

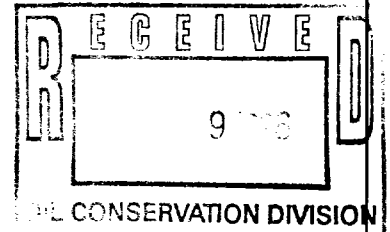
STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)

CASE NO. 11,596

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION TO)
ESTABLISH A RULE TO ALLOW COMMISSION)
MEMBERS TO PARTICIPATE IN COMMISSION)
MEETINGS AND HEARINGS BY MEANS OF A)
CONFERENCE TELEPHONE OR OTHER SIMILAR)
COMMUNICATIONS EQUIPMENT WHEN IT IS)
OTHERWISE DIFFICULT OR IMPOSSIBLE FOR)
MEMBERS TO ATTEND THE MEETING OR HEARING)
IN PERSON)

ORIGINAL



REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN
WILLIAM WEISS, COMMISSIONER
JAMI BAILEY, COMMISSIONER

August 15th, 1996
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission on Thursday, August 15th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

I N D E X

August 16th, 1996
Commission Hearing
CASE NO. 11,596

PAGE

REPORTER'S CERTIFICATE

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A P P E A R A N C E S

FOR THE COMMISSION:

LYN S. HEBERT
Deputy General Counsel
Energy, Minerals and Natural Resources Department
2040 South Pacheco
Santa Fe, New Mexico 87505

FOR THE OIL CONSERVATION DIVISION:

RAND L. CARROLL
Attorney at Law
Legal Counsel to the Division
2040 South Pacheco
Santa Fe, New Mexico 87505

FOR ARCO PERMIAN:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.
Suite 1 - 110 N. Guadalupe
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 9:17 a.m.:

3 CHAIRMAN LEMAY: And we shall call Case Number
4 11,596, which is a case called by the Oil Conservation
5 Commission to establish a rule to allow the Commission
6 members to participate in Commission meetings and hearings
7 by means of a conference telephone or similar communication
8 equipment when it is otherwise difficult or impossible for
9 the members or, I think, witnesses, to attend our meetings
10 and hearings.

11 With that, I will call on our Counsel, Lyn
12 Hebert, to present the proposed rule to the Commission.

13 MS. HEBERT: In 1993 the Legislature amended the
14 Open Meetings Act to allow public bodies to conduct
15 meetings involving conference telephones or other similar
16 equipment. And it just adds the flexibility, especially in
17 the case of a hearing that the Commission had a month ago,
18 that there was no testimony or evidence taken, and the
19 Commission meeting lasted 15 minutes. And considering one
20 of the Commissioners travels a distance to get here, to
21 have the flexibility to have that sort of a meeting and
22 attend it by conference telephone would be, I think, a good
23 thing for the Commission to have.

24 But the Statute, 10-15-1, requires that the
25 public body have such a provision in its rules in order to

1 take advantage of it, so the Commission would have to amend
2 a rule.

3 I'm proposing the Commission amend its general
4 provisions and put the rule that would become 19 NMAC 15
5 (A) (19).

6 I know that apparently there have been comments
7 that have been made by Texaco and NMOGA on this rule, and
8 the suggestion is that the Commission also allow witnesses
9 to attend and that it be restricted to videoconferencing.
10 And I think the Commission would want to consider the
11 expense and whether or not it would just choose to have the
12 discretion of not allowing the attendance by telephone in
13 the event that there was going to be complicated or
14 extensive testimony in evidence, rather than investing in
15 the expense of the videoconference. But those have been
16 suggestions made.

17 And our proposal was not that witnesses also be
18 allowed to attend, and I think it would be more appropriate
19 to amend the rule dealing with witnesses in the procedure
20 section of the rules, if the Commission wanted to consider
21 such a rule for witnesses.

22 But our proposal is simply limited to the
23 Commission.

24 CHAIRMAN LEMAY: Okay. Are there other
25 appearances in this case?

1 Mr. Carr?

2 MR. CARR: May it please the Commission, William
3 F. Carr with the Santa Fe law firm Campbell, Carr, Berge
4 and Sheridan.

5 I'd like to enter an appearance for ARCO Permian
6 in this matter, and I have some brief comments to provide
7 on behalf of ARCO.

8 CHAIRMAN LEMAY: Statement, no witnesses?

9 MR. CARR: No witnesses.

10 CHAIRMAN LEMAY: Thank you. Additional
11 appearances?

12 We'll take statements at the end, certainly.

13 With that, I'm trying to -- This is a rule-making
14 procedure, and I think we have shown a tendency to be more
15 casual in trying to get what we can into the record with
16 rulemaking, rather than follow, you know, strict guidelines
17 of formal procedure.

