File under Case 903

The Ohio Oil Co.

Legal Department

W. Hume Everett
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Attorneys

P. O. Box 3128
Houston, Texas

May 31, 1955

Re: Proposed Rules for Examiner System under Senate Bill 229

Mr. Willard F. Kitts
P. O. Box 664
Santa Fe, New Mexico

Mr. Jason W. Kellahin
P. O. Box 597
Santa Fe, New Mexico

Mr. George W. Selinger
Skelly Oil Company
P. O. Box 1650
Tulsa 2, Oklahoma

Mr. John Woodward
Amerada Petroleum Corporation
P. O. Box 2040
Tulsa 1, Oklahoma

Mr. Jack M. Campbell
J. P. White Building
Roswell, New Mexico

Gentlemen:

I enclose in duplicate, for your consideration, a draft of a revision of the Rules on Procedure embodying proposed rules covering the Examiner System. After giving the matter some thought, it appeared to me that it would be preferable to have the rules applying to the Examiner System integrated with the other procedural rules of the Commission rather than to have a separate set of rules applying to the Examiner System only.

I wish to emphasize that I intend the enclosed draft merely as a starting place for our Committee. I wish to give further thought to several of the problems and questions involved, and after having done so I may desire to recommend substantial changes in the draft.

If the Committee feels that a revision of the present Rules of Procedure is the proper approach, it would perhaps be advisable for the Commission to advertise the matter for the June 28 hearing in language sufficiently broad to include such a revision.

I will appreciate hearing from each of you when you have had the opportunity to consider the enclosure, as I am sure it will expedite our meeting on June 14 if we can each have the benefit of the ideas and suggestions of the others prior to that date.

Very truly yours,

J. O. Terrell Couch

TC:MK
Enc.2

The Ohio Oil Co.

Legal Department

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August 1, 1955

P. O. Box 3128
Houston, Texas

Mr. Willard F. Kitts
P. O. Box 664
Santa Fe, New Mexico

Dear Sir:

My comments and observations on the suggestions and objections made by the designated parties to the proposed revision of the Commission's Rules on Procedure are set out below. The suggestions and objections are discussed in the order in which they were presented to the Commission at the July 14 hearing.

MAGNOLIA PETROLEUM COMPANY: (Mr. Ross Madole)

Proposed new rule: I have no objection to inserting a new rule such as that suggested by Mr. Madole requiring copies of pleadings to be furnished to or made available to adverse parties who have entered their appearance of record in a particular hearing. However, it seems to me that the rule proposed by Mr. Madole should be redrafted so that only such adverse parties as have stated their addresses in the record of the hearing will be entitled to have a copy of the pleadings furnished to or made available to them. The mailing of a copy of the pleading or of the notice referred to in the rule, addressed to the adverse party at the address stated by such party in the record of the hearing should be specified as sufficient compliance with the rule. That part of the rule which requires four copies of a pleading to be deposited with the Secretary should specify that such four copies must be extra copies for the adverse parties in addition to the copies required for the Commission's own use. Consideration should be given to changing the proposed rule to refer to "any party to a matter or proceeding set for hearing before the Commission or an Examiner" rather than "any party to a hearing." The statute and present rules use the term "application for rehearing", rather than motion for rehearing. Perhaps, therefore, the proposed new rule should refer to "any written pleading, motion or application of any character filed in any such matter or proceeding, except the initial application for hearing."

Rule 1221: Magnolia's suggestion that Rule 1221 be changed to require the Commission to mail a copy of each order to each party who has entered an appearance of record would, in my opinion, place too great a burden on the Commission. If Magnolia's suggestion is followed, the validity of an order might be

dependent upon the fact question of whether the Commission mailed copies of the order as required by such rule. Of course, there is at present not even a statement in the Rules that the Commission should mail copies of its orders to the parties. Rule 1221, as proposed by the Committee, provides for copy of the order to be mailed to each party; however, it is true that the Rules as proposed by the Committee do not specify any penalty for failure to mail such copy, and by express provisions of those Rules, the validity of the order would be unaffected by the failure of the Commission to mail a copy of an order to a party, or the failure of a party to receive a copy of the order. As I recall, it was the consensus of opinion of the Committee members present at the June 14 Committee meeting that a willful failure or refusal to mail a copy of an order to a party within the specified 10-day period would likely be grounds for equitable relief. I doubt that the Commission should extend an opportunity to attack the Commission's orders on the alleged ground that a copy of the order was not mailed to such party.

