

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AMENDMENT OF)
THE FOLLOWING RULES: 19.15.14.1201 NMAC)
(RULEMAKING PROCEEDINGS); 19.15.14.1202)
NMAC (EMERGENCY ORDERS AND RULES);)
19.15.14.1204 NMAC (PUBLICATION OF)
NOTICE OF HEARING); 19.15.14.1205 NMAC)
(CONTENTS OF NOTICE HEARING);)
19.15.14.1207 NMAC (NOTICE REQUIREMENTS)
FOR SPECIFIC ADJUDICATIONS);)
19.15.14.1208 NMAC (PLEADINGS: COPIES);)
19.15.14.1209 NMAC (CONTINUANCE OF)
HEARING WITHOUT NEW SERVICE); AND)
19.15.14.1221 NMAC (COPIES OF COMMISSION)
AND DIVISION ORDERS))

CASE NO. 13,187

RECEIVED

DEC 18 2003

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

December 11th, 2003
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, December 11th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

December 11th, 2003
 Commission Hearing
 CASE NO. 13,187

	PAGE
APPEARANCES	3
ALSO PRESENT	4
LEGAL ARGUMENT BY MS. MacQUESTEN	7
APPLICANT'S WITNESS:	
<u>FLORENE DAVIDSON</u> (Staff Specialist, OCD) Direct Examination by Ms. MacQuesten	19
REPORTER'S CERTIFICATE	39

* * *

E X H I B I T

Applicant's	Identified	Admitted
Exhibit 1	7	19

* * *

Additional submission by Applicant, not offered or
 admitted:

	Identified
Hard copy of PowerPoint slides	7

* * *

A P P E A R A N C E S

FOR THE COMMISSION:

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FOR THE DIVISION:

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* * *

ALSO PRESENT:

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Data Information and Management Systems
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Senior Hydrologist, Hydrogeologist
Environmental Bureau
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Wayne Price
Environmental Engineer
Environmental Bureau
New Mexico Oil Conservation Division

Deborah D. Seligman
New Mexico Oil and Gas Association

* * *

1 WHEREUPON, the following proceedings were had at
2 10:21 a.m.:

3 CHAIRMAN WROTENBERY: Okay, now let me move us to
4 Case 13,187. This is another rulemaking proceeding on the
5 Application of the New Mexico Oil Conservation Division.
6 The Division is seeking amendments to various procedural
7 rules that were listed in the notice, and I won't read the
8 whole caption of the case here, but these changes would
9 have statewide application.

10 And Ms. MacQuesten, are you prepared to present
11 the Division's proposal?

12 MS. MacQUESTEN: Yes, I am. Before I begin,
13 though, Ms. Davidson has information for the Commission
14 regarding the notice provided in this case.

15 CHAIRMAN WROTENBERY: Excellent.

16 MS. DAVIDSON: The Division published notice of
17 the proposed Rule on the Commission docket more than 20
18 days before the hearing date, as required by
19 19.15.14.1201.(B).

20 The Division published notice of the proposed
21 Rule in newspapers of general circulation in the counties
22 in New Mexico affected by the proposed Rule:

23 *Alamogordo News, Artesia Daily Press, Farmington*
24 *Daily Times, Gallup Independent, Lovington Daily Leader,*
25 *The Observer, Portales News Tribune, Rio Grande Sun,*

1 Roswell Daily Record, Raton Range, and Union County Leader.

2 The Commission file contains affidavits of
3 publication from all but three of those newspapers, showing
4 publication of the notice no less than 20 days prior to the
5 hearing date as required by 19.15.14.1201.(B) NMAC. we are
6 still waiting for affidavits of publication from the
7 Alamogordo News, the Artesia Daily Press and the Roswell
8 Daily Record.

9 The Division also published notice of the
10 proposed rulemaking in the New Mexico Register on August
11 29th, 2003. The Commission file contains a copy of that
12 notice.

13 In addition, the Application, the text of the
14 proposed Rule and the text of the amendments to existing
15 Rules were posted on the Division website.

16 CHAIRMAN WROTENBERY: Thank you, Ms. Davidson.
17 Ms. MacQuesten?

18 MS. MACQUESTEN: May it please the Commission, my
19 name is Gail MacQuesten. I'm the attorney for the Oil
20 Conservation Division. I have one witness in this case,
21 Ms. Florene Davidson.

22 We're here today to ask the Commission to adopt
23 amendments to the procedural Rules that apply to Division
24 and Commission Hearings. In support of these amendments, I
25 would like to offer legal argument and testimony.

