

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK,  
by BARBARA D. UNDERWOOD,  
Attorney General of the State of New York,

Petitioner,

– against –

PRICEWATERHOUSECOOPERS LLP  
and EXXON MOBIL CORPORATION,

Respondents.

Index No. 451962/2016

IAS Part 61

Hon. Barry R. Ostrager

Motion Sequence No. 7

**AFFIRMATION OF JONATHAN ZWEIG IN SUPPORT OF THE OFFICE OF THE  
ATTORNEY GENERAL'S MOTION TO COMPEL COMPLIANCE  
WITH INVESTIGATORY SUBPOENAS**

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JONATHAN ZWEIG, under penalty of perjury, affirms:

1. I am an Assistant Attorney General in the Office of the Attorney General of the State of New York (“OAG”), counsel for petitioner. I make this affirmation in support of OAG’s motion to compel Exxon Mobil Corporation (“Exxon”) to produce (i) the cash flow projections in the form of spreadsheets and their backup materials (hereafter “cash flow spreadsheets”) that the company maintains and routinely uses in its investment decisions, business planning and financial reporting for 26 of its major oil, gas, and petrochemical projects and assets, as specified in Exhibit A to the proposed order annexed to the accompanying notice of motion, and (ii) the documents previously provided by Exxon to the Securities and Exchange Commission (“SEC”) relating to impairment evaluations, reserves assessments, and climate change.

2. I make this affirmation to describe (1) OAG’s efforts to obtain the information and documents sought by this motion, including through the meet-and-confer process ordered by the Court in June 2017, and (2) Exxon’s ability to produce without undue burden the documents sought by this motion. This affirmation is based on my review of the court docket and referenced documents, the investigative file, testimony obtained in the investigation, correspondence with Exxon’s counsel, and documents produced by Exxon and Exxon’s auditor, PricewaterhouseCoopers LLP (“PwC”), in connection with this investigation.

**I. Procedural History of OAG’s Requests for Exxon’s Cash Flow Spreadsheets**

**A. Initial Subpoena Issued to Exxon**

3. In its November 4, 2015 subpoena (the “2015 Subpoena”) to Exxon, OAG requested all documents concerning “the integration of Climate Change-related issues . . . into [Exxon’s] business decisions, including but not limited to financial projections and analyses, operations projections and analyses, and strategic planning,” as well as all documents concerning

“whether and how [Exxon] disclose[s] the impacts of Climate Change . . . in [Exxon’s] filings with the [SEC] and in [Exxon’s] public-facing and investor-facing reports including but not limited to [the] Outlook for Energy reports . . . and [the] *Energy and Carbon – Managing the Risks Report*.” Attached as Exhibit 1 is the 2015 Subpoena.<sup>1</sup>

4. Between November 2015 and November 2016, OAG sent a multitude of letters and emails to Exxon seeking documents relating to Exxon’s integration of climate change impacts into its investment decision-making, business planning, and financial reporting generally, and the company’s use of projected costs of greenhouse gas (“GHG”) emissions as a proxy for the effects of future GHG-related regulations on Exxon’s business (“proxy costs”) specifically.

5. On November 14, 2016, OAG moved the Court for an order compelling Exxon to produce documents reflecting the company’s use of proxy costs. At the hearing on that motion on November 21, 2016, OAG argued that “[w]e still haven’t gotten any documents that show the integration of climate change impact[s] into [Exxon’s] business,” and highlighted the need for “these documents about the proxy [costs] that [the] company say is it uses to [as]sure investors that it is incorporating these impacts.” Attached as Exhibit 2 is a transcript of the November 21, 2016 Hearing. (*See id.* at 19:16-19, 19:25-20:2.)

