

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

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7767 TO EXCLUDE THE SAN
ANDRES FORMATION FROM THE EUNICE
MONUMENT OIL POOL WITHIN THE
EUNICE MONUMENT SOUTH UNIT AREA,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24277

**APPLICATION OF GOODNIGHT
MIDSTREAM PERMIAN, LLC TO AMEND
ORDER NO. R-7765, AS AMENDED TO
EXCLUDE THE SAN ANDRES FORMATION
FROM THE UNITIZED INTERVAL OF THE
EUNICE MONUMENT SOUTH UNIT,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24278

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

**CASE NOS. 23614-17
24123
Order No. R-22869-A**

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

CASE NOS. 24018-27

**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

**ORDER DENYING GOODNIGHT'S MOTION
TO COMPEL DISCOVERY FROM EMPIRE NEW MEXICO**

This matter, having come before the Oil Conservation Commission (“Commission”) on the motion (“the Motion”) of Goodnight Midstream Permian L.L.C. (“Goodnight”) to compel certain data and documents from Empire New Mexico

("Empire"), and the Commission Chairman, being fully advised, hereby resolves the Motion pursuant to 19.15.4.16.C NMAC as follows:

1. The Commission relies upon the New Mexico Rules of Civil Procedure as a guide regarding the adjudication of hearings before it.

2. The Motion seeks four categories of information/data to be compelled: (1) Empire evaluation file of EMSU for purchase, including documents provided from XTO's "virtual data room", (2) Nutech's supporting data for its input parameters and log interpretations, (3) Nutech's RR Bell #4 Well Log Interpretation and Analysis, and (4) Empire's Docs and data relating to prospective new wells in the San Andres. I address each in turn below.

3. **Empire evaluation file of EMSU for purchase, including documents provided from XTO's "virtual data room":** It appears undisputed from Exhibit B to the Motion that XTO created a virtual data room ("VDR") for Empire's benefit. It is undisputed that Empire separately produced documents that were part of its evaluation file, as it should. However, the Motion does not refer to any "smoking gun" that would demonstrate that Empire has withheld documents that were provided by XTO through their VDR or otherwise presented to Empire by XTO that Empire should otherwise provide. I have no basis to challenge this assertion, particularly in light of the vintage of the XTC-Empire negotiations and who or what may remain from them. This portion of the motion should be denied.

4. **(a) Nutech's supporting data for its input parameters and log interpretations, and (b) RR Bell #4 Well Log Interpretation and Analysis:** Pursuant to Rule 1-026(B)(6)(d) NMRA, "Unless manifest injustice would result, the party seeking

discovery shall pay the expert a reasonable fee related to the deposition or for time spent in responding to discovery under this subparagraph.” Generally, parties ordered to disclose documents and data relied upon by their experts does not create an additional economic burden on the producing party to pay its own expert to provide same to the opposing party, nor on their expert to provide free services. The receiving party must pay whatever the expert’s fee or costs are for such production. In contrast, the expert’s opinions are usually separately contained in an easily reproducible report or otherwise provided in discovery responses without further expense. This discovery process is not as fair in this administrative tribunal as in district court where such discovery expenses can be recaptured by the prevailing party in a costs bill and where Rule 1-037 sanctions provide some guardrails. Yet it still should be followed here for lack of a better option.

Those principles guide resolution of both (2) and (3), above. If Nutech completely refuses to provide the supporting database to Goodnight, Nutech’s analysis would not be verifiable (at least not by Goodnight) and would fail the *Daubert* standard for scientific analysis. But pursuant to Rule 1-026(B)(6)(d), Goodnight must pay Nutech for that database, on whatever commercial terms it requires. Goodnight shall unfortunately have to agree to the terms of disclosure Nutech requires, at its cost. With respect to the well log interpretation and analysis, Empire raises the valid point that it purchased a product from Nutech that Goodnight can as easily purchase. Indeed, Goodnight’s Motion acknowledges that Empire told it to buy this requested data directly from Nutech.

Thus, this portion of the Motion should be denied, but with the caveat *that if Goodnight, through due diligence, cannot get the underlying data from Nutech to*

independently verify Nutech's analysis, it may offer proof at the hearing of such unsuccessful efforts as grounds for its exclusion.

5. Empire's Docs and data relating to prospective new wells in the San Andres: The Motion validly asserts the relevance of this data and documentation. All responsive documents not previously disclosed by Empire should be, including "AFE's" and their supporting documentation, as referenced in the deposition testimony of William West. But according to that deponent, AFE's were only "in the process of being prepared." So they may not be available, apart from what was otherwise produced. In light of Empire's statement through its counsel that it has produced all responsive documents, I have no cause to further compel discovery from Empire.

SO ORDERED.



Gerasimos Razatos, Acting Chairman
New Mexico Oil Conservation Commission