Magnolia objects to the use of the term "supplemental notice" in Rule 1221 proposed by the Committee. I take the blame for using that term, and agree that a copy of an order is not literally a "supplemental notice." The term was used as an expedient method of invoking the new supplemental notice procedure set up in Rule 1207. The term "supplemental notice" was used in the same manner and for the same purpose in the second paragraph of Rule 1218 proposed by the Committee. Any improvement of language is invited. However, if the term is discarded in Rule 1221, I think it should also be discarded in Rule 1218.

Rule 1219: I agree with the substance of Magnolia's suggestion. However, I suggest Magnolia's proposed language be changed to avoid the possibility of a contention that the rule would require the Commission to dispose of a case immediately upon the expiration of the 10-day period. Following the substance of Magnolia's suggestion, I believe the proposed Rule 1219 could be improved by changing the beginning part to read:

> "After the expiration of 10 days from the date the supplemental notice required by Rule 1218 has been given, the Commission shall either enter its order disposing of the matter or proceeding, or * * *."

SHELL OIL COMPANY: (Mr. Ed Nestor)

Rule 1216: Although Shell suggests that items (2) and (3) be eliminated from the rule proposed by the Committee, those items are in substance required by S.B. 229. As to Shell's other suggestion concerning this rule, I believe it is preferable for the Commission to have the right to call a hearing and have it held before an Examiner if the Commission desires to do so, unless an affected party objects or unless the purpose of the hearing is to amend, remove or add a statewide rule; therefore, I am of the opinion that Shell's proposal to the contrary should not be accepted.

Rule 1217: It seems to me that the answer to Shell's question concerning this rule is that if the disqualification of the Examiner is discovered by a party later than three days before the hearing, such party may obtain relief in one of the following ways: (1) the Examiner may disqualify himself at the request of such party; (2) the Commission may declare the Examiner to be disqualified; or (3) the party may proceed with the hearing either with or without protest and thereafter obtain a de novo hearing before the Commission as authorized by S.B. 229.

Rule 1220: The de novo hearing provided for in the rule is, of course, statutory, and Shell's suggestion to eliminate it must, therefore, be disregarded.

Rule 1203: Shell's objection to item (4) is answered by Rule 1201 which empowers the Commission to prescribe the time and place of hearing; whereas, item (4) in Rule 1203 merely authorizes an applicant to state a preference as to the time and place of hearing. The Commission, while having the benefit of the stated preference, is certainly not obligated to comply with the applicant's wishes on the subject.

EL PASO NATURAL GAS COMPANY: (Mr. Ben Howell)

Rule 1215: Mr. Howell questions whether the language used in the rule empowers the Examiner to rule on and to exclude evidence offered at a hearing. I am inclined to think that 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" does include the power to rule on and exclude evidence. In any event, the language is verbatim from the statute, and it is probable that in most, if not all, hearings the Examiners will prefer not to exclude evidence, but will admit it subject to objection. Under the circumstances, I do not feel it necessary to change the rule proposed by the Committee, although I have no objection to a change such as has been suggested by Mr. Howell.

HUMBLE OIL & REFINING COMPANY: (Mr. Clarence Hinkle)

Rule 1213: The proviso which Humble recommends be added to this rule is appropriate and I concur that the rule should be amended to specifically recognize that the qualifications of an Examiner stated in the rule shall not prevent any member of the Commission from serving as an Examiner as authorized by S.B. 229.

PHILLIPS PETROLEUM COMPANY: (Mr. E. H. Foster)

Rule 1217: Mr. Foster's two objections to this rule are, in my opinion, without merit.

