

CASE 5216: MOTION OF THE OCC TO
CONSIDER THE AMENDMENT OF RULE
1203 OF THE COMMISSION RULES.

CASE No.

5216

Application,

Transcripts,

Small Exhibits

ETC.

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
April 23, 1974

COMMISSION HEARING

IN THE MATTER OF:

Hearing called by the Oil Conservation Commission upon its own motion to consider the amendment of Rule 1203 of the Commission Rules and Regulations to simplify the method of initiating a hearing before the Commission by its examiners, and to include a provision for the acceptance of verbal applications for hearing when such is necessary to permit the meeting of deadlines for publication of legal notice, provided that a subsequent written application would be required.

Case No.
5216

BEFORE: A.L. Porter, Secretary and Director
I.R. Trujillo, Chairman of the Commission

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the New Mexico Oil
Conservation Commission:

Thomas Derryberry, Esq.
Legal Counsel for the
Commission
State Land Office Bldg.
Santa Fe, New Mexico

William Carr, Esq.
Legal Counsel for the
Commission
State Land Office Bldg.
Santa Fe, New Mexico

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CASE 5216

Page.....2.....

I N D E X

PAGE

DAN NUTTER

Direct Examination by Mr. Carr
Cross Examination by Mr. Porter

4
12

E X H I B I T S

Marked

Admitted

Commission's Exhibit No. A 5

12

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MR. PORTER: The Hearing will come to order, please. Let the record show that I.R. Trujillo, Chairman, and A.L. Porter, Jr., Secretary-Director of the Commission, are present, constituting a quorum at the Hearing. Call Case No. 5216.

MR. DERRYBERRY: Case 5216. In the matter of the hearing called by the Oil Conservation Commission upon its own motion to consider the amendment of Rule 1203 of the Commission Rules and Regulations to simplify the method of initiating a hearing before the Commission or its examiners, and to include a provision for the acceptance of verbal applications for hearing when such is necessary to permit the meeting of deadlines for publication of legal notice, provided that a subsequent written application would be required.

MR. PORTER: Mr. Carr.

MR. CARR: I'm William F. Carr, appearing for the Commission. I have one witness to be sworn.

MR. PORTER: Would you stand at the end of the table, please.

(Witness sworn.)

DAN NUTTER

called as a witness, having been first duly sworn, was

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examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q Would you state your name for the record, please?

A Dan Nutter.

Q Mr. Nutter, what is your occupation?

A Chief Engineer, New Mexico Oil Conservation Commission.

Q How long have you been so employed?

A I have been employed by the Commission since 1954; I have been in this position since about 1957, '58.

Q Mr. Nutter, do your duties as Chief Petroleum Engineer include making recommendations to the Commission on proposed rule changes?

A Yes, they do.

Q Are you familiar with the proposed amendment to Rule 1203, which is the subject matter of the Case today?

A Yes, I am.

Q Would you refer to what has been marked as Oil Conservation Commission's Exhibit A, which is the text of the Rule, read it, note the change that has been made, and explain to the Commission the reason in proposing this change?

NUTTER-DIRECT

CASE 5216

Page..... 5

A I have a copy of the proposed revision of Rule 1203, which has been identified as Exhibit No. A, Case 5216.

(Whereupon, Commission's Exhibit No. A was marked for identification.)

BY MR. CARR:

A (Continuing) The proposed language which I would suggest and recommend to the Commission be adopted for Rule 1203 is entitled, "Method of Initiating a Hearing." I would like first to go back to Order 850, issued by the Commission in 1949, and effective January 1, 1950. At that time, Rule 1203 was adopted and the wording in 1203 was essentially the same as it is in the proposed 1203 through the first sentence. We revised the wording slightly here up until the point where you get to the itemized segments there.

The old Rule said (Reading) The Commission, upon its own motion, and the Attorney General, on behalf of the State, and any operator, producer, or any other person having a property interest, may institute proceedings for a hearing. (End of reading.) That's identical. (Reading) If the hearing is set by the Commission, it shall be on motion of the Commission, and if by any other person, it shall be by application.

