

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

CASE NOS. 13,402 (Continued) and 13,357 (Dismissed)

ORIGINAL

CONTINUED AND DISMISSED CASES
TRANSCRIPT OF PROCEEDINGS

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
FRANK T. CHAVEZ, COMMISSIONER

March 8th, 2005

Santa Fe, New Mexico

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These matters came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, March 8th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

March 8th, 2005
Commission Hearing
CASE NOS. 13,402 (Continued) and 13,357 (Dismissed)

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A P P E A R A N C E S

FOR THE COMMISSION:

DAVID K. BROOKS, JR.
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

* * *

ALSO PRESENT:

Richard Ezeanyim
Chief Engineer, NMOCD

* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: Good morning, at this time
4 we'll call the Oil Conservation Commission meeting to
5 order. Let the record reflect that it's 9:00 a.m. on
6 Tuesday, March 8th, 2005. We're located in Porter Hall, at
7 the OCD Office in Santa Fe, New Mexico.

8 My name is Mark Fesmire.

9 To my right is Commissioner Jami Bailey.
10 Commissioner Bailey is the designee of the Commission of
11 State Lands Commissioner Patrick Lyons.

12 To my left is Mr. Frank Chavez. Mr. Chavez is
13 the former OCD supervisor in Aztec and the appointee of the
14 New Mexico Energy, Minerals and Natural Resources
15 Department Secretary, Joanna Prukop.

16 To Mr. Chavez's left is Commission Counsel David
17 Brooks, and to Commissioner Bailey's right is Commission
18 Secretary Florene Davidson. The court reporter today, as
19 almost always, is Steve Brenner.

20 And let the record reflect that all
21 Commissioners, in spite of severe health problems, are
22 present.

23 * * *

24

25

1 CHAIRMAN FESMIRE: The first matter of business
2 today is the adoption of the minutes of the previous
3 meeting held on February 10th, 2005.

4 Have the Commissioners had a chance to review the
5 minutes?

6 COMMISSIONER BAILEY: Yes, I have, and I move
7 that we adopt them.

8 COMMISSIONER CHAVEZ: Yes, I have. There's just
9 one small correction on the last page. The date of the
10 April meeting that was referenced should be April 14th, not
11 April 7th.

12 CHAIRMAN FESMIRE: Is there a motion to correct
13 the minutes for that date?

14 COMMISSIONER BAILEY: I move we correct them.

15 COMMISSIONER CHAVEZ: I second the motion.

16 CHAIRMAN FESMIRE: Motion having been made and
17 seconded, the minutes will be corrected to show on the
18 second-to-last line, the paragraph should read,
19 "Commissioner Chavez announced that he will be unable to
20 attend the Commission meeting scheduled for April 14th.
21 Another date for the April meeting will be decided upon at
22 a future date."

23 COMMISSIONER CHAVEZ: I move adoption of these --
24 approval of these minutes, with that correction.

25 CHAIRMAN FESMIRE: As amended?

1 COMMISSIONER CHAVEZ: As amended.

2 CHAIRMAN FESMIRE: Second?

3 COMMISSIONER BAILEY: I second.

4 CHAIRMAN FESMIRE: Having been moved and
5 seconded, all those in favor?

6 COMMISSIONER BAILEY: Aye.

7 COMMISSIONER CHAVEZ: Aye.

8 CHAIRMAN FESMIRE: All those opposed?

9 The Commission will adopt the minutes as amended.

10 * * *

11

12 CHAIRMAN FESMIRE: The first order of business
13 before the Commission today is a proposed order instituting
14 rulemaking and an amendment of OCD Rules 104 and 701.

15 Counsel Brooks, would you bring the Commission up
16 to speed on this issue?

17 MR. BROOKS: Yes, Mr. Chairman, honorable
18 Commissioners.

19 The proposed amendments -- the order instituting
20 rulemaking that I drafted for the Commission implements the
21 proposal to amend Rules 104 and 701 to permit operation of
22 infill wells in a spacing unit by an operator different
23 from the operator of the existing well or wells in the
24 spacing unit, under certain conditions and with certain
25 restrictions.

1 The proposed rule is the result of a work group
2 -- first an internal work group that developed some
3 proposals and then a stakeholder work group that worked
4 over those proposals rather substantially. There's been a
5 good deal of input both within and without the OCD at this
6 point, and we believe that the rule will not be extremely
7 controversial, but of course it is necessary to follow the
8 public-hearing requirements and the rule can only be
9 adopted after those requirements have been followed.

