

959 1 STATE OF NEW MEXICO 2 ENVIRONMENTAL IMPROVEMENT BOARD 3 4 No. EIB 21-27(R) 5 6 IN THE MATTER OF PROPOSED NEW REGULATION, 7 20.2.50 NMAC - Oil and Gas Sector - 8 Ozone Precursor Pollutants 9 10 TRANSCRIPT OF PROCEEDINGS 11 12 BE IT REMEMBERED that on the 23rd day of 13 September, 2021, this matter came on for hearing before 14 FELICIA ORTH, Hearing Officer, virtually through Cisco 15 Webex Meetings video conferencing, commencing at 9:00 a.m. 16 17 18 19 20 REPORTED BY: THERESA E. DUBOIS, RPR, CCR #29 21 Albuquerque Court Reporting Service, LLC 22 3150 Carlisle Boulevard, Northeast 23 Suite 104 24 Albuquerque, New Mexico 87110 25 (505) 806-1202 abqcrs@gmail.com	961 1 A P P E A R A N C E S (Continued) 2 For the New Mexico Oil and Gas Association: 3 ERIC L. HISER, ESQ. 4 BRANDON CURTIS, ESQ 5 JORDAN HISER & JOY, PLC 6 5080 North 40th Street 7 Suite 245 8 Phoenix, Arizona 85024 9 (480)505-3900 10 ehiser@jhjlawyers.com 11 bcurtis@jhjlawyers.com 12 DALVA L. MOELLENBERG, ESQ. 13 GALLAGHER & KENNEDY, P.A. 14 1239 Paseo de Peralta 15 Santa Fe, New Mexico 87501 16 (505)982-9523 17 dlm@gknet.com 18 19 For the Conservation Votes New Meido, Dine C.A.R.E., 20 Earthworks, Natural Resources Defense Council, San Juan 21 Citizens Alliance, Sierra Club, and 350 New Mexico 22 ("Clean Air Advocates"): 23 TANNIS FOX, ESQ. 24 WESTERN ENVIRONMENTAL LAW CENTER 25 409 East Palace Avenue, #2 Santa Fe, New Mexico 87501 (505)629-0732 fox@westernlaw.org DAVID R. BAAKE, ESQ. BAAKE LAW LLC 2131 North Main Street Las Cruces, New Mexico 88001 (575)343-2782 david@baakelaw.com For Environmental Defense Fund: ELIZABETH DELONE PARANHOS, ESQ. DELONE LAW INC. 1555 Jennine Place Boulder, Colorado 80304 (303)442-0610 elizabeth@delonelaw.com
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2	ANITA AMSTUTZ 1087	2	NOTE: No exhibits are attached physically to this transcript. They can be found online at www.env.nm.gov.opf/docketed-matters/
3	DAVID PATTERSON 1090	3	gov.opf/docketed-matters/
4	PATRICIA SHEELY 1093	4	WILDEARTH GUARDIANS EXHIBITS: ADMITTED
5	LYNNE HINTON 1095	5	Exhibit 1. WildEarth Guardians' Proposed Modifications 1124
6	RUTH STRIEGEL 1097	6	Exhibit 2. Resume of Jeremy Nichols 1124
7	JACK EDWARDS 1100	7	Exhibit 3. Direct Testimony of Jeremy Nichols 1124
8	NMED WITNESS: (Topic 21)	8	Exhibit 4. Prehearing Statement of Clean Air, Climate, and Health Coalition 1124
9	ELIZABETH BISBEY-KUEHN/BRIAN PALMER	9	Exhibit 5. "Impact of U.S. Oil and Natural Gas Emission Increases on Surface Ozone is Most Pronounced in the Central United States" 1124
10	Direct Examination by Ms. Katz 1104	10	Exhibit 6. Regional Air Quality Council "Early Action Compact Ozone Action Plan" 1124
11	Examination by the Board 1110	11	Exhibit 7. Denver Post article 1124
12	NMOGA WITNESS: (Topic 21)	12	Exhibit 8. "Air Quality Control commission approves first phase of rules to reduce oil and gas emissions" 1124
13	JOHN R. SMITHERMAN	13	Exhibit 9. "DEQ confirms ozone pollution violated federal standards" 1124
14	Direct Examination by Mr. Hiser 1112	14	Exhibit 10. U.S. EPA "Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards" 1124
15	Cross-Examination by Ms. Katz 1120	15	Exhibit 11. 5 Colorado Code Regulations 1124
16	Examination by the Board 1121	16	Exhibit 12. Utah Admin. Code r. R307-501 1124
17	WILDEARTH GUARDIANS WITNESS:	17	Exhibit 13. Wyoming Dept. of Environmental Quality Air Quality Regulations 1124
18	JEREMY NICHOLS	18	Exhibit 14. "New Mexico's oil and gas counties among the most air-polluted in the state amid recent boom" 1124
19	Direct Examination by Mr. Nykiel 1124	19	Exhibit 15. WildEarth Guardians' Petition to Designate Permian Basin of Southeast New Mexico a Nonattainment Area 1124
20	Cross-Examination by Ms. Katz 1136		
21	Cross-Examination by Mr. Curtis 1137		
22	Cross-Examination by Mr. Rose 1139		
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25	Direct Examination by Ms. Katz 1151		
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2	JEFFREY "RYAN" DAVIS	2	Exhibit 16. WildEarth Guardians' Spreadsheet 1124
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4	Cross-Examination by Ms. Katz 1185	4	Exhibit 18. Rising Temperatures, Worsening Ozone Pollution 1124
5	Examination by the Board 1186	5	Exhibit 19. Confronting Climate Change in New Mexico 1124
6	OXY USA, INC. WITNESS: (Topic 22)	6	Exhibit 20. Fourth National Climate Assessment, Chapter 25 1124
7	DANNY HOLDERMAN	7	Exhibit 21. UCLA Institute of Environment and Sustainability "Impacts of Oil and Gas Drilling on Indigenous Communities in New Mexico's Greater Chaco Landscape" 1124
8	Direct Examination by Mr. Janoe 1190	8	OXY USA, INC. EXHIBITS: ADMITTED
9	Examination by the Board 1199	9	Exhibit 1. Recommended modifications to 20.2.50 NMAC May 6, 2021 1194
10	KINDER MORGAN WITNESS:	10	Exhibit 2. Written Direct Testimony of Danny Holderman on behalf of Oxy USA, Inc. 1194
11	LESLIE NOLTING	11	Exhibit 3. Resume of Danny Holderman 1194
12	Direct Examination by Ms. Gutierrez 1203	12	Exhibit 4. Oxy USA Work Order 1194
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1 KINDER MORGAN EXHIBITS: (Continuing) ADMITTED 2 Attachment F - Caprock Vendor Quote 1203 3 Attachment G - Rio Vista Vendor Quote 1203 4 Attachment H - Monument Vendor Quote 1203 5 Attachment I - Caprock Cost-Effectiveness Analysis 1203 6 Attachment J - Rio Vista Cost-Effectiveness Analysis 1203 7 Attachment K - Monument Cost-Effectiveness Analysis 1203 8 Attachment L - Washington Ranch Cost-Effectiveness Analysis 1203 9 Attachment M - Excerpt of Regional Haze Stakeholder Outreach Webinar #2 1203 10 Attachment N - Turbine SCR Installation Schedule 1203 11 Attachment O - Excerpt of Engines Monitoring - Permit Template Language 1203 12 Attachment P - Excerpt of Turbines Monitoring - Permit Template Language 1203 13 Attachment Q - Blanco Compressor Station A Permit Application 1203 14 Attachment R - Blanco Compressor Station A Permit Application 1203 15 Attachment S - Summary of Turbines Available for Sale 1203 16 Attachment T - 10/16/2019 Letter from Baker Hughes 1203 17 Attachment U - Notice of Intent to Present Technical Testimony Filed by Solar Turbines on 07/27/2021 1203 18 Attachment V - 12/05/2017 Letter from Siemens 1203	1 HEARING OFFICER ORTH: Good morning. My name is Felicia Orth; I am the Hearing Officer appointed by the Environmental Improvement Board to conduct a hearing in EIB 21-27. This is a rulemaking for ozone precursors. We are on day four of the hearing, and we begin with public comment. 2 MR. BUTZIER: Madam Hearing Officer, we cannot hear you -- at least I cannot hear you. 3 HEARING OFFICER ORTH: Oh, I'm unmuted. Member Garcia, can you hear me? 4 BOARD MEMBER GARCIA: Yes, I can hear you just fine. 5 HEARING OFFICER ORTH: Mr. Butzier, I believe the problem is with your own system. 6 Let's see. We begin each day of the hearing at 9 with public comment. Public comment is also taken at 1 p.m. and 5 p.m. each day of the hearing. I have two folks who reached out to the Board's administrator, Pam Jones, with a request to offer public comment this morning, by email. That is Paul Gessing and Hanh Nguyen, and I'll call on you in just a moment. In the event you're on the platform and have not yet reached out by email, I'm still happy to accept your comment this morning. Simply reach out through the Chat; Chat is enabled for everyone.

975 1 Public comment is taken by audio, not video. 2 It's taken under oath and is limited to five minutes. So 3 with that let me find Mr. Gessing first. Here's 4 Mr. Gessing. 5 Mr. Gessing, I'm unmuting you. Can you hear me? 6 MR. GESSING: I can hear you. Can you hear me? 7 HEARING OFFICER ORTH: Yes, your voice is coming 8 through loud and clear. Would you please spell your first 9 and last name? 10 MR. GESSING: Yes, my name is Paul, P-A-U-L; last 11 name Gessing, G-E-S-S-I-N-G. 12 HEARING OFFICER ORTH: Thank you. And if you 13 would raise your right hand. Do you swear or affirm to 14 tell the truth? 15 MR. GESSING: I do. 16 HEARING OFFICER ORTH: Thank you. I'll start 17 your five minutes now. 18 PAUL GESSING, 19 having been first duly sworn or affirmed, 20 gave public comment as follows: 21 PUBLIC COMMENT BY PAUL GESSING 22 MR. GESSING: Okay. My name is Paul Gessing; I 23 run Rio Grande Foundation, which is a public research 24 nonprofit based in Albuquerque dealing with New Mexico 25 public policy issues. The Rio Grande Foundation is	977 1 not being able to see other attendees or nonpanel 2 speakers. That is a function of the Cisco Webex event 3 settings, Mr. Sontag. 4 Let's see. The other person reaching out by 5 email to offer comment this morning was Hanh Nguyen. 6 Mr. Nguyen, I'm going to unmute you. Can you 7 hear me? 8 MS. NGUYEN: Yes, I can hear you. 9 HEARING OFFICER ORTH: Okay. Great. Thank you. 10 Would you spell your first and last name, please? 11 MS. NGUYEN: My first name, H-A-N-H, Hanh; last 12 name Nguyen, N-G-U-Y-E-N, Nguyen. 13 HEARING OFFICER ORTH: Thank you. And I'm sorry 14 for mispronouncing your name. 15 MS. NGUYEN: That's all right. 16 HEARING OFFICER ORTH: So if you would, please, 17 raise your right hand. Do you swear or affirm to tell the 18 truth? 19 MS. NGUYEN: Yes, I do. 20 HEARING OFFICER ORTH: Thank you. I'm going to 21 start your five minutes now. 22 HANH NGUYEN, 23 having been first duly sworn or affirmed, 24 gave public comment as follows: 25 PUBLIC COMMENT BY HANH NGUYEN
976 1 concerned about the proposed methane rule. We have 2 serious concerns about language that eliminates thresholds 3 of the marginal well opportunities for oil and gas 4 production in New Mexico. As we all know, New Mexico is 5 among the most reliant states in the entire country on oil 6 and gas, and that includes everybody in our fair state. 7 We just want to make sure that this process is 8 collab -- collaborative with the industry and does not 9 unduly harm the production of oil and gas in the State of 10 New Mexico. The state is becoming more reliant on oil and 11 gas, not less, and we also need the revenue that it 12 generates. We need the jobs that it generates. And we 13 have been proactive as a state in reducing pollution 14 across the entire economy. That doesn't mean that we have 15 to do everything all at once. 16 And I urge the EIB and other policy makers to be 17 judicious and collaborative. The industry has no interest 18 in waste; they've improved dramatically in recent years, 19 their practices, in both major basins across New Mexico, 20 in limiting and reducing the amounts of waste and venting 21 and flaring, and I just want to make sure this is a 22 collaborative, not a punitive process imposed on the 23 industry. That's all I have for you. Thank you. 24 HEARING OFFICER ORTH: Thank you very much, 25 Mr. Gessing. I have a question from Larry Sontag about	978 1 MS. NGUYEN: Okay. All right. This is Hanh 2 Nguyen in Albuquerque. I appreciate the Environmental 3 Improvement Board for the opportunity to provide comment 4 on ozone hearing day four. Communities of color face 5 disproportionate impacts from climate change and air 6 pollution in Lea, Eddy and San Juan Counties. 7 There are more than 130,000 New Mexicans live 8 within a half mile of oil and gas development. People say 9 I live in Bernalillo County, far from oil and gas 10 production plants, why should I care? This is a health 11 equity issue; everyone should care. 12 Leaks due to equipment malfunction and lack of 13 maintenance account for 70 percent of the oil and gas 14 industry's emissions statewide. Here in New Mexico, oil 15 and gas operations release more than 1 million metric tons 16 of methane every year. That has the same short-term 17 climate impacts as 22 coal-powered power plants or 28 18 million automobiles. 19 I suggest the three critical improvements that 20 the EIB should make to protect communities and address 21 major sources of pollution. One, strengthen the 22 requirement to cut pollutions from pneumatic controllers 23 that are used in oil and gas production; the devices that 24 are -- that are the second largest source of oil and gas 25 methane emissions in New Mexico. NMED should require

979 1 companies to inspect pneumatics for leaks and accelerate 2 timeline to retrofit equipment with zero bleed or zero 3 emissions pneumatic controllers. 4 Two, protect those living closest to the 5 development by requiring more frequent inspections to find 6 and fix leaks. Three, ensure strong requirements for 7 operators to control pollution during the completion of an 8 oil or gas well, as well as when they redevelop an 9 existing well. 10 This is health equity for children an elderly, as 11 well as community of color. These actions will alleviate 12 the burden of diseases associated with pollution. Thank 13 you. 14 HEARING OFFICER ORTH: Thank you very much. I 15 don't have anyone else reaching out through the Chat to 16 offer public comment this morning. So we will return to 17 the technical case. 18 This morning we will begin with two witnesses 19 that we needed to move back to, putting Dr. Thompson on. 20 Before we turn to the technical witnesses this morning, I 21 believe, Ms. Katz, you had a proposal. Can you join us on 22 screen? 23 MS. KATZ: Good morning, Madam Hearing Officer 24 and members of the Board. I -- I had just a suggestion 25 regarding how to maybe streamline the process for asking	981 1 guess I would just ask for a little bit of consideration 2 that sometimes we fumble with the buttons at the bottom of 3 the screen, so as long as there is some allowance for 4 delay while that occurs, I think that would be really a 5 way to expedite without having to go through the long roll 6 call for each and every witness on every issue. Thank 7 you. 8 HEARING OFFICER ORTH: All right. I get so much 9 practice with names then. So Mr. de Saillan, do you have 10 a comment? 11 MR. DE SAILLAN: Yes. Thank you, Madam Hearing 12 Officer. I just wanted to say that I prefer -- well, I 13 appreciate Ms. Katz's suggestion. I prefer your approach 14 of using the -- starting the video because that's pretty 15 quick, simple and doesn't need people looking at the Chat. 16 HEARING OFFICER ORTH: All right. Thank you. 17 Thank you all then. I will do that. And I will take a 18 nice long pause to allow you to start your video. 19 Now, in the Chat I see that Sister Rose Marie 20 Cecchini would like to make public comment. So excuse me 21 while I -- oh, wait, I see Mr. Butzier. 22 MR. BUTZIER: Thank you, Madam Hearing Officer. 23 I -- you've already decided to do what Charlie de Saillan 24 recommended, and that is something I support. I also have 25 another efficiency suggestion, which is that perhaps the
980 1 the parties after they -- if they have questions -- 2 questions for a witness, cross-examination questions. And 3 I had suggested an approach whereby the Hearing Officer 4 could call on the specific parties that had submitted 5 direct or rebuttal testimony to ask if they had questions, 6 and then other parties could indicate in the Chat if they 7 wished to cross-examine the witnesses, but Madam Hearing 8 Officer, you had -- you suggested another way, which would 9 be to simply have the people who wanted to cross-examine 10 just start their video and appear on screen, and that 11 seems like an even better way to do that, so... 12 HEARING OFFICER ORTH: Thank you. It occurred to 13 me yesterday for some reason. We are all making our way 14 through an unusual landscape on a virtual platform, and in 15 an ordinary hearing I was thinking how would a lawyer 16 indicate they wish to cross-examine. Typically, they'd 17 just stand up and I could see them standing up, or even 18 beginning to stand up. 19 So let me ask if there are any other counsel or 20 party representatives on the platform who have -- have a 21 comment on this. 22 Mr. Hiser? 23 MR. HISER: Madam Hearing Officer, I think that 24 either of the approaches that you or Ms. Katz have spoken 25 about by putting yourself on the video would work. I	982 1 Hearing Officer could give each party the option to go 2 into their surrebuttal at the same time that they go into 3 their direct and rebuttal testimony; hopefully, avoiding 4 the sort of snaking effect of what we originally outlined. 5 I think that might make more sense, be more efficient, 6 would still allow NMED to be the final word. 7 HEARING OFFICER ORTH: Thank you for that, 8 Mr. Butzier. I agree. Certainly, yesterday, it became 9 apparent that that would be expeditious when we had a 10 witness in those circumstances. And again, so long as 11 NMED gets to present its final opinion on all of the other 12 parties' proposals, I think that would work. 13 Ms. Katz, is that -- is that something you agree 14 with? 15 MS. KATZ: Yes. Absolutely, Madam Hearing 16 Officer. Thank you. 17 MR. BUTZIER: Thank you, Madam Hearing Officer 18 HEARING OFFICER ORTH: Thank you very much. So 19 let me go back to public comment for just a moment. 20 Sister Cecchini, I'm sorry I didn't realize you wanted to 21 offer public comment, but I'm unmuting you now. Can you 22 hear me? 23 SISTER CECCHINI: Yes, I can. Thank you. Good 24 morning, members of the Board and Hearing Officer. I'm 25 Rose Marie Cecchini --

983 1 HEARING OFFICER ORTH: Hold on one second. Would 2 you please spell your name? 3 SISTER CECCHINI: Yes. First name, Rosemarie, 4 R-O-S-E-M-A-R-I-E, Cecchini, C-E-C-C-H-I-N-I. 5 HEARING OFFICER ORTH: Thank you. And if you 6 would raise your right hand. Do you swear or affirm to 7 tell the truth? 8 SISTER CECCHINI: I do. 9 HEARING OFFICER ORTH: Thank you very much, I'll 10 start your five minutes now. 11 SISTER ROSEMARIE CECCHINI, 12 having been first duly sworn or affirmed, 13 gave public comment as follows: 14 PUBLIC COMMENT BY SISTER ROSEMARIE CECCHINI 15 SISTER CECCHINI: Thank you. And good morning 16 members of the Board and Hearing Officer. As I have 17 stated, I'm a Maryknoll Sister, Director of the Office of 18 Light, Peace, Justice and Creation, with Catholic 19 Charities of Gallup Diocese. 20 And I'm offering these comments on behalf of 21 concerned people of faith in frontline communities that we 22 are serving in northeastern New Mexico, who are 23 disproportionately affected by the oil and gas operations 24 in the San Juan Basin. 25 These are causing serious health and	985 1 following improvements: Protect those living closest to 2 development by requiring more frequent inspection, define 3 and fix leaks. Ensure strong requirements for the 4 operators to control pollution during the completion of an 5 oil or gas well, or whenever you develop an existing well. 6 Strengthen requirements to cut pollution from pneumatic 7 controllers that are used in oil and gas production. 8 These devices are the second largest source of 9 the oil and gas methane emissions in New Mexico. NMED 10 should require companies to inspect pneumatics for leaks 11 and accelerate the timeline to retrofit equipment with 12 zero bleed or zero emission pneumatic controllers. We 13 believe in life of present and future generations depend 14 on your actions. 15 And thank you for the opportunity to offer our 16 comments today. 17 HEARING OFFICER ORTH: Thank you very much, 18 Sister Cecchini. 19 Okay. Now, I don't have any further indication 20 from the Chat or email that anyone would like to offer 21 public comment. 22 Our first witness this morning, Ms. Katz? 23 MS. KATZ: Madam Hearing Officer, I believe that 24 we had discussed that it was -- was it Mr. Smitherman that 25 Mr. Hiser was going to see if he wanted to present
984 1 environmental impacts to children, elderly, Native 2 Americans, and those living in poor, rural communities. 3 In fact, almost half of all Native Americans in San Juan 4 County, about 22,000 people live within a half mile of a 5 well site. In my visits, local people have described the 6 adverse health and environmental impacts they continue to 7 experience and suffer from due to the unregulated oil and 8 gas operations that continually emit methane gas through 9 venting, flaring, leaks and associated toxic air 10 pollution. 11 This unregulated methane release is a powerful 12 climate change accelerator. It is 84 times more polluting 13 than carbon dioxide, and responsible for 25 percent of the 14 warming we are now experiencing. And we have all 15 witnessed what the threats of climate crisis holds out 16 before us. 17 Our faith traditions teach that creation is 18 God-given and sacred and intended for the well-being and 19 flourishing of all humans and planetary life. Clean air 20 in the atmosphere is a sacred commons, providing oxygen 21 and breath for all living beings. 22 In gratitude and love for all our neighbors, 23 including humans, creatures of all species, tree and plant 24 life, the natural environment, we urge the Environment 25 Department to adopt strong methane rules which include the	986 1 regarding the small business facility definition? 2 HEARING OFFICER ORTH: Right. I think it was 3 Mr. Smitherman first and then Dr. Thompson. I've made 4 both of them panelists. 5 And if you -- if you expect to see a witness 6 among the panelists and you don't see them please look 7 among the attendees, I'm happy to do that. Let's see. 8 Mr. Hiser, will Mr. Smitherman need screen sharing 9 privileges? 10 MR. HISER: I think that would probably be 11 helpful, Madam Hearing Officer. 12 HEARING OFFICER ORTH: All right. I can do that. 13 Okay. That function is done. Mr. Smitherman, you are 14 still under oath. Mr. Hiser, please go ahead. 15 JOHN R. SMITHERMAN, 16 having been previously duly sworn or affirmed, was 17 examined and testified as follows: 18 DIRECT EXAMINATION OF JOHN R. SMITHERMAN 19 BY MR. HISER: 20 Q. Mr. Smitherman, can you please state your name 21 for the record? 22 A. John R. Smitherman. 23 Q. And have you previously submitted your testimony 24 that you've given on direct and rebuttal, and adopted that 25 in this proceeding?

987 1 A. Yes, I have. 2 Q. Okay. Did you prepare a summary of your 3 testimony as it relates to the small business exemption 4 that's currently proposed for 20.2.50.125 of the 5 regulation? 6 A. Yes, I did. 7 Q. Would you like to give a summary of that? And 8 we're going to cover your surrebuttal as well; is that 9 true? 10 A. I think that would be most efficient. 11 Q. Thank you. 12 A. Madam Chair, Vice-Chair, Board members and Madam 13 Hearing Officer, thank you for this opportunity to speak 14 to you today. 15 Q. And we can't see your slides, John. 16 A. I'm just about to try it right now. 17 Q. Okay. Just wanted to make sure you knew. 18 A. Am I sharing now? 19 Q. You are. 20 A. Good. Let me move this here. It's still 21 sharing? 22 Q. Yes. 23 A. Okay. Thank you for the opportunity to talk to 24 you today. I want to offer some comments on the small 25 business facility as well. As we all heard Mr. Davis	989 1 Exhibit A1 and his rebuttal testimony is found in Exhibit 2 41. And I apologize for that. 3 Q. (BY MS. HISER) And Mr. Smitherman, if you were 4 meaning to be advancing your slide, you are not doing so. 5 A. Oh. Hmm. Did that advance it? 6 Q. Yes. You are now on the small business facility. 7 This is, I believe, about Dr. McCabe. 8 A. Yeah, that's surrebuttal. I'm going to change. 9 Let me -- I've got a little technical complication here. 10 Let me stop sharing just for a moment and see if I can get 11 the correct -- you know, when you've got multiple screens 12 and sharing and new technical, sometimes it makes it a 13 little difficult for me. Give me just a moment, please. 14 CHAIRPERSON SUINA: Madam Hearing Officer, this 15 is Phoebe again. Can we have Mr. Hiser state again which 16 exhibits? I missed the second. Sorry about that. 17 MR. HISER: I'm sorry, Ms. Suina. Sometimes I am 18 guilty of speaking rapidly. It's Exhibit 41 is the 19 rebuttal exhibit. 20 CHAIRPERSON SUINA: Thank you. 21 BOARD MEMBER HONKER: And Mr. Hiser, the first 22 testimony, you said it was A1. On the list of exhibits we 23 have there's no A1. We have NMOGA Exhibits 1 through 7, 8 24 through 20 and then -- 25 MR. HISER: So, yes, Mr. Honker, it is a little
988 1 yesterday, he gave a very compelling argument and good 2 input about this particular section of the rule. From our 3 perspective, and I represent NMOGA -- New Mexico Oil and 4 Gas Association, we recognize that the negative impacts, 5 if you will, the cost impacts, the negative impacts of 6 this rule are not contained just to small businesses. 7 Really, every business -- every oil and gas operator has 8 both low-producing wells and higher-producing wells in 9 their inventory. 10 And it's those low-producing wells and assets 11 that are going to suffer the compliance cost issues that 12 go with this rule. Businesses make decisions on spending 13 money for anything, including compliance, based on a 14 project basis. If it's a well, it's on a well basis. 15 It's on the economics of that particular facility or 16 that -- that well. 17 HEARING OFFICER ORTH: I'm sorry. 18 Mr. Smitherman? 19 MR. SMITHERMAN: Yes. 20 HEARING OFFICER ORTH: Would you please identify 21 the exhibit you'll be referring to for the Board members? 22 MR. SMITHERMAN: I'm going to ask Counsel if 23 he'll give them the exhibit numbers, please. 24 MR. HISER: Thank you, Madam Hearing Officer. 25 Mr. Smitherman's direct testimony is found in NMOGA	990 1 bit confusing. It's in Appendix A of our initial filing 2 and it is the first exhibit in Appendix A. 3 BOARD MEMBER HONKER: Okay. Thank you. 4 MR. SMITHERMAN: Am I now sharing my screen? 5 Q. (BY MR. HISER) You are not. Now you are. 6 A. There we go. Am I sharing the screen that says 7 direct and rebuttal testimony? 8 Q. It says right now direct.PDF in the upper slide. 9 A. The slide itself, is it the NMOGA logo? 10 Q. It is the NMOGA logo. 11 A. Then it says direct and rebuttal near the bottom? 12 Q. Yes. 13 A. Thank you. Perfect. Sorry for that delay. 14 I've already addressed this particular slide, I'm 15 going to move past it. In essence, the concept is, if an 16 expenditure is more than a particular well or facility can 17 justify based on its income or future income, then the 18 operator is going to make the rational decision to not 19 spend the money and cease operating that asset. 20 So if -- if a well cannot justify the compliance 21 expenditures that are required for that particular well, 22 that well is going to be shut in and plugged, and all of 23 the benefits that go with that well's production, all of 24 it, as Mr. Davis said, its premature abandonment, is going 25 to -- you're going to miss out on the employment of people

991 1 that continue to work on that property, you're going to 2 miss out on tax revenues, all of the economic activity 3 that comes from that particular well. 4 So it's not a question of whether the company has 5 enough money or enough profits that they can comply with 6 these rules. Those companies are going to make individual 7 project or individual well decisions as to whether or not 8 to spend the money. So this whole company profit concept 9 just really is -- is really a false narrative. 10 So that's why NMOGA is focused on looking at each 11 individual requirement, each of the sections of the rule, 12 to try to as best we can, right-size the compliance 13 requirements and, therefore, the compliance costs that go 14 with each well, that try to then reduce compliance costs 15 on the lowest volume producing wells so that we don't have 16 to plug as many wells as perhaps we might have to under 17 this original rule. 18 So our change -- and we did make a change on the 19 proposed rule -- was to strike this section. I will say 20 that it was very difficult for us to get a full 21 understanding of the work that NMED did, and quite 22 frankly, very difficult for us to understand how many 23 operators they had identified that would fit under the 24 small business facility exemption, until we heard and read 25 the testimony here in just the last couple of days.	993 1 we see kind of over and over, the people that don't 2 understand how businesses work. He says that these 3 companies could afford to comply with the requirements as 4 proposed by the NMED because they're large companies and 5 successful companies. 6 That testimony, as I've just mentioned, just 7 misses the point. It's just not how businesses make 8 decisions. They make decisions on specific projects, and 9 if spending money on a particular project is not supported 10 by the -- by the return, if you will, of that particular 11 project or asset, they're simply not going to spend the 12 money and they're going to abandon that asset, and plug 13 and abandon a well, for example. 14 It's just making -- it's just making prudent 15 business decisions. And if companies make imprudent 16 business decisions, it's not in the best interest of their 17 shareholders. Thank you. 18 Q. Thank you, Mr. Smitherman. 19 MR. HISER: We have no additional questions of 20 Mr. Smitherman, Madam Hearing Officer. 21 HEARING OFFICER ORTH: Thank you very much, 22 Mr. Hiser and Mr. Smitherman. 23 Counsel or other party representatives, in the 24 event you have a question of Mr. Smitherman based on his 25 testimony, please turn on your screen. I see Ms. Katz.
992 1 We support -- Independent Petroleum Association 2 of New Mexico's position and their recommendation. We 3 also stand ready if the Board decides that it's worthy and 4 advisable for this small business facility provision to be 5 included in the rule and perhaps improved. There were 6 many, many valid criticisms of the rule as written 7 yesterday. I think that perhaps if the Board decides that 8 it's worthwhile keeping this rule, NMOGA would be happy to 9 participate in an improvement of that through some kind of 10 a cooperative exchange. 11 Regardless of that, it should not detract from 12 the tailored approach that NMOGA has taken for each one of 13 these rule sections. Thank you. That concludes my 14 summary. 15 Q. Did you want to touch on your surrebuttal, John? 16 A. Sure. Let's see if I can do that. That's 17 another -- another challenge, isn't it? I think I'm going 18 to stop sharing and change and reshare. Perhaps that 19 would work best. 20 Am I sharing the small business facility that 21 begins with Dr. McCabe's name? 22 Q. Yes, you are. 23 A. Lovely. Thank you. 24 This is in response to some rebuttal testimony 25 from Dr. McCabe. And it really is the same narrative that	994 1 Ms. Katz? 2 MS. KATZ: Thank you, Madam Hearing Officer. 3 CROSS-EXAMINATION OF JOHN R. SMITHERMAN 4 BY MS. KATZ: 5 Q. I just have a few questions for you, 6 Mr. Smitherman. So you -- you said that you had a 7 difficult time understanding what we did and how we came 8 up with our data on small business facilities, and the 9 facilities that we thought would qualify for that, until 10 the past couple of days. And so, I just wanted to ask you 11 if you read Ms. Day and Ms. Kuehn's 15 pages of direct 12 testimony, explaining all of that, which is the same, and, 13 in fact, more than what they explained yesterday, I 14 believe. 15 So did you review that testimony, which was filed 16 on July 28th, I believe? 17 A. I -- I did read it. I don't know that I read it 18 when it first came out, and so perhaps I missed some of 19 the impacts of that early on. It really became much more 20 apparent as I read through their rebuttal testimony and 21 looked back at really kind of what they -- what they were 22 describing in their -- in their direct. We actually tried 23 in fact. I, personally -- 24 Q. Okay. Thank you. 25 A. -- looked into the spreadsheets myself, and

995 1 perhaps didn't spend enough time on them, maybe that was 2 the case, but it was difficult to follow with just looking 3 at the spreadsheets themselves. 4 Q. Okay. Thank you. And -- and so, but you do 5 agree that after that direct testimony was filed and the 6 spreadsheet, that -- that NMOGA did have a chance to 7 prepare written rebuttal testimony on that as well? 8 A. Yes, we had an opportunity. 9 Q. Okay. Thank you. 10 And then, would you agree that the Department has 11 accepted many of NMOGA's proposed revisions to various -- 12 the various provisions of the rule? 13 A. Yes. 14 Q. As of our most recent deadline -- I should 15 clarify, and I guess the most recent one that we filed was 16 on September 16th? 17 A. Yes. NMED has accepted much of the input from 18 NMOGA. We've -- we've really tried very hard to not be a 19 no, but to be someone in our organization that tries hard 20 to look at the rule and try to find the right balance 21 between the effectiveness of the rules and the impact on 22 the industry. And this is an important industry in New 23 Mexico, so, yes, we appreciate the fact that NMED has 24 accepted much of our input. Thank you. 25 Q. And would you -- would you agree that NMED,	997 1 stayed the course, if you will, and -- and focused on each 2 individual section. 3 Q. So you didn't -- NMOGA didn't supply any data or 4 analysis, or economic analysis in support of a small 5 business exemption that would exempt lower producing 6 wells, correct? 7 A. No, we focused on those same aspects in the 8 individual sections. 9 Q. And so, as I understood your testimony today, 10 you're not suggesting that the Board adopt right now any 11 other proposal for small business exemption? What I heard 12 you say is that you're willing to engage in discussions 13 with NMED and presumably other parties about any kind of 14 small business exemption; is that correct? 15 A. That's correct. 16 MS. FOX: Thank you very much. That's all I 17 have, Madam Hearing Officer. 18 HEARING OFFICER ORTH: All right. Thank you, 19 Ms. Fox. I'm going to -- I see no other counsel or party 20 representatives on the screen, so I'll turn to the Board 21 in the event they have questions. If you are an attendee 22 and would have a question of Mr. Smitherman, please reach 23 out to me in the Chat. 24 EXAMINATION BY THE BOARD OF JOHN R. SMITHERMAN 25 HEARING OFFICER ORTH: Madam Chair, do you have
996 1 likewise, has not been a no, in terms of listening to the 2 input that -- that NMOGA provided? 3 A. I agree with that. 4 Q. Okay. Thank you very much. 5 MS. KATZ: That's all I have for Mr. Smitherman. 6 MR. SMITHERMAN: Certainly. Thank you, ma'am. 7 HEARING OFFICER ORTH: Thank you. Ms. Fox, did I 8 see you on screen? 9 MS. FOX: Yes. Thank you, Madam Hearing Officer. 10 CROSS-EXAMINATION OF JOHN R. SMITHERMAN 11 BY MS. FOX: 12 Q. Good morning, Mr. Smitherman. 13 A. Good morning, Ms. Fox. 14 Q. Yes, nice to see you. A few questions, 15 Mr. Smitherman. You stated in your testimony that, I 16 guess, not only did NMOGA not put forth an alternate 17 language for the definition of small business facility, 18 but NMOGA, in its last proposal to the Board, in Exhibit 19 47, proposes to strike the small business facility 20 definition, correct? 21 A. We did. We saw really what we believed to be a 22 better way to address the impacts on low-producing assets 23 by tailoring each of the sections that are applicable to 24 those different equipments that are on those assets. And 25 so rather than try to find a different structure, we -- we	998 1 questions of Mr. Smitherman? 2 CHAIRPERSON SUINA: Thank you, Madam Hearing 3 Officer. Yes, I have a couple of questions. I think on 4 one of your slides this morning, you had mentioned that 5 NMOGA represents over 1,000 members, which -- which is the 6 equivalent to about 90 percent of oil and gas production 7 in New Mexico; is that correct? 8 MR. SMITHERMAN: Yes, ma'am, that is. 9 CHAIRPERSON SUINA: Thank you. And so, does 10 NMOGA -- in that membership, are there members that would 11 be impacted by this small business discussion we have of a 12 small business facility? 13 MR. SMITHERMAN: I don't know. When -- when we 14 went through the statistics yesterday -- and I think the 15 number was somewhere less than 100 operators, that the 16 NMED has identified, I don't know the names of those 17 companies, so I don't -- I cannot tell with you any 18 certainty whether they're NMOGA members or not. 19 I know that NMOGA does have -- does have many 20 small operating company members, and so it's very possible 21 that some of those very members are -- excuse me -- some 22 of those very operators are members of NMOGA. 23 CHAIRPERSON SUINA: Okay. Thank you. And I just 24 want to have just -- I know Ms. Katz had asked you a 25 couple of questions regarding this. I just want to make

999 1 sure I understand. So, now, that you've heard more 2 testimony and information by NMED regarding what would be 3 a small business facility, do you have a full -- you said 4 there was about less than 100 operators. I guess there's 5 no -- I guess, are there -- other than that, that's what 6 you understand as those being impacted by the small 7 business facility language within the proposed rules; is 8 that correct? 9 Sorry if I made that a little bit confusing. I 10 just want to -- I just want to verify that that is your 11 current understanding after the discussions over the last 12 few days, and that no other analysis has been done by 13 yourself regarding who or what companies that will impact, 14 or the numbers? 15 MR. SMITHERMAN: That's correct. 16 CHAIRPERSON SUINA: Okay. All right. Thank you 17 so much. And I apologize if I made that a little bit 18 confusing. Thank you. 19 HEARING OFFICER ORTH: Thank you. Vice-Chair 20 Trujillo-Davis? 21 VICE-CHAIR TRUJILLO-DAVIS: Yes, I have a couple 22 of questions. Good morning. Good morning, 23 Mr. Smitherman. 24 MR. SMITHERMAN: Good morning. Could you give me 25 just one moment? There's someone making a lot of noise	1001 1 difference. For example, I know that there's many, many 2 low-rate producing wells, gas wells in the state. They 3 may be more concentrated in the Northwest, and those wells 4 may have a low-rate production that could go for many, 5 many years with very little decline. 6 You also may have a low-rate producing well that 7 has a decline to it, that quite frankly, may just have a 8 few more years of life left. So, first, you'd have to 9 look at that to see is it really worth it. And if -- if, 10 for example, you were going to spend money and you were 11 not going to get payback in the first year, you've spent 12 money and basically, you've spent the entire amount of 13 profit that that asset was going to give you for a full 14 year, that makes it very, very difficult to want to spend 15 that money. Certainly if it was going to be longer than 16 that, you'd have to think not only twice, but maybe three 17 times, as to whether it was a worthwhile expenditure. 18 Don't forget, also, that if you make the 19 commitment to spend the money for compliance, and you 20 think you are going to get a payout of that -- a payback 21 of that, not a payout, but a payback of that within a 22 year, other things can happen to that well that maybe you 23 needed to spend additional money for repair or some other 24 type of unexpected maintenance on that well, and that 25 pushes your pay back of the compliance cost even further.
1000 1 just outside my door. I need to take just a moment. 2 VICE-CHAIR TRUJILLO-DAVIS: Yes. No problem. 3 MR. SMITHERMAN: I'm very sorry about that. I 4 could barely hear you. 5 VICE-CHAIR TRUJILLO-DAVIS: No problem. I hope 6 you can hear me okay now. 7 MR. SMITHERMAN: Absolutely. Thank you very 8 much. 9 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I -- 10 well, now that we've had a good night's rest, I had some 11 time to think of a couple more questions, and I'm hoping 12 you can answer these. They kind of came up yesterday in 13 our talk with Mr. Davis. We -- we were talking about the 14 small businesses, and I'm trying to kind of pull this 15 image together for myself and stripper wells. 16 So we were discussing payoff over a time for 17 these wells. And I'm curious when -- when you're looking 18 at the economics on a well-by-well basis, what's the time 19 frame you look at for a stripper well? Because as I 20 understand it, they're low-producing wells, they may be 21 toward the end of their life. So what -- what's the 22 payoff time for any sort of investment on a well like 23 that? 24 MR. SMITHERMAN: Well, it does make a difference. 25 The character of the production of the well makes a	1002 1 So it really makes it very, very difficult to give you 2 just a kind of a stock answer to that. 3 But you can see, it -- it is -- getting beyond 4 certainly beyond a year's worth of income -- net income, 5 after operating expenses makes it very difficult for an 6 operator to make that commitment. 7 VICE-CHAIR TRUJILLO-DAVIS: So I'm gathering that 8 the newer the well, the higher the producer, it's easier 9 to make an upfront investment for compliance because it's 10 got a longer payout time, but a stripper well or marginal 11 well would have a shorter -- you'd want it to pay back 12 shorter, because the well could be plugged in the near 13 future or it may not pay for itself? 14 MR. SMITHERMAN: Yeah, but let's look at it a 15 little differently than that. If you've got a well that's 16 a moderately-high rate producer, that well is going to 17 make quite a bit of money in a year. And your compliance 18 costs could be something that could pay out within a few 19 weeks, if you get a really, really good producer. Well, 20 that make a really good business decision: I've got two 21 choices; I either don't pay the money for compliance and 22 plug the well, or I spend the money for compliance and yet 23 continue producing the well. 24 So if I were able to spend money on a well and I 25 get paid back within a month, then the rest of the time --

1003 1 the rest of the life of that well is additional income 2 that I get to have. That makes good -- that's a good 3 business decision, to go ahead and forego, in essence, 4 spend the income that I might have expected from that well 5 from one month, to be able to get the income for the rest 6 of the life of that well. That's a great decision. 7 When I look at a well that I have to spend the 8 same compliance money, perhaps, and it -- and it takes a 9 year, maybe longer, to be able to pay me back for that 10 compliance cost, it really becomes much, much more 11 difficult to say, hmm, I'm willing to do that. And let's 12 take that to the next level. If your company maybe has 13 quite a few of those wells that need compliance 14 expenditures that are low-rate producers, your whole 15 company's income may be dedicated to spending -- the 16 spendings that are associated with compliance. You may 17 spend the entire income year of your company on compliance 18 costs. 19 So what are you going to do with your employees? 20 You still have to pay them. What are you going to do with 21 all of the other things that keep your business running? 22 The smaller businesses do have a tougher challenge when 23 they have maybe a larger percentage of their well 24 inventory are low-rate producers. Does that make sense? 25 VICE-CHAIR TRUJILLO-DAVIS: Yes, it does and	1005 1 of the compliance dollars, they then have to get payback 2 of their purchase price. So they may try -- the first 3 owner may try to sell that property, but it's likely not 4 going to be bought by anyone because they knew that that 5 new owner is going to have to do the same thing. 6 VICE-CHAIR TRUJILLO-DAVIS: Thank you for kind of 7 helping me draw some pieces together. I appreciate you 8 answering my question. 9 MR. SMITHERMAN: Certainly. Thank you, ma'am. 10 VICE-CHAIR TRUJILLO-DAVIS: Thank you. 11 HEARING OFFICER ORTH: Thank you. Member Cates, 12 do you have questions? 13 BOARD MEMBER CATES: Yeah. Thanks for testifying 14 today, sir. So if I'm understanding you correctly, 15 perhaps your major concern is the effect on stripper 16 wells -- stripper wells; is that correct? 17 MR. SMITHERMAN: It is. I'm going to not 18 necessarily agree with the term "stripper" well because 19 sometimes people have a particular definition for that. 20 I'll just call them low-rate producers for now. 21 BOARD MEMBER CATES: So that's -- that's your 22 major concern. And this has probably been covered in 23 testimony, and I just don't remember, but is -- can you 24 tell us how many stripper wells there are potentially 25 affected by this? How many -- how many owners there are,
1004 1 thank you for clarifying that for me. 2 Generally, when -- just based on some comments 3 from Mr. Davis yesterday, when a well is reaching that 4 marginal status or stripper well status, what do -- what's 5 the life of that well look like? Does -- do larger 6 companies sell off those assets? Are they -- do they tend 7 to be bought up by small companies or -- because he was -- 8 he was discussing early abandonment. 9 So if a company decided not to put that 10 investment into compliance, or decided that that well 11 wasn't worth continuing to operate, would they try to sell 12 it off or would they plug it themselves? 13 MR. SMITHERMAN: Well, they may try, but the 14 problem doesn't go away, because the decision that the 15 first owner has as to whether to spend the compliance 16 dollars on that well, when they know that the well can't 17 pay that back for some long period of time, that problem 18 goes to the next owner, should someone buy it. In fact 19 it's actually worse, because now that next buyer has spent 20 money on that property; they would normally expect the 21 income of that property to pay them back for the purchase, 22 but then, not only have they spent money for the well 23 itself, but now they have the choice, a decision as to 24 whether to spend the compliance dollars. 25 So for them, they've not only got to get payback	1006 1 and what percentage of the production in the state comes 2 from stripper wells? 3 MR. SMITHERMAN: I don't have those statistics in 4 my head or in front of me, but I'll characterize it if you 5 wouldn't mind. There are a lot of low-volume producers in 6 the state. And NMOGA has taken the position that, in 7 essence, no well, regardless of its production rate is 8 immune from the impacts of this rule. In fact, if you'll 9 look particularly at the LDAR section, every well in the 10 state must be subject to LDAR under either the NMED's 11 currently-offered rules or NMOGA's redlines. So there are 12 a lot of low-producing wells -- 13 BOARD MEMBER CATES: Okay. So -- 14 MR. SMITHERMAN: Go ahead. I'm sorry. 15 BOARD MEMBER CATES: You said there were a lot of 16 low-producing wells, but you don't have the specific 17 number. I'm just trying to get a handle on how -- you 18 know, how much in the industry is comprised of 19 low-producing wells that will be affected by this. 20 There's no metric we could put on that? 21 MR. SMITHERMAN: Actually, I think Mr. Davis gave 22 some statistics yesterday on stripper wells as defined. I 23 think he gave a definition for stripper well, and gave you 24 some statistics on that, so perhaps that would be a better 25 place to look.