In order to afford added confidence in the Examiner system, it seems logical to me to provide some method whereby a party who believes an Examiner to be disqualified may avoid a hearing before that Examiner without precluding the holding of the hearing before another Examiner. Although I did not initially favor giving a party the power to disqualify an Examiner as a matter of right merely by filing an affidavit, I understand that the identical procedure is provided for disqualifying judges in the courts of the State of New Mexico. Certainly, the procedure is just as acceptable as a means for disqualifying an Examiner appointed by this Commission. I have no fear that a party "will run the whole string out" [Tr. 9, Case 903, July 14, 1955 Hearing], as Mr. Foster puts it, by filing successive affidavits of disqualification, for I do not anticipate that a party will execute an affidavit that he "believes the Examiner to be disqualified" unless the party actually does believe that to be the case; further, I am sure that the Commission would prevent any such dilatory tactics by setting the matter for a hearing before the Commission as authorized in the last paragraph of Rule 1217.

The first sentence of the rule certainly does not result in "disqualifying a man because he happened to be well informed about the matter on which he was going to conduct the hearing." [Tr. 9, supra.] That sentence reads:

> "No Examiner shall conduct any hearing in any matter or proceeding for which the Examiner has conducted any part of the investigation, nor shall any Examiner perform any prosecuting function."

The sentence quoted merely applies to the Examiner what I understand to be the present attitude of the Commission, assuring that the person conducting a hearing shall be and remain nonpartisan. I think it is of great importance in building and maintaining confidence in the administrative system that the parties be assured of impartiality of the hearing officer. If Mr. Foster's objection is to the draftsmanship rather than the purpose of the above quoted provision, perhaps he will offer a proposed redraft of the sentence at the request of the Committee or the Commission.

Rule 1220: I am of the opinion that Mr. Foster's objections to this rule are without merit.

Although I have read carefully my copy of Mr. Foster's detailed letter of July 25, 1955 to Mr. W. B. Macey, I confess I am still unable to see the "very serious question as to whether or not an order made by this Commission upon a de novo hearing is subject to a judicial review within the provisions of §69-223 of the Statutes." [Tr. 10, supra.] The pertinent part of the statute referred to reads as follows:

> "65-3-22. Rehearings - Appeals. - (a) within twenty (20) days after entry of any order or decision of the commission, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous."

Any such question, "serious" or otherwise, dissolves in the face of the broad and plain language of that statute, which was the law of this State when S.B. 229 was passed by the last Legislature, and which remains the law of this State. An order or decision of the Commission, whether entered at the conclusion of a hearing initially called and held before the Commission, or at the conclusion of a de novo hearing held pursuant to S.B. 229, is nevertheless "any order or decision of the Commission." There is no statute which states that the plain words of §65-3-22 do not mean what they say.

If Mr. Foster's reasoning is followed, it would be necessary to conclude that the losing party in a hearing before an Examiner, having the right under S.B. 229 to a de novo hearing, could, if successful in the de novo hearing, thereby preclude the opposing party from obtaining judicial review. Certainly, the Legislature did not intend that the party who loses in a hearing before an Examiner shall have the power by his voluntary action to control the successful party's right to judicial review in the event the decision should be reversed by the Commission.

There is no statute which states that when an order or decision is entered on the basis of a hearing before an Examiner a party must elect whether to apply for a de novo hearing as authorized by S.B. 229, or a rehearing as authorized by the statute quoted above. Senate Bill 229 guarantees the right to a de novo hearing. It does not repeal the statute quoted above. The two statutes fit together. Supposed conflicts may be argued only on the basis of implications. Mr. Foster implies that since S.B. 229 does not include any provisions for a rehearing and appeal to the courts, the Legislature must have intended that there be no such right of rehearing and appeal after a de novo hearing pursuant to S.B. 229, yet he would apparently recognize a right to rehearing and appeal from an order based on a hearing before an Examiner under S.B. 229. Is it not more logical to realize that a provision included in S.B. 229, authorizing rehearing and appeal to the courts from an order of the Commission, would have merely been an unnecessary repetition of rights already granted in §65-3-22?