10 I believe that Mr. Ezeanyim, the Chief Engineer
11 for the Division, was the lead person in formulating these
12 rules, and I see that he's in the hearing room this
13 afternoon, so if the Commission has any questions they can
14 address them to Mr. Ezeanyim. Of course, the details will
15 be worked out at a public hearing that will be scheduled in
16 accordance with the order, but if you have any questions at
17 this stage, I think, of this proceeding, he could probably
18 address them better than I can.

19 CHAIRMAN FESMIRE: Counsel Brooks, what exactly
20 are notice requirements for this order?

21 MR. BROOKS: Well, it sets a hearing for April
22 the 14th on the proposed rule. That means that a notice
23 must be published in *The New Mexico Register* at least 10
24 days prior to that. *The New Mexico Register* is published
25 twice a month. It's published on the 1st and the 15th of

1 each month, and the notice has to be in the issue that's
2 published on the 1st, which means it has to be to the
3 Records and Archives by March the 16th, and I believe that
4 the Commission Secretary is working with Sally on getting
5 that done.

6 CHAIRMAN FESMIRE: Okay.

7 MR. BROOKS: Second, there is a necessity to
8 publish notice in the newspaper at least 20 days prior to
9 the hearing. Twenty days prior to the hearing, if I'm not
10 mistaken, would be March the 25th, so that also is
11 susceptible to being done.

12 It also has to be put on the website at that time
13 and distributed to our mailing list at that time. And I
14 believe the Commission Secretary is going to be taking
15 responsibility for that, and if anything needs to be
16 drafted in that connection, then that will be my
17 responsibility.

18 CHAIRMAN FESMIRE: Commissioners, have you had a
19 chance to examine the proposed order adopting rulemaking?

20 COMMISSIONER BAILEY: Yes, I have.

21 COMMISSIONER CHAVEZ: I have too.

22 CHAIRMAN FESMIRE: The Chair would entertain a
23 motion as to the disposition of that order.

24 COMMISSIONER BAILEY: I move that we sign that
25 order.

1 COMMISSIONER CHAVEZ: I second the motion.

2 CHAIRMAN FESMIRE: The adoption of the order has
3 been moved and seconded. All those in favor?

4 COMMISSIONER BAILEY: Aye.

5 COMMISSIONER CHAVEZ: Aye.

6 CHAIRMAN FESMIRE: Opposed?

7 The Commission will sign the order and draft it,
8 instituting rulemaking concerning modification of Division
9 Order Rules 104 and 701 and proceed with the notice for
10 public hearing on April 14th, 2005.

11 MR. BROOKS: We need to get the order signed, I
12 believe.

13 CHAIRMAN FESMIRE: Do we have a copy of the rule?

14 MR. BROOKS: Did we prepare an original? Okay,
15 well, we can do that later in the meeting, so the
16 Commission Secretary and I will work on that during a
17 break.

18 CHAIRMAN FESMIRE: Okay.

19 (Off the record at 9:05 a.m.)

20

21 * * *

22

23 (The following proceedings had at 1:15 p.m.)

24 CHAIRMAN FESMIRE: Okay, let's go back on the
25 record. For the record, it is now 1:15, and we're going to

1 reconvene.

2 In just a minute, we're going to go back into
3 Cause Number 13,351. Before we do that, we have one piece
4 of unfinished business that we need to come up to speed on.

5 In Cause Number 13,453, we now have an order
6 requiring signature that -- the ruling on this order took
7 place earlier this morning. We just hadn't drafted the
8 order in proper form.

9 It's now been drafted and is ready for signature,
10 and I'll let the record reflect that I'm going to sign it,
11 and ask Commissioner Bailey, if it's satisfactory with her,
12 if she would sign it.

13 COMMISSIONER BAILEY: It is satisfactory, I will
14 sign it.

15 CHAIRMAN FESMIRE: And to Commissioner Chavez for
16 his signature and review.

17 COMMISSIONER CHAVEZ: It's satisfactory, I will
18 sign it.

19 (Off the record at 1:16 p.m.)

20 * * *

21
22 (The following proceedings had at 2:17 p.m.)

23 CHAIRMAN FESMIRE: The next case on the agenda is
24 13,357. It's the Application of Matrix New Mexico Holdings
25 for compulsory pooling in Lea County, New Mexico.

1 is, but I found it.

2 I did prepare a proposed draft. It circulated to
3 the other members of the Committee. I received no comments
4 from Mr. Carr, and I received no comments from Ms.
5 MacQuesten. I did receive comments from Ms. Davidson, I
6 did receive comments from Mr. Kellahin. Both of them
7 approved it with -- subject only to some typographical
8 corrections which have now been made.

