

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

**IN THE MATTER OF THE HEARING CALLED BY
THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:**

**APPLICATION OF TARGA MIDSTREAM SERVICES
LIMITED PARTNERSHIP FOR APPROVAL OF
ACID GAS INJECTION WELL(S),
LEA COUNTY, NEW MEXICO**

CASE NO. 14192

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**RESPONSE OF RANGE OPERATING NEW MEXICO, INC.
TO TARGA MIDSTREAM SERVICES LIMITED PARTNERSHIP'S
MOTION TO QUASH RANGE'S SUBPOENA DATED OCTOBER 2, 2008**

Range Operating New Mexico, Inc. ("Range") through their counsel, W. Thomas Kellahin, for its response to the motion to quash the subpoena filed by Range and delivered to Targa Midstream Services Limited Partnership (Targa"), state:

SUMMARY

Targa resist the production of data, reports and analysis of its documents for the reasons that (1) its data is proprietary and confidential, (2) its data is not relevant and will not lead to the discovery of admissible evidence (3) its production is burdensome. (4) the subpoena is too vaguely state, (5) it data is privileged and (6) the subpoena is unreasonably cumulative. Range has attempted but failed to settle the subpoena dispute with Targa.

POINTS AND AUTHORITIES

Targa recites a litany of reasons not to provide Range with anything, including the Division's form C-108 completed by Targa and required to be filed in accordance with Division Rule 701. Traga's motion to quash is a generalized refusal to produce and a generic attempt to mischaracterize Range's effort to obtain data from Targa to evaluate this application.

RESPONSE TO MOTION TO QUASH

Targa's acid gas injection well ("AGI well") will increase the H₂S levels in the San Andres reservoir that is the same reservoir currently being produced by Range and other operators posing a risk to those wells and their reserves. Range expects Targa should have technical data, tests, reports and studies about this projects including, but not limited to, feasibility studies, injectivity reports geologic and petroleum engineering data. Yet, Targa refuses to produce its data and studies—What could be more relevant? There is nothing objectionable about Range wanting Targa's C-108, its injectivity study and a disclosure of data

(1)Targa's claim of confidentiality is wrong:

Privileges in New Mexico are recognized only as provided for in the New Mexico Constitution and the rules adopted by the New Mexico Supreme Court, and except as therein provided. no person has the privilege to refuse to disclose any matter. refuse to be a witness or refuse to produce any object or writing. Rule 11-501 NMRA 2004; Public Service Company of New Mexico v. John Lyons. 2000-NMCA-077. ¶11, 129 N.M. 487. 491, 10 P.3d 166. 170. New Mexico Courts (and administrative tribunals) "are bound by the privileges expressly stated in Rule 11-502 NMRA 2000 (required reports privileged by statute). Rule 11-503 NMRA 2000 (attorney-client privilege). Rule 11-504 NMRA 2000 (physician-patient and psychotherapist-patient privilege), Rule 11-505 NMRA 2000 (husband-wife privileges). Rule 11-506 NMRA 2000 (communications to clergy). Rule 11-507 NMRA 2000 (political vote). Rule 11-508 NMRA 2000 (trade secrets). Rule 11-509 NMRA 2000 (communications to juvenile probation officers and social service workers). Rule 11-510 NMRA 2000 (identity of informer). and Rule 11-514 NMRA 2000 (news media)." *Id* at i 13.

Range assumes that Targa is concerned about that part of the subpoena that seeks Seismic data. If Targa is asserting confidentiality as the basis for refusing to produce seismic information, then Targa is wrong. Furthermore, the confidentiality rules at issue cannot be abused to circumvent parties' constitutional rights or this Division's statutory duties. In fact, all that the rules are designed to do is protect from the dissemination of such information to the public. The clearest illustration of this point is found in an opinion from the Interior Board of Land Appeals, *Yates Petroleum Corp., et. al.*, 131 IBLA 230 (1994). In *Yates*, as here, the party resisting discovery argued that federal

regulations which prohibit the release of "confidential information" to the public similarly prohibited the release of information to the opposing party. The IBLA explicitly rejected that contention: "the guiding regulations differentiate between disclosure of claimed confidential information to the general public and release of such information to the parties in a proceeding before the Department and require that a person requesting disclosure to a party establish that disclosure of the material is prohibited *by law*." *Yates*, 131 IBLA at 239. (emphasis in original).

The Division has historically utilized a relevance standard in determining whether materials subpoenaed should be produced and it has rejected objections based on the proprietary or confidential nature of the materials. even in those cases where seismic data are sought. (See May 22, 1998 letter decision in NMOCC Case No. 11724 (*d novo*); Application of Gillespie Crow, Inc.; See, also the Commission's Motion to Dismiss and Reply in *EEX Corporation vs. Oil Conservation Commission*).