1 I'd like to start with the legal argument. I've
2 prepared a short PowerPoint presentation that outlines the
3 substantive changes that we're asking for. Then I would
4 like to call Ms. Davidson to testify on the practical
5 effect of these changes.

6 I'd like to start with the legal argument. You
7 should have before you what has been marked as Exhibit 1.
8 That's a copy of the proposed amendment, showing the
9 additions and strikeouts.

10 You should also have a hard copy of the
11 PowerPoint slides for your convenience.

12 The amendments that we are seeking do two things.
13 There are several amendments that would change how we go
14 about Commission and Division Hearings, but there are also
15 many amendments that would simply put into the Rules our
16 current practices.

17 I'd like to start with the changes to Rule 1201.
18 1201 is the Rule regarding Rulemaking Proceedings, and
19 there are a number of changes that we would make to this
20 Rule.

21 The first change would be to Section B.(1), and
22 that is a change regarding newspaper advertisements.
23 Currently we have to publish notice in a newspaper of
24 general circulation in the counties affected by the
25 proposed Rule at least 20 days prior to the rulemaking

1 proceeding. So if we have a rule that affects all the
2 counties in New Mexico, such as the Rule we're hearing
3 today, we must advertise in a county paper in each county
4 with oil and gas production. For our proceeding today, for
5 example, we advertised in 11 county papers.

6 What we propose is to change the procedure where
7 a proposed rule has an impact statewide. In that
8 situation, we ask that we advertise in a newspaper of
9 general circulation in the state, rather than in each
10 individual county.

11 So using today's proceeding as an example, we
12 would advertise in one paper rather than 11. We would not
13 change the procedure if the rulemaking in question affected
14 only a particular area of the state. In that situation we
15 would advertise in those counties affected. So this change
16 would only affect rulemaking proceedings of statewide
17 application.

18 I'd like to point out at this point that this
19 proposed change, while it shows up in Rule 1201, will show
20 up in several of the other Rule amendments that we're
21 suggesting today.

22 The second change to 1201 is in B.(2). Currently
23 we publish notice of proposed rule changes on the
24 Commission docket and send the docket to all who have
25 requested such notice. The change would indicate that we

1 will publish on the applicable docket, because sometimes
2 rulemaking proceedings are done by the Division. Also, it
3 would clarify that we can send the docket to those parties
4 who are interested in receiving copies of the docket by
5 electronic mail.

6 The third change is to B.(3). Currently we
7 advertise in the *New Mexico Register*, which is a
8 requirement of statute, Statute Section 14-4-7.1.(B). But
9 that requirement doesn't appear in our Rules, and it is
10 unclear when that advertisement has to occur. So we
11 propose to put this requirement into our Rules regarding
12 notice and set a time limit. We are suggesting that we
13 publish at least 10 days prior to the hearing.

14 The next change is to B.(4). We would propose
15 adding a provision that we will post applications for
16 rulemaking to our website.

17 The next change is to Section C of 1201.
18 Currently either the Division or the Commission may hear a
19 rulemaking proceeding. We are suggesting that we put into
20 our Rules our current practice, which is that rules of
21 statewide application are heard by the Commission, unless
22 the Division Director directs otherwise.

23 The final provision that we would add to 1201
24 would be to simply clarify that these rulemaking procedures
25 set out in 1201 don't apply to special pool rules, which we

1 consider to be adjudicatory proceedings.

2 The next rule that we would propose a change to
3 is Rule 1202, which regards Emergency Orders and Rules. A
4 little background might be helpful here.

5 We have a statute that governs Emergency Orders
6 and Rules. It's Section 7-2-23. It recognizes two types
7 of emergency situations. The first is that it allows the
8 Division to shorten the notice period prior to a hearing in
9 cases of emergency. And the second provision it makes is
10 that it allows rules or orders to be issued without any
11 hearing at all. These orders are only valid for 15 days.

12 Our current Rule recognizes that we may issue
13 rules and orders without a hearing, but it doesn't contain
14 any provision for shortening the notice period in cases of
15 emergency. We're suggesting that we add a provision to
16 that effect.

17 To give an example of when this might be
18 necessary, let's say we have a situation where the
19 Commission or the Division feels that an emergency exists,
20 say for safety reasons, and wants to order an operator to
21 do something. They can do that without a hearing, but that
22 order would only have effect for 15 days. Even if at the
23 time they issued that order they also set a hearing, they
24 wouldn't be able to hold the hearing in time to have that
25 new rule continue beyond the 15 days. There would be a gap

1 between the 15 days and getting a formal, permanent rule in
2 place.