It seems to me probable that if a party attempted to appeal to the district court from an order entered on the basis of a hearing before an Examiner, without having sought the de novo hearing guaranteed by S.B. 229, such party would be met with the assertion that he had failed to exhaust his administrative remedy. However, if such party applied for the de novo hearing, he would, in Mr. Foster's judgment, lose his right to judicial review. We do not have the benefit of Mr. Foster's comments on this particular point, but I should think all would agree that we should not attribute to the Legislature an intention to create such a dilemma, especially when the dilemma does arise

not from the language of the statutes but could only arise by means of implications drawn from the failure of the Legislature to reaffirm in S.B. 229 a right of judicial review already on the statute books.

I agree with Mr. Foster that the Commission cannot by rule extend the statutory right of judicial review. No member of this Committee has ever recommended that the Commission attempt to do so. We have recommended a rule which states what we considered to be, and what I still consider to be, the clear and logical effect and operation of S.B. 229 and §65-3-22.

Mr. Foster has ably demonstrated to us, both in his letter of July 25 and by his statements in the record of Case 903, various ingenious lines of argument which might be advanced to limit and restrict by implication the provisions of S.B. 229 and §65-3-22. If initially it was not essential for the Commission to adopt a rule expressing its understanding of those two statutes, it is my firm conviction that the Commission should under the existing circumstances adopt such a rule. To fail to do so would be to subscribe to or surrender to the lines of argument presented. That would truly result in "confusion" and "misunderstanding". When the Commission makes its position clear by the adoption of a rule on this subject, since admittedly the rule cannot deprive anyone of a statutory right, Mr. Foster and any other person may proceed to assert such rights as they have under the statute without regard to any rule which is contrary to the statute.

I favor the retention of Rule 1221 as recommended by the Committee in its initial report. I am forwarding to Mr. Foster a copy of my comments on his objections.

MR. ROSS MALONE:

Rules 1204 and 1209: It seems to me that the objection of Mr. Malone can be met by adding to the sentence which is Rule 1204 the following phrase:

> "provided, however, that when legal notice of a hearing has been given once as provided by law and by this rule, such hearing may be continued as authorized in Rule 1209 by the person presiding at such hearing, and in such event no further notice of such hearing shall be required under this Rule 1204."

I discussed with Mr. Malone the conflict which he believes may exist between Rules 1204 and 1209, and requested him to furnish to the Committee any specific suggestions or wording that he may have. I have just received his letter of July 28, 1955, a copy of which has been directed to each of the other members of the Committee and to Mr. John W. Gurley. Although I have not had time to analyze the letter, I feel sure no additional comment from me will be required.

MR. W. D. GIRAND, JR.:

Rule 1202: The 15-day period for emergency orders is, of course, statutory, and Mr. Girand's suggestion that the period be extended to 30 days cannot be followed.

Rule 1207: It is my opinion that if the rule is changed as suggested by Mr. Girand, the validity of the Commission's orders would be unnecessarily rendered vulnerable to attack on the grounds that the Commission had failed to give the supplemental notice provided for.

Rule 1216: It is my opinion that if the Commission desires to hear any matter or proceeding properly commenced before it, the Commission has the right to do so and cannot be compelled to refer the matter to an Examiner. Therefore, I recommend that Mr. Girand's suggestion on this rule not be followed.

Rule 1217: As I have indicated above, I am of the opinion that the first sentence of this rule will assist in developing confidence in the Examiner system by assuring the parties that they will have the right to have their hearings conducted by an impartial official. I, therefore, oppose deleting the first sentence of this rule.

Mr. Girand's second suggestion concerning this rule is, I believe, satisfactorily taken care of in the last sentence of the second paragraph of the rule, which states that the disqualification affidavit may be filed at any time prior to three days before the date set for hearing, although the Examiner may thereafter disqualify himself or be disqualified by the Commission.

