

4/27/99

## 11 SCOPE OF RULES AND REGULATIONS

11.A. The following ~~General Rules~~ of statewide application have been adopted by the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department Commission to conserve the natural resources of the State of New Mexico, to prevent waste, to protect correlative rights, ~~of all owners of crude oil and natural gas, and to protect fresh waters public health and the environment and to otherwise implement the Oil and Gas Act, NMSA 1978, §§ 70-2-1 through 70-2-38.~~ Special rules, regulations and orders have been and will be issued when required and shall prevail ~~as against General Rules, Regulations and Orders if in conflict therewith.~~ However, whenever these General Rules do not conflict with special rules heretofore or hereafter adopted, these General Rules shall apply. [1-1-50...2-1-96]

11.B. The Division may grant exceptions to these rules after notice and hearing, when the granting of such exceptions will not result in waste but will protect correlative rights or prevent undue hardship. Orders, including special pool orders (formerly referred to as "Special Pool Rules and Regulations"), of the Division or the Commission may be issued when required and shall prevail against rules if in conflict with them. [1-1-50...2-1-96]

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. <u>12177</u>	Exhibit No. <u>3</u>
Submitted by <u>OCD</u>	
Hearing Date <u>5/19/99</u>	

4/27/99

**12    ENFORCEMENT OF STATUTES AND LAWS, RULES AND REGULATIONS  
DEALING WITH CONSERVATION OF OIL AND GAS**

The Division, ~~its agents, representatives and employees are~~ is charged with the duty and obligation of enforcing all rules and statutes of the State of New Mexico relating to the conservation of oil and gas including the ~~related~~ **protection of public health and the environment** ~~fresh waters~~. However, it shall be the responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations ~~have begun~~ **begin**. [1-1-50...2-1-96]

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**1201 NECESSITY FOR HEARING RULEMAKING PROCEEDINGS**

1201. A. ~~Except as provided in some general rule herein, b~~Before any rule, regulation or order, including revocation, changes, renewal or extension or amendment thereof, shall be made by the Division or Commission, a public hearing before the Commission or a legally duly appointed Division Examiner shall be held at such time and place as may be prescribed by the ~~Division Commission in accordance with NMSA 1978, § 10-15-1. [1-1-50...2-1-96]~~

1201.B. When the Commission, the Division, an operator or any interested person applies to adopt, amend or rescind any rule, such application shall constitute a request for rulemaking for which the following notice requirements apply:

- (1) the Division shall publish notice of the proposed rule in a newspaper of general circulation in the counties in New Mexico affected by the proposed rule with the publication date not less than 20 days prior to the date set for the public hearing; and
- (2) the Division shall publish notice of the proposed rule on the Commission docket and shall send the docket to all who have requested such notice not less than 20 days prior to the public hearing.

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## **1202 EMERGENCY ORDERS AND RULES**

Notwithstanding any other provision of these rules, in ~~ease the event~~ an emergency is found to exist by the Division or **Commission**, which, ~~in its judgement, requires the making adoption of a rule, regulation, or the issuance of an order without a hearing having first been had or concluded,~~ such emergency rule, ~~regulation, or order when made by the Division~~ shall have the same validity as if a hearing ~~with respect to the same~~ had been held before the Division or **Commission** after due notice. Such emergency rule, ~~regulation, or order~~ shall remain in force no longer than 15 days from its effective date, ~~and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.~~ [1-1-50... 2-1-96]

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### 1203 ~~METHOD OF INITIATING A HEARING~~

1203.A. ~~The Division 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 apply for a hearing. If the hearing is sought by the Division it shall be on motion of the Division and if by any other person it shall be by application. The application shall be signed by the person seeking the hearing or by his attorney. Two copies of the application must be filed 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, or rule, or regulation sought; and
  - (4) a list of the names and addresses of persons to whom notice has been sent;
- and
- (5) any other matter required by a particular rule or these rules, or order of the Division.

~~The application shall be signed by the person seeking the hearing or by his attorney. [1-1-50...2-1-96]~~

1203.B. ~~When conditions are such as to require verbal application to place a matter for hearing on a given docket, the Division 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 Division's Santa Fe office at least ten days before the date of the hearing, the case will be dismissed. [4-30-74...2-1-96]~~

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.