3 This fills the gap. It allows us to shorten that
4 notice procedure in emergency situations in order to
5 conduct a hearing on short notice in emergencies and get
6 permanent orders into place.

7 The next change would be to Rule 1204,
8 Publication of Notice of Hearing. The current Rule
9 provides that the Division must publish notice in a
10 newspaper of general circulation in the affected counties.
11 This applies to adjudicatory proceedings, as well as
12 rulemaking, which we've already discussed.

13 We propose several changes to the notice
14 procedure here. For all hearings, we would require notice
15 be posted on our Division website, and we would also
16 require that notice be made by mail or e-mail to those who
17 requested notice of our procedures.

18 For Commission Hearings we would add the
19 requirement of newspaper publication, and again we're
20 suggesting that the newspaper publication be in the county
21 papers if the procedure of the application has application
22 only to particular counties, or publication in a newspaper
23 of statewide circulation if the application has statewide
24 implications.

25 One important thing to note about this proposal

1 is that it does make an important change. Under this
2 amendment the Division would no longer publish notice of
3 adjudicatory proceedings before the OCD in newspapers. As
4 you'll see in later proposed amendments, the applicant
5 itself may need to publish in the newspaper for certain
6 adjudicatory hearings, but it would not be the OCD's
7 responsibility under the amendments.

8 The next change is to Rule 1205 regarding the
9 Contents of Notice of Hearing. Our current Rules provide
10 that for every notice of hearing except those of statewide
11 application, the notice shall specify or generally describe
12 the common sources of supply that may be affected if the
13 application is granted. That requirement makes sense in
14 some situations but not in others.

15 Our proposal is to amend the rule to set out what
16 information is needed for specific types of hearings. So
17 for special pool rules, nonstandard units, unorthodox
18 locations and allowables we would ask that the application
19 specify each common pool -- each pool or common source of
20 supply. For compulsory pooling or unitization cases, we
21 would ask that the legal description of the spacing unit or
22 area be provided. And for other hearings, that the
23 applicant reasonably the subject matter.

24 The next proposed change is to 1207, Notice
25 Requirements. There are several changes to this Rule.

1 I've broken it down into several slides. The first changes
2 are to subsection A.(1), the Compulsory Pooling and
3 Statutory Unitization section.

4 The first thing we wanted to do was change
5 subsection (a), or subparagraph (a), to clarify who is an
6 owner of an interest in a mineral estate who needs to be
7 notified. This adds language saying that the owner of an
8 interest in the mineral estate "of any portion of the lands
9 proposed to be pooled or unitized".

10 And the second change to A.(1) occurs in
11 subparagraph (b), and this regards the alternate procedure
12 that's available for some compulsory pooling and statutory
13 unitization cases.

14 Currently we have an alternate procedure in place
15 where the applicant is unable to locate all the owners of
16 interest to be pooled and the application is unopposed by
17 those located. In that situation, the application may be
18 filed containing all the information that's necessary for
19 the Hearing Examiner to make the decision, and the decision
20 is made often without further hearing.

21 We propose to make a change. And I'd like to
22 point out on this proposal that the language that we're
23 proposing is the language in Exhibit 1 that you have before
24 you today and not the language in the exhibit that was
25 attached to the Application, because we did find that we

1 needed to make a slight change to that language.

2 What we're proposing is that we allow this
3 alternate procedure in all compulsory pooling and statutory
4 unitization cases that are unopposed. That includes cases
5 that are unopposed where some of the owners have not been
6 located.

7 COMMISSIONER LEE: I like this one.

8 MS. MacQUESTEN: And just one more change on the
9 alternate procedure. The current Rule requires geological
10 maps, geological and engineering assessments of risk and
11 proposed risk penalty. That information went to the risk
12 penalty.

13 The Commission changed the rules regarding risk
14 penalty. It's now part of the Rules themselves, so that
15 proof no longer needs to be offered. So we're suggesting
16 that that information be deleted from the alternate
17 procedure.

18 The next change to 1207 deals with Surface
19 Commingling. The notice provisions regarding surface
20 commingling cases are already set out in 19.15.5.303. So
21 our suggestion is that we simply refer to that section in
22 our notice provisions and let people know that that's where
23 they need to look to see the notice requirements.