1007 1 BOARD MEMBER CATES: Yeah, okay. Got it. All 2 right. Thanks. Appreciate it. 3 MR. SMITHERMAN: Thank you, sir. 4 HEARING OFFICER ORTH: Member Bitzer? 5 BOARD MEMBER BITZER: Thank you. Does closing a 6 well sooner than you otherwise would have, potentially 7 increase the odds that you will end up, say, under changed 8 market, economic or technological circumstances, going 9 back out to that area and reopening it up again later? 10 MR. SMITHERMAN: It is certainly possible. I've 11 seen this in my career where we had a well or wells that 12 had reached the end of their economic -- profitable 13 economic life in our perception of it at the time, and so 14 we closed the well in. And then, later, either recognized 15 a different formation opportunity in the well, that we 16 could reenter and open up that new -- new zone, or perhaps 17 the economics changed. Perhaps product prices had changed 18 to the point that you could make a profit from the well, 19 so that does change. 20 I think that can be a little overstated, because 21 many times when you've got a well that has reached its 22 economic life's limit, it really is time to plug it. And 23 that's what the companies that I've been associated -- or 24 company that I've been associated with would try to do. 25 BOARD MEMBER BITZER: I know -- the reason I ask	1009 1 therefore have some negative impact on the land. I mean, 2 I know, a pad is what, about 3 acres, to go out there 3 and -- and set it up and drill. And I guess directional 4 drilling has shrunk the number of pads you need to create, 5 which I guess is a good thing, but I'm just wondering 6 if -- if keeping them open longer doesn't potentially keep 7 you from having to go back out there and do it all over 8 again later, is my question. 9 MR. SMITHERMAN: That's a complicated question. 10 And, of course, not knowing the specifics of your friend, 11 exactly what had happened, especially if it was in the 12 Southeast part of the state or in Texas. What we have 13 seen in the past, say, 10 or 15 years, is the application 14 of two very mature technologies in a nice novel and 15 effective way. That's called -- that is horizontal 16 drilling and hydraulic fracture stimulation. We've 17 applied those old technologies in a new way and have 18 discovered that some of the reservoirs that were not 19 economic in the past are now economic. 20 And so, perhaps, your friend didn't necessarily 21 have a well that was reopened, but perhaps he had a lease 22 that had opportunities that either that operator or 23 another operator developed, using these old technologies, 24 kind of "rent new." That's a good thing. And you're 25 right, they tend -- we tend to now put multiple wells on a
1008 1 is I know a guy who was given some oil well shares that 2 were worthless at the time. He was a lawyer practicing 3 law, and the client couldn't pay him and so he said, all 4 I've got for you is these oil shares. And the next thing 5 he knows, you know, a few years later, the dividend checks 6 started coming in -- the royalty checks or whatever. And 7 they weren't necessarily small. I mean, he did fairly 8 well for quite a while, based on what had previously been 9 worthless shares. I think this was down in the 10 Southeastern part of the state and maybe West Texas. 11 But the reason I go down this -- this path is 12 because I also have a friend down at the Biopark Society 13 who is a wildlife biologist specializing in endangered 14 plants, and there's a couple of critically endangered 15 plants up there in the Northwest corner of the state. And 16 he just cringes every time he sees one of those vehicles 17 with the big flags, so that you don't run into each other 18 running around in the dunes and so forth, because he knows 19 they're out there potentially in areas that are close to 20 these areas where the last of these endangered plants 21 live. 22 And I can't help but wonder if closing and then 23 reopening again later under different economic and 24 technological circumstances, doesn't increase the traffic 25 overall that you wouldn't have otherwise had, and	1010 1 single pad. 2 I've been very, very involved in a lot of work in 3 Southeast New Mexico in creating drilling islands, where 4 you've got very, very limited impacts on the surface, 5 which is great for everyone, really. So I think that the 6 developments that we're seeing today are much more 7 friendly to the surface. And I'm not exactly sure what 8 the vehicles are that you're talking about running around, 9 perhaps those are seismic-type vehicles. But I don't know 10 that it would make a difference, quite frankly, if you 11 shut in an old-producing well and then brought it back on, 12 versus continuing to produce that well. I think this is 13 probably something that's not related to that. 14 BOARD MEMBER BITZER: That's all I have, Madam 15 Chair. 16 HEARING OFFICER ORTH: Thank you. Member Duval, 17 do you have questions of Mr. Smitherman? 18 BOARD MEMBER DUVAL: No questions, sir. Thank 19 you. They've already been addressed. Thank you for your 20 time, sir. 21 MR. SMITHERMAN: Thank you, sir. 22 HEARING OFFICER ORTH: Thank you. Member Garcia? 23 BOARD MEMBER GARCIA: Yes. Thank you. I do have 24 a couple of questions for Mr. Smitherman. Mr. Smitherman, 25 I understand that there are many factors that come into

1011 1 play when a business makes a decision about whether to 2 continue operating a well, whether it be a gas well or an 3 oil well. And I understand -- my background, I know more 4 about the mining industry than I do the oil and gas 5 industry, but I know in mining, commodity price played a 6 played -- probably the biggest role in determining 7 operations of mine sites. 8 I'm wondering, could you tell me, does the -- 9 would you say the commodity price is the main factor in 10 making a decision? And then I know there's many other 11 factors that come into play when making a business 12 decision about closing or continuing to operate. Would 13 you say the commodity prices was -- was one of the most 14 important factors in making the decision about operations? 15 MR. SMITHERMAN: I always try to be cautious when 16 I use any of the "E-S-T" words: biggest, smallest. It is 17 certainly an important factor -- it's a very important 18 factor. Production rate's an important factor. Other 19 operating costs associated with the well are an important 20 factor. You can have the same well or a well making the 21 same oil and gas production rate, but vastly different 22 water production rates, and so your operating costs are 23 vastly different. So it is certainly one of the more 24 important factors, yes. 25 BOARD MEMBER GARCIA: Could you -- since you're	1013 1 I guess other -- other risks, operational risks 2 that are associated with the well. You may have a well 3 that's producing along just fine, but it's got maybe an 4 artificial lift system on it that may have some future 5 capital expenditures or major maintenance expenditures 6 that you expect. 7 There's probably others, Ms. Garcia, but I think 8 I'll stop there. 9 BOARD MEMBER GARCIA: Thank you. That's very 10 informative. Thank you. That's all I have. 11 MR. SMITHERMAN: Certainly. 12 HEARING OFFICER ORTH: Thank you. Member Honker? 13 BOARD MEMBER HONKER: Yes. Thank you, 14 Mr. Smitherman, for your responses to the other Board 15 members. It's been very, very helpful, at least in my 16 mind, to think about these -- these various factors. I do 17 think this is one of the big issues we're going to have to 18 deal with as a Board, is -- is the lower-production wells. 19 So just one question: I mean, you talked about commodity 20 price and, obviously, that would be a major consideration 21 for making decisions, I would think. But I assume it's 22 not only the current commodity price, but your expectation 23 of whether that's going to go up and down -- up or down in 24 the next year or so would factor in, would it not? 25 MR. SMITHERMAN: That's correct. It's not only
1012 1 here, let me go ahead and ask you: could you -- could you 2 name some of the other factors that come into a play when 3 you're making a decision about whether continuing to 4 operate a well? I understand you -- you not only have to 5 comply with Environment Department regulations. There's 6 OCD regulations, there's OSHA regulations and then there's 7 many, many, many other factors involved in making a 8 decision. Could you walk through some of the other 9 factors aside from commodity price. What are some of the 10 other factors that come into play? 11 MR. SMITHERMAN: Certainly, and it won't be 12 exhaustive just off the top of my head, so I appreciate 13 you asking for some of those factors. I've already 14 mentioned some of them: production rate is obviously 15 important; production decline, how quickly is this well 16 declining in its production. How many years of remaining 17 life under any particular commodity price scenario does it 18 have? Is it holding acreage that is valuable? That's a 19 very important piece. It -- it may be worth holding on a 20 little longer if you think you've got more development 21 opportunities on the same lease. There may be perhaps 22 sales consideration; is this something that another 23 company might value? So you may want to keep the well in 24 production if that's attractive to a buyer, that would be 25 good.	1014 1 today's price, but it's tomorrow's price and the price 2 over the next year or so. And then, you get into the 3 complications of whether or not you can, in essence, hedge 4 those prices and whether that's a valuable or advisable 5 thing to do. It gets complicated pretty quickly when you 6 start thinking about that, but you're right, it's not just 7 what we expect today, but it's what we expect within a 8 reasonable future of that well's production. 9 BOARD MEMBER HONKER: Okay. Thank you very much. 10 That's all I have. 11 MR. SMITHERMAN: Certainly. Thank you, sir. 12 HEARING OFFICER ORTH: Thank you, Member Honker. 13 I have a question from the Chat: Mick McClellan asks: 14 Mechanically speaking, would adding new equipment to 15 low-rate producing well further lower production by adding 16 back pressure, which would further extend the amount of 17 time required to pay back the compliance costs? 18 MR. SMITHERMAN: As I understand that question, 19 the answer is yes. 20 HEARING OFFICER ORTH: Okay. Thank you. I see 21 Mr. Nykiel on the screen. Mr. Nykiel, do you have 22 questions of Mr. Smitherman? 23 MR. NYKIEL: Yes, just briefly. 24 CROSS-EXAMINATION OF JOHN R. SMITHERMAN 25 BY MR. NYKIEL:

1015 1 Q. My name is Matt Nykiel; I'm here on behalf of 2 WildEarth Guardians. Good morning. 3 A. Good morning, sir. 4 Q. You were talking about making -- sort of the 5 process of making a business decision around costs for 6 marginal or stripper wells. And I was wondering if 7 there's a marginal or stripper well that is externalizing 8 a cost that is borne by the public or the state, do you 9 think that that company should internalize that cost? 10 A. As I understand your question, I think that we, 11 if you will, internalize those type of costs through 12 regulations that are imposed on the -- on the business, so 13 we, in essence, can quantify and -- quantify those costs 14 and then make a rational decision based on those. 15 Q. Okay. That's helpful. And so, if there were a 16 cost that has been externalized that's quantifiable, do 17 you think that -- do you think that regulation would be 18 helpful to internalize that cost to the company that 19 creates it? 20 A. I -- I think that to the degree that regulatory 21 agencies recognize valid -- I'll call them external costs, 22 because I think that's what we're -- I think we're saying 23 the same thing -- then, in essence, those regulatory 24 bodies will promulgate rules, and those companies will 25 then comply with those rules, regardless -- in essence,	1017 1 decisions as to whether to continue doing business in a 2 particular state based on -- partly based on the 3 difficulty in the cost of compliance with regulations. 4 I know our company, for example, basically didn't 5 want to take anymore opportunities in one state -- not New 6 Mexico -- because of the difficulties in that particular 7 state. So companies do make decisions that way. The 8 harder it is, the more complicated it is, the more 9 expensive it is to comply does make it more difficult, 10 especially for smaller companies that aren't necessarily 11 as sophisticated -- don't have the sophisticated persons 12 on staff to be able to manage these difficulties. 13 VICE-CHAIR TRUJILLO-DAVIS: Okay. And just to -- 14 for the rest of the Board's benefit, what I was thinking 15 of here is when I started out my career, I started out 16 working for a small, independent oil and gas company. And 17 I've seen them kind of slowly going away. And I would -- 18 that's kind of what sticks out in my head right now is, 19 are we going to see small businesses -- small New 20 Mexico-owned companies starting to either dry up or sell 21 out to bigger companies? And that's kind of where I 22 was -- where I was going with that question. 23 So Mr. Smitherman, thank you for taking the time 24 to answer that for me. 25 MR. SMITHERMAN: I think that it's a -- it's a
1016 1 regardless of the cost. 2 MR. NYKIEL: Okay. Thank you very much. 3 HEARING OFFICER ORTH: Thank you. Vice-Chair 4 Trujillo-Davis, I understand you have a follow-up? 5 VICE-CHAIR TRUJILLO-DAVIS: Yes, I do, just a 6 quick one. Mr. Smitherman, based on your experience in 7 the oil and gas industry and with NMOGA, would you 8 estimate with the current rules -- or I'm sorry, this 9 portion of the rule that we're looking at, the small 10 business definition, the companies -- the smaller 11 companies that are operating largely marginal or stripper 12 wells, or low producers -- whichever definition you want 13 to use -- do you see them going away? Like I'm -- I'm 14 wondering more of about the shift in the company 15 demographics as we kind of move forward with this 16 definition. Will we see these smaller companies either 17 sell out or kind of die off? Can you -- do you have an 18 estimation on that or is that kind of too big of a 19 question to ask? 20 MR. SMITHERMAN: Thank you for the question. I 21 think it's an important question to ask. I don't know -- 22 we certainly haven't quantified that, but anecdotally, you 23 know, I've got friends that are in business in Texas and 24 New Mexico and Colorado and Louisiana, and I hear -- I 25 hear those owners of those companies basically making	1018 1 worthy consideration and a worthy fear, if you will. I'm 2 not sure selling out to bigger companies is really the 3 alternative. When you get to the point where so many of 4 your wells cannot -- can no longer stand the cost of 5 compliance, there really won't be a buyer. So maybe 6 drying up and going away is a better way to expect the end 7 of those companies to be. 8 VICE-CHAIR TRUJILLO-DAVIS: Thank you. 9 HEARING OFFICER ORTH: Thank you. I'll pause for 10 a moment in the event other Board members have follow-up 11 questions. No? 12 Mr. Hiser, do you have any follow-up redirect? 13 MR. HISER: I do, Madam Hearing Officer, but I 14 think it's fairly short. 15 REDIRECT EXAMINATION OF JOHN R. SMITHERMAN 16 BY MR. HISER: 17 Q. I'll respond to a couple of questions that came 18 up during this round. Mr. Smitherman, with respect to, I 19 think, Vice-Chair Trujillo-Davis's really good question, 20 another way you could look at it would be that over your 21 time as industry executive, have you found that the 22 compliance staff that a company has to have, whether 23 they're a small or large operator, has increased in size 24 as the regulatory environment has become more involved? 25 A. There's no doubt about that. We -- our company

1019 1 grew in their regulatory compliance staff and I know that 2 that's ubiquitous across the industry. 3 Q. And does the cost of that compliance staff then 4 have to be spread over all of the operating assets of the 5 company? 6 A. It does. 7 Q. Okay. And then Mr. Nykiel asked you a good 8 question about internalization of externalities and the 9 role the regulations can play in that. Is there a scope 10 challenge there, which is that if the externalities are 11 imposed in only one area, say, New Mexico, but they're not 12 imposed in other areas, say Texas or Colorado, what does 13 that do to industry's incentives, and does that really 14 change things or does it just cause shifts? 15 A. Well, it certainly causes shifts. As I 16 mentioned, our company stopped doing as much business in 17 one state and started doing more business in others 18 because of the complications of compliance in that -- in 19 that state. So it tends to -- and businesses try to make 20 rational decisions. And it may make a very rational 21 decision to move more of your capital dollars and 22 development dollars into places where your compliance is 23 easier and where your costs are lower. 24 Q. And then, back to a very initial question from 25 Chair Suina, where she asked, what were some of the	1021 1 appropriate time. 2 HEARING OFFICER ORTH: All right. Yes, I think 3 it is. Go ahead. 4 CROSS-EXAMINATION OF JOHN R. SMITHERMAN 5 BY MR. COLCLASURE: 6 Q. Thank you, Mr. Smitherman. You had some 7 questions about whether stripper wells impose external 8 costs. Do you recall those questions? 9 A. I do. 10 Q. And would you agree that stripper wells and other 11 oil and gas wells also produce external benefits in 12 addition to producing external costs? 13 A. Absolutely. 14 Q. Would you agree that the oil and gas produced by 15 these wells provides electricity to all Americans and 16 people living in New Mexico? 17 A. It does. 18 Q. Would you agree that oil and gas provides 19 transportation fuel? 20 A. It does. 21 Q. Does it also -- 22 MS. FOX: Objection, irrelevant. 23 HEARING OFFICER ORTH: Ms. Fox? 24 MS. FOX: Objection to relevance. You know, this 25 testimony had to do with the small business exemption and
1020 1 challenges that the NMOGA had with the small business 2 exemption as the Environment Department had put it forward 3 in the -- in the September rules. Was one of the 4 challenges that NMOGA represents a lot of members, but we 5 weren't able to really identify a member that met both the 6 number of the employee criteria and the revenue criteria, 7 and that was part of the challenge we were having? 8 A. That's correct. 9 Q. Okay. Thank you. 10 HEARING OFFICER ORTH: All right. If there is 11 nothing further, we will excuse Mr. Smitherman for now. 12 Ms. Katz? I'm sorry, I see you on screen. Do 13 you have something further? 14 MS. KATZ: Madam Hearing Officer, there was quite 15 a lot of additional testimony that was presented and I 16 would like to ask if I could put on one of my witnesses to 17 do some surrebuttal to that testimony. 18 HEARING OFFICER ORTH: Yes, certainly. So, but 19 you don't have any further questions of Mr. Smitherman? 20 MS. KATZ: No, I do not. Thank you. 21 HEARING OFFICER ORTH: All right. Thank you. 22 And Mr. Colclasure, I see you on the screen. Did you have 23 further questions of Mr. Smitherman? 24 MR. COLCLASURE: Yes, Madam Hearing Officer, I do 25 have some cross-examination questions if now is an	1022 1 we've gone far afield of that for an exemption -- for 2 language that NMOGA -- neither NMOGA or the independents 3 are even proposing for change. And it's also unusual that 4 we would have -- allow counsel from the other parties two 5 opportunities for cross-examination. And so after -- 6 after -- after Board members. So that's another 7 objection. 8 HEARING OFFICER ORTH: All right. Thank you. 9 We're getting used to this new method of 10 cross-examination. And Mr. Colclasure passed earlier, but 11 Mr. Colclasure, I -- I remember Mr. Nykiel's questions of 12 Mr. Smitherman. But I'm wondering if we've gone far 13 afield at this point. 14 MR. COLCLASURE: Madam Hearing Officer, I believe 15 it is relevant because the implication earlier was that in 16 evaluating the criteria for small businesses, the external 17 costs of these wells should be included. And if the 18 external costs should be included, I'd like to draw out 19 testimony from this witness about the external benefits 20 that could also be included for this provision. 21 HEARING OFFICER ORTH: All right. 22 MS. KATZ: Madam Hearing Officer? 23 HEARING OFFICER ORTH: Yes. 24 MS. KATZ: May I just -- I'm a little confused. 25 I believe we -- we didn't -- I don't know what we provided

1023 1 for as far as friendly cross. I don't think we had said 2 that that was automatically allowed. 3 HEARING OFFICER ORTH: We hadn't, and mostly what 4 I was thinking, is that because Mr. Colclasure had passed 5 earlier on the opportunity to ask questions, I would give 6 him an opportunity now, even if it were out of order. 7 Again, no. So, thank you, Ms. Katz and thank 8 you, Ms. Fox. I certainly take your point. Having said 9 that, Mr. Nykiel did ask the question he asked, and so, 10 Mr. Colclasure, if you would, please, very quickly do this 11 and do it briefly. 12 MR. COLCLASURE: Thank you, Madam Hearing 13 Officer. 14 Q. (BY MR. COLCLASURE) Mr. Smitherman, would you 15 agree that if the external costs of a stripper well are to 16 be included or considered in any evaluation of the 17 regulatory definition or exceptions for small businesses, 18 that it would also be appropriate to include the external 19 benefits provided by those wells? 20 A. Yes, I do. 21 MR. COLCLASURE: I have no further questions. 22 HEARING OFFICER ORTH: All right. Thank you, 23 Mr. Colclasure. If there's nothing further, we'll excuse 24 Mr. Smitherman for the moment. 25 MR. SMITHERMAN: Thank you, Madam Hearing	1025 1 wells, and low-producing wells, I should say? 2 A. Yes. 3 Q. In the information that was presented by 4 Mr. Powell regarding the wells in New Mexico, how many 5 stripper wells were identified by the Oil Conservation 6 Division? 7 A. I will reference Mr. Powell's Rebuttal Exhibit 17 8 for the Board, and there were 30,021 total stripper wells. 9 Q. And how many marginal wells were identified by 10 OCD? 11 A. 8,132. 12 Q. And what is the percentage of production from 13 stripper wells and marginal wells? 14 A. The total share of production from stripper gas 15 wells is 19.7 percent of total gas production in the 16 state, and the percentage of production from oil stripper 17 wells is 10 percent of total production in the state. The 18 percentage of -- 19 Q. Do you know the -- sorry? 20 A. I'm sorry. The percentage of production from 21 marginal oil wells is 28.4 percent of total production, 22 and the percentage of total production from gas marginal 23 wells is 7.3 percent of total production. 24 Q. Do you know the lifetime of a typical oil or gas 25 well?
1024 1 Officer. 2 HEARING OFFICER ORTH: Thank you very much. 3 Ms. Katz, you said you have some brief 4 surrebuttal to Mr. Smitherman's testimony. Would you like 5 to do that now while the topic is fresh in our minds? 6 MS. KATZ: Yes, Madam Hearing Officer. Thank 7 you. And I would call Elizabeth Bisbey-Kuehn on that 8 point. 9 HEARING OFFICER ORTH: All right. And I did make 10 her a panelist. Does she need screen sharing privilege? 11 MS. KATZ: No. No, Madam Hearing Officer. Thank 12 you. 13 HEARING OFFICER ORTH: All right. Ms. Kuehn is 14 still under oath, and to the extent she will be referring 15 to exhibits, please let us know that ahead of time. 16 MS. KATZ: Thank you. I don't believe we'll be 17 referring to any specific exhibits, just maybe other 18 testimony. 19 ELIZABETH BISBEY-KUEHN, 20 having been previously duly sworn, was examined and 21 testified as follows: 22 REBUTTAL DIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 23 BY MS. KATZ: 24 Q. Ms. Kuehn, is it your understanding that NMOGA 25 and IPANM are advocating for an exemption for stripper	1026 1 A. So our records indicate that we have wells in 2 existence since the early 1970s, and we -- so we have 3 decades. We have wells that have been in production for 4 decades in our -- in our records. 5 Q. And can low-producing wells operate for long 6 periods of time? 7 A. Yes, as indicated by the data and the lifetime of 8 the well that we have -- that we have data on. 9 Q. Do low-producing wells necessarily have low 10 emissions? 11 A. They typically have lower emissions than higher 12 production facilities, but they -- they do have emissions. 13 Q. And, for instance, a low-producing oil well could 14 still have high VOC emissions because the focus is on oil 15 production, not gas production? 16 A. It could, yes. 17 Q. Do you know the average emissions rate of one of 18 these types of wells? 19 A. So we -- we've estimated an average emission rate 20 of around 8 tons to 10 tons per year for a stripper well, 21 which has a very specific definition in OCD's regulations. 22 The definition of a stripper well, again, is a well that 23 produces an average -- a daily average of less than 10 24 barrels of oil per day or 60,000 cubic feet of natural gas 25 per day.

1027 1 Q. And so, as far as the average emissions rate for 2 one of those types of wells in the aggregate, what would 3 that equate to as a total amount of emissions? 4 A. It would be several -- many, many thousands of 5 tons, if not hundreds of thousands of tons of VOC and NOx 6 emissions. 7 Q. Do you -- do you think -- and does the Department 8 believe that all companies should be able to comply with 9 minimum requirements, such as best management and 10 operational practices, calculating their potential to emit 11 and repairing leaks, if they want to be able to operate in 12 this state? 13 A. Yes. 14 MS. KATZ: Thank you. That's all I have. 15 HEARING OFFICER ORTH: Ms. Katz and Ms. Kuehn, 16 I'll pause for a moment for folks to present themselves on 17 screen. I see Mr. Baake. 18 MR. BAAKE: Madam Hearing Officer, just a -- just 19 a couple of questions for the witness. 20 CROSS-EXAMINATION OF ELIZABETH BISBEY-KUEHN 21 BY MR. BAAKE: 22 Q. Ms. Bisbey-Kuehn, is New Mexico the first state 23 to adopt an ozone precursor rule for the oil and gas 24 sector? 25 A. No, it's not.	1029 1 spoke about, do you know whether the modeling analysis 2 that was done by Ramboll considered or used as an option, 3 inclusion of the emissions from those wells or not, in 4 terms of the impact on the ambient air concentrations? 5 A. Those -- those upstream oil and gas wells were 6 included in the modeling inventory. 7 Q. And as I understand your proposal on the small 8 business exemption, that the -- the LDAR program would 9 still be applicable to those wells, even if they were a 10 small business under your proposal; is that correct? 11 A. That's correct. 12 Q. And so that the -- the operators would still be 13 required to investigate and correct leaks if they were to 14 occur? So it's not a complete exemption; it's an 15 exemption from certain requirements under the proposal; is 16 that correct? 17 A. That's correct. 18 MR. ROSE: Okay. Thank you, Madam Hearing 19 Officer. 20 HEARING OFFICER ORTH: Thank you. Pause another 21 moment in the event there are other questions by counsel 22 or party representatives. No? 23 So we'll turn to the Board for their questions. 24 While I'm doing that, if you are an attendee, rather than 25 a panelist on this proceeding, and you would have a
1028 1 Q. In fact, states like Colorado, Pennsylvania have 2 been doing this for -- for years, right? 3 A. Yes, they have. 4 Q. Is there any evidence that anyone submitted in 5 the record of massive well shut-ins, for example, in 6 Colorado, as a result of their regulations? 7 A. Not that I'm aware of. 8 Q. Or any other jurisdiction where this has been 9 done? 10 A. Not that I have knowledge of. 11 Q. So would it be fair to say that some of this may 12 be -- may be more speculation, but that when -- when the 13 rubber hits the road, as it were, companies usually seem 14 to be able to comply with the regulations? I'm sorry, 15 that may be -- that may be -- that may be more argument 16 than anything. But anyway, thank you so much. I 17 appreciate that clarification. 18 HEARING OFFICER ORTH: Thank you. Anyone else 19 like to join us on screen for questions of Ms. Kuehn? I'm 20 going to -- oh, there's Mr. Rose. Mr. Rose? 21 MR. ROSE: Just one follow-up question. 22 Hopefully, just one. We'll see. 23 CROSS-EXAMINATION OF ELIZABETH BISBEY-KUEHN 24 BY MR. ROSE: 25 Q. Ms. Bisbey-Kuehn, in terms of the emissions you	1030 1 question, please reach out in the Chat. 2 EXAMINATION BY THE BOARD OF ELIZABETH BISBEY-KUEHN 3 HEARING OFFICER ORTH: Madam Chair, do you have 4 questions? 5 CHAIRPERSON SUINA: Thank you, Madam Hearing 6 Officer. I do not. 7 HEARING OFFICER ORTH: All right. Thank you. 8 Vice-Chair Trujillo-Davis? 9 VICE-CHAIR TRUJILLO-DAVIS: Yes, I have a couple 10 of questions. Ms. Kuehn, I was curious -- and I think 11 Mr. Rose kind of started asking these questions, but the 12 small business designation doesn't exempt an operator from 13 the rules, do they? I just want to clarify. I'm looking 14 at the rule here. Is that what I'm understanding, that 15 they're not exempt from everything, just some things? 16 MS. BISBEY-KUEHN: That's correct, Member Davis. 17 There's a tiered set of requirements for all operators. 18 And all operators are required to calculate their 19 potential to emit, and have that calculation certified. 20 All operators are required to comply with the leak 21 detection and repair requirements and other specific 22 recordkeeping requirements and operational requirements 23 for small business facilities. By qualifying as a small 24 business facility, one only needs to meet the requirements 25 that are in Section 125.

1031 1 VICE-CHAIR TRUJILLO-DAVIS: Okay. So I just 2 wanted to make sure that we weren't talking about no 3 requirements. Okay. Great. Thank you for clearing that 4 up for me. 5 HEARING OFFICER ORTH: Thank you. Member Cates, 6 do you have questions? 7 BOARD MEMBER CATES: No questions here. Thank 8 you. 9 HEARING OFFICER ORTH: Thank you. Member Bitzer? 10 BOARD MEMBER BITZER: No questions for me. Thank 11 you. 12 HEARING OFFICER ORTH: Thank you. Member Duval? 13 He may have stepped away. Member Garcia? 14 BOARD MEMBER GARCIA: Yes. Thank you, Madam 15 Hearing Officer. I just have one clarifying question for 16 Ms. Kuehn. Also my understanding is this rule, we're 17 talking about certain counties that it applies to, 18 correct? So we're not talking about the entire universe 19 of oil and gas wells, correct? 20 MS. BISBEY-KUEHN: That is correct. 21 BOARD MEMBER GARCIA: Okay. And we're talking 22 about seven counties, roughly? 23 MS. BISBEY-KUEHN: Eight -- eight counties, 24 Member Garcia, yes. 25 BOARD MEMBER GARCIA: Eight, okay. Thank you	1033 1 MS. PARANHOS: Good morning, Madam Hearing 2 Officer. Let me just change my video, it's the wrong 3 camera. 4 HEARING OFFICER ORTH: It might be appropriate to 5 take a short break at this time. I wasn't necessarily 6 suggesting we tackle Dr. Thompson's testimony without a 7 break. I just wanted to make sure I was correct about 8 where we were going. All right. So shall we take 15 9 minutes? Come back at 10:48 or so. Yes? All right. 10 Thank you. 11 (Recess taken from 10:33 a.m. to 10:48 a.m.) 12 HEARING OFFICER ORTH: Let's come back from the 13 break, please. All right. We are back after a break. 14 And I see Ms. Paranhos on the screen, I see Mr. Rose and I 15 see Dr. Thompson. Mr. Rose, do you have something before 16 we begin? 17 MR. ROSE: Yes. I just wanted to reiterate the 18 discussion we had, I think, yesterday concerning our 19 objection to some of the testimony from EDF and exhibits. 20 And we can certainly argue it, but if it's -- rather than 21 delaying the time for these witnesses and putting them 22 off, maybe the better thing to do is to -- is to take the 23 testimony subject to our objection, and then either 24 arguing or briefing it when -- at the conclusion of the 25 hearing.
1032 1 very much. I appreciate that. 2 HEARING OFFICER ORTH: Thank you. Member Honker? 3 MEMBER HONKER: Just one question. Will there be 4 additional discussion of Colorado and Pennsylvania 5 requirements as we get into specific portions of the rule? 6 MS. BISBEY-KUEHN: Yes, Member Honker. 7 BOARD MEMBER HONKER: Okay. Thank you. That's 8 all I have. 9 HEARING OFFICER ORTH: All right. Thank you. 10 Ms. Katz, will there be any follow-up? 11 REBUTTAL REDIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 12 BY MS. KATZ: 13 Q. Just -- I guess just one quick question. So -- 14 so I just wanted to make clear that it is -- NMED is 15 proposing the small business definition, but that NMOGA 16 and IPANM are wanting to go back to a full exemption for 17 stripper wells; is that correct? 18 A. That's right. 19 MS. KATZ: Thank you. 20 HEARING OFFICER ORTH: All right. Thank you, 21 Ms. Katz. If there's nothing further, we will excuse 22 Ms. Kuehn for the moment. 23 Do I understand at this point that we will be 24 turning to Ms. Paranhos and EDF's witness, Dr. Thompson? 25 Ms. Paranhos, I see you on screen.	1034 1 HEARING OFFICER ORTH: Thank you for that. I -- 2 I know that you need to preserve your objection and I 3 believe I have an understanding of it. We have been 4 pressing through the -- through the witnesses rather than 5 taking up that objection, but you're right, we will take 6 it up. And in the meantime, I'd like to hear 7 Dr. Thompson's testimony. So thank you, Mr. Rose. 8 MR. ROSE: Thank you, Madam Hearing Officer. 9 HEARING OFFICER ORTH: And one more thing before 10 we begin with Dr. Thompson. I did reach out to Professor 11 Pacyniak to ask if it would be a good time for Joseph 12 Hernandez to testify after Dr. Thompson, and he agreed 13 that it would be, so let's plan on that. 14 Dr. Thompson, I believe it's the standard 15 spelling on your first and last name. If you would please 16 raise your right hand. Do you swear or affirm to tell the 17 truth? 18 DR. THOMPSON: I do. 19 HEARING OFFICER ORTH: Thank you. And Ms. 20 Paranhos, remember to refresh our memory on the exhibits 21 that she'll be referring to. 22 MS. PARANHOS: Absolutely, Madam Hearing Officer. 23 TAMMY THOMPSON, Ph.D., 24 having been first duly sworn or affirmed, was examined 25 and testified as follows:

1035 1 DIRECT EXAMINATION OF TAMMY THOMPSON, Ph.D. 2 (Modeling Topic) 3 BY MS. PARANHOS: 4 Q. Ms. Thompson, we just went through this, but 5 quickly, just can you state your name, please. 6 A. My name is Tammy Thompson. 7 Q. And where are you employed? 8 A. I am Senior Air Quality Scientist at the 9 Environmental Defense Fund. 10 Q. And what is your educational background? 11 A. I have a Bachelor of Science and a Ph.D. in 12 Chemical Engineering and my focus and, thus, my expertise 13 is in atmospheric chemistry and physics and air quality 14 modeling. I did my postdoctoral research at MIT, where I 15 was working on the linkage of climate change and air 16 quality. I was using models to investigate how national 17 and subnational climate policies would impact human health 18 through air quality cobenefits. 19 Q. Terrific. And can you give us an overview of 20 your work experience? 21 A. Sure. After my postdoc, I worked as a research 22 scientist at Colorado State University where I 23 investigated how emissions from oil and gas production in 24 the U.S. would impact the National Park System. I also 25 worked as a scientific consultant where I modeled national	1037 1 EDF on the ozone modeling, correct? 2 A. That is correct. 3 Q. And is EDF's Exhibit BBB an accurate version of 4 your rebuttal testimony? 5 A. Yes. 6 Q. And do you have any corrections to your prefiled 7 rebuttal testimony? 8 A. I do not. 9 Q. Thank you. 10 MS. PARANHOS: And Madam Hearing Officer and the 11 Board, Ms. Thompson's exhibits that are referenced in her 12 rebuttal testimony are EDF Exhibits CCC and DDD. 13 Q. (BY MS. PARANHOS) Ms. Thompson, can you please 14 summarize the opinions in your testimony related to the 15 New Mexico Ozone Attainment Initiative Photochemical 16 Modeling Study Draft Final Air Quality Technical Support 17 Document? 18 A. Yes. So the Department's modeling demonstrates 19 the need for and the benefits of VOC reductions even in 20 areas stated as NOx-limited because of the dynamic nature 21 of NOx and VOC sensitivity. I disagree with the NMOGA and 22 IPANM that reducing VOC emissions will not reduce the 23 formation of ground-level ozone, it will. 24 Second, the Department's modeling consistently 25 demonstrates a large contribution from oil and gas
1036 1 human health impacts from oil and gas production emissions 2 and how national methane standards would change those 3 human health impacts. 4 I have since worked as an -- American Association 5 for the Advancement of Science, policy fellow in EPA's 6 Office of Policy, where I was evaluating the use of air 7 quality modeling in cost/benefit analysis, of which human 8 health is a key part. And my job at EDF is to guide 9 decision making based on the science of atmospheric 10 chemistry and physics and air quality modeling and human 11 health impacts. 12 My expertise focuses on using modeling tools and 13 input data to estimate ambient concentrations of air 14 pollution species. I use existing information about the 15 human health impacts of different species of air pollution 16 that are -- that are recognized by the U.S. EPA and WHO to 17 make links from the air quality concentrations to human 18 outcomes. 19 Q. Thank you. And what does WHO refer to? 20 A. World Health Organization. Thank you. I'm 21 sorry. Acronyms. 22 Q. Thank you. And is EDF's Exhibit FF an accurate 23 copy of your resume? 24 A. Yes, it is. 25 Q. And you submitted rebuttal testimony on behalf of	1038 1 operations, especially during days and in locations of 2 high ozone levels. The Department's modeling shows that 3 oil and gas operations within New Mexico are the largest 4 in-state contributor by sector, to a number of high-ozone 5 days, and monitors in danger of being designated 6 nonattainment. 7 Including -- this includes impacts to the 2028 8 design value, and that means that oil and gas production 9 has the largest sectorial impact of emission sources 10 within New Mexico on the 2028 design values for monitors 11 in the Northern part of the state and a couple in the 12 South. 13 Third, the model likely underestimates future 14 ozone concentrations because it fails to consider our 15 changing climate. Studies have consistently predicted 16 that as the climate changes and gets warmer and 17 increasingly sunny and stagnant, ozone production will 18 likely increase through a number of primary and secondary 19 pathways. And this results in the need for larger 20 reductions of ozone precursors to achieve the same ozone 21 reduction numbers that the model is showing. 22 Q. Thank you, Ms. Thompson. And does the model 23 demonstrate that oil and gas sources contribute 24 significantly to ambient ozone concentrations? 25 A. Yes. The Department's model source apportionment