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#### 1204 PUBLICATION OF NOTICE OF HEARING

~~The Division shall give~~ Notice of each hearing before the Commission ~~and before or a~~  
Division Examiner ~~shall be~~ by publication once in accordance with the requirements of ~~NMSA~~  
1978, Chapter 14, Article 11, ~~N.M.S.A. 1978~~, in a newspaper of general circulation in the  
county, ~~or each of the counties if there be more than one, in which any land, oil, gas, or other~~  
property which is ~~that are~~ affected ~~by the application may be situated.~~ [1-1-50...2-1-96]

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## 1205 CONTENTS OF NOTICE OF HEARING

1205.A. Published notices shall be issued in the name of "The State of New Mexico" and ~~shall be~~ signed by the Director of the Division, and the seal of the Commission shall be impressed thereon. [1-1-50...2-1-96]

1205.B. The notice shall specify whether the case is set for hearing before the Commission or ~~before~~ a Division Examiner; ~~and shall state~~ the number and style of the case; ~~and~~ the time and place of hearing; and ~~shall briefly state~~ the general nature of the **application** ~~order or orders, rule or rules, regulation or regulations to be promulgated or effected~~. The notice shall also state the name of the ~~petitioner or~~ applicant, if any, and unless the contemplated order, ~~or rule, or regulation~~ is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply ~~which that~~ may be affected ~~if the application is granted by such order, rule or regulation~~. [1-1-50...2-1-96]

**1206 RESERVED** [Formerly "PREPARATION OF NOTICES".

## **PROPOSED ADDITIONS TO DEFINITIONS IN 19 NMAC 15. A. 7**

**MINERAL ESTATE** is the most complete ownership of oil and gas recognized in law and includes all the mineral interests and all the royalty interests.

**MINERAL INTEREST OWNERS** are those persons holding an interest in the executive rights including oil and gas lessees (i.e., "working interest owner") and mineral interest owners who have not signed an oil and gas lease.

**ROYALTY INTEREST OWNERS** are those persons holding an interest in the non-executive rights (the rights to explore and develop) including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

**WORKING INTEREST OWNERS** means the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil & gas minerals. Working interests are cost bearing.

**PRORATION UNIT** means the area in a pool that can be effectively and efficiently drained by one well as determined by the Division or Commission (See NMSA 70-2-17.B) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. A proration unit will be the same size and shape as a spacing unit. All proration units are spacing units but not all spacing units are proration units.

**SPACING UNIT** means the area allocated to a well under a well spacing order or rule. Under the Oil & Gas Act, § 70-2-12.B(10), the Commission has the power to fix spacing units without first creating proration units. See Rutter & Wilbanks, 87 NM 286 (1975). This is the area designated on Division form C-102.

**ADJOINING SPACING UNITS** means those existing or prospective spacing units in the same pool(s) that are touching at a point or line the spacing unit which is the subject of the application.

**EXISTING SPACING UNIT** means a spacing unit containing a producing well.

**PROSPECTIVE SPACING UNIT** means a hypothetical spacing unit which does not yet have a producing well.

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## **1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS**

1207.A. Applicants for the following adjudicatory hearings before the Division or Commission shall give notice in addition to that required by Rule 1204 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 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. [1-1-86...2-1-96]

(b) When an applicant is unable to locate all the owners of interests to be pooled and the application is unopposed by those located, the applicant may file under the following alternate procedure if notice is given as required in (a) above. The application shall include the following:

- (i) a statement that no opposition for hearing 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: The Division cannot pool a spacing unit larger in size than provided in these rules or applicable special pool orders);
- (v) a statement as to whether the pooled unit is for gas and/or oil production (see note under iv, above);
- (vi) written evidence of attempts made to gain voluntary agreement including but not limited to copies of relevant correspondence;
- (vii) geological map(s) of the formation(s) to be tested and a

geological and engineering assessment of the risk involved in the drilling of the well and a proposed risk penalty to be assessed against any working interest owner who does not pay its share of estimated well costs;

- (viii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;
- (ix) the location and proposed depth of the well to be drilled on the pooled units, and
- (x) a copy of the Authorization for Expenditure (AFE) to be submitted to the interest owners in the well. [1-1-87...2-1-96]

(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. [1-1-87...2-1-96]

(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. [1-1-87...2-1-96]

**(2) Unorthodox well locations:**

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

1. the Division-designated operator;
2. 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
3. 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.

