

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

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

CASE NOS: 21528

APPLICATION OF OIL CONSERVATION DIVISION
TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC, AND
TO AMEND 19.15.7 NMAC, 19.15.18 NMAC, AND
19.15.19 NMAC; STATEWIDE.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDING
RULEMAKING HEARING
DELIBERATIONS VOLUME 1
February 11, 2021
Via Webex Platform
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
FELICIA ORTH: Hearing Examiner
CHRIS MOANDER, ESQ.

This matter came on for deliberations before the
New Mexico Oil Conservation Commission on February 11, 2021,
via Webex Virtual Platform, hosted by New Mexico Energy,
Minerals, and Natural Resources Department.

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21

22

INDEX

23

Case Called

24

Reporter Certificate

25

1 CHAIRWOMAN SANDOVAL: Welcome back. It's been a
2 couple of weeks since we spent every day together. It is
3 9:09 on Thursday, February the 11th, 2021, and this is a
4 meeting of the Oil Conservation Commission. I'm Adrienne
5 Sandoval. I'm Chair of the Oil Conservation Commission and
6 Director of the Oil Conservation Division. Also with me
7 today are the other two Commissioners. Would you please
8 introduce yourselves.

9 COMMISSIONER KESSLER: Good morning, Jordan
10 Kessler (unclear) State Land Office. Irene, can you hear
11 me?

12 REPORTER: You're coming in rather faint.

13 COMMISSIONER KESSLER: Is that any better?

14 REPORTER: That is better, thank you.

15 COMMISSIONER ENGLER: This is Tom Engler. I'm
16 the secretary designate for the Commission. Irene, can you
17 hear me?

18 REPORTER: I can hear you, Mr. Engler, thank you.

19 COMMISSIONER ENGLER: Thank you.

20 CHAIRWOMAN SANDOVAL: Also with us today joining
21 virtually is Florene Davidson, clerk to the Commission, and
22 Chris Moander, our Commission counsel, as well as Felicia
23 Orth who has served as the designated hearing officer during
24 this proceeding.

25 Today we will be continuing with OCC Case Number

1 21528, and the Commission will be deliberating and possibly
2 taking action on the application of the OCD to adopt the
3 proposed rules to regulate the venting and flaring of
4 natural gas from oil and natural gas production and
5 gathering facilities.

6 The Commission has evidence of the public
7 rulemaking hearing held from January 4, 2021 through January
8 15 of 2021, and the evidentiary record is now closed.

9 Just a brief summary of the proposed rules. The
10 OCD proposed to adopt two new rules and to amend three
11 existing rules.

12 The new rules are 19.15.27 NMAC which establishes
13 requirements for operators of oil and gas production
14 facilities to report and reduce the venting and flaring of
15 natural gas; and 19.15.8 NMAC, which establishes
16 requirements for operators of natural gas gathering systems,
17 including natural gas pipelines, to report and review the
18 venting and flaring of natural gas.

19 The amended rules are 19.15.7 NMAC to change the
20 name of the form, add a form, and to provide instruction;
21 19.15.18 NMAC, to remove a provision and requiring operators
22 of production facilities and applications to file --
23 an application to flare natural gas; and 19.15.19 NMAC, two
24 provisions regarding the venting of natural gas at
25 production facilities.

1 The full text of OCD's final proposed rule is
2 available at OCD's website. It can be found both in the
3 case files under the hearing section, as well as all of the
4 documentation including the exhibits, et cetera, have been
5 posted on the outreach site for ease of the public to make
6 it easier to access that information.

7 And with that, I first want to start off today
8 with the -- with the rulemaking lasting from -- or the
9 testimony portion of this lasting from January 4 through
10 January 15 of this year. There were small periods of time
11 where a couple of the Commissioners were not able to sit
12 during that live portion.

13 Commission Engler, were you able to fully review
14 the transcript and the record of the portions that you may
15 have missed of the live hearing?

16 COMMISSIONER ENGLER: Yes, Madam Director, I got
17 all the transcripts and have read through every one of them,
18 yes.

19 CHAIRWOMAN SANDOVAL: Thank you. Commissioner
20 Kessler, were there any portions that you may have missed
21 and have you reviewed the record for them?

22 COMMISSIONER KESSLER: There are some that I
23 missed and I did review the transcripts.

24 CHAIRWOMAN SANDOVAL: Thank you. And there were
25 also a couple of portions that I missed as well, but I have

1 fully reviewed the transcript and the record for that.

2 All right. Now moving on to -- you know, I think
3 I want to sort of open it up to the Commissioners to figure
4 out how we want to, to tackle this today. My initial
5 suggestion would be, I think there are -- well, there's a
6 lot to do, and there's a lot of different -- there's a lot
7 of different items that have been proposed. But I think
8 that there are some sort of threshold issues out there that
9 we need to decide up front.

10 And then if we decide those up front and how we
11 want to proceed with those, then it -- I think it will make
12 it easier just to sort of going more line by line, here is
13 what I want to do on Page 3, et cetera. And, in my mind,
14 the biggest threshold issue is sort of the argument of what
15 is waste and what isn't waste, and in my mind that's the
16 largest one.

17 I think maybe sort of a peripheral one would be
18 some of the requirements that were proposed that are more
19 along the lines of the argument of does the Commission have
20 the authority to require flaring? If so, as at what level,
21 is it the 98 percent sort of language or just the flaring
22 sort of kind of issues, and those are the two issues I see,
23 but the biggest one being what is waste.

24 But I would, I would be -- I would love to hear
25 any other suggestions from the other Commissioners on the

1 process.

2 COMMISSIONER KESSLER: I would agree with that,
3 Madam Chair. And what I would suggest that we do is we
4 start with sort of the definition of waste, and then work
5 through the categories in the rules for venting and flaring
6 so that we can define whether or not those satisfy and have
7 specific testimony to satisfy whether or not those
8 constitute waste. And I think that is -- I think that's a
9 good place to start.

10 COMMISSIONER ENGLER: Yeah, I guess I want to say
11 that, I sort of actually prefer the first pages I have is by
12 definition of waste. So I think we are dead on on that one.
13 So these are cross-setting themes that we need to decide,
14 and I think that will influence a lot of decisions along the
15 way.

16 I do have another quick question for you,
17 Director. As we go through this, if we have come to a
18 position where we all don't agree, do we take a vote and
19 then go from there? Or how --

20 CHAIRWOMAN SANDOVAL: That's a good question.
21 Sorry, that's a -- I think that's a great question. Maybe
22 Mr. Moander, or Ms. Orth, if you have any guidance on how to
23 handle the situation, that might be helpful up front.

24 MR. MOANDER: Felicia, did I hear you? This is
25 Chris.

1 HEARING OFFICER ORTH: I'm happy to offer what
2 I've seen in the past of board and commission deliberations,
3 but why don't you go first if you would like.

4 MR. MOANDER: So my understanding of the general
5 rule is if there is conflict, that's what the voting system
6 is for, so -- but I want -- I'm curious what Felicia also
7 has to say about past practice because that can be helpful
8 and that may change my advice here.

9 HEARING EXAMINER ORTH: So what I've seen, for
10 example, more with the Water Quality Control Commission than
11 any others is, as you take on each section, and if on that
12 section you don't have consensus or complete agreement, you
13 do take a vote on that section, and then you move on. And
14 until you get to the end of the deliberation, obviously you
15 are not sort of adopting the entire rule, but you have taken
16 a number of votes all along the way and put things in the
17 parking lot, as they say, as necessary.

18 CHAIRWOMAN SANDOVAL: Okay.

19 COMMISSIONER ENGLER: This is Tom Engler. So if
20 you go to one section, and so as we go through a section and
21 we concur with -- all of us are in agreement, we can vote on
22 that section and then we can move on.

23 I guess my question is, not that I'm going to be
24 against everybody, but if one of us disagrees, I believe we
25 have to vote on that particular item, and then, you know,

1 again, you know, majority would say rules on the case. Is
2 that correct?

3 HEARING EXAMINER ORTH: Yes, that's what I have
4 seen the Water Quality Control Commission do.

5 COMMISSIONER ENGLER: Thank you.

6 CHAIRWOMAN SANDOVAL: Okay. Any other sort of up
7 front questions from the Commissioners?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: I'm taking that as a no.

10 COMMISSIONER KESSLER: I have a question. I'm
11 just looking at the definition of (unclear) as unnecessary
12 or excessive surface loss (unclear).

13 REPORTER: I'm sorry, Commissioner Kessler, this
14 is Irene. Can I ask you to please speak up. Thank you.

15 COMMISSIONER KESSLER: Sure. So for the court
16 reporter's benefit, I was reviewing the definition of
17 surface waste from the Oil & Gas Act, which is defined as
18 unnecessary or excessive surface loss or destruction without
19 beneficial use.

20 I'm reminding the Commissioners that those are
21 the guides (unclear) work through the different categories
22 for venting and flaring, emergency, et cetera, including
23 repair, maintenance, hydration units, et cetera, work
24 through those with unnecessary or excessive surface loss
25 without beneficial use.

1 COMMISSIONER ENGLER: Can I --

2 CHAIRWOMAN SANDOVAL: Yes. Open floor.

3 COMMISSIONER ENGLER: Excessive, is there a legal
4 definition, or is that up to us what is excessive?

5 CHAIRWOMAN SANDOVAL: I pulled up the
6 definitional language, more than -- and this is, I don't
7 know if you (unclear) a legal definition versus a (unclear)
8 definition, but it says more than necessary, normal or
9 desirable and moderate.

10 COMMISSIONER KESSLER: That's the dictionary
11 definition?

12 CHAIRWOMAN SANDOVAL: Yeah, that's the dictionary
13 definition. And unnecessary is quite simple; not needed.

14 COMMISSIONER ENGLER: Destruction without
15 beneficial use, what does that mean?

16 COMMISSIONER KESSLER: Beneficial use is, for
17 example, using gas (unclear) would be beneficial use.
18 Anything that's used for the beneficial use of the
19 operation.

20 COMMISSIONER ENGLER: The beneficial use part I
21 understand. The destruction part is that it's a waste when
22 it's being destroyed, flared.

23 CHAIRWOMAN SANDOVAL: I think --

24 COMMISSIONER KESSLER: Or vented.

25 COMMISSIONER ENGLER: Vented is not destruction,

1 though. Okay.

2 CHAIRWOMAN SANDOVAL: I think that there are or's
3 in there.

4 COMMISSIONER ENGLER: They are or's.

5 CHAIRWOMAN SANDOVAL: They are mutually exclusive
6 I think.

7 MR. MOANDER: So I think just a comment on the
8 construction. Are you guys looking at the statute or the
9 rule here? Just so I can follow.

10 CHAIRWOMAN SANDOVAL: I mean it's 70-2-3.

11 MR. MOANDER: So I think, one of the things you
12 can do when we look at this particular statute, there is a
13 lot of economic language in it, like inefficient, issues of
14 like non-rateable takings and purchasings. So I think there
15 is at least a theme in here that beneficial use probably has
16 some presumption of economic use, in other words, salable
17 product of some sort.

18 COMMISSIONER ENGLER: So if I can't sell it, and
19 I can't use it, is it a waste?

20 CHAIRWOMAN SANDOVAL: I think that's what we have
21 to decide.

22 MR. MOANDER: I think you're zeroing in there,
23 Doctor.

24 COMMISSIONER ENGLER: Yeah, my number one
25 question.

1 COMMISSIONER KESSLER: In excess (unclear) it's
2 either a loss or not usable.

3 COMMISSIONER ENGLER: So, Commissioner Kessler, I
4 think you had a thought where we like look at each one of
5 these and see how they all.

6 COMMISSIONER KESSLER: There was a different
7 suggestion. I think that the sort of (unclear) of use what
8 is and isn't waste. So if the Division has proposed in
9 their rule a number of categories in 19.15.27.8 -- this is
10 the part where we --

11 CHAIRWOMAN SANDOVAL: I think it's G, in the
12 reporting, G(2).

13 COMMISSIONER KESSLER: I would propose that we go
14 through these categories and decide whether or not the
15 testimony that was presented, we believe that the categories
16 are appropriately exempting venting and flaring.

17 CHAIRWOMAN SANDOVAL: Yeah. It looks like in
18 particular, and these are ones that I think came up quite a
19 bit was like the manual liquid unloading, uncontrolled
20 storage tanks, downhole maintenance.

21 COMMISSIONER KESSLER: (Unclear.)

22 CHAIRWOMAN SANDOVAL: What?

23 COMMISSIONER KESSLER: (Unclear) routine.

24 CHAIRWOMAN SANDOVAL: I think some of it is
25 routine downhole maintenance including operations and

1 workover rigs, (unclear) flaring, tubing units, and
2 specialty equipment, manual liquids unloading, uncontrolled
3 storage tanks, pneumatic controllers and pumps, thief
4 hatches, I think those were the main ones.

5 So I want -- I feel like some of the testimony
6 got really convoluted. So I think it would -- I guess even
7 more so than going through anything (unclear) function, it's
8 probably important to go through each one of these category
9 by category, but if it would help to go over the definitions
10 of emergency or malfunction, I'm open to whatever.

11 COMMISSIONER ENGLER: Maybe we should be looking
12 at this by looking at the Division's, the various people in
13 terms of how they perceived (unclear) like one of OCD's
14 arguments was that it's not a waste if technology just can
15 capture it.

16 So you want to try to look at (unclear) go waste
17 by waste and then try to come back to what the positions are
18 for these groups or --

19 CHAIRWOMAN SANDOVAL: I guess I was thinking, for
20 me it's easier to sort of talk about it in the context of
21 (unclear) you know, like an actual situation as opposed to
22 like waste is some construct.

23 That's sort of how I was thinking about it. Like
24 I probably can conceptualize it better if I'm talking about
25 something specific in using the testimony in those pieces

1 of, to drive those kinds of --

2 COMMISSIONER ENGLER: I got you.

3 CHAIRWOMAN SANDOVAL: I mean, I think some of the
4 ones we heard the most about were the uncontrolled storage
5 tanks and the pneumatics were probably the biggest
6 categories, and thief hatches, which were on the level of
7 tanks.

8 So I guess I'm specifically looking at Exhibit H8
9 or 9 G -- I think it's 8.G(2) and then (d), (e), (f), (h),
10 (i) and (j) which NMOGA -- sorry, I'm trying to pull up
11 OCD -- basically proposed different options there. OCD
12 basically proposes to leave this as it is. At least their
13 proposal is very similar to what the original says.

14 COMMISSIONER ENGLER: Well, OCD provided notice
15 of additional changes, and so it's Part 27.8.G(2)(a),
16 changes to clarity and oversight, so 8.G(3)(a), I read this,
17 again, calculate the lost natural gas, and so that,
18 beneficial use and so on, so they are discussing normal
19 operations pneumatic controllers and pumps from that. In
20 other words, it's not part of the lost natural gas.

21 CHAIRWOMAN SANDOVAL: Right. From my
22 understanding it was -- from my understanding of the
23 testimony, what pneumatic controllers was aimed to do, I
24 asked actually quite a few questions about this during
25 various parts of the hearing is like I think the intent is,

1 if you don't have the total, if you don't have -- if you
2 don't have the total amount, then how are you ever going to
3 figure out what that two percent is.

4 You know, will that two -- if you are trying to
5 get to 98 percent eventually, and you have the benchmarks
6 along the way, if you are only counting 90 percent of the
7 total gas for this construct, then the two percent doesn't
8 really mean two percent, it means five or seven.

9 So it seems very important to have a good basis
10 in order -- in order to actually figure out truly what that
11 two percent is, or you are never going to have that holistic
12 number.

13 COMMISSIONER KESSLER: Well, I think this is a --
14 I guess I had questions about this one along the way. Is
15 the intent of the rule with the 98 percent gas capture, is
16 that intended to measure waste and to take that 98 percent
17 of gas that does not constitute waste must be captured, or
18 was it the intention of the rule that 98 percent of all gas
19 has to be captured. And I definitely think that would be
20 the intention is that 98 percent of all gas has to be
21 captured, and I question whether --

22 COMMISSIONER ENGLER: I think you are correct.
23 From what I see, 98 percent of the total is to be for
24 beneficial use, what you capture. So if two percent is
25 lost, or allowed to be lost, I should say, but I'm still

1 lost -- so the volume lost is reduced by those various
2 items, I suppose, by OCD (unclear) so you are discounting
3 how much is lost with these various items. Isn't that
4 correct? That's the way it's written.

5 CHAIRWOMAN SANDOVAL: You are looking at the
6 first paragraph; right?

7 COMMISSIONER ENGLER: Yes. To actually calculate
8 the lost natural gas, the operator shall deduct all of these
9 items from it, then what's remaining is what's lost.

10 So all of those items that are listed by OCD
11 would not be considered lost, and pneumatic controllers is
12 on that list. That's how this reads to me.

13 COMMISSIONER KESSLER: Because we are saying that
14 these aren't waste? The way it's written is that it
15 doesn't --

16 COMMISSIONER ENGLER: It doesn't count against
17 you if it's not waste even though OCD suggested in terms of
18 reporting particularly, you are supposed to still report
19 this.

20 CHAIRWOMAN SANDOVAL: I think it goes towards the
21 definition used -- so what does that actually --

22 COMMISSIONER KESSLER: I don't think it's
23 beneficial use.

24 CHAIRWOMAN SANDOVAL: Isn't on lease use -- or
25 on -- sorry. Beneficial use is, I think your example of

1 like powering a compressor, right, powering the
2 pneumatics -- your gas actually pneumatics is going to be
3 the same thing. So it's on lease use gas beneficial use, so
4 doesn't -- I mean, this isn't a question, but doesn't that
5 benefit the operator to capture and calculate and include it
6 in there?

7 COMMISSIONER ENGLER: As part of the beneficial
8 use.

9 CHAIRWOMAN SANDOVAL: As part of your beneficial
10 use. The other component that I go to or don't recall in
11 Mr. Lapore's testimony where it was like, you know, it may
12 be a changing view of what waste is over time.

13 I mean, we specifically talk about pneumatics in
14 the sense that, you know, there has been a shift, you know,
15 you really no longer use pneumatics, like maybe in this
16 scenario, and like at what point -- you know, there are
17 other options. Granted, they can be tough or may not be
18 feasible in all situations, like electric, you know, to, to
19 use power and not have to use natural gas, but that's the
20 whole kind of update.

21 And then it also drives into an even more
22 complicated, and this starts to be where my mind gets a
23 little fuzzy is, okay, well, if there is a new facility and
24 they have power, should they be installing air -- you know,
25 those -- using that process up front, and if they were to

1 use gas actually in pneumatics, instead of, you know, the
 2 instrument air actually in pneumatics, is that waste? Would
 3 that amount, regardless of if it's on lease used gas a waste
 4 because they could have hooked it up to power, so now this
 5 gas that wouldn't have had to have been used is being used.
 6 If any of that makes sense.

7 COMMISSIONER KESSLER: Well, I agree. I'm just
 8 saying that the least restrictive is what we are doing. I
 9 very much get your point, and I think it's a good one.
 10 Where there's a better alternative, I don't think there was
 11 prescribed along the way, you know, how an operator needs to
 12 get there. He has to be able to say, all right (unclear).

13 COMMISSIONER ENGLER: Well, yeah, I agree. I
 14 don't think they -- there is a certain amount of (unclear).

15 CHAIRWOMAN SANDOVAL: I mean, is that maybe
 16 something that we then -- we do similar things, you know, in
 17 the operational practices performance standard section, you
 18 know, we talk about it here in the (unclear) and you have
 19 access to power, should you be required to put gas into
 20 pneumatics then, but I also have concerns that that would
 21 not have been in the --

22 COMMISSIONER KESSLER: What if we had a more
 23 general statement that pertain to all provisions of this
 24 rule that an operator has to use best practices of
 25 preventing (unclear) venting -- that's best available

1 practices. And I mean I know that that's not -- you know,
2 maybe an operator doesn't look at that section and decide
3 whether to connect to power or not.

4 Maybe it's not something they look at the rule
5 and say, "Oh, my gosh, I have to do this." But when they
6 can see that the intent of the rule would be to prevent
7 waste using all available best methods, you know.

8 COMMISSIONER ENGLER: I think you ought -- I
9 think the distinction there, and the wording that is used in
10 a lot in these documents is "technically feasible."

11 CHAIRWOMAN SANDOVAL: Yeah, which is important.

12 COMMISSIONER ENGLER: But it's different from
13 best practices.

14 COMMISSIONER KESSLER: That's correct. That's
15 correct.

16 COMMISSIONER ENGLER: And I actually think you
17 are on to something here about best practices. But a lot of
18 the wording here is technically feasible. (Unclear) is a
19 level higher in terms of things that you can do. A lot of
20 things are technically feasible, but not best practices or
21 current best practices.

22 COMMISSIONER KESSLER: Definitely.

23 CHAIRWOMAN SANDOVAL: That's true.

24 COMMISSIONER KESSLER: So I think we should put
25 that one in the parking lot in the sense we want to add it

1 to the --

2 CHAIRWOMAN SANDOVAL: I was about to say.

3 COMMISSIONER KESSLER: -- or not sure whether or
4 not (unclear).

5 CHAIRWOMAN SANDOVAL: I was looking at like
6 there's a performance standard section that covers venting
7 and flaring, you know, that section could be expanded, and
8 it could just be called performance standards.

9 COMMISSIONER KESSLER: (Inaudible.)

10 CHAIRWOMAN SANDOVAL: 27.E. It's called
11 performance standards for separation (unclear) for flare
12 equipment, but I don't know why it couldn't be just referred
13 to one as like performance standards.

14 COMMISSIONER KESSLER: Right. And the first
15 could be an operator shall do -- what was your preferred
16 language, Commissioner Engler?

17 COMMISSIONER ENGLER: Sorry. I was thinking.

18 CHAIRWOMAN SANDOVAL: Wasn't it technical -- was
19 it --

20 COMMISSIONER KESSLER: Technically feasible.

21 COMMISSIONER ENGLER: Technically feasible, you
22 know, using best practices, or current best practices, I
23 think would be probably more appropriate. But I do agree
24 with the Division, those have some spots about what is
25 currently today's best practices.

1 There may be things that we want to encourage or
2 maybe things that we think are more appropriate in the
3 future that we would like, you know, the industry to go that
4 direction. So there is a balance there between what's
5 currently best practice and what we would like to get to
6 with the new technology or --

7 COMMISSIONER KESSLER: What's the difference?

8 COMMISSIONER ENGLER: I don't want to lose that
9 thought because I think that is a valid (unclear).

10 CHAIRWOMAN SANDOVAL: I can just move this over.
11 Okay.

12 COMMISSIONER KESSLER: I can put it --

13 CHAIRWOMAN SANDOVAL: Yeah, I'm writing them
14 down. I thought it might be easier to visualize it.

15 COMMISSIONER KESSLER: We can also try to put it
16 up on the screen, but I can't --

17 CHAIRWOMAN SANDOVAL: Yeah, I'm just putting --
18 it makes me nervous if we like forget.

19 COMMISSIONER ENGLER: There is another question
20 of, one I don't understand, is if it's not a waste, if it's
21 not a waste, and it's not considered part of your lost
22 volume, I think G is asking you to report it still. You
23 still have to report it. I think accounting in the next
24 section you have to account for it.

25 So the logic there is you may be -- some of these

1 items are not -- are not going to be considered loss, but we
2 still want to know. And I -- I think the purpose there is
3 to -- we -- I say we -- the Division, we want to know that
4 there is so much uncertainty here that maybe there is a
5 desire to get information that may have been not really
6 important, but we don't know.

7 CHAIRWOMAN SANDOVAL: It could be, I think -- I
8 think it could be important for gaining more data. I
9 guess -- so on that statement, I almost see it similar to
10 what we did with the produced water rulemaking back in July,
11 or whenever that was, where if the data -- I mean, there was
12 like a portion of it that was data gathering, right, it was
13 reporting on what types of water were being used and how
14 much.

15 Because at the moment the Division didn't have
16 good data, nobody had good data on the types of water
17 (unclear) and in order to potentially regulate things in the
18 future, you have to have data now. So we sort of see that
19 as some of the things within the construct of what we are
20 doing here, we are just talking about a different type of
21 waste.

22 COMMISSIONER KESSLER: Exactly. I agree with
23 that, and I think that there is a difference from going with
24 what is or isn't (unclear) reported, and I think probably
25 that if the Commission has authority under the statute and

1 the provision that Mr. Ames pointed out that we do have
2 authority to require reporting regardless of whether or not
3 something is or isn't waste.

4 So the category that we think would be useful to
5 gather information on, I think the Commission has authority
6 to require reporting on that. I have sort of -- I'm
7 struggling with the area of what counts against an operator
8 for (unclear) and I think it's not waste.

9 I have a little, conceptually (unclear) I have --
10 I have considered that counting something that is not waste
11 against the operator. Does that make sense? We are saying
12 that something is not waste, but it's still in that two
13 percent. I'm concerned about it.

14 CHAIRWOMAN SANDOVAL: So the differentiation for
15 you is, or in your mind is, you're not concerned about
16 requiring the reporting --

17 COMMISSIONER KESSLER: Yes.

18 CHAIRWOMAN SANDOVAL: -- but if actually counts
19 against you and requires reporting --

20 COMMISSIONER KESSLER: If it counts against you
21 what we are saying is not waste.

22 CHAIRWOMAN SANDOVAL: Not waste. I think that
23 makes sense in my mind, and I don't -- but I don't think in
24 these four -- in the context of pneumatics, it doesn't seem
25 to be counted against them.

1 COMMISSIONER KESSLER: Okay.

2 CHAIRWOMAN SANDOVAL: At least that's how I read
3 this. It's being required to be reported so that you have a
4 total.

5 COMMISSIONER KESSLER: Yes.

6 CHAIRWOMAN SANDOVAL: But it's on the usage, so
7 it's beneficial use.

8 COMMISSIONER KESSLER: Right. I think that's --

9 CHAIRWOMAN SANDOVAL: Unless it does specifically
10 state normal operations of a pneumatic. Now, if a pneumatic
11 is malfunctioning, which can happen, it's stuck open and so
12 it's just venting, that would be a waste because it's not
13 normal operations, it's just venting. And that would, that
14 would be counted as waste, but the way it's --

15 COMMISSIONER KESSLER: Because it would be
16 excessive.

17 CHAIRWOMAN SANDOVAL: Because it would be
18 excessive.

19 COMMISSIONER ENGLER: That would be fall under
20 G(2)(b) under (unclear).

21 CHAIRWOMAN SANDOVAL: Which one? Sorry, say that
22 again.

23 COMMISSIONER ENGLER: (b), non-scheduled
24 maintenance or malfunction.

25 CHAIRWOMAN SANDOVAL: I think that would be

1 captured, yes.

2 COMMISSIONER ENGLER: So your example is correct,
3 but I think it would be under that one.

4 CHAIRWOMAN SANDOVAL: Yeah, I think that's right,
5 a malfunctioning whatever it is.

6 COMMISSIONER ENGLER: But it's a little more
7 (unclear) to this problem of pneumatic through the --
8 there's been testimony about the magnitude of how much is
9 being let off in gas. You know, we struggle with what would
10 be waste, but the other part of it is, if this is
11 significant volumes, then we need to be managing that.

12 And I'm going to put -- I'm going to make a
13 statement on the record for NMOGA to think about because
14 NMOGA, in their methane mitigation road map, indicated
15 pneumatics is the number one problem in gas emissions. And,
16 NMOGA, in its roadmap, provided mitigation steps for that.

17 So I think it's (unclear) on us to be able to --
18 if you don't do it in a waste, you would be doing standard
19 (unclear) we encourage them to go a certain direction.

20 COMMISSIONER KESSLER: I think that's an
21 excellent phrase, Dr. Engler. Also I'll just point out that
22 that was in (unclear) testimony.

23 COMMISSIONER ENGLER: It was in the testimony.

24 COMMISSIONER KESSLER: That the NMOGA roadmap --

25 COMMISSIONER ENGLER: There was multiple

1 testimony that stated this issue about the pneumatics. I
2 found the NMOGA's own -- NMOGA's own document is very
3 compelling, so I say it on the record so they can go and
4 talk about that.

5 CHAIRWOMAN SANDOVAL: So I, I agree. I felt like
6 a lot of the testimony on pneumatics is very -- I felt like
7 it was very old and outdated.

8 COMMISSIONER ENGLER: Would you like to explain
9 to the audience what you are doing?

10 CHAIRWOMAN SANDOVAL: We are trying to make a
11 white board parking lot. This is awkward. That's, fine,
12 yeah. There, there we go. This is where I put all of
13 our --

14 COMMISSIONER KESSLER: That's not technically
15 feasible.

16 COMMISSIONER SANDOVAL: All right. There we go.
17 I mean, I guess I really struggled with that. There is
18 nothing we can do. This is going to be the best it can be,
19 and that's where I'm sort of wanting to -- if you're
20 particularly -- and I understand it can be cost prohibitive
21 to be retrofitting, I get that. It get there is not always
22 power available or enough power or consistent power or the
23 right type of power or all of those pieces, I get that. But
24 in situations where particularly you are constructing new
25 facilities, you have the power available, in my mind it's

1 absolutely a waste if you are putting old school pneumatics
2 in that.

3 COMMISSIONER KESSLER: I think that captures what
4 we just discussed and said. And I think we maybe put it on
5 the white board until we can (unclear) best practices.

6 CHAIRWOMAN SANDOVAL: Yes.

7 COMMISSIONER KESSLER: And if the Division finds,
8 you know, a situation where a facility was built without a
9 adhering to current best practices, then the Commission
10 (unclear) then that operator would be subject to violation
11 of the rule and be (unclear).

12 CHAIRWOMAN SANDOVAL: Yeah. It's (unclear) in
13 general, but it's still -- so then going to another, I
14 think, facet of the argument, which I somewhat struggle to
15 understand, I feel like a large part is a waste versus
16 non-waste (unclear). The non-waste argument was, can we
17 measure it or not.

18 COMMISSIONER KESSLER: Yeah.

19 CHAIRWOMAN SANDOVAL: Is it accurately
20 measurable, and I don't see anything in the definition of
21 surface waste that (unclear) compares about is it accurately
22 measurable.