9 Mr. Kellahin, I will note, did suggest that the
10 -- perhaps not an unreasonable suggestion, but I will leave
11 it to the Commission's discretion, that the Rules should be
12 reviewed by the Examiners, and I do not believe that has
13 actually been done, but -- and in case they had any
14 comments on them. But that's...

15 Now, so far as the changes that have been made
16 since the last Committee report, they are shown in blue on
17 the draft, and generally speaking, I think they are based
18 on specific instructions that the Commissioners made on the
19 record at the previous hearing.

20 The one that probably requires a bit of comment
21 is Rule 1212, because that required a significant amount of
22 drafting to do what I understood the Commission wanted to
23 do. That is the rule with regard to who can appear before
24 the Commission and what they can do when they appear.

25 The rule, basically, as I have intended to draft

1 it, unless I simply made a mistake, which has been known to
2 happen, is this, that in an adjudicatory hearing the
3 parties must have standing in order to appear. Persons
4 without standing would not be allowed to appear in an
5 adjudicatory hearing, and anyone must be represented by
6 counsel except an individual. An individual who has
7 standing to be a party can appear *pro se*.

8 There is one exception to that, however, and this
9 was not discussed in the last Commission meeting, but it
10 seemed to me to be appropriate, and I will -- no one on the
11 Committee objected, but I will throw it out to the
12 Commission to consider that.

13 One sentence in here would allow a representative
14 of a governmental agency, federal, state, tribal, or a
15 political subdivision, to appear even in an adjudicatory
16 hearing for the purpose of making a comment. I think there
17 have been a number of adjudicatory hearings in which
18 representatives of the BLM and occasionally representatives
19 of political subdivisions have appeared and made statements
20 of their position on a particular matter, and usually the
21 people that have done that have not been attorneys. And it
22 would seem to me that that is a practice we would want to
23 permit. Other than that, we don't have a provision for
24 appearances to make statements in adjudicatory proceedings.

25 In a rulemaking proceeding, basically it's wide

1 open for making statements. Any citizen can appear either
2 *pro se* or as a representative of any group and make a
3 statement in a rulemaking proceeding. However, a person
4 who wants to present testimony must be represented by
5 counsel, and a person making a statement can neither
6 examine witnesses -- neither sponsor witnesses nor cross-
7 examine other witnesses.

8 Now, I did not attempt to address the issue of
9 whether persons can appear as parties *pro se* in rulemaking
10 proceedings, because I think that's -- I just really don't
11 know how to address that in determining whether somebody is
12 a party or not a party and the propriety of a *pro se*
13 appearance in a rulemaking proceeding.

14 Okay, thank you.

15 CHAIRMAN FESMIRE: What's the next step in this,
16 Mr. Brooks?

17 MR. BROOKS: I believe if the Commission is
18 satisfied with the draft, then we would want to, at the
19 next meeting, enter an order instituting rulemaking, just
20 as we did on the Rule 104, and then post it for public
21 notice for a later meeting.

22 I believe that perhaps the Commissioners have not
23 seen that draft before today. They may want to study it in
24 the time between now and the next meeting, and if we can
25 get it on the docket again for an order instituting

1 rulemaking at the April meeting, then at that point we
2 could enter such an order, and if the Commissioners want to
3 change -- want some changes, then we can do that at that
4 time, and then we can go from there into the public hearing
5 process.

6 CHAIRMAN FESMIRE: Okay. I would like to take
7 the time to study it. I've read it once. So do we need a
8 motion to put it on the --

9 MR. BROOKS: It wouldn't hurt.

10 CHAIRMAN FESMIRE: Okay.

11 MR. BROOKS: I'm not sure if we need a motion or
12 not, but it wouldn't hurt.

13 CHAIRMAN FESMIRE: All right. So we'll need a
14 motion to put it on the agenda for April.

15 COMMISSIONER BAILEY: I so move.

16 COMMISSIONER CHAVEZ: I second.

17 CHAIRMAN FESMIRE: And all those in favor?

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER CHAVEZ: Aye.

20 CHAIRMAN FESMIRE: The ayes have it. And that
21 should be all we need to do with it at this time.

22 MR. BROOKS: I believe so.

23 COMMISSIONER CHAVEZ: Except that I -- in the
24 meantime, can't the Examiners --

25 MR. BROOKS: Yeah, I think Mr. Kellahin's point

1 is appropriate, that we should submit it to the Examiners,
2 and at the next meeting we'll report their comments --

3 CHAIRMAN FESMIRE: That's a good idea.

4 MR. BROOKS: --as well.

5 CHAIRMAN FESMIRE: That's a good idea.

6 In order to avoid having to call an ambulance for
7 Commissioner Bailey, is there any further business before
8 the Commission?