4. 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 rule, notice shall be given to the affected persons in the adjoining spacing units towards which the unorthodox location encroaches. [1-1-86...2-1-96]

(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 . [1-1-86...2-1-96]

**(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 in the 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. [1-1-86...2-1-96]

**(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. [1-1-86...2-1-96]

(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. [1-1-86...2-1-96]]

(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. [1-1-86...2-1-96]

(7) **Surface disposal of produced water or other fluids:**

Notice shall be given to any surface owner within one-half mile of the site. [1-1-86...2-1-96]

(8) **Adjudications not listed above:**

Notice shall be given as required by the Division.

1207.B. **Type and Content of Notice.** Any notice required by this rule 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. [1-1-86...2-1-96]

1207.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 this rule 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 this rule, notice has been given at that correct address as required by this rule. 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. [1-1-86...2-1-96]

1207.D. **Evidence of failure to provide notice as required in this rule may, upon proper showing, be considered cause for reopening the case.** [1-1-86...2-1-96]

1207. 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 of the hearing. No further notice is required.

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**1208 FILING PLEADINGS: COPIES DELIVERED TO ADVERSE PARTY OR PARTIES**

1208.A. When any party to a hearing files any 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. plea, or motion of any character (other than application for hearing) which is not by law or by these rules required to be served upon the adverse party or parties, he The party filing the pleading shall at the same time either hand deliver or transmit by facsimile or electronic mail to the any adverse party or parties who has have entered an their appearance therein, or their respective the attorneys of record, a copy of the such pleading, plea, or motion or correspondence . For the purposes of these rules, aAn 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 an Division Examiner, with notice of such appearance to the parties of record from whom such pleadings, pleas, or motions are desired. [9-15-55...2-1-96]

1208.B. Parties to an adjudicatory proceeding must file a prehearing statement three days in advance of a scheduled hearing before the Division or the Commission. 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.

**5/18/99**

**1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE**

Any hearing before the Commission or an ~~an~~ **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. In the event of any continuance, a statement thereof shall be made in the record of the hearing ~~that which~~ is continued. [1-1-50...2-1-96]

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## 1210 CONDUCT OF HEARINGS

1210.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 in response to a subpoena issued by the Commission or any member thereof, or the authorized representative of the Division Director, and any person seeking to testify in support of an application or motion or in opposition thereto shall be required to do so under oath. However, relevant unsworn comments and observations by any interested party will be designated as such and included in the record. Comments and observations by representatives of operators' committees, the United States Geological Survey, the United States Bureau of Mines, the New Mexico Bureau of Mines, and other competent persons are welcomed. Any Examiner legally appointed by the Division Director may conduct such hearings as may be referred to such Examiners by the Director. [1-1-50...2-1-96]

1210.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.

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**1211 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PREHEARING CONFERENCE**

**1211. A.** The Commission or any member thereof, the Division Director or his the authorized representative of the Division Director has 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 person interested in the subject matter of the hearing. 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, and such court has powers to punish for contempt. Any person found guilty of swearing testifying falsely at any hearing may be punished for contempt. [1-1-50...2-1-96]

**1211.B.** A prehearing 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 prehearing 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 prehearing order following the prehearing conference.

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## 1212 RULES OF EVIDENCE AND EXHIBITS

1212.A. Full opportunity shall be afforded all interested parties at a hearing ~~before the Commission or a 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 which~~ is not supported by competent legal evidence. [1-1-50...2-1-96]

1212.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.

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### 1213 DIVISION EXAMINERS' QUALIFICATIONS AND APPOINTMENT

The Division Director shall, ~~by ex parte order, designate and appoint not more than four individuals to be Division~~ Examiners. Each ~~Division~~ Examiner so appointed shall be a member of the staff of the Division, ~~but no Examiner need to be a full time employee of the Division. The Director may, by ex parte order, designate and appoint a successor to any person whose status as an Examiner is terminated for any reason.~~ Each individual designated and appointed as an ~~Division~~ Examiner must have at least six years of such 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 ~~contained~~ shall prevent any member of the Commission from ~~being designated as, or serving as, an Division~~ Examiner. [9-15-55...2-1-96]

**5/18/99**

**1214 REFERRAL OF CASES TO DIVISION EXAMINERS**

The Division Director may refer any matter or proceeding to ~~any legally designated and appointed~~ 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]

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## 1215 **DIVISION EXAMINER'S POWER AND AUTHORITY**

The Division Director may, ~~by ex parte order,~~ 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 ~~or proceedings~~ is referred under these rules shall have full authority to hold hearings on such matter ~~or proceeding~~ in accordance with ~~and pursuant to~~ these rules. The **Division Examiner** shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including ~~administering oaths to the swearing of~~ witnesses, receiving ~~of~~ testimony and exhibits offered in evidence subject to such objections as may be imposed, ~~and~~ 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]

5/18/99

**1216 HEARINGS WHICH THAT MUST BE HELD BEFORE COMMISSION**

~~1216.A.~~ Notwithstanding any other provisions of these rules, the hearing on any matter shall be held before the Commission if:

- (1) if it is a hearing pursuant to NMSA 1978, § 70-2-13 ~~de novo~~; or
- (2) if the Division Director in his discretion desires the Commission to hear the matter.