23 Now, I understand that they want a certain -- I
24 think the Division wants a certain level of accuracy in the
25 numbers because that is (unclear) but I do not find

1 compelling the argument that like if I just can't get
2 something to 100 percent certainty in my estimations or
3 measurements, that it's not a waste.

4 COMMISSIONER KESSLER: I think that some things
5 (unclear) are requiring 98 percent capture. So the reason
6 that it becomes important to have accurate measurements is
7 the part where we are asking them for a number. Say that we
8 need the -- and the statute is saying whether or not
9 accurate measurements determine whether or not it's waste,
10 we need just an understanding in our rule that says that the
11 (unclear) can be measured, and I don't know how we do that.
12 But I don't think -- I really don't think it's appropriate
13 to have an exemption for a category that is difficult to
14 measure.

15 COMMISSIONER ENGLER: The measurement is going to
16 be standard or (unclear). I think the emphasis there is, is
17 to make aware for the provision when they are forcing people
18 to understand that a lot of these things are not going to be
19 accurate.

20 So there is going to be a -- do we have a day
21 where they are going to be confined to a hard two percent.
22 And so I think there is a certain amount of, of concern that
23 you may -- you want these numbers, but the understanding, I
24 think the desire is that the understanding is that some of
25 this might not be (unclear).

1 And I think that actually -- I think that's not
2 true. I think, you know, as I just said, the question here
3 is, it's under our purview to say let's go on.

4 CHAIRWOMAN SANDOVAL: Well, I think, yes, but I
5 also think that even if things aren't 100 percent accurate,
6 which, I mean, what is 100 percent accurate. I don't think
7 anything is 100 percent accurate in this world.

8 We, yes, we can require it to be reported, and it
9 goes in the construct of what you are talking about, but I
10 think it can also be waste in some construct.

11 I don't think it needs to be exclusive, like I
12 can't accurately measure if this is 100 percent accurate,
13 therefore it's not waste. I don't think that statement is
14 true.

15 COMMISSIONER ENGLER: That I agree with. We
16 can't just say it's not waste.

17 CHAIRWOMAN SANDOVAL: I think there was also --
18 maybe it was Ms. Perez -- because we kept getting all of
19 these statements like, production, it has to be so accurate
20 for production accounting, but there was really no testimony
21 to ever tell me what level of accuracy is required for that.
22 They just kept saying, it has to be this accurate for
23 production accounting.

24 And I pushed Ms. Perez to try to figure out, what
25 is that level of accuracy, and it's like we went in a

1 circle, "Well, it has to be accurate."

2 "Well, how accurate?"

3 "It has to be certain."

4 "Well, how certain?"

5 Like there was nothing tangible in the record
6 that I could find that, like, what is that level of accuracy
7 that's required?

8 COMMISSIONER KESSLER: Report on like performance
9 standards or (unclear) the cap like that, production
10 reporting is accurate to the production standard or the
11 reporting standard is like (unclear).

12 CHAIRWOMAN SANDOVAL: Yes. And neither of --

13 COMMISSIONER KESSLER: Yeah, like -- yeah, there
14 was nothing similar that was --

15 CHAIRWOMAN SANDOVAL: Right, but in my mind, if
16 you are relying on testimony that it has to this be accurate
17 or they can't do it, but you can't provide testimony of what
18 that level of accuracy is required, then I don't know how to
19 use that information to move forward.

20 It was, again, I think, very anecdotal. "It has
21 to be accurate. Okay, cool. What does that mean?" But we
22 never got there. I was never able to get there in the
23 testimony. Maybe you guys were.

24 CHAIRWOMAN KESSLER: We all have a better idea of
25 what our thoughts are, and we can place it in the reporting.

1 CHAIRWOMAN SANDOVAL: Yeah, we can. I think so.
2 We have like no other closing statement. I mean the main
3 thing in here is now without (unclear) emissions from low
4 pressure sources is not surface waste, and I think we can
5 sort of walk through their argument in the context of each
6 one.

7 COMMISSIONER KESSLER: (Inaudible.)
8 (Discussion regarding Commissioner Kessler's
9 audio.)

10 CHAIRWOMAN SANDOVAL: Is that better, Madam
11 Hearing Officer?

12 HEARING OFFICER ORTH: It's not much better, yet,
13 Commissioner Kessler. You are speaking through a mask, and
14 you turn your head towards the Chair when you speak, which
15 makes sense because you are speaking to the Chair and
16 Commissioner, but then that means you are turning your head
17 away from the mic, so if you could, please --

18 COMMISSIONER KESSLER: How about that?

19 HEARING EXAMINER ORTH: That's sounds better.
20 Thank you.

21 CHAIRWOMAN SANDOVAL: Thank you. Feel free to
22 state if we're not coming in loud and clear. We want to
23 make sure -- we want to make sure everybody hears us.

24 Okay. All right.

25 COMMISSIONER KESSLER: So we are looking through

1 (unclear).

2 CHAIRWOMAN SANDOVAL: Yeah.

3 COMMISSIONER KESSLER: I guess my high-level
4 thought on that is, I disagree in that anything that we
5 should pass for the gas capture, and there are going to be
6 some circumstances, at least in my mind, the way that I
7 visualize this rule, there are going to be some
8 circumstances where the rule says it has to be waste, and
9 there are going to be some situations where they don't.

10 So the work here is then to define what low
11 pressure sources or high pressure sources are waste, and
12 that is what counts as gas capture requirements; right?

13 CHAIRWOMAN SANDOVAL: I agree. I think the
14 generalization that all low pressure sources are not surface
15 waste is -- well, I -- I don't find the argument compelling,
16 nor did I during the testimony.

17 It makes only generalization of just like we are
18 (unclear) of oil pressure is out, because they seem to tie
19 the argument of low pressure, hard to measure, hard to
20 estimate, therefore not waste, and that chain of statements
21 doesn't line up in my mind.

22 COMMISSIONER KESSLER: Whereas if you look at the
23 definition of surface waste and unnecessary or excessive, it
24 may be -- I would say there is going to be circumstances
25 that certainly we can look for testimony to identify where

1 low pressure sources emitted unnecessary emissions, and that
2 constitutes waste by definition. So I don't have the --

3 CHAIRWOMAN SANDOVAL: Also, Dr. Engler, sort of
4 circling back -- I'm just now like processing. I don't know
5 how that (unclear) in my mind destruction without beneficial
6 use, I think you're right, that would be flaring. If you
7 put destruction, the destruction with beneficial use, in my
8 mind that's like you are using it as a fuel to fire your
9 engine, or your heater treater, or -- so that would be you
10 are destroying it, but you are destroying it for a
11 beneficial purpose, whereas destruction without a beneficial
12 use would be flaring.

13 COMMISSIONER ENGLER: That would makes sense.

14 CHAIRWOMAN SANDOVAL: Right. I think that's sort
15 of where that goes.

16 CHAIRWOMAN SANDOVAL: So, sorry, that was an hour
17 later. All right. You want to walk straight through the
18 categories?

19 COMMISSIONER KESSLER: Yes.

20 MR. MOANDER: Everybody, this is Chris. One of
21 the things that will help with this, and I know it can get a
22 little tedious, is referencing the exact provision that
23 you're addressing so that everyone can follow along.

24 CHAIRWOMAN SANDOVAL: Great. Thank you.

25 COMMISSIONER KESSLER: We're getting there.

1 CHAIRWOMAN SANDOVAL: Okay. I think we are
2 looking at 27 -- no. On Page G.

3 COMMISSIONER ENGLER: This is OCD Exhibit 2C?

4 CHAIRWOMAN SANDOVAL: I mean, I guess we could
5 look through OCD's. I was sort of looking through NMOGA's
6 exhibits because those are the ones -- they have crossed off
7 the ones that they do not think are low pressure -- I'm
8 sorry, they specifically do not think all waste is low
9 pressure sources, or hard to measure or whatever their --

10 COMMISSIONER KESSLER: I'm going to be looking at
11 OCD's exhibit and then look at --

12 CHAIRWOMAN SANDOVAL: Yeah, and it looks like
13 it's mostly in 27.G(2), and then the ones that NMOGA crossed
14 out were (d), (e), (f), (i) and (j).

15 I think that there was -- I'm trying to recall --
16 well, okay. You want to start with (d)? Let's do one of
17 the harder ones, in my mind. At least for me it is.

18 COMMISSIONER KESSLER: (d) is --

19 CHAIRWOMAN SANDOVAL: (d) is routine downhole
20 maintenance.

21 COMMISSIONER KESSLER: Yeah, I guess -- I'm
22 looking at NMOGA's B, venting and flaring during production
23 operations. I'm looking at OCD's Exhibit 2B, C is outlined
24 in NMOGA's -- throughout the provision in G, but not in D.
25 Same categories I should say.

1 CHAIRWOMAN SANDOVAL: Oh.

2 COMMISSIONER KESSLER: G is for reporting. D is
3 for prohibiting, for lack of a better word.

4 CHAIRWOMAN SANDOVAL: Well, I mean, I think there
5 is two things, though; right? There's sort of your
6 operational practices, and then there's your reporting. I
7 mean, operational practices are in D.

8 COMMISSIONER KESSLER: So do you think -- is
9 NMOGA saying that's fine if you do -- if certain types of
10 venting and flaring, in theory, just aren't -- what -- Dr.
11 Engler, are you following what I'm --

12 COMMISSIONER ENGLER: No, I was looking at
13 something. So, I'm sorry, I was -- go back to what you were
14 saying.

15 COMMISSIONER KESSLER: I'm looking at NMOGA's
16 exhibits, and I'm looking at 27.8.B.

17 COMMISSIONER ENGLER: B?

18 COMMISSIONER KESSLER: Yes, venting and flaring
19 during production operations. The operator shall not vent
20 or flare gas except whe3n they have these certain type
21 (unclear).

22 CHAIRWOMAN SANDOVAL: I mean, I sort of feel like
23 it goes back again to the, is it measurable, is it
24 accurately estimated issue, and that's their biggest concern
25 on that.

1 COMMISSIONER KESSLER: It's authorized during
2 these certain situations, for example, liquids unloading,
3 that's something I think should (unclear).

4 CHAIRWOMAN SANDOVAL: Right.

5 COMMISSIONER KESSLER: Okay.

6 CHAIRWOMAN SANDOVAL: I think it's sort of two
7 pieces and they (unclear) sort of (unclear) they are
8 tangential?

9 COMMISSIONER KESSLER: There you go.

10 CHAIRWOMAN SANDOVAL: They connect at one point.

11 COMMISSIONER KESSLER: All right. I think I --

12 COMMISSIONER ENGLER: Manual liquids unloading,
13 that's G(2)(b). I heard the (unclear).

14 COMMISSIONER KESSLER: D or G?

15 CHAIRWOMAN SANDOVAL: I think G because G is
16 where reporting --

17 COMMISSIONER KESSLER: Set out the -- okay.

18 CHAIRWOMAN SANDOVAL: I think G, but --

19 COMMISSIONER KESSLER: Okay.

20 CHAIRWOMAN SANDOVAL: Okay. So G(2) -- and I
21 was -- the first one here is (d), G(2)(d), which is the
22 downhole maintenance, I find that one very tricky. I would
23 almost -- I don't know. I would almost start with like
24 pneumatics or thief hatches or storage tanks.

25 Do you want to start with tanks? We have already

1 been talking about pneumatics, why don't we keep talking
2 about that one.

3 So that's G(2)(i), "Venting as a result of normal
4 operations or pneumatic controllers and pumps unless the
5 operator vents or flares less than 500,000 cubic feet per
6 year of natural gas," and I think that 500,000 cubic feet
7 per year of natural gas, I think that's likely -- it seems
8 like that's an exclusion to small operators.

9 COMMISSIONER KESSLER: Was there testimony?

10 CHAIRWOMAN SANDOVAL: I don't think so, to be
11 honest. I don't recall it.

12 COMMISSIONER KESSLER: Nor do I.

13 CHAIRWOMAN SANDOVAL: Do you, Dr. Engler?

14 COMMISSIONER ENGLER: No, there was not.

15 CHAIRWOMAN SANDOVAL: I mean, I -- I, in
16 general -- assuming that we don't decide to get rid of this
17 category because it's not waste, or whatever that construct
18 is, I'm okay with that exemption just because it actually is
19 quite cumbersome, if you know what pneumatic you have on
20 your site, and it seems like it should be much more simple
21 than it is. And likely operators over some sort of
22 threshold, which maybe this is appropriate, are already
23 going to be doing greenhouse gas reporting, and if they are
24 already doing greenhouse gas reporting, then they have
25 already had to go and do surveys and determine the amount of

1 pneumatics out there, so they have done that legwork
2 already. So I am comfortable with that exclusion, yeah,
3 sort of exclusion. I mean smaller operators --

4 COMMISSIONER ENGLER: That's total venting and
5 flaring of 500 or less?

6 CHAIRWOMAN SANDOVAL: I wonder if that should be
7 MCF, that's a low number.

8 COMMISSIONER ENGLER: 500 MCF per year.

9 CHAIRWOMAN SANDOVAL: Yeah. That seems like a
10 pretty low number, isn't it?

11 COMMISSIONER ENGLER: Well, your stripper well is
12 60 per day.

13 CHAIRWOMAN SANDOVAL: 60 MCF per day?

14 COMMISSIONER ENGLER: At least in the volume of
15 gas.

16 CHAIRWOMAN SANDOVAL: Well, I mean, you shouldn't
17 be venting all of the gas.

18 COMMISSIONER ENGLER: Preferably.

19 CHAIRWOMAN SANDOVAL: I mean, that might be why
20 they are not making money if they are venting all their gas.
21 Yeah. I sort of wonder about the unit on that, but overall,
22 I'm comfortable with that exclusion.

23 So I think the discussion we had earlier is, one,
24 is it waste; or, two, we don't think it's waste, but so it
25 doesn't count against you, but it may have to be reported.

1 COMMISSIONER KESSLER: Well, there was
2 testimony -- where are my notes. Okay. So --

3 REPORTER: (Discussion regarding Commissioner
4 Kessler and Commissioner Engler audio.)

5 CHAIRWOMAN SANDOVAL: I think your question was,
6 who gave testimony. It was done, I believe, by multiple
7 parties. I mean, Mr. Smitherman had everything, but I
8 didn't find his testimony to have a lot of technical
9 substance to it. There was, I believe, Mike Smith talks
10 about some of the pneumatic pieces.

11 I got it here. It should tell us. Mr. Leonard,
12 I think, hit on it some, Joe Leonard.

13 COMMISSIONER KESSLER: Oh, that's right.

14 CHAIRWOMAN SANDOVAL: He hit on it some. And I
15 think Mr. Greaves may have hit on it in a small amount, and
16 I think Mr. Smith talked about it as well. Hold on. It was
17 listed on the --

18 COMMISSIONER ENGLER: You also have a Dr. McCabe
19 from Climate Advocates.

20 CHAIRWOMAN SANDOVAL: And Dr. McCabe from Climate
21 Advocates.

22 COMMISSIONER KESSLER: Should we talk about what
23 testimony was on the --

24 CHAIRWOMAN SANDOVAL: Yes. You bet.

25 COMMISSIONER ENGLER: While you are doing that, I

1 guess on this pneumatics, I'm converging to, I really don't
2 want it -- I don't think it should count as waste against
3 the two percent.

4 What I do want it for is because I want to know
5 just how much it is. Again, NMOGA in its own documents has
6 stated -- I think there should be a component for pneumatics
7 so that we have something to say, this is where we want to
8 get to. And I think if we put that together -- I think
9 that's kind of where I'm going with this conversation.

10 CHAIRWOMAN SANDOVAL: I agree.

11 COMMISSIONER ENGLER: So I'm really asking the
12 industry to still account for it, but I don't know if I
13 really agree it should (unclear).

14 CHAIRWOMAN SANDOVAL: Unless it's malfunctioning,
15 then it would go in a different category. And how about for
16 reporting standards?

17 COMMISSIONER KESSLER: Dr. Engler, you don't
18 think it is part of the two percent because you don't think
19 it constitutes waste?

20 COMMISSIONER ENGLER: It almost would be -- well,
21 I could almost argue that it's -- that it should be excluded
22 on the waste to be able to control the separator or whatever
23 it's used for. So I could -- the pneumatic controller is
24 just there to open and close the valve in terms of whatever
25 they are doing, essentially, whatever it is. So in essence

1 it's part of the best beneficial use.

2 So I could argue that that is correct. Well, I
3 shouldn't argue, I would say that's a possibility. But
4 remember, there is a component of this that we would like to
5 see more information, but I hate to put more emphasis on the
6 industry to get more and more data that may or may not be
7 necessary. I think these are some (unclear).

8 CHAIRWOMAN SANDOVAL: Yes.

9 COMMISSIONER KESSLER: Or I think the
10 Commissioners can ask for that for them to understand better
11 what your thoughts are and what you are relying on for your
12 testimony to --

13 COMMISSIONER ENGLER: Well, again, I think Mr.
14 Leonard disagreed with those (unclear) technical and what
15 they can and can't do is demonstrated really as a (unclear).

16 COMMISSIONER KESSLER: Yes.

17 COMMISSIONER ENGLER: Low bleed and so on and how
18 you define it, so, for example. But, you know, I think that
19 was -- I thought they were credible how they were addressing
20 the differences similar engineers side by side. So I found
21 their information useful in things that can and cannot be
22 done, but I think that that's where I was leaning was toward
23 is what I could do with this information or what information
24 we should still get.

25 I do have a question, you don't need to

1 answer this, but can we, as the Commission, request an
2 update of information that the Division is (unclear).

3 COMMISSIONER KESSLER: I mean, I think we can
4 write it in the rule.

5 COMMISSIONER KESSLER: That we -- that we do
6 what? That the testimony be evaluated? I don't think we
7 would want to do that. No.

8 MR. MOANDER: Dr. Engler, I didn't quite capture
9 that question. Could you repeat that, please?

10 COMMISSIONER ENGLER: My question is, you know,
11 and I'm not asking really in terms -- well, maybe it is in
12 terms of the rule. But my question is that, it would be
13 important to the Commission if a year from now or so we
14 would get an update from the Division about the process of
15 what they are acquiring and what magnitude of (unclear) of
16 the proponent they see as necessary or worked on, just like
17 an update.

18 I don't necessarily mean it has to be in the
19 rule, I just wonder is there -- or maybe it should. Should
20 the Commission always be updated on something that is
21 (unclear).

22 MR. MOANDER: I think the Commission is empowered
23 to ask for that information. I mean, there is nothing
24 that -- I don't see anything that prohibits it.

25 Placing it in the rule might be a different story

1 because I don't know -- where would you -- where are you
2 thinking it might fit, like under the reporting requirement?

3 COMMISSIONER ENGLER: It would have to be under
4 reporting. I have no concept of where it would fit. I was
5 just thinking it would be beneficial to the Commission to
6 hear that. I'm not necessarily wedded to the idea it should
7 be in the rule.

8 MR. MOANDER: Well, I think the Commission is
9 free to make its request to the Division in a year. I don't
10 think there is any limitation on asking for that, and there
11 shouldn't be any harm in it either.

12 COMMISSIONER ENGLER: I agree.

13 COMMISSIONER KESSLER: I think that's a good
14 idea, Dr. Engler, and I think maybe writing it into the rule
15 is potentially problematic, but we can certainly request a
16 year from now that the Division provide or that in the
17 subsequent years that the Division provide an annual update
18 on (unclear) from the -- from the data that supports it
19 similar to how we do with the (unclear).

20 COMMISSIONER ENGLER: Okay. Thank you.

21 CHAIRWOMAN SANDOVAL: So I was looking at some of
22 the testimony, and Mr. Leonard talked about pneumatic
23 controllers. He had an Exhibit G5, which mostly just shows
24 pictures, so that's -- and G5 shows there is a like a
25 (unclear) control or diagrams, and he talks some about --

1 let's see. You know, he talks about -- let's see. He talks
2 about what they do, what they intend to do in the field.

3 And then then on Page 25 of that transcript,
4 which was Line 7 from July 12.

5 The question is, I'm assuming, from Mr. Feldewert
6 or Mr. Rankin: "Is the operator able to capture that, those
7 releases and send it to a sales line?

8 "It would be very, very difficult, and that is
9 because especially on the liquid level style switch and the
10 displacer style, the valve that those devices communicate
11 with, that valve is held in position by a spring, and so
12 using that pneumatic structure to combat the force of the
13 spring, and so if you were to put that back into a system
14 somewhere, any pressure that, that would remain on that
15 valve could interfere with that valve's ability to function
16 properly."

17 You know, I don't -- I don't disagree with his
18 statement, but like there -- I don't see a way to capture
19 it. Once it's actuated, I don't know how you pull it back
20 in. I think, again, that construct is like what is the way
21 versus what versus what we think is important -- well, let
22 me restate that.

23 So and I think it's aligned with sort of what we
24 are thinking that this on lease gas use would be beneficial
25 use in those controllers, would that be information -- so it

1 needs to be reported under the beneficial use category which
2 they are wanting (unclear).

3 COMMISSIONER KESSLER: It needs to be reported,
4 but not included in the two percent?

5 CHAIRWOMAN SANDOVAL: Yes, because it's a
6 beneficial use, with those, I think, large caveats that we
7 have on our parking lot here that we need to include things
8 in the performance standards so that as time goes on,
9 particularly, you know, if you are building these
10 facilities, operators are using equipment that most prevents
11 waste if able to, but I see this as a beneficial use.

12 And if it's malfunctioning, it goes under
13 malfunction category, which -- so I think Mr. Leonard's
14 testimony aligns with that. So I actually am just
15 thinking -- I think that's how it's already currently
16 written in OCD's rules, but --

17 COMMISSIONER KESSLER: The description of
18 (unclear).

19 CHAIRWOMAN SANDOVAL: I think it's in this
20 updated notice of amendments or whatever that was.

21 COMMISSIONER ENGLER: We actually track them all,
22 pneumatics is part of the law (unclear).

23 CHAIRWOMAN SANDOVAL: Okay. Do we feel
24 comfortable on pneumatics?

25 COMMISSIONER ENGLER: Yes. Let's move on.

1 CHAIRWOMAN SANDOVAL: Great. Do we want to go to
2 tanks?

3 COMMISSIONER KESSLER: Sure.

4 CHAIRWOMAN SANDOVAL: So there is a couple of
5 components on tanks. I mean, there is G(2)(f), and then
6 closely related we have G(2)(j), and then also I think maybe
7 this is where we talk about it as well in the Climate
8 Alliance and EDF, I think they proposed -- I will get to
9 it -- they propose a G, which is flaring from controlled
10 sourcing. And I actually am -- I think maybe we talk about
11 these (unclear) and this was very heavily talked about by, I
12 believe, Mr. Greaves. Is that his name?

13 COMMISSIONER ENGLER: Yes. Are you talking
14 about controlled or --

15 CHAIRWOMAN SANDOVAL: So there is three pieces on
16 tanks. There is uncontrolled storage tanks, there is the
17 proposal from Climate Alliance and EDF that controlled
18 storage tanks should be included, and then there is the
19 thief hatches. So it's sort of a three components to a
20 tank.

21 COMMISSIONER ENGLER: My take is, my
22 understanding of controlled is that those emissions are
23 either captured and used or destroyed through flaring. Is
24 that correct or not?

25 CHAIRWOMAN SANDOVAL: Yes, there can be those

1 situations --

2 COMMISSIONER ENGLER: They are controlled?

3 CHAIRWOMAN SANDOVAL: Yeah.

4 COMMISSIONER ENGLER: Would that come under
5 controlled?

6 CHAIRWOMAN SANDOVAL: I mean, I think it should
7 be pretty minimal. It should be pretty minimal.

8 COMMISSIONER ENGLER: I guess the starting point
9 for me, definition of control versus uncontrolled.

10 CHAIRWOMAN SANDOVAL: Quite literally, I think
11 it's your meter routed to a control device or routed through
12 some sort of VRU in order to compress it and get it back
13 into the line, but, you know, push it back in.

14 COMMISSIONER ENGLER: For sales?

15 CHAIRWOMAN SANDOVAL: Yeah. You're basically
16 flaring it or you are putting it -- now you are using it,
17 putting it back into the line. That is controlled.

18 COMMISSIONER ENGLER: That sounds good.

19 CHAIRWOMAN SANDOVAL: So but Climate Alliance
20 says, it defines it as flaring from controlled storage
21 tanks. And so they are wanting, I think, the flaring from
22 the controlled storage tank to count against them.

23 And I actually don't see where the flaring from a
24 controlled storage tank in the other rules would count
25 against you. It's sort of goes with other types of flaring

1 counts against you, but not -- I guess I wonder if it would
2 be captured in the Division's rules under stuff like basic
3 flaring.

4 COMMISSIONER KESSLER: General (unclear).

5 CHAIRWOMAN SANDOVAL: Yes. And why it wouldn't
6 be in this sort of generalized -- but I guess -- okay, so
7 I'm thinking through this out loud, sorry. You have to
8 report it though, a vented flared gas in these categories,
9 and what category and theory would one put it in, flaring
10 from a controlled storage tank, I actually do not know if
11 it's not explicitly called out.

12 COMMISSIONER KESSLER: Other.

13 CHAIRWOMAN SANDOVAL: Other? Yeah, it could go
14 in other. I think that's messy.

15 COMMISSIONER KESSLER: I find that would be just
16 like (unclear) controlled storage tanks and uncontrolled
17 storage tanks.

18 CHAIRWOMAN SANDOVAL: Yeah, technically in their
19 proposal they say flaring from controlled storage tanks.

20 COMMISSIONER KESSLER: I guess we don't have a
21 kind of third category for what we want to know. Is it
22 controlled or uncontrolled storage tank? Is that important
23 to them?

24 CHAIRWOMAN SANDOVAL: I'm trying to think about
25 that. I'm not sure if it matters to the Division. I don't

1 think we heard specific testimony on that. We did hear
2 testimony on why controlled storage tanks should be
3 included. But we did not hear testimony -- I'm sorry, I'm
4 speaking out loud.

5 COMMISSIONER ENGLER: Is this one reporting of
6 uncontrolled storage tank, controlled storage tank, this is
7 now handled within the (unclear).

8 CHAIRWOMAN SANDOVAL: Excellent question. Which
9 sort of inclined me to leave out the qualifier and just call
10 it tanks.

11 COMMISSIONER ENGLER: I think my question is
12 where is controlled and uncontrolled in that testimony. I
13 guess I will have to reserve the definition (unclear) but
14 I'm in for that.

15 CHAIRWOMAN SANDOVAL: I don't think so. I mean,
16 I would say they are pretty common. It may not be in here.
17 It's pretty common terminology, but I see your -- I mean, I
18 see where you're going.

19 COMMISSIONER ENGLER: My old rendition of
20 uncontrolled is the same as the gas --

21 CHAIRWOMAN SANDOVAL: Yeah.

22 COMMISSIONER ENGLER: Now controlled (unclear)
23 that is routed to a VRU for sales and flaring, so that would
24 be a controlled, but I don't think that's currently a true
25 definition of how we should be looking at the -- I'm just

1 wondering.

2 MR. MOANDER: This is Chris. One of the options
3 here because I -- from the testimony is trade usage or
4 common terms of art from the industry, common usage in the
5 industry for a definition, because sometimes if it's not
6 clear, but there is testimony that gives rough parameters of
7 what that control or uncontrolled tank likely is, there is
8 always the option to rely on trade usage.

9 CHAIRWOMAN SANDOVAL: Okay. So does that mean
10 that before we write (unclear) like let's get that, I think
11 it would be helpful to take a step back and look at the
12 definition specifically and decide, are they -- are any
13 venting and flaring from a tank surface waste.

14 And I think it's important in the definition that
15 they're or's, they are not and's. It doesn't have to be
16 unnecessary and excessive and destruction will happen -- or,
17 or, or -- which is very different. And I, in my mind, I
18 think it sort of comes up in a couple of places, and if you
19 are flaring it at your tank, that is destruction without
20 beneficial use; right?

21 COMMISSIONER KESSLER: Right.

22 CHAIRWOMAN SANDOVAL: Isn't that quite literally
23 the definition of destruction without beneficial use? You
24 are not destroying -- it's not being used in your heater
25 treater to fire it or at some other staff fired unit, or you

1 are not routing it to your pneumatics, you are -- well, the
2 pneumatic wouldn't be destruction, but if you are burning it
3 in your heater treater, that would be destruction with
4 beneficial use, but putting it in a flare and burning is
5 destruction without beneficial use.

6 So I struggle to see some of the arguments by
7 NMOGA that it is not beneficial use -- I'm sorry -- that it
8 is beneficial use, or they were, you know, sort of rely on
9 excessive and unnecessary -- I'm trying to find exactly in
10 the testimony where it went.

11 I feel like that is quite literally the easiest
12 piece of that definition. If you are flaring it, then that
13 is destruction without beneficial use. It's quite literally
14 the definition of destruction without beneficial use.

15 COMMISSIONER ENGLER: Well, it might be a concern
16 that there may be technical or space heater difficulties in
17 retrofitting for the actual emissions.

18 CHAIRWOMAN SANDOVAL: Well, I don't -- I agree,
19 but what does that have to do with anything?

20 COMMISSIONER ENGLER: You can't --

21 CHAIRWOMAN SANDOVAL: I mean, why does that make
22 any difference? I think in this rule the Division is not
23 requiring you to retrofit tanks. There's the requirement to
24 upgrade your flare. It's not a requirement to control your
25 storage tank.

1 COMMISSIONER ENGLER: So you have to report it
2 maybe within your two percent, but it doesn't mean have you
3 to be (unclear).

4 CHAIRWOMAN SANDOVAL: Right, unless you, you
5 know, I think the two percent does -- could drive different
6 practices, maybe like how you are flaring it and you are
7 over your percentage and you need to come down, and so maybe
8 you evaluate your use unit, it's not feasible as it is, I
9 understand that, but I don't think this rule is mandating
10 that you do it, it just --

11 COMMISSIONER ENGLER: It's an incentive.

12 CHAIRWOMAN SANDOVAL: It's an incentive.

13 COMMISSIONER ENGLER: Okay.

14 CHAIRWOMAN SANDOVAL: And I think that's where
15 the Division talked about trying to provide (unclear)
16 facilities for operators, and I think, in the construct of
17 trying to build this that's what they are trying to do,
18 because there are a lot of options where you can kind of
19 gain your capture, but I don't think this was requiring you
20 to retrofit. So I guess I'm not sure --

21 COMMISSIONER ENGLER: No, okay. I think that was
22 good. Thank you.

23 I do have another question, though, that I need
24 help on. Let me (unclear) there is multiple references in
25 testimony to documents about other agencies already

1 overseeing venting and flaring and everything from EPA to
2 the NMED. I have no understanding of the concept of that
3 and how -- how all of that rotates.