(2) Targa's claim that the data is irrelevant is wrong:

In the past, the Division and Commission have applied a broadest relevance standard in the adjudication of discovery disputes. The law favors liberal discovery in any proceeding. Carter v. Burns Constr. Co., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973); cert denied, 85 N.M. 5, 508 P.2d 1302, (1973). The applicable relevance standard in discovery is also broadly construed. Smith v. MCI Telecommunications Corp., 137 F.R.D. 454, 463 (S.D.N.Y.) The materials sought are clearly relevant.

It is patently disingenuous for Targa to refuse to produce their own data and analysis for inspection by Range when the matters at issue in this proceeding will require Targa to present this data at the hearing. Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law. See Yadon v. Ouinoco Petro., Inc., 114 N.M. 808, 845 P.2d 1262. (Ct. App. 1992) (Donnelly, J. dissenting) (citing Uhden v. New Mexico Oil Conservation Comm, 112 N.M. 528, 530, 817. P.2d 721, 723 (1991).) Where administrative proceedings deprive a party of a fair and full hearing, with opportunity to cross-examine witnesses, inspect documents, offer evidence in explanation or rebuttal, and to be fully apprised of evidence, there is no hearing. *Id.* (citing Transcontinental Bus Sys., Inc. v. State Corp. Comm'n, 56 N.M. 158, 179, 241 P.2d 829, 842 (1952)). *Without the* ability to inspect the documents subpoenaed,

Range will be deprived of the full and fair hearing which they are entitled under the law. See Transcontinental Bus Svcs. Inc. v. State Corp. Comm'n supra.

(3) Targa's claim that the subpoena is burdensome is wrong:

Range has a constitutional right to review the information sought by the subpoena. It has a right of timely review this information once it is produced prior to a Division hearing on this project. Because of its failure to understand the subpoena, Targa predicts that it will be burdensome but fails to explain.

(4) Targa's claims the subpoena is too vague:

Range has being denied due process by Targa's refusal to provide any data and disagrees that the subpoena is vague. But, in order to allow Targa to more clearly focus on the data requested by Range's subpoena, Range has amended and modified its subpoena having it reissued and re-served upon Targa and has extended the date for production. (See Amended Subpoena attached as Exhibit "A

(5) Targa's claim of privilege is wrong:

Under Rule 11-508 NMRA 2004 (Trade Secrets), a person has a privilege to refuse to disclose and to prevent others from disclosing a trade secret owned by the person, but only if assertion of the privilege will not tend to conceal fraud or otherwise work injustice. If the assertion of the privilege would otherwise work an injustice, then the Court should order disclosure of the material while taking such protective measures as the interests of the privilege-holder and the furtherance of justice may require. *Id.*

Even Courts which hold that a trade secret or other confidential information is subject to some measure of protection still require that the information be produced. The production is simply subject to an appropriate protective order. For example, in *Garcia v. Peebles*, 734 S.W.2d 343 (Tex. 1987), a personal injury plaintiff sought to discover manufacturing information that the defendant felt consisted of "trade secrets." The Texas Supreme Court ordered that the documents were properly discoverable, relying upon the policy that: [M]odern discovery rules were designed to "make a trial less a game of blind man's bluff and more a fair contest with the *basic issues* and facts disclosed to

the fullest practicable extent." [*United States v. Proctor & Gamble Co. J*, 356 U.S. 677, 682, 78 S.Ct. 983, 986. This court recognized that goal of discovery and pointed out that "the ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed." Unfortunately, this goal of the discovery process is often frustrated by the adversarial approach to discovery. The "rules of the game" encourage parties to hinder opponents by forcing them to utilize repetitive and expensive methods to find out the facts . . . The truth about relevant matters is often kept submerged beneath the glossy denials and formal challenges to requests until an opponent unknowingly utters some magic phrase to cause the facts to rise."

Garcia, 734 S.W.2d at 347 (citation omitted). It is remarkable that, in this case, Targa has engaged in precisely the sort of gamesmanship condemned by the *Garcia* court. Targa has refused to produce the relevant data.

(6) Targa claims the subpoena is unreasonably cumulative:

By reformatting its subpoena so that Targa should no longer be confused, Range seeks to help Targa understand that the disclosure of its data and its technical details for its application is in the best interests of all parties.