[9-15-55...2-1-96]

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1217 ~~EXAMINER'S MANNER OF CONDUCTING HEARING~~

~~An Examiner conducting a hearing under these rules shall conduct himself as a disinterested umpire. [9-15-55...2-1-96]~~

5/18/99

**1218 REPORT AND RECOMMENDATIONS;: DIVISION EXAMINER'S HEARING**

Upon the conclusion of any hearing before an **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 his written report ~~and with~~ recommendations for the disposition of the matter or proceeding by the Division. Such report ~~and recommendations~~ 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]

**5/18/99**

**1219 DISPOSITION OF CASES HEARD BY DIVISION EXAMINERS**

After receipt of the report ~~and recommendations~~ of the ~~Division~~ Examiner, the Division Director shall enter the Division's order disposing of the matter ~~or proceeding~~. [9-15-55...2-1-96]

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## **1220 DE NOVO HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS**

**1220.A.** When any order has been entered by the Division pursuant to any hearing held by an Division Examiner, any party of record adversely affected by the such order has ~~shall have~~ the right to have the such matter or proceeding heard *de novo* ~~de novo~~ before the Commission, provided that within ~~thirty~~ (30) days from the date the such order is ~~issued~~ rendered the such party files with the Division a written application for such hearing before the Commission. If an such application is filed, the matter or proceeding shall be set for hearing before the Commission at the first available hearing date following the expiration of fifteen days from the date the such application is filed with the Division. Any party to the proceeding adversely affected by the order or decision rendered by the Commission after hearing before the Commission may apply for rehearing pursuant to and in accordance with the provisions of Rule 1222 and said Rule 1222 together with the law applicable to rehearings and appeals in matters and proceedings before the Commission shall thereafter apply. [9-15-55...2-1-96]

**1220.B.** Any party requesting a stay of a Division order must file the request with the Division and provide copies of the request to the parties of record or their attorneys in the case at the time the request is filed. The request must have attached a proposed stay order. The Director may grant stays under other circumstances if such a stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party.

**1220.C.** Any party of record to the proceeding adversely affected by the order or decision issued rendered by the Commission after hearing before the Commission may apply for rehearing pursuant to and in accordance with the provisions of Rule 1222 and said Rule 1222 together with the law applicable to rehearings and appeals in matters and proceedings before the Commission shall thereafter apply. [9-15-55...2-1-96]

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**1221 COPIES ~~NOTICE~~ OF COMMISSION AND DIVISION ORDERS**

Within ~~10~~ **ten** days after any order, including any order granting or refusing rehearing, or order following rehearing, has been ~~rendered~~ **issued**, a copy of such order shall be mailed by the Division to each ~~person~~ **party** or his attorney of record ~~who has entered his appearance of record in the matter of proceeding pursuant to which such order is rendered.~~ [9-15-55...2-1-96]

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## 1222 REHEARINGS

Within 20 days after entry of any order ~~or decision~~ of the Commission any ~~person party of~~ **record adversely** affected thereby may file with the Division an application for rehearing in respect of any matter determined by such order ~~or decision~~, setting forth the respect in which ~~such the~~ order ~~or decision~~ is believed to be erroneous. The Commission shall grant or refuse any such application in whole or in part within 10 days after ~~it the same~~ is filed and failure to act ~~thereon~~ within such period shall be deemed a refusal ~~thereof~~ and a final disposition of such application. In the event the rehearing is granted, the Commission may enter ~~such a~~ new order ~~or decision~~ after rehearing as may be required under the circumstances. [1-1-50...2-1-96]

5/18/99

NEW

### **1223 EX PARTE COMMUNICATIONS**

In an adjudicatory proceeding, except for filed pleadings, at no time after the filing of an application shall any party, interested participant or their representatives communicate regarding the issues involved in the application with any Commissioner or Division Examiner when all other parties to the proceedings have not had the opportunity to be present.