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(End of reading.) This is identical. The old Rule says
(Reading) An application shall state: (1) The name or
general description of the common source or sources of
supply affected by the order sought, unless the same is in-
tended to apply to and affect the entire State, in which
event the application shall so state, and (2) briefly the
nature of the order, rule, or regulation sought, and (3)
any other matter required by a particular rule or rules.
(End of reading.)

You note that the old rule did not require the
name of the applicant. We think that this should be
included in the application.

Rule 1203, as it is currently in effect in the
Commission rules, still does not require the name of the
applicant, so we have included that in the proposed re-
vision. The old rule just then went on to say (Reading)
An application shall be signed by the person seeking the
hearing or by his attorney. Unless required by a specific
rule, an application need not be verified. (End of
reading.) Well, this was amended upon the adoption by the
Commission of the Examiner System and when the Examiner
System was adopted, Rule 1203 was amended and it was provided
that the applicant could request whether he wanted a

NUTTER-DIRECT

CASE 5216

Page.....7

hearing before the Examiner or the Commission, and if the hearing was requested before the Examiner, he could name the place where he wanted the hearing and he was also required at this time -- this was the first time it was put into the Rule -- he was also required to list the names and addresses of all the interested parties in his application to the Commission. I don't know why this was put in because there wasn't any requirement that the Commission do anything with this list of the interested parties once they received it, and, of course, the Commission, at the beginning of the Examiner System, did try the holding of hearings in towns other than Santa Fe, for the convenience of operators. We would schedule a hearing for Farmington, and it seems like when that Docket would come up all the cases would relate to southeast New Mexico. So, the next month we would schedule a case for southeast New Mexico and have the hearing in Hobbs, and everything would affect the San Juan Basin; so it really wasn't saving anybody any travel at all and the convenience was negligible, if there was any at all to anyone. So, the Commission has discontinued the procedure of having Examiner Hearings out of town, so we do feel that this provision in here that the applicant

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would state where he wants the hearing, should be deleted.

Also, the requirement for having hearings before the Commission if the applicant stated, has been deleted from the statute. There is no point in having that provision in this Rule anymore. So, we have suggested that the new Rule -- I read the first two sentences from old 850, they're identical to this new Rule -- I would suggest that the new Rule go on further to say (Reading) The application shall be in triplicate and shall state: (1) The name of the applicant, (2) the name or general description of the common source of supply or the area affected by the order sought, (3) briefly the general nature of the order, rule, or regulation sought, and (4) any other matters required by a particular rule or rules or order of the Commission. The application shall be signed by the person seeking the hearing or by his attorney. (End of reading.)

Now, the context of Rule 1203 as is presently in effect, is that this application can be only a written application in writing and in triplicate. It is a written application that must be filed in triplicate. Now, over the years we have, for the convenience of operators, when we're advertising a docket and some matter comes up

NUTTER-DIRECT

CASE 5216

Page.....9

-- often it is a unit agreement, the lease is expiring and they've got to get this unit on for hearing -- we have accommodated the operator by taking the application over the telephone with the promise that we would receive a written application. Well, these cases have been docketed and we have had instances where there wasn't any written application on file even for the date of the hearing. Well, we recently put out a memorandum that we would not docket cases except if we had written application, and we've had people flying airplanes half way across the country to get an application in here in time to file it. Of course, there would be another procedure that they could have some local attorney file an application for them. Often they are not in contact with a local attorney, however, so we would like to recommend that provision be made in Rule 1203 whereby we could accept an application verbally, provided that it would be followed up with a written application. I think I've got a safeguard in here to protect the Commission against the case I just mentioned, where we go to hearing and we still haven't got a written application, so I would suggest that Paragraph 2 be added to Rule 1203 and read as follows:

(Reading) When conditions are such as to require verbal

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application to place a matter for hearing on a given docket, the Commission will accept such verbal application in order to meet publishing deadlines. However, if written application, filed in accordance with the procedures outlined above, has not been received by the Commission's Santa Fe Office at least 10 days before the date of the hearing, the case will be dismissed. (End of reading.)

