

June 1, 1955

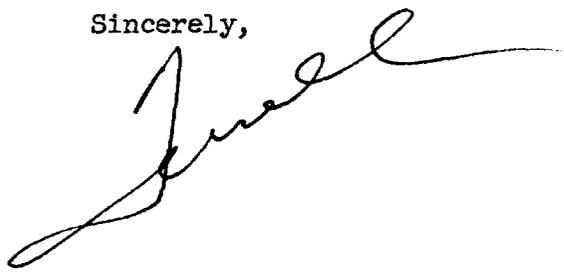
Dear Bill:

In yesterday's mail I circulated to the other Committee members a draft of a revision of the procedural rules integrating proposed rules for the Examiner System of Hearing.

A copy of the letter of transmittal and a copy of the proposed revision is attached for your information.

As indicated by the transmittal letter, this draft is intended merely as a jumping off place for the Committee. I thought it would be helpful in getting things started. I assume you will give Bill Kitts any suggestions or ideas you may have on the subject; however, I would appreciate hearing from you directly if you have time.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. W. Jones", written in black ink.

TC:MK

DRAFT OF PROPOSED REVISION

OF

NEW MEXICO OIL CONSERVATION COMMISSION
RULES ON PROCEDURE, INCORPORATING PRO-
VISIONS FOR HEARINGS BEFORE EXAMINERS

- - -

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, 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, and such application shall state a list of the names and addresses of all interested parties insofar as applicant believes.

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 regulations.

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) 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.

(b) 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. The Secretary of the Commission may at any time, and from time to time, revise the mailing list by mailing to the persons named thereon an application blank and shall include on the revised mailing list only those persons who return such blank.

(c) 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.

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

(e) 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.

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 continued by the examiner to the next regular hearing of the Commission following the date set for the hearing before the Examiner if any person who may be affected by any order entered by the Commission in connection with such hearing shall have

filed with the Commission, at least three days prior to the date set for such hearing, a written objection to such hearing being held before an Examiner. In such event the matter or proceeding shall be placed on the regular docket of the Commission for hearing, and the Secretary of the Commission shall promptly give a supplemental notice of such continuance to the applicant or petitioner and to each person who has entered an appearance in such matter or proceeding.

RULE 1210. CONDUCT OF HEARINGS

Hearings before the Commission or any Examiner shall be conducted without rigid formality. A transcript of testimony shall be taken and preserved as a part of the permanent record of the Commission. Any person testifying in response to a subpoena issued by the Commission 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 Commission may conduct such hearings as may be referred to such Examiner by the Commission or the Secretary thereof.

RULE 1211. STATUTORY POWERS AS TO WITNESSES, RECORDS, ETC.

The Commission or any member thereof has statutory power to subpoena witnesses and to require the production of books, papers, records, etc. A subpoena will be issued by the Commission for attendance at a hearing upon the written request of any person interested in the subject matter of the hearing. In case of the failure of a person to comply with the subpoena issued by the Commission, 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 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 competent legal evidence.

RULE 1213. EXAMINERS' QUALIFICATIONS AND APPOINTMENT

The Commission shall by 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 Commission. 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 at least six years practical 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.

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. The examiner appointed to hear any specific case shall be designated by name.

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 ordered by the Commission, 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 Commission in its discretion desires to hear the matter, or (2) if the application or motion so requests, or (3) 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 (4) 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. 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 stating that such party believes the Examiner to be disqualified. Such affidavit may be filed at any time prior to three days before the date such matter or proceeding is set for hearing.

In the event any Examiner disqualifies himself in any matter or proceeding referred to such Examiner, or if the Commission deems such Examiner to be

disqualified, or if any party to such matter or proceeding has filed an affidavit of such disqualification as hereinabove authorized, 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 report and recommendations for the disposition of the matter or proceeding by the Commission. 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 Commission with the certified record of the hearing.

A supplemental notice consisting of a copy of the proposed order, with such other report and 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 ten 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 report and 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. DISPOSITION OF CASES HEARD BY EXAMINERS.

After receipt of the report and recommendations of the Examiner, the Commission shall either enter its order disposing of the matter or proceeding, or

refer such matter or proceeding to the Examiner for the taking of additional evidence.

RULE 1220. 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 1222, and said Rule 1222 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 1221. 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 1222. 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 1223. 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.

June 21, 1955
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Introduced by
F. J. Danglade

AN ACT

RELATING TO THE NEW MEXICO OIL CONSERVATION COMMISSION; GRANTING AUTHORITY TO THE COMMISSION TO APPOINT EXAMINERS TO CONDUCT HEARINGS WITH RESPECT TO MATTERS COMING BEFORE THE COMMISSION AND TO MAKE FINDINGS AND RECOMMENDATIONS WITH RESPECT THERETO.

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. In addition to the powers and authority, either express or implied, granted to the Oil Conservation Commission by virtue of the statutes of the State of New Mexico, the Commission is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the Commission to provide for the appointment of one or more examiners to be members of the staff of the Commission to conduct hearings with respect to matters properly coming before the Commission and to make reports and recommendations to the Commission with respect thereto. Any member of the Commission may serve as an examiner as provided herein. The Commission shall promulgate rules and regulations with regard to hearings to be conducted before examiners and the powers and duties of the examiners in any particular case may be limited by order of the Commission to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case 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 the same to the Commission for consideration together with the report of the examiner and his recommendations in connection therewith. The Commission shall base its decision rendered in any matter or proceeding heard by an examiner, upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if said hearing had been conducted before the members of said Commission; PROVIDED, HOWEVER, no matter or proceeding referred to an examiner shall be heard by such examiner where any party who may be affected by any order entered by the Commission in connection therewith, shall object thereto within three days prior to the time set for hearing, in which case such matter shall be heard at the next regular hearing of the Commission. When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party adversely affected shall have the right to have said matter heard de novo before the Commission upon application filed with the Commission within 30 days from the time any such decision is rendered.

RULE 207 Filing Pleadings; Copy Delivered to adverse Party or Parties.