Rule 1218: Although it might be beneficial to all parties to receive a copy of any exceptions, suggestions and objections filed by other parties under Rule 1218 at the conclusion of a hearing before an Examiner, it appears doubtful that such information could be exchanged in time to be of any great benefit, unless action on the Examiner's report is postponed for a greater length of time. If a provision for such exchange of copies is added, the rule should require that such copies be sent only to the adverse parties who had entered an appearance and stated their addresses in the record of the hearing. The rule should specifically state that mailing of such copies to such party at such address will constitute compliance with the provision for furnishing copies and, as in the new rule suggested by Mr. Madole, some provision should be included to cover the case in which there are numerous parties.

Actually, it seems to me that the procedure for exchanging copies might be somewhat cumbersome and might delay the rendition of orders in such cases. Since such exceptions, suggestions and objections as are submitted must be filed as a part of the permanent record of the matter or proceeding, any party who desired to obtain a copy could do so in time to take such action as the party might desire subsequent to the order. I doubt the advisability of following Mr. Girand's proposal regarding Rule 1218.

Rule 1219: The substance of Mr. Girand's suggestion concerning this rule is, in my opinion, beneficial. If the rule proposed by the Committee is changed, I would suggest using the language "for further hearing" instead of the language "for the taking of additional evidence". This would follow the substance of Mr. Girand's suggestion without requiring the Commission to enter a formal order on the subject.

Rule 1220: Mr. Girand's suggestions regarding this rule cannot be followed because of the provisions of S. B. 229.

I regret that other commitments will prevent me from attending the August 17 meeting of the Commission and will also prevent me from meeting with the Committee prior to that date. However, I hope the comments and observations in this letter will be of assistance to the Committee and to the Commission in making the necessary determinations concerning the revision of the Procedural Rules.

Very truly yours,

J. Terrell Couch

TC:MK

cc - Hon. John F. Simms
Governor of the State of New Mexico
Santa Fe, New Mexico

Hon. E. S. Walker
Commissioner of Public Lands
Santa Fe, New Mexico

Mr. W. B. Macey
New Mexico Oil Conservation Comm.
P. O. Box 871
Santa Fe, New Mexico

Mr. J. W. Gurley
New Mexico Oil Conservation Comm.
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Tulsa 2, Oklahoma

Mr. Jack M. Campbell
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Mr. John Woodward
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TC:MK 5/27/55

DRAFT OF PROPOSED REVISION
of
NEW MEXICO OIL CONSERVATION COMMISSION
RULES ON PROCEDURE, INCORPORATING PROVISIONS FOR HEARINGS BEFORE EXAMINERS

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N-RULES ON PROCEDURE

RULE 1201. NECESSITY FOR HEARINGS

Except as provided in some general rule herein, before any rule, regulation or order, including revocation, changes, renewal or extension thereof shall be made by the Commission, a public hearing before the Commission or a legally appointed Examiner shall be held at such time and place as may be prescribed by the Commission.

RULE 1202. EMERGENCY ORDERS

Notwithstanding any other provision of these rules, in case an emergency is found to exist by the Commission, which, in its judgment, requires the making of a rule, regulation or order without a hearing having first been had or concluded, such emergency rule, regulation or order when made by the Commission shall have the same validity as if a hearing with respect to the same had been held before the 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.

RULE 1203. METHOD OF INITIATING A HEARING

The Commission upon its own motion and the Attorney General on behalf of the State and any operator, producer or any other person having a property interest may institute proceedings for a hearing. If the hearing is sought by the Commission it shall be on motion of the Commission and if by any other person it shall be by application. The application in TRIPLICATE shall state (1) the name or general description of the common source or sources of supply affected by the order sought, unless the same is intended to apply to and affect the entire state, in which event the application shall so state,

(2) briefly the general nature of the order, rule or regulation sought, (3) any other matter required by a particular rule or rules, and (4) whether applicant desires a hearing before the Commission or an Examiner, and, if hearing before an Examiner is desired, the time and place applicant prefers the hearing to be held may be stated in the application.