9 Hearing none, is there a motion to adjourn?

10 COMMISSIONER CHAVEZ: So move.

11 COMMISSIONER BAILEY: Second.

12 CHAIRMAN FESMIRE: All those in favor?

13 COMMISSIONER BAILEY: Aye.

14 COMMISSIONER CHAVEZ: Aye.

15 CHAIRMAN FESMIRE: We're officially adjourned at

16 3:02 p.m.

17 (Thereupon, these proceedings were concluded at

18 3:02 p.m.)

19 * * *

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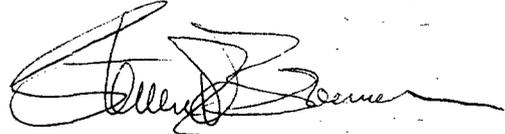
CERTIFICATE OF REPORTER

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

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL March 12th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006

19.15.14.1201 RULEMAKING PROCEEDINGS:

A. Before ~~any rule, including a revocation or amendment of an existing rule, shall be made by~~ the division or commission adopts, amends or repeals any rule, a public hearing before the commission or a duly appointed division examiner shall be held at such time and place as may be prescribed by the commission in accordance with Section 10-15-1 NMSA 1978; provided that the hearing may be continued in accordance with 19.15.14.1209 NMAC without additional notice.

B. When the commission, the division, an operator or any interested person applies to adopt, amend or ~~rescind~~ repeal any rule, such application shall constitute a request for rulemaking, ~~and~~ the division shall publish notice of the proposed rulemaking, stating the date, time and place of the hearing and the date by which public comments thereon must be received, provided that the time for public comment may be extended without additional notice. Published notices shall be issued in the name of "The State of New Mexico" and signed by the director of the division, and the seal of the commission shall be impressed thereon. The division shall publish such notice of the proposed hearing:

(1) one time in a newspaper of general circulation in the counties in New Mexico affected by the proposed rule (or if the proposed rule will be of statewide application, in a newspaper of general circulation in this state), with the publication date not less than 20 days prior to the date set for the public hearing;

(2) one time in the New Mexico register, with the publication date not less than 10 days prior to the public hearing; and

~~(4)~~ (3) by posting to the division's website not less than 20 days prior to the public hearing.

C. In addition, notice of the hearing shall be given on the applicable docket for the commission or division hearing docket at which the matter will be heard, which shall be sent by regular mail or electronic mail not less than 20 days prior to the public hearing to all who have requested such notice, not less than 20 days prior to the public hearing.

CD. If the rule proposed to be adopted, amended or ~~rescinded~~ repealed is of statewide application, the hearing shall be conducted before the commission in the first instance unless the division director otherwise directs.

DE. Any person may submit written comments on any proposed rule, which comments shall be made a part of the record of the hearing. Such comments must be received by the division not later than five working days before the date when the hearing is scheduled to commence, unless the time for filing such comments is extended by the director or the commission.

F. 19.15.14.1201 NMAC shall not apply to special pool rules, which may be adopted, amended or rescinded in adjudicatory proceedings subject to the notice provisions of Sections 1204 and 1207 of 19.15.14 NMAC.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03; A, 06/15/04]

19.15.14.1202 EMERGENCY ORDERS AND RULES:

A. Notwithstanding any other provision of 19.15 NMAC, in the event an emergency is found to exist by the division or commission, which requires adoption of a rule or the issuance of an order without a hearing, such emergency rule or order shall have the same validity as if a hearing had been held before the division or commission after due notice. Such emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding any other provision of 19.15.14 NMAC, in the event an emergency is found to exist by the division or commission, a hearing may be conducted upon any application within less than twenty-three (23) days after the filing thereof, and notice of such hearing may be given within such lesser time than twenty (20) days as the director of the division shall order.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03; A, 06/15/04]

19.15.14.1203 INITIATING A RULEMAKING OR ADJUDICATORY PROCEEDING HEARING:

A. The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, the attorney general, any operator or producer or any other person with standing may ~~apply for a hearing~~ commence a rulemaking or adjudicatory proceeding requiring a hearing by filing an application. The application shall be signed by the person seeking the hearing or by an attorney representing that person. Two copies of the application must be filed and shall state:

- (1) the name of the applicant;
- (2) the address of the applicant or its attorney for service, including an email address and fax number (if available);
- (3) the name or general description of the common source or sources of supply or the area affected by the order or rule sought;
- ~~(3)~~(4) briefly, the general nature of the order or rule sought;
- ~~(4)~~(5) a list of the names and addresses of persons to whom notice has been sent;
- ~~(5)~~(6) a proposed notice advertisement for publication;
- (7) a statement of the applicant's relationship to the subject matter that provides the basis for the applicant's standing to file the application, and
- ~~(6)~~(8) any other matter required by these rules or order of the division.

