

**STATE OF 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**

**REPLY IN SUPPORT OF APPLICANTS' MOTION TO EXCLUDE  
NMOGA'S CLOSING EXHIBIT 7 AND RELATED FINDINGS OF FACT**

**Preliminary Statement**

Applicants move to exclude a late-filed exhibit attached to the New Mexico Oil and Gas Association's ("NMOGA") Closing Package of exhibits, Closing Exhibit 7, a November 7, 2025 letter from the Surety and Fidelity Association of America, and related findings of fact #88 in NMOGA's brief and #191 in IPANM's brief. NMOGA's objection has no merit: (1) Applicants' motion is not untimely, (2) the public had reasonable notice that comments must be submitted by the close of hearing and that the hearing could end sooner than November 7, 2025, and (3) admission of new evidence prejudices Applicants because they have no opportunity to respond. Applicants' Motion to Exclude should be granted.

**Argument**

**I. APPLICANTS' MOTION TO EXCLUDE IS NOT UNTIMELY**

NMOGA and IPANM (together, "Oil and Gas Associations") first argue that Applicants' Motion to Exclude is untimely because NMOGA filed the exhibit with its post-hearing brief on April 3, 2026 and Applicants filed their Motion to Exclude on May 6, 2026. Res. at 2-3. However, neither the Oil Conservation Commission's ("Commission") rules on rulemaking at 19.15.3 NMAC nor the Hearing Officer's Amended Prehearing Procedural Order (July 17, 2025) or Order on Joint Motion to Extend Time for Post-Hearing Submittals (Dec. 18, 2025) establish deadlines for motion practice **after** close of the record. Applicants missed no filing deadline;

there is no waiver.<sup>1</sup>

Oil and Gas Associations argue next that Applicants' Motion to Exclude is untimely because the letter was placed in the docket in OCD Online: Imaging on November 19, 2025 and Applicants had ample time to object. Res. at 3. However, there was no need for Applicants to move to exclude late-filed public comments, including the letter that is the subject of Applicants' motion. Contrary to Oil and Gas Associations' claim, Res. at 3, late-filed public comments are **not** part of the "hearing record" and therefore are already excluded. *See* 19.15.3.10 NMAC (written comments filed in accordance with rule or Commission direction are part of "hearing record"). While the Commission Clerk properly placed the late-filed letter in the docket, its inclusion does not remedy its untimely submission and does not make it part of the "record proper."

## **II. ADMISSION OF NEW EVIDENCE AFTER CLOSE OF THE RECORD IS PREJUDICIAL**

### **A. The Public Notice Was Clear the Hearing Could End Before November 7**

Alternatively, Oil and Gas Associations request the Commission to admit Closing Exhibit 7 into the record, arguing that the deadline for submitting written public comment was not clear and therefore the Commission should accept the letter as public comment. Res. at 4-14. While the deadline may not have been clear to Ms. Alleyne, the author of the letter, the Commission's public notice was crystal clear. The entirely ordinary circumstance of the hearing ending early was both anticipated and broadcast to the public. Public notice for the hearing did not identify

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<sup>1</sup> Oil and Gas Associations argue in a footnote that Applicants' motion should be denied because they missed the September 15, 2025 deadline for filing motions to exclude evidence in the Amended Prehearing Procedural Order. Res. at 3, n.5. This argument is absurd. The deadline in the prehearing order applies to evidence filed prior to hearing and specifically prior to September 15, 2025. Plainly Applicants could not file a motion to exclude evidence by September 15, 2025 that NMOGA introduced April 3, 2026.

the final date of the hearing with precision, but instead stated that, “The public hearing will held . . . commencing October 20, 2025 at 9:00 am **and continuing each weekday thereafter as necessary.**” Notice of Public Hearing at 1 (emphasis added) [Ex. D to Res.]. There is no indication in the notice that the hearing would continue through November 7. In fact, the notice expressly accounted for the fact that the hearing could end early:

Public comment will be accepted each day of the hearing beginning at 4:00 p.m. on October 20, 2025, and at 9:00 am and 4:00 pm on each subsequent day of the hearing. A Spanish language translator will be available at 4:00 p.m. on October 20, 21, 27, and November 3, 2025. The translator will only be made available until the close of the evidentiary hearing. **If the evidentiary hearing closes before any of these dates, public comments will no longer be taken and a translator will not be available.**

*Id.* at 2 (emphasis added). As to submitting “Written Comments,” the notice also was clear the deadline for filing did not extend to November 7, but extended only through the end of the hearing: “Any person may submit written comments on the proposed amendments **no later than 5:00 pm on the final day of the evidentiary hearing . . .**” *Id.* at 1 (emphasis added). Similarly, the Commission’s Notice of Public Meeting expressly stated the rulemaking hearing would continue “until November 7, 2025, or **sooner if completed.**” Notice of Public Meeting (emphasis added) [Ex. E to Res.]. While Oil and Gas Associations request the Commission to extend the public comment period to allow admission of the untimely letter into the record based on “special circumstances,” the early conclusion of the hearing was both anticipated and advertised to the public.<sup>2</sup>

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<sup>2</sup> Oil and Gas Associations complain that the Commission Clerk didn’t personally notify Ms. Alleyne that written comments could be due before November 7. Res. at 4-5. However, Ms. Alleyne did **not** inquire when written comments were due when she emailed the Clerk on October 31, 2025 (before anyone knew when the hearing would end). Ms. Alleyne instead asked the Clerk for a copy of the proposed amendments, stating she understood “comments are due by the end of next week.” Oct. 31, 2025 Alleyne email [Ex. B to Res.]. While it may be unfortunate

The fact is all public notice requirements for this rulemaking were met. Commission Certificate of Compliance with Notice Requirements (Aug. 7, 2025). The public had full notice that written comments were due at the close of the evidentiary hearing which could end prior to November 7. Ms. Alleyne is not entitled to **actual** notice of the precise day the hearing would end. *Accord Rayellen Res., Inc. v. N.M. Cultural Properties Rev. Comm.*, 2014-NMSC-006, ¶¶ 27-28.

**B. Admission of New Evidence After Close of the Record Is Prejudicial**

In this case, the Commission should not allow admission of NMOGA's late-filed exhibit because it would be prejudicial and unfair to Applicants. Applicants have no opportunity to rebut the new evidence, evidence both NMOGA and IPANM use to support their cases. Moreover, both NMOGA and IPANM had ample opportunity during the rulemaking to present evidence on the impact of Applicants' proposed rules on sureties and, in fact, they made full use of that opportunity. *See* NMOGA Ex. F at 2-17 [Emerick Dir. Test.]; Gilstrap Dir. Test. at 3-10; Reb. Test. of Emerick at 2-27; Gilstrap Reb. Test. at 1-7; 10/29/25 Tr. 109-149; 11/3/25 Tr. 164-191. There is no prejudice to Oil and Gas Associations.

**Conclusion**

Based on the foregoing and on Applicants' Motion to Exclude, Applicants respectfully request the Commission exclude NMOGA's late-filed exhibit and two corresponding findings of fact.

Respectfully submitted,

/s/ Morgan O'Grady  
Morgan O'Grady, Staff Attorney

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the Clerk did not send a copy of the proposed amendments (presumably because she was exceedingly busy with the hearing), Ms. Alleyne was not led astray or given misinformation about the date comments were due.

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### Certificate of Service

I certify that on June 1, 2026, I served by a copy of this pleading to the following via email:

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