6. Over the next three months, OAG continued to attempt to obtain documents showing how Exxon actually used proxy costs in its investment decision-making, business planning, and financial reporting in both correspondence with Exxon and applications to the Court. For example, in a letter to the Court on December 1, 2016, OAG argued that Exxon “has not produced documents from shared folders . . . that appear to concern the application of the

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<sup>1</sup> All exhibits attached to this affirmation are true and correct copies of the document described.

proxy cost . . . to specific oil and gas projects.” Attached as Exhibit 3 is OAG’s December 1, 2016 Letter to the Court. (*See id.* at 3.)

7. On December 12, 2016, OAG requested that Exxon search for responsive documents located on various “SharePoint” shared-data locations, which OAG believed to be likely to contain highly relevant documents. Attached as Exhibit 4 is OAG’s December 12, 2016 Letter to Exxon. As set forth *infra* at ¶¶ 48-65, subsequent testimony and subsequently produced documents have confirmed that cash flow spreadsheets are indeed stored in centralized, readily accessible locations on Exxon’s SharePoint systems.

8. Likewise, OAG wrote in a letter to Exxon on February 6, 2017 that Exxon “does not appear to have produced any spreadsheets concerning the economics of specific projects that contain a line item for proxy costs.” Attached as Exhibit 5 is OAG’s February 6, 2017 letter to Exxon. (*See id.* at 1.)

9. On February 11, 2017, Exxon contested OAG’s claim that the company had not produced any documents showing “the actual incorporation of a proxy cost of carbon or any other greenhouse gas into a project economics decision” by pointing to Exxon’s Corporate Plan Appendices to the Dataguide (“Corporate Plan”), which Exxon had produced. Exxon claimed that its Corporate Plans are “internal policy documents that specify precisely how Exxon[] applies its proxy cost of carbon in every jurisdiction worldwide through the year 2040.” (*See* Affirmation of John Oleske (“Oleske Aff.”) ¶ 42.) However, Exxon now claims that the Corporate Plan does *not* “specify precisely how Exxon[] applies its proxy cost of carbon” laid out in its public Outlook for Energy reports (“Outlook Reports”), and instead only provides instructions for applying Exxon’s so-called “GHG cost.” (*See* Oleske Aff. ¶¶ 35-44.)

10. On February 28, 2017, Exxon inaccurately informed OAG that its document production in response to OAG's November 2015 subpoena was "substantially complete[]." Attached as Exhibit 6 is Exxon's February 28, 2017 letter to OAG. (*See id.* at 2.)

11. On March 23, 2017, the Court reminded Exxon of its "continuing obligation to provide responsive documents," stating that, "[i]f somehow a document turns up in somebody's drawer that wasn't on email, you're going to produce it." Attached as Exhibit 7 is a transcript of the March 23, 2017 Conference. (*See id.* at 28:20-26.)

12. On April 19, 2017, OAG reiterated its request, *see supra* ¶ 7, for Exxon to search for responsive documents located on shared-data locations, including a SharePoint maintained by ExxonMobil Development Company ("EMDC"), which OAG believed to be likely to contain highly relevant documents, including cash flow spreadsheets. Attached as Exhibit 8 is OAG's April 19, 2017 letter to Exxon. (*See id.* at 2 & n.3.)

13. Exxon responded on April 27, 2017 that it had "no reason to believe [the EMDC SharePoint] contain[ed] unique responsive documents." (Oleske Aff., Ex. 36, Exxon's April 27, 2017 letter to OAG at 3.)

**B. 2017 Subpoena Issued to Exxon**

14. On May 8, 2017, OAG issued a follow-up subpoena (the "2017 Subpoena"), which called for Exxon to: (i) provide key data relevant to any use of proxy costs in the company's cash flow spreadsheets; and (ii) produce the underlying cash flow spreadsheets themselves. Among other things, the 2017 Subpoena also called for the set of documents that the company had already produced to the SEC "pursuant to its investigation of Exxon's practices relating to climate change, reserve calculations, and impairment." Attached as Exhibit 9 is the 2017 Subpoena.

