

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

**NEW MEXICO OIL AND GAS ASSOCIATION’S AND INDEPENDENT PETROLEUM
ASSOCIATION OF NEW MEXICO’S JOINT MOTION TO STRIKE**

The New Mexico Oil and Gas Association (“NMOGA”) and Independent Petroleum Association of New Mexico (“IPANM”) move to strike the language included in Applicant, Western Environmental Law Center’s Notice of Errata pertaining to Section 19.15.9.8(C) and 19.15.9.9(C) NMAC in the above-referenced case. In support thereof, NMOGA and IPANM state:

I. BACKGROUND

1. On June 24, 2024, WELC filed its Application for Rulemaking.
2. On July 2, 2024, IPANM filed its entry of appearance and notice of intervention.
3. On July 16, 2024, NMOGA filed its entry of appearance and notice of intervention.
4. On April 25, 2025, WELC filed its Revised Application for rulemaking (“Revised Application”).
5. On June 2, 2025, WELC filed a Notice of Errata, allegedly to correct language included in its Revised Application for Rulemaking.
6. NMOGA and IPANM object to the language contained in WELC’s Notice of Errata as it pertains to 19.15.9.8.(C) and 19.15.9.9(C) NMAC. These edits are beyond the scope of an errata and are an improper attempt by WELC to amend its previously amended Revised Application for Rulemaking filed on April 25, 2025.

II. ARGUMENT

A. Applicable Law

7. Under NMSA 1978, § 70-2-39(B) (1999), an application for an administrative hearing, rehearing or de novo hearing before the division or commission will be considered to be materially amended if the amendment is made for a purpose other than to correct: (1) typographical errors; or (2) clerical errors.

8. In administrative law, substantive changes that alter the fundamental nature of a proceeding or cause prejudice to other parties are generally disallowed. For example, in *Eldorado at Santa Fe, Inc. v. Cook*, 1991-NMCA-117, ¶ 21, 113 N.M. 33, the court held that substantive errors in a published notice, such as incorrect land grant descriptions, could render administrative approvals void or voidable. *See id.*, 37, 1991-NMCA-117, ¶¶ 21 & 22, *abrogated on other grounds*, *Gillin v. Carrows Restaurants, Inc.*, 1994-NMCA-089, ¶ 9, 118 N.M. 120, 123, 879 P.2d 121, 124.

9. Further, if a notice of errata includes improper substantive changes, the remedies or actions available may include invalidating the administrative proceedings or requiring a rehearing. Section 70-2-25(B) expressly states that “[a] party adversely affected by an improper decision or order may file for a rehearing or appeal the matter to district court.”

B. Although styled as, “Applicant’s Notice of Errata” WELC’s filing is misnamed because rather than correcting typographical or clerical errors, WELC also attempts to substantively modify its Revised Application in violation of Section 70-2-39(B).

10. An errata is not the proper procedure for WELC to propose additional rulemaking. “Errata” is defined in Black’s Law Dictionary, 2nd Edition (online) as “[t]ext correction attribution in a short or minor document revision. Does not add text, as in an addendum, nor does it remove text, as in a corrigendum.” Under this definition, WELC has not in fact filed an errata because instead of making a “short or minor document revision” to its Revised Application, it instead attempts to add text that substantively amends its Revised Application. This is improper, as the

Tenth Circuit has noted in *Abernathy v. Wanders*, 713 F.3d 538, 544, n. 5 (10th Cir. 2013), and stated:

In a filing styled an “errata sheet,” the government seeks to alter and withdraw certain legal positions taken in its answer brief. An errata sheet, however, is a filing by which a party corrects technical, inadvertent errors, rather than one by which it makes substantive alterations to legal positions previously taken in its brief. In other words, an errata sheet is not a proper vehicle for the request that the government presents here [Citations omitted, emphasis in the original].

11. If WELC wishes to amend its Revised Application to make further substantive changes, it should ask leave of the Commission, and state proper reasons why it contends that such revisions should be granted.

12. Instead, WELC has attempted to disguise a material change to its Revised Application as a mere errata without offering the Commission or the parties any justification or supporting rationale for the acceptance of its untimely, proposed revisions.

C. The parties to this proceeding would be substantially prejudiced if WELC is allowed to amend its Revised Application through an errata.

13. Since June 2024, the parties have invested substantial time and resources analyzing WELC’s proposed revisions to New Mexico’s regulatory framework in order to evaluate the potential impacts those changes would have if adopted by the Commission.

14. In its Notice of Errata, WELC introduces significant new provisions that would authorize the Division to deny or alter an operator’s registration based on the operator being “out of compliance with federal and state oil and gas laws and regulations in each state in which the applicant does business.” This provision was absent from both WELC’s initial application and its Revised Application, and thus represents a new substantive proposal.

15. This newly introduced language plainly exceeds the scope of permissible “text correction.” It is not a correction at all, but rather an expansion of WELC’s regulatory proposal.

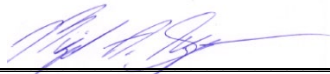
Permitting such a change at this stage would unfairly prejudice the parties to this proceeding, who have not had the opportunity to evaluate or respond to its implications. If adopted, this provision could have far-reaching consequences for operators by allowing the Division to deny registrations of operators or operator changes based on conduct occurring entirely outside the State of New Mexico, necessitating further process to assess its potential impacts on regulated entities.

III. CONCLUSION

16. For the forgoing reasons, NMOGA and IPANM respectfully request that the Commission strike WELC's proposed language in Section 19.15.9.8(C) and 19.15.9.9(C) NMAC from the record and decline to consider it, as the filing is not a proper errata and constitutes and impermissible substantive amendment.

Respectfully submitted,

DATED: June 6, 2025.

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CERTIFICATE OF SERVICE

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