An application shall be signed by the person seeking the hearing or by his attorney. Unless required by a specific rule, an application need not be verified.

RULE 1204. METHOD OF GIVING LEGAL NOTICE FOR HEARINGS

Notice of each hearing before the Commission and notice of each hearing before an Examiner shall be given by personal service on the person affected or by publication once in a newspaper of general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the county or each of the counties, if there be more than one, in which any land, oil or gas or other property which may be affected shall be situated.

RULE 1205. CONTENTS OF NOTICE OF HEARING

Such notice shall be issued in the name of "The State of New Mexico" and shall be signed by two members of the Commission or by the Secretary of the Commission and the seal of the Commission shall be impressed thereon.

The notice shall specify whether the case is set for hearing before the Commission or before an 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 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, 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 may be affected by such order, rule or regulation.

RULE 1206. SERVICE OF NOTICE

Personal service of the notice of hearing may be made by any agent of the Commission or by any person over the age of 18 years in the same manner as

is provided by law for the service of summons in civil actions in the district courts of this State. Such service shall be complete at the time of such personal service or on the date of publication, as the case may be. Proof of service shall be by the affidavit of the person making personal service or of the publisher of the newspaper in which publication is had. Service of the notice shall be made at least 10 days before the hearing.

RULE 1207. SUPPLEMENTAL NOTICES

(a) Mailing List. The Secretary of the Commission shall maintain an official mailing list of the names and addresses of persons who have filed a written request to be included on such list. Any person may at any time file with the Secretary of the Commission a written request to be included on or deleted from the mailing list. A request to be included on such list shall specify the address of the person making the request and such person may specify another address at any time and from time to time by written notice filed with the Secretary of the Commission.

(b) Supplemental Notice of Hearings. Not less than 10 days before the date on which any hearing is set, a supplemental notice of such hearing shall be given to each person included on the mailing list of the Commission. The supplemental notice of each hearing shall contain an abbreviated statement of the information required to be included in the legal notice of such hearing. Such supplemental notice may be in the form of a docket or in any other form the Secretary of the Commission deems convenient and it need not be certified or signed. The supplemental notice of one or more hearings set on the same or different date may be included in one list and may be given at the same time, if the Secretary deems it expedient to do so.

(c) Other Supplemental Notices. In addition to supplemental notice of hearings, such other supplemental notices shall be given as may be required by these rules.

(d) Method of Giving Supplemental Notices. A supplemental notice shall be given to any person included on the mailing list above provided for by depositing the notice in the United States mail, with adequate postage affixed, addressed to the person at the address of the person which is shown on the mailing list.

(e) Failure to Give or Receive a Supplemental Notice. Failure to give or receive any supplemental notice required by these rules shall not be grounds for any complaint, shall not affect the jurisdiction of the Commission, the right of the Commission or any Examiner to conduct any hearing, or the validity of any order or other action taken pursuant to or as a result of any matter or proceeding with reference to which such supplemental notice should have been given, unless complainant has no actual knowledge of such matter or proceeding until after the Commission's action in such matter or proceeding has become final, and then only in the event the failure to give or receive such notice is the result of willful misconduct of a member or employee of the Commission. Any and all objections and complaints based on failure to give or receive a supplemental notice shall be waived unless written application for relief supported by affidavit setting forth the pertinent facts is filed with the Commission within six months after the date of the action taken by the Commission pursuant to such notice. If any such application is so filed, the Commission shall proceed with notice and public hearing thereon in accordance with these rules, and if the above facts and injury to applicant are shown the Commission shall on its own motion reopen the matter or proceeding with reference to which such supplemental notice should have been given to applicant.

RULE 1208. PREPARATION OF NOTICES

After a motion or application is filed with the Commission the notice or notices required shall be prepared by the Commission and mailing, service and publication thereof shall be taken care of by the Commission without cost to the applicant.

