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Ryan Flynn, Executive Director

September 7, 2017

VIA E-MAIL

Ms. Florene Davidson
Commission Clerk
New Mexico Oil Conservation Commission

Dear Ms. Davidson:

The New Mexico Oil & Gas Association respectfully submits the following modifications to the proposed rulemaking, New Mexico Oil Conservation Commission Case 15738, scheduled to be heard by the Commission on September 21, 2017.

- The proposed revision to 19.15.3.10 eliminates the requirement for written comments to be pre-filed at least 5 business days before the hearing, which allows a person to wait until the day of the hearing to present comments, presumably as an exhibit. In addition, the current rule, 19.15.3.11(A)(2), allows a person submitting "non-technical testimony" to withhold supporting exhibits until the day of the hearing. NMOGA suggests the retention of the requirement that written comments be submitted no later than 5 business days before the hearing, and the addition of language to also require any exhibits supporting non-technical testimony be submitted no later than 5 business days before the hearing. Allowing a party to wait until the day of the hearing to submit exhibits or offer written testimony opens the door to gamesmanship in the administrative hearings. For example, a party could intentionally withhold exhibits or written testimony until the day of the hearing to deny other parties adequate time to prepare a response to the testimony, such as through the submission of written exhibits or rebuttal witnesses. Requiring parties to pre-file written comments and exhibits no later than 5 business days in advance of the hearing will eliminate the unfair advantage afforded to parties choosing to wait until the day of hearing to provide comments and supporting documents for non-technical testimony, making the hearings more transparent and orderly. Furthermore, the additional time will allow the Oil Conservation Commission ("Commission") and the Oil Conservation Division ("Division") to ensure sufficient time is scheduled at hearings to allow parties to present evidence and witnesses.
- The proposed revision to 19.15.3.11(B)(1) appears to eliminate the requirement that a person intending to "cross examine witnesses at the hearing" file a prehearing statement. NMOGA believes that this requirement should be retained. While the subsequent changes to 19.15.3.12(B)(3) restricts the right of cross examination to a "party" (which is defined as a person that files a prehearing statement or an entry of appearance 10 days in advance of the hearing), there is no clear reason to strike the current language in 19.15.3.11(B)(1) that requires a person intending to cross examine a witness to file a prehearing statement. All parties involved in the administrative process before the Commission or the Division should be allowed adequate advance notice as to the identity of other parties involved in any given proceeding, and the elimination of the language regarding pre-hearing statements 19.15.3.11(B)(1) is contradictory given the notice required for parties to a hearing.

On behalf of the New Mexico Oil and Gas Association, thank you for your consideration.

Yours truly,

Ryan Flynn