4 CHAIRWOMAN SANDOVAL: Into this?

5 COMMISSIONER ENGLER: Yes.

6 COMMISSIONER KESSLER: (Inaudible.)

7 REPORTER: I'm sorry, Commissioner Kessler, can
8 you repeat that comment, please?

9 COMMISSIONER KESSLER: Yes, I was giving the
10 Director a moment to think about (unclear). The NMED, as I
11 understand it, regulates tanks. Right?

12 CHAIRWOMAN SANDOVAL: Yes, and I think, no. They
13 are a different construct or sort of regulatory meters in
14 tanks. From my understanding there is like your (unclear)
15 tank, your (unclear) tank. So that would be like anything
16 after 2011. Then there is like maybe a central tank battery
17 if it falls under (unclear) or if it meets 505 requirements,
18 but I would be hesitant to say that they regulate each and
19 every tank that is out there.

20 COMMISSIONER KESSLER: So, yes, but it's not
21 exhaustive? There is no --

22 CHAIRWOMAN SANDOVAL: Yeah, and I don't -- I
23 don't think that what -- I'm trying to think of -- I don't
24 think that what the Division is proposing to do inhibits
25 what NMED -- I think it sort of dovetails with it because,

1 like I was saying, I don't think the rule requires you to do
2 something, but it counts against you in your gas capture
3 requirements. It could, depending on what we decide right
4 now, count against gas capture requirements.

5 So I'm just trying to think out a scenario saying
6 that, for quite a way, you have to have a tank under six
7 tons per year. So let's say you control it to make sure you
8 are under six tons per year. So your tank or two that are
9 tied together and routed to a flare to ensure that they are
10 under that six tons per year, I think the Division doesn't
11 then say, "Well, we actually have to route it back to a
12 VRU," it's just saying, that now counts against you in your
13 holistic gas capture requirement.

14 And I think, like I was saying to Dr. Engler, the
15 company can then holistically take a look at where they are
16 and say, "Well, I am -- I'm -- I'm not where I need to be.
17 I need to find other things to do," and maybe they look at
18 their tanks and say, "Well, here are a handful of scenarios
19 where we can" (unclear).

20 I don't think they are probably all the scenarios
21 that (unclear) can utilize, but I think there are some. So
22 this, I think, rule kind of fits on top of this, and it's an
23 actual layer of encourage that just like just because you
24 are meeting another state or federal requirement doesn't
25 mean you are meeting ours, and you may have to do better.

1 That's the sort of way I see it.

2 COMMISSIONER KESSLER: Okay.

3 COMMISSIONER ENGLER: Well, if I were an operator
4 and I was looking at it, I have multiple standards for
5 multiple states, and multiple authorities for multiple
6 agencies, I would find that (unclear).

7 Let's get back to tanks. I don't want to leave
8 that out there in terms of the -- the unification of how
9 things fit together. But, you know, we are trying to work
10 on tanks, controlled or uncontrolled.

11 CHAIRWOMAN SANDOVAL: Right. Yeah. I mean, I
12 agree with you in some places of that statement and I
13 disagree with you in others. I think, yes, reporting is
14 something different.

15 But at the same time, if you are reporting for
16 EPA purposes, you are reporting different numbers. You are
17 probably reporting some sort of compositional breakdown, and
18 you talk (unclear) whatever, whatever, whatever, the numbers
19 really are different. Now, if they have prudent numbers
20 that would (unclear) then that would be ideal, but that's
21 not the world that we live in.

22 So I want to make it as efficient as possible by
23 just -- and not create confusion or complication, but I
24 don't think the way that, at least the regulation, I'm not
25 talking about the report, I'm talking about the regulation

1 for structure of tanks is right now, is duplicative or
2 mutually exclusive. I think it fits on top of it and it
3 pushes companies to maybe do even better.

4 COMMISSIONER ENGLER: Well, I want to move
5 forward on regulations of tanks, but I would like to come
6 back to that discussion about (unclear) possibly later.

7 CHAIRWOMAN SANDOVAL: Okay. Let me put it on the
8 board so we don't forget. Okay. Okay. So that's a tank.
9 And turning to --

10 COMMISSIONER ENGLER: You were saying there is a
11 controlled tank and there could be cases of venting and
12 should that count as waste, and I think the answer is yes.
13 Okay.

14 CHAIRWOMAN SANDOVAL: Venting and flaring, I
15 think.

16 COMMISSIONER ENGLER: Okay.

17 CHAIRWOMAN SANDOVAL: The way that Climate
18 Advocates writes it is the flaring of a controlled storage
19 tank. Talks about flare use, flow lines.

20 COMMISSIONER ENGLER: Relatively you want to
21 count it towards the two percent.

22 CHAIRWOMAN SANDOVAL: That's the proposal of
23 Climate Advocates and the Division, except for the Division
24 doesn't include uncontrolled -- I'm sorry -- controlled
25 storage tanks.

1 COMMISSIONER ENGLER: Well, the Division states
2 that they felt the category would not require meeting
3 (unclear) the Division's capture for beneficial use for
4 destruction in flaring.

5 CHAIRWOMAN SANDOVAL: Right, but I guess I'm
6 confused by that statement because we are saying flaring in
7 other places is waste, so then why is flaring at a tank not
8 waste. Unless they are putting it as an -- unless your
9 controlled storage tank is controlled by a VRU and you're
10 putting it back into the sales line, but then, in my mind,
11 you look at that category and say, well, that (unclear) but
12 that seems pretty intuitive.

13 I'm trying to find -- I think the first question
14 we have to decide, and I'm trying to find the best testimony
15 here from NMOGA was they are saying that this is not waste,
16 that the low pressure venting and flaring from tanks is not
17 waste.

18 And I think that's the first thing we have to
19 decide, and then assuming it is waste -- well, if we decide
20 it's waste, what would the rule language look like. I was
21 trying to find -- I know that Mr. Smith talked about it.
22 I'm looking at Mr. Greaves testimony right now, but I know
23 Mr. Smith made some statement along the lines, well, most of
24 the time these tanks are the end of the line, and so there
25 is nothing to do with that gas. And so you need to route it

1 to, maybe your VRU is maybe the end of the line and there is
2 nothing you can do with it.

3 I mean, I'm looking back at the definition of
4 surface waste again, and we have or's. We do not have
5 and's, we have or, or destruction without beneficial use,
6 which, in my mind, is flaring.

7 So I very much struggle to understand how --
8 what Mr. Smith's testimony was is pertinent to this
9 discussion.

10 COMMISSIONER ENGLER: Whose testimony was it?

11 CHAIRWOMAN SANDOVAL: Mike Smith, Devon.

12 COMMISSIONER KESSLER: I'm sorry to do this, but
13 I have been thinking about --

14 CHAIRWOMAN SANDOVAL: Go for it.

15 COMMISSIONER KESSLER: This is a waste (unclear)
16 is the prevention of -- read this section -- unnecessary or
17 excessive surface loss and destruction without beneficial
18 use.

19 Let me read the second one. Unnecessary or
20 excessive surface loss or destruction without beneficial
21 use.

22 So does unnecessary or excessive modify both
23 surface loss or destruction? Because destruction without
24 beneficial use --

25 CHAIRWOMAN SANDOVAL: I see what you are saying.

1 COMMISSIONER KESSLER: I don't think that's a
2 totally separate thing. I think unnecessary or excessive
3 modifies the destruction without beneficial use.

4 CHAIRWOMAN SANDOVAL: The unnecessary or
5 excessive --

6 COMMISSIONER ENGLER: You are getting into the
7 grammar part. That's --

8 MR. MOANDER: This is Chris. I think the way
9 that Commissioner Kessler is reading this makes sense from a
10 construction statute standpoint.

11 COMMISSIONER KESSLER: This can go two ways, Mr.
12 Moander.

13 MR. MOANDER: I think it was the latter one. I'm
14 trying hard to catch whatever you are saying, because it is
15 a verbose paragraph that could be broken down.

16 COMMISSIONER KESSLER: You think unnecessary or
17 excessive modifies surface loss and destruction?

18 MR. MOANDER: Yeah, I think -- I think when you
19 say that, I looked at it again and then I question it.

20 CHAIRWOMAN SANDOVAL: Is there any case law on
21 this, Mr. Moander?

22 MR. MOANDER: Let me look, do a brief search and
23 see what I can find on this.

24 CHAIRWOMAN SANDOVAL: Okay. Maybe take a
25 five-minute break.

1 COMMISSIONER KESSLER: Let's take a break because
2 I don't think you can say -- I don't think you can look at
3 this whole clause and say that unnecessary or excessive
4 would only apply to surface loss, but destruction without
5 beneficial use would not also carry an unnecessary or
6 excessive modifier. I don't think that makes sense. I
7 don't think that makes sense. Because then it would very
8 specifically modify surface loss --

9 MR. MOANDER: Right.

10 COMMISSIONER KESSLER: -- destruction, you know,
11 would have no bounds on it. I don't think you can read it
12 that -- I don't think that's logical. So to just say that
13 any type of flaring is waste, I don't think, captures the
14 pretty specific definition of surface waste. Does that make
15 sense? I don't even know if that makes sense.

16 CHAIRWOMAN SANDOVAL: No, it makes sense.

17 COMMISSIONER KESSLER: But yeah, maybe, we can
18 take a break and we call all think about (unclear).

19 CHAIRWOMAN SANDOVAL: How long? Why don't we
20 come back at 11:15, everybody.

21 (Recess taken.)

22 CHAIRWOMAN SANDOVAL: Okay. So I think where we
23 were, we were talking about -- well, we started to dive into
24 the definition of surface waste and how it should be read
25 and interpreted.

1 COMMISSIONER KESSLER: Does anyone have any
2 additional thoughts on that to make?

3 MR. MOANDER: Yes. This is Chris. I took a few
4 minutes to look at this. There is no immediate case law
5 dealing with that sub -- or that Subpart B. But I think the
6 way that Commissioner Kessler described it, I think it was
7 initially is that you can sort of -- you can break that
8 first sentence off of Subsection B where it says, "but
9 including the loss or destruction."

10 So if we go back and just take that punctual
11 clause, I guess would be the term, unnecessary or excessive
12 surface loss, or unnecessary or excessive surface loss, and
13 I think the disjunctive "or" stands alone as the word
14 subsequent to that, destruction without beneficial use
15 however caused, so I think that's the correct reading of
16 this.

17 COMMISSIONER KESSLER: Yeah, that's the opposite
18 of what I said.

19 MR. MOANDER: Oh, it was. See, this mask thing
20 is screwing me up, because I think the problem you run into
21 is there is an issue of redundancy with unnecessary
22 destruction without beneficial use, or excessive destruction
23 without beneficial use. I think that can -- that could
24 lead into some absurdity in reading it, especially down the
25 road if we have other verbs that might get implicated.

1 The other one, the thing is that, I pulled this
2 out of the (unclear) that might apply here a little, too, in
3 that you've got a description of loss or destruction without
4 beneficial use, a listing of examples, which would indicate
5 to me that that phrase, destruction without beneficial use,
6 stands on its own because of the way it's described.

7 I mean, I can see where there is problems either
8 way, but I think that's the better reading of it.

9 COMMISSIONER KESSLER: Ms. Orth, do you have any
10 thoughts on that?

11 HEARING EXAMINER ORTH: Let me unmute, sorry.
12 No, I -- I'm sorry, I was waiting for Mr. Moander to, to
13 offer his interpretation. I don't.

14 CHAIRWOMAN SANDOVAL: I mean, that's how I
15 initially read it, but I'm an engineer, not --

16 COMMISSIONER KESSLER: I'm not really sure
17 how -- I guess I just have concerns about unnecessary or --
18 I don't really have unnecessary or surface loss (unclear)
19 but then destruction of without beneficial use (unclear).

20 CHAIRWOMAN SANDOVAL: Mr. Moander, did you say
21 that there were examples somewhere?

22 MR. MOANDER: Yes. So if you -- where I wrote
23 this whole run-on sentence is right at -- it says or any
24 product thereof, comma, so I broke these into two.

25 And so what we've got subsequently to that is

1 including the loss or destruction without beneficial use
2 resulting in evaporation seepage, so the way I'm reading
3 this here is this is a specific subsection of destruction
4 without beneficial use.

5 So we are seeing -- what I'm seeing here is the
6 phrase -- you know, this is really not a -- hopefully I
7 don't get in trouble for this -- this is a terribly drafted
8 piece of legislation because I see where Commissioner
9 Kessler is talking where we have loss or destruction again.

10 Now, in looking at this again, I can see where
11 Commissioner Kessler's reading makes sense because we have
12 loss or destruction twice, so even if that's disjunctive
13 they are clearly being viewed as similar or part of a whole,
14 so I think then that would mean Commission Kessler's
15 interpretation is reasonable.

16 COMMISSIONER KESSLER: It sort of sounds like you
17 are saying both readings could be reasonable.

18 MR. MOANDER: The reason I say that is I can see
19 this being argued both ways. Neither of them to me are
20 incredibly compelling, but I could see it being read both
21 ways and arguments made for that. Now the issue I think in
22 application, does it generate an absurd outcome or an
23 outcome inconsistent with any other section of either the
24 Act or OCC's regs. And in this instance are we concerned
25 about the use of just was it flaring proposed by WildEarth,

1 or is that -- am I off on that?

2 CHAIRWOMAN SANDOVAL: I mean the use -- I know we
3 are focusing on that, at least NMOGA had pulled the
4 underlying section. But then if we go further into the
5 definition, it does sort of list as examples, it says, but
6 including the loss or destruction without beneficial use,
7 and so it almost restates its intention there and it says,
8 including the loss or destruction without beneficial use.
9 It doesn't restate the excessive loss or the unnecessary
10 loss. Do you see what I'm saying?

11 COMMISSIONER KESSLER: Okay, yeah, yeah.

12 CHAIRWOMAN SANDOVAL: So that almost makes me
13 think the initial reading we had would be accurate.

14 MR. MOANDER: And that's the problem with this
15 drafting, you're right, because unnecessary or excessive is
16 not repeated in the same ways it is elsewhere in that
17 definition or in that subsection.

18 COMMISSIONER KESSLER: What are you looking at?

19 CHAIRWOMAN SANDOVAL: I was reading from right
20 70-2-3, I think.

21 COMMISSIONER KESSLER: Dash 3?

22 MR. MOANDER: Yes, 70-2-3, Sub B.

23 CHAIRWOMAN SANDOVAL: So the bottom half of that.

24 MR. MOANDER: I would caution that we don't
25 construe -- not that anyone has proposed it, but I think it

1 bears being said that we don't construe unnecessarily or
2 excessive to be surplusage since it appears to have been
3 removed in the second use of loss or destruction without
4 beneficial use, so I don't think we can claim it's
5 surplusage.

6 CHAIRWOMAN SANDOVAL: Okay, dumb question. What
7 do you mean by that?

8 MR. MOANDER: Words that are -- that can be
9 construed as not having any effect because it's excess
10 wording. In this case -- because that's sometimes what
11 people like will try to read a statute that way. And there
12 is no definition or case law I could find quickly about
13 unnecessary or excessive as used within this subsection.

14 COMMISSIONER KESSLER: So just to reiterate, Mr.
15 Moander, you are recommending we use the definition where
16 unnecessary or excessive be not modifying the description of
17 beneficial use? Sorry. What's your recommendation?

18 MR. MOANDER: I think my recommendation is, in
19 reading this over and over, I think that the unnecessary or
20 excessive applies to loss and destruction because they are
21 in a similar category, a loss or destruction and it does
22 appear --

23 CHAIRWOMAN SANDOVAL: But -- okay. Now I'm
24 confused.

25 MR. MOANDER: Because I'm having a hard time

1 making comments because of how this is written.

2 CHAIRWOMAN SANDOVAL: But if we take a step back,
3 I guess the piece that I'm now sort of concerned with is,
4 again, down further in that paragraph, they, you know,
5 however caused, loss or destruction without beneficial use,
6 however caused, of natural gas or any type or any form of
7 crude petroleum oil or any product thereof, but including
8 for loss or destruction -- they actually put a comma here --
9 without beneficial use resulting from evaporation seepage,
10 blah-blah, blah-blah, blah.

11 I guess my point or question, maybe both, is why
12 wouldn't -- if they intended for it to be -- if they
13 intended for it to read excessive destruction or unnecessary
14 destruction, why would they have not put that down?

15 COMMISSIONER KESSLER: They didn't put loss
16 either.

17 CHAIRWOMAN SANDOVAL: Loss is thrown in there out
18 of the blue now.

19 MR. MOANDER: Right.

20 COMMISSIONER KESSLER: So they lump together loss
21 or destruction in both the initial usage and the second
22 usage.

23 MR. MOANDER: Yes.

24 COMMISSIONER KESSLER: So I think that loss and
25 destruction go together and unnecessary or excessive

1 modified both loss and destruction.

2 MR. MOANDER: I think that's right here based on
3 this duplicate usage -- not duplicate but second usage.

4 COMMISSIONER KESSLER: Are we good?

5 CHAIRWOMAN SANDOVAL: Yeah. Great. We are going
6 to move on now, now that we have cleared that piece up.

7 COMMISSIONER KESSLER: So to recap, so the reason
8 I brought that question up is because we were talking about
9 flaring as being a category sort of unto itself, that it was
10 not -- did not have to be either unnecessary or excessive,
11 but I think that productive meaning of this is any type of
12 flaring that is waste must be unnecessary. It's not a
13 stand-alone type word, and that's where we were talking
14 about the controlled tanks.

15 CHAIRWOMAN SANDOVAL: Yes. Yeah, I think I
16 follow you. So I'm going back through some of the testimony
17 that was on tanks because I think the decision is either
18 venting or flaring from a tank waste.

19 Does venting and flaring from a tank of any
20 variety, controlled, not controlled, constitute waste? I
21 think what NMOGA is saying is it does not because it's low
22 pressure.

23 COMMISSIONER KESSLER: I think it does if it's
24 unnecessary or excessive.

25 CHAIRWOMAN SANDOVAL: So short -- I mean, what I

1 think is unworkable is a situation where you have to take
2 away the thousands of tanks individually out there, and each
3 company makes a decision, is that unnecessary or excessive
4 waste, I think that's unworkable.

5 I don't know how we would construct that thought
6 in a rule, and I think it would lead to a huge loophole,
7 potentially, because somebody could decide, nope, I don't
8 like -- I decided this is not unnecessary and/or excessive,
9 and therefore I am deciding it's not, and I think it would
10 put the Division in a --

11 COMMISSIONER KESSLER: -- pickle?

12 CHAIRWOMAN SANDOVAL: Yes, pickle. So I don't
13 feel like it's workable. So I feel like we have to make
14 sort of a holistic decision, otherwise it's going to be on a
15 case-by-case basis, and this is not workable in any rule.

16 COMMISSIONER KESSLER: Okay. So --

17 CHAIRWOMAN SANDOVAL: So I was looking at his
18 testimony. A lot of this happened on that same day.
19 Mr. Greaves talked about it, Mr. Smith seems to have talked
20 about it. One of the -- there were a couple of pieces of
21 testimony. Mr. Greaves at this point, and then there was a
22 question about the BLM service (unclear) sources.

23 For me sources would be a waste in that
24 regulation. And he explicitly says, "I'm not an expert on
25 the definition of waste." I guess there could be questions

1 as to BLM's waste definition and OCD's waste definition, but
2 Mr. Greaves explicitly says, "I am not an expert on the
3 definition of waste."

4 Let's see. He then says, all right -- so but
5 someone asks Mr. Greaves, I don't know who it is, actually,
6 "But you would agree that just because it can't be measured
7 with great precision doesn't mean it's not a significant
8 waste?"

9 Mr. Greaves responds, "Yeah, I'm not an expert on
10 the definition of waste, but I can -- I can say that your
11 approach is, is dependent whether it's waste or not is
12 different than whether it can be measured and accurately
13 determined."

14 They agree with that it is two separate things.

15 COMMISSIONER KESSLER: Yeah.

16 CHAIRWOMAN SANDOVAL: I'm just sort of going
17 through some other pages I marked that are pertinent to this
18 discussion.

19 COMMISSIONER KESSLER: It's significant it's
20 difficult to measure.

21 CHAIRWOMAN SANDOVAL: Right.

22 COMMISSIONER KESSLER: It's not beneficial --
23 there is no beneficial use; right? I think everybody on
24 that is trying to establish that it was beneficial use, so
25 it's necessary to operations. What day was that?

1 CHAIRWOMAN SANDOVAL: This is -- the one I'm
2 looking at is the 7th -- I sorry, the seventh day, the 12th.
3 I don't know what day that would be. I can't recall what
4 day he gave testimony.

5 COMMISSIONER KESSLER: Whose testimony is that?

6 CHAIRWOMAN SANDOVAL: I think they started
7 Tuesday afternoon and went into Wednesday. I can't remember
8 if they went into Thursday or not. Only half a day
9 Thursday.

10 COMMISSIONER KESSLER: Okay.

11 CHAIRWOMAN SANDOVAL: There is testimony from Mr.
12 Smith on the same day. It sort of goes along the same
13 lines, but it's more talking about why NMOGA wants to
14 exclude these five categories. And it really goes back to
15 the data quality in Mr. Smith's testimony, less about
16 whether or not it's waste.

17 It says, "In your opinion, will (unclear) report
18 under the five reporting categories under NMOGA be excluded
19 ensure to provide meaningful data capture not to a level of
20 accuracy that would be accepted for production accounting"
21 -- again we are talking about production accounting.

22 And they refer to one of the OCD exhibits, I
23 think 4A. It says, "One of the objectives of the rule is to
24 obtain complete and accurate measurements and reports of the
25 volume vented and flared.

1 "Will that be accomplished if operators are
2 required to report under those five categories?"

3 Basically Mr. Smith says, "I don't believe that
4 would meet that objective to obtain accurate measurements."

5 I feel like this conversation is more tying to
6 exclusion, less to the piece about waste, but more to the
7 piece about the rule as stated by the Division, which is two
8 different things. There was quite a bit of talk on that.
9 So much. So much.

10 COMMISSIONER ENGLER: Are we struggling to decide
11 if storage tanks controlled should be included in
12 uncontrolled.

13 CHAIRWOMAN SANDOVAL: We are struggling to decide
14 holistically if venting and flaring at tanks is not waste.

15 COMMISSIONER ENGLER: So then it should be,
16 should it not be reported? Should it not be that part of
17 the (unclear)?

18 CHAIRWOMAN SANDOVAL: Yes. I think that's the
19 case. And then depending on where we plan with that, then
20 we talk about controlled or uncontrolled, if they should be
21 reported, how, but we have to get past the threshold issue,
22 I think.

23 COMMISSIONER KESSLER: I'm still looking for
24 testimony that would say one way or another whether or not
25 it was either unnecessary or excessive.

1 COMMISSIONER ENGLER: I think you will find
2 testimony will go both ways.

3 CHAIRWOMAN SANDOVAL: It does go both ways.

4 COMMISSIONER KESSLER: So we have testimony in
5 different (unclear).

6 CHAIRWOMAN SANDOVAL: So at that point, I mean,
7 do we use our --

8 COMMISSIONER KESSLER: I think then we use our
9 technical expertise, or expertise from both of you with
10 technical expertise in the field to say whether or not and
11 why you believe that it -- the testimony from (unclear).

12 HEARING OFFICER ORTH: Madam Chair, this is
13 Felicia. Commissioner Kessler apparently is speaking away
14 from her microphone, and I can't hear her.

15 CHAIRWOMAN SANDOVAL: All right. Thank you.

16 COMMISSIONER KESSLER: Thank you for bringing
17 that up. I said at this point that I think the appropriate
18 thing to do with respect to whether or not the Commission's
19 (unclear) venting or flaring constitutes waste because it's
20 either unnecessary or excessive.

21 There is testimony, it looks like, both
22 directions from both the Division witness and from NMOGA's
23 witnesses, so I think what's appropriate to do is to ask the
24 technical members of the Commission to use their expertise
25 to decide whose testimony or expert (unclear) -- did that

1 come in clearly, Ms. Orth?

2 HEARING EXAMINER ORTH: It did. It did. Thank
3 you, Commissioner Kessler. And I think you might be
4 referring to the Division testimony that went to their view
5 on whether it (unclear) which depended really on whether
6 there was technology available, right, to not waste it.

7 I think we have heard similar testimony from
8 others, and so I can help you look for that if you would
9 like, but that's my memory of the Division's position on
10 that.

11 CHAIRWOMAN SANDOVAL: If you have that, that
12 would be helpful. This is sort of again looking at
13 Mr. Smith's testimony.

14 I asked the question, "So what you're saying is
15 because there may be some uncertainty it means it shouldn't
16 happen at all? There should be none of that information
17 because there is a level of uncertainty?"

18 Mr. Smith goes into, again, what are the
19 uncertainty pieces? Basically high pressure sources can be
20 more accurately estimated or measured and (unclear). If we
21 add the well pressure sources, it causes problems.

22 I asked -- again, we are talking -- I say
23 something along the lines of there seems to be a lot of talk
24 about production accounting. And I asked what the bar is
25 for production accounting.

1 And ultimately there is a lot of talk, but there
2 was actually no response, which I recognize in my next
3 question when I said, "I still don't think you have answered
4 the question. What is the bar for production accounting?"

5 And he says, "I, I don't know that I have that
6 particular answer." I'm sure if -- he refers to a Ms. Perez
7 who I think I asked the exact same question to and never got
8 an answer.

9 But I feel like most of the testimony here is
10 very much tied to low pressure sources, not to the
11 definition of waste, but to the Division's intent what the
12 rule should accurately -- to get accurate information and
13 numbers, and I am not really seeing the testimony to
14 (unclear) to really solidify for me that it's not waste.

15 There is a lot of testimony that, you know, maybe
16 the numbers are slightly inaccurate, but there is really not
17 a lot of testimony here as to it's actually not waste. I
18 don't know. I'm looking -- I'm like, I'm lost in my own
19 mind here.

20 That's where I'm coming out here is like there's
21 a lot of testimony around accuracy of data and how that is
22 one of the five categories should be excluded, but there is
23 not a lot of testimony as to why those five categories are
24 not waste.

25 COMMISSIONER KESSLER: I agree with you. I think

1 on the contrary there was Division testimony and testimony
2 from the witness for Climate Advocates that emissions from
3 tanks are significant. And in the absence of testimony the
4 other way, I mean, I'm inclined to believe there's
5 sufficient testimony on the record to indicate that it's
6 waste.

7 COMMISSIONER ENGLER: What were the five?

8 CHAIRWOMAN SANDOVAL: Yeah, those were the five
9 categories that we basically were talking about, the
10 pneumatics, the tanks, thief hatches, they sort of generally
11 talk about them in a lump in a lot of ways. They did break
12 out pieces, but most of the testimony was all centered
13 around, I don't know, you know, about the accuracy of
14 measuring or estimating it. There was very, very little
15 testimony about were they excluded because they were truly
16 not waste.

17 COMMISSIONER KESSLER: Right. Okay.

18 COMMISSIONER ENGLER: So your storage tank, your
19 thief hatches, pneumatics, that's three. What's the other
20 two?

21 CHAIRWOMAN SANDOVAL: It's the downhole
22 maintenance -- hold on -- G(2) -- some day I'm going to be
23 able to automatically track page numbers. Okay. It's
24 downhole maintenance, manual liquids unloading, uncontrolled
25 storage tanks, pneumatics and thief hatches, five.

1 And I would say that I think this -- I think what
2 I'm saying right now not only really accounts for tanks, but
3 really for all the other topics. So I don't believe there
4 is adequate testimony to really determine that they were not
5 waste, except for pneumatics defined as otherwise, that they
6 were of beneficial use, so that's an outlier.

7 Now, thief hatches, sort of along the tanks
8 conversation, I think absolutely if a thief hatch is left
9 open, that is unnecessary and/or excessive loss. That's
10 thief hatches did not meet the (unclear).

11 COMMISSIONER KESSLER: That was not necessary.

12 CHAIRWOMAN SANDOVAL: It's definitely not
13 necessary, and I guess when you are looking at waste, it
14 doesn't have to be unnecessary and excessive, it has to be
15 unnecessary or excessive.

16 COMMISSIONER KESSLER: Certainly.

17 CHAIRWOMAN SANDOVAL: So I would definitely say
18 that the -- that is a problem -- typically what happens is,
19 why a thief hatch is left open is (unclear) he's got to
20 gauge the tanks, opens the thief hatch, does his thing,
21 either forgets -- I would hope it's the more forget part to
22 go back up and close that thief hatch, as opposed to is just
23 lazy and doesn't go back up and climb the ladder and shut
24 it.

25 But it can be unfortunately relatively common, so

1 these vapors in the tank are just coming out. And I also
2 think that that is not only waste, but that is a safety
3 issue.

4 And sort of, okay, could go towards -- sort of
5 also goes to some of those prevent waste, protect
6 correlative rights, and help protect health and environment.

7 Dr. Engler, where do you -- where do you line up
8 on this?

9 COMMISSIONER ENGLER: Well, I guess, at this
10 point I'm trying to determine just one thing. One of them
11 is routine downhole maintenance during operation is
12 (unclear) so right now it is G(2)(d) is considered part of
13 the waste to be reported.

14 There is no testimony, actually very little if
15 any how much waste that occurs or if that is a waste
16 relative to, you know, the other side of (unclear). So it's
17 included in this reporting and that's part of the loss.

18 Again, I will separate or ignore the question of
19 accuracy of measurements because that's going to be
20 somewhat (unclear). I can't envision how I would do that
21 other than vented or flared, I guess. (unclear).

22 COMMISSIONER KESSLER: So I think that what we
23 can come back to is there is no confusion that it's
24 necessary on a tank for a thief hatch to be left open.

25 COMMISSIONER ENGLER: Well, the thief hatch, I

1 don't have a problem. I understand that.