I believe that this is perfectly reasonable. The written application would be required to be in ten days before the hearing; that's the earliest date the advertised notice of the case is going to appear in the paper, because notice must be given 10 days before the hearing. So, by the time the notice comes out in the papers, the application must be in our files, and this is not permissive, that the case may be dismissed; it is mandatory that the case will be dismissed if that application is not in. But I think that 9,999 times out of 10,000, that a written application will be on file and we wouldn't have to dismiss the case, and I believe for the convenience offered to the operators, to permit them to telephone an application in to meet a publishing deadline, would far outweigh the disadvantage of having

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an occasional case dismissed. So, I would recommend that the Rule be amended as I have described.

Q The present Rule 1203 contains a provision that an application shall state a list of the names and addresses of all interested parties known to the applicant. That phrase is apparently deleted. Would you explain that?

A That was not in the original Rule 1203 as adopted by 850. That was put in at the time the Examiner System was adopted. There was a general feeling when we first adopted the Examiner System -- there was a general feeling of suspicion about it; that it wasn't going to work. They put in a number of safeguards against the Examiner System, but the Examiner System has worked very well in the State. There have been a very small percentage of hearings de novo, and we feel that some of these preliminary safeguards that were installed in the rules are not necessary. As I mentioned before, when they put it in, that the application would have to state a list of the names and addresses of the interested parties, there wasn't any requirement that anything be done with that list. We had an application not long ago where the application itself was a paragraph about that long (indicating) and

the Company itself actually went bananas trying to list all the interested parties. They never could find them all but they were trying to comply with that rule. After we got the list, it's in the files, but that's about it. We don't feel that this is necessary. Legal advertisement is given in accordance with law and it's to all parties concerned, and I feel that that is sufficient.

Q Mr. Nutter, do you recommend that the Rule as proposed in Exhibit A be adopted by the Commission?

A Yes, sir, as proposed on Exhibit A.

MR. CARR: At this time I would offer Commission's Exhibit No. A into evidence.

MR. NUTTER: This, by the way, has been circulated at the hearing this morning.

MR. PORTER: Exhibit A will be admitted into evidence.

(Whereupon, Commission's Exhibit No. A was admitted into evidence.)

MR. CARR: I have nothing further.

CROSS EXAMINATION

BY MR. PORTER:

Q Mr. Nutter, how long do you think it usually is between the mailing of the advertisement to the newspapers

and the actual hearing?

A It is usually, approximately 20 days.

Q And it must appear 10 days prior?

A Yes, sir. We've got to get it to the newspapers; we have some counties in the State where we have to give notice that only have weekly newspapers and we have to meet their publishing deadlines, so we have to send it out a little bit early in order for them to get it, so from the date we send it until the notice is actually published is about 10 days, 8 to 10 days. Usually the notice comes out on a Friday and the hearing will be about 12 days after that. It takes 20 to 21 days from the time we receive the application until the hearing can be heard, at the earliest.

Q I see. You are suggesting that they can meet that deadline by calling in and then filing the application at least 10 days prior to the time the case is heard?

A Yes, sir.

Q I don't share your optimism as to the proceedings, but I think it might work.

A I started to say 99 out of 100, but I think it will be better than that.

MR. PORTER: If there are no questions of the Witness he may be excused. Does anyone else have anything

to offer in this Case?

MR. HUNKER: Mr. Porter?

MR. PORTER: Mr. Hunker.

MR. HUNKER: George Hunker, Roswell, New Mexico.