15. On the same date, OAG also issued a testimonial subpoena for the examination of Jason Iwanika, a planner employed by Exxon's majority-owned Canadian subsidiary, Imperial Oil Limited ("Imperial"), whose work involved the creation, use, and electronic storage of cash flow spreadsheets relating to oil sands projects in Alberta, Canada.

16. On May 19, 2017, Exxon moved to quash the 2017 Subpoena in its entirety, including those requests in the 2017 Subpoena for information and documents relating to Exxon's purported use of proxy costs in its cash flow spreadsheets, and the subpoena for Mr. Iwanika's examination. OAG opposed Exxon's motions to quash and cross-moved to compel compliance.

17. At a June 16, 2017 conference, the Court compelled Exxon to comply with requests in the 2017 Subpoena for Exxon's documents from 2016 that were responsive to the 2015 Subpoena, and for a list of employees responsible for estimating the company's oil and gas reserves. The Court also compelled Exxon to produce Mr. Iwanika for testimony. Attached as Exhibit 10 is a transcript of the June 16, 2017 conference. (*See id.* at 47:14-23, 59:3-12, 77:14-23, 78:3-18.)

18. The Court did not grant Exxon's motion to quash OAG's requests for information and documents relating to Exxon's purported use of proxy costs in its cash flow spreadsheets, and instead directed Exxon to meet and confer with OAG in an effort to narrow those requests. (*Id.* at 77:16-19, 78:19-79:12.) The Court stated that, if OAG has "identified potential documents that are relevant to [its] investigation," and "Exxon is on notice of the existence of such documents," then Exxon has "an affirmative obligation to produce them." (*Id.* at 45:25-46:4.) Likewise, the Court stated that Exxon has "an obligation to make a continuing production of any relevant documents that [OAG has] previously inquired about or come to your attention"

(*id.* at 62:16-18), and that OAG has “the authority to ask for additional documents” (*id.* at 26:2-3). The Court further stated to OAG that: “[Y]ou can ask all the interrogatories you want, and they will respond to those interrogatories. If they fail to respond to those interrogatories reasonably you will be back here, and I am going to sanction them for failing to answer those interrogatories to which they have no proper objection.” (*Id.* at 57:5-10.) Further, the Court anticipated that OAG would be able to request additional documents “based on what the witnesses testified to in their depositions as fact witnesses.” (*Id.* at 24:4-23.)

**C. Relevant Facts Since the Last Court Conference**

**1. Facts from Newly Produced Documents and from Exxon Witnesses**

19. Since the June 2017 conference, OAG has examined Mr. Iwanika, along with eleven other Exxon fact witnesses OAG subpoenaed for testimony. OAG has also completed an initial review of the 2016 documents Exxon has since produced, along with documents Exxon had withheld from PwC’s production, following the exhaustion of appeals to this Court’s October 28, 2016 Decision and Order holding that no accountant-client privilege applies and ordering PwC to produce responsive documents.<sup>2</sup>

20. The additional witness testimony and documents compelled by the Court under its June 16, 2017 ruling have confirmed that Exxon does in fact maintain final cash flow spreadsheets used for business decisions, planning, and financial reporting on centralized, electronic filing systems, including SharePoint systems, from which documents are readily accessible. (*See infra* ¶¶ 48-65.) Specifically, the new evidence shows that the spreadsheets are (i) likely in the custody or control of a limited number of planning supervisors working for each of Exxon’s major business units, and (ii) electronically stored in centralized locations maintained

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<sup>2</sup> This Court’s October 28, 2016 Decision and Order was affirmed by the Appellate Division, First Department on May 23, 2017. The New York Court of Appeals denied Exxon’s motion for leave to appeal on September 12, 2017.



by those business units (including in the EMDC SharePoint Exxon refused to search in April 2017, *see supra* ¶ 13), and thus readily retrievable by those business units, at Exxon management's request. The testimony and documents further reveal that the requested cash flow spreadsheets are routinely created, used, modified, and submitted for approval for purposes of Exxon's (i) capital investment decisions, (ii) ongoing corporate planning for assets Exxon has already invested in, (iii) estimates of reserves and resource base volumes of oil and gas attributable to its assets, and (iv) evaluations of assets for potential impairment. (*See Oleske Aff.* ¶ 64.) As such, these cash flow spreadsheets are highly relevant evidence of whether Exxon actually applied proxy cost assumptions in a manner consistent with its representations to investors and to the public. (*See id.* ¶ 65.)