1039 1 shows that emissions from oil and gas sources in New 2 Mexico consistently contribute more than 1 part per 3 billion to ozone monitors, and in many cases comprise, as 4 I said, the largest in-state contribution by economic 5 sector to ozone concentrations on high-ozone days. 6 The monitors in the Northwest portion of the 7 state show the largest contribution from oil and gas, and 8 the highest sensitivity of the VOCs. This conclusion 9 strongly points toward the need for controls of VOCs, as 10 well as NOx from oil and gas sources in New Mexico. 11 Q. And can you explain what the EPA Good Neighbor 12 rule is and how it is used as a benchmark to measure 13 whether oil and gas sources in New Mexico contribute 14 significantly to ozone? 15 A. Sure. So EPA's Good Neighbor rule creates a 16 pathway to requiring any state that contributes more than 17 1 ppb to ozone nonattainment status in another state, to 18 reduce its emissions to help that downwind state achieve 19 attainment of the ozone NAAQS. 20 So I'm not saying that this rule is applicable 21 here, because we are talking about an in-state source 22 impacting in-state attainment, but what the rule does is 23 it provides a benchmark for what the EPA considers 24 significant -- a significant contribution to ozone at a 25 monitor of interest.	1041 1 we need to build in a buffer basically, because we are 2 anticipating a change in climate that is going to ramp up 3 ozone production in the future, so we need to account for 4 that by creating or by planning for a larger reductions in 5 ozone precursors. 6 So the -- the Department's model, like most -- 7 like most regional photochemical models -- EPA is the 8 same, the model does not take into account a change in 9 climate. It holds climate consistent, it holds climate 10 the same, and in this case it was 2014, and so it 11 underestimates the future ozone concentrations. So this 12 underscores a need to adopt strong rules for these VOCs 13 and methane. 14 Q. Great. And I have a few more questions for 15 Ms. Thompson. I believe she does have some slides she 16 would like to share as she discusses some additional 17 points. 18 MS. PARANHOS: Madam Hearing Officer, can you 19 make sure she has the ability to share her screen? 20 HEARING OFFICER ORTH: Yes. 21 DR. THOMPSON: I apologize in advance for 22 technical difficulties. Yeah, it's grayed out, so I think 23 that -- I think that it's not enacted yet. 24 HEARING OFFICER ORTH: It just takes a moment. 25 DR. THOMPSON: Yeah, no worries. There we go.
1040 1 So if the oil and gas production sector were 2 treated like a state, and if New Mexico becomes 3 nonattainment, then the emissions from this sector alone 4 would have a large enough contribution to high ozone at 5 some in-state monitors in the Northwest, and I believe a 6 few in the South, to trigger the Good Neighbor rule. 7 So it's, again, just a benchmark to establish 8 what significant is according to the EPA. Oil and gas 9 production emissions contribute more on average on the ten 10 highest ozone days at the monitors than the 1 ppb 11 threshold to trigger -- to require to trigger the Good 12 Neighbor rule. And as I mentioned also, that they -- the 13 oil and gas impacts the 2028 design value, also 14 triggering -- that the impact of oil and gas on the 2028 15 design value would also trigger the Good Neighbor rule. 16 Again, this applies only to out-of-state sources, but it 17 is a benchmark. 18 Q. Right. And can you explain what an ozone climate 19 penalty is, and whether or not the NMED model accounts for 20 this? 21 A. So an ozone climate penalty means that as the 22 climate changes and gets warmer and increasingly sunny and 23 stagnant, ozone production will likely increase, all else 24 staying the same. The ozone climate penalty means that as 25 we evaluate future control strategies, like we did here,	1042 1 Okay. Let's make sure. Too many screens also complicates 2 this. Oh, that's nice. 3 COURT REPORTER: And Dr. Thompson, will you -- 4 will you slow down a little bit, please? This is Theresa. 5 DR. THOMPSON: Yes. I'm sorry. Yes. Where did 6 the WebEx go? Here we go. Okay. See. Do you see my 7 screen? 8 Q. (BY MR. PARANHOS) Yes, we do. I'm speaking to 9 my mute button. Terrific. 10 So could you explain what NOx or VOC-limited 11 means to the Board? 12 A. Yes, I can. So an area is NOx-limited, this 13 means that the series of atmospheric reactions that lead 14 to the net formation of ozone are basically bottle-necked 15 by the reactions driven by the NO/NO2 cycling. So this -- 16 so this means that the rate of net ozone formation will go 17 up if NOx emissions goes up, and will go down if NOx 18 emissions go down. So that's what NOx-limited means. 19 And similarly, if an area is VOC-limited, net 20 ozone production will go up if VOC concentrations go up 21 and will go down if VOC concentrations go down. Yeah. 22 Q. Terrific. And does the model show that different 23 parts of the state of New Mexico are NOx-limited? 24 A. Yes, it does, but it also shows that some areas 25 of the state are VOC limited on some days.

1043 1 Q. And does the fact that certain parts of the state 2 are NOx-limited lead to the conclusion that VOC reductions 3 will not help reduce ozone concentrations? 4 A. No. No. So NOx/VOC sensitivity is not a black 5 and white issue. Ozone formation that is limited by the 6 concentration of any species, it occurs on a -- on a 7 continuum, with the NOx-limited being on one end and 8 VOC-limited on the other. And this is how it's displayed 9 in the modeling as well. 10 So most of the ozone as produced in New Mexico is 11 produced under both NOx-limited and VOC-limited 12 conditions. And very rarely are the areas we are most 13 concerned about so far, out on the spectrum that 14 reductions of other VOC or NOx will not have an impact on 15 ozone formation. So, you know, we are most interested in 16 areas of high ozone concentration. Right? And these 17 are -- and especially the high ozone concentrations that 18 overlap with the oil and gas regions, so when we're 19 presenting the entire state like the NOx -- like the State 20 of New Mexico being NOx-limited on average, that's not 21 really what we want to know about. Really, we want to 22 know about what the areas are that we are most concerned 23 about, and the areas that overlap with oil and gas, what 24 those look like. 25 And so the modeling that the Department did show	1045 1 more VOC sensitive than it is NOx sensitive. So it's 45 2 percent NOx sensitive, which means it's 55 percent VOC 3 sensitive. So, 55 percent in that -- in that, like, 4 maximum spot of the ozone produced locally, from local 5 emissions was VOC sensitive. 6 So there's a continuum -- like, you know, like I 7 said, there a continuum, and especially in the Northwest, 8 it tends that that -- VOC sensitivity tends to increase 9 with -- with ozone. 10 So here's another one with, again, locally 11 produced ozone on the left. And you can see that that 12 maximum coincides with Albuquerque, and so the 13 anthropogenic emissions from Albuquerque, but then the 14 Southeastern part of the state also has ozone produced 15 locally from New Mexico emissions. And that also has the 16 highest VOC sensitivity. So, in this case, it's only 75 17 percent NOx sensitivity, so 25 percent VOC sensitivity. 18 So a quarter of that -- of that ozone is produced in VOC 19 sensitive -- in a VOC-sensitive regime. 20 So it's just -- it's just the point that, like, 21 okay, yeah, the rest of the State is mostly NOx-sensitive, 22 but that's not what we're really talking about here. 23 We're talking about these particular regions where 24 emission reductions from oil and gas will actually -- will 25 actually matter. Right? And so that's what this modeling
1044 1 that basically on high ozone days, the areas with the 2 highest ozone are often co-located with the highest VOC 3 sensitivity. So as ozone goes up and as anthropogenic 4 emissions in New Mexico go up, especially in the Northwest 5 part of the state, VOC sensitivity goes up. 6 And I've pulled some screenshots from the -- from 7 Exhibit 17. And these are -- this is from pages 158 to 8 184 so you can follow along. But just as a reminder very 9 quickly, this is a map of the NOx and VOC emissions as 10 they were modeled for this -- for these results. 11 So I just wanted to step through. There's a lot 12 more maps on these pages and there's a lot of information 13 and it's actually really cool and we can talk about it as 14 much as you guys want to, but I wanted to show this 15 because this is a single day. And what you see on the 16 left, the darker the blue, the higher the contribution of 17 in-state emissions to locally produced ozone. So that is 18 ozone that was produced in the State of New Mexico from 19 emissions from the State of New Mexico. 20 And on the right is the NOx/VOC sensitivity of 21 that locally produced ozone only, which is pretty cool. 22 Right? So you can see -- and this is, you know, 23 obviously, like -- this is a case for the San Juan region 24 where locally produced ozone -- where we see the highest 25 locally produced ozone at 6.8 parts per billion, and it is	1046 1 is showing. 2 And so here's -- here's -- I've got two -- one 3 more and then we can go back to it. So this is another 4 one again, the highest locally-produced ozone is in -- or 5 coincides with emissions associated with oil and -- with 6 the location of the emissions associated with oil and gas. 7 I can't say that I know exactly where these are coming 8 from, that's not how the modeling was designed; but they 9 coincide with the oil and gas regions. And in this case, 10 the most VOC-sensitive area was in the San Juan region. 11 It looks like it's actually in Arizona, but we've got 75 12 percent VOC-sensitivity up there, so -- so there is -- 13 there's a lot more information in this modeling than 14 really what has been communicated. 15 And I just wanted to give you all a chance to see 16 these and so we can talk about it as well. So they're -- 17 basically what this shows is that emissions reductions in 18 these two regions -- emissions reductions of VOCs will 19 lead to reductions in ozone. 20 Q. Great. Thank you, Dr. Thompson. 21 And yesterday -- or actually I think it was two 22 days ago now, we heard quite a bit of testimony that 23 NMED's model only result in modest reductions to ozone 24 concentrations. Did you agree with this characterization 25 of the model?

1047 1 A. No, I think calling the reductions modest is a 2 subjective statement. It's all relative. In reality, the 3 model benefits of the proposed controls are larger than 4 many sectorial control strategies implemented by states to 5 control ozone. 6 So, for example, when I was a graduate student in 7 Texas, our research group modeled the ozone design value 8 benefits of the Houston Inspection and Maintenance Plan 9 for Vehicles. And the plan was considered quite costly, 10 I'm sure you can imagine. And the modeling showed less 11 than a 1 part per billion benefit to the design value at 12 area monitors, but the technology was there, the benefits 13 were demonstrated and it was the right thing to do for 14 health of Houston -- Houstonians -- Houstonians. So it 15 was enacted. So, yeah, it's -- it's -- it's a relative -- 16 relative statement. 17 Q. Great. Thank you so much, Dr. Thompson. 18 MS. PARANHOS: I have no further questions for 19 her at this moment. 20 HEARING OFFICER ORTH: Thank you, Ms. Paranhos 21 and Dr. Thompson. If you would, Dr. Thompson, stop 22 sharing your screen briefly so that I can see what counsel 23 is joining us. 24 DR. THOMPSON: Oh, boy. Oh, boy. Here we go. 25 HEARING OFFICER ORTH: All right. So, counsel,	1049 1 the more anthropogenic plumes, for example -- the Four 2 Corner anthropogenic plumes. On that day, were, I think, 3 closer to 45 percent NOx sensitive. 4 Wildfires do release VOCs as well, but, yes, in 5 this -- in this case it clearly demonstrated a knockdown, 6 I guess, a reduction in NOx sensitivity that would 7 therefore ramp up the importance of VOCs due to wildfires. 8 Q. And are wildfires becoming more common in the 9 West as a result of the climate change? 10 A. Yes, wildfires are becoming more common. Yes, 11 climate change has impacted the prevalence of wildfires in 12 the West through drought, differences in rain patterns, 13 snowpack melts is melting sooner and it's melting faster, 14 and increased temperatures are drying things out faster 15 and -- as we all are living, this is increasing the number 16 and the size of wildfires in the West. 17 Q. So I know we're -- this is sort of an 18 unprecedented situation, but would it be reasonable to 19 assume that as wildfires in the West become more common, 20 we might start to see more days that are VOC-limited due 21 to more days where you have NOx plumes coming into New 22 Mexico? 23 A. There's a lot of uncertainty around wildfire 24 emissions, but the case that was demonstrated -- the one 25 case that we have demonstrated in the modeling suggests
1048 1 in the event you have questions, please join us. I saw 2 Mr. Baake first and Mr. Hiser second. Mr. Baake. 3 MR. BAAKE: Thank you, Madam Hearing Officer. I 4 just had a couple of clarifying questions. 5 CROSS-EXAMINATION OF TAMMY THOMPSON, Ph.D., 6 BY MR. BAAKE: 7 Q. Dr. Thompson, my name is David Baake; I represent 8 the nine groups that are collectively called Clean Air 9 Advocates. Thank you for your testimony. You mentioned 10 that this idea of being -- an area being NOx-limited or 11 VOC-limited isn't a "black and white issue," I think is 12 what you said. I had a particular scenario I wanted to 13 ask about. 14 So if you -- suppose you had an area that's 15 normally NOx-limited, but you have an influx of NOx 16 pollution due to a wildfire. In that situation, would you 17 expect the area might be more VOC-limited, at least until 18 the NOx plume dissipated? 19 A. Actually, one of the NOx/VOC maps that was 20 provided by the report showed a -- well, it was dominated 21 by a wildfire in Arizona and you can see the plume on the 22 sensitivity maps. It does stand out, it is less 23 NOx-sensitive than the rest of the state on that day. 24 It's about 65 to 70 percent NOx limited, so -- so, yes, 25 it's lower than the rest of the state, but not as low as	1050 1 that that could be the case, yes. 2 Q. Great. And just to shift -- my other line of 3 questions relates to a statement that I think was on your 4 last slide. And I think you said, VOC emissions from oil 5 and gas increase background concentrations for everyone; 6 is that -- did I have that right? 7 A. Yeah, that's -- that's right. And I -- I think I 8 sort of skipped over something that's part of that. Yes, 9 so VOC emissions from oil and gas will produce ozone 10 somewhere. As we demonstrated, some of it is going to be 11 local and is going to influence New Mexico and New Mexico 12 monitors and New Mexico humans. And some of it will be 13 downwind of that. 14 So we know that, like, if we're going to talk 15 about methane -- methane has an atmospheric lifetime of 16 about 10 years; we know this. In areas that have NOx 17 emissions, methane will lead to eventually -- it's a 18 destruction mechanisms -- leads to a net increase in 19 background ozone. And actually modeling has demonstrated 20 that; total anthropogenic methane emissions from humans 21 have increased global background ozone by about 5 part per 22 billion, give or take. 23 And so, increasing VOCs, methane -- ethane is -- 24 and it's very similar; it has a slow -- it has a shorter 25 lifetime, and so it's not going to last -- it's not going

1051 1 to last in the atmosphere for ten years; it's more like a 2 couple of months, but with the right background 3 conditions, again, you know, NOx availability, where you 4 can find a lot of that, just pass over a freeway, the 5 ethane will react and increase and lead to ozone 6 formation. 7 So if it -- as we've demonstrated, a lot of that 8 will happen locally in New Mexico, but if it doesn't, it's 9 going to be downwind and increase ozone for somebody else 10 and eventually for all of us through this background 11 contribution. 12 Q. That's really helpful. And so, I think what I 13 heard you say is that methane and ethane, while they may 14 not be considered VOCs, and are not as reactive in the 15 short-term, they will -- can eventually be expected to 16 contribute to the background levels of ozone; do I have 17 that right? 18 A. That's right. 19 Q. Okay. And my last question was that -- I think 20 you mentioned this already as well, but I wanted to make 21 sure I had it clear; that as -- when the reaction takes 22 place between VOCs and NOx, the weight of the reaction is 23 temperature-dependent; is that correct? 24 A. So the mechanism of temperature to ozone increase 25 is mostly through indirect. It's a mostly indirect	1053 1 Q. I really appreciate that. And I think that it 2 certainly seems like this is an incredibly complicated -- 3 you know, ozone formation is incredibly complicated, so 4 you have to be aware of that. 5 So, in general, due to the changes in weather, 6 weather patterns, the more stagnant situations, et cetera, 7 climate change is expected to increase ozone levels 8 overall? 9 A. That's right. The modeling has -- the modeling 10 has demonstrated that repeatedly and just, you know, each 11 time digs into all of those different, cool mechanisms 12 through which that happens. 13 Q. No further questions. I really appreciate the 14 colloquy. Thank you so much. 15 HEARING OFFICER ORTH: Thank you, Mr. Baake. 16 Mr. Hiser? 17 MR. HISER: Thank you, Madam Hearing Officer. 18 CROSS-EXAMINATION OF TAMMY THOMPSON, Ph.D. 19 BY MR. HISER: 20 Q. Dr. Thompson, my name is Eric Hiser; I represent 21 the New Mexico Oil and Gas Association in this proceeding. 22 Thank you very much for your testimony and it's always 23 delightful to hear explanations of atmospheric chemistry 24 and its complexities. 25 I guess the first question is, that you were
1052 1 pathway; like one example of a direct pathway is that it 2 increases what's a -- it's a reservoir, a PAN, which 3 stands for something that I can't remember off the top of 4 my head, but it's a chemical species that serves as a 5 reservoir for NOx, and increasing temperature causes that 6 reservoir to become less stable and it will actually 7 release NOx back into the atmosphere for ozone production. 8 So that's one direct mechanism of temperature. 9 More often, it's indirect through increases 10 through ramping up emissions from trees or ramping up 11 emissions from people using more electricity. And the 12 more direct mechanism is the stagnation of it. So we 13 know, like, weather is becoming more extreme and so 14 we'll -- we'll have more big storms. We'll also have more 15 high pressure systems where, you know, the system will 16 just sit over an area and you get stagnation and wind, 17 there's not a lot of ventilation, wind movement, you get a 18 lot of sun, and ozone production is driven by 19 photochemistry, so you need that sunlight to kick off the 20 series of reaction that cause ozone. Ozone doesn't form 21 at night, for example. 22 And actually smoke will decrease ozone formation 23 through decreasing sunlight, but, you know, so there's a 24 lot of indirect and direct pathways, but overall, yes, so 25 as temperature increases, it leads to increases in ozone.	1054 1 arguing that, in fact, that there may be some NOx 2 limitations that apply throughout much of the State or 3 even in the areas where oil and gas is limited, suggest 4 that there shouldn't be any VOCs -- or doesn't mean that 5 we shouldn't also regulate VOCs. Is anybody here arguing 6 in this proceeding that there should be no regulation of 7 VOCs? 8 A. No, I don't believe so. 9 Q. Okay. And in the slides that you presented, 10 where you were showing the pictures of the State and the 11 multicolored index from Ramboll's analysis that Ralph 12 Morris spoke to, you found, I think it was three different 13 days, did you not, where the shift was somewhat from the 14 NOx-limited side to a little bit more VOC-sensitive? 15 A. That's right. They didn't provide -- they didn't 16 provide all of the days that they modeled; they provided a 17 number of what they thought -- I honestly don't know how 18 they picked the days, but they looked mostly at the -- 19 well, higher ozone days. The fire was an interesting one, 20 obviously, because you could see the fire plume. And so, 21 yes, I can bring up the document and we can go through the 22 one or two days that were not shown, but, yes. 23 Q. But it was a couple of days. Do you agree with 24 Mr. Morris's testimony that it appears based on the 25 information presented in the modeling and the technical

1055 1 support document, that for the majority of time, that even 2 the oil and gas producing regions tend to skew more on the 3 NOx-limited side? 4 A. Above 50 percent -- 5 Q. Yes? 6 A. -- from what it -- I mean it's, like, yeah, so, 7 yes. Yes, so that means that half of the VOCs that are 8 emitted will -- will kick into ozone formation. 9 Q. And that as you go further from the very 10 centroidal portion of those areas, that that limitation 11 shifts rapidly toward NOx-limited in most days during the 12 year, to the extent -- 13 A. To the central part. Well, so, again, most days 14 is not -- like I can't comment on most days because I'm 15 looking at six or seven. And so, as I -- as I mentioned, 16 you know, most of the State does show NOx limitation -- 17 higher NOx limitation, but what we are talking about are 18 some of the counties that are covered under this rule, and 19 what emissions in those counties or what the 20 NOx-limitation and VOC-limitation in those counties might 21 be. Right? And so that was -- 22 Q. I was asking you about the counties in which the 23 oil and gas industry was located, not about the State as a 24 whole. 25 A. Right. Okay. And so, again, the Northwest part	1057 1 Good Neighbor rule and we recently, I think, certified 2 that to go to the EPA, but from what I remember of that, 3 the only monitor that was of concern was the one in 4 Denver. So could you just clarify that for the Board 5 since we recently went through that issue? 6 MS. KATZ: Member Trujillo-Davis, I might have to 7 ask my colleague, Mr. Knight, to speak to that. I don't 8 know if he's available at the moment, but I did not -- I 9 was not the counsel assigned to that proceeding. It looks 10 like his camera may not be working. There he is. 11 MR. KNIGHT: Good morning. Madam Hearing 12 Officer, members of the Board, Member Trujillo-Davis, yes, 13 that is correct, I think, is my answer. 14 HEARING OFFICER ORTH: Thank you, Mr. Knight. 15 Vice-Chair Trujillo-Davis, do you have questions 16 of Dr. Thompson? 17 VICE-CHAIR TRUJILLO-DAVIS: No, I have no 18 questions of Dr. Thompson. Thank you. 19 HEARING OFFICER ORTH: All right. Thank you. 20 Thank you, Mr. Knight for leaping in. 21 Let's see. Member Cates? 22 BOARD MEMBER CATES: No questions here. Thank 23 you. 24 HEARING OFFICER ORTH: Thank you. Member Bitzer? 25 May have stepped away. Member Duval?
1056 1 of the State tends to be more VOC-limited than the 2 Southeast part of the State. That one ramps up as 3 VOC-limited less often. 4 Q. And by more VOC-limited, you're speaking mostly 5 in a relative sense, here, correct? 6 A. That's correct, yes. 7 Q. Okay. In terms of -- I think that's it. Thank 8 you very much for that discussion, Dr. Thompson. I 9 appreciate it. 10 A. Yeah. 11 HEARING OFFICER ORTH: All right. Thank you. I 12 don't see any other counsel or party representatives on 13 screen, so I'm going to turn to the Board members for 14 their questions. While I'm doing that, in the event you 15 are an attendee rather than a panelist, please reach out 16 through the Chat with any questions you might have. 17 EXAMINATION BY THE BOARD OF TAMMY THOMPSON, Ph.D. 18 HEARING OFFICER ORTH: Madam Chair, do you have 19 questions of Mr. Thompson? 20 CHAIRPERSON SUINA: No questions from me. 21 HEARING OFFICER ORTH: Oh, okay. Thank you, 22 Madam Chair. Vice-Chair Trujillo-Davis? 23 VICE-CHAIR TRUJILLO-DAVIS: I do not have any 24 questions of Ms. Thompson, but I did want a clarification 25 I think from Ms. Katz. Ms. Thompson had referenced the	1058 1 BOARD MEMBER DUVAL: No. Thank you for your 2 testimony, Dr. Thompson. I do think it's interesting -- 3 this is just a comment -- like the line of questioning -- 4 actually, I do have a question. Sorry. 5 Can you speak to, like, why is it important to 6 delineate which of the limiting factors, because clearly 7 NOx and VOCs are interactive in producing ozone. And so, 8 can you speak to why that is important to understand the 9 limiting factors, as opposed to the total emissions, like 10 the total bulk emissions of both which are going to lead 11 to the overall increase in ozone? 12 DR. THOMPSON: I mean, it speaks to more bang for 13 your buck. Like, either way, you're getting benefits. 14 And the one thing about ozone that I meant to -- or I'm 15 sorry -- about VOCs that I meant to mention is that 16 there's no disbenefit to reducing VOCs. NOx has what's 17 called -- NOx can have a disbenefit, in which if you have 18 a ton of excess NOx, it will actually go back and react 19 with some of that ozone and artificially reduce it 20 locally, but when you start to skim off that excess NOx, 21 you can ramp up ozone. 22 We saw this in COVID, where some areas when car 23 traffic went down, ozone went up in some areas. And so 24 there can -- I mean, not to say that we shouldn't just 25 keep cutting NOx, because that's what we should do, but

1059 1 basically my point is, there's no disbenefit to cutting 2 ozone -- I'm sorry, VOCs. There's no disbenefit to 3 cutting VOCs. And it is, it's just a bang for your buck 4 kind of thing. 5 BOARD MEMBER DUVAL: Okay. Thanks for that -- 6 that clarification. I think, because when -- when things 7 are framed in terms of limitations and disbenefit, like 8 when it's framed in a negative connotation, I think it may 9 be hard for a lay audience to understand the -- the bulk 10 question there. 11 DR. THOMPSON: Yeah. That's a good point. 12 BOARD MEMBER DUVAL: So I appreciate that. 13 DR. THOMPSON: It's more about the positive. 14 Like, we can get more ozone reduction per ton reduced of 15 this, but regardless, you're going to see ozone 16 reductions. 17 BOARD MEMBER DUVAL: Thank you. Thank you for 18 your testimony. Thanks for your clarification, ma'am. 19 HEARING OFFICER ORTH: All right. Thank you. 20 Member Garcia? 21 BOARD MEMBER GARCIA: Yes, I do. Thank you, 22 Dr. Thompson, for your testimony. One question I'd like 23 to ask, and I'm not sure if you can answer this, but one 24 of the things that the industry is concerned about is -- 25 is the economic hit on the industry by this rule. And	1061 1 that, and I wish I could remember, you know -- I don't 2 want to speculate. I don't want to speculate exactly 3 about impact relationships, but it doesn't take much to 4 see improvements in children's health through reductions 5 in asthma due to small reductions of ozone. 6 And ozone -- and speaking to climate, ozone 7 itself is a pretty strong greenhouse gas, and so 8 reductions in methane, obviously, we know will have a 9 strong impact, will help -- will help climate efforts, but 10 the resulting ozone also will help climate effort. 11 MEMBER GARCIA: Okay. Thank you very much, 12 Dr. Thompson. I appreciate your testimony. 13 HEARING OFFICER ORTH: Thank you. Member Honker? 14 BOARD MEMBER HONKER: No questions. Thanks for 15 your testimony, Dr. Thompson. 16 HEARING OFFICER ORTH: Thank you. Ms. Paranhos, 17 is there any reason not to excuse Dr. Thompson for the 18 moment? 19 MS. PARANHOS: Just a -- just a few follow-up 20 questions for the purpose of clarifying some of her 21 testimony. 22 REDIRECT EXAMINATION OF TAMMY THOMPSON, Ph.D. 23 BY MS. PARANHOS: 24 Q. So Dr. Thompson, you testified that the use of 25 the term "modest" to characterize the ozone concentrations
1060 1 that -- and their contention is that you're only going to 2 see a moderate reduction in ozone, so why penalize the 3 industry so much when you're going to get a minimal 4 reduction in ozone. And certainly, it's something that 5 the Board has to consider, as you say, bang for your buck. 6 So, in looking at when we consider climate 7 change, and we talk about the increase in temperature of 8 the ocean by 1 degree or 2 degrees, it makes a tremendous 9 difference biologically, meteorologically, it makes a huge 10 difference, just 1 degree increase in the ocean. 11 I'm wondering if there's anything similar 12 happening with a small reduction in ozone formation. You 13 mentioned your experience in Houston, it reduced ozone 14 formation by a small amount, but for some reason it was 15 worth it. Could you speak to that a little bit, please? 16 DR. THOMPSON: That's right. It doesn't take 17 much of a change in ozone concentration to lead to human 18 health benefit. So we know that human -- that humans 19 react poorly to ozone. It's a very strong oxidant, which 20 means it gets into your lungs and reacts, or provides -- 21 or like irritates your lung tissue. And it doesn't -- it 22 doesn't take much for there to be -- for the models to 23 demonstrate a health benefit to -- to kids' asthma and 24 hospitalizations. And so a lot of the modeling will do 25 that. And, actually, we had -- I mean, I did modeling on	1062 1 that could be reduced by NMED's rule is really a 2 subjective standard; is that accurate? 3 A. Yes. Yes, that's right. And we -- we talked 4 about how by EPA standards, some of the reductions that we 5 were seeing -- or some of the possible reductions would 6 not be modest, they would be significant. 7 Q. Thank you. And so is it fair to say that your 8 testimony -- your opinion is that the ozone modeling does 9 show that reductions in oil and gas VOC emissions and NOx 10 emissions will result in significant and important ozone 11 reductions in the State of New Mexico? 12 A. Yes. 13 Q. Thank you. And with respect to the Good Neighbor 14 rule, you utilized that analogy just to describe what the 15 significance of oil and gas emissions coming from sources 16 in New Mexico is; is that accurate? 17 A. That's right. Again, it's just to set a 18 benchmark; it is not applicable here. So New Mexico 19 emissions may be applicable to Denver monitors through the 20 Good Neighbor rule, but that's a completely different 21 issue. We're talking about just how to think about how 22 significant or, you know, not modest, basically, these 23 emissions are. 24 Q. Thank you so much, Dr. Thompson. No further 25 questions.

1063 1 HEARING OFFICER ORTH: All right. Thank you very 2 much, Ms. Paranhos and Dr. Thompson. If there's no reason 3 not to excuse Dr. Thompson for the moment, we'll do that. 4 Thank you very much. 5 We're going to move then to Joseph Hernandez. 6 Mr. Johnson, I believe you are going to be presenting 7 Mr. Hernandez. 8 MR. JOHNSON: Yes. Thank you, Madam Hearing 9 Officer. Before I do that, Madam Hearing Officer, I'd 10 like to just raise one preliminary matter, if I may? 11 HEARING OFFICER ORTH: Yes. 12 MR. JOHNSON: So, thank you, Madam Hearing 13 Officer. On Tuesday afternoon, my co-counsel, Daniel 14 Jaynes, he had moved to admit Center for Civic Policy and 15 the NAVA Education Project's Exhibits 1 through 5, as well 16 as Exhibit 8 into the record. And at that time it was 17 noted that IPANM had objected to brief sections of two of 18 our exhibits due to relevance related to methane emission 19 comments. And I know we've tabled that discussion for a 20 later date. 21 However, I believe that we aren't sure as to the 22 status of the admission of our exhibits. 23 HEARING OFFICER ORTH: All right. So we -- we 24 are continuing to table it and Mr. Rose preserved his 25 objection a little bit ago, I think when Dr. Thompson was	1065 1 BY MR. JOHNSON: 2 Q. Good morning, Mr. Hernandez. Can you -- can you 3 please state your full name for the record? 4 A. Good afternoon. My name is Joseph Hernandez, 5 spelled J-O-S-E-P-H, Hernandez spelled H-E-R-N-A-N-D-E-Z. 6 Q. Thank you, Mr. Hernandez. Can you please tell us 7 why you're here today? 8 A. I am here to testify on behalf of the NAVA 9 Education Project. 10 Q. Okay. Thank you, Mr. Hernandez. And did you 11 submit prefiled testimony for the purposes of this 12 hearing? 13 A. Yes, I did. 14 Q. And a copy of your testimony has been filed and 15 marked as Center for Civic Policy, NAVA Education Project 16 Exhibit 4, correct? 17 A. Yes. 18 Q. And does that exhibit appear to be fair and 19 accurate? 20 A. Yes. 21 Q. And do you adopt that exhibit as your testimony? 22 A. Yes. 23 Q. Thank you, Mr. Hernandez. 24 Can you please tell us a little bit about, what 25 is the NAVA Education Project?
1064 1 introduced. 2 What I'd like to do is hear all of 3 Mr. Hernandez's testimony and make whatever reference 4 you'd like to make to the exhibits, and we're going to 5 have that discussion later. 6 MR. JOHNSON: Okay. Thank you, Madam Hearing 7 Officer. 8 HEARING OFFICER ORTH: All right. Thank you. 9 Mr. Hernandez, I believe it's the standard spelling on 10 your first and last name. Would you raise your right 11 hand, please. Do you swear or affirm to tell the truth? 12 MR. HERNANDEZ: I do. 13 HEARING OFFICER ORTH: Thank you. Your voice is 14 a little quiet, so I'm going to ask you to sit closer to 15 the microphone or speak up. 16 MR. JOHNSON: Thank you, Madam Hearing Officer. 17 Am I -- am I ready to proceed or can I proceed? 18 HEARING OFFICER ORTH: Yes. Let's just make sure 19 Mr. Hernandez's voice is clearly heard. 20 MR. HERNANDEZ: Madam Hearing Officer, is this 21 okay? 22 HEARING OFFICER ORTH: That's better. Thank you. 23 JOSEPH HERNANDEZ, 24 having been first duly sworn or affirmed, was examined 25 and testified as follows:	1066 1 A. The NAVA Education Project is a nonprofit 2 organization dedicated to uniting community stakeholders 3 to actively improve the quality of life for Native 4 American communities and protect the continuity of Native 5 American cultures. The NAVA Education Project is 6 committed to social, economic and environmental justice 7 principles that advance healthy and sustainable 8 communities for Native families living here in New Mexico. 9 Q. Thank you, Mr. Hernandez. And what exactly is 10 your role at the NAVA Education Project? 11 A. I work as the Diné Energy Organizer for NAVA 12 Education Project, where I educate Native American 13 communities on sustainable energy and economy models. 14 Q. Okay. Thank you, Mr. Hernandez. 15 I want to shift to talking a little bit about 16 your background. Can you tell us all about -- a little 17 bit, like where you're from? 18 A. I am from Shiprock Navajo Nation New Mexico. I 19 am an enrolled member of the Navajo Nation with the census 20 No. 226027 for my Diné relatives, (speaking in Navajo.) 21 My -- my family are owners of allotments in 22 Eastern Navajo Agency in an area with oil and gas 23 production. I am an heir to this allotment which is 24 located 11 miles east of Chaco Canyon near Nageezi. 25 Q. Thank you, Mr. Hernandez.

1067 1 Have you held any positions in your community? 2 A. Yes. It's important to know that my hometown, 3 Shiprock, is part of the Northern Navajo Agency. The 4 Agency is subdivided into 19 local governments called 5 Chapter houses. I am a member of the Gadii'ahi/Tokoi 6 Chapter house. I participate monthly in our 7 regularly-held virtue Chapter meetings. I previously 8 served as the president of the community land use planning 9 committee at my Chapter house. I also currently volunteer 10 as a vice president on the Navajo Nation Headstart Parent 11 Policy Council, an elected position by the parents of 12 Shiprock Center 1 and 2. 13 Q. Thank you, Mr. Hernandez. 14 Can you tell us a bit about your education? 15 A. Yes. I graduated from Shiprock High School in 16 May 2006. From there, I went to take courses at 17 Southwestern Indian Polytechnic Institute in Albuquerque, 18 New Mexico. While I did not end up graduating from SIPI, 19 I was admitted into -- into the SIPI's preengineering 20 program as well as its business administration program. 21 Q. Thank you, Mr. Hernandez. 22 I want to shift gears here again and talk about 23 your experience working. Do you have any experience 24 working in the oil and gas industry? 25 A. Yes. Following my time at SIPI I worked for	1069 1 Native communities that you work with in your role at -- 2 with the NAVA Education Project, to harmful pollution from 3 oil and gas sites? 4 A. Yes, certainly. As the Diné Energy Organizer for 5 the NAVA Education Project, I have personally seen that 6 many Navajo people live and work near oil and gas 7 production, especially in the allotment areas such as 8 where my own family holds allotments. When visiting these 9 areas I have personally breathed in air thick with the 10 taste of emissions produced by the oil and gas operations, 11 and it's -- it's a nasty feeling; you know, you have a 12 tingling sensation. You don't know what's going on. You 13 get headaches, you know, sometimes you feel confused and 14 it's -- it's no good. 15 Q. Mr. Hernandez, just to follow-up on that a little 16 bit, would you say that's a common experience that you 17 have in this area? 18 A. Yes. 19 Q. Okay. Thank you. 20 I want to shift gears one more time and talk 21 about the regulations being discussed here today. Can you 22 tell us if the NAVA Education Project holds a position 23 regarding the promulgated regulations? 24 A. Yes. Our -- our position is that the 25 Environmental Improvement Board should act so that all
1068 1 Riley Industrial Services, Incorporated as a hydroblast 2 technician on oil and gas wells in Bloomfield, New Mexico. 3 Q. And can you tell us a little bit about your 4 experiences working as a hydroblast technician? 5 A. Yes. I did -- when I was working on oil and gas 6 wells, we weren't told that these wells had toxic 7 pollutants. Now that I have learned more about the 8 harmful chemical makeup I am concerned that I was working 9 on a site with this kind of pollution, and especially, you 10 know, knowing that there's communities that live that are 11 surrounded by these. 12 Q. Thank you, Mr. Hernandez. 13 Now, I want to turn to your work with the NAVA 14 Education Project. Does your work there bring you into 15 contact with communities who are affected by the oil and 16 gas industry in our State? 17 A. The NAVA Education Project has provided me with 18 the opportunity to interact with Native American 19 communities located in oil and gas country. As NAVA 20 Education Project Diné Energy Organizer, I have worked 21 directly with these communities and I am all too familiar 22 with the daily challenges they face even from 23 environmental justice issues. 24 Q. Thank you, Mr. Hernandez. 25 And do you have any concerns about exposure of	1070 1 people are equally protected from oil and gas pollution, 2 especially Native American people. I have seen firsthand 3 just how harmful unregulated oil and gas production can be 4 for Native American communities. 5 Q. Thank you, Mr. Hernandez. 6 And in a -- and in a similar vein does the NAVA 7 Education Project hold a position regarding the 8 regulations proposed by the New Mexico Environmental 9 Department? 10 A. Yes. We believe that New Mexico Environmental 11 Department's proposed regulations should be made stronger. 12 That -- that is why we support the amendment proposed by 13 Center for Civic Policy and other environmental and 14 community groups. Basically, the stronger the protection 15 for Native American communities, especially those situated 16 right near oil and gas facilities, the better. 17 Q. Thank you, Mr. Hernandez. 18 I just have one more question. Can you -- can 19 you tell us about how you believe that these amendments 20 will protect Native American communities? 21 A. What's important about these amendments is that 22 they protect people who are living and working near oil 23 and gas wells. This is particularly important because of 24 the many Navajo people living and working in close 25 proximity to the oil and gas wells.