2 The thief hatch, I will pass. And actually I'm
3 thinking more about the storage tanks. I kind of want -- I
4 kind of like what OCD, the Division has put together. They
5 have uncontrolled storage tanks. Remember the goal here is,
6 one thing is that's going to stay (unclear) they want to
7 reduce tanks.

8 The second thing is, if you (unclear) then that
9 generates again a high part of super sense which are high
10 especially maybe for pollution, right, to reduce.

11 So I kind of feel like OCD is right on that side,
12 and actually I also could go, on the controlled storage
13 tanks, again, the Division's take on that was that since
14 they are already controlled, your emission rate would be
15 captured for beneficial use to destroy or flare, one could
16 argue that flaring should be accounted for in the two
17 percent for reporting.

18 Again, I think I'm going to defer to the
19 Division's take on that, that we don't want to account for
20 that at this point with the idea that the both (unclear).
21 That really is what the Division has prepared or put
22 together. They are not agreeing to have control for
23 (unclear) or part of it.

24 CHAIRWOMAN SANDOVAL: I guess I don't understand
25 that, though. Why if -- why, if we are considering flaring

1 for other reasons waste, why would flaring associated with
2 controlled storage tanks not also be waste? That doesn't
3 make sense to me.

4 COMMISSIONER ENGLER: It is -- there is no -- as
5 far as I can remember, there is no testimony of why
6 (unclear).

7 CHAIRWOMAN SANDOVAL: I think -- was it David
8 McCabe who spoke about it, or one of the other Climate
9 Advocates. Also I am looking at NMOGA's methane (unclear).

10 COMMISSIONER ENGLER: That also includes tanks.

11 CHAIRWOMAN SANDOVAL: Yeah. If they have it on
12 seven percent of the total, so it's not the highest, so --
13 but here's total for New Mexico, 61 percent was the highest.
14 19 percent unloading equipment, 9 percent -- it just says
15 liquids -- I don't know, I don't know what that means --
16 seven percent is tanks, four percent is other.

17 Now I would caveat that if you were -- if there
18 are other graphs or charts, sorry, if you bring it down to
19 Permian versus San Juan, in the Permian tanks account for 19
20 percent, which is an appreciable amount.

21 COMMISSIONER ENGLER: But they don't say if it's
22 controlled or uncontrolled. It's just tanks.

23 CHAIRWOMAN SANDOVAL: It doesn't -- I don't think
24 it breaks it out in the (unclear) for me.

25 COMMISSIONER ENGLER: I would say, to go back to

1 your concern, I think you are quite right, so maybe what we
2 should be looking at is, you know, G(2)(f), either we are
3 going to say storage tanks, and either controlled or
4 uncontrolled, and I guess we will need to provide a
5 definition for it --

6 CHAIRWOMAN SANDOVAL: Well, okay, I

7 COMMISSIONER ENGLER: -- on that.

8 CHAIRWOMAN SANDOVAL: I guess the way I see it is
9 we decide about tanks. I don't see the distinguish being a
10 factor between a controlled or uncontrolled tank. I see
11 tanks.

12 So I feel like whether -- if we decide that
13 venting and flaring from tanks is a waste, then that applies
14 to all tanks, be it controlled or uncontrolled. And then we
15 will have to decide, if that's the way we go, then we have
16 to decide how to craft that language.

17 But in my -- I guess I just cannot, in my brain,
18 like on this practical technical side how, how it's
19 different. I just cannot get my mind there. i don't feel
20 like there is enough credible testimony from the Division as
21 to why it was different, but Climate Advocate definitely put
22 on a strong reason to not include that. So that's where I
23 am. But I don't -- if we decide tanks -- if we decide tanks
24 are waste, which are sort of where we are leading up to --

25 COMMISSIONER KESSLER: (Unclear). We are leading

1 up to the destruction; right? Is there a reason it's
2 necessary from the testimony?

3 CHAIRWOMAN SANDOVAL: The testimony from NMOGA in
4 my mind did not provide a compelling reason for how tanks
5 are not waste. It provided compelling reasons in some
6 places, sort of -- well, actually I will walk back that
7 statement. They provided some justifications as to why it
8 is hard to model or measure or et cetera.

9 I do not feel like they provided strong
10 justification as to why it is not waste, and therefore I
11 defer to the Division's testimony on why it was included
12 from the get-go.

13 But then my point of struggle is, I don't see the
14 definition -- I don't see the distinguishing factor between
15 a controlled and uncontrolled tank other than the fact that
16 one is venting and one is flaring, but those are both waste
17 under the construct of this rule. So if we decide that
18 tanks are waste, then I think both types of tanks are waste.

19 COMMISSIONER KESSLER: Okay.

20 COMMISSIONER ENGLER: I agree. Mr. Leonard,
21 through his testimony, he had diagrams --

22 CHAIRWOMAN SANDOVAL: A good process for that.

23 COMMISSIONER ENGLER: Yes, where he was again --
24 I think, I don't know if he was asked the exact question,
25 but I do believe he was trying to set straight in those

1 diagrams, and there was several of them. The idea was that
2 in a facility that's under control you're basically under
3 pressure. So the system is built on (unclear) whatever is
4 there, usually it's a control system, or, even according, to
5 this, flaring.

6 CHAIRWOMAN SANDOVAL: It could be flaring.

7 COMMISSIONER ENGLER: So I think there are --
8 there may be some (unclear) question of the definition of
9 control that I don't mind. Uncontrolled I have a better
10 feel for, but, you know, when (unclear) so maybe you can say
11 they were uncontrolled, but I don't.

12 CHAIRWOMAN SANDOVAL: I guess I fail to see that
13 from my technical background.

14 COMMISSIONER ENGLER: You are the tech person.

15 CHAIRWOMAN SANDOVAL: I'm the -- I mean, sort of.
16 There's a different -- your configuration is going to be
17 different, yes, your piping configuration. There are
18 different -- it's going to be a different process flow, but
19 I guess, at the end of the day, I do not understand how, if
20 you are venting a tank that doesn't have a flare, then
21 that's waste, but if you are flaring out of a tank that has
22 a flare then that's not waste. I don't see how that's not
23 waste.

24 I see now -- I think the distinguishing factor is
25 that -- so a controlled storage tank source, typically it

1 refers to one of two things, either connected to a flare, or
2 it's going to be (unclear) or you came up with some crazy
3 new idea to (unclear). But that then goes -- if it's
4 connected to a heater treater, that goes to beneficial use
5 and then that may be taken out of this category entirely and
6 is lumped into a different category which is the beneficial
7 use category.

8 Now, if it is -- I think if we are talking -- so
9 maybe if we take away the term controlled storage tank and
10 we term it a flared storage tank, it seems we get rid of
11 that convoluted piece.

12 COMMISSIONER ENGLER: So if we go back to
13 G(2)(f), I believe what we are trying to get to is the word
14 control.

15 CHAIRWOMAN SANDOVAL: So -- okay. So if we are
16 deciding right here and now, like I -- I think I am a
17 proponent of, from the testimony or the lack of testimony, I
18 think that venting and flaring from a tank is waste.

19 But I'm making that statement based on the lack
20 of compelling testimony from NMOGA that it is not a waste.
21 And I do not believe the argument that it's hard to measure
22 or meter or estimate makes it not a waste, so I do not agree
23 with that. I think they are parallel halves. And the
24 Division, I think, presented us to why it could be a waste,
25 as did Climate Advocates presented why a particular

1 controlled storage tank.

2 So I believe, based on the testimony and evidence
3 that we have that venting and flaring from a storage tank,
4 be it connected to a flare or not, is a waste. And if
5 that's what we come to the agreement on, then I would -- I
6 think the cleanest way to do this would be to just get rid
7 of the word "uncontrolled" and just turn it to storage
8 tanks. So you report your venting or flaring for storage
9 tanks.

10 And if it's routed to a VRU and put back in the
11 process, then that goes to beneficial use, I think, or it
12 just doesn't even -- it's not even in the equation. It is
13 not even in the equation to begin with because that is not
14 waste. That's where I am. Where are you guys?

15 COMMISSIONER KESSLER: I think that's (unclear)
16 rationale.

17 CHAIRWOMAN SANDOVAL: Dr. Engler?

18 COMMISSIONER ENGLER: (unclear) the
19 word uncontrolled.

20 CHAIRWOMAN SANDOVAL: Yes, I just want to make it
21 very clear, yes.

22 COMMISSIONER ENGLER: Can we move forward to the
23 next one?

24 CHAIRWOMAN SANDOVAL: Can you just clarify, do
25 you agree?

1 COMMISSIONER ENGLER: I'll agree with that, yes.

2 CHAIRWOMAN SANDOVAL: Okay, all right.

3 COMMISSIONER ENGLER: For now.

4 CHAIRWOMAN SANDOVAL: How about we take a break
5 and come back at 12:45, and we can soiree into downhole
6 maintenance and manual liquid unloading.

7 (Recess taken.)

8 CHAIRWOMAN SANDOVAL: Welcome back, everybody.
9 Okay. I think, as I said before, we are now going to soiree
10 into downhole maintenance and manual liquid unloading, which
11 is G(2)(d) and (e) on NMOGA's commentary, commentary
12 redline.

13 Dr. Engler --

14 COMMISSIONER ENGLER: Yes.

15 CHAIRWOMAN SANDOVAL: -- you said (unclear).

16 COMMISSIONER ENGLER: Okay, so the first one,
17 okay, cool. So G(2)(d) is routine downhole maintenance
18 operations (unclear) as I recall from the testimony and so
19 on, the documents, there wasn't really too much discussed
20 there other than I do believe that NMOGA wants to exclude it
21 as waste based on just venting; is that correct?

22 CHAIRWOMAN SANDOVAL: I mean, that was (unclear)
23 their entire case.

24 COMMISSIONER ENGLER: So there is -- I do have a
25 certain amount of -- there is a certain amount of space

1 involved there (unclear). Hopefully they want the space
2 back. Okay. What they argue is the way the terms of,
3 again, as defined here in black in OCD's exhibit and then
4 should be accounted for within the two percent, you could
5 also argue that this is routine maintenance work that needs
6 to be done to maintain the well's integrity for production,
7 so --

8 CHAIRWOMAN SANDOVAL: That would be covered in
9 (c), though.

10 COMMISSIONER ENGLER: Yeah, routine. Yeah,
11 routine repair and maintenance, but still, I mean, how do
12 you get around the request here that the Division says
13 it's (unclear).

14 CHAIRWOMAN SANDOVAL: It's part of the reporting
15 category that counts against?

16 COMMISSIONER ENGLER: It's part of the two
17 percent, I do believe.

18 CHAIRWOMAN SANDOVAL: I would have to look it up.

19 COMMISSIONER ENGLER: So, you know, I don't -- I
20 guess I have nothing against the way it's put together, it
21 builds a certain amount of, you know -- difficulty, I'm
22 just (unclear).

23 CHAIRWOMAN SANDOVAL: So I think we -- I feel
24 like we do have to be consistent if we are not concerned
25 about difficulty in estimating, et cetera, in the other

1 categories -- okay. I'm not going to say we are not
2 concerned about it, but it's not a basis for exclusion.

3 COMMISSIONER ENGLER: The manual liquids
4 unloading, it was --

5 CHAIRWOMAN SANDOVAL: Also I think that came up
6 in the proximity issue.

7 COMMISSIONER KESSLER: Yeah, that was Mariah
8 Davis.

9 COMMISSIONER ENGLER: That's correct.

10 CHAIRWOMAN SANDOVAL: We didn't have the
11 differential --

12 COMMISSIONER KESSLER: Yeah, sort of --

13 CHAIRWOMAN SANDOVAL: Tangential, but different.

14 COMMISSIONER KESSLER: Yeah, that was discussed
15 in the testimony.

16 COMMISSIONER ENGLER: That goes back to OCD's
17 Exhibit 2C, D(2), venting and flaring during production
18 operations. And that's D(2)(b), operator on (unclear). And
19 then going back to G(2), manual liquid unloading, what's the
20 argument there? Is it the same as before?

21 CHAIRWOMAN SANDOVAL: I'm trying to see if there
22 are any exhibits.

23 COMMISSIONER KESSLER: Yeah, I mean with NMOGA's
24 specification, Page 8 of their current proposed application
25 to the rule explains -- downhole maintenance explains with

1 the same graph, they don't constitute specifically that they
2 can't be captured, it can't be accurately measured or
3 estimated.

4 CHAIRWOMAN SANDOVAL: Well, I think. (unclear)
5 their rule statute, but I'm thinking that (unclear).

6 COMMISSIONER KESSLER: So the Division recognized
7 that low volume and low pressure vents (unclear) not
8 considered waste and no critical (unclear) must be included
9 from reporting obligation. So I don't necessarily agree
10 with NMOGA's assertion.

11 (Reporter addresses audio issues.)

12 COMMISSIONER ENGLER: The argument about manual
13 liquid unloading not being a waste especially --

14 CHAIRWOMAN SANDOVAL: It seems to be.

15 COMMISSIONER ENGLER: -- they are saying it's not
16 now.

17 COMMISSIONER KESSLER: Yeah, that's correct, Dr.
18 Engler. Looking at NMOGA's justification, there is no
19 distinction in what they say here and what they provided,
20 there is no distinction between those three categories for
21 reasons that they said it should be taken out.

22 COMMISSIONER ENGLER: From what, from what I
23 recall, both the discussion on liquids unloading type and
24 was (unclear).

25 CHAIRWOMAN SANDOVAL: I'm just looking for H.

1 There's Exhibits like H1 through 10, and it mostly talks
2 about -- and it's framed the way it is, and I think
3 Mr. Davis would agree it's not really explaining why there
4 is (unclear) and then talks about the proximity issue. But,
5 yes, I agree. Again, we just were not provided in NMOGA's
6 case of testimony really any solid reasons why it is not
7 waste other than the measurement and the estimate issues.

8 COMMISSIONER ENGLER: The argument is not -- it's
9 not waste, but I think the argument has always been the
10 validity of the data should be excluded from reporting. And
11 that's what we can argue. That's what we can state, but the
12 argument -- our argument is that that's not the (unclear).

13 COMMISSIONER KESSLER: Right.

14 CHAIRWOMAN SANDOVAL: Right. Actually from
15 NMOGA's witnesses, Mr. Greaves in particular said that they
16 were not the same (unclear) that waste and the ability to
17 accurately measure or estimate were two different things.

18 COMMISSIONER KESSLER: Yes. That's right. And I
19 agree with (unclear).

20 CHAIRWOMAN SANDOVAL: I mean, so does that -- I
21 mean, that actually covers (d) and (e)?

22 COMMISSIONER ENGLER: Yes.

23 CHAIRWOMAN SANDOVAL: Wow, way to go. Okay. All
24 right. Do we feel like we have -- and it may come up in
25 other places on occasion, I think putting forward the issue

1 will likely come up, so have we -- do we feel comfortable
2 with where we landed on this?

3 COMMISSIONER KESSLER: Now I'm looking at H --
4 I'm looking at OCD Exhibit 6D through H, yeah, I mean I
5 think -- I guess what I'm saying is that we have worked
6 through many of the categories, but we have not worked
7 through all of them, because if you look at NMOGA's exhibit
8 here it has A through -- E and F were stricken, and then if
9 you turn the page you have E8, and then you may need to work
10 through those as well.

11 CHAIRWOMAN SANDOVAL: We could, yeah, we could go
12 ahead and do that.

13 COMMISSIONER KESSLER: Those are some of the more
14 strict -- I think those are better (unclear)

15 CHAIRWOMAN SANDOVAL: Dr. Engler, do you see
16 where we're at?

17 DR. ENGLER: I do.

18 CHAIRWOMAN SANDOVAL: All right. Why don't we
19 just hash that one out.

20 COMMISSIONER KESSLER: There was a lot of
21 discussion on that.

22 CHAIRWOMAN SANDOVAL: Yes, there was. And
23 basically -- so NMOGA's proposal was -- Climate Advocates,
24 so let's look at Climate Advocates. So many things here.
25 It looks like it was the Division's proposal.

1 COMMISSIONER KESSLER: Okay, yes.

2 CHAIRWOMAN SANDOVAL: And let's see how the
3 calculations were adjusted. It is in NMOGA's notice of
4 additional changes to proposal 8.G(3)(a) for OCD, it says --
5 let's see, the operator shall (unclear) natural gas,
6 beneficial use, emergency, vented or flared because it was
7 not suitable for transport. It was a subtraction category.

8 COMMISSIONER ENGLER: Just the item (i), (h),
9 (i), it might be the (unclear) concentrations of NOC, those
10 are excluded from the bottom loss, as they were mentioned.

11 CHAIRWOMAN SANDOVAL: Specific.

12 COMMISSIONER ENGLER: But the double I, the 02
13 concentrations that didn't have not (unclear) h double i
14 you're reporting, that does account to the bottom hole.

15 CHAIRWOMAN SANDOVAL: Except there is the
16 exception, and I think that exception is also written
17 somewhere else in the rules, and so this is just double
18 dipping.

19 COMMISSIONER KESSLER: When you (unclear) get
20 NMOGA's H, right, not (unclear).

21 CHAIRWOMAN SANDOVAL: I'm looking at OCD, wrong
22 list.

23 COMMISSIONER KESSLER: Comparing this to H from
24 the OCD exhibit excludes these two caveats for when -- for
25 exclusion for natural gas is not suitable for transportation

1 and specifies why and treats oxygen differently than from
2 that part of gas (unclear).

3 And NMOGA just writes the explanation that it's
4 not suitable for transportation. And I remember in the
5 conversation specifically related to how oxygen accounts for
6 50 percent.

7 CHAIRWOMAN SANDOVAL: So also the footnote in
8 Exhibit H, D, 8 D 4 L.

9 COMMISSIONER KESSLER: Hang on.

10 CHAIRWOMAN SANDOVAL: 4 L.

11 COMMISSIONER KESSLER: Yeah, yeah.

12 CHAIRWOMAN SANDOVAL: So I think that last part
13 sort of wasn't there in the original proposal. I'd have to
14 (unclear). I think this -- I think the Division added on
15 the, during commissioning of pipelines, to the double i to
16 make it more clear.

17 It is in another part of the rule, too. I mean,
18 that was one of the largest examples of when oxygen gets
19 into the line, I feel like a NMOGA (unclear) not
20 specifically exempted here. I do, I mean I see --

21 COMMISSIONER ENGLER: Why do the O2
22 concentrations -- have exceptions, so (unclear) why would
23 the O2 concentration be a hazard?

24 COMMISSIONER KESSLER: The reason the Division is
25 because the operator introduces oxygen into the gas based on

1 actions that they take, and NMOGA had been presented, for
2 example, the most prevalent, I think, was purging; right?

3 CHAIRWOMAN SANDOVAL: But in my mind, purging is
4 accounted for in the deduction.

5 COMMISSIONER KESSLER: Yeah. And I think it was
6 NMOGA or somebody else had a good example. I think
7 Mr. Greaves talked about like how oxygen could get in, and I
8 guess I don't have --

9 CHAIRWOMAN SANDOVAL: If you poorly design your
10 VRU system, you can introduce oxygen into the tank, and it
11 is a big problem in pipelines. And it can, if there is too
12 much O₂ in that line, the entire system to be blown out
13 could be a massive amount.

14 COMMISSIONER KESSLER: But it's a very low amount
15 of oxygen.

16 CHAIRWOMAN SANDOVAL: That's allowed.

17 COMMISSIONER KESSLER: Yes.

18 CHAIRWOMAN SANDOVAL: And so was it risk to
19 reward or somehow -- without hearing about the consequence,
20 if they don't design their operation to prevent that, it
21 could lead to a very large amount of venting and flaring.

22 I know in this rule there is a proposal in Rule
23 28, I think that it can lead to bring a portable flare out
24 to blow down your pipeline, but this, that's mostly if you
25 plan ahead.

1 I'm assuming this would be something totally
2 unplanned that they had to do quickly which means very large
3 volumes are vented from the pipeline and then probably
4 flared as a possibility.

5 So I guess all of that is there can be very low
6 ramifications for operators introducing oxygen into the
7 line. And if you purge and commission your equipment
8 appropriately, you don't have that problem. So there are
9 other operational places it seems like you could introduce
10 oxygen.

11 COMMISSIONER ENGLER: Does the word commissioning
12 show relation to a pipeline?

13 CHAIRWOMAN SANDOVAL: In my mind commissioning
14 means -- I guess it's probably not defined in here.
15 Actually, let's see if it's defined in here.

16 No. In my mind it doesn't just mean new
17 equipment, it means bringing back on the equipment that was
18 worked on, or replacing equipment. It could be new
19 equipment, but it could also be, if you're going to need to
20 work on your compressor or whatever it may be.

21 COMMISSIONER ENGLER: If there is subsequent left
22 over of existing equipment --

23 CHAIRWOMAN SANDOVAL: That should be captured.

24 COMMISSIONER ENGLER: -- that should be captured.

25 CHAIRWOMAN SANDOVAL: In my mind it absolutely

1 is. Now, if we need to provide some clarity on that if
2 that's the direction of flow. In my mind it's not only --
3 it does not only include brand new equipment. It means any
4 time you bring some piece of equipment previously down, back
5 up, because if you bring it down, you probably have to purge
6 it.

7 COMMISSIONER ENGLER: Purge.

8 CHAIRWOMAN SANDOVAL: Yes. And this doesn't say
9 commissioning of new equipment, it says of equipment.

10 COMMISSIONER ENGLER: I agree. That's why I
11 wanted clarity on the discussion. So venting the 02
12 concentration from lines or equipment by whatever means,
13 that that should be constituted as a blowdown, or that may
14 constitute waste regardless of how that occurs?

15 CHAIRWOMAN SANDOVAL: That's the question we are
16 trying to figure out. What I wish I understood slightly
17 better are what are the situations where it might happen.

18 COMMISSIONER ENGLER: Because that
19 might (unclear) there is a situation outside of the
20 exception that (unclear) valid purge, and this could
21 constitute waste.

22 CHAIRWOMAN SANDOVAL: I was wondering -- and this
23 would be more cumbersome for the Division, understanding
24 that, but I was wondering -- because I see the place that
25 like if you are not using operational best practices, and

1 you introduce oxygen, and now there is a massive blowdown
2 because of that, like that's a problem that should count
3 against you.

4 But in lieu of like defining each and every
5 scenario, I mean, should we include something that, that's
6 more like some sort of vetting process through the OCD or
7 like as approved or as reviewed or -- do you see where I'm
8 going? Do you see --

9 COMMISSIONER KESSLER: The thing is these
10 (unclear) as spur-of-the-moment venting or flaring
11 incidents, but if there is oxygen that's been introduced and
12 have to be vented or flared, and OCD is saying --

13 CHAIRWOMAN SANDOVAL: I guess (unclear) you have
14 to do what you have to do. Now the question is for
15 accounting purposes. I guess in my mind, is this more of an
16 accounting provision, or if the issue is accounting, the
17 question is does this count against them or not?

18 COMMISSIONER KESSLER: You're right.

19 CHAIRWOMAN SANDOVAL: And so it would be an
20 after-the-fact thing on the accounting side.

21 COMMISSIONER KESSLER: We could just say, unless
22 otherwise -- note the exception.

23 CHAIRWOMAN SANDOVAL: Unless otherwise approved
24 by the OCD or something?

25 COMMISSIONER KESSLER: Yes, I'm fine with that,

1 because I do think -- I mean I do think that they are --
2 there wasn't enough testimony presented by NMOGA that there
3 is times oxygen is introduced outside of commissioning. I'm
4 trying to find what's --

5 CHAIRWOMAN SANDOVAL: There was some talk about
6 what if the (unclear) but I also believe Mr. Greaves talked
7 about it without like a gas leak in the tank.

8 COMMISSIONER KESSLER: Yes, and there does seem
9 to be a point at which I would think that that did not con
10 -- that those specific incidents did not constitute waste
11 because they were necessary, but I -- and so I guess what I
12 would say here is I think adding some instruction and cover
13 a small number of incidents where the operator had
14 introduced oxygen for a legitimate purpose, that's not
15 just any -- should not count against them.

16 REPORTER: I'm sorry, Dr. Engler. I didn't hear
17 what you said. Can you repeat that please?

18 COMMISSIONER ENGLER: I said I thought it was
19 nitrogen that was used as a gas blanket, not oxygen.

20 CHAIRWOMAN SANDOVAL: And my response was it
21 could also be natural gas. But I don't know, I guess what
22 I'm not sure on is does it matter. I'm not sure it matters
23 which type of blanket it is, but my recollection of the
24 testimony is that eventually it's ends up oxygen --

25 COMMISSIONER ENGLER: The introduction of oxygen

1 into the system.

2 CHAIRWOMAN SANDOVAL: Yeah.

3 COMMISSIONER KESSLER: So I think that's a really
4 good approach, that the exception of (unclear)

5 CHAIRWOMAN SANDOVAL: Yeah, because I have seen
6 both cases of that. Okay. That was it.

7 COMMISSIONER KESSLER: Yes, (i) and (j), no
8 difference there.

9 CHAIRWOMAN SANDOVAL: I thought we did those.

10 COMMISSIONER KESSLER: Oh, yes, we did those.

11 CHAIRWOMAN SANDOVAL: That's what pneumatics and
12 thief hatches. Yeah. Okay.

13 COMMISSIONER KESSLER: And then that's it.
14 That's it.

15 CHAIRWOMAN SANDOVAL: Okay. So then I think
16 going back to my question before, do we feel comfortable
17 with sort of the construct that we have built around waste?
18 I think it could still come up potentially in one small
19 issue or another, but in general, do we feel like we have
20 built a construct around waste?

21 COMMISSIONER KESSLER: I think we decided for
22 each of the categories, and determined based on technical
23 evidence that specific categories either do or do not
24 constitute waste for the purpose of the hearing. I feel
25 good about where we are and how we have approached this to

1 ensure that it squares up with (unclear)

2 CHAIRWOMAN SANDOVAL: Okay. I agree. Dr.
3 Engler, are you --

4 COMMISSIONER ENGLER: I'm good for now.

5 CHAIRWOMAN SANDOVAL: Okay. Do we have any other
6 high-level issues we think should be discussed up front?

7 COMMISSIONER ENGLER: I do have a question, and
8 it's either going to be holistic or specific to an area with
9 regards to stripper wells, what is required for stripper
10 wells. I don't know whether you want to discuss that point
11 or just see where it goes and go forward.

12 CHAIRWOMAN SANDOVAL: My recollection of stripper
13 wells in the context of these rules is they have to assume
14 the gas capture requirements. There are a couple of small
15 exemptions. I believe one is they are not required to
16 retrofit flares at the same frequency as the non-stripper
17 wells. There is this exemption for pneumatic reporting
18 which is not specifically tied to stripper wells, but I
19 think the intent is there. And then the requirement on
20 measurement.

21 COMMISSIONER KESSLER: And AVO.

22 CHAIRWOMAN SANDOVAL: And AVO, yes. So I think
23 those are the pieces.

24 COMMISSIONER KESSLER: And measurement, I think,
25 is the most important of those, which would either (unclear)

1 stripper wells, but I think the Division ultimately
2 incorporated to ensure that the -- that that measure -- that
3 that estimation was independently verifiable.

4 CHAIRWOMAN SANDOVAL: Yes.

5 COMMISSIONER KESSLER: Which, for the sake of
6 after-the-fact auditing to ensure that stripper wells, even
7 though they are not required to measure, are held to a high
8 standard of accuracy.

9 CHAIRWOMAN SANDOVAL: Do you have something
10 specific on it?

11 COMMISSIONER ENGLER: Well, I do. I mean, when
12 I went through this there is (unclear) the flaring and flare
13 stack, AVO, but from what I could gather, all of the
14 (unclear) all of this is saying that it's stripper oil
15 wells.

16 CHAIRWOMAN SANDOVAL: Yes, I would agree with
17 that statement. I think that's how it's crafted.

18 COMMISSIONER ENGLER: And I guess we think about
19 the stripper oil wells should be (unclear) that I find it
20 somewhat cumbersome in making it too much for requiring sort
21 of the wells that are so low volume.

22 I could see where this would be problematic to
23 the point of possibly an action where they would look at how
24 you set that. And there could be, by the way, consequences
25 that might do that. So I think there needs to be a balance,

1 how to require information from small operators of stripper
2 wells, and still be able to (unclear).

3 CHAIRWOMAN SANDOVAL: Do you have any specific
4 suggestions?

5 COMMISSIONER ENGLER: Well, I was really -- when
6 I try and figured out what was required of them, I was
7 trying to figure out first that part. I'm not sure where to
8 go with that because many stripper oil wells are probably,
9 they are so low volume their biggest problem is having
10 somebody who will even take the gas from where they are at.

11 CHAIRWOMAN SANDOVAL: So but just recalling,
12 didn't a definition get kind of thrown in here at the last
13 minute -- look at the definition in 7.B, 27.7.B, isn't that
14 where they change it to gas production independent of oil
15 production. Right? They remove -- I think OCD removed the
16 stripper well definition hinging upon gas -- I'm sorry --
17 your oil production. It totally hinges upon your gas
18 production. So an oil well --

19 COMMISSIONER ENGLER: I don't think in many cases
20 oil wells (unclear).

21 COMMISSIONER KESSLER: I don't know if that's 100
22 percent true. I think that this is definitely something
23 that I stated concerns about, and the counter-prevailing
24 concern for me is the number of those stripper wells, at
25 least on state land, amount to at least half of the stripper

1 wells on state land.

2 So to not require the carve-out, more exceptions
3 for stripper wells would ultimately be disproportionately
4 the type that is specifically quite high emissions because
5 of the number of stripper wells there are there.

6 COMMISSIONER ENGLER: You have to be careful
7 here. There are a lot of stripper gas wells, and (unclear).
8 You need to split that number away from the number of
9 stripper oil wells. So -- and I think you are trying --
10 you've got to split that up. So you need to reduce down to
11 how many stripper wells, there's a less than the (unclear).
12 And I would suspect, you know, that again because there are
13 a lot of small operators given a lot of small oil wells, you
14 probably do have quite a few (unclear). Probably more than
15 (unclear).

16 The question though is, it isn't so much the
17 number of wells, but the volume. So if the volumes are so
18 small, you know, even if I have 100 stripper wells, you
19 know, 60 MCF a day, whatever, that's significantly less than
20 one facility that (unclear) to come up with. So the volume
21 (unclear).