18 So Lyn, would it be acceptable to kind of discuss
19 your proposal?

20 As I understand it, you are limiting your
21 recommendation at this point only to accept video -- is it
22 videoconferencing or telephone conferencing?

23 MS. HEBERT: It would be -- Actually, the exact
24 language would be conference telephone or other similar
25 communications equipment, and that tracks the language in

1 the statute. So it would allow videoconferencing if you
2 chose to do that, but you wouldn't be limited to just
3 videoconferencing.

4 CHAIRMAN LEMAY: But you're also limiting that
5 only to the Commissioners themselves?

6 MS. HEBERT: Just to the Commission.

7 CHAIRMAN LEMAY: Okay. Questions of Lyn
8 concerning the proposal as it currently exists before the
9 Commission?

10 Frank?

11 MR. GRAY: Frank Gray with Texaco. I did all the
12 comments that Texaco had there.

13 I'm interested to hear that you would consider
14 this only for those meetings that you knew in advance that
15 there would not be any matters of controversy or a lot of
16 exhibits entered. That was our concern, that if exhibits
17 were going to be presented at the hearing, that that person
18 away on the telephone would not have an opportunity to see
19 those exhibits, and it would either extend the period of
20 time before a decision is made or result in additional
21 questions later, probably an extension of the hearing.

22 I'm a little concerned that you might not know in
23 advance for sure that there were not going to be any
24 exhibits presented so that you could decide that a
25 Commissioner could attend by phone and not miss something.

1 I recognize the expense associated with videoconferencing,
2 but that does open up a lot of saving for both sides.

3 I recommend that the witness be allowed to use
4 that also, because we often bring a land person with us,
5 maybe, that -- fly in from Midland or Houston or wherever
6 and testify for five minutes that we have the mineral
7 rights under this section and sit down, and no questions
8 are asked, and spend \$600 or \$700 for that. That provision
9 might save us some money on our side.

10 CHAIRMAN LEMAY: Are you suggesting, Frank, that
11 maybe we enlarge the scope of the current recommended rule
12 to include that --

13 MR. GRAY: -- that the witness would be able to
14 testify --

15 CHAIRMAN LEMAY: Witnesses as well as Commission
16 members attend the videoconference.

17 We might have to -- Would we have to advertise
18 that separately, then, including witnesses of companies if
19 we were going to --

20 MS. HEBERT: I think so. We didn't include that
21 in our --

22 CHAIRMAN LEMAY: We didn't include that in our
23 initial advertisement.

24 It's a good issue to bring up. I mean, we could
25 certainly act on this separate and docket that for another

1 time to enlarge it. This would just be to allow -- As I
2 understand it, would it also allow final action to be taken
3 on orders in the event we did not meet, if we conference by
4 telephone?

5 MS. HEBERT: Yes, it would be everything you can
6 do in a public meeting.

7 CHAIRMAN LEMAY: I think we've been advised by
8 Counsel that moving to take final action on cases that have
9 been under consideration be taken at the regular scheduled
10 meeting.

11 Now, you all know there are times we don't meet,
12 and therefore sometimes that delays our signing orders
13 because we're not -- you know, we're just not getting
14 together, because we don't -- and this could allow for us
15 to get together on the telephone, even if we didn't have a
16 case to consider and take final action, such as approving
17 minutes. We can sign the orders. Even though the orders
18 could be signed by mail, the record would reflect that we
19 took final action at an open meeting.

20 But certainly your comments are well taken. I
21 think we need to consider that too, Frank.

22 MR. GRAY: Okay.

23 CHAIRMAN LEMAY: Yes --

24 MS. McGRAW: Kate McGraw --

25 CHAIRMAN LEMAY: -- Kate?

1 MS. MCGRAW: -- from R.W. Byram.

2 What would the notice requirements be, and would
3 these meetings be open to a reporter?

4 CHAIRMAN LEMAY: Lyn?

5 MS. HEBERT: Everything essentially would remain
6 the same, as far as the notice. None of that has changed.
7 All there is is allowing the Commissioners the flexibility
8 in the event of unusual circumstances. This wouldn't be
9 something that would just be used routinely; it would be
10 unusual circumstances, illness or something that caused a
11 Commissioner not to be able to travel.

12 MS. MCGRAW: But there would be notice of the
13 meeting, and --

14 MS. HEBERT: There certainly would be notice of
15 the meeting.

16 MS. MCGRAW: -- and there would be notice to
17 people to come in and listen to the call?

18 MS. HEBERT: Yes, and the context of our proposed
19 rule does require that all participants must be able to
20 hear each other and that members of the public attending
21 the meeting or the hearing must be able to hear Commission
22 members who speak during the meeting, including any
23 Commissioner who's not present in the room.

