

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED NEW REGULATION,
20.2.50 NMAC – *Oil and Gas Sector – Ozone Precursor Pollutants*

No. EIB 21-27 (R)

**MOTION TO STRIKE SOLAR TURBINES’
TECHNICAL TESTIMONY SUBMISSIONS**

Pursuant to the Environmental Improvement Board’s (“Board”) rulemaking procedures at 20.1.1.307 NMAC, Petitioner the New Mexico Environment Department (“Department”) files this Motion to Strike the following submissions listed on the Board’s electronic docket for this proceeding: July 2021 Solar Turbines Comment Letter to NM Methane Strategy Title 20 Ch 2 Part 50; Solar Turbines Testimony; and Text of Recommended Modifications to the Proposed Regulatory Change – Solar Turbines (collectively “Notice of Intent” or “NOI”). As grounds for its Motion, the Department states as follows:

1. The Board’s procedural rules at 20.1.1.200(B)(2) NMAC require that any person filing a notice of intent to present technical testimony who is not the petitioner must serve a copy of the notice of intent on the petitioner. This requirement is important because it ensures that the petitioner has timely notice of technical testimony submissions.

2. Solar Turbines did not serve a copy of their NOI on the Department by any of the means specified in 20.1.1.200(C) NMAC, and did not include a Certificate of Service with their NOI affirming that the documents were served on the Department and the Board’s legal counsel, as required under 20.1.1.NMAC. Department counsel learned of the submission of the NOI from viewing the docket on the Board’s website after the NOI was apparently posted by the Board Administrator, despite the lack of a Certificate of Service. Department counsel notes that in the first several days following the July 28, 2021 deadline for filing direct technical testimony, the

only document that appeared on the Board’s electronic docket from Solar Turbines was the letter to Ms. Bisbey-Kuehn without the cover email. It was not until counsel was drafting this Motion that the other two submissions – Solar Turbines Testimony, and Text of Recommended Modifications to the Proposed Regulatory Change – Solar Turbines – were discovered. Those submissions were not attached to the July 27, 2021 email which sent the letter to Ms. Bisbey-Kuehn, and they are not dated. It is not clear whether the delay in their appearance in the Board’s electronic docket was due to untimely filing by Solar Turbines, or untimely posting by the Board Administrator. This issue illustrates the importance of proper service – parties should not have to repeatedly check on the Board’s electronic docket for notice of what is filed.

3. The Board’s procedural rules for technical testimony at 20.1.1.302(A) require that an NOI “identify each technical witness the person intends to present and state the qualifications of that witness and include a description of their educational and work background,” “include a copy of the direct testimony of each witness in narrative form,” and “list and attach all exhibits anticipated to be offered by that person at the hearing” 20.2.1.1.302(A)(2),(4), and (6) NMAC.

4. These requirements are important because the pre-filed testimony is intended as a substitute for in-person testimony at the hearing. As such, it must be attributed to a witness, the witness’s background must be presented so that they can be qualified as a technical expert, and their testimony must be fully developed in complete narrative form, including the exhibits upon which the testimony is based, to allow the other parties to comprehend the positions and analyses being presented so that they can fully and adequately rebut the testimony. The parties also need to know which witness the testimony is attributed to so that they can object to the witness’s qualification as an expert on the topic if necessary, and can prepare and conduct cross-examination of the witness at the hearing.

5. Solar Turbines' submissions do not identify any witness, include a description of the witness's educational and work background, or include the witness's testimony in narrative form. None of the three documents posted on the Board's electronic docket that are identified in the docket links as associated with Solar Turbines are attributed to a witness or are marked as an exhibit.

6. Striking Solar Turbines' technical testimony submissions will not prejudice Solar Turbines because there is still an opportunity to file rebuttal technical testimony. The Department suggests that the Solar Turbines repackage its submissions as rebuttal testimony and comply with the Board's rulemaking procedures in any future filing. The Department notes that it received the letter dated July 14, 2021 that Solar Turbines addressed to Ms. Bisbey-Kuehn, and is considering those comments in connection with this rulemaking.

7. Concurrence of Solar Turbines was not sought due to the nature of this Motion. No other parties have indicated their opposition to this Motion as of the time of filing.

For the reasons stated above, the Department requests that Solar Turbines' technical testimony submissions be stricken from the record in these proceedings. The Department further requests that the Hearing Officer issue an order providing that future filings that do not conform with the basic requirements of the Board's rules, such as including a certificate of service where service is required, will be rejected by the Board Administrator.

Respectfully submitted,

NEW MEXIC ENVIRONMENT DEPARTMENT
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Strike Solar Turbine's Technical Testimony Submissions* was filed with the Environmental Improvement Board Administrator and served on the following via electronic mail on August 19, 2021.

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