When any party to a hearing files any pleading, 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 shall at the same time either deliver or mail to the adverse party or parties who have entered their appearance therein, or their respective attorneys of record, a copy of such pleading, plea or motion. If there be more than four adverse parties who have entered their appearance in said hearing, four copies of such pleading shall be deposited with the Secretary of the Commission and the party filing them shall inform all adverse parties who have entered their appearance, or their attorneys of record, that such copies have been deposited with the Secretary of the Commission. These copies shall be delivered by the Secretary to the first four applicants entitled thereto.

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a Kelly

NEAL & GIRAND
LAWYERS
NEAL BUILDING
HOBBS, NEW MEXICO

July 8, 1955.

Mr. William F. Kitts,
c/o Oil Conservation Commission,
Santa Fe, New Mexico.

Dear Mr. Kitts:

The writer respectfully proposes certain changes in the proposed Rules of Procedure offered by your Committee at the June meeting of the Oil Conservation Commission.

Since Rule 1202 is being amended, I think that the emergency Order should be valid for more than 15 days. I would suggest thirty days.

I suggest the following changes in the Rules enumerated:

1. In Rule 1207, in the first paragraph, sub-number (a), that the words, "give or" in lines one and two be deleted;
2. In Rule 1216, delete after the word, "Commission", on line two before the numeral (1) through the word "or" appearing on line three before the numeral (2) and re-number;
3. In Rule 1217, delete the first sentence. I would also suggest under Rule 1217, that Paragraph 3 be amended so that a time be fixed in which to inaugurate proceedings to disqualify an examiner;
4. In Rule 1218, in the last paragraph thereof, delete the period and insert a comma and add, "and copies of such exceptions, objections and suggestions to such Order be furnished to each person who entered an appearance of record at the hearing".

Mr. William F. Kitts,
Page Two,
July 8, 1955.

6. Rule 1219, I suggest that after the word, "or", on Page 8, be added the following: "Order further Hearing", and delete that portion of the Rule appearing on Page 9;
7. I suggest that Rule 1220 be deleted in its entirety. In regard to this Rule, I see no need for it in light of your Rule 1222 for the reason that a trial De Novo before the Commission on a matter which the Commission has referred to an examiner and entered its Order based upon the examiner's report and the record made before the examiner would serve no purpose except to delay the entry of a final Order.

I take this opportunity to compliment you and your Committee on the fine job done in the preparation of the proposed Rules and offer the above only as suggestions.

Respectfully submitted,

NEAL & GIRAND,

BY:



G/bc

cc: Mr. Jason W. Kellahin,
Attorney at Law,
Santa Fe, New Mexico.

Mr. Jack Campbell,
Attorney at Law,
Roswell, New Mexico.

Mr. William B. Macey, Secretary,
Oil Conservation Commission,
Santa Fe, New Mexico.

Mr. Terrell Couch,
c/o Ohio Oil Company,
Houston, Texas.

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

July 22, 1955

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

Dear Mr. Campbell:

I enclose a copy of the July 14th hearing of Case 903
regarding the Rules on Procedure.

We would appreciate it if you would give this transcript
your early attention and forward to us your recommendations
and, if possible, a rough draft of Section "N" of the Commission's
Statewide Rules and Regulations.

Very truly yours,

Charles M. Reider
District Engineer

CMR:brp
Enclosure

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OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

July 22, 1955

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

Dear Mr. Selinger:

I enclose a copy of the July 14th hearing of Case 903 regarding the Rules on Procedure.

We would appreciate it if you would give this transcript your early attention and forward to us your recommendations and, if possible, a rough draft of Section "N" of the Commission's Statewide Rules and Regulations.

Very truly yours,

Charles M. Reider
District Engineer

CMR:brp
Enclosure

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OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

July 22, 1955

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

Dear Mr. Woodward:

I enclose a copy of the July 14th hearing of Case 903
regarding the Rules on Procedure.

We would appreciate it if you would give this transcript
your early attention and forward to us your recommendations
and, if possible, a rough draft of Section "N" of the Commission's
Statewide Rules and Regulations.

Very truly yours,

Charles M. Reider
District Engineer

CMR:brp
Enclosure

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

July 22, 1955

Mr. Terrell Couch
Ohio Oil Company
P.O. Box 3128
Houston, Texas

Dear Mr. Couch:

I enclose a copy of the July 14th hearing of Case 903
regarding the Rules on Procedure.

We would appreciate it if you would give this transcript
your early attention and forward to us your recommendations
and, if possible, a rough draft of Section "N" of the Commission's
Statewide Rules and Regulations.

Very truly yours,

Charles M. Reider
District Engineer

CMR:brp
Enclosure

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PHILLIPS PETROLEUM COMPANY

AMARILLO, TEXAS

July 25, 1955

LEGAL DEPARTMENT

RAYBURN L. FOSTER
VICE PRESIDENT
AND GENERAL COUNSEL
HARRY D. TURNER
GENERAL ATTORNEY

AMARILLO DIVISION
E. H. FOSTER
CHIEF ATTORNEY
CLIFFORD J. ROBERTS
C. REX BOYD
JACK RITCHIE
THOMAS M. BLUME
JOE V. PEACOCK
WILLIAM M. COTTON
STAFF ATTORNEYS

Re: Proposed Rules of Procedure

Mr. W. B. Macey
New Mexico Oil Conservation Commission
Santa Fe, New Mexico

Dear Sir:

The Commission has submitted a draft of a proposed revision of Rules 1201-1223, inclusive, of the Rules of Procedure of the Commission, incorporating provisions for hearings before examiners.

A revision of the Rules of Procedure is necessitated by the enactment by the 1955 Legislature of New Mexico of Senate Bill 229, Chapter 235, Laws of New Mexico 1955, providing for the appointment of examiners to conduct hearings on matters coming before the Commission.

I wish to comment on Rules 1217 and 1220. I have heretofore stated my objections to Rule 1217. I shall briefly restate them here and then discuss Rule 1220. Rule 1217 is objectionable on principle.