24 CHAIRMAN LEMAY: Other questions or comments?

25 Mr. Carr?

1 MR. CARR: May it please the Commission, ARCO
2 Permian appreciates the benefits that can come from a rule
3 like you're now considering.

4 We do believe there is a distinction between
5 members of meetings of the Commission and actual contested
6 hearings, and we think that as to members meeting, members
7 of the Commission meeting, it's certainly appropriate to do
8 that by telephone.

9 We think that it's somewhat different when you
10 get into a hearing context, and we think that if there's
11 actually a hearing where there are disputed issues, that
12 you should do that by teleconferencing only in an emergency
13 and under unforeseen situations.

14 In a contested hearing, as you know, it's a more
15 effective process when you can be face to face, cross-
16 examining and reviewing evidence, and we would submit that
17 that may be appropriate to do that by teleconferencing on
18 occasion, but that in circumstances where the agency
19 decides they're going to go that route, that participants
20 in a hearing ought to have a right to object to going
21 forward in a teleconference mode, and if they object, that
22 the matter then would be set before the Commission and it
23 would actually be heard in a hearing context.

24 Emergency situations, of course, would be
25 something that in your discretion you would have to go

1 forward with, as time constraints and travel problems
2 dictated.

3 But that's ARCO's reaction to the proposal that's
4 before you today.

5 CHAIRMAN LEMAY: Did they have any objection to
6 the provision as stated by Lyn? I mean giving us the
7 discretion only under -- I guess we would make the call as
8 to what would be --

9 MR. CARR: They feel that --

10 CHAIRMAN LEMAY: -- appropriate, and we wouldn't
11 change the concept of having disputed cases heard in person
12 by three Commissioners.

13 MR. CARR: Really, we don't read this as your
14 intent to start having contested hearings by telephone.
15 But we are concerned that somebody else ten years from now
16 might think so, and we think it would be appropriate to
17 state that in a contested hearing where opposing parties
18 will present evidence, that if one objects to going forward
19 that way, that there ought to be a step back and it ought
20 to be set, and there may be some time restraint, that it be
21 set within ten days or something like that.

22 CHAIRMAN LEMAY: Is there some language that you
23 would like to have included in the Rule that way, or was
24 that just a recommendation for policy implementation?

25 MR. CARR: We believe that if it's going to be

1 policy, it should be in the Rule.

2 CHAIRMAN LEMAY: Do you have any recommended
3 language that way?

4 MR. CARR: I can certainly provide recommended
5 language that way.

6 CHAIRMAN LEMAY: Okay.

7 MR. CARR: Thank you.

8 CHAIRMAN LEMAY: Thank you.

9 Let's just put it up to my fellow Commissioners.
10 Commissioner Weiss, do you have questions or
11 comments?

12 COMMISSIONER WEISS: Yeah, I can certainly see
13 the advantage of this, especially rule-making, where just
14 signature is required. Might consider this technology I
15 think is just coming out on the Internet that might be less
16 expensive than going through the telephone company.

17 And then the idea about Mr. Gray's comment there,
18 about a witness who's just there to provide support, is
19 certainly reasonable.

20 But yeah, I would think in Texaco's case, for
21 example, they would want to have their experts, you know,
22 who's ever giving the testimony -- In fact, that might be
23 interesting, that might work well. Why bring five people
24 if you only have to bring one or two? So...

25 That would make sense.

1 That's my only comment.

2 CHAIRMAN LEMAY: Commissioner Bailey?

3 COMMISSIONER BAILEY: And of course, traveling in
4 the wintertime particularly can be quite difficult for
5 witnesses and Commission members to meet on time.

6 I think that this provides us the opportunity to
7 use technology that is now available, and I think we should
8 at least explore some of these ideas that have been brought
9 out.

10 CHAIRMAN LEMAY: Am I capturing the feeling or
11 the position of my fellow Commissioners that there's like a
12 two-step process that -- allowing us to do this, you're
13 agreeable to and that makes sense, and also we should
14 explore the other avenues of allowing witnesses to present
15 evidence through videoconferencing on noncontested cases,
16 for instance?

17 COMMISSIONER BAILEY: I think we need to explore
18 that.

19 CHAIRMAN LEMAY: Lyn, it would be a two-step
20 process; is that not right? I mean, we would consider just
21 business being conducted by the Commission in one phase,
22 and then accepting testimony and I guess interaction -- I
23 don't know if you can cross-examine by phone or by
24 videoconferencing, but having participation in some
25 uncontested cases would be a separate, maybe, rule-making

1 procedure.

2 MS. HEBERT: I would think that you would want to
3 put the witness provision in your procedure section that
4 actually talks about witnesses, and then your Commission
5 provision in your general provisions.