22 COMMISSIONER KESSLER: I agree with you there.
23 And I think unfortunately what we are doing is getting away
24 from what was presented in the record, and because none of
25 that is in the record, I am not sure that we can --

1 CHAIRWOMAN SANDOVAL: There was actually quite
2 little talk about stripper wells from any of the parties.

3 COMMISSIONER KESSLER: And nobody provided data,
4 as far as I know, about the amount, the quantity of
5 emissions in a concrete way. I think there were studies. I
6 don't know if they provided you with more information to
7 follow up. I don't think they were satisfactory.

8 COMMISSIONER ENGLER: It was presented by
9 Dr. Singer, and I have a question. There is an exhibit from
10 NMOGA that they do not have first (unclear) on stripper
11 wells production data.

12 CHAIRWOMAN SANDOVAL: Which is the -- do you
13 remember the exhibit number?

14 (Overtalk.)

15 CHAIRWOMAN SANDOVAL: Was this one --

16 COMMISSIONER ENGLER: Yes. It was presented and
17 it was testified to. Again, for the record, good question.
18 There is a lot in the public comment case, particularly the
19 article, there are quite a few comments from people with
20 stripper wells saying the things that -- how their
21 operations are and how (unclear).

22 So I do remember reading, I think there is a
23 series all of that (unclear) that did indicate it is going
24 to be a very difficult issue. And then they give you
25 examples.

1 I do understand the concern, though, which again,
2 to me, it's a balance. We want to know how much is being
3 vented and flared, and we want to minimize that. I'm just
4 worrying about the danger of overly burdensome (unclear) you
5 will be putting these guys in a position of (unclear).

6 CHAIRWOMAN SANDOVAL: I think that we can credit
7 to Dr. Singer that the assumption that all stripper wells
8 are operated by small companies is not correct. Many of the
9 stripper wells are operated by the larger companies in New
10 Mexico. And so that's also another hard distinguishing
11 factor with something that other than like I could give you
12 a list there was no information presented on.

13 COMMISSIONER ENGLER: There was (unclear).

14 CHAIRWOMAN SANDOVAL: They are stripper wells.

15 COMMISSIONER ENGLER: So again, that information
16 is somewhat (unclear). But there -- a stripper well is, by
17 definition, could be a small operator or large operator --
18 not by definition.

19 COMMISSIONER KESSLER: Sure. We can agree on
20 that. What requirements are necessary? What provisions of
21 the rule?

22 COMMISSIONER ENGLER: I think it's going to come
23 back down to what a lot of that, you know, capable of
24 measuring, estimating (unclear) providing a report that
25 would say that there was an (unclear).

1 CHAIRWOMAN SANDOVAL: Well, I think one of the
2 things, if I could, I mean, which they are more than likely
3 excluded from, I mean, we don't have -- so we did get
4 testimony, and this on AVO, about it wasn't the AVO itself
5 that was the concern, it was the recordkeeping and reporting
6 aspects that were the concern.

7 And, you know, I think that (unclear) statement
8 for everything on the recordkeeping and reporting aspect, I,
9 without any data to know truly what amount of waste they
10 basically attribute to stripper wells, it's better to say we
11 should maybe press back on what's in here, and I'm not sure
12 that we should, but --

13 COMMISSIONER KESSLER: I guess I would say, it
14 goes to operator of stripper wells exemptions from
15 particular provisions of the rule they should have made
16 their case about what exemptions they thought they were
17 entitled to, based off of evidence underlying their support.
18 I don't think it should be up to the Division to ask for
19 that evidence or testimony. I don't see there's anything to
20 support that.

21 COMMISSIONER ENGLER: Yeah, I can't argue that.
22 I do feel like several times NMOGA said they were
23 representing all stripper wells. So maybe that was the
24 point there should have asked for more information or
25 argument about stripper wells.

1 CHAIRWOMAN SANDOVAL: But there wasn't.

2 COMMISSIONER ENGLER: That's all.

3 CHAIRWOMAN SANDOVAL: Okay.

4 COMMISSIONER ENGLER: I do have a --

5 CHAIRWOMAN SANDOVAL: Is it a (unclear) issue?

6 If so, we can get those out of the way. Yeah, there are a
7 handful of issues. I was just wondering if there were any
8 overarching ones that would check on multiple places in the
9 rule that would allow the stripper wells or the waste --

10 COMMISSIONER ENGLER: Not stripper wells. Would
11 there be a good time -- we talked about time line
12 discussions for reporting in general.

13 CHAIRWOMAN SANDOVAL: I mean, I could see that
14 being appropriate, either overarching or --

15 COMMISSIONER KESSLER: (unclear).

16 CHAIRWOMAN SANDOVAL: Are you going to start the
17 conversation, Dr. Engler?

18 COMMISSIONER ENGLER: I have a question. Let me
19 start with --

20 CHAIRWOMAN SANDOVAL: Are you just -- are you
21 looking at OCD's?

22 COMMISSIONER ENGLER: I have no idea. This will
23 be OCD's Exhibit 2C, again then G(2), what it is by
24 definition the open paragraph description.

25 CHAIRWOMAN SANDOVAL: Okay.

1 COMMISSIONER ENGLER: So I need help here.

2 CHAIRWOMAN SANDOVAL: All right.

3 COMMISSIONER ENGLER: So the wording for the
4 request, 2021 quarter report for third quarter is due
5 (unclear) fourth quarter is February 15 of 2022; correct?

6 CHAIRWOMAN SANDOVAL: That's what it says.

7 COMMISSIONER ENGLER: Is there something magical
8 about having that base line by the end of 2021?

9 CHAIRWOMAN SANDOVAL: I believe -- I don't know
10 if I would term it magical. I think the intent there was so
11 that there is a sort of two-prong approach. First prong or
12 phase or whatever you want to term it is to develop the
13 baseline. Second phase is to implement the baseline.

14 And so I think starting at the beginning of 2022
15 it would be -- I think it's set up so, you know, six months
16 of reporting, it gives you your baseline, and then you start
17 to actually have to hit your baseline.

18 COMMISSIONER ENGLER: I agree. It's just the
19 baseline is in phase two.

20 CHAIRWOMAN SANDOVAL: Yes.

21 COMMISSIONER ENGLER: Why would you only want six
22 months of baseline and not a full year as counsel all seemed
23 to --

24 CHAIRWOMAN SANDOVAL: I -- well, yeah, I think
25 it's an interesting point. Actually one, I don't, again,

1 think there was any testimony for this at all. I don't
2 think NMOGA argued that.

3 COMMISSIONER ENGLER: I think NMOGA was trying in
4 multiple places to make a point about time.

5 CHAIRWOMAN SANDOVAL: Do you recall where?

6 COMMISSIONER ENGLER: Well, no.

7 CHAIRWOMAN SANDOVAL: I guess I don't recall
8 that --

9 COMMISSIONER ENGLER: Well, I'm just curious
10 about what -- I understand the baseline, and I understand
11 the quarter-quarter. I don't understand the sixth line, the
12 line that's here for four seasonal variations to
13 include (unclear). I also don't understand why, at this
14 time, and this is February, so we are expecting four months
15 for the entire industry to get everything in place.

16 CHAIRWOMAN SANDOVAL: Four months --

17 COMMISSIONER KESSLER: (unclear)

18 COMMISSIONER ENGLER: Where they have to measure,
19 everything that has to -- they have to be reported by the
20 third quarter (unclear) I do not understand why we think
21 that they can get this in place in four months. And I do
22 not understand how the Division has yet to come up with a
23 format specified by the Division which is not done yet for
24 reporting.

25 CHAIRWOMAN SANDOVAL: I mean, I don't know how

1 they could if there is not a rule.

2 COMMISSIONER ENGLER: Well, there is no rule yet.

3 CHAIRWOMAN SANDOVAL: Right. So I guess I'm
4 wondering how you would develop a format if there is no rule
5 to develop the format.

6 COMMISSIONER ENGLER: The rule said July 1.

7 COMMISSIONER KESSLER: I think the second would
8 have to happen to allow (unclear).

9 COMMISSIONER ENGLER: On the Division side.

10 COMMISSIONER KESSLER: The only thing I would
11 note from NMOGA is to allow for an exception for good cause,
12 so they didn't change -- they didn't propose, they --

13 CHAIRWOMAN SANDOVAL: And I do recall from
14 the proposal this was the -- not the additional proposal,
15 but the original, if you recall, I guess, going up to the
16 version that was done for public comment back in July, the
17 pre-proposal, the Division did walk back the reporting
18 requirements and allow quarterly reports for the first
19 (unclear) when originally it was a monthly report. And so I
20 think they did sort of walk that back. And again, I
21 just -- I am struggling -- if it's not in testimony, how
22 do we manage that?

23 COMMISSIONER ENGLER: Well, I guess my concern is
24 implementation, and I have a lot of questions on
25 implementation at this time. If it's not in the record,

1 then so be it, and okay, but at least I made a point on the
2 record that I have questions about implementation.

3 CHAIRWOMAN SANDOVAL: Well, I mean, Mr. Moander,
4 do you have a --

5 COMMISSIONER KESSLER: I wonder if there is
6 anything preventing us from changing the time frame. I mean
7 it's not like we're -- I don't think that we're -- the
8 Commission understands implementation (unclear) and so even
9 if there's enough of a record that we can pull out calendars
10 and time frames that we can adjust that as we -- that's
11 different than creating or proposing testimony related to
12 stripper wells and (unclear).

13 MR. MOANDER: This is Mr. Moander. Yeah, I think
14 that there was a lot of testimony about implementation
15 concerns. So I think the Commission's got some latitude on
16 this rule on these deadlines.

17 CHAIRWOMAN SANDOVAL: Okay. Thank you.

18 The other thing -- so I totally agree, Dr.
19 Engler, I think there was also (unclear) I have to find
20 it -- so, for example, in 27.8.F(2), I'm like picking that
21 provision really mostly just knowing it's talking about --
22 it gives a date of May 31, 2021 as one of the provision
23 dates starting, and I think May 31 is in other places in the
24 rule, or June 1, or something like that, I guess I'm just --
25 like if I'm -- this is very speculative -- if I'm like

1 mapping out the time frame for this rule, assuming that the
2 Commission can come to sort of agreement in the next couple
3 of days on like what this should look like, assuming that
4 can happen, you know, we will still have to draft the final
5 order.

6 And then assuming the Commission were to approve
7 said final order, and that would have to be approved in a
8 hearing, maybe, again, like a month later. I don't know,
9 I'm guessing here. So mid March, unless the Commission did
10 it at a normally-scheduled March hearing which would be the
11 end of March, so assuming that that was approved say the end
12 of March, I mean, usually -- so then it would -- with all
13 the questions and somebody's appeal date, it sort of pushes
14 the time line out even further, but I feel like it's a month
15 and a half to two months after the Commission signs the rule
16 to actually get it implemented in the record -- not the
17 record -- let's just say mid March, mid to end of March, end
18 of April, end of May, we are already looking at when it can
19 get effective, again, assuming all of these pieces fall into
20 place --

21 COMMISSIONER KESSLER: And that's when Industry
22 would have the final sort of understanding of what
23 (unclear).

24 CHAIRWOMAN SANDOVAL: Well, I mean, I could argue
25 that they have -- after the final order is signed they have,

1 but yeah, it would be final.

2 COMMISSIONER ENGLER: But to some extent they
3 know now that they don't have to act until it's final.

4 CHAIRWOMAN SANDOVAL: Yeah, I mean if I were
5 coming from a different perspective, I'm not going to do
6 anything predicated on the rule that we have right now.
7 What we have right now, it's all influx now. Now what's
8 potentially a final order, that would be something that I
9 might look at and say, okay, maybe now I have a solid
10 understanding of what's going to happen, and this is what I
11 can move forward with. But I sure as heck wouldn't move
12 forward right now.

13 COMMISSIONER KESSLER: I guess this is all saying
14 that (unclear) July is the --

15 CHAIRWOMAN SANDOVAL: I wonder -- I am very, very
16 hesitant to push back the actual implementation of, of your
17 gas cap -- or of the gas capture percentages, I am very
18 hesitant to start pushing that back.

19 However I also understand the concerns. I sort
20 of wonder -- and what about like a world where they report
21 for six months from October, November and December would be
22 their first quarter. January, February and March would be
23 their second quarter. And then there is just a truncated
24 year to begin with. And then every other time is the same,
25 they still have to meet the gas capture requirement for that

1 first year, by the end of that year, it's just slightly
2 truncated.

3 COMMISSIONER KESSLER: (unclear) that's not
4 something (unclear).

5 CHAIRWOMAN SANDOVAL: It could certainly be
6 worse, the equipment going up and down, like freezes that
7 can cause equipment to shut down.

8 COMMISSIONER KESSLER: I mean, that's to the
9 point that NMOGA did not -- they proposed -- they proposed a
10 very (unclear) so what if operators just, you know, come and
11 tell the Division on a case-by-case basis that they're not
12 going to be able to deal with this time line?

13 COMMISSIONER ENGLER: I guess I'm going to
14 apologize to the Division about the chance they have to
15 speak to every operator.

16 CHAIRWOMAN SANDOVAL: Well, that's -- I almost
17 feel like that's going to be more chaotic. That's kind of
18 like the Division's fight to get in the data for operators
19 to move forward with.

20 MR. MOANDER: So from a practical -- this is
21 Mr. Moander. From a practical standpoint, looking at this,
22 it sounds like there is two approaches that are being
23 proposed here. One of them is you stick with the deadlines
24 and perhaps maybe tinker a bit with when the first report is
25 due, but the other side is sort of a per-se, by-incident

1 request by producers.

2 Something to think of here is which side of that
3 is going to generate more paperwork and complex paperwork to
4 ultimately get the efficacy of the rule realized. Having
5 done compliance before, you kind of have to pick your poison
6 on that, and I think that's what you are guys are contending
7 with here.

8 CHAIRWOMAN SANDOVAL: Yeah.

9 COMMISSIONER KESSLER: Director, I mean, I agree
10 with Dr. Engler that, you know, I appreciate both sides of
11 this wanting to get their rules, settling and wanting to get
12 information (unclear) and conversely, you know, kind of
13 (unclear) production accounting. It's challenging. So I
14 think my suggestion would be to stick with the dates that we
15 have and allow for exceptions.

16 COMMISSIONER ENGLER: I think that's the easiest
17 way.

18 CHAIRWOMAN SANDOVAL: Yeah, I think what you are
19 saying is keep all this; right?

20 COMMISSIONER KESSLER: Well, I saw in
21 NMOGA's proposal (unclear).

22 CHAIRWOMAN SANDOVAL: Sorry, keep all this as
23 is --

24 REPORTER: I'm sorry, Commissioner Kessler, I
25 can't hear you.

1 COMMISSIONER ENGLER: What was in NMOGA's
2 proposal?

3 CHAIRWOMAN SANDOVAL: It's on --

4 COMMISSIONER KESSLER: There is another --

5 CHAIRWOMAN SANDOVAL: Give me the page number.

6 COMMISSIONER KESSLER: Page 8 at the top it says
7 in B, five lines down, "Unless otherwise approved by the
8 Division beginning January 2022," and that's the only thing
9 that I see.

10 COMMISSIONER ENGLER: That's NMOGA's reply to
11 OCD?

12 COMMISSIONER KESSLER: Yeah. And then they have
13 their explanation under that that says "Undisputed evidence
14 was presented on the complexity of production accounting
15 systems and that it may take operators more than a year to
16 modify their systems to accommodate"

17 COMMISSIONER ENGLER: I was looking at it more,
18 you know, accounting, different pieces. I was just looking
19 at it more from implementation of field operation systems
20 (unclear) gathering information with regards to the
21 reporting part.

22 CHAIRWOMAN SANDOVAL: It's tough. It's really
23 tough. The training, like, you know, I'm sure the operators
24 are like -- well, from my own personal experience, it's not,
25 you know, the regulatory people who do it, it's having to

1 train all the operators out there on what they are supposed
2 to be looking for. I do understand this is actually quite a
3 heavy lift.

4 COMMISSIONER KESSLER: I want to say it's a
5 nuance tool.

6 COMMISSIONER ENGLER: Every storage tank has to
7 be modeled (unclear) I think that all that's got to be put
8 together.

9 CHAIRWOMAN SANDOVAL: Yeah, I would argue that
10 some of that is already put together in some form or
11 fashion, but, yes. So then going back to, yeah, I am
12 concerned about having requests from all 600 operators in
13 the state for some sort of exception by the Division on
14 timeline. I actually feel like it may be cleaner and
15 probably have better data quality to push it out say three
16 months.

17 We are going to absolutely have to, as we look
18 through the rules line by line, identify some of the parts
19 of May or June, whether that is -- I think it's too -- it's
20 too much influx to state, yeah, like the flare stack to the
21 June 1 date. Like I'm -- I think we have to look at those,
22 but on the reporting -- I know this is tricky.

23 COMMISSIONER ENGLER: If you get two quarters
24 (unclear).

25 CHAIRWOMAN SANDOVAL: Well, then it would

1 probably be two worst-case quarters.

2 COMMISSIONER ENGLER: (Inaudible.)

3 REPORTER: Excuse me, Dr. Engler, I need for you
4 to stay close to your mic.

5 COMMISSIONER ENGLER: Again, this would be your
6 baseline.

7 CHAIRWOMAN SANDOVAL: Yeah, and I guess I was
8 thinking of it like, let's pretend you've got your baseline
9 in the winter months which are potentially your worst
10 months, which means you are going to start to average things
11 back up in a more positive way with the next month which
12 would actually be beneficial which might help them attain
13 the gas capture percentage.

14 And like I see the point, but at some point this
15 rule has to actually start making -- they actually have to
16 start attaining that. The question is attain, and that they
17 attain the gas capture percentage so they can get this very,
18 very, very, very important aspect of this rule, actually
19 this prevention of waste portion of it, I am very hesitant
20 about pushing that part back.

21 I could potentially get behind three months. Six
22 months seems long. What I would -- I think if we are
23 talking about pushing it back three months, they would get
24 their data for six months, and then that first year of
25 obtaining data they have nine months instead of 12. And you

1 can tell me that's the worst thing ever, but I think we are
2 going to get --

3 COMMISSIONER ENGLER: I don't know --

4 CHAIRWOMAN SANDOVAL: -- better data quality.

5 COMMISSIONER ENGLER: I don't know that it's
6 going to be worst.

7 CHAIRWOMAN SANDOVAL: The second worst?

8 COMMISSIONER ENGLER: My thought about attainment
9 is if you can have a system in place that will capture the
10 lowest paying group quickly, you know, so there is speed
11 there, so if we can get where we can get it captured
12 fastest, that will be better.

13 CHAIRWOMAN SANDOVAL: What do you mean?

14 COMMISSIONER ENGLER: Well, you know, a lot of
15 these (unclear) many of these things there could be actions
16 taken to reduce their loss of equipment.

17 CHAIRWOMAN SANDOVAL: Yes.

18 COMMISSIONER ENGLER: But if you get too many
19 proponents, you have this (unclear) then there is this --
20 they are gathering so many things that are not necessarily
21 part of what we want.

22 So that's what's going to happen. If an operator
23 is going to look at what they can do, they are going to try
24 to get that part of it, they don't want to lose that aspect.
25 So for me it's not so much -- if you change it, it's not so

1 much the timing as to when, but then it's how can I get to
2 that 98 percent fast, not necessarily (unclear) that's
3 just a guess.

4 CHAIRWOMAN SANDOVAL: I also don't think we can
5 guarantee that all operators think that way.

6 COMMISSIONER ENGLER: Well, and I agree. I think
7 there is probably sufficient descriptions or actions in here
8 to try to persuade them.

9 CHAIRWOMAN SANDOVAL: I mean (unclear) everybody
10 in here?

11 COMMISSIONER ENGLER: I suppose not. Let's move
12 on to something that we can --

13 CHAIRWOMAN SANDOVAL: Well, that means we -- at
14 the end of the day, I want the implementation portion.

15 COMMISSIONER ENGLER: Well, I think it's a
16 part -- well, I guess since we're allowed -- since I guess
17 that counsel said we have latitude on it, that I just --
18 when I look at these timelines (unclear) and I take issue
19 with this time. I don't necessarily have a problem with
20 starting the two first, I really think you should get a full
21 year of data. I think that would be much more efficient.
22 So I see that, and I don't -- but I see that as an operator
23 to do what they have to do.

24 Again, I'm not seeing, and I know it wasn't
25 really any presentation by the Division, but when you look

1 at these things, I am not necessarily confident the Division
2 (unclear).

3 CHAIRWOMAN SANDOVAL: I'm sorry --

4 COMMISSIONER ENGLER: That's why I have this
5 concern in looking at the implementation as far as time.

6 COMMISSIONER KESSLER: The other thing that's
7 tricky about this is that there is no incentive for
8 operators to start capturing the data during the period of
9 time they're establishing their baseline (unclear) possible
10 so that subsequent years you have to do your testing. So
11 effectively that means there is another, however long the
12 data gathering period is, that's a lot of waste.

13 CHAIRWOMAN SANDOVAL: That's my concern. I'm
14 very concerned about pushing back the actual implementation.
15 Like I understand the implementation and concerns on both
16 sides, I think, the Division and the operators. But in my
17 mind I think it would be -- I cannot see pushing this out
18 even six months to gather more data because it's like data
19 is important, and I think, how much waste, how much extra
20 waste is going to be happening in that time.

21 And that's sort of the confines of what we are
22 looking at, I mean, that's the statutory piece that we have
23 to look at everything through, right, how much extra waste
24 are we going to have in that six months where it would start
25 to be attained at that gas capture full percentage

1 COMMISSIONER ENGLER: Well, I can argue on that
2 one a little bit. Let's just be as brief as possible.

3 COMMISSIONER KESSLER: Well, I think we should
4 say what we think it should be, and then what I'm worried
5 about a little bit is that we all think very different
6 things, so there is not going to be any sort of -- I think,
7 what, you know, it's not like the Division, I think there
8 needs to be some flexibility in the rule for good cause, and
9 I don't disagree that there needs to be, with this proposal,
10 there needs to be some ability for operators to say, "Here
11 is where we are. Here is the efforts we made. There is no
12 way that we can then even get back from our production time
13 by this week."

14 But, you know, I think there is a likely
15 (unclear) that if one operator does it, there is going to be
16 a lot of operators, so -- My, I think my proposal would be
17 to stick with the dates that the Division has in the rules
18 that allows them ability for good cause for an operator to
19 come and say (unclear).

20 COMMISSIONER ENGLER: So that would be the
21 position of NMOGA?

22 COMMISSIONER KESSLER: Well, they say it should
23 not be done (unclear). I don't necessarily agree with that.
24 I think that's fairly easy to get it. It makes for a lower
25 bar to be able to just say, "Hey, here's our good cause. We

1 would like to" --

2 COMMISSIONER ENGLER: So what happens if you get
3 100?

4 COMMISSIONER KESSLER: That's my big concern.

5 COMMISSIONER ENGLER: Maybe you won't.

6 CHAIRWOMAN SANDOVAL: (Inaudible.)

7 COMMISSIONER ENGLER: Well, I know what my
8 preference is. I'm willing to accept Jordan's proposal --
9 Commissioner Kessler's proposal where there is basically an
10 ability to present and get a hearing.

11 COMMISSIONER KESSLER: If we are going to have a
12 (unclear) the way it's written right now, it's through an
13 administrative action so there will be no hearing required.
14 (unclear)

15 COMMISSIONER ENGLER: That would be a hearing
16 through the examiners?

17 CHAIRWOMAN SANDOVAL: The Division.

18 COMMISSIONER ENGLER: Well, again, I apologize to
19 the Division.

20 CHAIRWOMAN SANDOVAL: Well, I'm -- I don't know
21 how the Division will manage that. I mean, it's not like --
22 I don't know the exact time frame, but it's not
23 instantaneous that they request a hearing and get on the
24 docket, it depends on how long. And like what boundaries
25 will be put on that, too? They could continue their case.

1 Like at what point can you not continue? You know, there
2 has to be some boundaries on that. You can't propose a
3 hearing and keep continuing it and never resolve it.

4 COMMISSIONER KESSLER: They could take a
5 compliance action to deny or something.

6 CHAIRWOMAN SANDOVAL: I just see that as truly
7 cumbersome, and, like, yeah --

8 COMMISSIONER KESSLER: Yeah, I don't disagree.
9 I'm just saying that I don't, as written, I don't.

10 COMMISSIONER ENGLER: The Division has already,
11 as what they have described here, a significant amount of
12 work, and it's a number of format forms and so on within the
13 next several months when all the information comes in, it's
14 probably on a quarterly or monthly basis, so, you know,
15 saying that having these hearings is going to be cumbersome,
16 that kind of goes to my point that I have problems that I
17 think the Division should have settings in terms of timing.

18 But again, as Commissioner Kessler pointed out,
19 there has not been sufficient, really, testimony or evidence
20 to, to basically challenge. I would not expect the Division
21 to challenge it because I just question whether they can
22 accomplish it. I guess NMOGA has provided some sort of
23 carve-out.

24 COMMISSIONER KESSLER: Let me be clear, I think
25 the carve-out part is drafted, which is why I'm suggesting a

1 hearing, that by suggesting a hearing, that is acknowledging
2 that is --

3 COMMISSIONER ENGLER: Well, right.

4 COMMISSIONER KESSLER: I mean.

5 COMMISSIONER ENGLER: We are going to get all
6 kinds of slack, probably, since the first quarter (unclear).

7 CHAIRWOMAN SANDOVAL: Yeah, I would not be
8 surprised, but I don't know all the technical expertise
9 within the Division and how it -- that is a very quick
10 implementation time line.

11 COMMISSIONER KESSLER: And then too, I mean, too,
12 when people ask for exceptions are they just like on that
13 quarter delay? Is everybody on a different schedule because
14 that (unclear).

15 CHAIRWOMAN SANDOVAL: That's where I was really
16 coming from where I was saying it's going to cause more data
17 quality issues. I can perceive some of these exception --
18 potential exception requests coming in is going to cause
19 more data quality issues than if we just said -- if we just
20 said you can start October, November, December, and that's
21 your quarter one; quarter two will be January, February,
22 March, and then you've got nine months to attain that, like
23 here we go.

24 In my mind that seems like a more manageable and
25 workable solution for both operators and OCD, and we have,

1 you know, I have a hesitancy, but like there could still be
2 a world where there is still that exception, but it would
3 happen during (unclear) it has to be a high bar, but I don't
4 know how we include that, too.

5 And I'm afraid if we include it, even if it's
6 three months later, it's going to be (unclear). So I almost
7 think we've got -- don't include that and extend it three
8 months, but I'm not on board with the extending the
9 attainment of the gas capture percentages any further out
10 than we already are. It just gives them three less months
11 to attain the first one, but more time up front to actually
12 get the data.

13 COMMISSIONER ENGLER: What's the implementation
14 for the first quarter (unclear).

15 CHAIRWOMAN SANDOVAL: They have three less months
16 to get whatever work is done to attain that percentage.

17 COMMISSIONER ENGLER: Or they're out of
18 compliance?

19 CHAIRWOMAN SANDOVAL: Or they're out of
20 compliance.

21 COMMISSIONER KESSLER: What if they have the
22 option of either using for one time frame or delaying three
23 months, but then only getting nine months moving forward?

24 CHAIRWOMAN SANDOVAL: That still puts the
25 pressure on the Division on the implementation people.

1 Not to say that it can't be done. I mean,
2 inherently the Division is saying it can be done. This is
3 their proposal and their time frame.

4 COMMISSIONER ENGLER: But it might be, if there
5 is -- if enough companies opted for it later, then it may
6 give the Division at least a little less burden if they can
7 start things slower and then we'll compare.

8 CHAIRWOMAN SANDOVAL: I actually disagree because
9 I think what the Division has said they were going to do as
10 part of their testimony is that they intend for the
11 reporting section to build an IT system that could be
12 reported in. And so whether you have one operator reporting
13 into that system or you have 500, that reporting system has
14 to be ready whether it's one person or the --

15 COMMISSIONER ENGLER: It's still going (unclear).

16 CHAIRWOMAN SANDOVAL: I would have to go look up
17 the Division's testimony.

18 COMMISSIONER KESSLER: (unclear) more on the
19 danger of delaying this for three months and basing it on
20 less data, basing the capture on less data.

21 CHAIRWOMAN SANDOVAL: Well, if we --

22 COMMISSIONER KESSLER: I thought it was six
23 months.

24 CHAIRWOMAN SANDOVAL: It's currently six months.
25 If we cut it by three months, then it would be three months.

1 Or there is the option of -- I mean, what about like --
2 maybe this is a dumb solution, but maybe not. If it's three
3 months, what if we cut each year by one month?

4 COMMISSIONER KESSLER: That gets tricky.

5 CHAIRWOMAN SANDOVAL: It could get tricky.

6 COMMISSIONER ENGLER: Your other idea is better.
7 I think if you want to allow a delay of a quarter, then you
8 have two quarters, like you said, one is basically the first
9 quarter, and then the caveat there is the first year is back
10 to (unclear).

11 CHAIRWOMAN SANDOVAL: Yes.

12 COMMISSIONER KESSLER: Everybody is on the same
13 track after a year. So whether you opt for the additional
14 quarter to get your --

15 COMMISSIONER ENGLER: There is no opting, we are
16 just delaying everything.

17 CHAIRWOMAN SANDOVAL: Except the attainment date.

18 COMMISSIONER ENGLER: Except the attainment date,
19 which is why your first year is (unclear).

20 CHAIRWOMAN SANDOVAL: Now -- okay. So what if --
21 I mean, we are complicating it, so what if we do that, but
22 instead of having this NMOGA clause, unless otherwise
23 approved by the Division, what if that clause is on the back
24 end. Like if you can't quite attain your whatever level in
25 nine months instead of 12, you have an opt -- there is some

1 sort of option that the Division could potentially give you
2 three more months, but I think it still has to be understood
3 that second year, somebody will have to kick it up
4 eventually, or maybe that just makes it all too cumbersome.

5 COMMISSIONER ENGLER: What you should eventually
6 in the first nine months (unclear) is if they, you know, the
7 -- so basically in the first year, to be in compliance, your
8 first you can get 9-12. If you can do that, you are still
9 in compliance.