As a friend of the Commission, I would like to point out that 65-3-6 requires that the Commission give notice under this Act with regard to any orders prescribed by the Commission, and that these orders shall be served by personal service on the person affected, or by publication once in a newspaper of general circulation. The object of the old rule was to satisfy the due-process requirements so that persons who have interest in land could be protected by receiving notice by publication at the minimum of action by the Commission. I think that it would be improper for the Commission, at this time, to omit from its rule that the requirement that the names and addresses of the interested parties be omitted from the application.

MR. PORTER: Does anyone else have anything they want to offer? The Commission will take the Case under advisement.

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) SS.

I, RICHARD L. NYE, Court Reporter, do hereby certify that the foregoing and attached Transcript of Hearing before the New Mexico Oil Conservation Commission was reported by me, and the same is a true and correct record of the said proceedings, to the best of my knowledge, skill and ability.

Richard L. Nye
RICHARD L. NYE, Court Reporter

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BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE NO. 5216
Order No. R-4778

IN THE MATTER OF THE HEARING CALLED BY
THE OIL CONSERVATION COMMISSION UPON ITS
OWN MOTION TO CONSIDER THE AMENDMENT OF
RULE 1203 OF THE COMMISSION RULES AND REGU-
LATIONS TO SIMPLIFY THE METHOD OF INITIATING
A HEARING BEFORE THE COMMISSION OR ITS EXAMINERS
AND TO ALLOW THE ACCEPTANCE OF VERBAL APPLICATIONS
IN CERTAIN CIRCUMSTANCES.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on April 23, 1974, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 30th day of April, 1974, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

- (1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (2) That there is need for amendment of Rule 1203 of the Commission Rules and Regulations to provide increased flexibility to operators in this State to meet filing deadlines when confronted with emergency situations.
- (3) That said amendment should make provision for the Commission to accept verbal applications for hearings when such are necessary to permit the meeting of deadlines for publication of legal notice and when refusal to accept such an application would cause hardship to the applicant.
- (4) That there is also need for amendment of Rule 1203 of the Commission Rules and Regulations to delete the present requirement that a list of the names and addresses of all interested parties known to the applicant be included with the applications for examiner hearings since such information is not required by law, is not put to any use by the Commission, and imposes an unnecessary burden on applicants.

-2-

Case No. 5216
Order No. R-4778

(5) That said amendment should delete the present requirement that a list of the names and addresses of all interested parties known to the applicant be included with the application for examiner hearings.

(6) That adoption of such amendments to Rule 1203 will provide flexibility while providing sufficient safeguards to interested parties and will eliminate unnecessary information in applications.

(7) That adoption of such amendments to Rule 1203 is in the public interest, will prevent waste, will not impair correlative rights, and should be approved.

IT IS THEREFORE ORDERED:

(1) That Rule 1203 of the Commission Rules and Regulations is hereby amended to read in its entirety as follows:

"RULE 1203. METHOD OF INITIATING A HEARING

The Commission upon its own motion, the Attorney General on behalf of the State, and any operator or producer, or any other person having a property interest may institute proceedings for a hearing. If the hearing is sought by the Commission it shall be on motion of the Commission and if by any other person it shall be by application. The application shall be in triplicate and shall state (1) the name of the applicant, (2) the name or general description of the common source or sources of supply or the area affected by the order sought, (3) briefly the general nature of the order, rule, or regulation sought, and (4) any other matter required by a particular rule or rules, or order of the Commission. The application shall be signed by the person seeking the hearing or by his attorney.

When conditions are such as to require verbal application to place a matter for hearing on a given docket, the Commission will accept such verbal application in order to meet publishing deadlines. However, if written application, filed in accordance with the procedures outlined above, has not been received by the Commission's Santa Fe office at least ten days before the date of the hearing, the case will be dismissed."