Knowledge of the Facts Should Not Be a
Disqualifying Cause.

One of the objectionable features of Rule 1217 is found in this language:

"No examiner shall conduct any hearing in any matter or proceeding for which the examiner has conducted any part of the investigation, * * *."

Since any member of the Commission may serve as an examiner under the provisions of Senate Bill 229, I see no reason why any member of the Commission, or any other person who may be appointed as an examiner, should be disqualified because of his knowledge of the facts. Proceedings before the Commission are highly technical. Any person who attempts to function without having investigated the facts on any matter to be heard before him cannot, in my opinion, function properly.

1000 OFFICE 000

Mr. W. B. Macey

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July 25, 1955

Disqualifying an Examiner Should Be a Function
of the Commission.

Another objectionable feature of Rule 1217 is found in this language:

"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 stating that such party believes the examiner to be disqualified. Such affidavit may be filed at any time prior to three (3) days before the date such matter or proceeding is set for hearing."

Under the provisions of Senate Bill 229, no person may be forced to have his matter heard before an examiner. Within three days prior to the time set for hearing, one may object to a hearing before the examiner. In this event the matter must then be heard by the Commission. It seems to me the statutory right of objection to a hearing before an examiner should not be further fortified with the right to object for no reason at all to a particular examiner.

Whether an examiner is a qualified person to conduct a hearing should be for the sole determination of the Commission. If he is not qualified for any reason, then he should not, of course, be an examiner. But a determination of the fitness and qualification of an examiner is the sole function of the Commission, in my judgment. To hold otherwise would be to place it within the power of an applicant or petitioner or any party who has entered an appearance in any matter or proceeding to disqualify each examiner to whom the Commission might refer a matter. I do not believe that it was the intention of the Legislature, in administrative proceedings such as are conducted by the Commission under properly delegated authority, that one should have the right to disqualify an examiner to whom a matter has been referred, on the sole ground that he believes the examiner to be disqualified.

I have heretofore stated to the Commission that Rule 1220 is objectionable. I have not stated for the record the basis of my objection. I now wish to discuss at some length Rule 1220.

I wish to discuss the de novo provisions of Senate Bill 229 in connection with Rule 1220. The de novo provisions of the bill are contained in this language:

"When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party adversely affected shall have the right to have said matter heard de novo before the Commission upon application filed with the Commission within 30 days from the time any such decision is rendered."

That part of Rule 1220 which I wish to discuss as related to the de novo provisions of Senate Bill 229 is contained in this provision:

"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 1222; and said Rule 1222, together with the law applicable to rehearings and appeals in matters and proceedings before the Commission, shall thereafter apply to such matter or proceedings."

Senate Bill 229 Contains no Provision for a
Judicial Review of any Order or Decision of
the Commission.

Senate Bill 229 contains neither an express nor an implied provision for a judicial review of any order or decision of the Commission. The bill does contain an express provision which gives to a party adversely affected by a decision rendered by the Commission on a matter referred to an examiner the right to an administrative review on application for a de novo hearing made within thirty days from the time of the rendition of the decision. But this is not a provision for a judicial review.

Senate Bill 229 Contains no Provision for Rehearing.

The only provision for an administrative review of an order or decision of the Commission provided by Senate Bill 229 is that of a de novo hearing upon a matter referred to an examiner. If an administrative review of an order or decision of the Commission upon a matter heard by the Commission is desired it must be sought under the provisions of Section 69-223(a),(b), by the filing of a petition for rehearing. It is important, I think, to take note of the

difference in the provisions of Senate Bill 229 providing for administrative review of an order or decision of the Commission on a matter referred to an examiner and the provisions of Section 69-223(a) providing for an administrative review of an order or decision of the Commission on matters heard by the Commission. If a party to a proceedings before the Commission upon a matter referred to an examiner wishes or desires an administrative review of an order or decision of the Commission, he must proceed by way of an application for a de novo hearing. If he wishes or desires an administrative review of an order or decision of a matter heard by the Commission, he must proceed by way of an application for rehearing.

Application for a De Novo Hearing Cannot be Considered
an Application for a Rehearing.

While the results to be obtained on a de novo hearing under the provisions of Senate Bill 229 and the results to be obtained on an application for rehearing under the provisions of Section 69-223(a) may coincidentally be the same, an application for a de novo hearing, though filed within twenty days of the entry of an order or decision of the Commission, cannot be considered an application for rehearing. The two applications are different. They are different in nature and as to content.

The Administrative Review Provided for Under Senate
Bill 229 Exists as a Matter of Right.

A de novo hearing upon any matter referred to an examiner exists as a matter of right. The Commission must grant a de novo hearing. It has no discretion in the matter. The fact that an administrative review of an order or decision of the Commission by de novo hearing is expressly granted as a matter of right negatives the assumption that the Legislature had in mind extending the right of judicial review to such proceedings.

Scope of Administrative Review on De Novo Hearing
is not Limited.

On a de novo hearing the Commission must again go into all the evidence and render its decision anew. There is no statutory limitation on the scope of an administrative review afforded by a de novo hearing. It is important to notice that this is not true of the scope of an administrative review afforded by an application for rehearing.

Scope of Administrative Review on an Application
for Rehearing is Limited.

By statute the scope of an administrative review on an application for rehearing is limited. The applicant must set forth the respect in which an order or decision of the Commission is believed to be erroneous. On a rehearing he is limited to those matters raised in the application. And, regardless of what he raises, the Commission is under no statutory duty to grant a rehearing. In fact, the Commission may refuse to hear the application at all, either through the expedient of an order denying the application in whole or in part or through the expedient of letting the ten-day statutory period within which it must act expire, thus refusing a rehearing.

An Administrative Review of an Administrative Decision
and a Judicial Review of an Administrative Decision
are not the Same.