10 That doesn't remove you from the fact that you
11 still have that left to the next year, but in terms of
12 compliance only, we'll allow you to get the 9-12, but you
13 still have to get all the whatever that is for -- so you
14 give that a little bit of relaxation on the compliance. But
15 the only implication I see with the design for the 12 months
16 is the compliance part.

17 CHAIRWOMAN SANDOVAL: Yes.

18 COMMISSIONER ENGLER: So if you're allowed to say
19 just give 9-12, then if it's not -- it's not saying, hey,
20 you are not responsible to do all that stuff, but it would
21 be there and give you a year.

22 CHAIRWOMAN SANDOVAL: Yes.

23 COMMISSIONER KESSLER: Yes, I think that's a good
24 suggestion.

25 CHAIRWOMAN SANDOVAL: Okay, can you repeat that

1 language?

2 MR. MOANDER: Might I require maybe a recap of
3 that from Dr. Engler?

4 COMMISSIONER ENGLER: So we haven't completely
5 agreed, but we are working toward converging on the baseline
6 data, instead of starting in the third quarter or July of
7 this year, we would push it off by a quarter.

8 So the fourth quarter of this year and the first
9 quarter of next year would be the baseline data that is
10 captured.

11 Now, under the implementation, you know, we want
12 to keep the kinds of things such that instead of having a
13 full year to reach compliance, they only will have nine
14 months.

15 Now, instead of penalizing for that shorter time
16 frame, the suggestion is that for compliance, they only need
17 to get 9-12, right, three-quarters to stay in compliance,
18 but it doesn't ofuscate them from not having to still meet
19 the requirements in the next year and so on.

20 MR. MOANDER: Thank you. I appreciate that,
21 Doctor.

22 CHAIRWOMAN SANDOVAL: That turned out to be a
23 tricky one, but I feel like that's a fair way to do it.

24 COMMISSIONER KESSLER: I agree. I mean, none of
25 this would affect the timing whether it's like all

1 requirements (unclear).

2 CHAIRWOMAN SANDOVAL: I agree. And if they do
3 what Dr. Engler suggests, then you do the things -- you get
4 the most bang for your buck up front, maybe then it will be
5 a good start.

6 COMMISSIONER ENGLER: I think we should strongly
7 encourage, the things that have the highest emissions, they
8 should (unclear) that would put the emphasis on the industry
9 to go forth. You will get (unclear).

10 CHAIRWOMAN SANDOVAL: Thank you, Dr. Engler.

11 COMMISSIONER KESSLER: So should we --
12 Mr. Moander, are you able to think of a way of crafting that
13 language, or should it be -- or should Ms. Orth do that?

14 CHAIRWOMAN SANDOVAL: This is probably a broader
15 question as we, I think, are going to start to shift gears
16 and like go more line by line piece, could either you
17 Mr. Moander or Ms. Orth like have the order copy and like
18 start -- put it up on the share screen and like, so as we
19 make changes, it's made in real time and we can see it, that
20 would be extremely helpful for this process.

21 MR. MOANDER: I was unable to find a word
22 document because the rules have been pulled off Westlaw and
23 some of the other places, a Word document that I could edit
24 in real time. So if someone has one, I'm happy to work on
25 it, but I don't have one available.

1 HEARING EXAMINER ORTH: So, Mr. Moander, this is
2 Felicia. Mr. Ames included Word versions of the Division's
3 final proposal so that the other parties could make their
4 proposed adjustments.

5 What we don't have, at least so far as I know,
6 are the NMOGA's or Climate Advocates' final proposals where
7 we really ought to just be working with one version, anyway.
8 So we could pull up Word from OCD's.

9 CHAIRWOMAN SANDOVAL: Do you have that handy?
10 Could you -- could we -- could you submit it to him, please,
11 Ms. Orth?

12 HEARING EXAMINER ORTH: Yes, absolutely. Hold on
13 a sec.

14 CHAIRWOMAN SANDOVAL: And maybe now would be a
15 good time to take a 15 -- a 15-minute break while we will
16 get that pulled up because I think we are ready just to
17 start to turn this session into line-by-line proposals, et
18 cetera. And if, if -- I think it's going to really help
19 speed the process if, Mr. Moander, you are sharing your
20 screen, and, as we are speaking you are adding the edits in
21 there in redline.

22 MR. MOANDER: Understood. As soon as I get it, I
23 will put it up.

24 CHAIRWOMAN SANDOVAL: So it's 2:20, so basically
25 we'll come back at 2:35. All right. Thanks everyone.

1 (Recess taken.)

2 CHAIRWOMAN SANDOVAL: Okay. Commissioners,
3 Exhibit 2B?

4 COMMISSIONER KESSLER: Exhibit 2B, and then I
5 have in front of me NMOGA's proposed redline and --

6 CHAIRWOMAN SANDOVAL: Wait. What is 2D?

7 MR. MOANDER: Should be --

8 CHAIRWOMAN SANDOVAL: Oh, this is the clean
9 version.

10 MR. MOANDER: Yes. If you give me a second I can
11 swap to the, quote, dirty version if that's what the
12 Commission would prefer. I better close that, that's mine.
13 Does the Commission prefer that?

14 CHAIRWOMAN SANDOVAL: I actually would.

15 MR. MOANDER: Okay. So give me just a second and
16 let me pull that together.

17 CHAIRWOMAN SANDOVAL: No problem. If you want to
18 unshare and then reshare, that's fine.

19 MR. MOANDER: Yeah, that will make this move a
20 little quicker, so give me one moment. I'm also going to
21 mute myself.

22 (Pause.)

23 MR. MOANDER: So it looks like the Word documents
24 I have are only clean, and I have PDFs of the track changes
25 format, so I don't believe I have a track changes version

1 for Exhibit 3C -- 2 -- yeah, 3. Yeah, so I would need
2 those, if those are available, which I don't know, I don't
3 believe they are.

4 CHAIRWOMAN SANDOVAL: Mr. Ames, are you on?
5 Would you be able to share with Mr. Moander?

6 MR. AMES: Yes. I am not seeing what Mr. Moander
7 is putting on the screen, but I can forward to him the Word
8 version of Exhibits 2C and 3C which are the mark-up, the
9 track change versions that the Division filed in PDF format
10 on whenever it was we filed everything.

11 CHAIRWOMAN SANDOVAL: That would be great. I
12 think that's additional -- by chance, Mr. Ames, does the
13 track change version include those additional changes?

14 MR. AMES: It does not, because our track change
15 versions 2C and 3C were filed before the additional changes
16 were filed on February 5.

17 CHAIRWOMAN SANDOVAL: No problem. Thank you.

18 MR. AMES: I have sent the Word version of that
19 notice of additional changes to proposed final rules that
20 was filed on February 5 to Mr. Moander in Word version.

21 CHAIRWOMAN SANDOVAL: All right. Thank you.

22 MR. AMES: Chris, did you receive the documents?

23 MR. MOANDER: Sure did. I'm finishing preparing
24 them right now. Thanks for sending those along.

25 (Pause.)

1 MR. MOANDER: Okay, I believe we are ready to go.

2 CHAIRWOMAN SANDOVAL: Can you make it bigger,
3 again, please?

4 MR. MOANDER: Oh.

5 MR. AMES: Chris, I see comments on the side. Do
6 you want me to -- yeah, thank you.

7 MR. MOANDER: I just realized that that probably
8 shouldn't be there.

9 MR. AMES: This is the final version, but in the
10 transmittal it must have reactivated the comments that were
11 buried before I .pdf'd it.

12 MR. MOANDER: I won't take a look, and I will
13 make sure that when I save this, I tidy that up for you.

14 CHAIRWOMAN SANDOVAL: Okay. Thank you.

15 All right. Here we go, guys -- oh, what
16 happened? Okay.

17 MR. MOANDER: No, no, no. I had to blow up a
18 window quick so I can keep the documents organized while we
19 are doing this.

20 CHAIRWOMAN SANDOVAL: Can you actually make sure
21 that all edits are turned on so we can see them?

22 MR. MOANDER: So that's where it appears there is
23 probably some privileged stuff in here that Mr. Ames was
24 just talking about. I -- here, let me look at something
25 quick just to make sure.

1 CHAIRWOMAN SANDOVAL: Thank you. Can you unshare
2 for a minute to weed all the comments out and then reshare
3 with all the other edits?

4 MR. MOANDER: I can try. Let me see if I can
5 pull that off. Unfortunately, Madam Chair, these are in
6 line changes, so if I delete the comment, it deletes the
7 change. But if we take a closer look at this -- hold on --
8 yeah.

9 Mr. Ames, so you know, the comments I'm seeing
10 are all from one individual, and it's not -- formatted not
11 highlight is the only comment. At least on this first
12 document. Does that pose any heartburn for you?

13 MR. AMES: No. I saw the one comment on the
14 right with Mr. Lapore's name. I'm wasn't sure how much was
15 down below. If the only comments are, are of the -- of that
16 nature, then it's not an issue, no.

17 MR. MOANDER: I'm going through it one more time
18 just to make sure if that's the case, and it is.

19 MR. AMES: Okay.

20 MR. MOANDER: I'll do that on the next time on
21 the other document when we get to that as well. Okay. I
22 think we're there now. Did I lose everybody?

23 CHAIRWOMAN SANDOVAL: No, we're here.

24 MR. MOANDER: It got awfully quiet.

25 COMMISSIONER KESSLER: All of the changes we are

1 seeing up here have already been accepted into OCD's
2 proposed final; is that correct? So the additional changes
3 we would be looking at would (unclear) but I think that's
4 fair to go to that.

5 CHAIRWOMAN SANDOVAL: Yes.

6 COMMISSIONER KESSLER: So the first one I am
7 seeing in all of my versions --

8 MR. MOANDER: You got it.

9 CHAIRWOMAN SANDOVAL: All right. We got this.
10 Oh, oh, what just happened?

11 MR. MOANDER: Tell me where you want me to be and
12 I will get there.

13 COMMISSIONER KESSLER: So the first proposed
14 change is on Climate Advocates' edition on air pollution
15 control.

16 CHAIRWOMAN SANDOVAL: So I'm wondering, do we
17 need to -- I mean, I think, should we still go through them
18 and validate if that's the Division's change.

19 MR. MOANDER: Yes, I believe that's going to be
20 required whether you accept the Division's change or any
21 change.

22 CHAIRWOMAN SANDOVAL: So in 19.15.27.2, I'm good
23 with the change from development to exploration.

24 COMMISSIONER KESSLER: Agreed.

25 COMMISSIONER ENGLER: Agreed.

1 CHAIRWOMAN SANDOVAL: We all agree. We got off
2 to a great start.

3 MR. MOANDER: Let me actually check something.
4 No. I'm going to have to annotate this. I can't just
5 accept that change, but that's fine, I will come back and
6 clean this up.

7 CHAIRWOMAN SANDOVAL: However you want to do it,
8 and tell us if we are going too quick.

9 MR. MOANDER: I will absolutely do that.

10 CHAIRWOMAN SANDOVAL: Great. Okay. And then,
11 yes, I think you're correct, Commissioner Kessler, the first
12 proposed changes are by Climate Advocate, and they (unclear)
13 A, for Air Pollution Control Act -- and maybe this is
14 another threshold issue we should discuss, but I think it's
15 quick.

16 I do not agree with adding that. OCD does not
17 regulate air pollution. And I think that language is
18 indicative of something that should be in an environmental
19 rule, which this is not. I think that --

20 HEARING EXAMINER ORTH: Madam Chair, I'm sorry to
21 interrupt. This is Felicia. I noted that the four
22 definitions that were proposed by Climate Advocates and EDF,
23 each of those definitions, proposed definitions is verbiage
24 that is used in their proposal in 8C on venting and flaring
25 during completion or recompletion operations.

1 So I really think it makes sense to look at 8C,
2 and then depending on what you do with 8C, let's say you
3 were to adopt their proposal in 8C, I think you would want
4 to define the terms used there.

5 CHAIRWOMAN SANDOVAL: Well, that's quite logical.
6 All right. Thank you, Ms. Orth.

7 COMMISSIONER KESSLER: Go to Page 25?

8 COMMISSIONER ENGLER: Climate Advocates.

9 COMMISSIONER KESSLER: Oh, okay.

10 CHAIRWOMAN SANDOVAL: I think my original
11 statement stands, or what I said a moment ago. I have very
12 strong concerns about -- well, I think there are multiple
13 concerns I have here.

14 One, we heard testimony from Mr. Bolander that
15 there could be some very real safety issues, particularly
16 with oil wells with the slugs of liquid and all of those
17 issues, and so this proposal during flowback could prevent
18 some big issues.

19 He recognized that Colorado had required it, but
20 said he did not agree that that was potentially the route to
21 go. I can't remember the name of the Climate Advocates
22 witness.

23 HEARING EXAMINER ORTH: I think you are thinking
24 of Tom Alexander, Madam Chair.

25 CHAIRWOMAN SANDOVAL: That's it. Thank you. And

1 he, you know, made some testimony, but at the end of the day
2 it sounded like all -- and his testimony was along the
3 lines of, well, it was feasible to do it in these different
4 basins, but at the end of the day, all of those basins were
5 gas basins, not oil basins, and there are different concerns
6 in those different areas.

7 Again, the flowback and the large volumes of
8 liquid that could come and provoke -- and be a venting
9 problem. So then in testimony from Mr. Bolander on the last
10 day during rebuttal, he recognized, yes, that there is a
11 differentiation between gas and oil wells, and it may be
12 feasible on gas wells where it's not feasible on oil wells.

13 And so in his testimony he indicated that it
14 might be feasible to add some statement in (C)(1), but if
15 there is the ability to capture during initial flowback --
16 if capture during initial flowback is feasible, then that
17 should be captured as well, which I believe is the change
18 now in (C)(1) proposed by the Division which would encompass
19 capturing for gas wells.

20 So this is a very long, long way of saying, I
21 have a lot of concerns on multiple levels, but the Climate
22 Advocates' proposal holds the largest theme in safety
23 tissues. But the second -- and this is a theme sort of for
24 both Climate Advocates and EDF's proposals that I think the
25 Commission should be wary of is references that are rooted

1 in an environmental outcome.

2 And when I say that, I mean like these references
3 to combustion efficiencies of 98 percent, I think there is
4 statutory authority for OCD to require gas to be flared as
5 opposed to vented, and there was testimony on that. I am
6 not sure how far that goes. If it goes far enough to not
7 only require flaring but also to insert, I mean, basically
8 environmental regulation phrasing into our rule, I think --
9 I'm very concerned about doing that and sort of overstepping
10 our statutory authority and appearing more like an
11 environmental -- sort of stepping into the environmental
12 regulation aspect as opposed to the waste aspect.

13 And I think we begin to do that when we start to
14 refer to these types of limits as well -- as well as, I
15 mean, I'm very, very concerned about having something in our
16 rule that, air pollution control equipment, first off OCD
17 does not regulate pollution; we regulate waste.

18 Could waste lead to pollution? You know, one
19 could make that argument, but that's not the jurisdictional
20 authority that I think OCD has, and I think we have to be
21 incredibly cognizant not to step over that line and then
22 walk into, I think as NMOGA has talked about quite a bit in
23 their closing statement, you know, then we become some sort
24 of emissions control process or whatever, however you want
25 to term it.

1 So this is a very, very long way of saying I have
2 a lot of concerns about the Climate proposal -- proposals,
3 Climate Advocate's proposals in C. I think that the OCD
4 proposal sort of meets -- poses, as far as it can in a safe
5 way, but again sort of more back as a threshold issue, I
6 very much have concerns about the terminology to anything
7 air pollution, emissions, et cetera, related, and I think we
8 may be stepping over the line when we start to put in those
9 type of -- those types of references.

10 COMMISSIONER KESSLER: I would agree with you,
11 and I think the Division did a nice job explaining why the
12 OCD has authority -- has statutory authority to be able to
13 regulate disposal of a waste product, at least venting and
14 flaring versus (unclear). So I agree we need to be
15 cognizant. I agree about the concerns with the safety
16 described for us by Mr. Bolander and NMOGA, so sort of a
17 concern that is addressed we have.

18 CHAIRWOMAN SANDOVAL: So we -- I'm sorry -- Dr.
19 Engler, where are you on this?

20 COMMISSIONER ENGLER: I'm good with getting rid
21 of air pollution control. I don't associate the reference
22 in it at all.

23 CHAIRWOMAN SANDOVAL: What about sort of in the
24 broad context of, since we are already talking about C --
25 well, let's -- let's address C when we get to C.

1 COMMISSIONER KESSLER: I thought we were in C.

2 CHAIRWOMAN SANDOVAL: I guess we are. My, my
3 proposal would be that we do not take any of the
4 recommendations from Climate Advocates in C. I think -- I
5 agree with the edition from the Division in (C)(1). I think
6 that when feasible, particularly for gas wells -- and maybe
7 my question is, should we specifically call them out to make
8 it very clear? Yes, that would be a question I have. Dr.
9 Engler, if you have comments on the technical side.

10 COMMISSIONER ENGLER: For what part?

11 CHAIRWOMAN SANDOVAL: (C)(1).

12 COMMISSIONER ENGLER: As far as OCD's?

13 CHAIRWOMAN SANDOVAL: Yeah.

14 COMMISSIONER ENGLER: OCD's (unclear) form, and
15 their edition was they want to reserve -- I think a lot of
16 this that we're seeing comes to -- I think it was really
17 prescriptive, and I think there is a level of detail here
18 that's prescriptive from Climate Advocate's (unclear) I
19 would also second what you said about, when I asked the
20 question, Mr. Alexander, his testimony was on gas wells
21 only, and it's not really relevant to New Mexico or what we
22 do. I feel like that was somewhat of a -- it wasn't a good
23 connection for me.

24 COMMISSIONER KESSLER: I apologize, can we --

25 CHAIRWOMAN SANDOVAL: We need to take a

1 five-minute break. Sorry, guys.

2 (Recess taken.)

3 COMMISSIONER ENGLER: We are all in agreement
4 that the (unclear) (C)(1) control equipment should not be
5 accepted. I think (C)(1) would lean towards (unclear)

6 CHAIRWOMAN SANDOVAL: It looks like NMOGA in
7 (C)(1) does not have a proposal. It's -- it just has the
8 previous language, but I think that nails down (C)(1). So
9 do we want to come back and do (C)(2), 3, et cetera.

10 COMMISSIONER ENGLER: Yes.

11 COMMISSIONER KESSLER: That's fine. I guess,
12 just to clarify, we don't specify if it's for gas wells or
13 it's not --

14 (Inaudible.)

15 CHAIRWOMAN SANDOVAL: Mr. Moander, can we go back
16 up. Okay. So OCD proposes to remove the or crude oil,
17 which I think is appropriate for this rule.

18 COMMISSIONER KESSLER: Yes, agree.

19 COMMISSIONER ENGLER: Agree.

20 CHAIRWOMAN SANDOVAL: All right. B, the original
21 B was struck and replaced with -- this was the proposal that
22 came in separately during the hearing. And I think NMOGA
23 has no comment on that. Climate Advocates and EDF have no
24 comments on that. I have no comments on that. I'm good
25 with it.

1 COMMISSIONER KESSLER: Yes, I would agree.

2 COMMISSIONER ENGLER: I agree.

3 CHAIRWOMAN SANDOVAL: C, NMOGA has no comment on
4 it. Climate Advocates has no comment.

5 COMMISSIONER KESSLER: I think this should be
6 accepted.

7 CHAIRWOMAN SANDOVAL: Yes, agree.

8 COMMISSIONER ENGLER: Same here.

9 CHAIRWOMAN SANDOVAL: Completion operations, this
10 was the proposal we discussed at the rulemaking hearing.
11 NMOGA has no issues with it, neither does Climate Advocates.
12 I am good with the change.

13 COMMISSIONER KESSLER: I think there (unclear) it
14 conforms to the (unclear) I don't remember exactly. Anyway,
15 I agree with the Division's proposal.

16 CHAIRWOMAN SANDOVAL: I think it's more solid,
17 too, than the previous language which was a little more
18 cumbersome.

19 COMMISSIONER KESSLER: Yes.

20 CHAIRWOMAN SANDOVAL: Okay. So completions
21 operation change is approved.

22 COMMISSIONER ENGLER: Just for clarity, again, I
23 like the way it is. It does connect to the definition of
24 initial flowback and separation. So approving --
25 essentially approving one you're agreeing with all.

1 CHAIRWOMAN SANDOVAL: I agree. We should still
2 look at the others and make sure we are good with them.

3 COMMISSIONER ENGLER: (unclear) They do that.

4 CHAIRWOMAN SANDOVAL: The next one, the updates
5 on lettering, that makes sense. Change from delineation --
6 actually before that we have the Climate Advocate's proposal
7 to include the definition of drill out.

8 HEARING EXAMINER ORTH: Again, Madam Chair, they
9 proposed a definition of drill out because that term is used
10 in 8.(C)(1). Same with flowback and flowback fluid.

11 CHAIRWOMAN SANDOVAL: Well, then let's go ahead,
12 because of all the reasons we discussed a moment ago, remove
13 those definitions. If we are not going to adopt those
14 changes then there is no need for those definitions.

15 COMMISSIONER ENGLER: That's also correct.

16 CHAIRWOMAN SANDOVAL: All right. Thank you, Ms.
17 Orth. Okay. Now, going to proposed G, change from
18 delineation to exploratory well makes total sense. It's
19 consistent within the rule. I'm good with it.

20 COMMISSIONER KESSLER: Yes.

21 COMMISSIONER ENGLER: Yes, (unclear).

22 CHAIRWOMAN SANDOVAL: G(1), the verbiage is
23 changed from drilled to completed. Good with that. That
24 makes more operational sense. Okay.

25 Emergency, I think we are going to have a fun

1 discussion here. There are a couple of rules in emergency
2 definition. Actually Climate Advocates and EDF does not
3 have a proposal for the rule or a proposed change from the
4 Division. NMOGA does. This is a point we talked about
5 this.

6 COMMISSIONER KESSLER: There is a timing issue
7 and (unclear) issue. As I remember there was a number of
8 hours that, that NMOGA wanted to change also the number of
9 times that they could have to get to a site or within an
10 area was an issue; right?

11 CHAIRWOMAN SANDOVAL: Yes. So NMOGA wants eight
12 hours instead of four. And I think actually probably the
13 more significant change is in 6. They want three or more
14 emergencies at one site, whereas the Division three or more
15 emergencies within a single reporting area, and the
16 reporting areas are basically north and south half of the
17 state.

18 I know there was talk on the last day that the
19 way it's written, (unclear) three, and this is more like
20 two, the way it's written three or four.

21 COMMISSIONER KESSLER: So the BLM's position that
22 this sort of emergency is significantly is a different thing
23 (unclear) 30-day period, that's significantly different.

24 CHAIRWOMAN SANDOVAL: Does it makes sense to
25 discuss the hour thing and the reporting area separately?

1 COMMISSIONER KESSLER: I think so, and I also
2 there is (unclear) including the referring specific area
3 and/or that, so, yes, hours, we are going to discuss hours?

4 CHAIRWOMAN SANDOVAL: Yes. We had a lot of
5 testimony on this, some of it helpful. I can't remember if
6 I'm -- is that something some operator needs to be able to
7 do in four hours, not all. And then there was -- we could
8 never quite pin down how many operators would shut things in
9 remotely, and they want to shut them in remotely is that,
10 you're going to go out, take a look at it, see what the
11 alternatives are, whatever.

12 COMMISSIONER KESSLER: (unclear) I think if you
13 look at it, I mean I don't --

14 CHAIRWOMAN SANDOVAL: Yeah, I agree.

15 COMMISSIONER ENGLER: What was that?

16 COMMISSIONER KESSLER: I said I'm fine with the
17 fact that it's -- they are going to take a look at whatever
18 is causing the problem, it's going to take a while. So if
19 you are located down south or wherever, then get out to that
20 site and like mobilizing and getting out there in four
21 hours.

22 CHAIRWOMAN SANDOVAL: And you can have the whole
23 field go down. So you need multiple (unclear) around.

24 CHAIRWOMAN SANDOVAL: But there is also like this
25 range of things and concerns about people getting -- it's

1 like if you can go out there and do it in two hours, do it
2 in two hours. If you can do it in four, do it in four. If
3 it takes you eight, okay. But it's like, if we give eight,
4 are people going to take all of the eight because they can,
5 and then that just leads to some more venting and flaring.
6 So I almost would like this to be, if you can do it, do it,
7 but I don't know how that's enforceable.

8 COMMISSIONER KESSLER: I would agree with that
9 because I think --

10 CHAIRWOMAN SANDOVAL: All right. How do you
11 implement that practically?

12 COMMISSIONER KESSLER: Unless they say something
13 like except for (unclear) but then, I think that can be
14 (unclear) have exceptions that are being requested are
15 really .

16 CHAIRWOMAN SANDOVAL: You know part of me is
17 like -- Dr. Engler, do you have any thoughts?

18 COMMISSIONER ENGLER: Well, that event (unclear)
19 identification and safety so I guess I don't want something
20 to be rushed because they only have four hours. So I guess
21 I would say eight. I understand what you are saying. Maybe
22 they will take the full eight. I just don't want the people
23 to rush and give four hours or something and they -- more
24 difficult cases there are. But if you're going back to the
25 testimony, there is very good argument on all sides why we

1 should deal with this -- or why four hours versus eight. I
2 can't say that's either one of those actually (unclear) they
3 both were very good. I could say that was heard (unclear)
4 but four or not I can, but I logically think say eight, yes.

5 That's the -- I do like your (unclear) of how it
6 would minimize their efforts, if you can do it in four, do
7 it in four. But I don't know how you either make that rule
8 or make it -- I have also been asked -- I don't know how to
9 do it.

10 CHAIRWOMAN SANDOVAL: Crafting that language is
11 tricky, and then actually being able to manage that in a
12 program.

13 COMMISSIONER KESSLER: It's almost like a credit
14 program or something like that which -- I think it's a
15 really good idea, but I don't think it will work here.

16 CHAIRWOMAN SANDOVAL: I think that would be hard.

17 COMMISSIONER ENGLER: Then again, they have
18 pressure and say let's get this done in four and they cut
19 that corner when really they should take eight. So again, I
20 will always default to that (unclear).

21 CHAIRWOMAN SANDOVAL: Yeah, I guess my mind goes
22 out in a lot of different cases. Like, if you have assets,
23 like literally, if you have new assets near Carlsbad or
24 whatever, and your nearest operator is in Midland, like at
25 what point -- and we are now giving you eight hours to do it

1 and your operator is in Midland, at what point should you
2 actually have an operator closer to those assets and
3 that's -- that would be a more prudent operations practice.

4 COMMISSIONER KESSLER: (Unclear) going to go
5 Midland. just because you're still -- even if you were
6 still in New Mexico, and you're pretty nearby, it can be a
7 while -- it can take a long time, especially with the Texas
8 line (unclear).

9 COMMISSIONER ENGLER: You can have people on
10 call, they will, I mean you can station them in Hobbs, but
11 they are still going to be an hour and a half away from the
12 (unclear)

13 You could have emergency people who are closer,
14 but it would still take an hour, hour and a half to get
15 there. I would go with eight hours.

16 CHAIRWOMAN SANDOVAL: Okay.

17 COMMISSIONER ENGLER: Or do you want 5 1/2?

18 CHAIRWOMAN SANDOVAL: Sorry. I'm just (unclear)
19 again.

20 I mean if we did something that said, the flaring
21 of natural gas for more than eight hours after notification
22 that is caused by an emergency of scheduled maintenance or
23 malfunction from a natural gas gathering system unless -- I
24 mean -- I don't know.

25 This can be remedied, that was terrible language,

1 but it's like I want it to be managed as quickly as possible
2 while being safe, but how do you write that?

3 COMMISSIONER KESSLER: You could put a comma
4 after or a malfunction of -- well, I mean, that's the
5 definition.

6 CHAIRWOMAN SANDOVAL: Yeah.

7 COMMISSIONER KESSLER: So what we are talking
8 about is more of a provision to address an emergency rather
9 than just like a --

10 CHAIRWOMAN SANDOVAL: (unclear)Especially since
11 we are writing in eight hours whatever time frame.

12 COMMISSIONER KESSLER: I just read it. I'm fine
13 with the definition section to try and say -- yeah, there's
14 limitation to try to add language requiring that the
15 operator resolve it as quickly as possible within definition
16 section.

17 CHAIRWOMAN SANDOVAL: Well, I mean, do we add in
18 a performance standard section?

19 COMMISSIONER KESSLER: Emergencies should be
20 resolved as as is technically feasible.

21 CHAIRWOMAN SANDOVAL: Okay. I think that's a
22 good stop, and let's do eight hours here, and then add
23 something from the performance standards section about
24 emergencies shall be fixed as soon as possible.

25 COMMISSIONER KESSLER: Okay. So then --

1 CHAIRWOMAN SANDOVAL: So this was talked about a
2 whole lot by -- apparently I'm terrible with names.
3 (unclear)Enterprise.

4 COMMISSIONER KESSLER: Yeah.

5 CHAIRWOMAN SANDOVAL: And that was -- are we
6 there -- rynerman, Paul Rynerman.

7 I think ultimately he said that recurring
8 equipment failure is not always operator negligence, was the
9 long and short of it, and they don't want that to always
10 count against them. And you know, rotating equipment
11 initially, I think some could be prone to recurring
12 equipment failure.

13 COMMISSIONER KESSLER: What I can't remember is
14 whether or not the objection is only that it's sort of
15 connected to operator negligence, or whether there is a more
16 particular evidence and testimony that he offered that it
17 could happen for legitimate reasons. That should be --

18 CHAIRWOMAN SANDOVAL: Let's see what NMOGA says,
19 86 of the transcript.

20 COMMISSIONER KESSLER: "Events or occurrences
21 (unclear) diagnostic and troubleshooting process are
22 complicated but aren't always (unclear) operator
23 negligence."