B. Applications for hearing before the division or commission must be in writing and received by the division at least 23 days in advance of the hearing on that application.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1203, 8-29-03]

19.15.14.1204 PUBLICATION OF NOTICE OF ADJUDICATORY HEARING:

A. The division shall give notice of each adjudicatory hearing before the commission or a division examiner at least ~~five working~~ twenty days before the hearing by (1) posting notice on the division's website, and (2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings.

B. In addition, the division shall give notice of each hearing before the commission by publication once in accordance with the requirements of Chapter 14, Article 11 NMSA 1978, in a newspaper of general circulation in the counties that are affected by the application or, if the effect of the application will be statewide, in a newspaper of general circulation in this state.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1204, 8-29-03; A, 06/15/04]

19.15.14.1205 CONTENTS OF NOTICE OF ADJUDICATORY HEARING:

A. Published notices shall be issued in the name of "The State of New Mexico" and signed by the director of the division, and the seal of the commission shall be impressed thereon.

B. The notice shall specify: whether the case is set for hearing before the commission or a division examiner; the number and style of the case; the time and place of hearing; and the general nature of the application. The notice shall also state the name of the applicant. If the application seeks to adopt, revoke or amend special pool rules, establish or alter a non-standard unit, permit an unorthodox location, or establish or affect the allowable of any well or proration unit, the notice shall specify each pool or common source of supply that may be affected if the application is granted. If the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area sought to be pooled or unitized. In all other cases, the notice shall reasonably identify the subject matter so as to alert persons who may be affected if the application is granted.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1205, 8-29-03; A, 06/15/04]

19.15.14.1206 [RESERVED] [Formerly "PREPARATION OF NOTICES"]

19.15.14.1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice in addition to that required by 19.15.14.1204 NMAC as set forth below:

(1) Compulsory pooling and statutory unitization.

(a) Notice shall be given to any owner of an interest in the mineral estate of any portion of the lands proposed to be pooled or unitized whose interest is evidenced by a written document of conveyance either of record or known to the

applicant at the time of filing the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

(b) When notice is given as required in Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC, of an application for compulsory pooling and the application is unopposed by those owners located, the applicant may file under the following alternate procedure. The application shall include the following:

- (i) a statement that no opposition is expected and why;
- (ii) a map outlining the spacing unit(s) to be pooled, showing the nature and percentage of the ownership interests and location of the proposed well;
- (iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that a diligent search has been conducted of all public records in the county where the well is located and of phone directories, including computer searches;
- (iv) the names of the formations and pools to be pooled (note: this procedure does not apply to an application to pool a spacing unit larger in size than provided in 19.15.3.104 NMAC or applicable special pool orders);
- (v) a statement as to whether the pooled unit is for gas and/or oil production (see note under item (iv) of Subparagraph (b) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC);
- (vi) written evidence of attempts made to gain voluntary agreement including but not limited to copies of relevant correspondence;
- (vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;
- (viii) the location and proposed depth of the well to be drilled on the pooled units; and
- (ix) a copy of the authorization for expenditure (AFE) to be submitted to the interest owners in the well.

(c) All submittals required shall be accompanied by sworn and notarized statements by those persons who prepared the submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) All unopposed pooling applications will be set for hearing. If the division finds the application complete, the information submitted with the application will constitute the record in the case, and an order will be issued based on the record.

(e) At the request of any interested person or upon the division's own initiative, any pooling application submitted shall be set for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

(a) Definition "affected persons" are the following persons owning interests in the adjoining spacing units:

- (i) the division-designated operator;
- (ii) in the absence of an operator, any lessee whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application is filed; and

(iii) in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application was filed. In the event the operator of the proposed unorthodox well is also the operator of an existing adjoining spacing unit and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then "affected persons" include all working interest owners in that spacing unit.

(b) If the proposed location is unorthodox by being located closer to the outer boundary of the spacing unit than permitted by 19.15.3.104 NMAC or applicable special pool orders, notice shall be given to the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(c) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than provided in special pool orders, notice shall be given to all affected persons.