It requires no citation of authority to demonstrate that an administrative review of an administrative decision is not a judicial review of an administrative decision. An administrative review of an administrative decision may be had before any administrative agency to which such administrative function has been delegated. All that has been done under the de novo provisions of Senate Bill 229 is to delegate to the Oil Conservation Commission the power and authority of administrative review of its orders and decisions on matters referred to an examiner. The Commission had the power of administrative review of its orders and decisions on matters not referred to an examiner under the provisions of Section 69-223(a) by way of an application for a rehearing. No right of judicial review of the administrative review of the Commission on a matter referred to an examiner is expressly contained in Senate Bill 229.

An administrative review of an order or decision of the Commission made upon a hearing de novo, or made upon a rehearing, is not the same as a judicial review of an order or decision of the Commission. Upon an administrative review, the Commission may either affirm, modify, or vacate its previous order in whole or in part. It may, if it sees fit to do so, enter an entirely new order or any order which it thinks it should have entered in the first instance. On a judicial review of an order or a decision of the Commission, the Court may determine only whether the order or decision of the Commission was proper or improper. It may not substitute its judgment for that of the Commission. The Legislature appears to have had in mind the distinction between a judicial review on a trial de novo before a court and an administrative review by the Commission of its order or decision on a hearing de novo. In Senate Bill 229 no provision is made for a judicial review of an order or decision of the Commission made and entered on a de novo hearing. By implication, it appears

that no judicial review of the de novo order or decision was contemplated by the Legislature. If it had been the will of the Legislature that such an order or decision should be the subject of judicial review, all it had to do was to say so. This it did not do.

Only Provision for Judicial Review is Contained
in Section 69-223(a),(b).

The material provisions of Section 69-223(a),(b), New Mexico Statutes 1941, are as follows:

"(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. The commission shall grant or refuse any such application in whole or in part within ten (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.

"(b) Any party to such rehearing proceeding, dissatisfied with the disposition of the application for rehearing may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision, by filing a petition for the review of the action of the commission within twenty (20) days after the entry of the order following rehearing or after the refusal of rehearing as the case may be."

Judicial review of an administrative decision does not exist as a matter of right. Appeals to the court from decisions of an administrative agency may be granted or withheld at the will of the Legislature. No citation of authority is needed to sustain this statement.

An Order or Decision of the Commission Disposing of an Application for Rehearing is not "Any Order or Decision of the Commission" Within the Meaning of Section 69-223(a) of the Statute.

The statutory time for filing an application for rehearing begins to run with the entry of "any order or decision of the Commission." About this, there can be no controversy. This is the express provision of Section 69-223(a). Under Subsection (a) of the statute a motion for a rehearing must be filed within twenty days of the date of the entry of "any order or decision of the Commission." The Commission shall grant or refuse the application in whole or in part within ten days after the same is filed. If it fails to act thereon within the ten-day period this constitutes a refusal and a final disposition of the application. If a rehearing is granted the Commission may enter such new order or decision after rehearing as may be required under the circumstances. The granting or refusing of the application in whole or in part, or the entry of a new order or decision after rehearing, cannot on any theory be said to be "any order or decision of the Commission" within the meaning of Subsection (a) of the statute. To so construe the statute would be to permit the filing of successive applications for rehearings. This would render the statute unworkable.

Under Subsection (b) a party to a rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal to the district court by filing a petition for review within twenty days after the entry of the order following the rehearing, or after the refusal of rehearing as the case may be.

Any Order or Decision of the Commission, Within the Meaning of Section 69-223(a), Includes Only the First Order or Decision of the Commission.

While judicial review by appeal, provided for by Section 69-223(b), is from the disposition of the application for rehearing which may consist in the granting or refusing of such application in whole or in part, or the entry of a new order or decision after rehearing, notice must be taken of the fact that the appeal is initiated, and can only be initiated, by the filing of an application within twenty days from the entry of any order or decision of the Commission. It is therefore clear that the term "any order or decision of the Commission" as used in Section 69-223(a) can refer to, and does refer only to, the first and original order or decision of the Commission. The term "any" was not intended to be used in the sense that an applicant could select which of several orders or decisions that might be entered by the Commission on which he might file an application for rehearing. Rather the term "any" was used to describe the entry of an order on the subject matter of the hearing from which one dissatisfied with the disposition of a motion for rehearing might have a judicial review of that order

by way of an appeal to a district court provided he followed the statutory mandate of filing his application for a rehearing within the twenty-day statutory period from the date of the entry of the order. This is made clear by the statutory provision that the appeal is from the entry of the order following rehearing or following the refusal of rehearing. The initial step in perfecting the appeal from the entry of the order following rehearing or the refusal of rehearing is the mandatory and jurisdictional requirement that an application for rehearing be filed, not within twenty days from the entry or failure of the entry of an order disposing of the application for rehearing or the entry of a new order or decision after a rehearing or the entry of an order on a hearing de novo, but within twenty days of the date of the entry of any order or decision of the Commission.

A Judicial Review of a De Novo Hearing Cannot be had.

The time element involved in the exercise of the right to a de novo hearing on a matter referred to an examiner and the exercise of the right of judicial review of the disposition of an application for a rehearing on a matter heard before the Commission is such that a judicial review of the disposition of a matter on a de novo hearing cannot be had. The practical effect of establishing a thirty-day period from the time of the rendition of a decision by the Commission on a matter referred to an examiner within which the right to a de novo hearing may be exercised, while retaining the mandatory and jurisdictional statutory period from the date of the entry of an order or decision on a matter heard before the Commission for the filing of an application for a rehearing is a strong, if not a conclusive, indication that the Legislature had no intention of extending the right of judicial review to a de novo order or decision of the Commission.

It must be assumed that the secretary will, in the future as in the past, promptly and expeditiously, in compliance with Section 69-206 of the 1941 Statutes, enter all rules, regulations, and orders in a book kept for that purpose by the Commission. It is not assumed that the secretary will withhold the entry of any order, rule, regulation, or decision of the Commission from entry until after the expiration of thirty days from the rendition of a rule, order, or regulation of the Commission. It is to be assumed that the Commission will make no distinction as to the time of the entry of any order, rule, regulation, or decision of the Commission on matters heard by the Commission itself and matters referred by the Commission to an examiner.