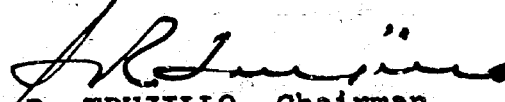
(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

-3-


Case No. 5216
Order No. R-4778

DONE at Santa Fe, New Mexico, on the day and year herein-
above designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


I. R. TRUJILLO, Chairman

ALEX J. ARMIJO, Member


A. L. PORTER, Jr., Member & Secretary

SEAL

dr/

DOCKET: COMMISSION HEARING - TUESDAY - APRIL 23, 1974

OIL CONSERVATION COMMISSION - 9 A.M. - MORGAN HALL, STATE LAND OFFICE
BUILDING - SANTA FE, NEW MEXICO

CASE 5216: In the matter of the hearing called by the Oil Conservation Commission upon its own motion to consider the amendment of Rule 1203 of the Commission Rules and Regulations to simplify the method of initiating a hearing before the Commission or its examiners, and to include a provision for the acceptance of verbal applications for hearing when such is necessary to permit the meeting of deadlines for publication of legal notice, provided that a subsequent written application would be required.

CASE 5217: In the matter of the hearing called by the Oil Conservation Commission upon its own motion to consider the adoption of a Commission definition for "Temporary Abandonment" of wells, and further to consider the amendment of Rule 202 of the Commission Rules and Regulations to adopt an administrative procedure for abandonment of wells in this state for a limited period of time only, and for the adoption of a requirement for an individual one-well plugging bond for the continued temporary abandonment of any well after the expiration of the administrative period of time in which such well could be temporarily abandoned.

CASE 5158: (De Novo)

Application of Cities Service Oil Company for compulsory pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Pennsylvanian formation underlying the E/2 of Section 29, Township 21 South, Range 27 East, Eddy County, New Mexico, to be dedicated to its Simpson Well No. 1 to be drilled at an orthodox location for said unit. Also to be considered will be the cost of drilling and completing said well and the allocation of such costs, as well as actual operating costs and charges for supervision. Also to be considered is the designation of applicant as operator of the well and a charge for risk involved in drilling said well.

Upon application of Michael P. Grace and Corinne Grace, this case will be heard De Novo pursuant to the provisions of Rule 1220.

CASE 5167: (De Novo)

Application of Fluid Power Pump Company and Petro-Lewis Corporation for compulsory pooling, Sandoval County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying two non-standard proration units in Township 19 North,

(Case 5167 continued from Page 1)

Range 3 West, Media-Entrada Oil Pool, Sandoval County, New Mexico, described as follows:

Unit No. 1, the S/2 SW/4 of Section 14 and N/2 NW/4 of Section 23, dedicated to applicants' Media Well No. 1 located in Unit M of said Section 14; and

Unit No. 2, the S/2 SE/4 of Section 15 and N/2 NE/4 of Section 22, to be dedicated to applicants' Media Well No. 2 located in Unit P of said Section 15.

Upon application of John K. Reimer and R. E. McKenzie, Jr., this case will be heard De Novo pursuant to the provisions of Rule 1220.

CASE 5218: Application of John K. Reimer and R. E. McKenzie, Jr. for 40-acre spacing, revocation of non-standard proration units, and re-establishment of 40-acre allowables, Sandoval County, New Mexico. Applicants, in the above-styled cause, seek an order rescinding that portion of Order No. R-4277 which established 160-acre spacing units for the Media-Entrada Oil Pool, Sandoval County, New Mexico, alleging the existence of reservoir information now available, but not available at the time of the spacing hearing. Applicants further seek the revocation of orders numbers R-4274 and R-4287 which established four 160-acre non-standard oil proration units in said pool, and the revocation of Order No. R-4713 which established a special depth bracket allowable of 750 barrels of oil per day for said pool.

NEW MEXICO OIL CONSERVATION COMMISSION
POST OFFICE BOX 2088
SANTA FE, NEW MEXICO
7501

PROPOSED REVISION -- RULE 1203

RULE 1203. METHOD OF INITIATING A HEARING

The Commission upon its own motion, the Attorney General on behalf of the State, and any operator or producer, or any other person having a property interest may institute proceedings for a hearing. If the hearing is sought by the Commission it shall be on motion of the Commission and if by any other person it shall be by application. The application shall be in triplicate and shall state (1) the name of the applicant, (2) the name or general description of the common source or sources of supply or the area affected by the order sought, (3) briefly the general nature of the order, rule, or regulation sought, and (4) any other matter required by a particular rule or rules, or order of the Commission. The application shall be signed by the person seeking the hearing or by his attorney.