1071 1 Q. Thank you, Mr. Hernandez. 2 MR. JOHNSON: Madam Hearing Officer, this 3 concludes Mr. Hernandez's direct testimony and he now 4 stands available for any cross-examination. Thank you. 5 HEARING OFFICER ORTH: Thank you very much, 6 Mr. Johnson. Let me pause for a moment in the event any 7 counsel or party representatives want to appear on screen 8 for questioning. 9 All right. At this point then, I will turn to 10 the Board for their questions. If you're an attendee on 11 this platform and you have a question of Mr. Hernandez, 12 please reach out through the Chat. 13 EXAMINATION BY THE BOARD OF JOSEPH HERNANDEZ 14 HEARING OFFICER ORTH: Madam Chair, do you have 15 questions of Mr. Hernandez? 16 CHAIRPERSON SUINA: Thank you, Madam Hearing 17 Officer. And thank you, Mr. Hernandez, for your testimony 18 and for the information that you provided to us. I just 19 wanted to clarify. I know it's been thrown out there, 20 1000 foot -- some thousand foot requirement regarding 21 some -- some of the requirements in the proposed rules or 22 in some of the proposals from NAVA and from your 23 organization. Can you elaborate a little bit upon the 24 necessity for that in your perspective? 25 MR. HERNANDEZ: Thank you, Madam Chair. And,	1073 1 I think that's -- I would have to -- you know, the 2 jurisdiction aspect of it, I actually would want to defer 3 that to my counsel because they definitely, you know, 4 would -- would understand that question. But I just know 5 that, yeah, that jurisdiction is a -- is unlike nothing 6 other than the State of New Mexico when dealing with -- 7 with these communities, so... 8 CHAIRPERSON SUINA: Thank you, Mr. Hernandez. I 9 appreciate your testimony and thank you. That's all the 10 questions I have now. 11 HEARING OFFICER ORTH: Thank you. Vice-Chair 12 Trujillo-Davis? 13 VICE-CHAIR TRUJILLO-DAVIS: Yes. I just first 14 would like to thank Mr. Hernandez for taking the time to 15 talk to the Board today. And -- and I actually just had 16 some follow-up questions to Member Suina's questions. I'm 17 curious about jurisdiction. I understand that the NMED 18 rules applied to the wells located on tribal lands, but 19 I'm curious, generally, who -- who -- and Mr. Hernandez, 20 this may or may not be a question for you, but who 21 generally inspects those? Is it an NMED inspection or is 22 that a BIA inspection? And I'm just kind of looking for 23 clarity on the jurisdictional issue. 24 MR. HERNANDEZ: Thank you, Member Davis. And 25 I -- Madam Hearing Officer, I would like to defer this to
1072 1 yes, you know, I -- again, that thousand foot is -- is 2 important, it's critical because we're, you know, we have 3 not just homes, we have businesses, we have education 4 institutions, you know, that are in that proximity. And 5 it's going to be critical that -- that we ensure that, you 6 know, they are protected, you know. And -- and I think 7 that's vital to these amendments, is that, you know, it 8 offers assurance that -- that there will -- you know, that 9 they don't have to worry about, you know, what's in the 10 air when they step outside, or, you know, on a nice, cool 11 day, when they open up the window, you know, they don't 12 have to worry about what's in the air. 13 CHAIRPERSON SUINA: Thank you for that, 14 Mr. Hernandez. I also wanted to just have a quick 15 follow-up. I think I asked this of Ms. Pasqual in 16 previous discussions; from your perspective, how would 17 these proposed rules also maybe overlap or address some of 18 the jurisdictional issues between tribal land areas and 19 nontribal land areas, and areas where this rule would be 20 applicable? 21 MR. HERNANDEZ: You are -- Madam Chair, you are 22 correct, there definitely is a jurisdictional overlap in 23 this region. It's complicated but, you know, we -- we -- 24 the communities that live there, they have, you know, 25 managed to -- to -- to work with all Agency partners. And	1074 1 my counsel. 2 HEARING OFFICER ORTH: That's -- that's a 3 perfectly fine answer, Mr. Hernandez. Thank you. 4 MR. JOHNSON: Madam Hearing Officer, you know, in 5 terms of responding to that question, I'm not sure -- we 6 really don't know on that point. We'd have to circle 7 back, but to answer that question, we don't know. 8 HEARING OFFICER ORTH: All right. Thank you. 9 That was Mr. Johnson. 10 And you needn't -- by the way, when a witness 11 defers as to a legal question, it's not something that has 12 to be resolved immediately. I would typically invite the 13 parties to make whatever legal or jurisdictional argument 14 they have in the posthearing submittal. 15 I do see Mr. Rose on the screen. Mr. Rose, do 16 you have something to offer? 17 MR. ROSE: Just to -- no, just clarify that these 18 rules do not apply on tribal lands. That's either EPA 19 under the Clean Air Act, or if the tribe has been 20 delegated, the treatment of the state would be the tribe 21 under that authority. So anything on tribal, whether it's 22 pueblo or Navajo, or in some cases Apache land, it's 23 federal regulations, and EPA is the enforcing body, unless 24 the tribe -- and I believe the Navajo Nation does have 25 treatment as a state, but most of the pueblos do not, so.

1075 1 HEARING OFFICER ORTH: All right. Thank you very 2 much for that. Ms. Katz, do you have anything to add? 3 MS. KATZ: Just agreeing on behalf of the 4 Department, that Mr. Rose was correct about that. 5 HEARING OFFICER ORTH: All right. Thank you. 6 Vice-Chair Trujillo-Davis, do you have other questions of 7 Mr. Hernandez? 8 VICE-CHAIR TRUJILLO-DAVIS: No. That answers all 9 my questions. Thank you for everybody who answered. 10 HEARING OFFICER ORTH: Thank you. Member Cates? 11 BOARD MEMBER CATES: Yeah. Mr. Hernandez, thanks 12 for testifying today. I've -- the last few years been 13 involved in research and analysis around the closure of 14 the Navajo Generating Station coal fire station over in 15 Arizona and the imminent closure of San Juan and Four 16 Corners Power Plant. 17 And as you know, sir, those -- within the Navajo 18 community, on and off the reservation, those are -- you 19 know, those closures are an issue. The fate of those 20 plants has been a very divisive topic among the Navajo 21 population especially. And so, what I'm wondering is, is, 22 you know, are the rules we're promulgating here -- we're 23 considering here, the regulation of oil and gas extraction 24 up in your part of the world, is it -- is it comparably 25 divisive among Navajo people?	1077 1 practice our traditional ways, so, thank you. 2 BOARD MEMBER CATES: Yeah, And then I think 3 Mr. Rose -- or I'm not sure I have the name right -- one 4 of the attorneys suggested that a rule we're considering 5 doesn't apply to tribal lands, and the implication that it 6 doesn't matter. And so would you -- I would imagine you 7 would probably dispute that assertion. 8 I'll just restate my question that if -- if -- if 9 someone were to say, this rule that we're considering 10 doesn't apply to tribal land, it doesn't matter to -- it 11 doesn't affect Native people and Navajo people in 12 Northwestern New Mexico, doesn't -- doesn't affect them, 13 it's none of their business, it doesn't matter; do you 14 accept that? 15 MR. HERNANDEZ: I just know that, you know, many 16 tribal community members live near oil wells which will be 17 subjected to these rules, so... 18 BOARD MEMBER CATES: Okay. That's all I have. 19 Thank you, sir. 20 HEARING OFFICER ORTH: Okay. Thank you. And 21 before I forget, Mr. Hernandez, would you spell two things 22 for me? Spell the name of President Nez's proclamation 23 and spell the name of your Chapter house. 24 MR. HERNANDEZ: Yes. I'll start with my Chapter 25 house: that's G-A-D-I-I-A-H-I - T-O-K-O-I. And the
1076 1 MR. HERNANDEZ: Madam Hearing Officer, Member 2 Cates, the -- the -- you know, the -- a lot of the 3 conversations I have had with community leaders and also 4 community members who do live in this region and -- and -- 5 and here in the region that you mentioned as well, near 6 the power pollutants, coal burning power plants, they -- 7 they understand that we are transitioning away from fossil 8 fuel. They get it, the Navajo people know that that's the 9 future. 10 President Nez, when he took -- when the first 11 order that he -- that he put in was the Háyoolkáál 12 Proclamation, which is to pursue and prioritize renewable 13 energy development for -- for the benefit of the Navajo 14 people. And -- and that's -- that's important, you know, 15 to see that. And the community -- the impacted 16 communities, you know, they -- they know that -- that this 17 is needed, you know, to improve the quality of health for 18 everyone there. 19 You know, it was mentioned about jurisdiction, 20 well, air that we breathe in and air that we pray for, you 21 know, it's sacred to us. And the air has no jurisdiction. 22 You know, it's -- it's abundant. And our holy people gave 23 it to us to protect, and so I just wanted to mention that, 24 you know, because we -- there's many people who still 25 today in that -- near the oil and gas industry still	1078 1 spelling of the Háyoolkáál, Proclamation, there's -- 2 there's like, I want to say like some glottals and -- 3 could I put it in the text? I mean in the Chat? 4 HEARING OFFICER ORTH: Yes. Thank you very much 5 for that. 6 MR. HERNANDEZ: I could spell it, though, for the 7 record. And I'll put it in the text. 8 H-A-Y-O-O-/-L-K-A-A-L. 9 HEARING OFFICER ORTH: Thank you very much, 10 Mr. Hernandez. Let's see if Member Bitzer has rejoined 11 us. I don't believe so. Member Duval, do you have 12 questions of Mr. Hernandez? 13 BOARD MEMBER DUVAL: No, but thank you for your 14 testimony, Mr. Hernandez. 15 HEARING OFFICER ORTH: Thank you. Member Garcia, 16 do you have questions? 17 BOARD MEMBER GARCIA: No questions. Thank you 18 very much for your testimony, Mr. Hernandez. 19 HEARING OFFICER ORTH: Thank you. And Member 20 Honker? 21 BOARD MEMBER HONKER: No questions for 22 Mr. Hernandez. Thank you very much for your testimony. I 23 would like to, I guess, put a placeholder in for further 24 in the hearing, I do think the issue that Vice-Chair 25 Trujillo-Davis raised about wells that will not be subject

1079 1 to this rule on tribal lands. 2 And I'd be interested in hearing any 3 information that NMED has on the universe that -- that 4 would be beyond the scope of this rule, but within the 5 overall state boundaries. I think that would be very 6 interesting for us to know, anything we know about the 7 universe out there of how they're regulated and that sort 8 of thing. So that's a comment for further discussion. 9 HEARING OFFICER ORTH: Thank you, Member Honker. 10 Ms. Katz, I'm not sure if one of your subsequent witnesses 11 will be addressing that or perhaps could add it at Member 12 Honker's request. 13 MS. KATZ: We can see if we can add that. I do 14 think also that might be -- as far as how many wells, that 15 might be more -- OCD might be able to answer that better 16 than us, but I'll see what -- I'll see if somebody can 17 maybe answer some of those questions. 18 HEARING OFFICER ORTH: Thank you very much. 19 Let's see. Mr. Johnson, will there be -- I don't have 20 other questions -- oh, wait. Madam Chair has a follow-up 21 for Mr. Hernandez. Madam Chair? 22 CHAIRPERSON SUINA: Thank you again, Madam 23 Hearing Officer and thank you, Mr. Hernandez. I wanted to 24 follow-up a little bit of what Member Cates -- or Cates' 25 questions were, just to, I guess -- (unintelligible.)	1081 1 and I'm looking at the -- at the phrase you used, that air 2 does not have any jurisdiction. Can you elaborate a 3 little bit on that comment? 4 MR. HERNANDEZ: Yes. So I think this would have 5 to go back to, you know, my upbringing. You know -- you 6 know, we -- there's -- there's a lot of traditional 7 teachings with your -- that you -- you, you know, when 8 you're in ceremony, you know, you hear a lot about our 9 traditional ways of living, you know, because we -- we 10 are, you know, are taught that through our creation story, 11 that the holy people who brought us -- who created our -- 12 our Earth Mother, provided us with -- gifted us with -- 13 with -- with -- with water and with air and with the land, 14 and that the air doesn't go above out there in the 15 universe, you know, it stays here for a reason. And -- 16 and -- and that's a gift to us, as Diné, is that we were 17 gifted the air. And so we -- we have to -- with, you 18 know, we live in a reciprocal way, where we have to honor 19 that gift and protect what was given to us. 20 And -- and so -- and this is, you know, teachings 21 that -- that, you know, just come to all of us when we go 22 through ceremony. So, you know, and we've known that as 23 our Father Sky, you know, who produces the air. And so, 24 again, you know, it's about -- it's about making, you 25 know, a better world. And I think that's what, when we
1080 1 HEARING OFFICER ORTH: Hold on, Madam Chair. 2 Your video has frozen and we can't hear you. I think 3 perhaps if you turn off your video, we will be able to 4 hear you. 5 CHAIRPERSON SUINA: Yeah, can you hear me better? 6 HEARING OFFICER ORTH: Much better. 7 CHAIRPERSON SUINA: Okay. I was going -- my -- 8 my -- my system has been difficult today, so appreciate 9 that comment. I'll just restart here. 10 Thank you again, Mr. Hernandez. And I just 11 wanted to follow-up on Mr. Cate's line of questioning and 12 also to touch on what Mr. Rose had mentioned earlier. Do 13 you know if Navajo Nation has treatment as a state status 14 for air quality, rules and regulations? 15 MR. HERNANDEZ: Madam Chair, I do know that 16 Navajo Nation does have its own environmental protection 17 agency. 18 CHAIRPERSON SUINA: Great. 19 MR. HERNANDEZ: And I would have to defer the 20 rest to my counsel. 21 CHAIRPERSON SUINA: Okay. That's fine. I just 22 wanted kind of that acknowledgment. And then, also, you 23 know, do you know if these rules do apply to specific 24 lands within New Mexico, I think we've clarified that. 25 And I think you had mentioned, Mr. Hernandez, about air,	1082 1 say our prayers, we -- we pray for all living things, you 2 know, everyone. Thank you. 3 CHAIRPERSON SUINA: Thank you, Mr. Hernandez. I 4 appreciate that additional clarification and how you 5 elaborated on that. So, given that, I think, back to kind 6 of the jurisdictional question, so with that concept of 7 how you explained your Diné upbringing and your 8 perspective of air, water and other resources, so I think 9 it goes to say that air doesn't stop at the jurisdictional 10 boundary that is confined by a three-strand barbed wire; 11 is that right? 12 MR. HERNANDEZ: That's correct, Madam Chair, yes. 13 CHAIRPERSON SUINA: Thank you, Mr. Hernandez. So 14 your interest in this, as you said also, is that there are 15 community members, tribal members, from the Diné Nation, 16 from your communities that are also immediately adjacent 17 to facilities that this rule would apply; is that correct? 18 MR. HERNANDEZ: Madam Chair, yes. 19 CHAIRPERSON SUINA: Okay. All right. Thank you 20 so much, Mr. Hernandez. I appreciate your -- your 21 testimony. 22 HEARING OFFICER ORTH: Thank you, Madam Chair. 23 Mr. Johnson, did you have any follow-up? 24 MR. JOHNSON: No, Madam Hearing Officer, I have 25 no further questions. Thank you.

1083 1 HEARING OFFICER ORTH: All right. So thank you 2 very much for your testimony, Mr. Hernandez. We'll excuse 3 you for the time being. 4 Let's see. I had a request from I think it was 5 Mr. Baake to talk about the YouTube videos. Let me -- I 6 was going to mention this later. The Cisco Webex event 7 license is just so different from the meeting license. 8 Let me just say, I have managed to record each of our 9 sessions. I have it both on my computer and on a thumb 10 drive that I'll be delivering to Santa Fe for Pam to have 11 in the public records archive. 12 I will say I was a little surprised, and have not 13 been able to change this recording setting. I don't think 14 it's possible for me to change this recording setting. I 15 had hoped that the recording would show the view that -- 16 where we look at the Brady Bunch, if you will, a little 17 bit -- is something happening? 18 Let me say this as quickly as possible then. I 19 had hoped that sort of as on a different platform, the 20 Zoom platform, that the recording for each of our sessions 21 would be in the layout that is on my screen at all times. 22 That's how the recording -- recordings that are done on 23 Zoom work. 24 On the WebEx event platform, it does not show all 25 of -- all of everyone who is on the screen all of the	1085 1 HEARING OFFICER ORTH: Let's come back from the 2 lunch break, please. Right now I'm going to take public 3 comment. We are at the 1:00 public comment session in 4 this hearing, EIB 21-27. My name is Felicia Orth, Hearing 5 Officer appointed by the Board to conduct the hearing. 6 Public comment is taken through audio, not video, 7 is limited to five minutes, and is taken under oath, along 8 with all other testimony in this matter. 9 Let me give you the names of the folks who 10 reached out by email to the Board administrator, Pamela 11 Jones, and we'll call you in this order: David Baldwin, 12 Preston Miles, Anita Amstutz, David Patterson, Patricia 13 Shelly and David Anderson. 14 In the event you are on the platform to offer 15 public comment and did not reach out by email, that's 16 fine. Still happy to take your comment. Chat is enabled 17 for everyone. Please just reach out through Chat if you'd 18 like to offer comment and have not done so already. 19 So let me start with Mr. Baldwin. Let me find 20 him here. I don't see Mr. Baldwin among the attendees, 21 but I do see two call-in users. I'm going to unmute each 22 of the call-in users in the event one of our commenters 23 has called in. I am unmuting call-in user number 9. 24 Would you identify yourself, please? 25 Call-in user number 9? Okay.
1084 1 time. Instead, it shows the speaker view, I think is what 2 it's called or the stage view. So I have very much 3 appreciated, and I think the parties have appreciated 4 seeing all of the Board members on screen 99 percent of 5 the time. Obviously, we can tell you're engaged and 6 listening. That's been great. 7 Let me say, though, that I've been unable to 8 adjust the setting. That means that the recording only 9 shows stage, so right now, the recording will only show 10 that I'm on the screen, which kind of horrifies me. I'm 11 sorry about that. So, yes, I'm happy to try to get the 12 videos on to YouTube. I also have a blog I might be able 13 to work with, but I haven't figured that out yet. And I 14 agree, it would be a good thing, so I'll -- I'll keep 15 working on that. 16 Let's see. It's 10 after 12. Is there any 17 reason not to take a lunch break at this time? Let me 18 mention one more thing about the recordings. Chat is not 19 preserved, Q and A, not preserved; attendee list, panelist 20 list. It really is just the video of people speaking, 21 that's all it is. 22 Okay. Thanks. Let's return at 1 and we have, I 23 believe it was five or six public commenters. Thank you, 24 all. 25 (Recess taken from 12:10 p.m. to 1 p.m.)	1086 1 Call-in user number 10, I'm unmuting you. Would 2 you identify yourself, please? No. So these may well be 3 calls that are made in conjunction with computer access, 4 which is fine. 5 So I didn't see Mr. Baldwin. Let me look for 6 Preston Miles. No, I don't see Preston Miles. Also, even 7 if someone signed up for a particular spot and have not 8 made it on the platform for that time period, I'm more 9 than happy to accept your public comment at any one of the 10 other two dozen or so public comment opportunities between 11 now and October 1st. 12 Anita Amstutz. Let me see if Ms. Amstutz is with 13 us. I see -- all right. Ms. Amstutz, I'm unmuting you. 14 Can you hear me? 15 MS. AMSTUTZ: Yes, thank you. 16 HEARING OFFICER ORTH: Oh, good. Your voice is 17 coming through very clearly. If you would please spell 18 your first and last name. 19 MS. AMSTUTZ: Anita, A-N-I-T-A; Amstutz, 20 A-M-S-T-U-T-Z. 21 HEARING OFFICER ORTH: Thank you. And raise your 22 right hand. Do you swear or affirm to tell the truth? 23 MS. AMSTUTZ: Yes, I do. 24 HEARING OFFICER ORTH: Thank you so much. I'm 25 going to start your five minutes now.

1087 1 ANITA AMSTUTZ, 2 having been first duly sworn or affirmed, 3 gave public comment as follows: 4 PUBLIC COMMENT OF ANITA AMSTUTZ 5 MS. AMSTUTZ: Thank you, honorable members of the 6 Board and Felicia, for inviting me here today. I am 7 ordained in the Mennonite Church and I have been serving 8 communities in New Mexico for almost 20 years. I teach my 9 congregation -- we try to teach our people to be good 10 stewards of the earth, of creation, because if we care for 11 the earth, the earth will take care of us since everything 12 we need and are sustained by comes from the good earth. 13 We also teach that for how we take care of one another. 14 When we take care of one another, then we will survive, we 15 will be able to thrive. 16 So I have been following the oil and gas industry 17 and it's -- in this particular part of the world, and 18 especially in the Southern part of the State, and I've 19 been -- what I understand is that New Mexico gas 20 operations emit at least 1 million metric tons of climate 21 warming methane a year and thousands of smog-forming 22 volatile organic chemicals, those are VOCs, and that can 23 include anything from benzene, which is a known cancer 24 causing agent, to things that cause -- provoke asthma. 25 I also understand from reading that 130,000 New	1089 1 those existing wells. And, finally, strengthen 2 requirements to cut pollution from pneumatic controllers 3 used in oil and gas production in the field. 4 I ask you, Board members, to please consider how 5 we can be good stewards, of not only our creation, our 6 natural resources in this State and also for our 7 communities. Thank you for your time. 8 HEARING OFFICER ORTH: Thank you very much, 9 Ms. Amstutz. We will go now to Mr. Patterson. I know I 10 saw there you, there you are. 11 Mr. Patterson, can you hear me? 12 MR. PATTERSON: Yes, I can hear you. Can you 13 hear me? 14 HEARING OFFICER ORTH: Yes, you are coming 15 through clearly. Thank you. 16 MR. PATTERSON: Great. 17 HEARING OFFICER ORTH: Would you raise your right 18 hand, please. 19 MR. PATTERSON: Yes. 20 HEARING OFFICER ORTH: Do you swear or affirm to 21 tell the truth? 22 MR. PATTERSON: Yes, I do. 23 HEARING OFFICER ORTH: Thank you. I'm going to 24 start your five minutes now. 25 DAVID PATTERSON,
1088 1 Mexicans live within a half mile of oil and gas 2 production, a half mile. And this is really concerning 3 for me, knowing the incredible -- the ways these are 4 impacting communities and impacting our beautiful earth. 5 So I just have a few questions. I ask all of you Board 6 members to consider what it means to be a good steward. 7 Is it a good steward of the earth when we are not taking 8 care of our earth and the way we can curb these kinds of 9 particulates. 10 And methane, in particular, which is a greenhouse 11 gas more powerful -- 84 percent more powerful than carbon 12 dioxide. I wonder -- I ask, is it good for each other, 13 how do we take care of one another in our communities in 14 this state? And finally, I wonder, is it good for 15 business, knowing that so much waste is happening with the 16 flare-offs and the gas leakage? That's not even good for 17 in terms of business sense and the bottom line. So I ask 18 you to consider, please, as a -- as the faith voice in our 19 communities, from here all the way up to Farmington, I 20 have served communities, please, please, protect our 21 communities by requiring more frequent inspections for 22 finding and fixing oil and gas leaks in the field. 23 Number 2, ensure strong requirements for 24 operators to control pollution before the completion of 25 our oil and gas wells, as they're existing and creating	1090 1 having been first duly sworn or affirmed, 2 gave public comment as follows: 3 PUBLIC COMMENT BY DAVID PATTERSON 4 MR. PATTERSON: Thank you. My name is David 5 Patterson. My wife, Leslie, and I live in Las Cruces 6 where we enjoy our tiny garden full of native plants that 7 attract hummingbirds, native bees, butterflies, and an 8 assortment of other birds that come to our feeders. 9 Leslie has been feeding hummingbirds in the various places 10 she's lived for close to 40 years. She still dreams about 11 their arrival in the spring and mourns their departure in 12 the fall. 13 Both of us were devastated last year when 14 hundreds of thousands of migrating birds started falling 15 from the skies over New Mexico, caused by a combination of 16 factors, but all related to a change in climate. We have 17 read extensively about the causes of climate change and 18 the adverse effects it is already having on our planet. 19 And it is getting worse faster than most of the scientists 20 thought it would. 21 At times we feel hopeless and helpless. We don't 22 have money or power or political influence. We do, 23 however, still have our voices and the ability to vote. 24 So, today, we are collectively using our voice to plead 25 with the Environmental Improvement Board to make the ozone

1091 1 precursor rules stronger than is already proposed. We 2 have read the same reports that you have about the methane 3 cloud over the Four Corners area, the hundreds of thousands 4 of tons of VOCs and methane that is spewed into the air 5 over New Mexico by oil and gas companies, that have been 6 fighting regulations for years, leaving thousands of wells 7 abandoned and leaking. 8 We are well aware that these companies contribute 9 close to 40 percent of our State budget and they use that 10 money as a cudgel or a bribe to keep lawmakers from 11 enacting meaningful regulations. We are also very aware 12 that the oil and gas companies have known for over 40 13 years that burning fossil fuels causes climate change. 14 Leslie and I know that you know this. We know that you 15 are aware of the hundreds of thousands of New Mexican 16 citizens exposed to the polluted air and water caused by 17 this drilling. 18 We are also pretty sure you know about the six 19 great extinctions taking place right now. One million 20 species of plants, animals, birds, fish, all living things 21 are expected to go extinct in the next few years; one 22 million species. That's mind boggling. We know oil and 23 gas drilling is not going away tomorrow. It will be with 24 us for years to come. 25 But you, members of the Environmental Improvement	1093 1 having been first duly sworn or affirmed, 2 gave public comment as follows: 3 PUBLIC COMMENT BY PATRICIA SHEELY 4 MS. SHEELY: Ms. Orth and members of the 5 Environmental Improvement Board, my name is Patricia 6 Sheely. I am a member of the United Methodist Church 7 Faith Community. I live in Gallup. 8 My two main concerns about methane pollution are 9 the health effects and its contribution to climate change. 10 I support strong methane rules and I want to thank you for 11 holding these meetings and allowing me to speak. As a 12 retired dietitian who worked with our Navajo brothers and 13 sisters, I am very concerned about the effect of pollution 14 on the health and development of our infants and children. 15 We are only now becoming aware of the 16 significance the environment and its accompanying stress 17 plays on the developing fetus and the mother's ability to 18 have a successful pregnancy. Pollutants such as methane 19 and VOCs have an adverse effect on our older residents 20 with heart and respiratory conditions as well. 21 I grew up with one oil well on a 125-acre farm in 22 Ohio. I can't imagine living in the midst of a whole 23 field of wells. I worry about the health of our 24 residents. I feel that we have a responsibility to care 25 for the well-being of everyone. I find it embarrassing
1092 1 Board, have the opportunity and responsibility to actually 2 improve, approve, and strengthen the ozone precursor rule 3 to help curb the horrible wasting, polluting, leaking of 4 methane and other volatile organic compounds, which the 5 American Lung Associates -- the American Lung Association 6 calls sunburn to the lungs. 7 So, please, please, use your position to actually 8 help improve the environment in New Mexico. Thank you for 9 the opportunity to speak to you today. Leslie and I have 10 our fingers crossed, as we enjoy nature in our tiny yard. 11 HEARING OFFICER ORTH: Thank you very much, 12 Mr. Patterson. 13 Our next public commenter would be Patricia 14 Shelly. Let me look for Ms. Shelly here. Or it might be 15 Sheely, excuse me. Ms. Sheely, can you hear me? 16 MS. SHEELY: Yes, I can. 17 HEARING OFFICER ORTH: All right. I can hear 18 your voice. Would you spell your name, please? 19 MS. SHEELY: P-A-T-R-I-C-I-A, S-H-E-E-L-Y. 20 HEARING OFFICER ORTH: Thank you. Raise your 21 right hand. Do you swear or affirm to tell the truth? 22 MS. SHEELY: I do. 23 HEARING OFFICER ORTH: Thank you very much. I'm 24 going to start your five minutes now. 25 PATRICIA SHEELY,	1094 1 that New Mexico has a methane cloud over the Four Corners 2 area that can be seen from space. The climate crisis is 3 here. It is affecting our State with hotter temperatures, 4 decreasing our snowpack and monsoons and causing the loss 5 of our pinon pines and juniper forests. 6 Our landscape is our greatest resource for the 7 future. New Mexico can do our part by requiring frequent 8 inspections of wells, define and fix leaks. Leaks due to 9 equipment malfunction and lack of maintenance account for 10 70 percent of our emissions. We have the technology to do 11 this. This could even be a source of increased jobs. The 12 methane captured is a valuable resource that should not be 13 wasted. 14 Please take action today to strengthen these 15 rules, and I thank you very much. 16 HEARING OFFICER ORTH: Thank you very much, 17 Ms. Sheely. Let's see. Our next speaker would be David 18 Anderson. I don't see Mr. Anderson on the call. After 19 that we have Lynne Hinton, who reached out through the 20 Chat. Let me look for Ms. Hinton. Ms. Hinton, I have 21 unmuted you. Can you hear me? 22 MS. HINTON: I can. Thank you so much. 23 HEARING OFFICER ORTH: All right. If you'd spell 24 your name, please. 25 MS. HINTON: First name L-Y-N-N-E. Last name

1095 1 Hinton, H-I-N-T-O-N. 2 HEARING OFFICER ORTH: Thank you very much. 3 Raise your right hand. Do you swear or affirm to tell the 4 truth? 5 MS. HINTON: I do. 6 HEARING OFFICER ORTH: Thank you very much. I'm 7 going to start your five minutes now. 8 LYNNE HINTON, 9 having been first duly sworn or affirmed, 10 gave public comment as follows: 11 PUBLIC COMMENT BY LYNNE HINTON 12 MS. HINTON: Thank you, Board members and 13 Mrs. Orth for allowing me to speak. I am Reverend Lynne 14 Hinton and I am Conference Director of the New Mexico 15 Conference of Churches and I live in Albuquerque. 16 I am here today because like so many other people 17 of faith, I am concerned about methane pollution in our 18 State. I also come because of the scripture reading, 19 known as our lectionarial reference for this Sunday. In 20 the gospel reading, Jesus told his followers: "It would 21 be better for a millstone to be hung around the neck of 22 someone and thrown into the sea, than to carry out harm 23 against a child." 24 Today, I come speaking for our children, 25 recognizing that I am part of a generation causing them	1097 1 I have a few more folks reaching out through 2 Chat. Ruth Striegel or Streigel. Excuse me if I 3 mispronounce your name. Can you hear me? 4 MS. STRIEGEL: I can hear you. Can you hear me? 5 HEARING OFFICER ORTH: Oh, very clearly. Thank 6 you. If you would, please, spell your name. 7 MS. STRIEGEL: S-T-R-I-E-G-E-L. 8 HEARING OFFICER ORTH: Thank you. And raise your 9 right hand. Do you swear or affirm to tell the truth? 10 MS. STRIEGEL: I do. 11 HEARING OFFICER ORTH: Thank you very much. I'm 12 going to start your five minutes now. 13 RUTH STRIEGEL, 14 having been first duly sworn or affirmed, 15 gave public comment as follows: 16 PUBLIC COMMENT BY RUTH STRIEGEL 17 MS. STRIEGEL: My name is Ruth Striegel. I live 18 in Albuquerque where I'm a member of First Congregational 19 United Church of Christ, and I serve as a board member of 20 New Mexico Interfaith Power and Light. I appreciate this 21 opportunity to comment on methane regulations. 22 Two years ago, I had the opportunity to visit 23 oilfields around Carlsbad. I met many citizens there who 24 were suffering from asthma, bronchial conditions, rashes 25 and odd cancers that the citizens felt could be related to
1096 1 harm, and remembering that we did not inherit this planet 2 from our ancestors, but, rather, we are borrowing it from 3 our children. We know that New Mexico does have a -- does 4 not have a great record regarding methane pollution. 5 There are leaks from oil and gas operators that are 6 releasing tons of methane. And we also know that the 7 operators are not being held accountable for the pollution 8 being created. 9 I come asking that you now also speak for the 10 children and create and enforce strong methane rules, that 11 we find ways to protect our children by requiring more 12 frequent inspections to find and repair leaks, that we 13 develop strong requirements for operators to control their 14 pollution, and that we find ways to cut all methane 15 pollution from the oil and gas industries in our State. 16 When the history books bare our stories, note our 17 positions and our values, I hope this Board and the people 18 of faith across the State of New Mexico will be found to 19 be on the side of taking care of our earth and our 20 children. 21 Thank you for allowing me to speak and for your 22 concerns for our beautiful planet for present days and for 23 generations to come. Thank you. 24 HEARING OFFICER ORTH: Thank you very much, 25 Reverend Hinton.	1098 1 methane and associated gases that they were breathing 2 daily. I was able to see gas escaping from several oil 3 facilities through a flare camera which makes gas 4 emissions visible. 5 I'm asking you to require frequent inspections to 6 find and fix leaks, to protect the people living near oil 7 and gas facilities. I'm asking the Board to create strong 8 requirements for operators to control escaping gases 9 during the completion of a well or redevelopment of an 10 existing well. I'm asking your support of strong methane 11 rules to protect human health and God's creation. 12 People living in oil and gas producing regions 13 should not be made to suffer simply because they live near 14 these wells. More often than not, the people impacted are 15 children, the elderly, our Native communities and those 16 living in rural communities. I'm asking you to enact 17 strong methane regulations to help address health, 18 environmental justice, and climate justice concerns that 19 affect people's lives and our future. 20 Almost half the Native American residents of San 21 Juan County live within a half mile of a well site, a half 22 mile. Think of what it would mean to them to get up in 23 the morning and breathe clean air. 24 Colorado and other states have enacted 25 regulations curbing methane waste, while still allowing

1099 1 for growth in the industry. Methane regulation actually 2 creates jobs in mitigation and manufacturing. Cleaning up 3 our air will result in healthier children, adults and 4 elders, making our communities stronger, and more 5 resilient. The idea that strong regulation will reduce 6 our tax income and take away jobs simply isn't true. That 7 short-sighted narrative serves only to increase our 8 societal imbalance and make our planet and our communities 9 sicker and less able -- able to cope in a rapidly-changing 10 world. 11 In my faith tradition, we are asked to repent 12 when we're not living in a life-giving way. The word 13 repent means to turn around, change course, and go in a 14 new and better direction. In this time of climate crisis, 15 we are all faced with a moral reckoning, but also the 16 opportunity to head in a new direction; one that seeks to 17 protect without fail, the health and well being of our 18 communities. 19 Please help New Mexico find that new direction by 20 enacting strong methane regulations that protect us all. 21 Thank you. 22 HEARING OFFICER ORTH: Thank you, Ms. Striegel. 23 Jack Edwards would like to offer comment. Let me look for 24 you in the list here. Mr. Edwards, there you are. I'm 25 unmuting you. Can you hear me?	1101 1 was too low. We have a pall of smoke hanging over the 2 West. I recently drove from Washington back to New Mexico 3 after visiting my children, and I just had to drive 4 through horrendous smoke. It did get even less as I 5 crossed the mountains into Salt Lake City. 6 I'm here to encourage the Board to enact stronger 7 rules to fugitive methane releases. The purpose of this 8 is to prevent increasingly large buildup of greenhouse -- 9 greenhouse gases and the worsening of global climate 10 change. I think anybody who can connect a couple of dots 11 can understand that. 12 In the latest August 2021 report of the 13 Intergovernmental Panel on Climate Change, the IPCC -- 14 IPCC identifies methane as one of the worst greenhouse 15 gases and contributes to climate change. One of the 16 profound issues associated with this is what is called 17 "methane acceleration." And this means that as a climate 18 warms, new sources of sequestered methane are activated 19 and this includes releases from thawing permafrost and 20 marine hydrates as the oceans warm. 21 So the gas that we release now is not a linear 22 effect; it's an accelerating effect. It's like if you put 23 a microphone up to a speaker and you get this loud 24 squealing feedback effect, that's what happens in global 25 warming and they're seeing that now. So if methane is
1100 1 MR. EDWARDS: I can hear you. Can you hear me? 2 HEARING OFFICER ORTH: You're just a little 3 quiet. 4 MR. EDWARDS: All right. 5 HEARING OFFICER ORTH: That's better. 6 MR. EDWARDS: Okay. I'll try to speak up. 7 HEARING OFFICER ORTH: Yeah, just make sure to 8 keep your voice up. And would you raise your right hand. 9 Do you swear or affirm to tell the truth? 10 MR. EDWARDS: I do. 11 HEARING OFFICER ORTH: Thank you very much. I'll 12 start your five minutes now. 13 JACK EDWARDS, 14 having been first duly sworn or affirmed, 15 gave public comment as follows: 16 PUBLIC COMMENT OF JACK EDWARDS 17 MR. EDWARDS: Thank you very much. Just this 18 morning I was reading something and it said Lake Powell 19 and Lake Mead are currently at one-third their capacity 20 levels, and that within a year it's expected that Lake 21 Powell Glen Canyon Dam will no longer be able to make 22 hydro power. 23 Earlier this summer, I saw articles that 24 irrigators on the Sacramento River have for the first time 25 been told to stop diverting water, that the water supply	1102 1 such a global warming potential, why not control the 2 releases? It's a very -- it's a financial issue. 3 And I think our health issues and other issues 4 require us to take these efforts at this time to control 5 these things. And I will leave you with just one more 6 closing thought: throughout the Southwest, one of the 7 most frequently found ancestral puebloan structures are 8 the granaries, built of tightly mortared stone mud and 9 built in high and inaccessible cliffs. What did they know 10 that we seem to be forgetting? They knew it is vital to 11 protect our seeds for the future. Wouldn't it be nice if 12 we New Mexicans, with our rich cultural background and our 13 special climate vulnerability could be a leader in 14 controlling fugitive methane emissions. 15 Everyone needs to make the contributions that 16 they can, and I do encourage the Board to make strong 17 regulations for the curbing of methane emissions. Thank 18 you very much. 19 HEARING OFFICER ORTH: Thank you, Mr. Edwards. 20 I have no one else reaching out through Chat or 21 email to offer public comment. Please know there are lots 22 more opportunities at 9, 1 and 5 each day. 23 So we will return to the technical case. I want 24 to make sure that Mr. Butzier, who has been struggling to 25 get back on to the platform, is with us. Mr. Butzier?

1103 1 MS. SHEEHAN: Madam Hearing Officer, this is 2 Christina Sheehan. Has the echo resolved? 3 HEARING OFFICER ORTH: Yes, it has. Thank you. 4 Your voice is -- 5 MS. SHEEHAN: Excellent. 6 HEARING OFFICER ORTH: Your voice is coming 7 through clearly. Thank you. 8 MS. SHEEHAN: Okay. Thank you for your patience. 9 HEARING OFFICER ORTH: All right. So let's see. 10 Ms. Katz? There you are. Hi. So do I remember correctly 11 that we're going to be moving to Topic 21 at this point 12 with witnesses Kuehn, Palmer, Smitherman, Nichols on 13 direct and then Kuehn, Palmer, Baca, Smitherman, Meyer, 14 McNally, Blewitt and Kim on rebuttal? 15 MS. KATZ: I believe that's correct. And I -- 16 I'm -- yes, I believe that's correct. We might have to 17 see as we get to those later ones, but... 18 HEARING OFFICER ORTH: Okay. So we're starting 19 with Ms. Kuehn and Mr. Palmer? 20 MS. KATZ: Yes. The Department calls Elizabeth 21 Bisbey-Kuehn and Brian Palmer. 22 HEARING OFFICER ORTH: Okay. Are they still 23 among -- still among the panelists? I see Ms. Kuehn. 24 MS. KATZ: They're both here. I see Mr. Palmer. 25 HEARING OFFICER ORTH: Okay. There he is. Okay.	1105 1 32 and NMED Rebuttal Exhibit 1, that you've already 2 adopted? 3 MR. PALMER: Yes. 4 MS. KATZ: Okay. Thank you. Ms. Kuehn, do you 5 want to start presenting on the definition section of the 6 rule at 20.1. -- or 20.2.50.7? 7 MS. BISBEY-KUEHN: Yes. Thank you. I just need 8 permission to share. 9 MS. KATZ: Okay. Can you please give us the 10 general overview of this section? 11 MS. BISBEY-KUEHN: Sure. The section 20.2.50.7 12 includes definitions of terms used throughout Part 50. 13 The proposed definitions were derived from state and 14 federal regulations and other technical glossaries. 15 The Department received numerous comments on 16 those definitions, and in response to those comments the 17 Department made many necessary Revisions, deleted 18 unnecessary definitions and added new definitions. 19 MS. KATZ: Thank you. And can you please 20 summarize the definitions and revisions that were 21 uncontested, which is the topic that we are covering at 22 the moment? 23 MS. BISBEY-KUEHN: Yes. So I will start -- I 24 won't go through in detail each one of these definitions 25 unless the Board would like me to do so. They're all
1104 1 Thank you. 2 MS. KATZ: And I'll just say for the Board that 3 this testimony appears in NMED Exhibit 32 on pages 13 4 through 23, and NMED Rebuttal Exhibit 1 on pages 4 through 5 21. 6 ELIZABETH BISBEY-KUEHN AND BRIAN PALMER 7 having previously been sworn or affirmed, were 8 examined and testified as follows: 9 DIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 10 AND BRIAN PALMER 11 BY MS. KATZ: 12 MS. KATZ: Okay. Ms. Kuehn, you previously 13 testified regarding your qualifications, correct? 14 MS. BISBEY-KUEHN: Yes. 15 MS. KATZ: And Mr. Palmer, you did as well? 16 MR. PALMER: Yes, I did. 17 MS. KATZ: And Ms. Kuehn, the testimony you are 18 summarizing on this topic appears in NMED Exhibit 32, 19 which you already adopted on the record, correct? 20 MS. BISBEY-KUEHN: Yes. 21 MS. KATZ: And NMED Rebuttal Exhibit 1 as well, 22 correct? 23 MS. BISBEY-KUEHN: Correct. 24 MS. KATZ: And Mr. Palmer, the same applies for 25 you, that your testimony on this topic is in NMED Exhibit	1106 1 self-explanatory. Instead, I'll go through each one of 2 these definitions and discuss the changes that we've made. 3 So the first change was to the definition of auto 4 igniter. NMOGA proposed to strike the language in the 5 combustion chamber from that definition and NMED agreed 6 with that revision. It was warranted because open flares 7 do not have and are not required to have a combustion 8 chamber. 9 We made another edit, a small edit within the 10 definition of centrifugal compressor as well and that 11 concludes this -- this set of definitions. 12 In terms of -- for the definition of custody 13 transfer, NMED agreed with NMOGA's proposal and others, to 14 delete this definition. I should also add that many of 15 the industry parties agreed with NMOGA's request, so 16 wherein I refer you to NMOGA, it was with other parties' 17 agreement, with NMOGA's requested changes. 18 IPANM requested the addition of a definition of 19 design value, which we agreed with. We thought that 20 provided -- that was a necessary definition to -- to 21 include in Part 50. In terms of the definition of 22 downtime, NMOGA proposed to delete "not in operation" or 23 when a well is producing, and solely for the purpose of 24 destruction. I'm sorry. They -- I'm sorry. Let me start 25 that again.