A simple example will illustrate what I am attempting to say. "A" applies for an unorthodox well location. The matter is referred to an examiner. An order or decision of the Commission is rendered and properly entered, denying "A" any relief. "A" now has his choice of an administrative review of this decision.

He may have a de novo hearing without the right of judicial review upon an application filed within thirty days from the date of the rendition of the decision. He may have an administrative review of this decision by way of a rehearing with the right of judicial review upon an application for a rehearing filed within twenty days of the entry of the order. It is evident that "A" cannot pursue his right of a de novo hearing and, at the same time, pursue his right of judicial review. At least, the legislative intent that he may do so is not sufficiently clear to justify the Commission in its endeavor to extend the right of judicial review by rule to an order or decision of the Commission on a de novo hearing.

The Right of Judicial Review Cannot be Extended
by a Rule of the Commission.

There can be no objection to stating a statutory provision as a rule. This has been done with respect to a rehearing in Rule 1222. But this has not been done in the statement of Rule 1220. In stating Rule 1220 the Commission seeks by administrative action to extend the right of judicial review to decisions of the Commission made after a de novo hearing authorized by Senate Bill 229. Neither Senate Bill 229 nor any other statutory provision authorizes the Commission to do this. It is fundamental that the Commission has only such power and authority as is expressly or by necessary implication delegated to it. The Legislature has not delegated to the Commission the power or authority to extend the right of judicial review to its orders or decisions.

Bottomed on the provisions of Senate Bill 229, Rule 1220 appears to be in direct conflict with the provisions of Section 69-223 of the statute which provide the procedural steps to be followed in order to obtain a judicial review of an order or decision of the Commission. It follows that any attempt to grant the right to apply for a rehearing other than in accordance with the provisions of Section 69-223 of the statute can result only in confusion, misunderstanding, a probable miscarriage of justice, and injury to those attempting to comply with the rule.

It is not clear why the Commission should give to the de novo provisions of Senate Bill 229 a construction which places Rule 1220 in conflict with Section 69-223 of the statute, when such action is neither necessary nor required in order to perpetuate the right of a hearing de novo under the provisions of Senate Bill 229 and the right of judicial review under Section 69-223 of the statute. The only explanation offerable is, the Commission must have considered the provisions of Senate Bill 229 as in conflict with the provisions of Section 69-223, and that it was charged with the duty and authorized by law to resolve this conflict by the promulgation of the rule.

Nothing could be farther from the truth. The two provisions of the statute are not in conflict. And, if they were, statutory authority to resolve such a conflict

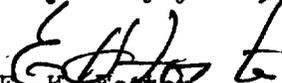
July 25, 1955

is not one of the powers delegated to the Commission in the administration of the conservation laws of the State of New Mexico.

The Existence of the Right of Judicial Review
is For Individual Determination.

It is sound thinking, I believe, to suggest to the Commission that it should not attempt to prejudge or determine by rule the existence of the right of judicial review of its orders or decisions. The existence or nonexistence of the right of judicial review of an order or decision of the Commission is a matter for individual determination.

Very truly yours,


E. H. Foster

EHF:fe

cc: The Honorable John F. Simms
Governor of New Mexico
Santa Fe, New Mexico

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

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

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Santa Fe, New Mexico

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Box 3128
Houston, Texas

Mr. Harry D. Turner
Staff Attorneys



44777-1002 100
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SKELLY OIL COMPANY

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100 100 100
TULSA 2, OKLAHOMA

July 25, 1955

PRODUCTION DEPARTMENT
J. S. FREEMAN, VICE PRESIDENT

Re: Case 903
Rules on Procedure

Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Attention: Mr. Charles M. Reider

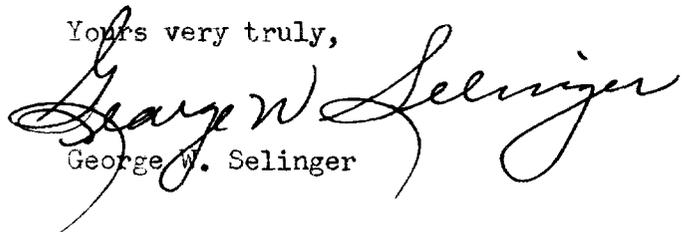
Gentlemen:

Thank you for your letter of July 22, attaching a copy of the transcript of the hearing held July 14 on the revision of Section "N", Rules on Procedure, governing hearings to be conducted by Trial Examiners.

We are herewith attaching our suggestions and recommendations for revision of Section "N". You will note that we recommend amending Rule 1209, without the necessity of a wholesale change of rules. We have attempted to keep this revision as simple as possible.

We are returning the Transcript of Proceedings.

Yours very truly,


George W. Selinger

GWS:dd

CONDUCTING OF HEARINGS
Rule 1209

(a) Hearings before the Commission shall be conducted without rigid formality. A transcript of testimony shall be taken and preserved as a part of the permanent records of the Commission. Any person testifying in response to a subpoena issued by the Commission 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, unsworn comments and observations by any interested party will be united and made a part of 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. ~~Deleted~~ (Two members of the Commission constitute a quorum for the transaction of business and for holdings of hearings, but one member of the Commission may conduct a hearing for the purpose of receiving testimony only.)

Added: (b) The Commission may authorize any one of its members or any member of its staff to conduct hearings on any application that may be properly filed before it. At the time of such filing, applicant may specifically request that the matter be referred to an examiner, and unless such request is objected to by any interested party at least ten (10) days prior to the day selected for hearing, the matter will be automatically referred; provided, however, the Commission may, at its discretion, have the matter heard before it at the next regular statewide hearing of the Commission. Applications eligible for reference must be on file at least fifteen (15) days prior to such regular statewide hearing of the Commission, except in emergency matters as provided for in Rule 1202 herein.