## ***2. Meet and Confers Since the Last Court Conference***

21. Since the June 16, 2017 conference, OAG and Exxon have engaged in an extensive meet-and-confer process, in which the parties have exchanged dozens of communications concerning OAG's requests for information and documents reflecting the company's purported use of proxy costs in its cash flow spreadsheets. From the beginning of that effort, OAG offered to limit its requests to a small fraction of Exxon's major oil and gas projects and assets worldwide, leading to OAG's present, limited requests for cash flow spreadsheets that relate to just 26 projects and assets Exxon invested in or conducted ongoing planning for since 2010.

22. Exxon has rejected all of the various compromises OAG has offered, insisting that OAG further restrict its already limited request to an even smaller subset of projects. Exxon's offer of a subset of cash flow spreadsheets is restricted to projects supervised by ExxonMobil Development Company ("EMDC"), and would cover only investment decisions. These

limitations would exclude cash flow spreadsheets concerning: (i) any projects or assets in non-OECD countries<sup>3</sup>; (ii) any downstream (*e.g.*, refining) and chemical projects or assets; (iii) any evaluation of existing assets for potential impairment; (iv) any assessment of Exxon's company reserves and resource base; (v) any upstream (*i.e.*, finding and producing oil and natural gas) projects or assets in the exploration phase (*i.e.*, those supervised by ExxonMobil Exploration Company) or the production phase (*i.e.*, those supervised by ExxonMobil Production Company); (vi) any projects or assets supervised by XTO Energy, Inc. ("XTO")<sup>4</sup>; and (vii) any assessment of Exxon's 2010 purchase of XTO for over \$40 billion in equity.

23. Below is a detailed account of the meet-and-confers between OAG and Exxon ordered at the last conference.

24. On June 20, 2017, in its first substantive communication after the June 16 conference, Exxon told OAG by email that it would produce no documents other than those the Court had specifically ordered to be produced, notwithstanding the Court's order to meet and confer as to the remainder of OAG's requests. Attached as Exhibit 11 is Exxon's June 20, 2017 email to OAG.

25. The next day, OAG proposed that "as an initial step" toward narrowing the scope of Exxon's projects and assets subject to OAG's outstanding requests, Exxon should provide OAG with certain "preliminary data" concerning (i) projects involving major investment decisions of \$25 million or more between 2010 and 2016, and (ii) assets for which Exxon created "cash-flow projections for use in evaluating potential impairments or impairment triggers between 2010 and 2016." OAG explicitly made this proposal "without any waiver of the

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<sup>3</sup> "OECD" refers to the Organisation for Economic Cooperation and Development, which includes 35 developed and emerging countries as members.

<sup>4</sup> Exxon's subsidiary XTO focuses on unconventional oil and gas resources and operates primarily in North America.

enforceability of OAG's outstanding requests, and with a full reservation of OAG's rights and remedies[.]” Attached as Exhibit 12 is OAG's June 21, 2017 letter to Exxon. (*See id.* at 1-2.)

26. After multiple telephonic meet-and-confers, Exxon agreed to provide an initial list of major upstream investments of \$50 million or more supervised by EMDC. EMDC is responsible for many of Exxon's upstream projects in the development phase, but documents and testimony indicate that it is not responsible for, among other things, (1) downstream or petrochemical assets, and (2) upstream projects supervised by other Exxon upstream companies, such as ExxonMobil Exploration Company, ExxonMobil Production Company, and XTO.

