

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 21-27(R)

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

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 23rd day of
September, 2021, this matter came on for hearing before
FELICIA ORTH, Hearing Officer, virtually through Cisco
Webex Meetings video conferencing, commencing at 9:00 a.m.

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1 HEARING OFFICER ORTH: Good morning. My name is
2 Felicia Orth; I am the Hearing Officer appointed by the
3 Environmental Improvement Board to conduct a hearing in
4 EIB 21-27. This is a rulemaking for ozone precursors. We
5 are on day four of the hearing, and we begin with public
6 comment.

7 MR. BUTZIER: Madam Hearing Officer, we cannot
8 hear you -- at least I cannot hear you.

9 HEARING OFFICER ORTH: Oh, I'm unmuted. Member
10 Garcia, can you hear me?

11 BOARD MEMBER GARCIA: Yes, I can hear you just
12 fine.

13 HEARING OFFICER ORTH: Mr. Butzier, I believe the
14 problem is with your own system.

15 Let's see. We begin each day of the hearing at 9
16 with public comment. Public comment is also taken at
17 1 p.m. and 5 p.m. each day of the hearing. I have two
18 folks who reached out to the Board's administrator, Pam
19 Jones, with a request to offer public comment this
20 morning, by email. That is Paul Gessing and Hanh Nguyen,
21 and I'll call on you in just a moment. In the event
22 you're on the platform and have not yet reached out by
23 email, I'm still happy to accept your comment this
24 morning. Simply reach out through the Chat; Chat is
25 enabled for everyone.

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

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

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

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

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

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

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

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 --

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

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

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

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?

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

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

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

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

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.

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

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.

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

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,

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

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

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

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

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

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.

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 --

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

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

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,

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.

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

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

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

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

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

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.

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

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:

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,

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

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

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

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

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

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

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

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

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

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?

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.

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.

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

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

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.

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

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.

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.

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:

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

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

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

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

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.

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,

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.

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.

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

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

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

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?

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,

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

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

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

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

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 NO_x, and increasing temperature causes that
6 reservoir to become less stable and it will actually
7 release NO_x 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.

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

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

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

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

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?

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

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

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

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

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.

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

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:

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?

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.

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

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

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

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.

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,

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

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

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.

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?

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

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

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

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.)

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,

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

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.

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

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.)

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.

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.

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

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

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,

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

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

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,

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

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

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

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.

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

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

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?

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

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

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?

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.

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

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

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.

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.

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

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

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.

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

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?

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

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,

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

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

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

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

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

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

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

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?

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.

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

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

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

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 prefilled

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

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,

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.

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

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

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

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

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

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

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.

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.

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

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.

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

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.

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

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.

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

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

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

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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?

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

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

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

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?

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

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.

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

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.

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.

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

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

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

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

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

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

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.

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

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.

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 --

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,

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?

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.)

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

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.

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

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.

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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?

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

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

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 --

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.

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,

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

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.

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.

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

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,

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?

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,

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.

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 --

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.

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

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?

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?

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

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

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.

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

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

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

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

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

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,

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

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?

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

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

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.)

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STATE OF NEW MEXICO
BEFORE THE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
PROPOSED ADOPTION OF RULE 21-27 NMAC
RULES HEARING

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on September 22nd, 2021, the Public Hearing
of the New Mexico Environmental Improvement Board was
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
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that I have no interest whatsoever in the final
disposition of this matter.



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