1107 1 I'm looking at downtime. So for the definition 2 downtime, NMOGA proposed to add the word "inoperable" and 3 delete "not in operation," or when a well is producing and 4 the control device is not in operation, and these 5 revisions simplified the definition, and we agreed with 6 that -- with that revision. 7 MS. KATZ: Did you agree that some of that is not 8 shown in this redline on the slide; is that correct? 9 MS. BISBEY-KUEHN: Inoperable -- you're right, 10 that language "inoperable" was accepted and does not 11 appear in this redline strikeout version of the rule. 12 MS. KATZ: Thank you. 13 MS. BISBEY-KUEHN: For a closed combustion 14 device, NMED agreed with NMOGA's proposal to delete the 15 term "gas fuel," and replace with "waste gas." Add 16 "solely for the purpose of destruction." Add "or 17 combustor" and delete "reboiler and heater." And the 18 Department agreed with those clarifications of the term, 19 as those align with the language -- with the Department's 20 regulatory intent. 21 For "hydrocarbon liquid," NMOGA proposed to 22 delete "hydrocarbon does not include produced water," 23 which the Department agrees with. And the revisions to 24 this definition clarify the Department's intent with 25 respect to this term.	1109 1 regulatory intent with respect to this equipment under 2 Part 50. 3 For the definition of "produced water," NMED 4 agreed with NMOGA's proposal to delete "fluid" and replace 5 with "liquid," and add "associated equipment." I'm sorry. 6 NMED -- let me take a step back here. For the definition 7 of "produced water," NMED agreed with NMOGA's proposal to 8 delete "fluid" and replace with "liquid," and to delete 9 "drilling for or," and replace with "well completion." 10 And these revisions clarified the definition of the 11 Department's intent with respect to this term. For 12 "produced water management unit," NMED agreed with the 13 addition of the words "or pond" to align with the previous 14 definition of permanent pit. 15 NMED did not agree with NMOGA's proposal to add 16 "and associated equipment at the location used for the 17 recycling of produced water." NMED intended to include 18 recycling facilities within this term, as used in this 19 part. 20 "Responsible official" was the next definition 21 that was modified, and NMED agreed with NMOGA's proposal 22 to revise this definition, to clarify that an official 23 does not need to be responsible for the overall operation 24 of the source in order to be considered a responsible 25 official as that term is used within Part 50. That was
1108 1 MS. KATZ: And Ms. Kuehn, I'm going to clarify 2 you said delete that sentence. They propose to add it. 3 MS. BISBEY-KUEHN: Correct, they proposed to add 4 that in our -- I need to look at that. 5 Okay. With respect to the term "liquid 6 transfer," NMOGA proposed to delete the term "loading 7 and/or produced water from," and make other minor material 8 changes, and NMED -- NMED agreed with those changes. 9 With respect to the definition of "permanent 10 pit," NMED agreed with NMOGA's proposal to add "or pond" 11 to the term "and/or pond" within the definition. Those 12 revisions clarify the meaning of the term and the 13 Department's intent with respect to the sources subject to 14 this part. 15 NMOGA requested to make changes to the definition 16 of "potential to emit," which the Department agreed with. 17 They requested to strike the term "contaminant" and 18 replace with "pollutant," which is -- which aligns with 19 our definition and our state and federal rule, and strike 20 "the" and replace with "any" and make other minor 21 editorial changes that the Department agreed with. 22 Also for pneumatic diaphragm pumps NMOGA proposed 23 to delete "natural" from the definition. The revision was 24 appropriate because those pumps may use a variety of gases 25 to actuate, and this revision clarifies the Department's	1110 1 the last edit. 2 I do want to add that NMOGA requested a new 3 definition of tank battery. That definition was not 4 included in the September 16th version of the rule. 5 However, the Department does not take issue with that 6 definition and would be agreeable to including it in Part 7 50. 8 MS. KATZ: Okay. I believe that's the end of the 9 definition section. 10 MS. BISBEY-KUEHN: Yes. 11 MS. KATZ: No more questions on this topic. 12 HEARING OFFICER ORTH: Thank you. I wasn't sure 13 if Mr. Palmer was going to be addressing it as well. 14 We pause for a moment in the event other counsel 15 or other party representatives have questions, please join 16 us on screen. 17 I see no one. In that case I will turn to the 18 Board for their questions. In the event you are an 19 attendee and would pose a question to Ms. Kuehn, please 20 reach out in the Chat. 21 EXAMINATION BY THE BOARD OF ELIZABETH BISBEY-KUEHN 22 HEARING OFFICER ORTH: Madam Chair? She may not 23 be with us. Vice-Chair Trujillo-Davis? 24 VICE-CHAIR TRUJILLO-DAVIS: I have no questions, 25 Madam Hearing Officer. Thank you.

1111 1 HEARING OFFICER ORTH: Thank you. Member Cates? 2 BOARD MEMBER CATES: No questions here. 3 HEARING OFFICER ORTH: Thank you. Member Bitzer? 4 BOARD MEMBER BITZER: So just happy to see 5 regulators and the regulated working together. I have no 6 questions. 7 HEARING OFFICER ORTH: Thank you. Oh, Madam 8 Chair reached out through Chat to say that she has no 9 questions. I know her video is giving her trouble. 10 Member Duval? 11 BOARD MEMBER DUVAL: No questions. Thanks for 12 the testimony. 13 HEARING OFFICER ORTH: Thank you. Member Garcia? 14 BOARD MEMBER GARCIA: One quick clarifying 15 question. So the changes that are made after the 16 September 16th version, I guess we'll get in post -- 17 post-hearing submittals and some point we'll get a final 18 version with these other changes? 19 MS. KATZ: Yes. Sorry. I think that's more my 20 purview, but, yes, Member Garcia, that's -- it will -- 21 we'll submit a final redline version after the hearing. 22 BOARD MEMBER GARCIA: Okay. Thank you very much. 23 HEARING OFFICER ORTH: Thank you. Member Honker, 24 any questions? 25 BOARD MEMBER HONKER: No questions. Thanks	1113 1 A. I believe so. 2 Q. And 41 for your rebuttal? 3 A. I think that's correct. 4 Q. Okay. Thank you. 5 And you have no changes on the definitional 6 testimony from what's previously been presented and 7 adopted, correct? 8 A. I do not. 9 Q. Would you like to give a real quick summary of 10 our thoughts on the uncontested definitions Ms. Kuehn just 11 walked through? 12 A. Certainly. I think I'm on the correct section. 13 NMOGA did make a few small clarifying edits on some of the 14 definitions; not anything particularly controversial, and 15 I won't be reviewing all of those today. 16 But if the Board has any questions or others have 17 any questions about those, I'd certainly welcome those 18 questions. One of the things that we tried very, very 19 hard to do was to try to define things, especially 20 facilities, so that there was no gaps, no overlaps and 21 no -- as few of ambiguities as we could come up with. 22 The clarity that comes from that, it benefits 23 everyone. It's better for the NMED, it's better for the 24 regulated community, and it's certainly better for the 25 public, too. So as we walk through some of these
1112 1 HEARING OFFICER ORTH: Thank you very much. 2 Do we hear now from Mr. Palmer? 3 MS. KATZ: Oh, sorry. You know, I think 4 Mr. Palmer was mistakenly included in this. I don't know 5 that I realized that, so I apologize for that. I think we 6 would be moving on to Mr. Smitherman. 7 HEARING OFFICER ORTH: Mr. Smitherman. All 8 right. Great. Let's see. Do we have Mr. Smitherman with 9 us? Do I need to -- 10 MR. SMITHERMAN: I do have some slides, Madam 11 Hearing Officer. 12 HEARING OFFICER ORTH: All right. Go ahead, 13 Mr. Hiser. 14 JOHN R. SMITHERMAN, 15 having been previously duly sworn or affirmed, was 16 examined and testified as follows: 17 DIRECT EXAMINATION OF JOHN R. SMITHERMAN 18 BY MR. HISER: 19 Q. Mr. Smitherman, did you previously provide and 20 adopt some direct testimony on definitions in this matter? 21 A. I did. Give me just one moment, please. 22 Q. Okay. 23 A. Okay. I'm ready. Thank you, sir. 24 Q. Mr. Smitherman, are your comments mostly found in 25 NMOGA Exhibit A1?	1114 1 suggested changes, keep that in mind, because that's 2 really what our goal was on these facility definitions. 3 The first definition that I'd like to address is 4 the definition that NMOGA suggested be added, and that is 5 a definition for the phrase "tank battery" -- for the term 6 "tank battery." The term "tank battery" is used 7 throughout this rule. It is in applicability paragraphs, 8 it is in the titles of tables. It is in the text itself, 9 and without a definition for that, it becomes very unclear 10 as to where some of these rules apply and where they 11 don't. And we really, really would prefer -- and I think 12 everyone would prefer -- that there be clarity in these 13 rules. 14 I'm going to walk you through a diagram that we 15 created that attempts to define or describe every possible 16 type of facility that's out there in the oilfield. I'm 17 going to start on this left side in this kind of gray box 18 area, talking about the upstream -- the well sites as NMED 19 calls them. We had suggested calling those well 20 production facilities, but as you'll see later, we think 21 that the well site terminology is just fine. 22 There are several types, if you will, of well 23 sites, and each one of these little oblong -- I'll call 24 them circles -- oblongs represents a type of well site. 25 This particular well site type has these little X's on it,

1115 1 as you see down at the bottom; X's are wells, and so 2 there's wells on this site. These little three rectangles 3 represent tanks that are on that site. That's the tank 4 battery that's on that site. 5 So, here, a pretty traditional oilfield 6 installation, where you've got wells, and on the same site 7 you've got the tanks themselves that support those -- 8 those wells. You'll typically have other facilities on 9 there, too: separators and perhaps heater-treaters and 10 other things, but I'm focused mostly on where the wells 11 are and where the tanks are. 12 You'll also have facilities -- this is very 13 traditional also, where you've got a site that has wells 14 on it and tanks on it, but you also have wells that are 15 off that site. They have individual well sites of their 16 own with no tanks, and they send their production through 17 flow lines to this facility. 18 But you'll also find some cases where you've got 19 a facility that has a tank -- a set of tanks on it, a tank 20 battery, if you will, with no wells on it, and your wells 21 are all remote from that particular site. There are other 22 configurations of these, but generally speaking, these are 23 all very similar in their kind of function. They're the 24 original wells where the -- excuse me -- they're the wells 25 where the fluids originate: oil, gas and water, and there	1117 1 facilities called the central delivery point, where all of 2 the crude oil from, say, several of these upstream well 3 sites, is collected, perhaps treated a bit, and then sent 4 through a custody transfer point to the oil transmission 5 system. And those facilities will certainly have tanks on 6 them, and in my view, have tank batteries. 7 Natural gas typically leaves these upstream 8 facilities, and at some point goes to a gas compression 9 station. It also could be owned perhaps by the same 10 owner/operator of these facilities, but it also could be 11 owned by the midstream gas gathering company. They also 12 will have tanks on them. 13 As natural gas leaves that gas compression 14 station -- we call, by the way, both this facility here in 15 the oil sector, and this facility here in the gas sector, 16 are all clearly defined and incorporated in the definition 17 of gathering and boosting. Once gas leaves that gathering 18 and boosting station, it goes to a natural gas processing 19 plants where, again, you could have a string of tanks or a 20 tank battery, and then on to the transmission system, 21 transmission compressor station, which also could have 22 tanks. 23 Part of my point here is that these tanks can 24 live in many of these facilities. These tank batteries 25 will live in many of these facilities. They're components
1116 1 are facility sites, some of which that have tanks on them. 2 And quite frankly, some could not have tanks on them, but 3 I'm focused on the tank batteries. 4 Once you leave these well sites or well 5 production facilities, if you wish, you will typically 6 send the water to a certain type of facility, you'll send 7 oil or condensate to perhaps a different type of facility, 8 and you'll send the gas to a different type facility. 9 So let's talk about the water. The two types of 10 water facilities are an SWD, a saltwater disposal 11 facility; where that water is stored temporarily and then 12 pumped into a disposal well. You'll find tanks on that 13 type of facility, a tank battery, if you will. You'll 14 also perhaps find tanks -- a tank battery at a recycling 15 facility. And as this rule called it, a produced water 16 management unit. 17 This could be owned by the same owner as the 18 upstream production or it could be a third-party; 19 typically, a commercial SW -- or typically a commercial 20 water service provider. But, again, you could have tanks 21 on that facility as well, or a tank battery, in my term. 22 Crude oil can be trucked straight to the pipeline 23 transmission system. It can be pipelined straight to the 24 pipeline transmission system, or it could be pipelined to 25 a facility typically owned by the same owner as these	1118 1 of many of these facilities, so using the term "tank 2 battery" without a clear definition of what it is can 3 cause quite a bit of confusion. 4 Let's take a quick look at the well site 5 definition that's in this current rule as offered by NMED. 6 It means the equipment directly associated with one or 7 more oil wells or natural gas wells upstream of the 8 natural gas processing plant. Here's the important part: 9 A well site may include equipment used for extraction, 10 collection, routing, storage -- there's your tanks -- 11 separation, treating, dehydration, artificial lift, 12 combustion, compression, pumping, metering, monitoring and 13 product piping. 14 Now, for me, that sounds a whole lot like the old 15 traditional description of a tank battery. It is what 16 I've been familiar with for 40 years, but I will say in 17 our group of experts that have been working on this rule 18 for NMOGA and for the industry, we had quite a bit of 19 disagreement within our group as to what a tank battery 20 was. So without a definition, a lack of clarity arises, 21 and it arises actually in this rule itself. 22 I suggest that you take a look at section 23 20.2.50.114, which is the compressor seals section. The 24 provisions of that rule are unclear. In fact, if you'll 25 look at the very bottom here, I've got that rule -- a

1119 1 section of the rule quoted. "Reciprocating compressors 2 located at tank batteries" -- and that's emphasis added by 3 me -- "are subject to the requirement." Reciprocating 4 compressors located at well sites are not subject to the 5 requirement. Well, wait a second. I thought a well site 6 was -- had a definition of -- that included the definition 7 of all these things that could be happening on a well 8 site, including storage, which is tanks. And so it 9 becomes very unclear as to where -- as to where -- as to 10 what sites are, in fact, applicable to this rule. The 11 lack of clarity that this causes is really not necessary. 12 We've got a way to fix this. 13 If we understand that a tank battery really is in 14 the -- and for this rule is basically a string of tanks, 15 it's a component of other facilities, and we can use those 16 other facility names to clearly and completely define 17 where these sections of this rule apply and where they 18 don't. 19 So I urge the Board and NMED to adopt NMOGA's 20 definitions of facilities and also the definition of tank 21 batteries. Once you do that, now the hard work is going 22 to be that this rule contains the term tank batteries 23 throughout. We did not redline that. It would have 24 been -- I think -- I think it would have been confusing 25 actually. So what we're suggesting to you is that we do	1121 1 agreeable to NMOGA's definition of tank battery? 2 A. No. I'm sorry, I missed that. 3 Q. Okay. Thank you. 4 A. Lovely. 5 HEARING OFFICER ORTH: Thank you, Ms. Katz. 6 Anyone else? Let me pause for a moment. 7 No? I will turn then to the Board for their 8 questioning. 9 MR. SMITHERMAN: Ms. Orth? 10 HEARING OFFICER ORTH: Oh. Yes? 11 MR. SMITHERMAN: Could I extend my answer with a 12 question? Ms. Katz, does that mean that we can also go 13 back through, and I'll say, clean up the places where the 14 term tank battery exists where it causes confusion? 15 MS. KATZ: Yes. I anticipate that would be a 16 part of them adopting that definition and adjusting the 17 rule appropriately, so we can work with NMOGA to do that. 18 MR. SMITHERMAN: Great. We're happy to help. 19 Thank you. 20 HEARING OFFICER ORTH: All right. Thank you. 21 All right. So let me turn to the Board members for their 22 questions. While I'm doing that, in the event you are on 23 the platform as an attendee and you would have a question 24 of Mr. Smitherman, please reach out through the Chat. 25 EXAMINATION BY THE BOARD OF JOHN R. SMITHERMAN
1120 1 adopt the term tank battery, and as NMOGA has suggested, 2 and that we -- and that NMED look back at the rule and 3 adjust the rule language so that this confusion, this lack 4 of clarity, is -- is addressed. And NMOGA stands ready to 5 help in that process, because it helps us, it helps NMED 6 and it helps the public. 7 "Hydrocarbon liquids," we appreciate the fact 8 that NMED has accepted our suggestion to make it clear 9 that hydrocarbon liquids do not include produced water. 10 If it did, some of these rules would be very difficult, if 11 not infeasible for those -- for that phase. 12 And that is my -- that's the sum total of my 13 comments, Counsel. 14 Q. Thank you, Mr. Smitherman. We don't have any -- 15 MR. HISER: I don't have any additional comments 16 for you, Madam Hearing Officer. 17 HEARING OFFICER ORTH: All right. Thank you, 18 Mr. Smitherman and Mr. Hiser. Let me pause for a moment 19 in the event other counsel or party representatives would 20 like to join us on screen for questions. 21 Ms. Katz? 22 CROSS-EXAMINATION OF JOHN R. SMITHERMAN 23 BY MS. KATZ: 24 Q. Mr. Smitherman, I just wanted to ask you if you 25 heard that Ms. Kuehn's testimony that the Department was	1122 1 HEARING OFFICER ORTH: Madam Chair, I see you are 2 on screen again. Do you have questions? 3 CHAIRPERSON SUINA: At this point I don't have 4 any other questions. Thank you, Madam Hearing Officer. 5 Am I coming through better? I'm trying to work on my 6 internet here. 7 HEARING OFFICER ORTH: Yes. Yes, actually, you 8 are. 9 CHAIRPERSON SUINA: Okay. 10 HEARING OFFICER ORTH: And I know you're there 11 even if your video is off. 12 Vice-Chair Trujillo-Davis, do you have questions 13 of Mr. Smitherman? 14 VICE-CHAIR TRUJILLO-DAVIS: I don't have any at 15 this time. Thank you. 16 HEARING OFFICER ORTH: All right. Thank you. 17 Member Cates? 18 BOARD MEMBER CATES: No questions here. 19 HEARING OFFICER ORTH: Okay. Member Bitzer? 20 Member Bitzer, do you have questions? I think 21 you're muted. No; he is shaking his head no. 22 Member Duval? 23 BOARD MEMBER DUVAL: No, I do not. Thank you. 24 HEARING OFFICER ORTH: Thank you. Member Garcia? 25 No. She's waving no. And Member Honker?

1123 1 BOARD MEMBER HONKER: No questions. Thank you. 2 CHAIRMAN DURZO: All right. Thank you. The 3 gremlins are after us again, I think. 4 So do we go -- at this point if I'm reading 5 across the spreadsheet -- oh, thank you, Mr. Smitherman. 6 MR. SMITHERMAN: Thank you, ma'am. 7 HEARING OFFICER ORTH: To WildEarth Guardians and 8 Witness Nichols? I see Mr. Nykiel on the screen so I 9 think I got that right. Mr. Nykiel? 10 MR. NYKIEL: Yes. Thank you. And would you mind 11 granting me presentation privileges? I may need that. 12 Thank you. And WildEarth Guardians would like to 13 call our witness, Mr. Jeremy Nichols. If he could be 14 added to the panelists, please. 15 Mr. Nichols, would you -- 16 HEARING OFFICER ORTH: I need to swear 17 Mr. Nichols, right? 18 MR. NYKIEL: I was just going to have him test 19 his audio, but, yeah, go ahead, that will be a test. 20 HEARING OFFICER ORTH: All right. Mr. Nichols, I 21 saw you raise your right hand. Do you swear or affirm to 22 tell the truth? 23 MR. NICHOLS: Yes, I do. 24 HEARING OFFICER ORTH: Oh, your voice is very 25 clear. Thank you.	1125 1 BY MR. NYKIEL: 2 Q. Good afternoon, Madam Hearing Officer, Madam 3 Chair, members of the Board. My name is Matt Nykiel; I'm 4 here with my co-counsel, Daniel Timmons, and we represent 5 WildEarth Guardians. 6 Good afternoon, Mr. Nichols. Would you please 7 state your name for the record and spell it for the court 8 reporter? 9 A. Yeah. Good afternoon, my name is Jeremy Nichols, 10 spelled J-E-R-E-M-Y N-I-C-H-O-L-S. 11 Q. Great. Thank you. Mr. Nichols, please share 12 with whom you're employed and your job title? 13 A. Yeah. I'm the Climate and Energy Program 14 Director for WildEarth Guardians. WildEarth Guardians is 15 a nonprofit environmental advocacy group that's based in 16 Santa Fe, but works on West-wide environmental and 17 conservation issues, including issues related to 18 confronting the climate crisis and helping to advance a 19 clean energy future. 20 Q. Thanks. Would you tell us about your experience 21 when it comes to air quality regulations? 22 A. My work has involved dealing with air quality 23 regulatory matters for many years. There's quite an 24 interplay between our climate issues that we're facing, 25 and air pollution issues that we're also trying to
1124 1 MR. NICHOLS: Great. Great. Thank you, Madam 2 Hearing Officer. 3 HEARING OFFICER ORTH: And would you mention the 4 exhibits, Mr. Nykiel? 5 MR. NYKIEL: Yes. Thank you. And to that point, 6 it's my understanding there are no objections to WildEarth 7 Guardians exhibits, and for efficiency sake if that's 8 still the case, we would move to admit WildEarth Guardians 9 Exhibits 1 through 21. 10 HEARING OFFICER ORTH: All right. Let me pause 11 for a moment just to make sure there are no objections. 12 It sounds like no, so thank you very much. 13 WildEarth Guardians Exhibits 1 through 21, you said? 14 MR. NYKIEL: That's right . 15 HEARING OFFICER ORTH: They are admitted. 16 (WildEarth Guardians' Exhibits 1 - 21 received 17 into evidence at this time.) 18 MR. NYKIEL: Thank you. And for the benefit of 19 the Board and the other parties, the primary exhibits I'll 20 be referring to for purposes of our direct are WildEarth 21 Guardians Exhibits 1, 2 and 3. 22 JEREMY NICHOLS, 23 having been first duly sworn or affirmed, was examined 24 and testified as follows: 25 DIRECT EXAMINATION OF JEREMY NICHOLS	1126 1 address, such as ground-level ozone pollution. 2 I've weighed in on numerous air quality 3 regulatory proceedings on behalf of Guardians over the 4 years, including Environmental Protection Agency 5 proceedings, including rulemakings, permitting processes, 6 and also with a number of state proceedings, including 7 rulemaking hearings, permitting and the development of air 8 quality policy, including in New Mexico, Colorado and 9 other Western states. 10 Q. Okay. Thank you. 11 Would you describe some of the administrative 12 bodies that you've submitted comments to and testified 13 before? 14 A. Yes. Well, first off, the Environmental 15 Improvement Board, which I've had the pleasure to testify 16 before in past proceedings. Also the Colorado Air Quality 17 Control Commission, the Board's sister regulatory body in 18 Colorado. Also the agencies themselves, the staff, the 19 New Mexico Environment Department, the Colorado Air 20 Pollution Control Division, and other similar state 21 agencies as well, you know, interacting with them in terms 22 of permitting matters, regulatory matters, enforcement 23 matters and the like. 24 The Environmental Appeals Board, which is U.S. 25 Environmental Protection Agency Board. I've practiced

1127 1 before them, and just have generally engaged in many 2 formal proceedings regarding the development and 3 implementation of air quality policy. 4 Q. Okay. Thank you. 5 And is WildEarth Guardians Exhibit 2 an accurate 6 copy of your resume? 7 A. Yes, it is. 8 Q. Okay. Did you include any examples of comments 9 that you filed with air quality boards in other states 10 regarding similar ozone precursor controls for the oil and 11 gas industry? 12 A. I did. Just as an example, just to illustrate to 13 the Board the level of my engagement on behalf of 14 Guardians in air quality proceedings that are specific to 15 addressing ozone precursor emissions from the oil and gas 16 sector. So I submitted as an example -- an illustrative 17 example, a prehearing statement that was filed in the 18 context of a rulemaking hearing before the Colorado Air 19 Quality Control Commission in 2019. And addressing some 20 of the -- some similar issues that are at play in this 21 proceeding. 22 Q. Okay. And that -- that example is marked as 23 WildEarth Guardians Exhibit 4, correct? 24 A. Yes, that's correct. 25 Q. Okay. And you submitted signed prefiled	1129 1 in a public health and an environmental health standpoint 2 for the State of New Mexico. 3 Q. Okay. And is New Mexico's high ozone unique or 4 have other states been experiencing similar conditions? 5 A. Ozone is becoming a challenge for many states in 6 the Western U.S., outside of California at least, which 7 has traditionally struggled with ozone for urbanization 8 reasons. 9 But what we have seen in my experience and what I 10 have seen is that in the interior Rocky Mountain West, 11 states are increasingly facing the challenge of high ozone 12 as a result of unchecked oil and gas extraction activities 13 and the precursor emissions that are released as a result 14 of oil and gas production. It's not the sole source, it's 15 not the sole reason, but it is kind of a common theme that 16 we see in states like Colorado, Wyoming and Utah, where 17 high ozone does seem to be very closely linked to the 18 level of oil and gas extraction activity. 19 Q. Okay. And the last question in sort of this line 20 of questions, can you tell us generally about the 21 relationship between ozone and climate change? 22 A. Well, it's come up a few times during the hearing 23 so far. I mean, in the face of the climate crisis, ozone 24 problems do seem to be worsening and that trend seems to 25 be the new norm, where in the face of rising temperatures,
1128 1 testimony in this matter marked as Guardians Exhibit 3? 2 A. Yes. 3 Q. Okay. And do you have any changes to make to 4 that prefiled testimony? 5 A. No, I don't. 6 Q. Okay. Thank you. 7 Oh. And do you adopt this prefiled testimony as 8 your testimony today? 9 A. I do. 10 Q. Okay. So Mr. Nichols, let's turn to ozone in New 11 Mexico. Would you summarize the state of ozone in New 12 Mexico, from your perspective? 13 A. Yeah. Just briefly, you know, this has been 14 obviously covered by other parties as well, but just 15 flagging, you know, our perspective on this situation. 16 The ozone problem does seem to be persisting in the State 17 of New Mexico with numerous exceedances of the ozone 18 ambient air quality standards recorded in 2021, as well as 19 in recent years. 20 Since we filed our -- or at least my written 21 testimony, I am aware that there have been additional 22 exceedances recorded at monitors in the State of New 23 Mexico. And so it's very concerning to see that the 24 problem, if it's not getting worse, then it doesn't seem 25 to be getting better, and so it is very concerning for me	1130 1 the conditions that create ozone are becoming more -- more 2 frequent, more extensive. Ozone seasons are lasting 3 longer. 4 There does seem to be this direct link, which is 5 something to be mindful of, obviously, with the aim of 6 confronting this problem; that producing ozone efforts 7 need to be focused on anticipating the conditions that the 8 climate crisis are likely to bring that will likely induce 9 higher ozone levels. 10 Q. Okay. I'd like to turn to the Department's 11 proposal that's the subject of this hearing. In general, 12 what is WildEarth Guardians' position on the Department's 13 proposed rule? 14 A. In general, we think it's a good step forward. 15 It's refreshing. We've engaged in other states' 16 regulatory proceedings where they have adopted similar 17 rules to address ozone precursor from the oil and gas 18 sector. It's been mentioned throughout the hearing so 19 far, about Colorado's efforts. Colorado has taken a lot 20 of steps forward. And it's refreshing to see New Mexico 21 move in that direction as well. 22 That said, we do see some areas where 23 improvements could tighten up these rules more 24 significantly, and I think provide a more complete level 25 of protection for communities and people in New Mexico.

1131 1 Q. Okay. Fair to say a good step forward, but you 2 don't think the proposed rules are the strongest rules in 3 comparison to other states? 4 A. Well, we have suggested areas for revision to 5 what's been proposed. And we do feel that in terms of 6 what we have proposed, if this Board agrees that these 7 concepts make sense, it would definitely take them 8 further. 9 You know, New Mexico is a leader in so many ways 10 just because of the statute, the statutory requirement 11 that ozone levels that are within 95 percent of the NAAQS 12 need to be acted upon and need to be addressed. Colorado 13 doesn't have that law. Other states don't have that law, 14 so already New Mexico is already stepping up to lead in 15 big ways. 16 And we just see this rulemaking as another 17 opportunity to follow up and follow through with that 18 leadership. And so, to that end, we have suggested some 19 areas of improvement, very targeted areas of improvement, 20 in the proposed rules that we think, should this Board 21 adopt them, would definitely tighten them up and make them 22 all the more affective. 23 Q. Thanks. And Guardians-recommended changes to the 24 Department's proposed rules are included as WildEarth 25 Guardians Exhibit 1, which is titled WildEarth Guardians	1133 1 and addressed when assessing the source's potential to 2 emit. 3 This clarity was offered based on evidence that 4 we have come across that indicates that perhaps 5 emissions -- stationary source emissions that occur at the 6 drilling stage may not be properly accounted for in 7 assessing a full stationary source facility's potential to 8 emit, which, of course, has ramifications for the 9 applicability of the rules. 10 Q. And what would the consequences be of overlooking 11 or omitting potential emissions? What could those be? 12 A. Well, if a proper assessment of a facility's 13 potential to emit is not undertaken, then it could lead 14 the Department and sources to conclude that they're not 15 subject to certain control requirements, which if that's 16 not actually the case, then that's obviously not a desired 17 outcome. We want to make sure there's an understanding of 18 potential to emit such that sources really clearly 19 understand whether or not they are subject to the proposed 20 rules, and for the Department and also for the public as 21 well. 22 Q. Thank you. 23 And would you just briefly describe -- you 24 mentioned that there's indication that these emissions are 25 not being accounted for. Would you just describe how you
1132 1 Proposed Redline Modifications to NMED's proposed 20.2.5 2 NMAC; is that right? 3 A. Uh-huh, yes. 4 Q. Okay. And just briefly for the benefit of the 5 Board, would you just explain how Guardians presented that 6 redline modification in Exhibit 1? 7 A. Well, these were very concise redlines, and 8 rather than present the whole draft of the proposed rule 9 in our very surgically targeted redlines, we presented 10 them as excerpts for the Board to more easily understand 11 what we were proposing, and more clearly see our redlines. 12 Q. Okay. Thank you. 13 Let's turn to the Guardians' first proposal in 14 the definitions section. Would you briefly summarize that 15 proposal, please? 16 A. Yeah. So what we have offered is kind of going 17 off the last witness, is some clarity that we think would 18 help improve the implementation and effectiveness of the 19 proposed regulations. And what we have suggested is that 20 the "potential to emit" definition in the regulations at 21 20.2.50.7 Paragraph GG, that there be a clarifying 22 sentence added at the end that clarifies that emissions 23 associated with the stationary source that may occur prior 24 to commencement of operation or commencement of 25 production, that those emissions need to be accounted for	1134 1 know that? 2 A. Yeah. So we collaborated with a group of 3 students at UCLA that were a part of the Institute of the 4 Environment and Sustainability, to try to better 5 understand kind of the sequencing of the development of 6 oil and gas wells, and the air permitting process. 7 Because as we have noticed over the years -- and I think 8 it's been acknowledged by the Department at times -- 9 there's kind of a disconnect between the regulatory 10 authority exercised by the Department, and then the 11 authority exercised by the Oil Conservation Division. 12 And it seems like that disconnect has led to 13 situations where stationary sources of air pollution, 14 where sources or operators may commence construction of 15 those stationary sources -- oh, excuse me -- before 16 obtaining the proper permit coverage from the Environment 17 Department, such as a general permit or a Notice of 18 Intent. And this is specific to the development of wells 19 at a wellhead site. And -- and the experience that we, in 20 working with the UCLA students -- what we uncovered is 21 that wells -- companies will begin drilling wells at a 22 well site, and in the process emissions will be released 23 from the well bore and for all intents and purposes, I 24 mean, those are point source emissions that are subject to 25 regulation under state and federal clean air laws, but

1135 1 then the permitting activity focuses on the construction 2 of the associated tank batteries, or other associated 3 processing equipment, but that activity is all part of the 4 construction of that single stationary source. 5 And so, it does seem like -- and we're not, you 6 know, this wasn't some conclusive, you know, our report 7 found signs that companies are beginning the drilling of 8 wells before getting their permits. How extensive of a 9 compliance problem is it, we don't fully know, but we have 10 seen enough, and in our Exhibit 21 -- or in my Exhibit 21 11 to my testimony, we think it warrants contemplating adding 12 clarity in the definition of potential to emit, to ensure 13 that stationary sources of air pollution receive their 14 permits before they begin construction. 15 Q. Thank you. 16 Do you have anything else to add before I offer 17 you for cross-examination? 18 A. No. No. Thank you. 19 MR. NYKIEL: Okay. Thank you, Mr. Nichols. 20 Madam Hearing Officer, I have no further questions at this 21 point and would offer Mr. Nichols for cross-examination. 22 HEARING OFFICER ORTH: Thank you. I see Ms. Katz 23 on screen. Ms. Katz, do you have questions of 24 Mr. Nichols? 25 MS. KATZ: Just -- just one quick question, Madam	1137 1 is Brandon Curtis, appearing on behalf of NMOGA. I had 2 just a few questions for Mr. Nichols. 3 HEARING OFFICER ORTH: Please go ahead. 4 CROSS-EXAMINATION OF JEREMY NICHOLS 5 BY MR. CURTIS: 6 Q. Good afternoon, Mr. Nichols, appreciate your 7 testimony today. My name is Brandon Curtis, and I have 8 just a few questions regarding your testimony. You 9 referred to the report in Exhibit 21, that you, in concert 10 with WildEarth Guardians and UCLA -- UCLA Institute of the 11 Environmental and Sustainability group put together. And 12 I just wanted to flesh out some of the issues that you 13 raised in that report. 14 So you rely on the report for the conclusion that 15 35 percent or more of assessed wellhead facilities may 16 have been constructed prior to being permitted by NMED; is 17 that correct? 18 A. Yes. 19 Q. Okay. And do the findings of this report form, 20 at least in part, the basis for your opinion that a 21 revision of the definition of PTE is required? 22 A. It raises concerns that some added clarity could 23 be beneficial for both sources and the Department and the 24 public as well. 25 Q. Okay. Thank you.
1136 1 Hearing Officer. 2 CROSS-EXAMINATION OF JEREMY NICHOLS 3 BY MS. KATZ: 4 Q. Hello, Mr. Nichols. I'm Lara Katz, the attorney 5 for NMED. I just wanted to ask you if the approach that 6 you were talking about with respect to the -- your changes 7 for the PTE definition, is that something that other 8 states have adopted, like specifically Colorado, have they 9 adopted that approach? 10 A. I don't believe they have, to the same extent 11 that we have offered here. And, you know, I guess I would 12 also offer that the same opportunity to suggest this kind 13 of clarifying language, I don't believe has arisen, and so 14 this set -- this proceeding and this proposed set of 15 regulations seemed like an ideal opportunity to -- to 16 raise this and to make this suggestion. 17 Q. Okay. Thanks. I thought I had heard you say 18 that you had submitted comments and participated in 19 Colorado rulemaking, so that's why I asked. Thank you. 20 A. Thank you. 21 HEARING OFFICER ORTH: All right. Let me pause 22 for a moment in the event other parties' counsel or 23 representatives have questions. Oh, I think I see 24 Mr. Hiser. 25 MR. CURTIS: Hi, Madam Hearing Officer; my name	1138 1 And I want to turn to a specific page in the 2 study here. I believe it's on page 15. And maybe you 3 know these fact right off the top of your head. I believe 4 on page 15, it states that only 62 wells were ultimately 5 included in the assessment; is that correct? 6 A. Yes. 7 Q. Okay. And are you familiar with Brandon Powell's 8 testimony, from the OCD, that was presented yesterday, in 9 which he testified that there are currently 4,616 oil 10 wells and 29,002 natural gas wells permitted in the state 11 currently? 12 A. Yes, I believe I heard that. 13 Q. So would you agree that the study in Exhibit 21 14 covered a very small sample of permitted wells in New 15 Mexico? 16 A. Well, I don't know if I can comment to that 17 effect. I mean, I will say that they took a sampling and, 18 you know, in working with the students at UCLA, I know 19 they were challenged by virtue of that disconnect between 20 OCD's regulation and NMED's. NMED is not necessarily 21 tracking the well development side of things, even if 22 there are air emissions associated with it. And not 23 having that data really connected or cross-walked at all, 24 and so they were challenged in terms of trying to make 25 correlations.

1139 1 And I think they did the best they could. Would 2 we have liked to see them look at additional well 3 facilities? Absolutely. But I think the look that they 4 took raised enough concern for us, again, that added 5 clarity could be useful. 6 Q. Thank you. I wanted to point out one assertion 7 in the report and see if you agree with this 8 characterization. On page 17 of the report, the author 9 states that the report is limited to, "an extremely small 10 subset of facilities." Do you agree with that 11 characterization from the report? 12 A. I agree the report says what it says. 13 Q. Okay. Great. 14 I don't have any further questions. Thank you, 15 Mr. Nichols. 16 A. Thank you. 17 HEARING OFFICER ORTH: Thank you, Mr. Curtis. 18 Let me pause for a moment in the event other 19 counsel -- oh, I see Mr. Rose. Mr. Rose, do you have 20 questions for Mr. Nichols? 21 MR. ROSE: Excuse me, Madam Hearing Officer. I 22 do. 23 CROSS-EXAMINATION OF JEREMY NICHOLS 24 BY MR. ROSE: 25 Q. Mr. Nichols, I'm trying to understand exactly	1141 1 So -- and perhaps there could be some added 2 clarity to refer specifically to point source emissions 3 and not fugitive emissions. And that's something I'll 4 grant you, we could have added that clarity. 5 Q. I guess what I'm getting at more is that, in 6 terms of the application of this definition, since it only 7 applies to Part 50, I was curious whether you thought that 8 that approach would then transfer to the NSR program under 9 Part 72, and whether similar clarification, in your mind, 10 was necessary, or what you thought -- or what you were 11 trying to accomplish in terms of adding this, as it 12 applied to both the regulatory program and the 13 preconstruction permit review program. 14 A. Yeah, that's a really good question. I 15 appreciate that. Obviously, the scope of what was before 16 us was a set of regulations specific to the oil and gas 17 sector, and we presented this proposal because we saw this 18 opportunity to provide clarification specific to this -- 19 this sector, where it does seem like clarification is 20 needed. 21 Obviously, we weren't going to propose changes to 22 the construction permitting rules, as that would have been 23 outside the scope of this rulemaking, but we figured this 24 was a good place to start. And to the extent that clarity 25 needs to be added to other -- you know, to the extent that
1140 1 what your language that you're proposing here to the 2 definition of PTE is intended to include. I see that it 3 includes nonmobile source emissions. 4 What -- what kind of emissions are you referring 5 to at production sites that you think are not now 6 captured, that would be captured by this definition? 7 A. Well, thank you for that question, Mr. Rose. 8 And, you know, you raise a really important issue, in that 9 I guess from a technical standpoint, the definition of PTE 10 should account for emissions that are subject to 11 regulation at the well development stage. And I think 12 this was by the Department in some of the rebuttal 13 testimony, that the definition of PTE already is 14 sufficient. And we just feel like some clarity could 15 help -- I guess, help foster a better understanding of the 16 true scope of that definition. 17 We included the phrase "nonmobile source" 18 because, as many of us know, mobile sources, such as -- 19 such as a drilling rig engine are not subject to 20 regulation under a source permitting program or subject to 21 regulation by the Department. Those are subject to 22 federal regulation. And so we wanted to just make clear 23 that the scope of the emissions that we're clarifying 24 needs to be addressed are not those mobile source 25 emissions.	1142 1 potential to emit is defined in other sections of the 2 NMAC, you know, I won't say right now whether the 3 clarification is needed, but perhaps if this clarification 4 is added here, it's worth considering down the road. 5 Q. And let me just ask this: You're aware, are you 6 not, that under Part 72 for facilities that require an NSR 7 permit, they can't begin construction until they actually 8 have a permit from the Department, correct? 9 A. Yes, I'm aware of that. 10 Q. And it's your concern that that's not being 11 administered appropriately by the Department, at well 12 sites, and that there's somehow some construction is 13 occurring prior to the permit at these sites? 14 A. Yeah, there's concern that it may be happening. 15 And that's why we've offered clarity to make sure that to 16 the extent it is happening, that it perhaps gets 17 addressed. 18 Q. Do you have any sense of how many well sites have 19 a PTE or in the case of Part 72, I think the terminology 20 is potential emission rate, how many of those actually 21 exceed 25 tons per year of criterion pollutants to be 22 subject to an NSR permit? 23 A. No, I don't know those numbers. 24 MR. ROSE: Okay. Thank you, Madam Hearing 25 Officer. I have no further questions.

