercise her discretion to permit leave to file a surreply. *See Dollens v. Wells Fargo Bank, N.A.*, 2015-NMCA-096, ¶ 23 (a surreply “requires leave of the court and is only granted as a matter of discretion”).

8. The Oil and Gas Associations’ requested delay, included for the first time in their Replies, is a new argument that would significantly affect the course of this proceeding.

¹ The Oil and Gas Associations’ Joint Reply to NEE does not contain page numbers. Therefore, citations to the Joint Reply to NEE are according to the PDF pages of that document.

Accordingly, Applicants' Motion for Leave to File Surreply is proper and reasonable.

Based on the foregoing, Applicants respectfully request the Hearing Officer grant Applicants leave to file a brief surreply in opposition to the Oil and Gas Associations' new requests to delay the filing deadlines for testimony and hearing in this proceeding.

A copy of Applicants' proposed surreply is attached.

Respectfully submitted,

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I certify that on July 4, 2025, I served a copy of the foregoing pleading to the following via email:

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**APPLICANTS' PROPOSED SURREPLY TO THE OIL AND GAS ASSOCIATIONS'
REPLY IN SUPPORT OF THEIR JOINT MOTION TO STRIKE**

Preliminary Statement

Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club (collectively “Applicants”) oppose the New Mexico Oil and Gas Association and Independent Petroleum Association of New Mexico’s (collectively, “Oil and Gas Associations” or “Associations”) new requests to delay the deadlines for filing testimony and the hearing in this rulemaking that they propose in their Joint Replies in support of their Motion to Strike two clerical errors identified by Applicants in their Notice of Errata.

The Oil and Gas Associations’ request for delay has no basis. As explained in Applicants’ Response to the Associations’ Motion to Strike, Applicants’ two errors are properly errata. And even assuming *arguendo* they are not, the proposed amendments are insubstantial, are allowed as part and parcel of an iterative rulemaking process, and do not prejudice the Associations.

Argument

I. THE OIL AND GAS ASSOCIATIONS’ REQUEST TO DELAY THE FILING DEADLINES AND HEARING IN THIS PROCEEDING HAS NO BASIS

The Oil and Gas Associations’ request to delay the hearing schedule in this matter has no basis and should be denied. In both Replies the Oil and Gas Associations request, if their Joint

Motion to Strike Applicants' errata is denied, that the Oil Conservation Commission ("Commission"), alternatively, "reschedule the Rulemaking Hearing to allow the initial response time between Application Filing and Direct Testimony Deadlines"¹ or "[a]mend the Notice and Pre-hearing Order to afford the same, making Direct Testimony due September 2, 2025, and Rebuttal Testimony due October 14, 2025." Joint Reply to NEE Resp. at 5²; Joint Reply to Apps' Resp. at 12-13. The Oil and Gas Associations claim that as a result of the two minor amendments in Applicants' Notice of Errata (filed June 2, 2025), they somehow do not have sufficient time "to prepare for and present their case" to the Commission. Joint Reply to NEE Resp. at 5; Joint Reply to Apps' Resp. at 12. This claim is absurd. The Associations suffer no prejudice as a result of two minor amendments, and their request to delay should be summarily denied.

Applicants will not repeat their arguments from their Response to the Motion to Strike but incorporate those arguments by reference. In summary, Applicants omitted two amendments from their Revised Application (filed April 25, 2025), proposing that an operator registration under proposed 19.15.9.8.C NMAC and a well transfer under proposed 19.15.9.9.C NMAC may be denied if the applicant "is out of compliance with federal and state oil and gas laws and regulations in each state in which the applicant does business." Errata at 1-2. The omissions were inadvertent and not material. In fact, **by their terms**, both the initial Application and the Revised Application **already** proposed giving the Oil Conservation Division ("OCD") discretion to deny a well transfer if the applicant is out of compliance with federal and state oil and gas laws in

¹ The Associations' first request to reschedule is indecipherable. It is unclear what the Associations mean by "initial response time," "Application Filing," or "Direct Testimony Deadlines." (There is only one deadline for filing direct testimony.) Whatever the Associations mean to request, they apparently seek additional time to file testimony and start the hearing.

² The Oil and Gas Associations' Joint Reply to NEE does not contain page numbers. Therefore, citations to the Joint Reply to NEE are according to the PDF pages of that document.

which the applicant does business. *See* Apps' Resp. at 2-3.³ The error identified regarding well transfers is merely clarifying and is **not** substantive. With no substantive addition to Applicants' proposals, there can be no prejudice to the Oil and Gas Associations. The Associations would have had to respond to the proposal whether or not Applicants filed their Errata.

As to the error regarding operator registration, Applicants put the parties **on notice** in their Revised Application that their proposed amendments gave OCD the discretion to deny an operator registration if the applicant is out of compliance with federal and state oil and gas laws in which the applicant does business. Errata at 3-4; *see* Revised Application at 3. Nowhere in their Replies do the Oil and Gas Associations explain why this one minor amendment would necessitate months of delay to file direct and rebuttal testimony and hold the hearing or why the Associations are unable to develop testimony in response during the **seven weeks** between the filing of the Notice of Errata on June 2, 2025 and the filing of direct testimony and exhibits on July 25, 2025.

This proceeding is a rulemaking in which all parties are expressly authorized to propose amendments to the Revised Application when direct and rebuttal testimony are filed. Prehearing Order, ¶¶ 2(d), 4. And, in practice, all parties can offer amendments throughout the rulemaking process. Any amendment adopted by the Commission must be within the scope of the Notice of Hearing and supported by substantial evidence. *See* Apps' Resp. at 6-8. The Associations'

³ In Applicants' initial Application at 19.15.9.9.C(5) NMAC and Revised Application at 19.15.9.9.C(6) NMAC, Applicants propose a well transfer may be **denied** if:

... **the certification or disclosure requirements set forth in Subsection B of this Section** disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

(Emphasis added.) The certification and disclosure requirements in proposed 19.15.9.9.B NMAC **include** certification and disclosure of an operator's "compliance with federal and state oil and gas laws and regulations in each state" in which the operator does business.

request to delay simply has no basis.

Finally, the Commission set the October 20, 2025 date for this hearing on March 20, 2025 in consideration of the Commissioners' busy calendars and with the concurrence of all parties.⁴ Both the Commissioners and the parties intentionally blocked out three weeks for this rulemaking in October and November, ahead of major holidays, to avoid conflicts and to effectuate an efficient rulemaking hearing. The Associations' request to reschedule the rulemaking hearing would needlessly undermine the Commission's scheduling efforts. So, too, would the Associations' request to reschedule the deadlines for direct and rebuttal testimony, the latter of which, according to the Associations' request, would fall six days prior to the first day of the rulemaking hearing. No party, and certainly not the Commission, Hearing Officer, or the general public, would benefit from rescheduling the deadlines such that parties and their witnesses had less than a week to review rebuttal testimony before the rulemaking hearing.

Conclusion

Based on the foregoing, Applicants respectfully request the Hearing Officer deny the Oil and Gas Associations' request to reschedule the deadlines for filing testimony and hearing date in this rulemaking.

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⁴ 3/20/25 OCC Tr. 17:21 to 25:4.

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