24 COMMISSIONER ENGLER: Won't the Division have to
25 be able to identify operator negligence? Is that a --

1 CHAIRWOMAN SANDOVAL: Yeah, I don't know how they
2 are going to do that. That's a high bar. I mean, that's
3 sort of, in my mind, almost the same as like demonstrating,
4 you know, what was it generally we were arguing about,
5 willing to -- willingness to --

6 COMMISSIONER KESSLER: Willful.

7 CHAIRWOMAN SANDOVAL: Willful negligence?

8 COMMISSIONER KESSLER: (unclear) Willful
9 negligence is a different standard than willful -- I can't
10 remember the --

11 CHAIRWOMAN SANDOVAL: Knowing and willful; right?

12 COMMISSIONER KESSLER: Yeah.

13 REPORTER: Commissioner Kessler, can I ask you to
14 speak up again?

15 MR. MOANDER: I'm just piping in again.

16 Mr. Moander here? So you are (unclear) negligence as
17 willful? Is that you what you are discussing here?

18 CHAIRWOMAN SANDOVAL: I mean, no. What I'm
19 saying is proving operator negligence practically can be
20 very, very difficult. So if you exclude including recurring
21 equipment failure, it leads to operator negligence, and
22 operator negligence, what would that practically be and how
23 is that proven?

24 MR. MOANDER: Generally speaking -- generally
25 speaking, I mean negligence is understood pretty good --

1 pretty consistently through legislative, administrative law.
2 I mean, that's where you have to show a duty, breach of
3 duty, injury, I mean that's a case within a case.

4 You could always misuse equipment, I mean
5 something that's more specific and isn't a legal term of art
6 makes it a lot like something that's based on a factual
7 scenario rather than having to assess a legal standard. So
8 that's why I'm something like misuse of equipment or
9 something along that line.

10 CHAIRWOMAN SANDOVAL: Okay. What about this
11 concept. So I -- I'm looking at the testimony, you know,
12 Mr. (unclear). What does recurring mean? And you know,
13 recurring means more than once. NMOGA, two times or ten
14 times, that's all he says about recurring. And then he sort
15 of walks through some of the situations where things could
16 happen. And I, from my experience, I -- I understand this
17 to be the case.

18 But at the same time, like what's that limit, so
19 I wonder if it makes sense to include something similar to
20 what we do in 6 where it's the operator's negligence,
21 including recurring equipment failure, you know, something
22 like that happens three or more times within a 60-day period
23 or another period, so put some sort of definition around it.

24 COMMISSIONER KESSLER: What I am thinking is this
25 is -- part of the problem is that, I remember this from

1 someone's testimony that there was a real objection to
2 equipment failure being associated with the operator. So if
3 we can bump it down a line, like five is operator's
4 negligence, 6 is recurring equipment failure including X
5 number of times in a time period.

6 CHAIRWOMAN SANDOVAL: I like that. Dr. Engler?

7 COMMISSIONER ENGLER: I was just waiting for you
8 guys to get there.

9 CHAIRWOMAN SANDOVAL: You were ahead of us
10 already?

11 COMMISSIONER ENGLER: Yeah, that's --

12 CHAIRWOMAN SANDOVAL: Did you hear that,
13 Mr. Moander. We want, on Line 5, we want the operator's
14 negligence and including, and then get rid of that, and then
15 recurring equipment failure on the next line in 6.

16 COMMISSIONER ENGLER: And 6 becomes 10.

17 CHAIRWOMAN SANDOVAL: 6 becomes 10. You can
18 clean that up later.

19 MR. MOANDER: Yeah, there's going to be a lot of
20 clean-up.

21 CHAIRWOMAN SANDOVAL: So then I think if we
22 figure out 6, we should match 5 to 6.

23 COMMISSIONER ENGLER: Six to 7?

24 CHAIRWOMAN SANDOVAL: Yes, yes, I'm sorry. So I,
25 I guess my question on 6, or 7 now, is that if the BLM gives

1 four, basically, we should change it from three or more
2 emergencies to four or more emergencies and mirror that.

3 COMMISSIONER KESSLER: Fixing it so we can
4 concur.

5 CHAIRWOMAN SANDOVAL: I think that language makes
6 sense for the OCD.

7 COMMISSIONER KESSLER: So would we be taking it
8 as unit by unit by the area, or do you want to leave it --
9 because this takes -- I mean, the equivalent of this is
10 apples to apples, it's exactly the same, but the similar
11 process would be to limit X number of emergencies in X day
12 time frame to X spacing units.

13 But I don't (unclear) a really big change from
14 that's (unclear) but I don't necessarily object. I don't
15 necessarily object then to more leniency, that's such a big,
16 it is a big --

17 CHAIRWOMAN SANDOVAL: I don't necessarily agree
18 with at one site, but seems, to me that seems in a very low
19 bar.

20 COMMISSIONER KESSLER: Yes, I agree.

21 CHAIRWOMAN SANDOVAL: And I get the Division is a
22 high bar, but is a high bar appropriate or does it need to
23 be tamped down. The testimony from NMOGA shows it's may be
24 too much.

25 COMMISSIONER ENGLER: (unclear) gridlock here.

1 CHAIRWOMAN SANDOVAL: It would be --

2 practically it would be an entire operation. There are not
3 many, if any, companies that operate in both (unclear).

4 COMMISSIONER KESSLER: Use as an example, I think
5 for state land, EOG is the highest, they have something like
6 600 some, so, you know, reporting areas. That is the
7 maximum.

8 CHAIRWOMAN SANDOVAL: And what -- I mean, what do
9 you think -- what was your spacing unit? What do you think
10 that was like? Like what do you think, how much?

11 COMMISSIONER KESSLER: A spacing unit had
12 multiple wells on it, but they are limited to one formation,
13 so that could be several two mile laterals that developed on
14 the --

15 CHAIRWOMAN SANDOVAL: I just feel that's still
16 too low, but -- so is there like a --

17 COMMISSIONER KESSLER: A medium one?

18 CHAIRWOMAN SANDOVAL: Like a medium one.

19 COMMISSIONER ENGLER: Keep going.

20 COMMISSIONER KESSLER: Yeah, let me think.

21 CHAIRWOMAN SANDOVAL: Do you have any
22 suggestions, Dr. Engler? I don't really want to draw like
23 an arbitrary line like a county or something like that.

24 COMMISSIONER KESSLER: But it's favors companies
25 that have multiple operations -- that have operations. I

1 mean, there are the companies that have a lot of them, and
2 could be, you know, disproportionately favored on average.
3 They could tie it to the site of the company.

4 CHAIRWOMAN SANDOVAL: I would be worried about
5 notice requirements for that.

6 COMMISSIONER ENGLER: To me it's like, that
7 second part that says, let the Division determine the
8 (unclear) reasonably anticipate the (unclear).

9 CHAIRWOMAN SANDOVAL: Right.

10 COMMISSIONER ENGLER: So the cases that come to
11 my mind would fall under that -- I think I would fall under
12 that category. So even though it's where, for three it was
13 basically beyond our control, and that line there would give
14 the Division the ability to define that section. (unclear).

15 CHAIRWOMAN SANDOVAL: Yeah. Well, we also heard
16 testimony that's expected in those areas, and there are
17 things you can do to help.

18 COMMISSIONER ENGLER: I have seen it take up high
19 utility sections where we had to wait for utilities to get
20 in first. That's the state. So there are -- I always
21 thought that, too, until I saw the type of electrical storm
22 that, you can't -- you can put a resistor and (unclear) on
23 your equipment (unclear).

24 CHAIRWOMAN SANDOVAL: Okay.

25 COMMISSIONER ENGLER: But again, my example, I

1 think fits underneath the Division's second part. So I
2 still like four hours is too large, but when I keep thinking
3 of the examples there is that second part that the Division
4 that speaks of. I think if you go down to by site, I think
5 that's very --

6 CHAIRWOMAN SANDOVAL: I think that's too low a
7 bar.

8 COMMISSIONER KESSLER: I think that's a low
9 bar --

10 COMMISSIONER ENGLER: Somebody draft that.

11 CHAIRWOMAN SANDOVAL: Well, and, yeah.

12 COMMISSIONER KESSLER: I guess this is 27, we
13 have to figure out what the equivalent is on 28. You asked
14 for me to, I --

15 CHAIRWOMAN SANDOVAL: I did. This is the time of
16 day when we get punchie.

17 MR. MOANDER: And there is no testimony that
18 might help set that second parameter that anyone. Can
19 anyone? I can't.

20 CHAIRWOMAN SANDOVAL: I don't think so. Ms.
21 Orth, do you recall anything?

22 HEARING EXAMINER ORTH: I don't. Sorry. I
23 remember Mr. Bolander's testimony that they were tracking
24 with the definition of emergency in the BLM language, namely
25 just quoted recurring equipment failure, but I don't

1 remember at the time as a definition of recurring.

2 CHAIRWOMAN SANDOVAL: Okay. So what if, what if
3 we did this, instead of screwing with the single reporting
4 area I understand that could be masses for equal, what if we
5 change it to four emergencies within the 30 day time period
6 so it leaves those components consistent with BLM.

7 There is just so much with BLM, it make sense
8 that I think that any place it meets up with BLM, I'm not
9 sure that (unclear) OCD doesn't have the lease information,
10 so like I think it would be hard to manage a provision like
11 that.

12 COMMISSIONER KESSLER: There is something we
13 could say like over (unclear) and then just broaden the
14 Division's discretion a little bit unless the Division --
15 except for cause, okay, or like if somebody wants to come
16 and explain to the Division rather than just specific sort
17 of foreseeability issue that the Division has sets to be
18 heard. The operator wants to bring it.

19 CHAIRWOMAN SANDOVAL: Just kind of like the
20 practical implementation part of it. I don't want there --
21 the new C-129. Or the old C-129 or whatever -- sorry, go
22 ahead.

23 HEARING OFFICER ORTH: I'm sorry, Madam Chair.
24 Actually, I misspoke when it came to the recurring equipment
25 failure exception, they were tracking with the Alarm. In

1 this section, the testimony from Mr. Bolander was that they
2 were already -- the Division in this proposal was already
3 more generous or forgiving than BLM because BLM had a time
4 period of 30 days, not 60 days. So sorry if I misspoke.

5 CHAIRWOMAN SANDOVAL: No. I think I recall that,
6 and then I asked the question, then actually they are more
7 restrictive because if it's 30 days, you get three within 30
8 days, you get -- in a 60 day time span you get six. If you
9 get three within 60 days, you get three.

10 Sorry. But like, so I -- I feel sort of in
11 earlier statements that if we mirror it more towards BLM and
12 we say four or more emergencies which means they get three
13 within the 30 days within the reporting area.

14 COMMISSIONER KESSLER: It's fine. It's fine. I
15 am still stuck on how much time. How differently that
16 impact (unclear)

17 CHAIRWOMAN SANDOVAL: I mean, absent finding some
18 weird awkward middle ground, if was some like --

19 COMMISSIONER KESSLER: Yeah. Well, I don't have
20 any.

21 CHAIRWOMAN SANDOVAL: For now, Mr. Moander, will
22 you do four or more emergencies and change the 60 to 30? I
23 think it gives the definition already.

24 MR. MOANDER: Just a few clean-up issues. It
25 looks like under H(2), it says, except as provided in

1 Subparagraph 4. I don't recall anyone addressing that.

2 CHAIRWOMAN SANDOVAL: Where?

3 MR. MOANDER: Page 2.

4 CHAIRWOMAN SANDOVAL: Oh, I think that's fine.

5 COMMISSIONER ENGLER: Yeah, it is.

6 CHAIRWOMAN SANDOVAL: Doesn't mess that up.

7 MR. MOANDER: No, no. And then on 4 there is the
8 eight hours after notification and then the strike-through
9 at the end.

10 CHAIRWOMAN SANDOVAL: The after notification is a
11 good modification.

12 MR. MOANDER: Okay.

13 CHAIRWOMAN SANDOVAL: They are not mindreaders,
14 not clairvoyant, so I think it has to be predicated on
15 notification. And those strike-throughs are appropriate.

16 MR. MOANDER: And then on what is now 7 within a
17 single reporting area pursuant to Subsection A --

18 CHAIRWOMAN SANDOVAL: Yes, we are going to keep
19 that and just modify the 3 to 4 and 30 to 60. Sorry, that
20 was backwards. 60 to 30.

21 MR. MOANDER: Got it.

22 CHAIRWOMAN SANDOVAL: Woo, we made it, all right.
23 Okay. So the next --

24 MR. MOANDER: I hate to be a stickler on this,
25 but don't we want to finish going through the definitions,

1 because there is some strike-throughs and editions in there.

2 CHAIRWOMAN SANDOVAL: That's what we are doing.

3 MR. MOANDER: making sure we are not leaving.

4 CHAIRWOMAN SANDOVAL: Making sure we were done
5 with emergency.

6 MR. MOANDER: Woo-hoo.

7 CHAIRWOMAN SANDOVAL: Yes, small victory here.
8 I'm trying to see what's next. I think flowback fluid,
9 flowback fluid from Climate Advocates.

10 COMMISSIONER ENGLER: Flare stack.

11 CHAIRWOMAN SANDOVAL: Okay, flare stacks.
12 NMOGA's fine with that. Climate Advocates seems fine with
13 that. I am fine with that.

14 COMMISSIONER KESSLER: I'm fine with that.

15 COMMISSIONER ENGLER: We're all good.

16 CHAIRWOMAN SANDOVAL: Okay. Flare stack is good
17 as proposed. Then it's flowback and flowback fluid. And
18 correct me if I'm wrong, Ms. Orth, but those all tie back to
19 that (C)(1).

20 HEARING EXAMINER ORTH: Exactly.

21 CHAIRWOMAN SANDOVAL: Okay. So we will not be
22 including those. Malfunction, there is a change on the
23 Division.

24 CHAIRWOMAN SANDOVAL: I mean, that's -- I don't
25 mean that that change would be (unclear).

1 MR. MOANDER: No, it actually makes it easier to
2 read, I think because there is sort of a redundancy.

3 CHAIRWOMAN SANDOVAL: Okay. Next, production,
4 production operations, I think is next.

5 COMMISSIONER ENGLER: I have a question for that.

6 It's tied to the one below it, separation
7 flowback, so separation flowback you go no later than 30
8 days. So that suggests to me that (unclear).

9 REPORTER: Please speak up, thank you.

10 COMMISSIONER ENGLER: Correct?

11 CHAIRWOMAN SANDOVAL: Right. I think so, if I'm
12 following you.

13 COMMISSIONER ENGLER: So under production
14 operations this says, it says it period begins 31 days.
15 Specifically 31 days. Shouldn't that say no later than 31
16 days?

17 CHAIRWOMAN SANDOVAL: Should --
18 (Overtalk.)

19 COMMISSIONER ENGLER: So separation flowback no
20 later than 30 days. So I'm lost between the two.
21 Production operations begins after separation flowback;
22 right?

23 CHAIRWOMAN SANDOVAL: Yeah.

24 COMMISSIONER ENGLER: Maybe it should say instead
25 of 31 days (unclear).

1 CHAIRWOMAN SANDOVAL: I agree. Okay.

2 COMMISSIONER ENGLER: Well, it could be for
3 separation flowback, you're allowed no later than 30 days,
4 you're allowed, 30 days is your maximum.

5 CHAIRWOMAN SANDOVAL: 30 days after initial
6 flowback.

7 COMMISSIONER ENGLER: correct. Production
8 operation says it -- it just says 31 days from the initial
9 flowback.

10 CHAIRWOMAN SANDOVAL: So that doesn't give you --
11 wait. So separation flowback concludes no later than 30
12 days after initial, so if it has to be done on day 30, and
13 day 31 production starts.

14 COMMISSIONER ENGLER: Right, but separation
15 flowback in less than 30 days, but production operations be
16 31 days?

17 CHAIRWOMAN SANDOVAL: I mean, should we have test
18 on the earlier of -- but then we get rid of the order of
19 placement. I understand that and we heard testimony about
20 this (unclear) on why they struck the or the permit
21 production equipment gets placed into service, but should
22 the or mean the period that begins on the earlier of the
23 conclusion of the initial flowback and separation flowback?

24 COMMISSIONER ENGLER: Basically the way I read
25 this, the production operation occurs after drilling date

1 and separation are (unclear). And the way the separation
2 flowback says, no later than 30 days. Production operation
3 is (unclear) so I guess there should be that conditional in
4 there. So if the on the earlier phase --

5 REPORTER: Mr. Engler, please speak up.

6 COMMISSIONER ENGLER: Okay. So again, maybe the
7 question is, I still -- as I understand it there should be
8 a condition production operation. Am I saying that right?

9 CHAIRWOMAN SANDOVAL: I think you are.

10 COMMISSIONER ENGLER: Because there is a
11 condition on separation flowback, it's no later than.

12 CHAIRWOMAN SANDOVAL: I mean, could we just say
13 the period that begins 31 days following the commencement of
14 initial flowback or following the commencement -- say on the
15 earlier of 31 days following commencement of initial
16 flowback, or following completion of separation flowback?
17 Does that work? The earlier of the two, either 31 days or
18 following completion of separation flowback. I think that
19 works.

20 COMMISSIONER ENGLER: Say it again.

21 CHAIRWOMAN SANDOVAL: Okay. So it would be
22 production operation means the period that begins on the
23 earlier of 31 days following the commencement of initial
24 flowback or following completion of separation flowback.
25 That would be earlier on that.

1 COMMISSIONER ENGLER: Yes. Yeah, the separation
2 flowback, if you change it on 30 days after initial it's
3 kind of hard (unclear).

4 CHAIRWOMAN SANDOVAL: Well, I know, but the issue
5 is they could finish separation flowback before 30 days
6 which means they would move into production before day 31,
7 and so we need to write the provision so that if they move
8 into production before that it's definitionally confined.
9 So I think that works. Do you see?

10 COMMISSIONER KESSLER: Yes.

11 CHAIRWOMAN SANDOVAL: Mr. Moander, did you get
12 that?

13 MR. MOANDER: I believe I did. Take a look right
14 here. I'll highlight it, subsection --

15 CHAIRWOMAN SANDOVAL: Yeah, I think that's right.
16 Great, thank you.

17 The next one is in (r). I think this one works.
18 We just sort of talked about it in introduction. I'm going
19 good with the change in separation flowback.

20 COMMISSIONER KESSLER: Yes.

21 COMMISSIONER ENGLER: The one we previously did?

22 CHAIRWOMAN SANDOVAL: Yes.

23 COMMISSIONER ENGLER: Yes.

24 CHAIRWOMAN SANDOVAL: Okay, that one is good to
25 go.

1 Now, NMOGA has some potential changes (unclear)
2 or venting. I actually think we basically addressed all of
3 this during our belabored conversation on waste and
4 categories. Some of these at least. I think what they are
5 trying to do here, from my reading, is they are trying to
6 exclude the things, the low pressure sources that we had
7 earlier, exclude them from the definition of venting so
8 don't exclude them from being waste?

9 COMMISSIONER KESSLER: Yeah.

10 CHAIRWOMAN SANDOVAL: Because then they would not
11 get reported. So I assume even though for the situation of
12 pneumatics where we decided that a properly operating one
13 may not be waste, but I think if you remove it from the
14 definition for venting that it won't even get caught up in
15 the reporting, if I'm thinking about this right.

16 COMMISSIONER KESSLER: Yeah, I think that's
17 (unclear) I may not agree with NMOGA's statement that low
18 pressure sources --

19 REPORTER: Please speak up.

20 COMMISSIONER KESSLER: So their statement that
21 emissions from low pressure sources does not follow the
22 venting definition should exclude low pressures because
23 the -- I think that the categories that we decided are not
24 waste, you can still use the term venting or flaring, it's
25 just that we have to be specific about when certain venting

1 or flaring is or is not waste. You don't have to include in
2 the language. So I think that the director is correct, we
3 have covered it in our decision to go through category by
4 category and look for what activities are -- do or do not
5 constitute waste, and that that should be specific for, for
6 capturing our (unclear)

7 CHAIRWOMAN SANDOVAL: I think so, too. I think
8 it's inappropriate to put it in the definition. I think
9 it's covered, for one, what we talked about earlier on waste
10 in our talk about -- as we talked through section B, NMOGA's
11 8(G)(2), all of those sections, and so I feel like it's
12 captured. I think this is an inappropriate place to do
13 that.

14 COMMISSIONER KESSLER: I agree. So I would
15 support the Division's definition of venting and flaring --
16 excuse me (unclear).

17 COMMISSIONER ENGLER: Agreed.

18 CHAIRWOMAN SANDOVAL: We made it a definition in
19 Rule 1. All right. On to 19.15.27.8(A).

20 HEARING EXAMINER ORTH: Madam Chair, this is
21 Felicia. I would offer one observation here, and this
22 language written as justification by Climate Advocates and
23 EDF under 27.8(A), it does not appear that they propose
24 any changes to the Division's 28.A it appears that
25 effectively what they are doing is supporting the Division's

1 proposal as against proposed changes by NMOGA.

2 CHAIRWOMAN SANDOVAL: Okay. Thank you, Ms. Orth.

3 So in 28 -- 27.8(A), there are quite a few
4 changes from the Division. There are no proposal by Climate
5 Advocates or discussion and NMOGA proposes to strike
6 maximize recovery of natural gas and.

7 COMMISSIONER KESSLER: I guess the only thing I
8 would say is I think that duty to maximize recovery is the
9 flip side to minimize waste, so --

10 CHAIRWOMAN SANDOVAL: That's the entire intention
11 of the statute.

12 COMMISSIONER KESSLER: Yeah, so I think the -- I
13 think the statute says that the (unclear) to waste. I guess
14 what I'm saying is I don't see any pros or cons from kicking
15 out maximizing recovery for leaving it in because I think
16 it's the same step. Does that make sense? I think
17 maximizing recovery and minimizing waste are two sides of
18 the same coin, just defining one -- otherwise keep it
19 (unclear).

20 COMMISSIONER ENGLER: Should it, should it -- if
21 you wanted to connect them, shouldn't it say something like
22 maximize the recovery of natural gas by minimizing the waste
23 of natura gas. Does that make sense? That would connect
24 the two.

25 CHAIRWOMAN SANDOVAL: So instead of saying and

1 (unclear)

2 COMMISSIONER ENGLER: minimizing.

3 CHAIRWOMAN SANDOVAL: I do sort of agree it's
4 redundant, but I also don't, you know, mind leaving it in
5 there.

6 COMMISSIONER KESSLER: Well, you have NMOGA's
7 exhibits, Exhibit A, that specific Exhibit A has their
8 justification statement under NMOGA Exhibit A.

9 CHAIRWOMAN SANDOVAL: Oh, I think that's Exhibit
10 A -- it's a separate --

11 COMMISSIONER KESSLER: Okay. Could we just say,
12 the proposed changes have (unclear) surface waste report
13 (unclear), so there is no question that operators have a
14 duty to minimize waste. I -- I mean, it's the same thing.
15 I don't see specific (unclear) for why maximize recovery
16 should be taken out, so I'm going to ask that we leave it in
17 there.

18 CHAIRWOMAN SANDOVAL: I think tying it together
19 is separate (unclear).

20 COMMISSIONER KESSLER: I'm fine with that.

21 CHAIRWOMAN SANDOVAL: Okay. Mr. Moander, can you
22 see -- we're probably not done with this, but that sentence
23 should be the operator has a general duty to maximize the
24 recovery of natural gas by minimizing the waste of natural
25 gas through venting and flaring.

1 So remove and, and change maximizing to
2 minimizing. Okay. I think that basically what OCD did is
3 they sort of flipped this statement, they removed except as
4 authorized up front and put it at the back.

5 COMMISSIONER KESSLER: Yes.

6 CHAIRWOMAN SANDOVAL: So I don't think
7 it's (unclear) I don't think it changes the intent.

8 COMMISSIONER KESSLER: Yes.

9 CHAIRWOMAN SANDOVAL: I'm fine with the remainder
10 of the changes. It sort of flipped the paragraph.

11 COMMISSIONER ENGLER: Yes, I think we're good.

12 CHAIRWOMAN SANDOVAL: Not changing any of the
13 intent.

14 COMMISSIONER KESSLER: Yes, for that particular
15 provision, that's fine.

16 CHAIRWOMAN SANDOVAL: Okay. 27.8(B).

17 COMMISSIONER KESSLER: This is one of the
18 technically feasible places.

19 CHAIRWOMAN SANDOVAL: Yeah.

20 MR. MOANDER: So there is no Subsection 8(B)(2)
21 changes. Did I capture it right?

22 CHAIRWOMAN SANDOVAL: Say that again.

23 MR. MOANDER: Subsection 8.(B)(2), those changes
24 are accepted?

25 CHAIRWOMAN SANDOVAL: Not yet.

1 COMMISSIONER KESSLER: This was a discussion,
2 it's technically feasible, and --

3 CHAIRWOMAN SANDOVAL: Reasonably practical.

4 COMMISSIONER KESSLER: Yes.

5 CHAIRWOMAN SANDOVAL: Dr. Engler, you sort of
6 mentioned this earlier. Where are you with that?

7 COMMISSIONER ENGLER: The technically feasible is
8 a fairly high level. A lot of things are technically
9 feasible, but they don't actually connect with (unclear) so
10 those two statements actually (unclear) what is best
11 practices may not be technically feasible. So I'm -- you
12 know, I questioned somebody on this testimony.

13 But to me, and I think if you read through a lot
14 of the testimony, a lot of people will come back to this
15 word technically feasible -- or words, I should say,
16 feasible. I'm not, I don't really like that sentence. I
17 don't like technically feasible. It is, it is all through
18 this document.

19 CHAIRWOMAN SANDOVAL: I very concerned about
20 reasonably practical (unclear) the way it's used. I have to
21 look back at A. It seems to be tied to like, is it -- do
22 they perceive it as (unclear) effective. What one company
23 perceives as class effective than another company, and I am
24 not on board with opening that can of worms.

25 COMMISSIONER ENGLER: Technically feasible

1 (unclear) it doesn't matter whether or not you do it, if
2 it's feasible you should do it. If it's feasible you should
3 do it. That's universally the follow.

4 CHAIRWOMAN SANDOVAL: I don't disagree with that,
5 but I also don't like the opposite. So it's like, well, if
6 it costs too much for me --

7 COMMISSIONER ENGLER: Well, I do --

8 CHAIRWOMAN SANDOVAL: -- then I don't have to do
9 it. I think you're --

10 COMMISSIONER ENGLER: I do agree -- I think Mr.
11 Ames stated for OCD, there is a certain amount of wanting to
12 encourage, you know, new thoughts, development.

13 CHAIRWOMAN SANDOVAL: Innovation.

14 COMMISSIONER ENGLER: Innovation, and I think --
15 so I think the point there is, just using their rules, we
16 are not doing (unclear). So again, you know, I don't have
17 the words for this, but maybe we can work that out. I do
18 agree that we should -- there should be a way of -- of
19 getting what we want. I guess, at the end of the day,
20 technically feasible may be the only true descriptions that
21 are (unclear) the desire and intent.

22 CHAIRWOMAN SANDOVAL: I'm not opposed to, maybe
23 you are, I'm definitely opposed to reasonably practical, and
24 the justification that was given by NMOGA.

25 COMMISSIONER KESSLER: Yeah, it was too much

1 focus on economics.

2 CHAIRWOMAN SANDOVAL: Yeah, what's technically
3 feasible for a company that has a hundred wells is very
4 different than somebody who has 1,000 or 5,000, and that's
5 that's not how we regulate. That's not how we should
6 regulate.

7 COMMISSIONER ENGLER: (Inaudible.)

8 CHAIRWOMAN SANDOVAL: I don't know if I disagree
9 with that, but I don't feel as strongly as I feel about the
10 other one. But if we can up with different terminology that
11 would meet this --

12 COMMISSIONER: Put it in the parking lot for a
13 moment. Technically reasonable.

14 CHAIRWOMAN SANDOVAL: Reasonably technical.

15 COMMISSIONER KESSLER: (unclear) there is not an
16 objective that we can use that would be -- you can always
17 (unclear) you can make it standard to use best practices.

18 COMMISSIONER ENGLER: I can't think of anything
19 better, so to get out, we can set this aside and if
20 something does come up, we can --

21 CHAIRWOMAN SANDOVAL: Maybe it will pop in your
22 mind at 2 a.m.

23 COMMISSIONER ENGLER: I doubt it.

24 CHAIRWOMAN SANDOVAL: Okay. So let's table that,
25 but I 100 percent do not agree with reasonably practical,

1 otherwise we will keep this for now.

2 Okay. Two, no change. Climate Advocates, no
3 change. NMOGA, I'm fine with the changes. They didn't --
4 to clarify -- they don't remove the requirements for all the
5 (unclear) they just placed it in a different section.

6 COMMISSIONER ENGLER: Agreed.

7 CHAIRWOMAN SANDOVAL: Three, 3, I think everyone
8 is happy with. Correct? C, 27.8(C), regarding a big chunk
9 of this, which is (C)(1), and we opted to go with the
10 Division's update -- oh, we should probably talk about the
11 title. I'm fine with or.

12 COMMISSIONER KESSLER: Right.

13 COMMISSIONER ENGLER: Correct.

14 CHAIRWOMAN SANDOVAL: Two, (C)(2), no change from
15 NMOGA, no change from Climate. I don't have a problem with
16 (C)(2), that makes perfect sense to me.

17 COMMISSIONER KESSLER: Wait, this what we already
18 talked about.

19 CHAIRWOMAN SANDOVAL: Yeah, this is what we --

20 Okay. Are we good with (C)(2), the separation
21 equipment, that makes sense to me.

22 COMMISSIONER ENGLER: Separation flowback.

23 CHAIRWOMAN SANDOVAL: It makes -- okay, (C)(2)(a)
24 has no proposal changes. (C)(2)(b), this is just moving
25 that terminology to a different section, I think, which

1 makes sense.

2 COMMISSIONER KESSLER: It makes sense but, I mean
3 (unclear).

4 CHAIRWOMAN SANDOVAL: I'm good with removing that
5 language. It's consistent with what we have done above in
6 (C)(2).

7 COMMISSIONER ENGLER: I agree.

8 COMMISSIONER KESSLER: I agree.

9 CHAIRWOMAN SANDOVAL: (C)(3).

10 COMMISSIONER KESSLER: I don't disagree with the
11 Division's proposal, and I don't disagree with Climate
12 Advocates had the word properly sized, I don't have an issue
13 with that. I think it should be properly sized, so adding
14 that language in.