1143 1 HEARING OFFICER ORTH: Thank you very much, 2 Mr. Rose. Let me ask -- I have a question from a Board 3 member about WildEarth Guardians exhibits, on the list of 4 documents available. Mr. Nykiel? 5 MR. NYKIEL: Yes. Thank you for that question. 6 Our exhibit list was included in our Notice of Intent to 7 Present Technical Testimony and the exhibit list begins at 8 page 7 of that document. I apologize. We did not include 9 a separate standalone exhibit list, but that's where you 10 can find it. I can also share that, if that's helpful. 11 HEARING OFFICER ORTH: All right. Thank you. 12 CHAIRPERSON SUINA: Madam Hearing Officer, this 13 is Phoebe. 14 HEARING OFFICER ORTH: Yes. 15 CHAIRPERSON SUINA: Yeah, I'm trying to follow-up 16 with Pam because I can't find the exhibits either. I've 17 been looking throughout his whole testimony trying to find 18 them, so we're just making sure that they were available 19 to the Board. 20 HEARING OFFICER ORTH: Yeah. Mr. Nykiel, you 21 said page 7, the exhibits -- not just the exhibit list, 22 but the actual exhibits start at page 7 of the NOI? 23 MR. NYKIEL: Oh, I'm sorry. The exhibit list 24 begins at page 7, and then we filed our exhibits 25 individually with Pam so they -- to my knowledge, they	1145 1 Have the Chat setting so that the Chat comes to 2 me. Do you have this link yet? 3 ADMINISTRATOR JONES: Excuse me. Madam Hearing 4 Officer, I have also sent a link to the docketed matters 5 page through email to each of the Board members. 6 HEARING OFFICER ORTH: Okay. Thank you very 7 much, Pam. 8 ADMINISTRATOR JONES: Sure. 9 MR. NYKIEL: Madam Hearing Officer, if I may? 10 HEARING OFFICER ORTH: Mr. Nykiel. 11 MR. NYKIEL: I just wanted to note that I think 12 we did discover the issue, it appears that our exhibits 13 were posted on NMED's docketed -- docket page for the old 14 website, but they were not transferred to the new NMED 15 website. And that was news to us until just now. 16 HEARING OFFICER ORTH: Thank you very much. That 17 change in web pages did definitely cause -- cause some 18 confusion. So thank you for that. 19 Let me ask Board members, if you would like a 20 longer opportunity to review the exhibits before you ask 21 your questions, or if you're ready to ask any questions 22 you might have of Mr. Nichols. 23 CHAIRPERSON SUINA: Madam Hearing Officer, yeah, 24 I'm just jumping on now, trying to get the pull-down of 25 that information. So, I, personally, would like at least
1144 1 were available to the other parties and posted on the EIB 2 webpage. 3 HEARING OFFICER ORTH: Okay. We're just trying 4 to find them. 5 CHAIRPERSON SUINA: Madam Hearing Officer, I just 6 got off the phone with Pam, so she's going to repost them 7 up on the docketed matters website. I know -- well, 8 Mr. Nichols, I apologize, we're all trying to scramble and 9 reference exhibits. And so I apologize Hearing Officer, I 10 don't know if you want to take a moment break while Pam 11 gets that up. 12 HEARING OFFICER ORTH: You know, I think that's 13 an excellent idea. We would need a break by 3 in any 14 event. So let's reconvene around 2:45. 15 And Mr. Nichols, if you would hang in there with 16 us until we're sure the Board members can see those. 17 MR. NICHOLS: Yes, absolutely 18 HEARING OFFICER ORTH: Thank you. See you at 19 2:45. 20 (Recess taken from 2:33 p.m. to 2:46 p.m.) 21 HEARING OFFICER ORTH: Let's come back from the 22 break, please. Board members, I spoke with Pam. She said 23 it was a size issue, which I believe is why it wasn't 24 emailed to you directly, but they're getting it on to the 25 web page and she has sent a link.	1146 1 another five minutes to go through. 2 HEARING OFFICER ORTH: That's fine, Madam Chair. 3 Thank you. 4 CHAIRPERSON SUINA: I don't know what my fellow 5 Board members want, if they need additional time. 6 HEARING OFFICER ORTH: We -- we can certainly 7 take a longer break. Would you like to come back at 3? 8 CHAIRPERSON SUINA: I'm good with that. I don't 9 know, my fellow Board members? 10 HEARING OFFICER ORTH: Mr. Duval -- Member Duval 11 has reached out through Chat saying that works for him. I 12 see Members Cates and Davis and Bitzer and Garcia all 13 giving the thumbs there. All right. Let's come back at 14 3. Thank you. 15 (Recess taken from 2:49 p.m. to 3:01 p.m.) 16 HEARING OFFICER ORTH: Let's come back from the 17 break, please. We're back after a short break. Madam 18 Chair and other Board members -- oh, wait, I see 19 Mr. Nykiel raising his hand. Mr. Nykiel? 20 MR. NYKIEL: Yes. Thank you, Madam Hearing 21 Officer. I apologize, I would have liked to have 22 suggested this before we went on the last break, but just 23 considering, thinking through the implications or our 24 exhibits not having been transferred from the old website 25 to the new website, I'd like to suggest that potentially

1147 1 we excuse Mr. Nichols for the moment, and if it is 2 possible, recall him tomorrow morning after public 3 comment, just given the fact that our exhibits, you know, 4 probably can't be read in very great depth in ten minutes, 5 and to give the Board ample time, to the extent they 6 choose, to review that. I would just suggest that as a 7 potential solution to kind of be flexible here. Problem? 8 HEARING OFFICER ORTH: I think that's a 9 reasonable suggestion. 10 Madam Chair, how do you feel about that? 11 CHAIRPERSON SUINA: Thank you, Madam Hearing 12 Officer and Mr. Nykiel. I'm looking at the other Board 13 members as well. I think -- you know, I think that's a 14 great suggestion, given that we've had a lot of time with 15 some of the other exhibits there were already posted and 16 we were able to go through those in detail and have that 17 time to process them. I think it would only be fair that 18 we could do that for WildEarth guardians as well. 19 HEARING OFFICER ORTH: All right. Thank you. I 20 do see the other Board members nodding. Mr. Nichols, I am 21 sorry for the inconvenience, but if you would join us 22 shortly after 9:00 in the morning, we could set up the 23 Board member questioning for you after public comment. 24 MR. NICHOLS: That sounds great. I can make 25 myself available and then, I presume we'll continue with	1149 1 you had moved very quickly from Mr. Rose's 2 cross-examination to the questions about their exhibits, 3 and so my question is whether other parties would also 4 have the opportunity for cross-examination to continue 5 tomorrow morning. 6 HEARING OFFICER ORTH: Oh, absolutely. If I 7 moved too quickly there, I apologize. This -- this 8 platform, we need to work together to stay on track, so 9 thank you for that. 10 MR. COLCLASURE: Thank you. 11 HEARING OFFICER ORTH: Yes, of course. Yes, of 12 course. Let's see here. Mr. Rose? 13 MR. ROSE: Yes, IPANM's Witness Blewitt, his 14 testimony responds to Mr. Nichols, and it would, I think, 15 be appropriate for him to go tomorrow morning as well 16 after we completed Mr. Nichols testimony. I think it 17 would make more sense to the Board members to follow that. 18 HEARING OFFICER ORTH: All right. Thank you. So 19 let me ask Ms. Katz then -- oh, well, I guess I also need 20 to ask Mr. Hiser about witnesses Smitherman, Meyer and 21 McNally; and Ms. Katz about Kuehn, Palmer and Baca. 22 Ms. Katz, I see you first. 23 MS. KATZ: Yes. I mean, I believe we would want 24 to go after Mr. Nichols' testimony, that would only make 25 sense. I just need to check -- I don't think anybody is
1148 1 rebuttal and whatnot. 2 HEARING OFFICER ORTH: Mr. Nykiel, what do you 3 think, rebuttal after the exhibits? 4 MR. NYKIEL: I think so. 5 HEARING OFFICER ORTH: All right. I mean, since 6 we're recalling you anyway, Mr. Nichols, it would probably 7 be better for the Board members to follow your rebuttal. 8 All right. Thank you very much, Mr. Nichols and 9 Mr. Nykiel. 10 MR. NYKIEL: Thank you, Madam Hearing Officer, 11 Madam Chair, and the Board. 12 HEARING OFFICER ORTH: All right. There is 13 another person -- let me do this while I'm thinking about 14 it. I think it was Mr. Colclasure who said that his 15 witness Kim is not available this afternoon and we would 16 be taking witness Kim in the morning as well. 17 Mr. Colclasure? 18 MR. COLCLASURE: Yes, Madam Hearing Officer, 19 that's correct. We did flag previously that Mr. Nichols 20 would be unavailable this afternoon, and so if he is 21 called for rebuttal on this topic, we would prefer to do 22 that tomorrow. 23 May I also ask a follow-up question about 24 WildEarth Guardians witness, Mr. Nichols. I understand he 25 is coming back tomorrow for Board questions. Previously,	1150 1 unavailable tomorrow. 2 HEARING OFFICER ORTH: All right. Thank you. 3 And Mr. Hiser? 4 MR. HISER: Madam Hearing Officer, I don't 5 believe that we'll -- Mr. McNally doesn't really have 6 anything to testify to in this section. I think Mr. Meyer 7 is now not as relevant given the Department's statement 8 about the tank definition. And so Mr. Smitherman is with 9 us every day, and so to the extent we needed to do 10 something, it would be easy for him to just quickly follow 11 on at the end of tomorrow, before Ms. Katz, obviously. 12 HEARING OFFICER ORTH: Yes, thank you very much. 13 Sounds like we have a plan. All right. 14 Ms. Katz, then are we moving from 21 to 22? 15 MS. KATZ: Yes, Madam Hearing Officer. And I 16 believe I'll call Elizabeth Bisbey-Kuehn again on that. I 17 don't think Mr. Palmer is involved on that one. 18 HEARING OFFICER ORTH: All right. And just be 19 sure to mention exhibits. And Ms. Kuehn is still under 20 oath. 21 MS. KATZ: Yes. Okay. Let me -- so this -- this 22 is also going to be in NMED Exhibit 32, starting on page 23 3, and rebuttal -- NMED Rebuttal Exhibit 1. I don't have 24 the page number at the moment. 25 Excuse me. Actually, I don't even know if this

1151 1 is actually in the rebuttal, so I'll just have Ms. Kuehn 2 start with the slide show and we'll cover everything. 3 ELIZABETH BISBEY-KUEHN, 4 having been previously sworn or affirmed, was 5 examined and testified as follows: 6 DIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 7 (Topic 22) 8 BY MS. KATZ: 9 Q. So, Ms. Kuehn, you already adopted this testimony 10 on the record, correct? 11 A. Correct. 12 Q. Okay. So this -- so now we're getting into the 13 provisions of the rule. And before we actually get to the 14 first -- to the first sort of main substantive section, 15 which is applicability at 20.2.50.111, I am going to ask 16 Ms. Kuehn to cover the overview about the equipment 17 database that NMED -- where the data came from, and the 18 key exhibits that are referred to throughout the testimony 19 of Ms. Kuehn and Mr. Palmer. And that's all in the NMED 20 Exhibit 32 in the page numbers that I identified. 21 So -- all right. Ms. Kuehn, can you please 22 describe the Department's -- the Air Quality Bureau's 23 equipment database, please? 24 A. Yes. And Board members, you'll hear from our -- 25 from the Department and the ERG witnesses about the	1153 1 including equipment stock parameters, including flow 2 rates, height, velocity, temperature, stack diameter. 3 Those are all inputs into the air dispersion models that 4 we used. We track the operating hours of that equipment, 5 the pound per hour and ton per year emission limits of all 6 regulated air contaminants, control device, if applicable, 7 and the efficiency of that particular control device, as 8 well as fuel types, the heating value of the fuel and fuel 9 use -- usage rates for each piece of equipment that 10 combusts fuel. 11 And then as well, general information such as 12 serial numbers, manufacturer and construction dates, 13 capacity rates or throughput rates; for instance, 14 horsepower or million BTU per hour capacities, federal air 15 regulations and state air regulations, as well as the 16 source classification codes which are a lower level of 17 code that identify on that specific piece of equipment. 18 Q. Ms. Kuehn, will you provide -- 19 A. Sorry. Go ahead. 20 Q. Can you provide -- can you discuss how that data 21 from the TEMPO database was provided to ERG for their cost 22 and emissions reductions estimates? 23 A. Yes. So the Department downloaded all of the 24 equipment and facility data for the respective counties, 25 and limited those searches to only oil and gas-related
1152 1 equipment list that we have used to develop the 2 sections -- relevant sections of Part 50, and so this will 3 speak to the database where those -- where that 4 information was pulled. And so I'll start there. 5 So the Bureau utilizes an equipment database 6 called TEMPO to record and monitor and track information 7 about regulated equipment and facilities -- regulated 8 under the Air Quality Control Act and the Board's 9 regulations. And information is collected from air 10 permits, compliance reports submittals, other types of 11 notifications, settlement requirements, emissions 12 inventories. 13 And the data is structured in a way where we 14 capture two different types of data really; one on the 15 facility level data, and one on equipment level data. And 16 for facility level data, we are capturing the company that 17 owns, operates and is the billing party for that 18 particular facility, the person designated as the main 19 contact, estimated potential and actual emissions of 20 facility-wide emissions, location information, applicable 21 air regulations, the reported NAICS and SIC codes; those 22 are industrial classification codes that identify the type 23 of equipment and other general information relation to the 24 facility. 25 And on the equipment level, we track information	1154 1 equipment. We provided that data to ERG. ERG used that 2 data to develop the equipment spreadsheets, used to 3 evaluate the emissions reductions and the cost estimates 4 of this rule. 5 We -- the Department's data provided to ERG is 6 included in the tabs in each of the equipment 7 spreadsheets, and is referred to throughout this testimony 8 as NMED equipment data. And the ERG spreadsheets are 9 provided as exhibits in electronic format, as Microsoft 10 Excel files. 11 Q. Thanks. And can you walk through the summary 12 about -- of your testimony regarding the key exhibits that 13 are referred to in the -- in your and Mr. Palmer's 14 testimony? 15 A. Yes. NMED and ERG developed and relied upon 16 several key documents in developing the proposed rule, and 17 the supporting technical information. And these documents 18 are referred to throughout our testimony. And the 19 following list contains the Exhibit number, name as 20 referred to in the testimony, and then a brief description 21 or citation information for each key document. 22 And so the first key exhibit is the EPA Control 23 Techniques Guideline, which is an EPA Office of Air and 24 Radiation report that they put out to identify potential 25 control options for nonattainment areas for the oil and

1155 1 natural gas industry. 2 The second key exhibit is new source performance 3 standards Subpart 0000, which is EPA's federal rule for 4 new sources, and established standards of performance for 5 crude oil and natural gas facilities for which 6 construction modification or reconstruction commenced 7 after August 23rd, 2011, and before September 15 -- 18th, 8 2015. 9 And the third key exhibit is new source 10 performance standard Subpart 0000a, which was a 11 modification of the previous NSPS and is in effect for 12 those same types of facilities that were -- that commenced 13 construction after September 18th, 2015. 14 The fourth key exhibit is the Pennsylvania 15 General Permit. This is an operating permit for natural 16 gas compressor -- compression stations, processing plants 17 and transmission stations. Pennsylvania General Permit 5A 18 is Pennsylvania's general operating permit for 19 unconventional natural gas well site operations and remote 20 pigging stations. 21 Colorado Regulation No. 7 is Colorado's rule that 22 regulates emissions of NOx and VOC from the oil and gas 23 sector for the purpose of controlling ozone. And Wyoming 24 Permitting Guidance, which is the Wyoming Department of 25 Environmental Quality's permitting guidance for oil and	1157 1 the PTE calculation, so it makes that clear. And then it 2 also contains in Subsection C of Section 111 the specific 3 requirements for small business facilities as defined in 4 the part. 5 And Subsection D of Section 111 lists specific 6 types of facilities that are not subject to Part 50, and 7 those include oil refineries, transmission pipelines and 8 saltwater disposal facilities. 9 Q. Okay. And can you review the requirements as 10 they stand, with the comments that were received and the 11 revisions that were made? 12 A. Yes. NMOGA and other parties requested the 13 insertion of the word "certain" in the first sentence and 14 the striking of the word "and," and the inclusion of the 15 words "associated with." The Department agreed with that 16 revision. We substituted the word "site" for stations. 17 In Subsection B we received extensive comment on 18 the fact that not all owners and operators have qualified 19 professional engineers either on staff to make these 20 decisions, or that it was inappropriate for a qualified 21 professional engineer to certify to these calculations 22 when they don't have knowledge of these specific types of 23 operations. 24 And so we revised this section to address those 25 comments, which we believe satisfactorily addresses the
1156 1 gas productions facilities. 2 Q. Okay. Ms. Kuehn, can you give a summary overview 3 of what Section 111 of Part 50 titled "Applicability" 4 covers? 5 A. Yes. Subsection A, or rather the whole Section 6 111 outlines the specific sources of air pollutants that 7 are covered under Part 50, and the rule applies as we'll 8 soon learn, or as you know already, to crude oil and 9 natural gas production and processing equipment, including 10 operations that extract, collect separate, dehydrate, 11 store, process, transport, transmit, handle in areas of 12 the state specified by 20.2.50.2 and located at well 13 sites, tank batteries, gathering and boosting sites, 14 natural gas processing plants, and transmission compressor 15 stations located up to the point of the local distribution 16 company, custody, transfer station. 17 Q. And can you give an overview of that section? 18 A. Yes. The Section 111 -- what I just covered was 19 covered in Subsection A of Section 111. This slide is 20 referring to Subsection B of that section. It requires 21 owners and operators to calculate the potential to emit in 22 order to determine applicability of Part 50 to any 23 individual source. The PTE calculation must be certified 24 by a professional engineer or an in-house engineer. 25 And requirements of Part 50 may not be used in	1158 1 concerns raised by the parties. And so the insertion of 2 "or" an in-house engineer with expertise in the operation 3 of oil and gas equipment, vapor control systems and 4 pressurized liquid samples. It identifies the type of 5 experience that we would like an in-house engineer to have 6 in order to certify that calculation. 7 And the second sentence, "The emissions standards 8 and requirements of this part may not be considered in the 9 PTE calculation," was a clarification for owners and 10 operators, that -- that clarified that you cannot use the 11 requirements of Part 50 to reduce your emission rate in 12 order to determine the applicability of this rule to any 13 specific source. 14 And the last couple of revisions were minor 15 clarifications, minor revisions to the -- to the term oil 16 refinery, and then the inclusions of the saltwater 17 disposal facilities was -- clarified the Department's 18 intent in terms of the applicability of this part. 19 Q. And can you discuss the defined terms that are 20 associated with this section and the revisions that were 21 made to those terms? 22 A. Yes. NMOGA and Kinder Morgan, as well as other 23 parties, submitted a comment on these terms: gathering 24 and boosting station, transmission compressor station and 25 wellheads or well sites, and then requested deletion of

1159 1 the term "natural gas compressor station." The Department 2 has revised those definitions based on those requests, and 3 we believe that these current definitions have 4 satisfactorily addressed the concerns raised by the 5 parties. NMOGA, in addition, requested that the term 6 "wellhead site" be redefined as a well production 7 facility, and the Department did not make that edit for 8 the September 16th version of the rule, but the Department 9 is not opposed to redefining this term well site to be a 10 well production facility. 11 And that's -- that concludes this slide. 12 Q. Thank you, Ms. Kuehn. And I believe 13 Mr. Smitherman might have said the wellhead site was 14 acceptable to NMOGA, but I'll let him confirm that next 15 time he's up. 16 MS. KATZ: That's all I have on this section, 17 this topic for Ms. Kuehn. 18 HEARING OFFICER ORTH: All right. Thank you very 19 much, Ms. Katz and Ms. Kuehn. We pause for a moment in 20 the event there are questions from other parties. 21 Mr. Rose. 22 CROSS-EXAMINATION OF ELIZABETH BISBEY-KUEHN 23 BY MR. ROSE: 24 Q. Yes, just a couple of questions for Ms. Kuehn. 25 On your testimony about the TEMPO database, you talked	1161 1 definition would preclude? 2 A. Yes. It was intended that an in-house engineer 3 with that type of expertise certify the PTE calculation. 4 Q. And what about outside professionals? For 5 example, I know companies, for the most part, hire 6 consultants to prepare their permit applications for 7 submittal. As I read it, it would preclude, unless they 8 had a PE on staff that would certify it, it would preclude 9 the consultants from preparing and submitting and 10 certifying to the PTE calculation as well, correct? 11 A. That is correct. And so it doesn't necessarily 12 have to be a professional engineer, it can be an engineer 13 with the -- with -- that is not a certified professional. 14 And this calculation is -- is the most critical 15 calculation to determine applicability under this part and 16 we -- we need that calculation to be certified by -- by 17 someone with experience in those -- in those -- that has 18 the experience that's listed in the rule. And we feel 19 that provides an additional level of review and assurance 20 that the calculations were performed accurately and are 21 truly representative of the potential emissions from the 22 source. 23 Q. And you would agree that currently, that, for 24 example, submittals of Notices of Intent or -- or NSR 25 permit applications, which also have fairly complicated
1160 1 about it having all of the equipment that the Department 2 was aware of through the various programs. Would you 3 speak to whether -- whether well sites currently are 4 captured in that database, and to what extent? 5 A. Yes. Thank you. And so well sites that emit 6 over an applicability threshold are required to register 7 with the Department for either a Notice of Intent or air 8 permit. So those facilities that are required to register 9 with the Department are included in the database. Those 10 facilities that are not currently regulated by the 11 Department are not present in the database. 12 Q. Okay. Thank you. And that would include sites 13 with less than -- with a potential emission rate of less 14 than 10 tons per year, I think, is the NOI threshold 15 currently? 16 A. Correct. 17 Q. Thank you. And with respect to your changes on 18 who has to certify the PTE calculations, I just had a 19 question about, it looks like you're retaining the 20 requirement that it be an engineer to certify to those 21 calculations, either in-house or a potential -- or a 22 professional engineer. Did you intend to exclude other 23 environmental professionals? Normally, folks, for 24 example, who prepare and submit NSR applications to the 25 Department? It appears as though that's what the	1162 1 calculations, including emissions calculations, do not 2 currently require that an engineer certify to those 3 conditions, correct? 4 A. They do not. 5 MR. ROSE: Okay. Thank you, Madam Hearing 6 Officer. That's all my questions. 7 HEARING OFFICER ORTH: All right. Thank you. I 8 think I saw Mr. Hiser joining us on screen. Mr. Hiser? 9 MR. HISER: You did, Madam Hearing Officer. 10 CROSS-EXAMINATION OF ELIZABETH BISBEY-KUEHN 11 BY MR. HISER: 12 Q. Good afternoon, Ms. Kuehn. I was wondering if 13 you could put your definition or the 20.2.50.111 back up 14 on the screen for just a second. 15 You have a nice picture of Ms. Orth. 16 If it won't go back up, we can just ask the 17 question without it. 18 A. Here we go. Sorry about that, Madam Hearing 19 Officer. 20 Q. No, that's... 21 Yes. Perfect for that. And the question I 22 wanted to ask you was about Subsection B, and you're 23 talking about that the emissions standards and requirement 24 of this part may not be considered in the PT -- PTE 25 calculations required in this section, or determining if

1163 1 any source is subject to this part. And I just wanted to 2 clarify that if a source is subject to more or less some 3 identical requirements under Part 50 and under another 4 federal program like NSPS or a permit condition that would 5 be federally enforceable, we would still be -- "we," being 6 the industry or source owner or operator would still be 7 able to account for that federal standard or the permit 8 limitation in calculating the PTE for purposes of this 9 part? 10 A. Yes, they would. 11 Q. Okay. Thank you very much. Appreciate the 12 clarification. 13 HEARING OFFICER ORTH: Thank you, Mr. Hiser. 14 Thank you for not sharing your screen anymore, Ms. Kuehn, 15 so that I can see if there are any other counsel or party 16 representatives who have a question of Ms. Kuehn. 17 No? All right. We turn to the Board members for 18 their questions. While I'm doing that, in the event you 19 are an attendee on this platform and you would have a 20 question for Ms. Kuehn about this topic, please reach out 21 through the Chat. 22 EXAMINATION BY THE BOARD OF ELIZABETH BISBEY-KUEHN 23 HEARING OFFICER ORTH: Madam Chair, do you have a 24 question? 25 CHAIRPERSON SUINA: Thank you, Madam Hearing	1165 1 in-house engineer does not have to be a professional 2 engineer, but should have experience with the operations 3 of oil and gas equipment, vapor control systems and 4 pressurized liquid samples. 5 CHAIRPERSON SUINA: Okay. I just want to make 6 sure that as we look at this, knowing that this is under 7 the State of New Mexico, that there is -- so in my field, 8 I'm a small business owner of an environmental engineering 9 firm and I know I'm always having to really make sure that 10 the way I categorize labor, cross codes, and who is doing 11 what, even the use of engineer is very specific in the 12 State of New Mexico. 13 So, with that, has anybody else proposed an 14 alternative term in lieu of in-house engineer? 15 MS. BISBEY-KUEHN: Yes, Member Suina -- Chair 16 Suina, the industry parties have requested the use of an 17 operator or outside party consultant to -- to certify to 18 that calculation. And the Department has not accepted 19 that proposal. 20 CHAIRPERSON SUINA: Okay. Have any of the other 21 parties -- anybody else, in terms of additional language, 22 to try to revise this particular section? 23 MS. BISBEY-KUEHN: Not in respect -- with respect 24 to that specific topic. 25 CHAIRPERSON SUINA: Okay. All right. Thank you
1164 1 Officer, I do. I have just have a couple of clarifying 2 questions. And it goes to, I believe -- I'm trying to 3 find that. It's the language about in Section -- it's 4 related to the engineer certification and the use of 5 engineer in 20.2.50.111B. And I just wanted to know if -- 6 in the definitions, and I was trying to go back and forth, 7 is it clarified what an in-house engineer is in the 8 definition? I just want to be careful and mindful and 9 cognizant that the use of "engineer" as a term has 10 unique -- and just in genuine, unique -- unique, I guess, 11 licensing requirements in the State of New Mexico. I just 12 want to make sure -- so that's the background on my 13 question. 14 MS. BISBEY-KUEHN: Thank you, Chair Suina. Yes, 15 the definition, there is a definition of qualified 16 professional engineer in the regulation. That definition 17 reads: "Qualified professional engineer means an 18 individual who is licensed by a state as a professional 19 engineer to practice one or more disciplines of 20 engineering and who is qualified by education, technical 21 knowledge and experience to make the specific technical 22 certifications required under this part." And so that 23 definition is in place. 24 We do not have a separate definition for in-house 25 engineer. The important distinction, I guess, is that an	1166 1 so much. 2 HEARING OFFICER ORTH: Okay. Thank you. 3 Vice-Chair Trujillo-Davis? 4 VICE-CHAIR TRUJILLO-DAVIS: Yes, thank you. I do 5 have a few questions. And I apologize, I'm kind of going 6 off of the Member Suina here. I was thinking along these 7 similar lines here. So if I understand correctly, an 8 in-house engineer doesn't have to be a certified 9 professional engineer or certified PE; is that correct? 10 MS. BISBEY-KUEHN: That's correct. 11 VICE-CHAIR TRUJILLO-DAVIS: Do they require a 12 degree from a University or accredited University in 13 engineering? Or does it just have to be somebody who's 14 worked their way up through the oilfield ranks? 15 MS. BISBEY-KUEHN: We haven't specified the 16 credentials, but -- but by using the term "engineer," we 17 intended for it to be those who had obtained a degree in 18 engineering. 19 VICE-CHAIR TRUJILLO-DAVIS: Okay. So as I 20 understand it, the PTE is the cornerstone for everything 21 moving forward for a facility, the compliance enforcement. 22 So it should be really, really important to make sure that 23 those numbers are correct, and whoever is putting those 24 numbers together are certifying them and having correct 25 numbers, right, because they're representing the

1167 1 organization? 2 MS. BISBEY-KUEHN: (Witness nodding head.) 3 VICE-CHAIR TRUJILLO-DAVIS: So there are other 4 regulations that have -- oh, before I get to that. Can -- 5 and a consultant can't sign off on a PTE; is that correct? 6 MS. BISBEY-KUEHN: No, that's correct. 7 VICE-CHAIR TRUJILLO-DAVIS: So there are other 8 regulations -- federal regulations that allow for a 9 consultant or an outside professional engineer to sign a 10 document, and then have it certified by a responsible 11 party within a company. Was that considered or -- and 12 dismissed, or can you kind of give me some insight on 13 that? 14 MS. BISBEY-KUEHN: Sure. Yeah, and it's been my 15 experience that -- that there can be misrepresentations of 16 a -- of a source's potential to emit. And that that can 17 be done by a consultant and it often results in 18 compliance -- ongoing compliance issues for the company, 19 which requires enforcement action and then revisions to 20 applications and subsequent permits to be issued based on 21 corrected emissions values. And it happens so frequently 22 that -- that we intended, very much intended for this 23 calculation to undergo the review of an engineer with a 24 specific type of experience, and affirmatively sign off 25 that that emissions representation was accurate and -- and	1169 1 general? You don't have to give me specifics. 2 MS. BISBEY-KUEHN: Where they were appropriate to 3 make, and I don't recall any specific examples right 4 within this section. I don't believe we received any 5 director or rebuttal on this section from those parties. 6 BOARD MEMBER GARCIA: Thank you very much. 7 Appreciate that. 8 HEARING OFFICER ORTH: Thank you. Member Honker? 9 BOARD MEMBER HONKER: No questions. Thanks. 10 HEARING OFFICER ORTH: All right. Thank you. We 11 did have Member Bitzer and Member Duval on the platform. 12 If you're unable to unmute yourself now, let me know. I 13 see Member Bitzer. Do you have questions of Ms. Kuehn? 14 Unfortunately I can't hear you, but I think 15 you're shaking your head no. 16 All right. Member Duval? 17 BOARD MEMBER DUVAL: I do not. Thank you. 18 HEARING OFFICER ORTH: All right. Thank you very 19 much. Ms. Katz, will there be any follow-up? 20 MS. KATZ: Just a little bit. 21 REDIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 22 BY MS. KATZ: 23 Q. Ms. Kuehn, did the Department include the 24 "in-house engineer" in addition to the professional -- the 25 certified qualified professional engineer at the request
1168 1 representative of the source's true potential to emit. 2 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for 3 answering those questions for me. I appreciate it. 4 HEARING OFFICER ORTH: Thank you. Member Cates? 5 BOARD MEMBER CATES: Yeah, no questions here. 6 Thank you. 7 HEARING OFFICER ORTH: Thank you. Member Bitzer? 8 Member Bitzer is having connection issues. 9 Member Duval? Member Garcia? 10 BOARD MEMBER GARCIA: Yes, I do have a couple of 11 questions for Ms. Kuehn 12 HEARING OFFICER ORTH: All right. 13 BOARD MEMBER GARCIA: So just in general, I 14 understand you got a lot of comments and feedback in the 15 two-year process of venting the proposed rule. And I see 16 with your changes, you made a lot of changes based on 17 changes that NMOGA proposed. They're most impacted by 18 that, so I imagine they did have a lot of changes. And I 19 appreciate you took into account and made changes where 20 you could, so that's good to see. 21 I'm wondering if you could tell me, if you 22 remember, were there also some changes you made based on 23 some of the WildEarth Guardians' request or NAVA Center 24 for Civic Policy, et cetera? Do you recall if you made 25 some changes based on some of their requests just in	1170 1 of industry, based on their testimony regarding the New 2 Mexico licensing statute that does not require an engineer 3 employed with a company to be licensed? 4 A. Yes. 5 Q. Okay. So that follows that statutory provision 6 regarding engineers? 7 A. Yes. 8 Q. Okay. Thank you. 9 HEARING OFFICER ORTH: All right. Thank you very 10 much. If there's nothing further, we can move to the next 11 witness, Ms. Katz. Or the next topic. 12 MS. KATZ: There's a few other witnesses on this 13 topic from NMOGA, IPANM, Oxy, Kinder Morgan; all submitted 14 direct on the definitions that are covered in this topic, 15 as well as the applicability section, and then there's 16 several rebuttal witnesses, so I guess I would ask the 17 other parties. 18 HEARING OFFICER ORTH: Yeah, okay. I just wanted 19 to make sure Mr. Palmer isn't -- isn't your next witness 20 on this one. 21 MS. KATZ: Yes, sorry. He was again mistakenly 22 included on there. 23 HEARING OFFICER ORTH: All right. I'm very 24 sorry. Shall we move to Mr. Smitherman? 25 MR. HISER: Yes, Madam Hearing Officer. I

1171 1 believe he should be on the panel list. 2 HEARING OFFICER ORTH: Oh, there he is. All 3 right. 4 MR. SMITHERMAN: I do have slides. Can you allow 5 me to share? Was that successful? 6 MR. HISER: Yes. 7 JOHN R. SMITHERMAN, 8 having been previously duly sworn, was examined and 9 testified as follows: 10 DIRECT EXAMINATION OF JOHN R. SMITHERMAN 11 (Topic 22) 12 BY MR. HISER: 13 Q. All right. Mr. Smitherman, can you please state 14 your full name for the record? 15 A. My name is John R. Smitherman. 16 Q. Thank you. Can I remind you that you are still 17 under oath? And did you -- 18 A. Yes, sir. 19 Q. -- did you submit and adopt your testimony, 20 direct and rebuttal in this -- 21 A. Yes. 22 Q. Thank you. 23 Have you prepared a few slides in -- in direct 24 and rebuttal on a number of these additional definitions 25 and topics that we just heard?	1173 1 we can get through that. But let's check and make sure 2 she's okay -- the topic, I think, covers both. 3 MS. KATZ: The definition of facilities, did 4 you -- sorry. 5 MR. HISER: This is the gathering and boosting. 6 Is that -- did you intend that in this? If not, we'll 7 wait until Ms. Kuehn goes through it. 8 MS. KATZ: I believe so. 9 Liz, can you confirm that we already went through 10 that or did we? 11 MS. BISBEY-KUEHN: I'm sorry, I didn't hear the 12 question. 13 MR. HISER: Liz, did you mean to cover the other 14 definitions, like gathering and boosting and compressor 15 station in your last round of testimony? 16 MS. BISBEY-KUEHN: Yes, we covered -- we covered 17 those. 18 MR. HISER: Okay. 19 MS. KATZ: So that's appropriate, Mr. Hiser. 20 MR. HISER: Okay. I just wanted to make sure we 21 weren't getting ahead of where we're to be. 22 Q. (BY MR. HISER) So Mr. Smitherman, did NMOGA 23 propose a couple of other definitions and changes as well, 24 that you'd like to speak to? 25 A. Yes, we did. Let's start with the well
1172 1 A. I did. 2 Q. Would you like to give a brief summary of that 3 for the Board members, please? 4 A. Certainly. Thank you very much. 5 Madam Chair, Vice-Chair, Board members and Madam 6 Hearing Officer, thank you for this opportunity. On 7 applicability, as you've just heard, NMED has included a 8 requirement that only qualified professional engineers -- 9 originally that was the only option, but in their recent 10 redline, has also allowed other qualified persons to 11 certify those calculations, and NMOGA agrees with those 12 changes; mostly because registered professional engineers, 13 I think as Ms. Kuehn said, while they're highly qualified, 14 sometimes they're highly qualified in very narrow fields, 15 and perhaps very few of them are actually qualified in 16 this particular field of calculating those PTE important 17 numbers. So requiring only certified registered 18 professional engineers was going to cause quite a 19 bottleneck and really would not have served the purpose of 20 the public very well or the industry. That's all I had on 21 direct or rebuttal. 22 We could go into a few comments on surrebuttal if 23 you'd prefer, or we could wait. 24 Q. Why don't you go ahead and just talk about your 25 definition of facilities, if that's okay with Ms. Katz, so	1174 1 production facility. And by the way, I appreciate 2 Ms. Kuehn's openness to that particular term, although it 3 seems like we're both honoring each other because we're 4 happy, quite frankly, now with the term well site. We 5 think that's appropriate and there's no real reason to 6 continue to, if you will, disagree over that. So we're 7 happy with the term "well site." 8 We would -- we've taken in a lot of input from 9 others, if you will, and even looking at the current 10 definition of well site as offered by the NMED, we do find 11 that there's an opportunity for a little more 12 clarification there. In many cases -- in fact, the vast 13 majority probably, on these well sites, where most of the 14 equipment is owned, operated, leased, controlled by a 15 single operator, there are many times that equipment on 16 those sites, that are owned and operated by others. One 17 of the most common examples is a gas meter facility. That 18 is owned by typically a gas midstream company, it's not 19 under the control or ownership of the operator of the 20 facility. 21 And so, what we'd like to offer is an opportunity 22 to clarify well site, adding those words in blue, where it 23 means, the equipment under the operator's control, 24 directly associated with one or more oil wells, et cetera, 25 or gathering and boosting stations, if any. I think that