27. In a July 5, 2017 letter, OAG noted that Exxon's production of an initial, limited list of investment projects would serve “as an initial response” to the information requests in the 2017 Subpoena, but OAG explicitly reserved its rights to obtain further documents and information, including “for projects handled by entities other than EMDC and for projects exceeding the \$25 million threshold but less than the \$50 million threshold.” Attached as Exhibit 13 is OAG's July 5, 2017 letter to Exxon. (*See id.* at 1-2.)

28. On July 14, 2017, Exxon produced a list of twenty EMDC projects of \$50 million or more that were approved for investment between 2010 and 2016. This list did not include any proxy cost or GHG-related information. Attached as Exhibit 14 is Exxon's July 14, 2017 letter to OAG.

29. On July 18, 2017, OAG requested that Exxon provide the proxy cost and GHG-related information called for by the 2017 Subpoena with respect to the twenty upstream EMDC projects Exxon had identified in its list. OAG also requested that Exxon provide “a list of projects for which Exxon created one or more cash-flow projections for use in evaluating potential impairments or impairment triggers between 2010 and 2016.” OAG made clear that

“[t]hese requests [were] made without prejudice to OAG’s ability to request additional information and documents.” Attached as Exhibit 15 is OAG’s July 18, 2017 letter to Exxon. (*See id.* at 1-2.)

30. On August 2, 2017, Exxon responded by refusing to produce the requested information for the twenty projects on the narrow list it had produced, even though the list was generated using criteria that Exxon had itself selected. Exxon then incorrectly stated that OAG had agreed that it would “identify a subset of projects for further inquiry” from Exxon’s list, when in fact, OAG consistently maintained its right to obtain documents and information for projects in addition to those on any list Exxon might produce, and certainly never communicated any agreement to select only a subset of projects from a list that Exxon did not even produce until weeks later. Exxon further stated in its August 2 letter that it was “willing to consider a more limited proposal that identifies a subset of projects from which the Attorney General seeks additional information” – as long as such request was consistent with Exxon’s own assessment of “the needs of the investigation.” Exxon refused, however, to provide a list of assets evaluated for potential impairment, and revived the same preemption defense to OAG’s requests for accounting-related documents that it had made in its prior motion to quash. Attached as Exhibit 16 is Exxon’s August 2, 2017 letter to OAG. (*See id.* at 3-4.)

31. Two days later, on August 4, 2017, OAG responded by reiterating its right to the requested information and documents. OAG also noted that four Exxon employees had testified that proxy cost figures and other requested information would be contained in cash flow spreadsheets in Exxon’s possession. Again, OAG explicitly “reserve[d] the right to request information about additional Exxon projects,” noting that Exxon had “not provided an explanation of what kinds of projects would not be handled by EMDC” and that “the list [Exxon

had] provided appear[ed] to be limited to upstream projects, as opposed to downstream or chemical projects.” Attached as Exhibit 17 is OAG’s August 4, 2017 letter to Exxon. (*See id.* at 3 & n.6.)

32. On August 14, 2017, Exxon rejected OAG’s requests. Exxon claimed that “there is no centralized repository of the data sought by [OAG’s] interrogatories, including the cash flow models that the Attorney General most immediately demands.” Exxon then reiterated its proposal to produce unspecified “documents sufficient to show the manner in which GHG costs were applied” for a “small subset of projects from [OECD] countries” only. Exxon also refused to produce anything in response to Requests for Information Nos. 6-7 concerning its company reserves estimates.<sup>5</sup> Attached as Exhibit 18 is Exxon’s August 14, 2017 letter to OAG. (*See id.* at 4, 6.)

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Oleske Aff., Ex. 51, [REDACTED] Tr. 62-64, 66-71,

119.)

34. Earlier that year, on April 19, 2017, OAG had specifically asked Exxon to search for responsive documents from the EMDC SharePoint. At that time, Exxon had produced a very limited number of documents from that location (such as policies and procedures, and internal presentations related to one particular project), and OAG believed that it was likely to contain additional important documents. (Ex. 8, OAG’s April 19, 2017 Letter to Exxon at 2.)