(3) Non-standard proration unit. Notice shall be given to all owners of interests in the mineral estate to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the one-half quarter section (for 80-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations), or section (for 640-acre pools or formations) in which the non-standard unit is located and to such other persons as required by the division.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, notice shall be given to:

(i) all division-designated operators in the pool; and

(ii) all owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, notice shall be given to:

(i) all division-designated operators in the pool; and

(ii) all division-designated operators of wells within the same formation as the pool and within one (1) mile of the outer boundary of the pool which have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. Notice shall be given to all potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area. (a) through (d). The material on unorthodox locations was moved to Paragraph (2) of Subsection A of 19.15.14.1207 NMAC.

(6) Downhole commingling. Notice shall be given to all owners of interests in the mineral estate in the spacing unit if ownership is not common for all commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. Notice shall be given to any surface owner within one-half mile of the site.

(8) Surface commingling. Notice shall be given as prescribed in 19.15.5.303 NMAC.

(9) Adjudications not listed above. Notice shall be given as required by the division.

B. Type and content of notice. Any notice required by 19.15.14.1207 NMAC shall be sent by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the date of hearing of the application and shall include a copy of the application, the date, time and place of the hearing, and the means by which protests may be made. When an applicant has been unable to locate all persons entitled to notice after exercising reasonable diligence, notice shall be provided by publication, and proof of publication shall be submitted at the hearing. Such proof shall consist of a copy of the legal advertisement that was published at least five working days before the hearing in a newspaper of general circulation in the county or counties in which the property is located or if the effect of the application is statewide, in a newspaper of general circulation in this state.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit signed by the applicant or its authorized representative, that: (a) the notice provisions of 19.15.14.1207 NMAC have been complied with; (b) the applicant has conducted a good-faith diligent effort to find the correct address of all persons entitled to notice; and (c) pursuant to 19.15.14.1207 NMAC notice has been given at that correct address as required by 19.15.14.1207 NMAC. In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as required in 19.15.14.1207 NMAC may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the date, time and place of the hearing. No further notice is required.
[1-1-86...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1207, 8-29-03; A, 06/15/04]

19.15.14.1208 PLEADINGS, COPIES, AND PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:

A. For pleadings and correspondence filed in cases pending before a division examiner, two copies must be filed with the division. For pleadings and correspondence filed in cases pending before the commission, five copies must be filed with the division. The division will disseminate copies to the members of the commission. The party filing the pleading or correspondence shall at the same time serve copies thereof upon either hand deliver or transmit by facsimile or electronic mail to any each party who has entered an appearance therein on or prior to the working day immediately preceding the day when such pre-hearing statement must be filed or their attorneys of record, a copy of the pleading or correspondence. Service shall be accomplished by hand delivery or transmission by facsimile or electronic mail, except that service upon a party who has not filed a pleading containing a FAX number or email address may be made by ordinary first class mail. An appearance of any interested party shall be made either by letter addressed to the division or in person at any proceeding before the commission or before a division

examiner, with notice of such appearance to the parties of record. Any written entry of appearance or other initial pleading filed by a party other than the applicant shall include the address of the party or its attorney for service, including an email address and fax number (if available).

B. Parties to an adjudicatory proceeding who intend to present evidence at the hearing shall file a pre-hearing statement, and serve a copy thereof on opposing counsel of record in the manner provided in Subsection A of 19.15.14.1208 NMAC, at least four days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00p.m., Mountain Time, on the Friday preceding the scheduled hearing. The statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing. Copies of all exhibits that any party to an adjudicatory proceeding proposes to offer in evidence at the hearing shall be filed and served with that party's pre-hearing statement. Witnesses not identified in a pre-hearing statement, or exhibits not filed and served therewith, may be excluded from evidence unless the party offering such evidence makes a satisfactory showing of good cause for failure to disclose the same.

C. In rulemaking proceedings, any party intending to offer technical testimony at the hearing shall file with the division a pre-hearing statement and copies of exhibits in the manner and within the time provided in subsection B of 19.15.14.1208 NMAC but shall not be required to serve copies thereof on any other party.

D. Motions for continuance shall be filed and served no later than the date for filing the pre-hearing statement, unless the reasons for requesting a continuance arise subsequent to such date, in which event the motion shall be filed as expeditiously as possible after the moving party becomes aware of the need for a continuance.
[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1208, 8-29-03; A, 06/15/04]

19.15.14.1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE:

Any hearing before the commission or a division examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published.
[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1209, 8-29-03; A, 06/15/04]

19.15.14.1210 CONDUCT OF HEARINGS:

A. Hearings before the commission or a division examiner shall be conducted without rigid formality. A transcript of testimony shall be taken and preserved as a part of the permanent records of the division. Any person testifying shall do so under oath. However, relevant unsworn comments and observations by any interested party will be designated as such and included in the record.