CONCLUSION

Without the opportunity to review the underlying information upon which Targa based its decision to locate acid gas injection well(s) in Section 3, Range's due process rights to cross-examine Targa will be denied. Accordingly, absent full and complete compliance with the amended subpoena, Range will be unable to make a complete presentation of relevant evidence to the Division and due process will be denied.

KELLAHIN & KELLAHIN



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RESPONSE TO MOTION TO QUASH

CERTIFICATE OF SERVICE

I certify that on October 21, 2008, I served a copy of the foregoing documents by:

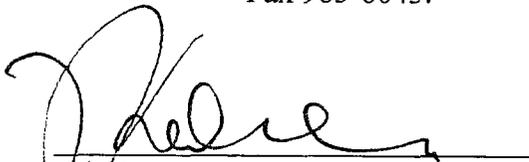
- US Mail, postage prepaid
- Hand Delivery
- Facsimile
- Email

to the following:

David K. Brooks, Esq.
Fax 505-476-3462

J. Scott Hall, Esq.
Fax 982-4289

William F. Carr, Esq.
Fax 983-6043.



W. Thomas Kellahin

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES
BEFORE THE OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING CALLED BY
THE OIL CONSERVATION DIVISION FOR THE
PURPOSE OF CONSIDERING:**

**APPLICATION OF TARGA MIDSTREAM SERVICES
LIMITED PARTNERSHIP FOR APPROVAL OF A
ACID GAS INJECTION WELL(S)
LEA COUNTY, NEW MEXICO**

CASE NO. 14192

AMENDED SUBPOENA DUCES TECUM

TO: Targa Midstream Services Limited Partnership
c/o J. Scott Hall, Esq.
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, New Mexico, 87504-2307

Pursuant to Section 70-2-8, NMSA (1978) and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 8:15 a.m., October 30, 2008, to the offices of the Oil Conservation Division, 1220 S. St. Francis Drive, Santa Fe, New Mexico, 87505 and to produce the documents and items specified in attached Exhibit A and to make available to Range Operating New Mexico, Inc. and their attorney, W. Thomas Kellahin, for copying, all of said documents.



This amended subpoena is issued on application of Range Operating New Mexico, Inc. through their attorneys, Kellahin & Kellahin, 706 Gonzales Road, Santa Fe, New Mexico 87501 to replace the original subpoena issued on October 10, 2008

Dated this _____ day of October, 2008.

NEW MEXICO OIL CONSERVATION DIVISION

BY: _____
MARK FESMIRE, DIRECTOR

EXHIBIT "A"
TO AMENDED SUBPOENA DUCES TECUM
TO TARGA MIDSTREAM SERVICES LIMITED PARTNERSHIP
IN NEW MEXICO OIL CONSERVATION DIVISION
CASE 14192

PURPOSE: The purpose of this amended subpoena is to provide all of the information necessary for Range Operating New Mexico Inc. to be able prepare its opposition to Targa Midstream Services Limited Partnership in Case 14192

THE DATA TO BE PRODUCED INVOLVES
THE
SAN ANDRES FORMATION

PRODUCE THE FOLLOWING DOCUMENTS

- (1) Any injectivity studies for the Section 3 AGI wellbore project,
- (2) A copy of any technical report or study that could be used by Targa for this case, including but not limited to, any report and/or study by Geolex and/or Alberto Gutierrez.
- (3) Any study equivalent to that of the Geolex study in Section 27,
- (4) Exhibits/data illustrating Traga's concept of how the acid gas would be contained in formation,
- (5) Exhibits/data showing how Targa expect the acid gas to affect offset production in the same interval Targa want to injecting in to.

(6) Log Data: If used by Targa for this case, then identify each well and the available data:

- a. Mudlogs or strip logs indicating formation data.
- b. Openhole logs, including but not limited to density/neutron porosity, resistivity and sonic logs
- c. Case-hole logs, including cement bond logs with collar locator and any casing inspection logs that have been run to verify mechanical integrity.
- d. All data analysis and reports from cores and side-wall cores obtained.

(7) Fluid Data: If used by Targa for this case, then

- e. All DST reports, including pressure charts, fluid recovery data and observed flow rates, together with service company analysis thereof with respect to reservoir parameters.
- f. All daily drilling reports from spud until the production casing was run.
- g. All completion reports including all intervals perforated and stimulated.

(8) Gas-Water Contact Data: If used by Targa for this case, then

- a. All evidence utilized or which can be utilized in establishing the level of gas/water contact,
- b. both the Original and the Current gas/water contacts are the concern.

(9) Reservoir Data: If used by Targa for this case, then

- a. Temperature data
- b. Reservoir pressure data, by individual zone (perforation) including but not limited to bottom-hole surveys or pressures, surface pressure readings, daily tubing pressure and casing pressures, drill stem tests, build-up tests and interference tests, with relevant information as to shut-in time and production rates prior to shut-in.