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<sup>5</sup> Exxon did agree to produce a small number of impairment-related documents, but only to the extent that they were identified using search terms.

35. As noted at ¶ 13, Exxon had previously told OAG it had “no reason to believe [the EMDC SharePoint] contain[s] unique responsive documents.” (Oleske Aff., Ex. 36, Exxon’s April 27, 2017 letter to OAG, at 3.) To date, Exxon has neither explained nor corrected this statement.

36. On September 14, 2017, OAG wrote Exxon concerning, among other things, the company’s continued refusal to search the EMDC SharePoint. Attached as Exhibit 19 is OAG’s September 14, 2017 letter to Exxon. OAG’s proposal included the following:

- First, OAG proposed that in lieu of responding to the Requests for Information in the 2017 Subpoena, Exxon should produce from its SharePoint folders the cash flow spreadsheets associated with 23 of its largest assets and projects, along with key backup materials identified by Exxon’s witnesses, such as input files that contain the relevant proxy cost information. Further, OAG requested cash flow spreadsheets for the subset of assets reviewed for potential impairment by Exxon’s Corporate Controller’s department. (*See id.* at 2-3.)
- Second, OAG renewed its request for impairment-related documents, and noted that reproducing the documents provided to the SEC would impose no burden on Exxon. (*Id.* at 3-4.)

In making these proposals, OAG emphasized yet again: “This letter is, as always, without prejudice to our office’s right to seek additional documents, information, and testimony concerning any subject matter relevant to our investigation.” (*Id.* at 7 n.18.)

37. On September 27, 2017, Exxon rejected OAG’s proposals above, and offered no new proposals or compromises of its own. Attached as Exhibit 20 is Exxon’s September 27, 2017 letter to OAG. Notably, Exxon continued to maintain that it is “false” to assert that Exxon’s cash flow models are “readily accessible from a central repository” (*id.* at 3-4), but ignored ██████████ testimony directly contradicting its position (*see infra* ¶ 50).

38. On October 25, 2017, OAG reiterated its requests, again “reserv[ing] all rights under all of our outstanding subpoenas and related requests,” and asked Exxon to reconsider the

positions described above. Attached as Exhibit 21 is OAG’s October 25, 2017 letter to Exxon.

(See *id.* at 4.)

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Oleske Aff., Ex. 26, [REDACTED] Tr. 93-101, 105, 117-18, 136-37, 185-89.) [REDACTED]

[REDACTED]

40. On February 5, 2018, OAG reiterated its requests in light of [REDACTED] testimony. In that letter, “[w]ithout waiving any rights,” OAG withdrew its request that Exxon produce the cash flow spreadsheets for every asset that Exxon’s Corporate Controller’s department reviewed for potential impairment, and instead narrowed that request to [REDACTED]

[REDACTED]. Attached as Exhibit 22 is OAG’s February 5, 2018 letter to Exxon. (See *id.* at 1 n.2.)

41. On February 13, 2018, Exxon responded by denying OAG’s requests and maintaining its prior positions, notwithstanding [REDACTED] testimony. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attached as Exhibit 23 is Exxon’s

February 13, 2018 letter to OAG. (See *id.* at 1, 3.) [REDACTED]

[REDACTED]

(Oleske Aff., Ex. 26, [REDACTED] Tr. 187-88), [REDACTED]





44. On February 14, 2018, OAG requested that Exxon explain why it had not previously produced these highly relevant documents, which contain climate-related search terms, and some of which dated back to 2013 and 2014. Attached as Exhibit 25 is OAG's February 14, 2018 letter to Exxon.

45. On February 23, 2018, Exxon responded by asserting that these highly responsive documents "were originally coded as non-responsive" but "were ultimately determined to be responsive." The reason it took Exxon over five months from the date of [REDACTED] examination to produce these documents was left unexplained. Attached as Exhibit 26 is Exxon's February 23, 2018 letter to OAG. (*See id.* at 4.)