B. The division director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness must be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the presence of the witness at hearing is waived upon notice to and without objection of the parties. Pages of the prepared written testimony shall be numbered and contain line numbers on the left-hand side.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1210, 8-29-03]

19.15.14.1211 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PRE-HEARING PROCEDURE

A. The commission or any member thereof and the division director or the division director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, and records in any proceeding before the commission or division. A subpoena will be issued for attendance at a hearing upon the written request of any party. In case of the failure of a person to comply with the subpoena issued, an attachment of the person may be issued by the district court of any district in the state. Any person found guilty of testifying falsely at any hearing may be punished for contempt. The director or the director's authorized representative shall, upon request of a party, issue a subpoena for the production of books, papers or other tangible things in advance of the hearing. Any motion for protection or to quash any such subpoena may be considered as a pre-hearing motion pursuant to subsection C of 19.15.14.1211 NMAC or may be reserved for consideration at the hearing on the merits, in the discretion of the director or the examiner assigned to hear the case. Subpoenas for the deposition of witnesses in advance of the hearing of a case shall be issued only in extraordinary circumstances, upon motion for good cause shown.

B. A pre-hearing conference may be held prior to the hearing on the merits in cases pending before the division or the commission either upon request of a party or upon notice by the division director or a division examiner. The pre-hearing conference will be to narrow issues, eliminate or resolve other preliminary matters and to encourage settlement. The division director or the division examiner may issue a pre-hearing order following the pre-hearing conference. The director or examiner shall cause written or oral notice of such pre-hearing conference to be given to the applicant and to all other parties who, at the time such conference is scheduled, have filed appearances in the case.

C. The director or any hearing examiner may rule on motions that are necessary or appropriate for disposition prior to hearing on the merits. If the case is pending before the commission, the director shall rule on any such motion; provided that the director may refer any such motion for hearing by a hearing examiner specially designated for such purpose who, if the case is a *de novo* application, shall not have participated in the case prior to the filing of the application for *de novo* hearing. Prior to ruling on any such motion, the director or examiner shall give written or oral notice to any party who has filed an appearance in the case and who may have an interest in the disposition of such motion (except any party who has indicated that it does not oppose

such motion), and shall allow any such interested party an opportunity, reasonable under the circumstances, to respond thereto. The director or examiner may conduct a hearing on any such motion, following written or oral notice to all interested parties, either at a pre-hearing conference or otherwise. If oral testimony is received at any such hearing, a record shall be made thereof as at other hearings.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1211, 8-29-03]

19.15.14.1212 RULES OF EVIDENCE AND EXHIBITS; APPEARANCE *PRO SE* OR BY COUNSEL:

A. Full opportunity shall be afforded all interested parties properly appearing at a hearing before the commission or division examiner to present evidence and to cross-examine witnesses. In general, the rules of evidence applicable in a trial before a court without a jury shall be applicable, provided that such rules may be relaxed, where, by so doing, the ends of justice will be better served. ~~No order shall be made that is not supported by competent legal evidence.~~

B. Parties introducing exhibits at hearings before the commission or a division examiner must provide a complete set of exhibits for the court reporter, each commissioner or division examiner and other parties of record; provided that in rule making proceedings copies of exhibits shall be furnished at the hearing only to parties who have filed pre-hearing statements indicating that they will present technical testimony.

C. Individual parties with standing may appear and participate in hearings either *pro se* or through counsel. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities may appear as parties only through counsel. No person may act as counsel before the division or the commission except an attorney licensed to practice law in the State of New Mexico. A non-attorney may appear as a representative of a federal, state or tribal governmental agency or political subdivision in any proceeding, or as a representative of any person or organization in a rulemaking proceeding, if the purpose of such appearance is only to make a statement. In a rulemaking proceeding any member of the public may appear on his or her own behalf to make a statement without regard to standing. Persons appearing to make a statement who are not otherwise qualified to enter an appearance may not present evidence nor cross-examine witnesses.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1212, 8-29-03]

19.15.14.1213 DIVISION EXAMINERS' QUALIFICATIONS AND APPOINTMENT:

The division director shall appoint division examiners. Each division examiner so appointed shall be a member of the staff of the division. Each individual appointed as a division examiner must have at least six years of experience as a geologist, petroleum engineer or licensed lawyer, or at least two years of such experience and a college degree in geology, engineering or law; provided however, that nothing herein shall prevent any member of the commission from serving as a division examiner.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1213, 8-29-03]

