

1 **STATE OF NEW MEXICO**
2 **BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

3 **IN THE MATTER OF:**

4 **PROPOSED NEW REGULATION**

5 **20.2.50**

No. EIB 21-27 (R)

6 ***Oil and Gas Sector – Ozone Precursor Pollutants***
7

8 **NMOGA's REPLY IN SUPPORT OF MOTION TO STRIKE**

9 **SECTION VI OF CCP AND NAVA EP EXHIBIT 6 (REBUTTAL TESTIMONY OF**
10 **TECHNICAL WITNESS PROFESSOR CLIFFORD J. VILLA)**
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12 The New Mexico Oil and Gas Association ("NMOGA"), pursuant to 20.1.1.307.E NMAC,
13 submits this reply to CCP and NAVA EP's Response to NMOGA's Motion to Strike ("Response").

14 1. CCP and NAVA EP are correct to point out that the proper citations for NMOGA's
15 Motion to Strike are in 20.1.1 NMAC instead of 20.1.6 NMAC. The correct cites, in the order
16 they appear, are to 20.1.1.307 instead of 20.1.6.207; 20.1.1 instead of 20.1.6; 20.1.1.7.S instead of
17 20.1.6.7.U; 20.1.1.404 instead of 20.1.6.303 NMAC; and 20.1.1.400.A rather than 20.1.6.300.A.
18 NMAC.

19 2. As CCP and NAVA EP's Response indicates, there is no substantive difference
20 between the respective rule provisions. In particular, the definition of "technical testimony" and
21 its exclusion of legal argument are the same.

22 3. With regard to the definition of "technical testimony," as CCP and NAVA EP
23 argue, it does include "other specialized testimony," but that should be read consistent with the
24 categories of scientific, engineering and economic testimony, and also consistent with the
25 exclusion of legal argument from technical testimony.

1 4. CCP and NAVA EP's argument that the August 25, 2021 procedural order is
2 precedent for allowing legal expert testimony is not persuasive, as that Order was intended to
3 address a particular legal argument contained in an exhibit that was sponsored by a "non-legal
4 technical expert."

5 5. With regard to the case law, NMOGA contends that Section VI of Professor Villa's
6 testimony does take a position on an "ultimate question of law," the legal authority of the Board.

7 6. CCP and NAVA acknowledge the Hearing Officer's discretion under the applicable
8 rules to allow or limit testimony. Allowing legal argument and legal opinions as part of technical
9 testimony could further extend an already lengthy and complex rulemaking and would depart from
10 past practice. NMOGA's mention of the possible need to present surrebuttal was not intended as
11 a "threat," but just to illustrate the consequences of setting a precedent of allowing this type of
12 testimony and how it could result in even longer rulemaking hearings due to the need for parties
13 to consider introducing legal opinions from a legal expert as part of technical testimony rather than
14 simply presenting legal arguments.

15 7. Regarding whether this part of Professor Villa's testimony is proper rebuttal,
16 NMOGA would point out that the testimony cited in the Response does not contain any legal
17 opinion or argument on the point addressed by Professor Villa, *i.e.*, the Board's legal authority.
18 Also, the testimony offered by the Environmental Defense Fund would be viewed as friendly
19 testimony.

20 8. CCP and NAVA would not be prejudiced if this part of Professor Villa's testimony
21 is excluded, as it can be presented as legal argument in post-hearing filings.

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Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that on September 26, 2021, a true and correct copy of the foregoing **Reply**
4 was served via electronic mail to the following:

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