24 The next change is to Section B of 1207. We're
25 suggesting that the applicants may provide notice by

1 publication if they're unable to locate all interest owners
2 after the exercise of reasonable diligence. In this case
3 we ask them to do the legal advertising, not the Division.
4 They would then provide us with a copy of the legal
5 advertisement.

6 And the type of newspaper advertisement for them
7 would be the same that we're proposing for those situations
8 where the Division does the legal advertising. They could
9 use a newspaper of general circulation in the county or
10 counties if the application has only county implications.
11 But if it's a statewide application, they would be able to
12 use a newspaper of general circulation in the state.

13 The next proposed change is to 1208, Pleadings:
14 Copies and Prehearing Statements, and this change is
15 regarding the use of prehearing statements. It changes the
16 time for filing prehearing statements and who needs to file
17 them. Prehearing statements would be required from parties
18 to adjudicatory proceedings who intend to present evidence
19 in the case. They would need to serve the prehearing
20 statements on opposing counsel, and the filing and service
21 would take place at least four days before the hearing.
22 The current rule provides for three days before the
23 hearing.

24 As a practical matter, with our hearings set on
25 Thursdays, this would mean that the prehearing statements

1 would need to be filed on the preceding Friday. It gives
2 the parties a little more time to review that information
3 and prepare their case.

4 Rule 1209, Continuance of Hearing Without New
5 Service. The current Rule contains the following language:
6 It says, "In the event of any continuance, a statement
7 thereof shall be made in the record of the hearing that is
8 continued."

9 This language has been interpreted as requiring a
10 transcript of continuance announcements. So if the Hearing
11 Examiner has five cases on the docket that have been
12 continued, he goes on the record and announces all of the
13 continuance. That information is then transcribed and
14 later it's imaged into our imaging system.

15 We're asking to remove that language. The
16 continuance is noted on a docket when the case is reset,
17 and we don't feel it's necessary to make a transcribed
18 record of each continuance.

19 I'd like to point out, the Commission actually
20 made this change in an order adopted on May 15th of this
21 year, but notice of that proposed adoption was not
22 published in the *New Mexico Register* as required by
23 statute, so we are back before the Commission asking that
24 we adopt it again and make that permanent.

25 And the last change we have is to 1221, Copies of

1 Commission and Division Orders. And in this change we
2 simply want to clarify who should receive copies of orders.
3 And the clarification is that copies should go to the
4 Applicant and to each person who enters an appearance, in
5 person or by attorney. And by that we mean anyone who
6 files a pleading or notice of appearance in a case, or who
7 enters an appearance at the hearing.

8 Are there any questions from the Commission about
9 the proposed changes?

10 COMMISSIONER BAILEY: Just one. The very first
11 one, 1201, Rulemaking Proceedings, portion C, "If the rule
12 proposed to be adopted, mended or rescinded is of statewide
13 application, the hearing shall be conducted before the
14 commission in the first instance unless the division
15 director otherwise directs." That is reflective of the Oil
16 and Gas Act, isn't it?

17 MS. MacQUESTEN: I believe so, but I would have
18 to double-check. I'm not sure.

19 COMMISSIONER BAILEY: Okay, I was just wanting to
20 confirm that if anybody questions why the Director would
21 not set all rulemaking before the Commission, that there
22 was some sort of statutory --

23 MS. MacQUESTEN: Well, currently --

24 COMMISSIONER BAILEY: -- precedent.

25 MS. MacQUESTEN: -- we're -- either the

1 Commission or the Division may conduct rulemaking
2 proceedings. What we wanted to clarify was that where the
3 rule has statewide application, we thought it should be the
4 Commission doing that rulemaking, rather than the Division.

5 COMMISSIONER BAILEY: I just wanted confirmation
6 of that. I have no problem with it.

7 CHAIRMAN WROTENBERY: Of course, that is our
8 practice --

9 MS. MacQUESTEN: It is the practice --

10 CHAIRMAN WROTENBERY: -- that statewide rules
11 come before the Commission. The statute does give the
12 Division Director authority to adopt those rules, but our
13 practice and preference is to bring those matters before
14 the Commission.

15 COMMISSIONER LEE: Is that necessary or --

16 CHAIRMAN WROTENBERY: It's not necessary under
17 the Statute, but I think it is the wise course when we're
18 talking about policy matters of statewide concern, that the
19 Commission consider the matter.