When conditions are such as to require verbal application to place a matter for hearing on a given docket, the Commission will accept such verbal application in order to meet publishing deadlines. However, if written application, filed in accordance with the procedures outlined above, has not been received by the Commission's Santa Fe office at least ten days before the date of the hearing, the case will be dismissed.

ir/

BEFORE THE OIL CONSERVATION COMMISSION Santa Fe, New Mexico	
Case No. <u>5216</u>	Exhibit No. <u>A</u>
Submitted by <u>Nutter</u>	
Hearing Date <u>4/23/74</u>	

EXPEDITE

ROUGH

dr/

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

CASE NO. 5216
Order No. R-

(IN THE MATTER OF THE HEARING CALLED BY)

THE OIL CONSERVATION COMMISSION UPON ITS
OWN MOTION TO CONSIDER THE AMENDMENT OF
RULE 1203 OF THE COMMISSION RULES AND
REGULATIONS TO SIMPLIFY THE METHOD OF
INITIATING A HEARING BEFORE THE COMMISSION OR ITS EXAMINERS AND TO
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ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on April 23, 1974,
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NOW, on this 30th day of April, 1974, the Commission, a
quorum being present, having considered the testimony presented
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in the premises,

FINDS:

(1) That due public notice having been given as required by
law, the Commission has jurisdiction of this cause and the subject
matter thereof.

(2) That there is need for amendment of Rule 1203 of the
Commission Rules and Regulations to provide for increased
flexibility to operators in this State to meet filing deadlines
when confronted with emergency situations.

(3) That ~~said~~ amendment should make provision for the
Commission to accept verbal applications for hearings when such
~~is~~ ^{are} necessary to permit the meeting of deadlines for publication of
legal notice and when refusal to accept such an application
would cause hardship to the applicant.

(4) That there is also need for amendment of Rule 1203
of the Commission Rules and Regulations to delete the present
requirement that a list of the names and addresses of all interested
parties known to the applicant be included with the applications
for examiner hearings since such information is not required by
law, is not put to any use by the Commission, and imposes an
unnecessary burden on applicants.

(5) That said amendment should delete the present requirement that a list of the names and addresses of all interested parties known to the applicant be included with the application for examiner hearings.

(6) That adoption of such amendments to Rule 1203 will provide flexibility while providing sufficient safeguards to interested parties and will eliminate unnecessary information in applications.

(7) That adoption of such amendments to Rule 1203 is in the public interest, will prevent waste, ~~and~~ will not impose ~~impar~~ ^{impar} correlative rights, and should be approved.

IT IS THEREFORE ORDERED:

(1) That Rule 1203 of the Commission Rules and Regulations is hereby amended to read in its entirety as follows:

"RULE 1203. METHOD OF INITIATING A HEARING

The Commission upon its own motion, the Attorney General on behalf of the State, and any operator or producer, or any other person having a property interest may institute proceedings for a hearing. If the hearing is sought by the Commission it shall be on motion of the Commission and if by any other person it shall be by application. The application shall be in triplicate and shall state (1) the name of the applicant, (2) the name or general description of the common source or sources of supply or the area affected by the order sought, (3) briefly the general nature of the order, rule, or regulation sought, and (4) any other matter required by a particular rule or rules, or order of the Commission. The application shall be signed by the person seeking the hearing or by his attorney.

When conditions are such as to require verbal application to place a matter for hearing on a given docket, the Commission will accept such verbal application in order to meet publishing deadlines. However, if written application, filed in accordance with the procedures outlined above, has not been received by the Commissioner's Santa Fe office at least ten days before the date

-3-

Case No. 5216

Order No. R-

of the hearing, the case will be dismissed."

(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.