(10) Production Data: if used by Targa for this case, then

- a. all production data including, but not limited to all well check records, including gauges/charts for each well on a daily basis from initial testing/completion to date showing actual production of oil, gas and water for said well per day and per month.

- b. Chronological reports to include details of:
 - (i) perforating and perforation locations
 - (ii) stimulation fluids, volumes, rates,
 - (iii) and pressures for each treated interval
- c. Swabbing, flowing and/or pumping results for each interval that was perforated and tested including Pre and Post stimulation results as applicable.

(11) Reservoir Simulation: If used by Targa for this case, any reservoir simulation which includes any of the subject wells, then provide: model software description, model parameters and assumptions, model variables, model history matching data, model predictions, subsequent modification.

(12) Any petroleum engineering data used or to be used by Targa to justify its position in NMOCD Case 14192 including all pressure data, including but not limited to bottom hole pressure surveys, daily tubing pressure and casing pressure surveys, with relevant information as to shut-in time and production/injection rate prior to shut-in;

(13) Any and all reserve calculations, including but not limited to estimates of ultimate recovery, production decline curves, pressure decline curves, material balance calculations (including reservoir parameters), volumetric calculation (including reservoir parameters);

(14) Any and all reservoir studies, including but not limited to drainage calculations, well interference studies, pressure studies or well communication studies;

(15) Any and all documents and data concerning "workover" actually conducted, attempted or contemplated;

(16) Reservoir Geology: If used by Targa for this case: Any geologic data including geologic maps, structure maps, isopachs, cross-sections, and/or logs being used by Targa to justify its position;

(17) Seismic Data: If used by Targa for this case, then

- (1) all seismic data, including:
 - a. vertical seismic profile line (north-south trace through and extending one mile in each direction from the subject well location)
 - b. vertical seismic profile line (east-west line through and extending one mile in each direction from the subject well location)
 - c. Targa's conversion of the San Andres top time structure into a structure map showing actual depths,
 - d. any and all information concerning the acquisition, processing and interpretation of the 3-D seismic data;
 - e. copies of the geophysical interpreter's report, including all maps and input data;
 - f. predesign of the 3-D survey including the resolution, bin size, number of bins, number of pre and post-stack traces;
 - g. identify and describe the seismic calculation (computer) program used;
 - h. any and all seismic profiles and time sections;
 - i. list of all ties and mis-ties to well data;
 - j. any velocity maps, including isochron or velocity converted depth maps;
 - k. details on digitization of maps, including a detailed description of the software package for reduction of the digitized data;
 - l. details, including any adjustment of parameters for map construction including depth conversion; and
 - m. copies of any and all maps including initial and final isopach contour maps of structure and any "isometric displays" or presentations.

(18) Targa's Hearing Exhibits:

(1) copies of any geologic data and exhibits including geologic maps, structure maps, isopachs, cross-sections, and/or logs to be used by Targa.

(2) copies of any and all geophysical data/studies and exhibits to be used by Targa, including gas/water migration studies.

(3) copies of any and all petroleum engineering data/studies and exhibits to be used by Targa, including acid gas effects on productive wells and the source of the acid gas for disposal.

INSTRUCTIONS

This Subpoena Duces Tecum seeks all information available to you or in your possession, custody or control from any source, wherever situated, including but not limited to information from any files, records, computers documents, employees, former employees, consultants, counsel and former counsel. It is directed to each person to whom such information is a matter of personal knowledge.

When used herein, "you" or "your" refers to the person or entity to whom this Subpoena Duces Tecum is addressed to including all of his or its attorneys, officers, agent, consultants, employees, directors, representatives, officials, departments, divisions, subdivisions, subsidiaries, or predecessors.

The term "document" as used herein means every writing and record of every type and description in the possession, custody or control of Targa Midstream Services Lkimited Partnership and/or Geolex, whether prepared by you or otherwise, which is in your possession or control or known by you to exist, including but not limited to all drafts, papers, books, writings, records, letters, photographs, computer disks, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations or of interviews, conferences, or meetings. It also includes diary entries, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agenda, bulletins, notices, announcements, plans, specifications, sketches, instructions charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, lists, tabulations sound recordings, computer printouts, books of accounts, checks, accounting records, vouchers, and invoices reflecting business operations, financial statements, and any notice or drafts relating to the foregoing, without regard to whether marked confidential or proprietary,. It also includes duplicate copies if the original is unavailable or if the duplicate is different in any way, including marginal notations, from the original