20 COMMISSIONER LEE: But the Director of OCD still
21 have authority to make rule herself.

22 CHAIRMAN WROTENBERY: Yes.

23 COMMISSIONER LEE: Good.

24 CHAIRMAN WROTENBERY: And there may be some
25 unusual circumstance where some action would need to be

1 taken quickly or under some other special circumstance
2 where the Division Director should have that authority to
3 act, but this proposal would just express the general
4 preference and practice of bringing statewide rules to the
5 Commission.

6 COMMISSIONER BAILEY: That's fine.

7 MS. MacQUESTEN: Thank you, then. I would move
8 for the admission of Exhibit 1, the proposed amendments.

9 CHAIRMAN WROTENBERY: I don't hear any objection,
10 so OCD Exhibit 1 is admitted into evidence.

11 MS. MacQUESTEN: And I would call Florene
12 Davidson as a witness.

13 CHAIRMAN WROTENBERY: Ms. Davidson, would you
14 mind changing chairs?

15 Don't be too hard on her.

16 (Thereupon, the witness was sworn.)

17 FLORENE DAVIDSON,

18 the witness herein, after having been first duly sworn upon
19 her oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MacQUESTEN:

22 Q. Would you state your name for the record?

23 A. Florene Davidson.

24 Q. And where do you work?

25 A. Oil Conservation Division in Santa Fe.

1 Q. How long have you been employed with the OCD?

2 A. Forty-one years.

3 Q. And in those 41 years, have you ever been called
4 upon to be a witness in a case before the Commission?

5 A. Not the main witness. I have done little bits,
6 but not the main witness.

7 Q. And you're looking forward to being a witness
8 today?

9 A. Not really.

10 CHAIRMAN WROTENBERY: She's honest.

11 THE WITNESS: I've sworn.

12 Q. (By Ms. MacQuesten) What is your title?

13 A. I'm Staff Specialist.

14 Q. And do your duties as Staff Specialist include
15 overseeing the notice and advertisement of Division and
16 Commission proceedings?

17 A. Yes, they do.

18 Q. I'd like to ask you some questions about the
19 newspaper advertisements for those proceedings. Now,
20 currently we advertise all hearings in newspapers of
21 general circulation in the affected counties?

22 A. That's right.

23 Q. And that applies to both Commission Hearings and
24 Division Hearings?

25 A. Yes.

1 Q. If a hearing has statewide application, how many
2 newspapers do you need to advertise in?

3 A. Eleven, that's all the producing counties.

4 Q. How do you go about notifying those papers that
5 you have an advertisement you need published?

6 A. After the applications are received, we make the
7 advertising in one format, and we fax those advertisements
8 to each newspaper that we need to advertise in.

9 Q. After the advertisements have been published, do
10 you then collect the affidavits from the newspapers?

11 A. Yes, we send a cover letter asking for them to
12 send the affidavit to us as soon as possible.

13 Q. And if the proceeding is a rulemaking proceeding,
14 as opposed to an adjudicatory proceeding, you have to then
15 make sure that the publication occurred 20 days before the
16 hearing?

17 A. Correct.

18 Q. How soon after a newspaper receives a fax telling
19 them they need to advertise something do they actually put
20 it in the newspaper?

21 A. In most of the papers -- Most of the papers are
22 daily papers, and they publish within two to three days of
23 receiving the fax.

24 There are two weekly newspapers and one bi-
25 weekly, and it takes them sometimes as long as seven or

1 eight days to publish after they receive the fax.

2 Q. And how long after the advertisement is published
3 do you receive the affidavit of publication?

4 A. That varies. It can be anywhere from five to six
5 days all the way up to 29 days.

6 Q. So you may not know, even on the date of the
7 hearing, whether you've met the 20-day notice requirement?

8 A. That's right.

9 Q. And in fact for this hearing, did I hear you say
10 we have not yet received the affidavit from three papers?

11 A. That's right.

12 Q. When was the fax sent to those papers telling
13 them we wanted to advertisement placed?

14 A. We sent the faxes to all papers on October 31st.

15 Q. How much does it cost to run a legal
16 advertisement for hearing?

17 A. That varies also. We have --

18 Q. Does it vary according to the length of the
19 advertisement?

20 A. According to the length of the advertising. I
21 did try to do some research on this, and -- for about the
22 last couple of months, the hearings for the last couple of
23 months, and I found that that varied all the way up from
24 \$300, \$350, to -- there was one for \$700.

25 Q. Okay.

1 A. So it depends on the length of the ads, yes.

2 Q. Now, those were adjudicatory hearings that you
3 were looking at?

4 A. Right.

5 Q. Okay. For the rulemaking proceedings -- Well,
6 let me back up. The cost for a legal advertisement is set
7 by statute or rule, is it not?