Added: (c) Such examiner shall have the power to regulate all proceedings held before them and perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearings, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, ruling on such objections, and shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the Commission for consideration, together with the report of the examiner and his recommendations in connection therewith. It shall be the duty of the examiner to send a copy of his report and recommendations to each of the parties of record involved in the matter, stating that in five (5) days he will file such report with the Commission and further advising that exceptions to such report by any party adversely affected shall be filed with the Commission five (5) days after the date of the intended filing by such examiner. Upon receipt of such exceptions to the examiner's report, the Commission shall set the matter down for (a) de novo hearing or (b) upon unanimous agreement of all parties entering appearances in the case for oral arguments only, within thirty (30) days from the time any such decision is rendered by the examiner.

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C O P Y

ATWOOD & MALONE
LAWYERS

JEFF D. ATWOOD
ROSS L. MALONE
CHARLES F. MALONE

E. KIRK NEWMAN
RUSSELL D. MANN

ROSWELL PETROLEUM BUILDING
ROSWELL, NEW MEXICO

July 28, 1955

Mr. J. O. Terrell Couch
Legal Department
The Ohio Oil Company
P. O. Box 3128
Houston, Texas

Re: Proposed Amendment of Rules of New Mexico
Oil Conservation Commission

Dear Mr. Couch:

I am sorry that I did not have an earlier opportunity to forward my written comments on the proposed rules of procedure prepared by the committee of which you are a member. I appreciated very much the invitation to submit my views, and I am doing so herewith.

At the outset, I would like to express the view that experience under the rules will be the most effective means of determining the changes which should be made. The following additional changes seem to me to merit consideration. As you will note, some of them are merely matters of draftsmanship which you may disregard if you do not feel that they are an improvement.

1. I mentioned at the hearing the apparent conflict between the provisions of Rule 1204 and 1209. Rule 1204 contains the mandatory requirements that "notice of each hearing before the Commission and notice of each hearing before an examiner" shall be given by personal service and publication. Rule 1209 is entitled "Continuance of Hearing Without New Service", and provides that a matter as to which notice has been published for hearing before an examiner shall be placed on the regular docket of the Commission for hearing if an objection is filed by an interested person within three days prior to the proposed hearing. The rule then continues to provide for only a supplemental notice to persons who have appeared in the proceeding as a prerequisite for the Commission hearing. As I read the mandatory and unqualified requirement of Rule No. 1204, no valid hearing could be held before the Commission, whether on continuance under Rule 1209, or otherwise, without personal service and publication. As 1209 is written, it does not contemplate such service. One manner of eliminating the conflict would be

to insert after the words "notice of each hearing before the Commission," in Rule 1204, the following: "except hearings continued by an examiner as provided in Rule 1209".

2. The same apparent conflict exists between Rule 1209 and subparagraph (c) in Rule 1207. The latter provision requires a supplemental notice not less than ten days before the date of a hearing before the Commission, whereas under the provisions of Rule 1209, a matter set before an examiner will be continued to the next regular hearing of the Commission in case of objection without reference to whether time is available for the supplemental notice required by subparagraph (c) of Rule 1207.

3. We discussed individually the attempt of the drafting committee to combine under Rule 1207 "supplemental notices", every type of service or notice which would occur subsequent to the original service and publication. While the objective is a desirable one, it seems to me that it is not appropriate to treat the proposed report and recommendations of the examiner as a "supplemental notice" as is done in Rule 1217. The same observation could be made with reference to treating the Commission's orders as a supplemental notice under Rule 1221.

4. I believe that the phraseology of Rule 1203 would be improved if the words "known to applicant" were inserted in lieu of the words "insofar as applicant believes" appearing in the third line from the end of the rule.

5. At the June Commission hearing you will recall that there was some discussion as to the due process of law aspects of Section 1209 if notice of a hearing before an examiner is published, and the hearing is actually held before the Commission on continuance, with no publication of notice of the Commission hearing as such. I think that this may pose a problem, but that it can be handled as suggested, I believe by John Woodard, by making the published notice include the possibility of continuance for hearing before the Commission as provided by the rules and regulations of the Commission.

6. If, as suggested, by El Paso Natural Gas Company I believe, the examiner is given the express power to exclude testimony or evidence in Rule 1215, I believe that provisions should be made for making a tender of the proof so that it would be in the record when considered by the Commission. The exclusion could then be assigned as error and passed upon by the Commission.

7. With reference to Rule 1217, I am curious as to the "prosecuting function" which is referred to. I do not know of any "prosecution" that would occur before an examiner, and it would seem to me that if it is intended to prohibit the examiner

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from participating in the hearing, other than as an umpire, that should be so stated. The last sentence of the first paragraph of Rule 1217 does no harm, but it seems to me that the provisions for disqualification by the parties is perfectly adequate without it. The procedure is patterned after our statute providing for disqualification of District Judges, which puts the burden on the parties to disqualify. It presumes that the judge will be impartial without an express requirement to that effect.

Of the foregoing suggestions, I consider numbers 1 and 2 to be quite important as they undoubtedly will result in an attack on the jurisdiction of the Commission if the conflicts are not eliminated. The remaining matters fall in the general category of "observations". I have the feeling that the procedure is unduly extended by the filing of the proposed report of the examiner, filing and possibly argument before the Commission of exceptions thereto, entry by the Commission of an order and thereafter a trial de novo by the Commission of the same issues, followed by the possibility of a rehearing. I am confident that only matters in which no controversy is anticipated will be heard before examiners under these circumstances, but perhaps, until the volume of cases becomes much greater, that will be desirable.

May I again express my appreciation of your invitation to file these recommendations. I am sending copies to Messrs. Gurley, Kitts, Kellahin, Sellinger and Woodard, who, I understand, composed the Committee.

With best personal regards, I am,

Sincerely yours,

Ross L. Malone

RLM:bc

cc: Mr. John W. Gurley ✓
Mr. Willard F. Kitts
Mr. Jason Kellahin
Mr. George Sellinger
Mr. John Woodard

COPY

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to insert after the words "notice of each hearing before the Commission," in Rule 1204, the following: "except hearings continued by an examiner as provided in Rule 1209".