RULE 1209. CONTINUANCE OF HEARING WITHOUT NEW SERVICE

Any hearing before the Commission or an 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 mailed, served or published. In the event of any continuance, a statement thereof shall be made in the record of the hearing which is continued.

Any matter or proceeding set for hearing before an Examiner shall be automatically continued to the next regular hearing of the Commission following

any district in the State, and such court has powers to punish for contempt. Any person found guilty of swearing falsely at any hearing may be punished for contempt.

RULE 1212. RULES OF EVIDENCE

Full opportunity shall be afforded all interested parties at a hearing 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 which is not supported by some competent legal evidence.

RULE 1213. EXAMINERS' QUALIFICATIONS AND APPOINTMENT

The Commission shall be ex parte order designate and appoint not more than four individuals to be Examiners. Each Examiner so appointed shall be a member of the staff of the Commission, but no Examiner need be a full time employee of the Commiasion. The Commission 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 Examiner must have a college degree in geology, engineering or law and at least two years practical experience as a geologist, petroleum engineer or lawyer.

RULE 1214. REFERRAL OF CASES TO EXAMINERS

Either the Commission or the Secretary thereof may refer any matter or proceeding to any legally designated and appointed Examiner for hearing in accordance with these rules.

RULE 1215. EXAMINER'S POWER AND AUTHORITY

The Commission may, by ex parte order, limit the powers and duties of the Examiner in any particular case to such issues or to the performance of such acts as the Commission deems expedient; however, subject only to such limitations as may be so ordered, the Examiner to whom any matter or proceeding 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 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 the swearing of witnesses, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and transcribed and shall certify same to the Commission as hereinafter provided.

RULE 1216. HEARINGS WHICH MUST BE HELD BEFORE COMMISSION

Notwithstanding any other provision of these rules, the hearing on any matter or proceeding shall be held before the Commission (1) if the application or motion so requests, or (2) if any party who may be affected by the matter or proceeding files with the Commission more than three days prior to the date set for the hearing on the matter or proceeding a written objection to such matter or proceeding being heard before an Examiner, or (3) if the matter or proceeding is for the purpose of amending, removing or adding a statewide rule.

RULE 1217. EXAMINER'S MANNER OF CONDUCTING HEARING, DISQUALIFICATION

No Examiner shall conduct any hearing in any matter or proceeding for which the Examiner has conducted any part of the investigation, nor shall any Examiner perform any prosecuting function. An Examiner conducting a hearing under these rules shall conduct himself as a disinterested umpire, with the duty to receive the evidence offered and to assist in developing of the pertinent facts. Any Examiner who cannot accord a fair and impartial hearing and consideration to the parties in any matter or proceeding referred to such Examiner, or who is otherwise disqualified to conduct the hearing and consider the matter or proceeding, shall so advise the Secretary of the Commission and shall withdraw from such matter or proceeding.

In the event the applicant or petitioner, or any other party who has entered an appearance in any matter or proceeding, concludes that the Examiner to whom the matter or proceeding has been referred is for any reason disqualified to act therein, the party contending that such disqualification exists shall file with the Commission an affidavit containing the pertinent facts establishing such disqualification. Such affidavit may be filed at any time before an order is rendered by the Commission on the basis of the proceedings before such Examiner. Upon the filing of such affidavit the Commission shall set the matter of the Examiner's disqualification for hearing before the

Commission and give a supplemental notice of such hearing, five days in advance thereof, to each person who has entered an appearance in the matter or proceeding as to which the disqualification is claimed.

In the event any Examiner disqualifies himself in any matter or proceeding referred to such Examiner, or if such Examiner is found by the Commission to be disqualified upon the complaint of any party to such matter or proceeding, the Commission or the Secretary thereof shall promptly refer the matter or proceeding to another Examiner for hearing, or set such matter or proceeding for hearing before the Commission in accordance with these rules. In such event, the Secretary shall give a supplemental notice of such action to each party who has entered an appearance in such matter or proceeding.