46. Exxon has not provided any amended or supplemental certifications relating to its non-compliance with OAG's requests for cash flow spreadsheets, including its failure to adequately search the EMDC SharePoint site or any of the other centralized data locations used at other Exxon business units to store these documents.

**D. March 29, 2018 U.S. District Court Decision**

47. On March 29, 2018, the U.S. District Court for the Southern District of New York dismissed Exxon's lawsuit seeking to enjoin OAG's investigation, holding that Exxon's claims were based on "extremely thin allegations and speculative inferences." Attached as Exhibit 27 is the March 29, 2018 Decision. (*See id.* at 2.) The district court specifically rejected Exxon's claim that OAG's inquiry was preempted by SEC regulations, stating that "Exxon's preemption claim [fares] no better. Ordinarily, an action to enforce or quash a subpoena is not the proper forum in which to assert a preemption defense. . . . AGs [] are afforded latitude to conduct their investigations without interference and anticipatory jurisdictional challenges." (*Id.* at 47.) Exxon has filed a notice of appeal.

**II. OAG's Request for Cash Flow Spreadsheets Does Not Impose an Undue Burden**

48. Based on Exxon's own documents and testimony, its planners and managers routinely create and use cash flow spreadsheets for ordinary business purposes, including its standardized processes for making major investment decisions, conducting ongoing business planning for projects that have received capital investments, estimating oil and gas reserves and resources associated with its assets, and evaluating assets for potential impairments. (See Oleske Aff. ¶ 64.)

49. The company's testimony and documents indicate that, as a matter of corporate policy and practice, these documents are likely within the control of a limited number of planning supervisors within each of the subsidiaries responsible for supervising those projects, and are electronically stored in centralized, organized, and readily accessible shared locations within each relevant Exxon subsidiary, so as to be readily accessible as needed to Exxon's planners and management.

50. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Oleske Aff., Ex. 51, [REDACTED]  
Tr. 119:19-23.) [REDACTED]  
[REDACTED]  
[REDACTED] (*Id.* at 66-67.) [REDACTED]  
[REDACTED]  
[REDACTED] (*Id.* at 63-64.)

51. [REDACTED]

[REDACTED]

[REDACTED] (Oleske Aff., Ex. 26, [REDACTED] Tr. 187:3-6, 188.) [REDACTED]

[REDACTED]

[REDACTED] (*Id.* at

445:16-25.) [REDACTED]

[REDACTED]

[REDACTED] (*Id.* at

94-97, 99-100, 105, 118, 130-32, 136-37.)

52. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attached as Exhibit 28 is EMC

003179777, a copy of this email.

53. [REDACTED]

[REDACTED]

[REDACTED] Attached as Exhibit 29 is EMC 003973950, a

copy of this email.

54. Testimony and documents also show that Exxon maintains input files and other backup materials that support cash flow spreadsheets in organized and readily accessible files.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Oleske Aff., Ex. 26, [REDACTED] Tr. 183-85.)

55. Likewise, in February 2016, [REDACTED] responded to a request from [REDACTED] [REDACTED] by providing the cash flow spreadsheets, along with backup materials such as input files, for [REDACTED]. The email includes a screenshot capturing the folder structure used to house these spreadsheets, demonstrating that they were centralized, well organized, and clearly labeled. Attached as Exhibit 30 is EMC 002879296, a copy of this email.<sup>6</sup>

56. There is every reason to believe that Exxon’s centralized, structured archiving of cash flow spreadsheets used for investment decision-making purposes in the EMDC SharePoint is typical of Exxon’s file storage practices. For example, Exxon’s cash flow spreadsheets for corporate planning purposes appear to be straightforward to collect. [REDACTED]

[REDACTED]

[REDACTED] (Oleske Aff., Ex. 26, [REDACTED] Tr. 199.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Oleske Aff., Ex. 26, [REDACTED] Tr. 224-25.)