2. The same apparent conflict exists between Rule 1209 and subparagraph (c) in Rule 1207. The latter provision requires a supplemental notice not less than ten days before the date of a hearing before the Commission, whereas under the provisions of Rule 1209, a matter set before an examiner will be continued to the next regular hearing of the Commission in case of objection without reference to whether time is available for the supplemental notice required by subparagraph (c) of Rule 1207.

3. We discussed individually the attempt of the drafting committee to combine under Rule 1207 "supplemental notices", every type of service or notice which would occur subsequent to the original service and publication. While the objective is a desirable one, it seems to me that it is not appropriate to treat the proposed report and recommendations of the examiner as a "supplemental notice" as is done in Rule 1217. The same observation could be made with reference to treating the Commission's orders as a supplemental notice under Rule 1221.

4. I believe that the phraseology of Rule 1203 would be improved if the words "known to applicant" were inserted in lieu of the words "insofar as applicant believes" appearing in the third line from the end of the rule.

5. At the June Commission hearing you will recall that there was some discussion as to the due process of law aspects of Section 1209 if notice of a hearing before an examiner is published, and the hearing is actually held before the Commission on continuance, with no publication of notice of the Commission hearing as such. I think that this may pose a problem, but that it can be handled as suggested, I believe by John Woodard, by making the published notice include the possibility of continuance for hearing before the Commission as provided by the rules and regulations of the Commission.

6. If, as suggested, by El Paso Natural Gas Company I believe, the examiner is given the express power to exclude testimony or evidence in Rule 1215, I believe that provisions should be made for making a tender of the proof so that it would be in the record when considered by the Commission. The exclusion could then be assigned as error and passed upon by the Commission.

7. With reference to Rule 1217, I am curious as to the "prosecuting function" which is referred to. I do not know of any "prosecution" that would occur before an examiner, and it would seem to me that if it is intended to prohibit the examiner

July 28, 1955

from participating in the hearing, other than as an umpire, that should be so stated. The last sentence of the first paragraph of Rule 1217 does no harm, but it seems to me that the provisions for disqualification by the parties is perfectly adequate without it. The procedure is patterned after our statute providing for disqualification of District Judges, which puts the burden on the parties to disqualify. It presumes that the judge will be impartial without an express requirement to that effect.

Of the foregoing suggestions, I consider numbers 1 and 2 to be quite important as they undoubtedly will result in an attack on the jurisdiction of the Commission if the conflicts are not eliminated. The remaining matters fall in the general category of "observations". I have the feeling that the procedure is unduly extended by the filing of the proposed report of the examiner, filing and possibly argument before the Commission of exceptions thereto, entry by the Commission of an order and thereafter a trial de novo by the Commission of the same issues, followed by the possibility of a rehearing. I am confident that only matters in which no controversy is anticipated will be heard before examiners under these circumstances, but perhaps, until the volume of cases becomes much greater, that will be desirable.

May I again express my appreciation of your invitation to file these recommendations. I am sending copies to Messrs. Gurley, Kitts, Kellahin, Sellinger and Woodard, who, I understand, composed the Committee.

With best personal regards, I am,

Sincerely yours,

Ross L. Malone

RLM:bc

cc: Mr. John W. Gurley
Mr. Willard F. Kitts
Mr. Jason Kellahin ✓
Mr. George Sellinger
Mr. John Woodard

The Chic Oil Co.

Legal Department

W. Hume Everett
Thomas H. McElroy
J. O. Ferrell Couch
Attorneys

August 1, 1955

P. O. Box 3128
Houston, Texas

Re: New Mexico Oil Conservation Commission
Rules on Procedure

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

Dear Sir:

I enclose my letter dated August 1, 1955, addressed to you, containing my comments and observations concerning the suggestions and objections which have been made regarding the proposed revision of the Rules of Procedure.

Because of Mr. E. H. Foster's letter dated July 25, I felt it appropriate to furnish to him a copy of my comments and observations pertaining to his objections to Rules 1217 and 1220. I have, therefore, sent to him a copy of that portion of the enclosed letter which relates to his objections.

Very truly yours,


J. O. Ferrell Couch

TC:MK
Enc.

cc (w/enc.) - Mr. J. W. Gurley ✓
P. O. Box 871
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. Jack M. Campbell
J. P. White Building
Roswell, New Mexico

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

The Ohio Oil Co.

Case 903

Legal Department

W. Hume Everett
Thomas H. McElroy
J. O. Terrell Couch
Attorneys

August 1, 1955

P. O. Box 3128
Houston, Texas

Re: New Mexico Oil Conservation Commission
Rules on Procedure

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

Dear Sir:

For your information I enclose a copy of my letter dated August 1, 1955, to Mr. Willard F. Kitts, containing my comments and observations concerning the suggestions and objections which have been made regarding the proposed revision of the Rules of Procedure.

Because of Mr. E. H. Foster's letter dated July 25, I felt it appropriate to furnish to him a copy of my comments and observations pertaining to his objections to Rules 1217 and 1220. I have, therefore, sent to him a copy of that portion of the enclosed letter which relates to his objections.

Very truly yours,



J. O. Terrell Couch

TC:MK
Enc.1

LAW OFFICES OF
CAMPBELL & RUSSELL
J. P. WHITE BUILDING
ROSWELL, NEW MEXICO

TELEPHONES
4975 - 4287

JACK M. CAMPBELL
JOHN F. RUSSELL

Aug. 12, 1955

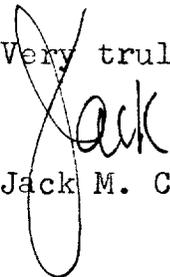
W. F. Kitts, Attorney
New Mexico Oil Conservation Commn.
P. O. Box 871
Santa Fe, New Mexico

Dear Bill:

I have your letter of August 8th concerning a meeting of the Commission's Committee on Rules and Procedure. I am scheduled to attend a meeting of the State Board of Finance at 9:00 A.M. on August 16th, and if it is completed I will be glad to attend the committee meeting at 1:30 P.M. on the same date.