15 CHAIRWOMAN SANDOVAL: My question is then, do we
16 need to add it above to (B)(2)?

17 COMMISSIONER KESSLER: I think that should --

18 REPORTER: (Addresses audio.)

19 COMMISSIONER KESSLER: It should be properly
20 sized. We could just add that unless otherwise the
21 (unclear) should be properly sized.

22 CHAIRWOMAN SANDOVAL: I don't want to put it at
23 the front, properly sized. Dr. Engler?

24 COMMISSIONER ENGLER: Where are you at?

25 CHAIRWOMAN SANDOVAL: (C)(3)(a), and then my

1 question that we make that decision in (C)(3)(a) do we do
2 the same for (C)(a)(2), properly sized flare stack to finish
3 up the.

4 COMMISSIONER ENGLER: Yes.

5 CHAIRWOMAN SANDOVAL: Okay. Mr. Moander, can we
6 go back up to (B)(2), please?

7 MR. MOANDER: I need you to walk me through this
8 one.

9 CHAIRWOMAN SANDOVAL: So (B)(2), the only
10 change --

11 MR. MOANDER: Wait (2)(b)?

12 CHAIRWOMAN SANDOVAL: No, (B)(2), the section
13 above.

14 MR. MOANDER: I got you. A properly sized flare
15 stack.

16 CHAIRWOMAN SANDOVAL: Yeah.

17 MR. MOANDER: That's where I didn't understand
18 where you were going.

19 CHAIRWOMAN SANDOVAL: And then in 3 -- I'm sorry,
20 in C -- going down to Section (C)(3)(a), it should be still
21 a properly sized flare stack sounds better than a flare
22 stack that is properly sized. Would that --

23 (C)(3)(a) should be a properly sized flare stack
24 is equipped, yeah.

25 MR. MOANDER: Is there any comment about just

1 (C)(3) itself right above? I think it makes sense, I
2 mean --

3 COMMISSIONER KESSLER: Yeah, I thought we had
4 talked about this.

5 CHAIRWOMAN SANDOVAL: We sort of did.

6 COMMISSIONER KESSLER: When we talked about G.

7 CHAIRWOMAN SANDOVAL: I like the provision at the
8 end.

9 COMMISSIONER KESSLER: Yeah, I support that.

10 CHAIRWOMAN SANDOVAL: NMOGA has a change in
11 (3)(b). They want it to be once a week instead of twice.
12 I'm sorry, I think twice a week because at this point, I
13 think the gas quality can be changing, and it could lead
14 to -- so essentially here the provision is how long can
15 they flare if the gas quality (unclear). So they are only
16 happening once a week, you are going to wait until another
17 seven days, and what if two days later actually the pipe is
18 now (unclear) will have flared an extra four days.

19 COMMISSIONER KESSLER: I agree with that.
20 (unclear) The only justification that NMOGA gives in (a) is
21 the frequency of sampling is to say this operator (unclear)
22 gas technically feasible (unclear) not necessary.

23 CHAIRWOMAN SANDOVAL: But how are they going to
24 know if they don't get a sample.

25 COMMISSIONER KESSLER: Yeah, I'm fine with this.

1 CHAIRWOMAN SANDOVAL: Okay. I think we can leave
2 that for the Division's proposal. Dr. Engler?

3 COMMISSIONER ENGLER: Yes.

4 CHAIRWOMAN SANDOVAL: I think that rounds us out
5 with C. Go on to D, venting and flaring of production
6 operations. We heard testimony on the removal of the first
7 item from the Division, which I agree with. I think it was
8 specifically asked to be removed by NMED.

9 COMMISSIONER KESSLER: Okay. Yeah.

10 CHAIRWOMAN SANDOVAL: Rule one is good.

11 And I am good with the new one, which just very
12 cleanly says, during an emergency or malfunction. Okay.

13 MR. MOANDER: Any other thoughts on that from
14 other Commission members? I want to make sure everyone has
15 got input on this.

16 COMMISSIONER KESSLER: I like the removal of the
17 language surrounding emergency or malfunction. The simple
18 version is better. Let's see. Yeah.

19 COMMISSIONER ENGLER: I like it, too.

20 COMMISSIONER KESSLER: So are we on 2?

21 CHAIRWOMAN SANDOVAL: Yeah, and there were no
22 comments on the new one from NMOGA or Climate Advocates.
23 There are comments on 2 by those parties.

24 COMMISSIONER KESSLER: I think NMOGA's is
25 (unclear) reasonable.

1 CHAIRWOMAN SANDOVAL: And they proposed in B, I
2 guess. Let's look at A, 2(A), the new 2(A) as proposed by
3 Climate Advocates. I mean, I remember quite a bit of
4 testimony on this by Mr. Davis.

5 COMMISSIONER KESSLER: I got (unclear) by NMOGA
6 and (unclear). I think that's (unclear) to require all
7 reasonable actions if an action is reasonable, so that --

8 CHAIRWOMAN SANDOVAL: I agree.

9 COMMISSIONER KESSLER: And I don't have an issue
10 with the Division's proposal. And NMOGA's proposal, I have
11 (unclear). Dr. Engler (unclear).

12 COMMISSIONER ENGLER: Let's go.

13 CHAIRWOMAN SANDOVAL: I think Climate Advocate
14 (B)(2)(a), for me I feel this is trying to assert that like
15 a part of you record, some sort of waste minimization, it's
16 just not -- I think there was quite a bit of testimony on
17 that from Mr. Davis. There, also, I mean there is quite a
18 lot of documentation within the MAP report which is why from
19 OCD. I just don't find's that appropriate.

20 COMMISSIONER KESSLER: I think it's restrictive.

21 CHAIRWOMAN SANDOVAL: Yeah, it's just not an
22 option for all wells, and it's not waste minimization
23 provides other thing proposed here.

24 COMMISSIONER ENGLER: This is an option. That's
25 correct.

1 CHAIRWOMAN SANDOVAL: So you do agree with not
2 including that proposal?

3 COMMISSIONER ENGLER: That is also correct.

4 CHAIRWOMAN SANDOVAL: All right. So we
5 addressed -- I mean, Dr. Engler do you agree with all
6 things?

7 COMMISSIONER ENGLER: Where was that at?

8 CHAIRWOMAN SANDOVAL: In NMOGA's (D)(2)(b).

9 COMMISSIONER ENGLER: This is for liquids
10 unloading?

11 CHAIRWOMAN SANDOVAL: Yeah, not the other
12 language, let's just look at the all. I mean, I think
13 Commissioner Kessler's point was, if an action is reasonable
14 then wouldn't we take. So you should take all reasonable
15 actions. If it's unreasonable, it's not take --

16 COMMISSIONER ENGLER: The one word all.

17 CHAIRWOMAN SANDOVAL: I think we should leave it.
18 If the action is something that's reasonable, it should be
19 taken.

20 COMMISSIONER ENGLER: Okay. Why are you -- why
21 do you want to take it out?

22 COMMISSIONER KESSLER: Take any reasonable
23 action.

24 COMMISSIONER ENGLER: Okay.

25 CHAIRWOMAN SANDOVAL: So then we probably --

1 there was a lot of discussion in the testimony about this
2 proximity issue in (D)(2)(b).

3 COMMISSIONER KESSLER: I guess that's probably --
4 I heard absolutely (unclear) about needing somebody on site
5 for safety reasons, but also was -- I think the different on
6 the ground operational piece of it that Mr. Davis described
7 was, I think they are -- that you could be doing, a scenario
8 where you could be unloading liquids for several different
9 sites, that you might have to go and call somebody that, you
10 know, that they're -- they required somebody to chained to
11 the site, I think misunderstands some of the various
12 (unclear) that happen in the field.

13 CHAIRWOMAN SANDOVAL: I think there was
14 testimony, too, that more could be accomplished and maybe --

15 COMMISSIONER KESSLER: Yeah.

16 CHAIRWOMAN SANDOVAL: Ultimately waste --

17 COMMISSIONER KESSLER: Minimized.

18 CHAIRWOMAN SANDOVAL: Minimized, yeah. I guess
19 I'm not 100 percent --

20 COMMISSIONER KESSLER: With proximity, I don't
21 think it's (unclear).

22 CHAIRWOMAN SANDOVAL: This we had talked about in
23 testimony, post at the well site the contact information of
24 the person, I guess, like, I don't know, my mind goes to
25 the -- you just post somebody on your wellsite and like it's

1 up there forever.

2 I'm not sure, like, hey, look, I was in
3 compliance because I posted this. It needs a current date.
4 Date and time? I mean, it seems to me -- I hate taking it
5 in the weeds, but those other things, that's the -- yeah,
6 take operator's magazine with them and hold it up.

7 COMMISSIONER KESSLER: So how about we say, shall
8 remain at --

9 COMMISSIONER ENGLER: (Inaudible.)

10 CHAIRWOMAN SANDOVAL: It is a thing, but like the
11 operator remains --

12 COMMISSIONER KESSLER: It's on the top of Page 4.

13 CHAIRWOMAN SANDOVAL: The operator remains
14 present on site until the end of the --

15 COMMISSIONER KESSLER: How about, operator
16 remains present on site until the end of unloading for --
17 within close proximity while posting contact information and
18 date?

19 CHAIRWOMAN SANDOVAL: Have you looked at the
20 NMOGA one?

21 COMMISSIONER KESSLER: That is --

22 COMMISSIONER ENGLER: Well, in the OCD rebuttal,
23 they state that BLM requires an operator to remain on site,
24 so basically they require a person to be present on site.

25 REPORTER: Speak up, please.

1 COMMISSIONER ENGLER: Okay. So again in the
2 rebuttal of OCD they quote from the BLM, person while
3 purging will remain present on site during the event.

4 CHAIRWOMAN SANDOVAL: Colorado requires it, too.

5 COMMISSIONER ENGLER: (unclear) Colorado requires
6 it. But I felt like Mr. Davis gave a very good scenario
7 that I agreed with, about, I don't know if I call it I guess
8 an exception or just the practicality of how to get
9 (unclear) facility, you are looking at multiple wells, how
10 do you take them (unclear). I guess I'm sort of -- the word
11 close proximity is not defined enough.

12 COMMISSIONER KESSLER: I don't mind, you know --
13 (Overtalk.)

14 COMMISSIONER KESSLER: Mr. Bolander says
15 (unclear) "Liquids unloading by manual purging the operator
16 remains on on site or close to the well site to contact
17 information of" --

18 REPORTER: Can you slow down, please? Thank you.

19 COMMISSIONER KESSLER: Yeah, I'll slow down. It
20 ensures that personnel remain within 30 minutes of the well
21 being unloaded. I'm fine with that. I think that's a
22 reasonable proposal. You know, in general, I like being
23 consistent with BLM. With the BLM (unclear).

24 COMMISSIONER ENGLER: I think that is good, yes.

25 CHAIRWOMAN SANDOVAL: I think there was

1 compelling testimony on this item from Mr. Davis.

2 CHAIRWOMAN SANDOVAL: Mr. Moander, if you can
3 find NMOGA's proposal for this order, you can put a note in
4 there to accept.

5 MR. MOANDER: What I'm doing, so you guys know,
6 is I'm just juggling all, because I don't have a paper file,
7 it's all digital, so this is a little bit of a morass, but
8 just for the sake of brevity, Subparagraph 2, that would be
9 (D)(2), it's going to be rewritten per NMOGA?

10 CHAIRWOMAN SANDOVAL: Per NMOGA, except for the
11 removal of the term "all."

12 MR. MOANDER: All right.

13 CHAIRWOMAN SANDOVAL: Otherwise, that sort of big
14 sentence in the middle.

15 MR. MOANDER: Which sentence?

16 CHAIRWOMAN SANDOVAL: That doesn't look like it's
17 in the right place. I'm sorry, it's (D)(2)(b).

18 MR. MOANDER: (2)(b), okay. So that's the
19 paragraph we are going to be --

20 CHAIRWOMAN SANDOVAL: Yeah, D(2)(b), we are good
21 with NMOGA changes except for the removal of all. We want
22 to keep the term all in the language.

23 MR. MOANDER: All right, got it.

24 CHAIRWOMAN SANDOVAL: Thank you. Okay. So I'm
25 just going to make a time check. It's 4:51. We are in the

1 middle of Section D. I would at least like to finish
2 Section D.

3 COMMISSIONER ENGLER: There's a lot there.

4 CHAIRWOMAN SANDOVAL: There aren't a lot of -- I
5 mean there were changes mostly on the Division's side just
6 for -- I don't like hanging in the middle.

7 COMMISSIONER KESSLER: That's fine except, I'm
8 sorry, that's okay. I think we can hustle through this.

9 COMMISSIONER ENGLER: Hustle?

10 CHAIRWOMAN SANDOVAL: Appropriately --
11 appropriately hustle.

12 COMMISSIONER KESSLER: So we are on.

13 CHAIRWOMAN SANDOVAL: (2)(b). We just (D)(2)(c)
14 and (d) has no -- well, okay. Climate Advocates proposes
15 to strike (e).

16 COMMISSIONER ENGLER: That's because they have it
17 in there.

18 CHAIRWOMAN SANDOVAL: Yeah, I think that's
19 because it was a modified version of (unclear).

20 COMMISSIONER KESSLER: So we will keep it in?

21 CHAIRWOMAN SANDOVAL: Yes.

22 COMMISSIONER KESSLER: Okay. So are we
23 on (3)(b)?

24 CHAIRWOMAN SANDOVAL: (3)(b), there is no changes
25 in (b) -- I'm sorry, the new 3. My apologies, this is just

1 changing the terminology to Division.

2 COMMISSIONER KESSLER: Yes.

3 CHAIRWOMAN SANDOVAL: As is (3)(a).

4 COMMISSIONER KESSLER: No problems there.

5 CHAIRWOMAN SANDOVAL: No problems there. Okay.

6 (3)(c), there is a change from Climate Advocates. No change
7 from NMOGA.

8 HEARING EXAMINER ORTH: I believe there is a
9 change proposed by Climate Advocate in (3)(c).

10 CHAIRWOMAN SANDOVAL: Yes, I specified that's
11 what I think -- it's NMOGA. Thank you.

12 COMMISSIONER KESSLER: I think it indicates they
13 want whether or not -- that they should be obtaining
14 quantities performed within 60 days. Am I reading that
15 right?

16 CHAIRWOMAN SANDOVAL: In the Climate Advocates
17 proposal?

18 COMMISSIONER KESSLER: Yeah.

19 CHAIRWOMAN SANDOVAL: I mean, I guess I don't --
20 I don't understand. I think currently we already covered
21 this. This is just like a reminder?

22 COMMISSIONER ENGLER: So the first part of (3)(c)
23 for 15 days, that is request of 60 days.

24 CHAIRWOMAN SANDOVAL: Well, it's like within 15
25 days of determining that's in paying quantities, but then

1 the bottom part --

2 COMMISSIONER KESSLER: I thought it was to limit
3 it to 12 months. It says in the explanation, basically they
4 want to shorten up that 12 months of time which could be
5 used for some other (unclear) they want to shorten that to
6 60 days unless the operator seeks (unclear) compliance.

7 And just from, from kind of at the land office,
8 we definitely evaluate whether or not a well is producing in
9 paying quantities over a year rather than shorter time
10 frames. And I think, especially for (unclear) wells, the
11 intention is to -- well, I guess -- I think 60 days is too
12 short a time to determine whether or not a well can produce
13 in paying quantities. With decline curves, I think they are
14 going to know within the next several months, but I don't
15 think 60 days.

16 So if we wanted to do something where we said,
17 instead of basing paying quantities (unclear) based on six
18 months, and then an operator can ask for leave for more
19 time, I would be comfortable with that. Otherwise I'm
20 inclined to stick with what Division used in their proposal.

21 CHAIRWOMAN SANDOVAL: The Division removed any
22 sort of reference to like a (unclear) time frame. It's now
23 just limited to (unclear)

24 COMMISSIONER KESSLER: (unclear) the time frame
25 is 12 months.

1 CHAIRWOMAN SANDOVAL: Oh, I got it. So you are
2 saying essentially make it like a separate six months? My
3 concern is like did we actually get any testimony on that?

4 COMMISSIONER KESSLER: No, we did not. We did
5 not have any discussion on that.

6 CHAIRWOMAN SANDOVAL: I mean, except for
7 Mr. Alexander, I -- it says transfer --

8 COMMISSIONER KESSLER: Yeah, let me pull that up.

9 CHAIRWOMAN SANDOVAL: Yeah. Page 100, Line 17.

10 COMMISSIONER KESSLER: Yeah, Page 100, Line 17,
11 and it went through Pages 100 and 101.

12 CHAIRWOMAN SANDOVAL: Oh, okay.

13 COMMISSIONER KESSLER: And other lines -- I'm
14 having trouble finding the transcript from that day.

15 CHAIRWOMAN SANDOVAL: It was -- all right. So
16 the question to Mr. Alexander. He had suggested revisions
17 to the exception (unclear) operators to make plans
18 (unclear). We made some suggested revisions to that
19 exception. (unclear) the Commission through. So there is
20 blah, blah, blah. On the other hand there is notion that we
21 support that 12 months is far in excess of what is generally
22 required to evaluate the well's potential.

23 Now, the alternative definition or proposal here
24 to this is that the operator will begin to file certain Form
25 C-129s within 15 days of determining the well's paying

1 quantities. Even with that we understand that perhaps the
2 intent is that the operator do the right thing. As soon as
3 they determine the well is capable of producing payable
4 quantities, that they are going to shut it in and wait for
5 infrastructure or whatever.

6 And we propose the alternative philosophy, and
7 that is, give the operator say two months, 60 days to
8 evaluate a well. Make it incumbent upon the operator to
9 provide -- to provide sufficient technical evidence to the
10 Division that if they need more time, here is why. If you
11 give an operator 12 months, they will take 12 months. If
12 you give an operator two months, an operator will get
13 additional information, and you will get that.

14 And in that case, you are going to almost
15 minimize waste, whereas if you give an operator 12 months,
16 you will almost always increase waste and pollution to the
17 environment.

18 COMMISSIONER KESSLER: But that doesn't say
19 anything about, there is no explanation there of how you are
20 going to get two months to say that and how -- whether or
21 not a well is producing in paying quantities. The factor
22 that you look at for production of paying quantities are
23 production over several months. So I just -- I don't -- to
24 be able to -- to say you are shortening that time frame,
25 there needs to be more of a discussion of how you evaluate

1 that data. And they don't say how you would do that
2 quicker, they just say you should do it quicker.

3 That seems to provide record evidence of why, of
4 how (unclear) it should be a separate section.

5 CHAIRWOMAN SANDOVAL: Dr. Engler, do you have
6 any, from your experience.

7 COMMISSIONER ENGLER: Well, it seems to me that
8 some of our (unclear) the Commission.

9 COMMISSIONER KESSLER: So we haven't really done
10 analyses that production of paying quantities is something
11 that I deal with, so (unclear).

12 COMMISSIONER ENGLER: Didn't I just say that?

13 COMMISSIONER KESSLER: No. It's not (unclear)

14 COMMISSIONER ENGLER: Well, yeah, I'm having
15 trouble understanding.

16 CHAIRWOMAN SANDOVAL: I think essentially they --
17 well, from the testimony it was, if you give them 12 months
18 they are going to take 12 months, which maybe is eight
19 months longer or six months longer or ten months longer.

20 COMMISSIONER KESSLER: But it takes longer than
21 two months to determine whether or not the wells (unclear).

22 CHAIRWOMAN SANDOVAL: I agree.

23 COMMISSIONER KESSLER: The number of months -- I
24 don't disagree with their, with what they say with however
25 long we give an operator they will take. But the standard

1 for evaluating include a year and short of going back on
2 what the standard is, I would want to see some sort of
3 evidence that it can be evaluated in a smaller amount of
4 time. It may well be able to, I just -- that evidence is
5 not before us.

6 CHAIRWOMAN SANDOVAL: Do you have any technical
7 expertise on that?

8 COMMISSIONER ENGLER: No, I don't. No. I think
9 what you get there is (unclear).

10 REPORTER: Speak up, please.

11 COMMISSIONER ENGLER: To evaluate the production
12 clause.

13 COMMISSIONER KESSLER: So you think we (unclear).

14 COMMISSIONER ENGLER: Yeah, I can't see how --
15 actually, I just can't try to minimize that waste time, in
16 my mind, potentially, I'm just not convinced that the
17 evidence is here.

18 CHAIRWOMAN SANDOVAL: I guess my concern is
19 taking any other time would be totally arbitrary. There is
20 no basis.

21 COMMISSIONER KESSLER: There is no evidence.

22 MR. MOANDER: Madam Chair, that is my concern as
23 well. It sounds like there is nothing to back up altering
24 the language at this point.

25 CHAIRWOMAN SANDOVAL: Okay. All right. Well

1 then we keep the language as proposed by the Division
2 throughout (3). So in (3), (3)(a) and (3)(c).

3 COMMISSIONER ENGLER: Can I ask for (3)(c) from
4 the Division, what's the word or for?

5 CHAIRWOMAN SANDOVAL: Might be the -- okay.
6 (Overtalk.)

7 COMMISSIONER ENGLER: At the very end of (c),
8 there is an or.

9 CHAIRWOMAN SANDOVAL: Well, because essentially
10 everything goes back to (d), the operator cannot vent or
11 flare natural gas except, so now we would go to the 4, so
12 yeah, I think that or gets taken out. It was at (3)(c), at
13 the end of it.

14 MR. MOANDER: I need to look at this again and
15 make sure this is reading -- I'm going to highlight that to
16 come back. I want to look at this with some fresh eyes and
17 see if there is a reason for that, but I will temporarily
18 delete it.

19 COMMISSIONER ENGLER: Sounds good.

20 CHAIRWOMAN SANDOVAL: Okay. All right. (4), so
21 there are a couple of modifications. NMOGA had one
22 modification in that picture. And then in (4)(a) -- let's
23 go to (4)(c), basically they can't vent and flare unless they
24 have the following activities -- no venting and flaring
25 except during the following activity unless prohibited by

1 these other things.

2 I think (c) is correct, regardless of whether it
3 was planned or unplanned, you have to be able to vent or
4 flare for repair maintenance.

5 COMMISSIONER ENGLER: Remove the word scheduled.

6 CHAIRWOMAN SANDOVAL: I agree with removing the
7 word scheduled. You have to be able to, regardless of
8 whether it's scheduled or not, repair and maintain your
9 equipment or you are going to have bigger problems down the
10 road. (4)(e) --

11 COMMISSIONER KESSLER: I think there was an
12 issue.

13 CHAIRWOMAN SANDOVAL: -- I think we do have to
14 modify it because we decided to include reporting of
15 controlled tanks; right? What it is saying is you can't
16 vent -- you know, the first statement of this, you can't
17 vent and flare except during the following activities where
18 the (unclear) conduct and/or flare -- I think the
19 clarification is you can vent or flare at any time, but it
20 still may count against you.

21 COMMISSIONER KESSLER: Yes, yes. I would go with
22 that.

23 CHAIRWOMAN SANDOVAL: The normal operation of the
24 storage tank, but not including -- and you are still not
25 allowed to vent from your thief hatch. Actually this may be

1 fine. I was reading it differently at first. I think it's
2 probably not the thief hatch that's located on a tank.

3 COMMISSIONER ENGLER: Correct.

4 CHAIRWOMAN SANDOVAL: So why do we care if it's
5 routed to a flare control device?

6 COMMISSIONER KESSLER: I don't understand routed
7 to a flare control device. Why does that matter?

8 CHAIRWOMAN SANDOVAL: If the thief hatch is not
9 routed to a flare control device, it can be open. Am I
10 reading that right?

11 COMMISSIONER KESSLER: I'm not following this
12 right now. It's the end of the day, sorry.

13 COMMISSIONER ENGLER: You're not the only one.

14 MR. MOANDER: Madam Chair, if that sentence were
15 removed or that clause were removed, it sounds like this
16 Subsection A wouldn't change at all. Is that what you are
17 getting at?

18 CHAIRWOMAN SANDOVAL: Well, I guess I don't
19 understand -- okay, so if you take a step back, right, like
20 the whole purpose of this section is venting and flaring
21 during production operations, the operator shall not vent or
22 flare gas except during the following activities, so it's
23 saying you can vent or flare during normal operations of a
24 storage tank or low pressure production vessel, but you
25 cannot vent and flare -- that's not included -- basically

1 you can vent from a storage tank, but that does not include
2 venting from a thief hatch that is located on a tank that is
3 not fully and properly closed or maintained on a schedule.
4 I don't understand why it matters if thief hatches are on a
5 tank that is routed to a flare or control device.

6 COMMISSIONER KESSLER: It seems like you should
7 be able to vent or flare from a thief hatch.

8 CHAIRWOMAN SANDOVAL: I get that. That's where
9 I'm going, I'm fine with everything of the modification
10 except for I think we strike the routed to a flare control
11 device. Because that seems to say that if it's on a tank
12 that's not controlled, sure.

13 COMMISSIONER KESSLER: Open the hatch, and that
14 doesn't --

15 CHAIRWOMAN SANDOVAL: Okay.

16 COMMISSIONER ENGLER: Correct.

17 CHAIRWOMAN SANDOVAL: Good to go. F, I am fine
18 with (f).

19 COMMISSIONER KESSLER: Yes.

20 CHAIRWOMAN SANDOVAL: I'm good with (g). I think
21 we heard quite a bit of testimony on -- yeah, (f) and (g) is
22 good. We heard quite a bit of testimony from both of the
23 parties as to what was necessary.

24 Okay. H, (4)(h), there is a modification and we
25 heard testimony from the Division, from Mr. Powell on this,

1 and I cannot recall exactly the time frame he said, but he
2 said 30 minutes was way too short.

3 COMMISSIONER ENGLER: Mr. Powell's testimony, he
4 clearly said that if you have multiple strings, you could
5 easily be spending 30 minutes per string. And I would
6 concur with Mr. Powell because I have done that.

7 CHAIRWOMAN SANDOVAL: Yeah, Mr. Powell was very
8 explicit on that.

9 COMMISSIONER ENGLER: He's correct.

10 CHAIRWOMAN SANDOVAL: And Bradenhead tests are
11 very important for a variety of issues and one is to prevent
12 that.

13 HEARING OFFICER ORTH: Madam Chair?

14 CHAIRWOMAN SANDOVAL: Yes.

15 HEARING OFFICER ORTH: I'm sorry. This is
16 Felicia. NMOGA proposed a new (h).

17 COMMISSIONER KESSLER: Yeah, they --

18 CHAIRWOMAN SANDOVAL: Okay.

19 COMMISSIONER KESSLER: But I think we can wrap up
20 the discussion of Bradenhead test. I agree with you for the
21 current (h), and then we can go back (unclear) from
22 Mr. Powell.

23 CHAIRWOMAN SANDOVAL: So we are not accepting the
24 final proposal to (h). Now let's look at -- so NMOGA's
25 proposal, I think this is an updated version of -- there was

1 like a -- I had a lot of concerns about his testimony.

2 So originally their proposal was that you could
3 vent from (unclear) components but just no flanges,
4 connecters, that language, I think it raised a lot of
5 concerns with the testimony. I believe that this is the new
6 version of that.

7 COMMISSIONER KESSLER: That's -- it looks like
8 this was authorized, and not (unclear) but I suppose routine
9 venting or flaring, venting and flaring as defined, the only
10 problem I have there is how does that -- what's in the
11 record related to how emissions of this type are not waste,
12 so are they (unclear) are they unnecessary or are they
13 excessive.

14 CHAIRWOMAN SANDOVAL: I would have to look at the
15 exhibit. My concern initially with looking at this is
16 normal unintentional leaks that are not the result of
17 adequate design equipment and maintenance. I mean,
18 unintentional leaks can be very (unclear) so I feel like
19 that allows a whole variety of problems in. Just because
20 it's uncontrolled doesn't make it not waste.

21 MR. MOANDER: Sorry. I forgot my dog just walked
22 in. He is pointing at his mouth telling me exactly what
23 time it is. I'm like, yeah, I know.

24 COMMISSIONER ENGLER: He is saying hurry up.

25 COMMISSIONER KESSLER: I have about four more

1 minutes before I need to go, so we are getting close. I can
2 tell you about that.

3 MR. MOANDER: He sends his gratitude.

4 CHAIRWOMAN SANDOVAL: I mean, I'm sort of
5 wondering if we should table that one for tomorrow.

6 COMMISSIONER KESSLER: I think that would be a
7 good idea.

8 CHAIRWOMAN SANDOVAL: Because --

9 COMMISSIONER ENGLER: Hear discussion. Do we
10 hear a discussion. Let's just, for (k) and (l), I think we
11 have already discussed (l), which --

12 COMMISSIONER KESSLER: yes.

13 CHAIRWOMAN SANDOVAL: -- aligns, we discussed it
14 early in the original pipelines. We discussed in the oxygen
15 conversation.

16 COMMISSIONER KESSLER: I think we are all good
17 with (l).

18 CHAIRWOMAN SANDOVAL: We are good with (l).

19 COMMISSIONER KESSLER: Necessary and --

20 CHAIRWOMAN SANDOVAL: Yes. And then (k), the
21 only change here is, again, they want to do it once per
22 week, which we already discussed earlier.

23 COMMISSIONER KESSLER: And I'm fine with the
24 Division not specifying what product natural gas (unclear).
25 I agree with that. I'm fine with that.

1 CHAIRWOMAN SANDOVAL: So I assume it -- yeah, it
2 aligns with our discussion in (C)(3)(b). Okay. And with
3 that --

4 COMMISSIONER KESSLER: We have a few minutes for
5 discussion about NMOGA's proposed (h), and then otherwise --

6 CHAIRWOMAN SANDOVAL: Yes. So we can start
7 tomorrow with (h), NMOGA's proposed (h) and then go on to
8 (e).

9 COMMISSIONER KESSLER: All right.

10 COMMISSIONER ENGLER: So we can get done.

11 CHAIRWOMAN SANDOVAL: I think, so the thing is a
12 lot of the changes in 28 are, they make only one.

13 All right. Well, with that, everybody, it's
14 5:18, and we'll see you tomorrow at 9 o'clock.

15 (Recessed at 5:18 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of extremely poor to fair quality.

17 Dated this 11th day of February 2020.

18 /s/ Irene Delgado

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