6 I would think the Commission has the inherent
7 authority to allow witnesses to attend by telephone, just
8 as a district court does on occasion. But it would
9 probably be better to be in the Rule and make it clear, and
10 perhaps have means for parties to object if that was
11 appropriate.

12 CHAIRMAN LEMAY: Mr. Carr, since you seem to have
13 the -- maybe the biggest objection to the Commission
14 conducting business this way, is ARCO's concern that we
15 would extend some very routine matters into the area of
16 trying to hear a case long-distance?

17 MR. CARR: I think that's the concern. I don't
18 think it should be characterized as an objection, and I'd
19 be happy to provide some language that would address that.

20 CHAIRMAN LEMAY: Okay.

21 MR. CARR: But I don't think ARCO's objecting to
22 it. They did have this concern and thought that there
23 might be circumstances where really you want to be able to
24 confront someone, have exhibits in front of you and work
25 with them, and then doing it by a teleconferencing method

1 would make it more difficult to present the matter to the
2 Commission.

3 That's what their concern is. It's just an
4 option they would like to request.

5 CHAIRMAN LEMAY: If you drew the line at
6 contested/noncontested, would that satisfy the --

7 MR. CARR: I would think so, and I --

8 CHAIRMAN LEMAY: -- concerns of ARCO?

9 MR. CARR: -- from conversations with ARCO, that
10 they would be concerned if, for example, Mr. Weiss
11 participated by telephone in a case before the Commission.

12 It's not of that nature; it's really more
13 focusing on if you have a witness you want to cross-examine
14 and go to an exhibit and ask them to look at something,
15 there may be circumstances where it would be awkward to do
16 it by phone, and they would like to be able just to, in
17 those circumstances, request that the matter go to an
18 actual hearing format instead of by telephone.

19 CHAIRMAN LEMAY: Commissioner Weiss?

20 COMMISSIONER WEISS: I have one comment. I think
21 we want to work with this before we ever do it officially.
22 Our experience with ONGARD reminds me that things don't
23 work too well the first time, so I want to avoid that.

24 CHAIRMAN LEMAY: Thank you, Commissioner Weiss.

25 Is there anything else, any statements, comments,

1 concerning the Rule as proposed by Lyn?

2 I mean, I think what we want to do is -- the
3 other aspect to enlarging witness participation, we'll say,
4 by teleconferencing is certainly a financial one, and I
5 think -- I'd like to put that particular one on hold a
6 little bit and discuss who would pay for it, how much it
7 would cost, maybe even -- I don't know about appointing a
8 committee, but having some informal discussions concerning
9 that. That wasn't our intent to broaden it that large to
10 start with, so... But that's certainly an issue we'll
11 leave on the table.

12 But for purposes of the Commission acting on an
13 application before it, we're going to act on Commissioner
14 participation only here.

15 Anything else in the case?

16 If not, we'll take Case 11,596 under advisement
17 and leave the record open for any additional comments for a
18 period of a week, if you have something else you want to
19 add, just to the Commission participation.

20 Will a week be enough if you want to add --

21 MR. CARR: Yes, sir.

22 CHAIRMAN LEMAY: -- some comments, Bill?

23 MR. CARR: Yes, sir, it will be.

24 CHAIRMAN LEMAY: Okay. We'll leave the record
25 open for a week and then take the case under advisement.

1 We have some business before us. Can we take
2 about a ten-minute recess, and we can come back and I'll
3 have a chance to have, I think, my fellow Commissioners
4 look at the minutes so we can take formal action on those,
5 and then wind up?

6 So we'll take a ten-minute recess break now.

7 (Thereupon, a recess was taken at 9:35 a.m.)

8 (The following proceedings had at 9:54 a.m.)

9 CHAIRMAN LEMAY: Let's continue. We have some
10 business.

11 Entertain a motion to accept the minutes of the
12 last meeting.

13 COMMISSIONER BAILEY: I move that we accept the
14 minutes of the last meeting.

15 CHAIRMAN LEMAY: Thank you. Second?

16 COMMISSIONER WEISS: I second.

17 CHAIRMAN LEMAY: Moved and seconded. So be it,
18 the minutes are accepted.

19 (Thereupon, these proceedings were concluded at
20 9:54 a.m.)

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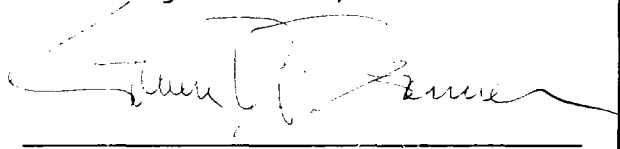
CERTIFICATE OF REPORTER

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 August 16th, 1996.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998