With kindest regards, I am

Very truly yours,


Jack M. Campbell

JMC:le

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RULE _____. Filing Pleadings; Copy Delivered to Adverse Party or Parties. When any party to a hearing files any pleading, 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 shall at the same time either deliver or mail to the adverse party or parties who have entered their appearance therein, or their respective attorneys of record, a copy of such pleading, plea or motion. If there be more than four adverse parties who have entered their appearance in said hearing, four copies of such pleading shall be deposited with the Secretary of the Commission and the party filing them shall inform all adverse parties who have entered their appearance, or their attorneys of record, that such copies have been deposited with the Secretary of the Commission. These copies shall be delivered by the Secretary to the first four applicants entitled thereto.

RULE 1221. Notice of Commission's Orders. Within ten (10) days after any order, including any order granting or refusing or following rehearing has been rendered by the Commission, a copy of such order shall be mailed by the Commission to each person or his attorney of record who has entered his appearance of record in the matter or proceeding pursuant to which such order is rendered.

RULE 1219. Disposition of Cases Heard by Examiner. Upon the expiration of ten (10) days after such supplemental notice has been given as provided in Rule 1218 of the receipt of the report and recommendations of the Examiner, the Commission shall either enter its order disposing of the matter or proceeding or refer such matter or proceed to the Examiner for the taking of additional evidence.

Referred to Conservation Committee

Reported Out:.....Senate Action 3rd Reading:.....

House Action:.....Governor's Action:.....

Senate Bill No. 229

Introduced by:

F. J. Dangle

AN ACT

RELATING TO THE NEW MEXICO OIL CONSERVATION COMMISSION; GRANTING AUTHORITY TO THE COMMISSION TO APPOINT EXAMINERS TO CONDUCT HEARINGS WITH RESPECT TO MATTERS COMING BEFORE THE COMMISSION AND TO MAKE FINDINGS AND RECOMMENDATIONS WITH RESPECT THERETO.

1 *Be It Enacted by the Legislature of the State of New Mexico:*
2 Section 1. In addition to the powers and authority, either
3 express or implied, granted to the Oil Conservation Commis-
4 sion by virtue of the statutes of the State of New Mexico,

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1 the Commission is hereby authorized and empowered in pre-
2 scribing its rules of order or procedure in connection with
3 hearings or other proceedings before the Commission to pro-
4 vide for the appointment of one or more examiners to be
5 members of the staff of the Commission to conduct hearings
6 with respect to matters properly coming before the Commis-
7 sion and to make reports and recommendations to the Commis-
8 sion with respect thereto. Any member of the Commission
9 may serve as an examiner as provided herein. The Commis-
10 sion shall promulgate rules and regulations with regard to
11 hearings to be conducted before examiners and the powers and
12 duties of the examiners in any particular case may be limited
13 by order of the Commission to particular issues or to the
14 performance of particular acts. In the absence of any limiting
15 order, an examiner appointed to hear any particular case shall
16 have the power to regulate all proceedings before him and to
17 perform all acts and take all measures necessary or proper
18 for the efficient and orderly conduct of such hearing, includ-
19 ing the swearing of witnesses, receiving of testimony and
20 exhibits offered in evidence subject to such objections as may
21 be imposed, and shall cause a complete record of the proceeding
22 to be made and transcribed and shall certify the same to the
23 Commission for consideration together with the report of the
24 examiner and his recommendations in connection therewith.
25 The Commission shall base its decision rendered in any mat-
26 ter or proceeding heard by an examiner, upon the transcript of
27 testimony and record made by or under the supervision of
28 the examiner in connection with such proceeding, and such
29 decision shall have the same force and effect as if said hearing
30 had been conducted before the members of said Commission;
31 PROVIDED, HOWEVER, no matter or proceeding referred to
32 an examiner shall be heard by such examiner where any party

1 who may be affected by any order entered by the Commis-
2 sion in connection therewith, shall object thereto within three
3 days prior to the time set for hearing, in which case such
4 matter shall be heard at the next regular hearing of the Com-
5 mission. When any matter or proceeding is referred to an
6 examiner and a decision is rendered thereon, any party ad-
7 versely affected shall have the right to have said matter heard
8 de novo before the Commission upon application filed with the
9 Commission within 30 days from the time any such decision
10 is rendered.

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Introduced by
F. J. Dangle

AN ACT

RELATING TO THE NEW MEXICO OIL CONSERVATION COMMISSION; GRANTING AUTHORITY TO THE COMMISSION TO APPOINT EXAMINERS TO CONDUCT HEARINGS WITH RESPECT TO MATTERS COMING BEFORE THE COMMISSION AND TO MAKE FINDINGS AND RECOMMENDATIONS WITH RESPECT THERETO.

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. In addition to the powers and authority, either express or implied, granted to the Oil Conservation Commission by virtue of the statutes of the State of New Mexico, the Commission is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the Commission to provide for the appointment of one or more examiners to be members of the staff of the Commission to conduct hearings with respect to matters properly coming before the Commission and to make reports and recommendations to the Commission with respect thereto. Any member of the Commission may serve as an examiner as provided herein. The Commission shall promulgate rules and regulations with regard to hearings to be conducted before examiners and the powers and duties of the examiners in any particular case may be limited by order of the Commission to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case 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 the same to the Commission for consideration together with the report of the examiner and his recommendations in connection therewith. The Commission shall base its decision rendered in any matter or proceeding heard by an examiner, upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if said hearing had been conducted before the members of said Commission; PROVIDED, HOWEVER, no matter or proceeding referred to an examiner shall be heard by such examiner where any party who may be affected by any order entered by the Commission in connection therewith, shall object thereto within three days prior to the time set for hearing, in which case such matter shall be heard at the next regular hearing of the Commission. When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party adversely affected shall have the right to have said matter heard de novo before the Commission upon application filed with the Commission within 30 days from the time any such decision is rendered.