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

APPLICATION OF VENDERA RESOURCES III, LP, VENDERA MANAGEMENT III, LLC AND HIGHMARK OPERATING, LLC TO APPROVE A FORM C-145 NAMING HIGHMARK ENERGY OPERATING, LLC AS THE SUCCESSOR OPERATOR OF THE CENTRAL VACUUM UNIT, LEA COUNTY, NEW MEXICO.

CASE NO. 21704

CHEVRON U.S.A. INC.'S RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE SUR-REPLY

Chevron U.S.A. Inc. ("Chevron") submits this response in opposition to Vendera's and HighMark Energy Operating, LLC's (together, "Vendera") Motion to allow a sur-reply. For the reasons stated, the Division should deny the motion.

INTRODUCTION

Seeking a second bite at the apple, Vendera requests leave to file a sur-reply in opposition to Chevron's motion to dismiss. There are at least two reasons that the request should be summarily denied.

First, the opportunity to file a sur-reply is afforded only when new arguments or issues are raised for the first time in a reply. That is not the circumstance here, as Vendera openly acknowledges. The sole basis for Vendera's proposed sur-reply is a provision in one of the two agreements at the heart of the contractual dispute, which easily could have been raised in its response weeks ago.

Second, Vendera's additional argument does not change anything and would be futile to consider. If anything, the provision Vendera raises—when read in its entirety—supports Chevron's position that the Commission lacks authority to hear Vendera's application.

ARGUMENT

A. Vendera's Requested Sur-Reply Inappropriately Raises Arguments that Could Have Been Addressed in its Response.

Leave to file a sur-reply is not granted unless the opposing party's brief includes new information that the responding party should be afforded an opportunity to address. *See C.T. v. Liberal Sch. Dist.*, 562 F. Supp. 2d 1324, 1329 n.1 (D. Kan. 2008) ("[a] surreply will not be allowed unless the reply of the party filing the initial motion contained new information which the responding party needs an opportunity to address") (citation omitted); *see also Carrasco v. N.M. Dep't of Workforce Sols.*, No. 10-0999 MCA/SMV, 2013 U.S. Dist. LEXIS 83420, at *10-11 (D.N.M. Mar. 19, 2013).

Rather than responding to new arguments or issues raised by Chevron, Vendera acknowledges that it is simply raising "additional support for its position," consisting of a reference to a provision in the Unit Agreement. *See* Mot. at ¶ 2. The request should be denied because Vendera has presented no reason for being allowed "the unusual privilege of filing a sur-reply—particularly [when] they give no reason why the argument they wanted to make . . . had not been available to them when they filed their response just a few weeks earlier." *SEC v. Harman Wright Grp., LLC*, 777 Fed. Appx. 276, 278 (10th Cir. 2019); *see also Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2020 U.S. Dist. LEXIS 228168, at *14-15 (D.N.M. Dec. 3, 2020) (denying request for sur-reply when it does not respond to new arguments).

B. Vendera's Sur-Reply is Futile.

The provision in the Unit Agreement Vendera relies upon for its request confirms that the Commission lacks authority to resolve the contractual disputes between the parties. As such, Vendera's request is futile and should be denied.

Vendera contends in its request for leave that Article 35 of the Unit Agreement, which provides that "all powers and authority vested in the Commission in and by any provisions of this contract are vested in the Commission and shall be exercised by it," means that the Commission has express authority to resolve the multiple contractual disputes between the parties over who serves as unit operator. *See* Mot. Ex. 1 at ¶ 4 (emphasis added).

However, nothing in the Unit Agreement grants the Commission the power or authority to resolve the contractual disputes between the parties.[1] This is further confirmed by the portion of Article 35 that Vendera omits—that any authority vested in the Commission is subject to "the provisions of the laws of the State of New Mexico." *See* Art. 35.

One such law—the Statutory Unitization Act—expressly provides that the Commission's power and authority are "[s]ubject to the limitations of the [Act]" which is "to carry out and effectuate the ***<u>purposes</u>*** of the [Act]." *See* § 70-7-3 (emphasis added). The Legislature explicitly limited <u>the purposes</u> of the Act to obtaining greater ultimate recovery, preventing waste, and protecting correlative rights. *See* § 70-7-1. As Chevron demonstrated in its motion and at hearing, the statutory purposes do not extend to resolving the multiple private contractual disputes presented here, such as whether voting procedures were properly followed, the nature and ownership of the working interests committed to a vote under the unit agreement, and ultimately whether the purported vote to remove Chevron and select a successor operator was legally valid.

[1] Chevron reserves the right to respond the arguments in Vendera's Sur-Reply in the event the Division grants the motion.

CONCLUSION

For the reasons stated, Chevron U.S.A. Inc. respectfully requests that the Division deny Vendera leave to file its proposed sur-reply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2021, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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