1175 1 that is hopefully a clarification that will help the NMED 2 and the regulator community. 3 Q. And Mr. Smitherman, is that consistent with the 4 multicolored chart that you previously showed to the Board 5 and the other parties? 6 A. It is. 7 Q. Okay. 8 A. And well sites are all of those things that were 9 on that left-hand side in the gray. 10 Q. And then, Mr. Smitherman, did you inadvertently 11 jump like five slides into this preparation instead of 12 starting at the top? 13 A. I don't think I did. 14 Q. Okay. Because this looks like your surrebuttal, 15 not your direct. 16 A. Oh, it is surrebuttal. But in my rebuttal -- oh, 17 I think I see your point. In my -- yes, there it is. 18 Let's move up in the direct. Thank you very much, 19 Counsel. 20 Q. I think it's probably better to start there. 21 A. It was. It's the same concept, though. The 22 concept that we accept the term well site, so we'll move 23 on from there. 24 Q. Did you want to clarify a little bit about the 25 gathering and boosting and compression issues?	1177 1 later. 2 We've also suggested that transmission compressor 3 stations be included. This is important because they are 4 different than normal, if you will, or the upstream 5 gathering and boosting stations. Typically, upstream 6 gathering and boosting stations deal with raw, unprocessed 7 natural gas, and that raw unprocessed natural gas 8 typically has much more volatile organic compounds in them 9 than you might find in a gas transmission system. 10 And so emissions, even fugitive emissions from a 11 transmission compression station will have, for the same 12 volume of gas that might be emitted, much, much lower 13 content of ozone precursors. So it's right to have 14 included the transmission compressor station as a separate 15 definition, and the applicability should be considered as 16 you look at those facilities separate from gathering and 17 boosting stations. 18 We also found that the natural gas compressor 19 station was a definition that just caused, really, 20 confusion. We appreciate the fact that NMED has now 21 removed that. It did not seem to serve any purpose at 22 all, and so we appreciate you taking that into 23 consideration. 24 And then we're back to where I started. 25 Q. Okay. Thank you, Mr. Smitherman.
1176 1 A. Yeah, let's talk about that now. This is the 2 current proposed definition of "gathering and boosting 3 station." And just, again, to be clear, as you recall on 4 that diagram I showed you, it includes facilities that 5 deal with natural gas and compression stations in the 6 natural gas chain. 7 It also deals with perhaps some facilities in the 8 crude oil chain, specific -- specifically what we would 9 call a central delivery point, where crude oil is 10 collected at a single point prior to custody transfer to 11 the oil transmission sector. And so we've made 12 suggestions, and the NMED has accepted those suggested 13 changes to make sure that those facilities have a home, if 14 you will, in these rules. And that's what we've talked 15 about here on this slide as well. 16 It's also -- I want to make -- just touch on 17 something else, that the word "stabilized" is in our 18 definition because sometimes the crude oil that makes it 19 to a central delivery point has, in essence, become an 20 equilibrium, if you will, and so, therefore, has, in 21 essence, boiled off all of its flash volatiles, and the 22 only thing left is the working and breathing vapors there. 23 So I just wanted to make sure that it's understood that, 24 typically, you'll find stabilized crude oil at a CDP. And 25 we'll talk on that definition for stabilized a little bit	1178 1 MR. HISER: Apologies to the Board for getting 2 slightly out of order on the slides. Madam Hearing 3 Officer, I don't have any additional questions for 4 Mr. Smitherman and would tender him back for other 5 questions from others. 6 HEARING OFFICER ORTH: Thank you very much, 7 Mr. Hiser and Mr. Smitherman. If you would stop sharing 8 your screen, Mr. Smitherman, I will be able to see if 9 anyone has questions of you. Thank you for that. 10 Counsel or party representatives, if you have a 11 question, please -- I see Ms. Katz. Do you have a 12 question? 13 MS. KATZ: I had just one for clarification. 14 CROSS-EXAMINATION OF JOHN R. SMITHERMAN 15 BY MS. KATZ: 16 Q. Mr. Smitherman, in your -- in your 17 modifications -- proposed modifications to the definition 18 of well site, did you intend to include leased equipment 19 as under the control of the owner or operator? 20 A. Yes. We think that leased equipment should be 21 under the -- it is under the control of the operator and 22 it should not be excluded. 23 MS. KATZ: Okay. Thank you. 24 HEARING OFFICER ORTH: Thank you. Let me pause a 25 moment in the event anyone else has a question before I

1179 1 turn to the Board. All right. I'm going to turn to the 2 Board. While I'm doing that, in the event you are an 3 attendee on this platform and you have a question for 4 Mr. Smitherman, please reach out in Chat. 5 EXAMINATION BY THE BOARD OF JOHN R. SMITHERMAN 6 HEARING OFFICER ORTH: Madam Chair, do you have 7 questions? 8 CHAIRPERSON SUINA: Thank you, Madam Hearing 9 Officer. I just wanted to thank Mr. Smitherman and NMED 10 for working together on the language. And just also in 11 terms of process, so I know in some of your slides, 12 Mr. Smitherman, you said that some of your recommended 13 changes have actually been accepted by NMED, so I was 14 wondering, is there like a latest, since it sounds like 15 there's been ongoing back and forth. I don't know if it's 16 a question for you, Mr. Smitherman, or Ms. Katz. 17 MR. SMITHERMAN: I can try to address that. I 18 think the latest is in NMOGA's redline of September 7th, 19 as I recall. And the latest from OC -- NMED, actually, is 20 after the September 16th, I know in one section. We have 21 actually now proposed this language, the language change 22 on the well site. This is -- this is the first time 23 that's been offered, so we have not gotten any kind of a 24 conversation or response yet from NMED. We're hoping that 25 they give us a favorable decision on that.	1181 1 Oh, I see you now again, Member Bitzer. Do you have 2 questions? I believe he just indicated he does not. 3 Member Garcia? No. 4 And Member Honker? 5 BOARD MEMBER HONKER: No questions from me. I'll 6 add my -- my thanks for the collaboration to my fellow 7 Board members. 8 HEARING OFFICER ORTH: Thank you very much. 9 Let's see. Mr. Hiser, I think I will just thank you and 10 Mr. Smitherman. 11 And I believe our next witness would be from 12 IPANM. It would be Mr. Davis. Am I correct on that, 13 Mr. Rose? 14 MR. ROSE: I believe so. I think he's on. At 15 least he was. 16 HEARING OFFICER ORTH: There he is. All right. 17 You are still under oath, Mr. Davis. And if you would 18 make sure to mention any exhibits that the Board would 19 want to refer to during your testimony. 20 MR. ROSE: Thank you, Madam Hearing Officer. I 21 think Mr. Davis's testimony today is fairly unique, in 22 that it's not occurring after 5:00, so I will try to get 23 him on and off fairly quickly. It's -- Mr. Davis's 24 testimony, his direct is IPANM Exhibit 2, and his rebuttal 25 testimony is IPANM Exhibit 10. And his testimony related
1180 1 MS. KATZ: And Madam Chair, I can just add that 2 the -- that -- that the -- what was shown in the 3 Department's slide should be -- I believe we -- hopefully, 4 it's all coming from our -- our September 16th filing, so 5 it should be the most recent version, and that we can 6 agree to it, and we also can agree to what NMOGA has just 7 put up in its slide, up on those additional modifications 8 to the well site definition. 9 CHAIRPERSON SUINA: Thank you, Ms. Katz and 10 Mr. Smitherman. Thank you. Madam Hearing Officer, that 11 was my only question. 12 HEARING OFFICER ORTH: All right. Thank you. 13 Vice-Chair Trujillo-Davis? 14 VICE-CHAIR TRUJILLO-DAVIS: I do not have any 15 questions, but I'd also like to echo Member Suina's 16 comments about the collaboration between NMED and NMOGA 17 and other partners. Thank you. 18 HEARING OFFICER ORTH: Thank you. Member Cates? 19 BOARD MEMBER CATES: Exactly what Member 20 Trujillo-Davis said there. Thank you. 21 HEARING OFFICER ORTH: Thank you. Member Bitzer? 22 His audio may have gone out. I'll move on to 23 Member Duval briefly. Member Duval? 24 BOARD MEMBER DUVAL: No questions. Thank you. 25 HEARING OFFICER ORTH: All right. Thank you.	1182 1 to Section 111, which I think is what he's going to speak 2 about here, is a subset of that. So it should be labeled 3 in there. I don't remember exactly which pages, but the 4 heading should be there. 5 And Madam Hearing Officer, I think since his 6 testimony is limited, it might be -- and it's related to 7 the Department's language about professional engineer, I'd 8 like him to speak about the Department's proposed change. 9 It may be more efficient for him to talk about his direct 10 and rebuttal and then surrebuttal, in a sense, in 11 responding to the Department's latest proposal, to not 12 break it up. 13 JEFFREY "RYAN" DAVIS, 14 having been previously duly sworn or affirmed, was 15 examined and testified as follows: 16 DIRECT EXAMINATION OF JEFFREY "RYAN" DAVIS 17 (Topic 22) 18 BY MR. ROSE: 19 Q. Mr. Davis, could you briefly give -- summarize 20 your direct and rebuttal testimony for the Board? 21 A. Yes, sir. I assume you guys can hear me okay. 22 Okay. So it's very similar to what Mr. Smitherman 23 testified just earlier; we had concerns regarding the 24 requirement for the certification of the PTE calculation 25 by a qualified professional engineer. The Department has

1183 1 made some revisions in the latest redline dated September 2 16th in this respect, and it addresses the majority of our 3 concerns that we put forward and we do appreciate that. 4 We still have some concerns just regarding -- and 5 this kind of gets into the testimony of Ms. Kuehn earlier, 6 about the limitation there with the way that the 7 Department's added the in-house engineer, which was 8 something we were -- we were advocating for. We still 9 have some concerns that in some instances smaller 10 companies will use an outside consultant, due to the fact 11 that they may not have an in-house engineer. 12 And we -- we have found that just from serving 13 our members, that in a lot of instances, these 14 calculations are being done by a qualified individual 15 that's usually designated by the company. So we do 16 appreciate the amendments that have been made, but we 17 still think that -- that there's a need for additional 18 flexibility there, you know, to allow for a qualified 19 individual that's designated by the company. 20 Q. Thank you, Mr. Davis. Just for the Board's 21 edification here, I know you explained your background 22 before; could you explain your background and what 23 expertise you have in engineering expertise? 24 A. Yeah. So I'm a mechanical engineer by education, 25 but I've worked as a petroleum engineer for the majority	1185 1 Hearing Officer, and we'd offer Mr. Davis for examination. 2 HEARING OFFICER ORTH: Thank you, Mr. Rose and 3 Mr. Davis. I see Ms. Katz on the screen. Ms. Katz, do you 4 have questions? 5 MS. KATZ: I just have one for Mr. Davis. 6 CROSS-EXAMINATION OF JEFFREY "RYAN" DAVIS 7 BY MS. KATZ: 8 Q. Mr. Davis, did IPANM suggest any language 9 revisions to those applicability provisions that would 10 address your concern about allowing a designated 11 regulatory specialist to certify PTE calculations? 12 A. Our -- our proposal there was to strike the 13 certification language in the proposed regulation, with 14 the -- the thought that that would handle our concerns. 15 We do appreciate and understand the need for that 16 certification, and I think that's kind of based on 17 Ms. Kuehn's testimony earlier. 18 So we do recognize the need for that 19 certification, we'd just like to see the flexibility there 20 for a qualified individual. 21 Q. Okay. But you haven't provided any specific 22 language that would implement that? 23 A. Not at this time. 24 Q. Okay. Thank you. 25 HEARING OFFICER ORTH: Thank you. Are there
1184 1 of my career since I graduated. I've moved into 2 operations management, I oversee all of our regulatory 3 compliance and field operations. 4 We -- we have a regulatory compliance specialist 5 that handles the majority of our regulatory matters. And 6 I do oversee that, but we do not have a professional 7 engineer on staff, which, again, the in-house engineer 8 revision handles that situation, but in most cases, we 9 rely on and designate our regulatory compliance specialist 10 to provide certifications when we're submitting forms or 11 permits to state agencies. 12 Q. And -- and do you believe that your regulatory 13 specialist has the degree of expertise the division -- the 14 Department's looking for, in terms of these calculation? 15 A. Yes. I mean, they're the ones that are handling 16 this on a day-to-day basis. They're the ones most 17 familiar with the calculations that go into PTE, so that's 18 why we feel like, you know, the qualified individual 19 designated by the company would be a more appropriate way 20 to handle that PTE certification. 21 Q. Thank you, Mr. Davis. Do you have any other 22 comments on this section? 23 A. I do not. 24 Q. Thank you, Mr. Davis. 25 MR. ROSE: That concludes our testimony, Madam	1186 1 other counsel or party representatives who have questions 2 of Mr. Davis? Please appear on screen if you do. 3 All right. I'm going to move to questions from 4 the Board. If you're an attendee on this platform with a 5 question for Mr. Davis, please reach out in the Chat. 6 EXAMINATION BY THE BOARD OF JEFFREY "RYAN" DAVIS 7 HEARING OFFICER ORTH: Madam Chair? 8 CHAIRPERSON SUINA: Thank you, Madam Hearing 9 Officer. Thank you, Mr. Davis. Actually, I don't have 10 any questions at this time. Thank you. 11 HEARING OFFICER ORTH: Thank you. Vice-Chair 12 Trujillo-Davis? 13 VICE-CHAIR TRUJILLO-DAVIS: I don't have any 14 questions, and thank you for taking the time today, 15 Mr. Davis. 16 HEARING OFFICER ORTH: Thank you. Member Cates? 17 BOARD MEMBER CATES: Yeah, I do have a question 18 for Mr. Davis having to do with some public input we heard 19 yesterday or maybe today or the day before, I don't know. 20 But someone called in and said that -- something 21 like many independent operators have \$20,000 22 (unintelligible) of a well, let's say, and the cleanup 23 costs are 80 -- 60, 80, 100, whatever, and then it falls 24 to the state or the public of whoever to clean that up. 25 You know, this is off topic from your most immediate

1187 1 testimony, and perhaps any of your testimony at all, but I 2 just wanted to ask you whether, you know, is there -- is 3 there some truth to that? 4 MR. DAVIS: So I don't know if it was on my end, 5 but toward the beginning there you were cutting out, but I 6 think I understand your question being around financial 7 surety or bonding with the industry. 8 BOARD MEMBER CATES: Right. Right. 9 MR. DAVIS: So I'll speak purely from my 10 experience, but -- and specifically here in New Mexico. 11 You know, we have a federal bond that we obtain to 12 operate, as well as our -- our bond through the state. 13 And then, in my experience, the way that inactive wells 14 are handled, you know, once a well has been designated as 15 inactive, and I believe that's 15 months of no production, 16 we're required to put up individual financial assurance on 17 that well that is in the amount very close to what the 18 plugging and abandonment reclamation costs would be. 19 I would commend the State in their structure 20 there, you know, they keep a break-it bond-type structure, 21 but they also ensure the proper financial surety by 22 requiring additional bonding when a well becomes inactive, 23 which, in my opinion, is when the State should be 24 concerned and want to have that financial surety before, 25 by the company. I hope that answers your question.	1189 1 introduction, I'll swap spots with Mr. Holderman and 2 everybody will be able to see him. I can assure everyone 3 that I'm quite loud enough that if there's something I 4 need to say from the side, you will hear me. 5 HEARING OFFICER ORTH: All right. Thank you, 6 Mr. Janoe. 7 MR. JANOE: So Mr. Holderman, it's Danny 8 Holderman; typical spelling of Danny. Last name 9 H-O-L-D-E-R-M-A-N will be testifying in this segment on 10 Section 111 on applicability and the definition of well 11 site in Section .7. Mr. Holderman has six total exhibits; 12 the first is Oxy USA Exhibit No. 1, which is his 13 recommended changes to the regulatory program. Oxy USA 14 Exhibit 2, which was his written direct testimony. Oxy 15 USA Exhibit 3, which is his resume, and Oxy USA Exhibit 4, 16 which was a model work order prepared in connection with 17 some testimony of Section 115 that won't be relevant in 18 this section right now. 19 In addition we have Oxy USA Rebuttal Exhibit 1, 20 which are, again, recommended changes to the regulatory 21 program. And then finally Oxy USA Rebuttal Exhibit 2, 22 which is the written rebuttal technical testimony of 23 Mr. Holderman. 24 So I will swap out with Mr. Holderman right now 25 and we will get to the direct.
1188 1 BOARD MEMBER CATES: Yeah, it does. I just 2 wanted a little fact check there. So I appreciate your 3 testimony. Thank you. 4 MR. DAVIS: Yes, sir. 5 HEARING OFFICER ORTH: Thank you. Member Bitzer? 6 BOARD MEMBER BITZER: Madam Chair, I have no 7 questions. Thank you. 8 HEARING OFFICER ORTH: Thank you. Member Duval? 9 BOARD MEMBER DUVAL: Madam Chair, no questions. 10 Thanks. 11 HEARING OFFICER ORTH: Thank you. Member Garcia? 12 BOARD MEMBER GARCIA: No questions. Thank you. 13 HEARING OFFICER ORTH: Thank you. And Member 14 Honker? 15 BOARD MEMBER HONKER: No questions. 16 HEARING OFFICER ORTH: All right. Thank you very 17 much. I think, then, thank you, Mr. Rose and Mr. Davis. 18 We'll excuse Mr. Davis for the moment. 19 And do I understand from the spreadsheet we're 20 moving to Mr. Holderman, who is Oxy's witness? 21 MR. JANOE: Yes, Madam Hearing Officer. This is 22 Scott Janoe for Oxy USA, Inc. With me is Danny Holderman, 23 and I will beg the Hearing Officer's indulgence. With our 24 technical difficulties, we have decided the easiest way 25 for us to handle this will be when I'm done with the	1190 1 HEARING OFFICER ORTH: Thank you, Mr. Janoe. 2 Mr. Holderman, Mr. Janoe has already given us your name 3 spelling, so if you'd raise your right hand. Do you swear 4 or affirm to tell the truth? 5 MR. HOLDERMAN: I do. 6 HEARING OFFICER ORTH: Thank you. And do you 7 need screen sharing privileges? 8 MR. HOLDERMAN: I do not. 9 HEARING OFFICER ORTH: All right. 10 DANNY HOLDERMAN, 11 having been first duly sworn or affirmed, was examined 12 and testified as follows: 13 DIRECT EXAMINATION OF DANNY HOLDERMAN 14 (Topic 22) 15 BY MR. JANOE: 16 Q. Good afternoon, Mr. Holderman. Did you prepare 17 the written direct and rebuttal testimony in Oxy USA 18 Exhibit 2 and Oxy USA Rebuttal Exhibit 2? 19 A. Yes. 20 Q. Do you have any changes to your written 21 testimony? 22 A. No, with the exception of the revisions to my 23 direct technical testimony that were notice -- 24 (Unintelligible.) 25 Q. And did you prepare --

1191 1 HEARING OFFICER ORTH: I'm sorry. Mr. Janoe, 2 Mr. Holderman was cutting out there at the end. 3 A. Sorry. I'll answer again. I just said no, I 4 don't have any corrections, with the exception of the 5 revisions that were noted in my -- the revisions to my 6 direct technical testimony that were noted in my rebuttal 7 testimony. 8 Q. (BY MR. JANOE) And Mr. Holderman, did you 9 prepare the proposed modifications to the regulatory 10 program in Oxy USA Exhibit 1 and Oxy rebuttal Exhibit 1? 11 A. Yes. 12 Q. Did you have any changes to those proposed 13 modifications? 14 A. No, but there have been multiple changes to the 15 proposed by various parties that may warrant our updating 16 this in the future. 17 Q. Did you prepare a copy of your resume for this 18 proceeding as Oryx USA Exhibit -- (unintelligible.) 19 A. Yes. 20 HEARING OFFICER ORTH: I'm sorry. Hold on. You 21 froze again. 22 MR. HOLDERMAN: Sorry. 23 HEARING OFFICER ORTH: I'm not sure what's 24 happening. Repeat -- repeat your answer, please. 25 A. I just said, no, I don't have any corrections,	1193 1 A. I'm the asset director for our onshore resources 2 in carbon management, at Delaware Basin Business Unit with 3 Oxy USA. In the role, I'm responsible for ensuring for 4 all oil and gas productions operations and related 5 activities carried out on the company's behalf. I'm 6 responsible for ensuring that those operations and related 7 activities prioritize the health and safety of our 8 employees, contractors and the surrounding community, that 9 they comply with all applicable local, state and federal 10 laws, and that they generate value for our stakeholders. 11 Q. Where did you go to school, Mr. Holderman? 12 A. I received a Bachelor of Science degree with 13 honors in chemical engineering from Oklahoma State 14 University in 2000. 15 MR. JANOE: Madam Hearing Officer, I'd request 16 that all of the discussed exhibits -- Oxy USA Exhibits 1 17 through 4, and Oxy USA Rebuttal Exhibits 1 and 2 be 18 admitted. 19 HEARING OFFICER ORTH: Thank you. My memory is 20 that there were not objections to Oxy's Exhibits. I'll 21 pause for a moment in the event there are any objections. 22 No? Thank you. The exhibits are admitted. 23 (Oxy USA, Inc.'s Exhibits 1-4 and Oxy USA, Inc.'s 24 Rebuttal Exhibits 1 and 2 were received into evidence at 25 this time.)
1192 1 but there have been multiple changes proposed, so it 2 may -- by various parties, so that may warrant us -- 3 (unintelligible.). 4 HEARING OFFICER ORTH: The very end cut out. May 5 warrant you what? 6 A. Updating -- making updates in the future. 7 HEARING OFFICER ORTH: All right. Thank you. 8 Q. (BY MR. JANOE) Did you prepare a copy of your 9 resume for this proceeding as Oxy USA Exhibit 3? 10 A. Yes. 11 Q. Did you prepare an example work order for this 12 proceeding as Oxy USA Exhibit 4? 13 A. Yes. 14 Q. And do you adopt the entirety of all of these 15 exhibits? 16 A. Yes. 17 Q. Mr. Holderman, where do you work? 18 A. Oxy USA, Inc. 19 Q. How long have you worked there? 20 A. Approximately seven years. 21 Q. How long have you worked in the oil and gas 22 industry? 23 A. I have 17 years of experience in the industry; 24 six of which have been in New Mexico. 25 Q. What do you do for Oxy?	1194 1 Q. (BY MR. JANOE) Mr. Holderman, will you please 2 summarize your testimony on Sections 111 and the 3 definition of well site in Section 7 for the Board? 4 A. Yes. Oxy USA appreciates the opportunity to -- 5 Q. Go a little slower, Mr. Holderman. 6 A. Oxy USA appreciates the opportunity to 7 participate in this hearing and provide practical input on 8 the proposed rule package based on Oxy USA's experience 9 operating in the state. 10 Through coordination and open dialogue with the 11 Department and other stakeholders throughout this process, 12 including EDF and other NGOs, many of Oxy USA's initial 13 concerns have been resolved. However, there are still 14 elements of the rule that Oxy USA believes need to be 15 clarified or otherwise addressed. I will discuss both Oxy 16 USA's initial concerns, and how those concerns have been 17 addressed or remain at issue. 18 The core of the Department's proposed rule is a 19 series of technology-based standards, imposing 20 requirements for retrofitting older equipment and 21 installing new equipment by certain established time 22 frames, based on the equipment's potential to emit, or 23 PTE. 24 Oxy USA supports additional retrofit and 25 installation requirements to further reduce emissions, but

1195 1 proposes that operators have the option to determine 2 applicability based on actual emissions as an alternative 3 to relying solely on potential to emit. Determining 4 applicability based on actual emissions would allow 5 operators to more accurately target higher emitting 6 equipment for purposes of bringing it into compliance with 7 the rule. 8 Oxy understands from the Department's rebuttal 9 testimony, that the Department believes that actual 10 emissions are not acceptable, as they may not be 11 representative of future operations. However, Oxy does 12 not propose to make actual emissions the sole measure. 13 Rather, Oxy believes it is appropriate for operators to 14 evaluate either PTE or actual emissions to determine the 15 more accurate measurement as applied to their operations. 16 Additionally, as originally drafted, the proposed 17 rule requires operators to calculate potential to emit for 18 each emission source and to have those calculations 19 certified by a qualified professional engineer. While 20 certification of potential to emit calculations is a 21 reasonable requirement to confirm validity, requiring that 22 a qualified professional engineer make that certification 23 creates a significant burden in terms of time required for 24 a professional engineer to complete and certify the 25 calculations for each emission source.	1197 1 allow for consideration of actual emissions as an 2 alternative to potential to emit. Oxy USA has also 3 proposed definitions for satellite facilities and inactive 4 wellhead sites, along with edits to the definition of 5 wellhead site. 6 Oxy believes these edits are necessary to exclude 7 certain low-emitting sites from the LDAR inspection 8 requirements discussed in more detail in Section 116. Oxy 9 USA has, accordingly, proposed definitions for satellite 10 facilities, and temporarily -- temporarily abandoned 11 wellhead sites, along with an updated definition of 12 wellhead site in Section 7, that excludes injection 13 wellhead sites and wellhead only sites. 14 In addition, Oxy appreciates and supports EDF, 15 Clean Air Advocates and NAVA's proposed edits submitted on 16 September 19th, which are in line with the proposal in our 17 rebuttal testimony. 18 MR. JANOE: At this time, Madam Hearing Officer, 19 we present Mr. Holderman for cross-examination. 20 MADAM HEARING OFFICER: Thank you very much, 21 Mr. Janoe and Mr. Holderman. Let me pause for a moment, 22 in the event any counsel or party representative wants to 23 turn on their screen and pose questions to Mr. Holderman. 24 I'm not seeing any action here, Mr. Holderman. 25 MR. HOLDERMAN: Okay.
1196 1 Oxy USA estimates the professional engineers 2 would be required to conduct 6,780 hours of work for 3 approximately three-and-a-quarter years of eight hours 4 work days, at a total cost of approximately \$800,000 to 5 complete this requirement for Oxy USA's approximately 645 6 facilities and 2,745 wells for which a potential-to-emit 7 calculation would be required. 8 Allowing operators to determine applicability 9 based on actual emissions as certified by an in-house 10 engineer would significantly lighten that burden without 11 sacrificing calculation quality. Allowing certification 12 would also make the proposed rule more internally 13 consistent. In section 115 B (6)(c) the proposed rule 14 explicitly allows certifications to be made by qualified 15 professional engineer or an in-house engineer with 16 relevant expertise. Therefore, Oxy suggests modifying 17 proposed Section 111, to allow certification calculations 18 by a qualified in-house engineer. 19 After the submittal of my direct and rebuttal 20 testimony, the Department proposed revisions to section 11 21 in the rule version filed on September 16th. These edits 22 allow an in-house engineer with appropriate expertise to 23 make this certification. Oxy appreciates the Department's 24 consideration of the issue and supports this change. 25 However, Oxy continues to believe that the rule should	1198 1 HEARING OFFICER ORTH: Oh, wait. Oh, no, that 2 was the Chair. 3 MR. HISER: This is Mr. Hiser for NMOGA. We're 4 just looking at the definitions that are presently in this 5 topic; is that correct, and not some of the other issues 6 that were just briefly touched on by Mr. Holderman? 7 HEARING OFFICER ORTH: That's my understanding. 8 We are on Topic 22. Ms. Katz, do you have a 9 clarification? 10 MS. KATZ: Yes. I mean I'm having a bit of 11 trouble, too, because I think -- I was trying to find 12 where in this particular section some of the things that 13 Mr. Holderman was talking about. And I believe they're 14 related in other sections of the rule, so other topics 15 then of the hearing, so... 16 MR. JANOE: Madam Hearing Officer, if I may? 17 We made the reference in Section 116 exclusively for this 18 reason: The definition changes we proposed to well site 19 play out in Section 116 and would be more properly 20 addressed there. I think that's the point that both 21 Ms. Katz and Mr. Hiser are probably alluding to. We just 22 wanted to make sure that, you know, upfront, we were hard 23 wiring that for everyone. And we can all live to fight 24 another day on Section 116, but we wanted to make sure we 25 understand that there are, in fact, cross-references here

1199 1 that are going to matter as the Board is evaluating what 2 to do with these rules. 3 HEARING OFFICER ORTH: Thank you very much for 4 that. With that understanding, let me ask if any counsel 5 or party representatives have questions for Mr. Holderman. 6 No? All right. I'll turn to the Board for 7 questions. And if you are an attendee on this platform 8 and you would have a question, please reach out through 9 Chat. 10 EXAMINATION BY THE BOARD OF DANNY HOLDERMAN 11 HEARING OFFICER ORTH: Madam Chair, do you have 12 any question? 13 CHAIRPERSON SUINA: Thank you, Madam Hearing 14 Officer. I don't have any questions at this time. 15 HEARING OFFICER: Thank you. Vice-Chair 16 Trujillo-Davis? 17 VICE-CHAIR TRUJILLO-DAVIS: Yes, I have only one 18 question, but now that the 116 argument is coming in, I'm 19 not sure if this is the appropriate time. So we can hold 20 off if it's not the right time, but I was just wondering 21 if Mr. Holderman could explain the difference between 22 actual emissions versus PTE and his suggestion on that. 23 I'd just like some clarification on -- on that suggestion. 24 MR. HOLDERMAN: So I -- there's, I guess, a 25 number of -- or number of examples to make, so I'll try to	1201 1 not saying we wouldn't do it, but there is no reward or no 2 ability to not incur the cost of compliance without fully 3 removing the tanks in that instance. 4 VICE-CHAIR TRUJILLO-DAVIS: Okay. So if I'm 5 understanding correctly, there's no off-ramp to refile or 6 to adjust for changing field conditions? 7 MR. HOLDERMAN: Correct. 8 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for 9 clarifying that. And I'm sure, I think we'll probably 10 discuss that more in 116. 11 HEARING OFFICER ORTH: Probably. Thank you. 12 Member Cates? He may have stepped away. Member 13 Bitzer? I know was struggling to stay connected with us. 14 Member Duval? 15 BOARD MEMBER DUVAL: No questions. Thank you, 16 Madam Hearing Officer. 17 HEARING OFFICER ORTH: Thank you. Member Garcia? 18 She's saying no. Member Honker? 19 BOARD MEMBER HONKER: No questions. Thank you. 20 HEARING OFFICER ORTH: All right. Thank you all 21 very much. Thank you, Mr. Janoe. And -- oh, there's 22 Member Bitzer. 23 BOARD MEMBER BITZER: No questions. 24 HEARING OFFICER ORTH: Thank you. So thank you, 25 Mr. Janoe and Mr. Holderman for making your screen work
1200 1 make one and then can expand from there. As it states, 2 when we submit in our permit, a throughput for the 3 facility we then have the flow rates that were used -- 4 that we used to then assess potential to emit from the 5 facility. 6 Essentially, from that point on, there are two 7 ways for us to reduce emissions or try to comply with the 8 rule. The first is to make sure that we are doing the 9 inspections and keeping our equipment in compliance and 10 limiting leaks, et cetera. The other option is for us to 11 modify the facility to limit the throughput and eliminate 12 the option to emit in the beginning. 13 The current rule doesn't allow us to lower our 14 potential to emit if we lower -- change the process and 15 lower the throughput through the facility, to then allow 16 us to not have to capture the cost of surveillance, even 17 though we no longer are required to do it. So I guess an 18 extreme example of that would be if I took a facility that 19 had a large tank battery and I decided to bypass those 20 tanks as a primary means, and I only used the tanks in an 21 upset condition for when I didn't have take-away. 22 In that particular instance, the tanks would be 23 empty 95, 98 percent of the time and we would be out there 24 monthly taking surveys of empty tanks based on only using 25 it for potential to emit. So there's no -- I guess, I'm	1202 1 with challenging circumstances. 2 Do I understand now that we'll be moving to 3 Kinder Morgan's witness, Witness Nolting? 4 MS. KATZ: I believe that is correct. 5 HEARING OFFICER ORTH: Oh, good. I see 6 Ms. Gutierrez. And I believe I made Witness Nolting a 7 panelist. There she is. Witness Nolting, if you would 8 raise your right hand. Do you swear or affirm to tell the 9 truth? 10 MS. NOLTING: I do. 11 HEARING OFFICER ORTH: Okay. And if you would 12 spell your name, please? 13 MS. NOLTING: First name is Leslie, L-E-S-L-I-E; 14 last name Nolting, N-O-L-T-I-N-G. 15 HEARING OFFICER ORTH: All right. Thank you very 16 much. Whenever -- oh, and will you need screen sharing? 17 MS. GUTIERREZ: Yes. If you could give me screen 18 sharing permission, that would be great. 19 HEARING OFFICER ORTH: To you, Ms. Gutierrez? 20 MS. GUTIERREZ: That's correct, yes. And while 21 you're doing that, may I start with a housekeeping item? 22 Because this is Kinder Morgan's first substantive 23 presentation and having no motions objecting to our 24 exhibits, I'd like to move to admit into the record all of 25 Kinder Morgan's Exhibits 1 through 18, including

1203 1 Attachments A through BB, as in Bravo, Bravo. 2 HEARING OFFICER ORTH: Let me pause for a moment. 3 It's my understanding as well that Kinder Morgan's 4 exhibits did not draw objections, but let me pause for a 5 moment. 6 Okay. Your exhibits are admitted. Thank you. 7 (Kinder Morgan's Exhibits 1-18 and Attachments 8 A-BB received into evidence at this time.) 9 MS. GUTIERREZ: Thank you, Madam Hearing Officer. 10 Good afternoon, Madam Chair and members of the 11 Board. For the benefit of Board members and other 12 parties, this testimony will relate to Kinder Morgan's 13 Rebuttal testimony Exhibit 11 and additionally, 14 Ms. Nolting's resume and qualifications are provided at 15 Exhibit 1 to Kinder Morgan's direct testimony. 16 Thank you. Okay. 17 LESLIE NOLTING, 18 having been first duly sworn or affirmed, was examined 19 and testified as follows: 20 DIRECT EXAMINATION OF LESLIE NOLTING 21 (Topic 22) 22 BY MS. GUTIERREZ: 23 Q. Okay. Ms. Nolting, where are you employed and 24 what is your current position? 25 A. I'm employed by Kinder Morgan, Inc., where I have	1205 1 Q. Do you have any changes to that testimony? And 2 if not, do you accept -- do you adopt your written 3 testimony here today? 4 A. I have no changes to my testimony, and, yes, I 5 adopt my written testimony in full. 6 Q. Thank you, Ms. Nolting. 7 Could you please summarize for the Board your 8 testimony regarding definitions, as those might impact 9 Kinder Morgan's transmission compressor stations? 10 A. Yes, I'm happy to do that. 11 Good afternoon, Madam Hearing Officer, Madam 12 Chair and Board members. I will be speaking with you 13 several times throughout the course of this hearing. This 14 presentation today will address three definitions, and in 15 particular those that are listed on this slide. And these 16 are similar to some of the conversations that were 17 addressed by Mr. Smitherman for NMOGA. 18 For context, NMED has made some important changes 19 to these definitions since the July draft; specifically, 20 we requested revisions to the definition of gathering and 21 boosting station, the addition of a separate definition 22 for transmission compressor station, and deletion of the 23 defined term natural gas compressor station. 24 The NMED has incorporated these changes as of the 25 September 16th draft rule. We support these changes and
1204 1 been an EHS specialist and now EHS manager focusing on air 2 permitting and compliance. 3 Q. Thank you. And can you describe what you do in 4 your role as EHS specialist and EHS manager? 5 A. Yes. I currently assist a team of scientists and 6 engineers in maintaining air quality compliance for Kinder 7 Morgan's natural gas transmission network. In this role I 8 also review capital projects in states across the country 9 for air permitting costs and control technology 10 requirements. I have participated in PSD, minor NSR, 11 Title V and other permitting in New Mexico and other 12 states. 13 I also prepare annual emission inventories for 14 facilities in multiple states, and I regularly participate 15 in state rulemakings regarding the proposed air 16 regulations, including those in Colorado. 17 Q. Thank you, Ms. Nolting. And how long have you 18 been in your current position? 19 A. I've been in this position since 2008. 20 Q. And did you submit written, rebuttal technical 21 testimony on definitions at Exhibit 11, in particular 22 regarding definitions of gathering and boosting stations, 23 natural gas compressor -- compressor stations and 24 transmission compressor stations? 25 A. Yes, I did.	1206 1 thank NMED for making them and ask the Board to adopt 2 them. 3 Before I go into these definitions, this is a 4 diagram that you've seen before and is kind of similar to 5 the diagram Mr. Smitherman presented. Just a little bit 6 of background on why it's important to distinguish the 7 transmission storage segment from gathering and boosting. 8 These are wholly different operations that occur 9 at different points along the natural gas supply chain. 10 The gathering and boosting compressor station is 11 highlighted here in yellow. This type of boosting station 12 is located before the natural gas processing plant, which 13 means it was unprocessed natural gas from the well sites. 14 This type of gas has higher VOC content than the 15 transmission segment. The transmission compressor 16 station, in contrast, is located after the natural gas 17 processing plant, which means it moves pipeline quality 18 gas, with very low VOC content; typically, less than 1 19 percent VOC by weight. 20 NMED and ERG's testimony acknowledges many of the 21 differences between the transmission and storage segment. 22 And based on these differences, NMED has rightly 23 determined different treatment that -- of these facilities 24 appropriate. 25 I'd like to next take a close look at the

1207 1 proposed definitions as of September 16. The revised 2 definitions properly distinguish gathering and boosting 3 from transmission, and remove the unnecessary defined 4 term, natural gas compressor station. 5 Here is NMED's current proposed definition of 6 gathering and boosting; we support this definition. The 7 key to this definition is that it rightly draws a bright 8 line to only include those compressor stations prior to 9 the inlet of the natural gas processing plant. 10 Next is the definition of transmission compressor 11 station. We agree that having a definition of 12 transmission compressor station that is separate from 13 gathering and boosting, and we thank the NMED for adding 14 this definition. 15 In our rebuttal testimony, we proposed clarifying 16 changes to this definition, and NMED has largely 17 implemented those proposed revisions. I will summarize 18 those edits in the next few slides to explain why the 19 changes -- changes are important. We thank the NMED for 20 including the changes and support the current definition 21 as set out in the September 16th draft. 22 Finally, let's take a look at NMED's earlier 23 proposed definition of natural gas compressor station. As 24 you'll see, with the breadth of this definition, it would 25 capture both gathering and boosting, and expressly	1209 1 correction in the engines and turbine section, as an 2 example. We thank NMED for making this change to the 3 proposed rules. 4 The second example is in reference to Section 122 5 regarding pneumatics. In this section, Table 1 offers a 6 schedule for compliance with the rule section applicable 7 to well site, tank batteries, and gathering and boosting 8 sites. Table 2 then sets forth a different compliance 9 schedule, which is -- which used to be applicable to 10 natural gas processing plants and natural gas compressor 11 stations. 12 As shown on this slide, NMED has now revised 13 Table 2 to refer to transmission compressor stations 14 instead of natural gas compressor stations. This remedies 15 the earlier confusion that that term would have created, 16 and would have made gathering and boosting stations 17 inadvertently subject to both Table 1 and Table 2. 18 There were other examples in the proposed rules, 19 where the use of the term natural gas compressor station 20 would have created confusion. NMED's recent revisions to 21 the definitions and use of those definitions throughout 22 the proposed rules resolve this confusion and results in a 23 much clearer rule for operators and the Department alike. 24 Again, we thank NMED for these improvements to the 25 proposed rules and their responsiveness to stakeholder
1208 1 included transmission compressor stations. So this 2 definition overlaps with the other two, which are more 3 refined definitions, so NMED rightly deleted this 4 definition from the September 16 draft. 5 On this slide there are a couple of sections 6 where -- key places where the terms natural gas compressor 7 station would be either imprecise or create significant 8 compliance concerns. Examples illustrate the need to 9 adopt NMED's recent deletion of this term throughout the 10 proposed rules. 11 The first point is that in each applicability 12 section, earlier drafts referenced both gathering and 13 boosting stations and natural gas compressor stations, 14 without a specification reference to transmission 15 compressor stations. As noted in the prior slide, the 16 earlier definition of natural gas compressor stations 17 covered both the gathering and boosting and the 18 transmission stations. And if gathering and boosting 19 stations are already expressly listed, the use of the term 20 natural gas compressor station would not make sense. 21 Where the intent is to apply a certain rule 22 section to a transmission compressor station, the term 23 transmission compressor station should be used, and the 24 term natural gas compressor station should be deleted. 25 This slide shows where the NMED made this type of	1210 1 input. 2 With respect to the definition of transmission 3 compressor station, again, we agree with the separate 4 definition. In rebuttal testimony, we rec -- we 5 recommended a few changes to NMED's proposed definition, 6 which NMED since implemented. We support the definition 7 as revised and just wanted to take one or two minutes to 8 explain why the changes are warranted. 9 First, the reference to pipeline quality natural 10 gas is important because it is one of the key 11 differentiating differences -- features between gathering 12 and boosting and transmission. Second, the reference to 13 natural gas processing plants, rather than facilities, is 14 consistent with the defined term in the proposed rules. 15 Third, the reference to transmission through a 16 pipeline, rather than in a pipeline, is a more accurate 17 description of transmission operations. Fourth, there are 18 several different potential delivery endpoints for natural 19 gas after it travels through the transmission system. The 20 transmission segment delivers to the local distribution 21 company custody transfer station, which is an NMED defined 22 term. It also may deliver into underground storage or to 23 other industrial users. It is important to be clear about 24 these potential points of delivery. 25 In closing, we ask the Board to adopt the