57. Cash flow spreadsheets used for impairment evaluation purposes also appear to be straightforward to collect. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>6</sup> See also Oleske Aff., Ex. 51, [REDACTED] Tr. 497-505 (describing the contents of this document).

[REDACTED] (Oleske Aff., Ex. 14, [REDACTED] Tr. 94-95, 262-65.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.* at 88.)

58. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. The cash flow spreadsheets associated with the XTO acquisition likewise appear to be easily accessible. [REDACTED]

[REDACTED] (Oleske Aff., Ex. 14, [REDACTED] Tr.

233-34), [REDACTED]

[REDACTED]

[REDACTED] (*id.* at 251-52).

60. Exxon has also produced multiple emails in which its employees send hyperlinks to cash flow spreadsheets to each other in lieu of attachments. While Exxon has produced spreadsheets that were attached to emails, Exxon has not produced spreadsheets that were shared via hyperlink. The use of hyperlinks demonstrates the ease with which Exxon employees are able to retrieve specific cash flow spreadsheets. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The extracted text that Exxon produced along with the document even contains the exact filepath of the spreadsheet on Exxon’s computer system. However, Exxon did not produce the linked spreadsheet to OAG. Attached as Exhibit 32 is EMC 003179781, a copy of this email.

61. Additionally, while there may be multiple discrete projects associated with a particular asset, the cash flow spreadsheets Exxon has produced to date indicate that such projects are sometimes included in a single spreadsheet to allow a consolidated view of the relevant asset. For example, [REDACTED]

[REDACTED]. (Oleske Aff., Ex. 40, [REDACTED].) Such grouping likely reduces the number of discrete documents that Exxon would need to produce pursuant to OAG’s requests.

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attached as Exhibit 33 is PNYAG0308127, a PowerPoint presentation [REDACTED]

[REDACTED]. (See *id.* at 23; see also Oleske Aff., Ex. 26, [REDACTED] Tr. 592-96.)

63. In this investigation, by contrast, Exxon has only produced cash flow spreadsheets that happen to be attached to emails, or happen to be located in the computer files of certain custodians. In addition, many of the titles of the spreadsheets Exxon has produced contain the

word “draft,” indicating that they may not have been the versions used to support final business decisions. Others are incomplete and focus only on one aspect of the evaluation (such as revenue or cost) without providing the full cash flow spreadsheet. Thus, it is unclear whether most of the cash flow spreadsheets that Exxon has produced are those that it actually used for decision-making and planning purposes.

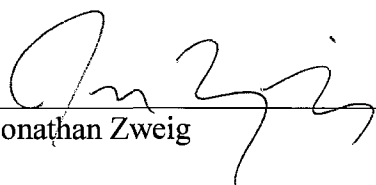
64. Indeed, Exxon’s use of search terms such as “GHG” or “proxy cost” would not generally pick up cash flow spreadsheets in which Exxon *failed* to include such costs. While search terms are often an appropriate way to locate relevant documents, it is sometimes necessary, as it is here, to supplement the use of search terms with the collection of specific documents.

65. Here, while Exxon has searched the emails of the named custodians as well as some shared folders, it has refused to produce cash flow spreadsheets from the shared folders where those documents are known to be stored. As described above, there are company archives of actionable cash flow spreadsheets that contain the most reliable evidence of the economic assumptions Exxon actually used for decision-making and planning purposes. According to the testimony of Exxon’s own planners, producing the cash flow spreadsheets saved in the SharePoint archive would ensure that OAG is provided with the cash flow spreadsheets that Exxon actually utilized. (Oleske Aff., Ex. 51, [REDACTED] Tr. 244-46; Oleske Aff., Ex. 26, [REDACTED] Tr. 186-89.)

**Conclusion**

66. OAG respectfully requests that the Court compel Exxon to produce the cash flow spreadsheets identified in the proposed order submitted herewith, as well as the documents it has provided to the SEC, and make other and further orders as the Court deems just and proper.

Dated: June 19, 2018  
New York, New York

  
Jonathan Zweig