RULE 1218. REPORT AND RECOMMENDATIONS RE EXAMINER'S HEARINGS

Upon the conclusion of any hearing before an Examiner, the Examiner shall promptly consider the proceedings in such hearing, and based upon the record of such hearing the Examiner shall prepare his written recommendations for the disposition of the matter or proceeding by the Commission. Such 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 Commission with the certified record of the hearing.

A supplemental notice consisting of a copy of the proposed order, with such other recommendations as the Examiner may submit to the Commission, shall be given to each person who entered an appearance of record at the hearing, and no order in such matter or proceeding shall be entered by the Commission until at least five days after such supplemental notice has been given.

Any party who would be affected by such proposed order may submit written exceptions, objections and suggestions to such order and to any further recommendations of the Examiner, at any time before an order is rendered by the Commission in such matter or proceeding. All such written exceptions, objections and suggestions received by the Commission in connection with any matter or proceeding shall be filed by the Commission as a part of the permanent record of such matter or proceeding.

Commission and give a supplemental notice of such hearing, five days in advance thereof, to each person who has entered an appearance in the matter or proceeding as to which the disqualification is claimed.

In the event any Examiner disqualifies himself in any matter or proceeding referred to such Examiner, or if such Examiner is found by the Commission to be disqualified upon the complaint of any party to such matter or proceeding, the Commission or the Secretary thereof shall promptly refer the matter or proceeding to another Examiner for hearing, or set such matter or proceeding for hearing before the Commission in accordance with these rules. In such event, the Secretary shall give a supplemental notice of such action to each party who has entered an appearance in such matter or proceeding.

RULE 1218. REPORT AND RECOMMENDATIONS RE EXAMINER'S HEARINGS

Upon the conclusion of any hearing before an Examiner, the Examiner shall promptly consider the proceedings in such hearing, and based upon the record of such hearing the Examiner shall prepare his written recommendations for the disposition of the matter or proceeding by the Commission. Such 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 Commission with the certified record of the hearing.

A supplemental notice consisting of a copy of the proposed order, with such other recommendations as the Examiner may submit to the Commission, shall be given to each person who entered an appearance of record at the hearing, and no order in such matter or proceeding shall be entered by the Commission until at least five days after such supplemental notice has been given.

Any party who would be affected by such proposed order may submit written exceptions, objections and suggestions to such order and to any further recommendations of the Examiner, at any time before an order is rendered by the Commission in such matter or proceeding. All such written exceptions, objections and suggestions received by the Commission in connection with any matter or proceeding shall be filed by the Commission as a part of the permanent record of such matter or proceeding.

RULE 1219. DE NOVO HEARING BEFORE COMMISSION

When any order has been entered by the Commission pursuant to any hearing held by an Examiner, any party adversely affected by such order shall have the right to have such matter or proceeding heard de novo before the Commission, provided that within 30 days from the date such order is rendered such party files with the Commission a written application for such hearing before the Commission. If such application is filed, the matter or proceeding shall be set for hearing before the Commission at the next regular hearing date following the expiration of fifteen days from the date such application is filed with the Commission. In such hearing before the Commission, the Commission shall be entitled to receive and consider the record of the hearing conducted by the Examiner in such matter or proceeding. Any person 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 1221, and said Rule 1221 together with the law applicable to rehearings and appeals in matters and proceedings before the Commission shall thereafter apply to such matter or proceeding.

RULE 1220. NOTICE OF COMMISSION'S ORDERS

Within 10 days after any order has been rendered by the Commission, a supplemental notice consisting of a copy of such order shall be given to each person who has entered an appearance of record in the matter or proceeding pursuant to which such order is rendered.

RULE 1221. REHEARINGS

Within 20 days after entry of any order or decision of the Commission, any person affected thereby may file with the Commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such 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 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 new order or decision after rehearing as may be required under the circumstances.

RULE 1222. CHANGES IN FORMS AND REPORTS

Any changes in the forms and reports or rules relating to such forms and reports shall be made only by order of the Commission issued after due notice and hearing.