1211 1 following changes reflected in NMED's September 16th 2 draft, to remove the definition of natural gas compressor 3 station, to replace natural gas compressor station with 4 transmission compressor station in the relevant 5 applicability sections, and to accept the refined 6 definition of transmission compressor station. As an 7 important point, these changes will not substantively 8 revise the scope of the rule, but are extremely important 9 for clarity during implementation. 10 To the extent that there are any outstanding 11 issues following the parties' summary of their technical 12 testimony, we may offer surrebuttal. Thank you for your 13 time and I'm happy to answer any questions. 14 HEARING OFFICER ORTH: Thank you, Ms. Gutierrez 15 and Ms. Nolting. We may pause for a moment to allow other 16 parties, counsel or party representatives to show their 17 screen to indicate their questions of you. 18 No? All right. I'll turn to the Board then in 19 the event they have questions. While I'm doing that, if 20 you're on the platform as an attendee, reach out through 21 the Chat if you have a question. 22 EXAMINATION BY THE BOARD OF LESLIE NOLTING 23 HEARING OFFICER ORTH: Madam Chair? 24 CHAIRPERSON SUINA: Thank you, Madam Hearing 25 Officer. No, I don't have any questions. And again, want	1213 1 BOARD MEMBER DUVAL: Madam Hearing Officer, 2 Member Trujillo-Davis asked the question I was going to 3 ask, so -- so no questions. I'll wait for follow-up on 4 that. 5 HEARING OFFICER ORTH: Thank you. Member Garcia? 6 BOARD MEMBER GARCIA: No questions. Thank you. 7 HEARING OFFICER ORTH: All right. And Member 8 Honker? 9 BOARD MEMBER HONKER: I have no questions. 10 Thanks. 11 HEARING OFFICER ORTH: Member Vice-Chair 12 Trujillo-Davis, have you any -- any further questions? 13 VICE-CHAIR TRUJILLO-DAVIS: No, not at this time. 14 Thank you. 15 HEARING OFFICER ORTH: All right. Thank you. 16 And Ms. Gutierrez, any follow-up? 17 MS. GUTIERREZ: I may ask just one more question 18 just to clarify a response to Ms. Trujillo-Davis's 19 question. Sorry. Member Trujillo-Davis. 20 REDIRECT EXAMINATION OF LESLIE NOLTING 21 BY MS. GUTIERREZ: 22 Q. So Ms. Nolting, would you agree that our primary 23 concern is that if we are defined the same as a gathering 24 and boosting station, we would have control obligations 25 associated with operations in the transmission segment
1212 1 to thank Kinder Morgan and their legal counsel for working 2 with NMED on the detail language. Appreciate that. 3 HEARING OFFICER ORTH: Thank you. Vice-Chair 4 Trujillo-Davis? 5 VICE-CHAIR TRUJILLO-DAVIS: Yes. Thank you. I 6 just have one quick question. Is your major concern that 7 transmission will get lumped in with gathering and 8 boosting, which is a little further upstream? 9 MS. NOLTING: Yeah, I would say that is our 10 concern. There are certain -- and this is a rule to 11 reduce VOC emissions and there are certain activities that 12 are control requirements that just don't make sense for 13 the transmission segment because you just don't get a lot 14 of VOC reduction. 15 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for 16 that. I may have a few more after everybody else, but 17 thank you for answering that 18 HEARING OFFICER ORTH: All right. Thank you. 19 Member Cates? 20 BOARD MEMBER CATES: Glad you worked out those 21 differences, and no questions here. Thank you. 22 HEARING OFFICER ORTH: Thank you. Member Bitzer? 23 BOARD MEMBER BITZER: Madam Hearing Officer, I 24 have no questions. Thank you. 25 HEARING OFFICER ORTH: Thank you. Member Duval?	1214 1 that would not be appropriate because our operations are 2 different and because Kinder Morgan transports a different 3 product? 4 A. That's correct, yes. 5 MS. GUTIERREZ: Thank you. I think that's all of 6 my follow-up questions. 7 HEARING OFFICER ORTH: All right. Thank you very 8 much, Ms. Nolting and Ms. Gutierrez. 9 We are at 4:41 at this point. We do have just a 10 few public commenters at 5. Is there any reason not to 11 take a break until 5? Ms. Katz? 12 MS. KATZ: Madam Hearing Officer, we could. I 13 believe we still have EDF's -- we have a rebuttal witness 14 from EDF on here. 15 HEARING OFFICER ORTH: I'm not -- yeah, I'm not 16 suggesting that we won't finish the topic or go to -- go 17 to the EDF, I was just thinking it would be good to take a 18 break before five. 19 MS. KATZ: Yes, that's fine with me. Thanks. 20 HEARING OFFICER ORTH: All right. Thank you. So 21 let's come back at 5. Thank you. 22 (Recess taken from 4:41 p.m. to 5:00 p.m.) 23 HEARING OFFICER ORTH: Let's come back from the 24 break, please. My name is Felicia Orth, the Hearing 25 Officer designated by the Board to conduct a hearing in

1215 1 EIB 21-27. We've reached the 5 p.m. public comment 2 session. We have public comment sessions every day at 9, 3 1 and 5. I have two folks who reached out to the Board 4 Administrator, Pam Jones, to offer public comment at 5 5 before we return to the technical case. Dr. Kathy Mezoﬀ. 6 And by the way, if I'm mispronouncing your name, I 7 apologize in advance. And Matthew Allen. 8 So let me see if I can find Dr. Mezoﬀ. I don't 9 see Dr. Mezoﬀ by name. I do see a couple of call-in 10 users. So let me unmute call-in user 15. If this is you, 11 Dr. Mezoﬀ, please speak up. Hello? Who is this? 12 I don't think that was the right -- that was the 13 right number. Now we have call-in user number 16. I'll 14 unmute call-in user number 16. Who is this, please? 15 No? All right. As with all of our sessions, in 16 the event you're unable to make the time you had 17 requested, I'm happy to accept your comment at another 18 time. Also, if you're on the platform, regardless of 19 whether you reached out with an email, please reach out 20 through the Chat if you'd like to offer your comment now 21 and haven't previously made a comment. 22 Let me look for Matthew Allen. I don't see 23 Mr. Allen either. Okay. I think then -- and I don't see 24 anyone requesting comments in the Chat. Let's see. Kathy 25 had tried to call in, cannot get in by phone. Can it --	1217 1 Okay. All right. Oh, now I have a caller 19. 2 Dr. Mezoﬀ, is this you? 3 DR. MEZOﬀ: Yes, it is. 4 HEARING OFFICER ORTH: Great. We have a winner. 5 Dr. Mezoﬀ, this is the public comment session at 5 p.m. 6 DR. MEZOﬀ: Okay. 7 HEARING OFFICER ORTH: Public comment is taken 8 under oath. It's limited to five minutes and is taken 9 with audio, rather than video. Would you raise your right 10 hand, please. Do you swear or affirm to tell the truth? 11 DR. MEZOﬀ: Yes, I do. 12 HEARING OFFICER ORTH: Thank you. I'm going to 13 start your five minutes now. 14 KATHLEEN MEZOﬀ, M.D., 15 having been first duly sworn or affirmed, 16 gave public comment as follows: 17 PUBLIC COMMENT OF KATHLEEN MEZOﬀ, M.D. 18 DR. MEZOﬀ: Thank you. Dear members of the 19 Environmental Improvement Board. I am Dr. Kathy Mezoﬀ, a 20 retired pediatrician, who practiced in Gallup -- 21 (unintelligible). 22 HEARING OFFICER ORTH: Hold on. I'm sorry. I'll 23 start your time again. Your voice got muddy and we're 24 making a transcript so it's important that we hear you. 25 COURT REPORTER: And I need her spelling, please,
1216 1 okay. She says the access code is wrong. Let me see if I 2 can find an access code. I see 25932098894. Oh, the 3 dial-in number for the United States, it says 4 1-650-479-3208. Let me see here. And the access code is 5 25932098894. Oh, I was speaking too fast. Excuse me 6 while I do this again. The number is (650)479-3208. And 7 the access code is 25932098894. So let's wait just a 8 moment to see if we can get Dr. Mezoﬀ on the line. 9 I'll look again for Mr. Allen. By the way, I did 10 have a request from Mr. Larry Sontag that the attendees be 11 allowed to see other attendees. And I have zero objection 12 to attendees being allowed to see other attendees. 13 Obviously, if we were in an auditorium together somewhere, 14 you could look around and see who was in the room. I will 15 say, though, I looked to see if I could do it, the option 16 for allowing attendees to see other attendees is grayed 17 out and I don't -- I don't have that option, so I'm sorry 18 if that's a frustration for folks. 19 This is a Cisco event rather than a Cisco 20 meeting, and so that might have something to do with that 21 setting. I'm not sure. In any event, I'm sorry about 22 that. 23 Let's see. I don't see -- I'll unmute this 24 caller. Caller 16, who is this? Nope. I'll unmute 25 caller 15 one more time. Caller 15, who is this? Hello.	1218 1 of her name also. Thank you. 2 HEARING OFFICER ORTH: Yes. I'm sorry, I forgot 3 to ask you that. Dr. Mezoﬀ, would you spell your name, 4 please? 5 DR. MEZOﬀ: Yes, it's Kathleen, K-A-T-H-L-E-E-N, 6 Mezoﬀ, M-E-Z-O-F-F. 7 HEARING OFFICER ORTH: So, Dr. Mezoﬀ, I'm not 8 sure what's happening. When you first start to speak, 9 it's loud and clear and then it becomes muddy and low. 10 DR. MEZOﬀ: Okay. I will try to speak up. 11 HEARING OFFICER ORTH: All right. Thank you. 12 DR. MEZOﬀ: If it doesn't -- I'm on my cell 13 phone, I can go to my land line if there's still any 14 trouble. 15 HEARING OFFICER ORTH: Okay. I'll start your 16 time. 17 DR. MEZOﬀ: Members of the Environment -- hello? 18 HEARING OFFICER ORTH: Yes. I'm sorry. Please 19 start again. 20 DR. MEZOﬀ: Members of the Environmental 21 Improvement Board: I am Dr. Kathy Mezoﬀ, a retired 22 pediatrician who practiced in Gallup at Rehoboth McKinley 23 Christian Hospital for 34 years. You have the right to 24 suspect that as a pediatrician, I have a very special 25 place in my heart for babies and children. New Mexico is

1219 1 home to some of the worst methane and ozone precursor 2 pollution in the country. We know that babies and 3 children with their small lungs and developing brains are 4 at great risk from the pollutants and toxins from oil and 5 gas operations. 6 It is, therefore, imperative from a public health 7 perspective that we stop the 1 million tons of climate 8 warming methane and the hundreds of thousands of tons of 9 volatile organic compounds that endanger the health, 10 especially of those in the rural areas of Southeast and 11 Northwest New Mexico: cancers, asthma and heart disease 12 to name a few. 13 Leaks due to equipment malfunction and lack of 14 maintenance account for over half of the oil and gas 15 industry's methane emissions in the state. In addition to 16 the health and quality of life concerns in Eddy, Lea and 17 San Juan Counties, methane accelerated climate change, 18 which will especially affect the futures of our children 19 as it worsens and accelerates. 20 Our weather is already causing frequent 21 catastrophes across the world, as you know. Most occur 22 because of methane waste and pollution. Through updated 23 equipment and technology it can actually create jobs in 24 the methane mitigation industry, as well as saving our 25 state millions of dollars.	1221 1 ELIZABETH BISBEY-KUEHN, 2 having been previously duly sworn or affirmed, was 3 examined and testified as follows: 4 REBUTTAL DIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 5 BY MS. KATZ: 6 Q. So Ms. Kuehn, regarding Mr. Holderman's 7 discussion of Oxy's proposal to use actual emissions for 8 determining applicability, does the Department believe 9 that actual emissions are appropriate for determining 10 applicability under this rule, and is that an approach 11 that is used in federal regulatory applicability? 12 A. The Department does not agree with that proposal 13 or find that it is appropriate. The use of potential to 14 emit to determine applicability of air quality regulations 15 and permitting requirements is a common and longstanding 16 practice utilized by state and federal air quality 17 regulatory agencies. 18 The use of actual emissions to determine 19 applicability is not acceptable, as that calculation is 20 based on previous year's records of operation of the 21 source, which may not be representative of a source's 22 future operations or emissions. Because actual emissions 23 can change year to year depending on numerous factors, 24 including economics, regulatory requirements, political 25 decisions, consumer demand and market conditions, that
1220 1 Please, let's get this done for the sake of our 2 children, society and our world. Dr. Kathleen Mezoff, 3 Gallup, New Mexico. 4 HEARING OFFICER ORTH: All right. Thank you very 5 much, Dr. Mezoff. And thank you for persisting with us. 6 DR. MEZOFF: Okay. I hope it all came through. 7 Thank you. 8 HEARING OFFICER ORTH: Thank you. All right. 9 Let me look one more time for Matthew Allen. I'm not 10 seeing Matthew Allen. All right. In the event Mr. Allen 11 joins us on the platform later, I'd be happy to accept his 12 comment at another session. 13 So let's return to the technical case. And as I 14 understand the spreadsheet, Ms. Katz, we are still on 15 Topic 22. We go back to Ms. Kuehn; you said not 16 Mr. Palmer. Ms. Paranhos, although I see witness Lyon, 17 Ms. Paranhos messaged that, in fact, she did not have a 18 surrebuttal witness on this topic. 19 MS. KATZ: Yes. Okay. That's what I understood 20 as well. So the Department calls back Ms. Kuehn. 21 HEARING OFFICER ORTH: All right. Will there be 22 slides? 23 MS. KATZ: No, there will not. There's just a 24 few questions here. 25 HEARING OFFICER ORTH: All right. Thank you.	1222 1 measure cannot be considered reliable or representative 2 emissions rate with respect to determining applicability 3 under this Part. 4 Potential to emit, on the other hand, is a 5 source's maximum capacity to emit an air pollutant under 6 its physical and operational design and is a much more 7 accurate and reliable estimations of the source's 8 emissions. 9 Q. Thank you, Ms. Kuehn. 10 And so Mr. Holderman claimed that there was a way 11 to limit PTEs. And is there -- are there ways for a 12 source to limit PTE? 13 A. Yes. There are many opportunities for a source 14 to limit the potential to emit. And the regulatory 15 mechanism to do so is to obtain a federally enforceable 16 air permit that's issued by the Department that limits 17 either a facility or source's potential to emit. 18 That PTE then can be used to determine 19 applicability under this Part, and in addition, every 20 section of this Part contains both an applicability 21 on-ramp and applicability off-ramp. So it is not just 22 limited to that specific allowance to obtain an air permit 23 to limit the source's emissions. 24 Q. So there are -- there are PTE thresholds 25 specified throughout the various sections of the rule,

1223 1 that if a source is below that, then that -- 2 (unintelligible) applies to them, correct? 3 HEARING OFFICER ORTH: Ms. Katz, you broke up 4 there right at the end. 5 MS. KATZ: Okay. Sorry. Yeah, I stopped talking 6 and everybody acted like they didn't hear me. 7 Q. (BY MS. KATZ) So I was just saying that there's 8 PTE thresholds provided throughout the various sections of 9 the rule, and if a source is below that threshold, then 10 that section would not apply to that source; is that 11 correct? 12 A. That's correct. 13 MS. KATZ: Okay. Thank you. That's all I have. 14 HEARING OFFICER ORTH: Thank you. Thank you, 15 Ms. Katz and Ms. Kuehn. Let me pause a moment in the 16 event another party would like to present themselves on 17 screen to question Ms. Kuehn on this point. 18 I'm not seeing any new screens, Ms. Katz. I'm 19 going to turn to the Board for their questions. In the 20 event you're on the platform and you would have a question 21 and you are an attendee, please reach out through the Chat 22 while I am running through the list of Board members. 23 EXAMINATION BY THE BOARD OF ELIZABETH BISBEY-KUEHN 24 HEARING OFFICER ORTH: Madam Chair, do you have 25 questions of Ms. Kuehn?	1225 1 or term used in federal and state regulations. So are you 2 saying this is something that the industry should be 3 already used to this term, and understand how it works and 4 how it would fit into their processes? 5 MS. BISBEY-KUEHN: That's correct. 6 BOARD MEMBER GARCIA: Okay. That's all. Thank 7 you. 8 HEARING OFFICER ORTH: Thank you. Member Honker? 9 I believe you're saying no questions. All right. 10 Thank you. 11 We have come to the end of this testimony then. 12 Thank you, Ms. Kuehn and Ms. Katz. 13 Do I understand that from here, we go back to 14 Mr. Smitherman -- or let's see -- Witnesses Smitherman, 15 Davis and Nolting or? 16 MS. KATZ: Maybe. Did we get off, then? That 17 means that -- because then we were -- what we just did was 18 probably what we were supposed to do on the other end of 19 this. So -- so, yes, I guess we have to go through the 20 list again, I guess. 21 HEARING OFFICER ORTH: All right. 22 MS. GUTIERREZ: This is Ana Gutierrez. I can say 23 that on behalf of Kinder Morgan we don't have surrebuttal 24 or additional testimony on this topic. 25 HEARING OFFICER ORTH: Thank you very much.
1224 1 CHAIRPERSON SUINA: Yes. Thank you, Madam 2 Hearing Officer. It's been a long day and a lot of little 3 glitches. I just want to make sure I'm clear. So from 4 your testimony and the follow-up, there -- there, in fact, 5 is an off-ramp for -- to -- to adjust for PTEs and for, as 6 Mr. Holderman's example that he shared with us earlier -- 7 in fact there is an off-ramp? 8 MS. BISBEY-KUEHN: That's correct. 9 CHAIRPERSON SUINA: Okay. Thank you for that 10 clarification. 11 HEARING OFFICER ORTH: Thank you. Vice-Chair 12 Trujillo-Davis? 13 VICE-CHAIR TRUJILLO-DAVIS: I don't have any 14 questions. Member Suina covered mine, so thank you. 15 HEARING OFFICER ORTH: Thank you. Member Cates? 16 I don't see Member Cates. Member Bitzer? 17 BOARD MEMBER BITZER: I don't have any questions, 18 Madam Hearing Officer. 19 HEARING OFFICER ORTH: Thank you. Member Duval? 20 BOARD MEMBER DUVAL: I have no questions. 21 Thanks. 22 HEARING OFFICER ORTH: Member Garcia? 23 BOARD MEMBER GARCIA: Yes. Thank you. I do have 24 a clarifying question, if I may. So, Ms. Kuehn, you 25 mentioned that PTE is a common and longstanding practice,	1226 1 Mr. Hiser? 2 MR. HISER: Madam Hearing Officer, I think we had 3 a very little bit of brief thing for Mr. Smitherman. Yes, 4 I think he's still with us. 5 MR. SMITHERMAN: We do have a little bit of 6 surrebuttal on this Topic 22. Could I have sharing 7 capabilities, please? 8 Okay. I think we're ready. 9 JOHN R. SMITHERMAN, 10 having been previously duly sworn or affirmed, was 11 examined and testified as follows: 12 SURREBUTTAL EXAMINATION OF JOHN R. SMITHERMAN 13 BY MR. HISER: 14 Q. Yes. I think in your prior testimony you had 15 briefly touched on stabilized and sort of hinted to the 16 Board that more would be coming. Would you like to 17 explain to the Board and the parties here the concern 18 around stabilized, as it relates to the definitions? 19 A. Certainly. Thank you. We suggested adding 20 "stabilized" as a -- as a defined topic or a defined term. 21 NMED first, basically, said that they don't agree with 22 that because it doesn't show up anywhere in the rule. And 23 actually the word stabilized or stabilizing shows up in 24 the definition of gathering and boosting stations. 25 And it -- it does have an impact when -- when --

1227 1 especially when a certain type of tank is used; either an 2 external or internal floating roof tank. And those are 3 different than your typical, normal storage vessel. 4 A normal storage vessel, you look at the outside 5 shell, it's fixed, the top is where the top is. Inside, 6 it's nothing but open, and so you could have liquids or 7 gases that go from the very top of the tank to the very 8 bottom of the tank. And so as fluids move in or out of 9 that tank, a normal storage tank, whatever is above the 10 liquid, we call that the head space. Whatever is above 11 that can be gas vapors and you may need to be able to 12 capture those gases if, for example, the liquid levels 13 rises, it tends to push those vapors out the top. And so 14 all -- you know, many of our -- many of the rule's 15 requirements are geared toward those type of tanks. 16 But you can also have floating roof tanks, and 17 here, in essence, there isn't a head space, there isn't a 18 gaseous area above the liquid that could contain vapors. 19 You've got basically a round floating roof that sits right 20 on top of the liquids and is sealed, and so you don't have 21 the same considerations and the same possibilities for 22 emissions on those type of tanks. So it's important to 23 understand that those do exist. 24 And that those -- go ahead. 25 Q. No, I thought you were finished. Go ahead.	1229 1 and boosting stations or transmission compressor stations, 2 so there's no exclusions for compressors that happen to be 3 at well sites. I just wanted to make that clear. 4 Q. Okay. And just trying to make sure we were 5 making clear that we're not trying to create any loopholes 6 in the rules by that prior statement? 7 A. Exactly. 8 Q. Okay. Thank you, Mr. Smitherman. 9 A. Thank you, sir. 10 Q. We appreciate that clarification. 11 MR. HISER: That's all from us on surrebuttal, 12 Madam Hearing Officer. 13 HEARING OFFICER ORTH: All right. Thank you very 14 much. Mr. Smitherman, thank you for making the screen 15 clear again. 16 Ms. Katz, I see you on screen. Do you have 17 questions of Mr. Smitherman? 18 MS. KATZ: No. No questions, Madam Hearing 19 Officer, just to say that that NMED accepts the definition 20 of "stabilized." And if we had been pointed to that 21 before, we would have been able to accept it prior to the 22 hearing, so thank you. 23 HEARING OFFICER ORTH: I'm sorry. Ms. Katz, very 24 sorry again. You cut out. Would you -- would you start 25 from the beginning again?
1228 1 A. No, I just choked a little bit there, so sorry 2 about that. It's late in the day. 3 Floating roof tanks are typically governed by 4 NSPS support K (b.) And so we would like to recognize 5 that, and in essence make sure that there's not any 6 conflict between this new Part 50 and those national 7 standards. 8 Q. And so when we had included -- NMOGA had talked 9 about this previously, this had been sort of what we had 10 been intending to get to, and then we have just not been 11 able -- we hadn't completed the connection in the other 12 section, and this is just explaining why that definition 13 was, and the rationale? 14 A. That's correct. It was a little bit of an 15 oversight on our part or maybe just incompleteness on our 16 part. 17 Q. Okay. Thank you. Did you have anything else? 18 A. I wanted to clarify something. In my rebuttal 19 testimony, I had stated that gas compressors at well sites 20 were not included in this Part, and that was -- I used -- 21 I probably overstated what I meant. 22 What I meant was, quite frankly, all gas 23 compressors, all engines and gas compressors are covered 24 by this Part if they meet the applicability standards. 25 Then they tend to end up in either well sites, gathering	1230 1 MS. KATZ: Sorry about that. NMED can accept the 2 proposed definition of "stabilized." And if we had known 3 that and we had been pointed to where that occurred and 4 what the rationale was, we would have accepted it prior to 5 the hearing. 6 HEARING OFFICER ORTH: Thank you for that. 7 Let me ask if there are any other counsel or 8 party representatives to have a question of 9 Mr. Smitherman, please turn on your screen. 10 No? I'll go to the Board then for their 11 questions. And while I'm doing that, if you are on the 12 platform as an attendee and would have a question, please 13 reach out through the Chat. 14 Madam Chair, any questions? 15 CHAIRPERSON SUINA: Thank you, Madam Hearing 16 Officer. I don't have any questions. Thank you. 17 HEARING OFFICER ORTH: Thank you. Vice-Chair 18 Trujillo-Davis? 19 VICE-CHAIR TRUJILLO-DAVIS: I don't have any 20 questions. Thank you. 21 HEARING OFFICER ORTH: Thank you. Member Cates? 22 I don't see. Member Bitzer? 23 BOARD MEMBER BITZER: No questions, Madam Hearing 24 Officer. Thank you. 25 HEARING OFFICER ORTH: Thank you. Member Duval?

1231 1 BOARD MEMBER DUVAL: No questions. 2 MADAM HEARING OFFICER: All right. Member 3 Garcia? 4 BOARD MEMBER GARCIA: No questions. Thank you. 5 HEARING OFFICER ORTH: No questions. And Member 6 Honker? 7 BOARD MEMBER HONKER: No questions. 8 HEARING OFFICER ORTH: All right. Thank you. 9 Thank you very much, Mr. Smitherman. 10 MR. SMITHERMAN: Thank you, ma'am. 11 HEARING OFFICER ORTH: All right. Do we go back 12 to -- oh, Ms. Gutierrez already said we do not go back to 13 Ms. Nolting. Does that mean we have wrapped up Topic 22? 14 Ms. Katz? Going once. Going twice. 15 MS. KATZ: It appears. I hope so. 16 HEARING OFFICER ORTH: All right. Terrific. So 17 we can talk about tomorrow. I suspect that it might be 18 too late to leap into another topic unless you think the 19 definition of construction -- no, we've got about a dozen 20 witnesses on that. What else, Ms. Katz? 21 MS. KATZ: So I first want to say that at the 22 rate we're going right now, we are not going to get 23 through this hearing in the time allotted, it seems. I'm 24 getting concerned about that. So -- so I guess, I mean, 25 so as far as tomorrow goes, you know, so we have to get	1233 1 Conservation Commission in January that we were not going 2 to be able to wrap up within two weeks. If we had the 3 hours most commonly associated with banking, for example. 4 And so we started at 8 every morning, and we can do that 5 so long as we announce it in time for folks to understand 6 that that's the new start time. 7 Mr. Hiser, I see you on screen. 8 MR. HISER: So Madam Hearing Officer, I tend to 9 agree with Ms. Katz that there is a certain amount of 10 slowness here, and perhaps it would be useful if we could, 11 amongst the counsel, have a discussion, but part of the 12 challenge from the NMOGA is without knowing what other 13 parties are doing, we have a record that we have to 14 protect. And so we can't simply not do anything because 15 we don't know what the other parties are going to do. And 16 so if we knew what other parties had objections to, we 17 could then stipulate on those things, whether or not those 18 objections, that our testimony is there, we could move 19 much faster. But without knowing that, and without 20 knowing the positions on cross, we're unable to not 21 protect our record. So that's part of the reason things 22 are slow. 23 So I would be -- I am fully in agreement with 24 Ms. Katz, that if we could do that, we, NMOGA, would be 25 very supportive of that as well.
1232 1 through the general provisions in Topic 23. Engines and 2 turbines are very -- it's a large, very large section. 3 So -- and I guess I'm going to -- I'm wondering, you know, 4 especially if the parties are going to discuss at length 5 revisions that have already been made and accepted and 6 agreed upon by everybody, it's going to really draw things 7 out. And so I'm wondering if there's a way to maybe 8 streamline that, those presentations in a way that 9 might -- where those could be more brief and the Board 10 could ask questions about those, if they had them, but 11 that we could focus more on the areas of disagreement, 12 because I just -- it does seem like -- like if we go at 13 the rate we did today, maybe we'll get through the next 14 two topics. 15 So, yeah, that's what I would predict based on 16 where we're at, is that we would get through 23 and 24 and 17 maybe 25 tomorrow, if we were lucky. 18 HEARING OFFICER ORTH: Okay. So we can have that 19 conversation certainly while we're on the platform. I'm 20 not sure if it -- if you want to do it on the platform or 21 if you want to do that amongst yourselves, because, 22 essentially, it would mean revising the spreadsheet into 23 which all of the counsel had input. 24 Let me just mention another possibility. It 25 became clear in the methane hearing with the Oil	1234 1 HEARING OFFICER ORTH: So let me ask. Is there 2 some way in which I can facilitate this conversation among 3 counsel? Set up a virtual meeting amongst you all and 4 then exhibit; set up a virtual meeting with you all and 5 stick around. I'm not making any recommendations to the 6 Board. I really am just here to smooth the process. So 7 I'll be part of the discussion if you want; otherwise, I 8 can just exit. What are your druthers? 9 MR. HISER: So I would -- of course, this is 10 Ms. Katz's petition and rule, so I think that she should 11 have the primary say about what would be done, but we 12 would be happy to meet with other counsel and sort of 13 ascertain where the points of disagreement are, and then 14 to reshuffle the proceeding to sort of address that so 15 that we could move more expeditiously through those 16 sections of the rule, which we think there are several, 17 where there's not a lot of disagreement between the 18 parties, so that we could make more expeditious process 19 and really focus the Board's attention on those areas that 20 really need the Board's resolution and input. 21 HEARING OFFICER ORTH: Thank you. I see 22 Mr. Butzier. 23 MR. BUTZIER: Thank you, Madam Hearing Officer. 24 I think it might make sense to either stay on this call 25 and have the Board members drop off and have a discussion

1235 1 now or perhaps try to do the discussion among counsel at 2 8 a.m. tomorrow. And that may be preferable so people can 3 collect their thoughts, but I wanted to -- I wanted to 4 just address real quickly two things. 5 One is on the schedule, we think that maybe the 6 discussion of the definition of construction ought to be 7 moved from its current location as part of Topic 21 -- or 8 excuse me -- Topic 23, down to Topic 24 because it does 9 not relate to 122; instead, relates more, we think, to 10 Section 113. That's one suggestion. 11 The other -- the other thing, looking forward to 12 next week, we noticed that there are three of the 13 pneumatics witnesses who are not available Thursday and 14 Friday, and we thought it might make sense to try to get a 15 hard date; and we would propose Tuesday as the date that 16 we start the morning on the pneumatics topic. If we do 17 that, it's possible that -- I'm more optimistic, I think, 18 than maybe others that we might be able to get through 19 this in two weeks, especially now that we have streamlined 20 things somewhat from the way we started the proceeding. 21 Those are my only thoughts. Thank you. 22 HEARING OFFICER ORTH: Thank you. So I will 23 definitely be on the platform at 8:00 tomorrow morning and 24 am looking forward to any way at all in which counsel can 25 propose moving more expeditiously. And do be sure to let	1237 1 shortened form for the Board to enhance their 2 understanding of what we have filed in writing. 3 HEARING OFFICER ORTH: All right. Thank you for 4 that, Ms. Fox. 5 I think perhaps -- I think the parties have been 6 very good about brief summaries, and not sort of 7 stretching their testimony out to 30 minutes just because 8 they could. So I think that's a good observation. 9 Mr. Janoe, I see you on screen. 10 MR. JANOE: I would tend to agree with Ms. Fox. 11 I think that the parties have done a tremendous job in 12 moving forward and not taking up more time than was 13 necessary, but certainly putting in context what's in the 14 voluminous papers that will be presented or have been 15 presented to the Board, I think make a lot of sense. And 16 indeed, as we were talking about earlier today, doing a 17 little bit of the hard wiring, to say this provision 18 connects over here, we'll be talking to you about it more. 19 I think that helps provide at least some signposts and a 20 little bit of the story here in a way that I would think 21 is important, and frankly, key to advocacy in this type of 22 proceeding. 23 So I would respectfully disagree with my good 24 friend, Mr. Rose, that we dispense with summaries. Let's 25 just -- let's make them tight, let's make them brief and
1236 1 me know how I can help. 2 I felt like suggesting that cross-examination be 3 handled just by people showing up on screen worked pretty 4 well today. If you don't agree, let me know, but I 5 thought that worked. 6 Is there anything else we can talk about tonight? 7 I mean, I'm happy to go longer if you'd like to leap into 8 something 9 MR. ROSE: Madam Hearing Officer, one -- one 10 other thing we could do is, you know, we're spending time 11 summarizing what's already been submitted, and so we can 12 look at -- I mean, I don't know that it's really all that 13 necessary to summarize our direct and rebuttal since it's 14 already -- full direct and rebuttal is in writing. And 15 so, rather getting to, in essence, responding to the 16 Department's proposed changes earlier this month might be 17 the better way to go. 18 Just admit that testimony and go straight to 19 that, and cross, might be a more appropriate approach. 20 HEARING OFFICER ORTH: I think that sounds like a 21 great suggestion as well. Ms. Fox? 22 MS. FOX: Thank you, Madam Hearing Officer. We 23 have already very much, you know, gotten our direct and 24 rebuttal down to a short amount of time. And so we would 25 like to present our direct and rebuttal even if in a more	1238 1 make them work like Ms. Fox was saying. 2 HEARING OFFICER ORTH: All right. Thank you very 3 much for that. 4 Is there anything else we can talk about while 5 we're on the call tonight? I have one other thing, 6 please. Tomorrow, I need a hard stop at noon and we'll 7 reconvene at 1 for public comment. And I'm sorry if that 8 will be in the middle of someone's testimony, but I do 9 need a hard stop at noon for a one-hour lunch break. And 10 I'm definitely not suggesting we get used to luxuriously 11 long lunch breaks. 12 Mr. Rose, I see you on the screen again. 13 MR. ROSE: Yeah, the only thing I would suggest, 14 and it's up to you, Madam Hearing Officer, is we're all 15 assuming that our summaries are helpful to the Board, and 16 maybe they are. I'd be curious what the Board wants to 17 see, as opposed to what we think the Board wants to see, 18 to see how effective that is. So I don't -- I don't want 19 to preclude people from making statements, but I think it 20 might be helpful if you could give us some feedback in 21 terms of what the Board finds useful and not so useful. 22 HEARING OFFICER ORTH: All right. Madam Chair or 23 Vice-Chair, or the members still on the platform us with, 24 do you have any feedback for counsel? 25 CHAIRPERSON SUINA: Yes. I'll let Member Garcia

1239 1 go first. Go ahead, Member. 2 BOARD MEMBER GARCIA: Oh, no. Madam Chair, you 3 go ahead. Go ahead. Okay. Okay. All I was going to say 4 is that I appreciate the discussion for -- and I did find 5 that repeating things that are already agreed upon didn't 6 seem as productive. So I appreciate that that may be 7 dispensed with, but as far as whether a summary is useful 8 or not, I think we can read through the summaries and -- 9 and get to the meat of the discussion and kind of figure 10 it out would be my -- my thought. 11 If -- if the parties wish to give a very brief 12 summary, that would be okay, but we can also read through 13 it and then get to the meat of the issue right away. I 14 would be okay with that. 15 HEARING OFFICER ORTH: Thank you. 16 CHAIRPERSON SUINA: Madam Hearing Officer, if I 17 may? Yeah, I think one of things that's been, as was 18 demonstrated earlier today, is what's the latest 19 information, what have the parties come to consensus on, 20 in terms of the language, what's still outstanding in 21 terms of contention. Those -- those aspects, I guess, I'm 22 still trying to track that. And then, you know, and in 23 the case again, not pointing fingers, but we didn't have 24 the exhibits, you know, I didn't know if there were 25 details within those exhibits that applied. Of course,	1241 1 to the crux of the issues where there is time that should 2 be spent on debate on the issues. So whatever we can do 3 to get us to that, I think would be super helpful. 4 HEARING OFFICER ORTH: Thank you. Any other 5 Board members with a comment? No? 6 Mr. Nykiel, do you have a comment? 7 MR. NYKIEL: On a -- on a separate matter that we 8 can get to before we pop off. 9 HEARING OFFICER ORTH: Okay. Go ahead. 10 CHAIRPERSON SUINA: Madam Chair, I have one other 11 comment. 12 HEARING OFFICER ORTH: Yes. 13 CHAIRPERSON SUINA: So if you guys decide tonight 14 with the -- after this hearing, today's hearing, to go to 15 8, I just want to throw in there because we started at 9, 16 I had a whole bunch of stuff between 7:30 and 9:00 that I 17 already scheduled in, but I can make those adjustments if 18 need be. 19 And I just want to throw it out there, I can stay 20 later if that -- you know, I know it cuts into the evening 21 time, but just throwing that out there. 22 HEARING OFFICER ORTH: All right. Thank you. 23 Great. I wouldn't do that without discussion. 24 CHAIRPERSON SUINA: Okay. 25 HEARING OFFICER: Ms. Katz?
1240 1 probably, because they were submitted. But so just kind 2 of those logistics. And I think it also helps to hear 3 from the parties to what has already been, like, 4 straightforward, this was an issue, it's no longer an 5 issue, let's move on, but just to note that at least in 6 the record. 7 I know we have public members that are watching 8 the proceedings as well, so, you know, I know it helps for 9 them as well, to hear that we have taken a look at that, 10 we've looked and heard from the people during this hearing 11 and -- and trying to make sure that we get those -- all 12 parties' and stakeholders' comments and input in making 13 the decisions. 14 So that's kind of where I stand. And I know 15 however we can expedite that, in terms of the confusion of 16 paperwork, I know we're in virtual world. I see all of 17 our little screens today, but I'm all for that, too, 18 expediting however the various stakeholders and legal 19 counsel see fit. Thank you. 20 HEARING OFFICER ORTH: Thank you. Other Board 21 members? Vice-Chair? 22 VICE-CHAIR TRUJILLO-DAVIS: I agree with 23 Ms. Suine -- or Member Suina. I do like to see where 24 there is agreement between the different parties, that the 25 issues have been addressed, but I really would like to get	1242 1 MS. KATZ: Yes, Madam Hearing Officer, I will say 2 that I am particularly exhausted tonight and I would 3 really prefer to not keep going tonight, to have it 4 tonight. And if other people were amenable, I mean, I 5 will push through if everybody wants to stay, but it's 6 been a pretty grueling many days and many weeks before 7 that. So, yeah. 8 HEARING OFFICER ORTH: All right. Thank you for 9 that. 10 MS. KATZ: And I would like -- I think it's -- 11 Mr. Butzier's suggestion for counsel to get together in 12 the morning at 8, and maybe talk through some of this 13 would be helpful. And I appreciate the Board weighing in 14 on what's helpful for them, so thank you all. 15 HEARING OFFICER ORTH: All right. I see Member 16 Honker. Member Honker? 17 BOARD MEMBER HONKER: Just a point of 18 clarification: so if the counsels have a discussion at 19 8 a.m., back to Chair Suina's concern, I would assume the 20 Board members would just tune in at 9 and not be part of 21 the counsels' discussion? 22 HEARING OFFICER ORTH: That's exactly right, 23 Member Honker. Yes. 24 Mr. Nykiel? 25 MR. NYKIEL: Yeah, this is going back to our

1243 1 exhibits. And I just wanted to make sure; I heard that 2 perhaps Pam had directed the Board to a link on the NMED 3 web page, and I would just -- if it's possible, I had 4 submitted to Pam and the other parties -- well, I think 5 just to Pam, a zip -- a zip file that individualizes -- 6 individualizes the exhibits rather than put them in bulk, 7 which is I think what she -- Pam referred to on the 8 website. So I just think that would be easier for the 9 Board to view, if they had a zip file that individualized 10 the exhibits, and just would request that Pam share that 11 with the Board so it's easier to view. 12 HEARING OFFICER ORTH: Okay. 13 ADMINISTRATOR JONES: I can do that. 14 HEARING OFFICER ORTH: All right. Pam has said 15 she can do that. Thank you, Pam. 16 VICE-CHAIR TRUJILLO-DAVIS: I just wanted to 17 respond to Mr. Nykiel -- I'm sorry, I totally murdered 18 your last name. I apologize for that. When I pulled up 19 the file, it had a table of contents and it allowed me to 20 separate your exhibits so I could see them individually. 21 MR. NYKIEL: Perfect. That's great. 22 HEARING OFFICER ORTH: All right. Thank you. 23 Anything else before we adjourn for the evening? 24 I think we have a plan. Counsel and party representatives 25 on this platform at 8, Board members at 9. We'll take the	1245 1 STATE OF NEW MEXICO 2 BEFORE THE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD 3 PROPOSED ADOPTION OF RULE 21-27 NMAC 4 RULES HEARING 5 6 REPORTER'S CERTIFICATE 7 I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY 8 CERTIFY that on September 22nd, 2021, the Public Hearing 9 of the New Mexico Environmental Improvement Board was 10 taken before me, that I did report in stenographic 11 shorthand the Proceedings set forth herein, and the 12 foregoing pages are a true and correct transcription to 13 the best of my ability. 14 I FURTHER CERTIFY that I am neither employed by 15 nor related to nor contracted with (unless excepted by the 16 rules) any of the parties or attorneys in this matter, and 17 that I have no interest whatsoever in the final 18 disposition of this matter. 19  20 21 22 THERESA E. DUBOIS, RPR 23 New Mexico CCR #29 24 License Expires: 12/31/2021 25
1244 1 public comment then. All right. Thank you all very much. 2 We'll see you in the morning. 3 COURT REPORTER: I'm assuming I don't have to be 4 here at 8. 5 HEARING OFFICER ORTH: No. No, no. It won't be. 6 Thank you very much, Theresa, for clarifying that. It 7 won't be on the transcript. Thank you. 8 (Proceedings concluded September 23, 2021 at 9 5:48 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	

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