19.15.14.1214 REFERRAL OF CASES TO DIVISION EXAMINERS:

The division director may refer any matter or proceeding to a division examiner for hearing in accordance with these rules. ~~The division examiner appointed to hear any specific case shall be designated by name.~~

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1214, 8-29-03]

19.15.14.1215 DIVISION EXAMINER'S POWER AND AUTHORITY:

The division director may limit the powers and duties of the division examiner in any particular case to such issues or to the performance of such acts as the director deems expedient; however, subject only to such limitations as may be ordered by the director, the division examiner to whom any matter is referred under these rules shall have full authority to hold hearings on such matter in accordance with these rules. The division examiner shall have the power to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including administering oaths to witnesses and receiving testimony and exhibits offered in evidence subject to such objections as may be imposed. The division examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify same to the director as hereinafter provided.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1215, 8-29-03]

19.15.14.1216 HEARINGS THAT MUST BE HELD BEFORE COMMISSION:

Notwithstanding any other provisions of these rules, the hearing on any matter shall be held before the commission if:

- A. it is a hearing pursuant to Section 70-2-13 NMSA 1978; or
- B. the division director desires the commission to hear the matter.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1216, 8-29-03]

19.15.14.1217 [RESERVED]

[9-15-55...2-1-96; Repealed 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1217, 8-29-03]

19.15.14.1218 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING:

Upon the conclusion of any hearing before a division examiner, the division examiner shall promptly consider the proceedings in such hearing, and based upon the record of such hearing the division examiner shall prepare a written report with recommendations for the disposition of the matter or proceeding by the division. Such report shall either be accompanied by a proposed order or shall be in the form of a proposed order and shall be submitted to the division director with the certified record of the hearing.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1218, 8-29-03]

19.15.14.1219 DISPOSITION OF CASES HEARD BY DIVISION EXAMINERS:

After receipt of the report of the division examiner, the division director shall enter the division's order disposing of the matter.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1219, 8-29-03]

19.15.14.1220 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

A. When an order has been entered by the division pursuant to a hearing held by a division examiner, a party of record adversely affected by the order has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the order is issued the party files with the division a written application for such hearing. If an application is filed, the matter or proceeding shall be set for hearing before the commission.

B. Any party requesting a stay of a division or commission order must file ~~the request~~ a motion with the division and provide copies ~~of the request~~ thereof to the parties who have entered appearances of record or their attorneys in the case at the time the request is filed. ~~The request motion~~ must have attached a proposed stay order. The director may grant a stays pursuant to such a motion (or upon his or her own initiative after according all parties who have appeared in the case notice and an opportunity to respond) under other circumstances if such a stay is necessary to prevent waste, protect correlative rights, protect public health ~~and~~ or the environment or prevent gross negative consequences to any affected party. Any order of the director staying an order of the commission shall be effective only until the commission acts on the motion.

C. Any party of record adversely affected by the order issued by the commission after hearing may apply for rehearing pursuant to 19.15.14.1222 NMAC. [9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1220, 8-29-03]

19.15.14.1221 COPIES OF COMMISSION AND DIVISION ORDERS:

Within 10 days after an order, including any order granting or refusing rehearing or order following rehearing, has been issued, a copy of such order shall be mailed by the division to each party or its attorney of record. For purposes of 19.15.14.1221 NMAC only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the division or by entering an appearance on the record at a hearing.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1221, 8-29-03; A, 06/15/04]

19.15.14.1222 REHEARINGS:

Within 20 days after entry of any order of the commission any party of record adversely affected thereby may file with the division an application for rehearing on any matter determined by such order, setting forth the respect in which the order is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within 10 days after it is filed and failure to act within such period shall be deemed a refusal and a final disposition of such application. In the event the rehearing is granted, the commission may enter a new order after rehearing as may be required under the circumstances.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1222, 8-29-03]

19.15.14.1223 EX PARTE COMMUNICATIONS:

A. In an adjudicatory proceeding, except for filed pleadings, at no time after the filing of an application for hearing shall any party, interested participant or their representatives communicate regarding the issues involved in the application with any commissioner or the division examiner appointed to hear the case when all other parties of record to the proceedings have not had the opportunity to be present.

B. The prohibition in Subsection A of 19.15.14.1223, above, does not apply to those applications that are believed by the applicant to be unopposed. However, in the event that an objection is filed in a case previously believed to be unopposed, the prohibition in A, above, is immediately applicable.

[7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1223, 8-29-03]