8 A. It's a General Service Department rule, yes, and
9 it is set.

10 Q. And it's set at what?

11 A. Forty-four cents a line.

12 Q. A line, all right. And are there additional
13 costs that are added to that?

14 A. Some newspapers do add additional costs. They
15 charge us for an affidavit, and that can be all the way
16 from five dollars to 10 dollars. Not all newspapers to,
17 but some do charge us.

18 Q. Okay. Now thinking of rulemaking proceedings in
19 particular, did you do a cost comparison for how much it
20 costs to put newspaper advertisements on that November pit-
21 rule hearing?

22 A. Yes.

23 Q. Now, that was a rule with a statewide
24 application, so you advertised it in the 11 county papers?

25 A. Right.

1 Q. How much did that cost? And that's just for the
2 November hearing, that's not for the other advertisements
3 that were done for the pit-rule hearing, right?

4 A. Right, and the total cost was \$796.52.

5 Q. Do you know how much it would cost to advertise
6 the pit-rule hearing in only the *Albuquerque Journal*?

7 A. We put a call in to the *Albuquerque Journal* to do
8 some research on that and have not heard from them yet. I
9 did check all of the newspapers that we sent the pit-rule
10 application to, advertisement to, and the most costly of
11 those was about \$89. I can't imagine that the Albuquerque
12 paper would be any more than that, but it could run that
13 much.

14 Q. Did that \$89 include both the cost per line and
15 any additional charges --

16 A. Yes, it did.

17 Q. -- that the paper had?

18 Let's talk about newspaper advertisements for
19 adjudicatory hearings. Currently the OCD is responsible
20 for those advertisements; is that true?

21 A. Yes, that's true.

22 Q. And we're proposing that we only do ads for
23 Commission Hearings?

24 A. Right.

25 Q. So let's talk about the cost of doing Division

1 Hearings. How often do we currently run ads for
2 adjudicatory hearings?

3 A. Every two weeks.

4 Q. And how many different ads do you submit each
5 two-week period, as a general rule?

6 A. That varies. We -- Generally, it's anywhere from
7 three to five newspapers we have to advertise in.

8 Q. And how many ads would that include?

9 A. That includes -- Of course that again varies, but
10 it's -- normally it's probably around six to eight, maybe
11 10 cases, new cases.

12 Q. And before, you were testifying about how much
13 the OCD spends on advertising on adjudicatory cases?

14 A. Right.

15 Q. You looked at how many time periods?

16 A. I looked at the past two months, October and
17 November, and discovered that it was anywhere from \$300 to
18 -- I think I said \$700 a while ago. It's up to \$500.

19 Q. Is that per month or per each two-week period?

20 A. Per each two-week period, per each hearing.

21 Q. Let's move on to transcripts on continuances. Do
22 your job duties include approving payment for hearing
23 transcripts?

24 A. Yes.

25 Q. Does that include the transcripts that are done

1 on continuances?

2 A. Yes.

3 Q. Could you describe how those continuances are
4 recorded by the Hearing Examiner?

5 A. The Hearing Examiner, I believe at the beginning
6 of each hearing, calls for continuances, gives the
7 continuances that they are aware of, and those are all put
8 in one transcript, I believe.

9 Q. So there isn't a separate transcript made in each
10 case recording a continuance?

11 A. No.

12 Q. There's one transcript made with all of the
13 continuances --

14 A. Right.

15 Q. -- identified?

16 A. Right.

17 Q. What is the typical cost for such a transcript?

18 A. It generally is a -- it's a short transcript, of
19 course, four to five pages. It's about \$18.75.

20 Q. What happens after that transcript is made? Is
21 it imaged?

22 A. It is copied and it is imaged. An image is put
23 in each case file.

24 Q. So a separate image is done for each case --

25 A. Right.

1 Q. -- listed?

2 A. Right.

3 Q. So if six cases were continued, that document
4 would be imaged six times?

5 A. That's correct.

6 Q. Now, if a case is continued is that noted on the
7 docket?

8 A. It is noted on the docket, yes.

9 Q. So even if we didn't have a transcript of the
10 continuance, the fact that the case was continued would
11 still be in the record?

12 A. Right, because a copy of that docket page showing
13 that particular case is imaged for each case.

14 Q. All right. Ms. Davidson, I'd like to ask you
15 very briefly about some of the other changes we're
16 proposing. And my understanding is that these changes put
17 into the Rules our current practice so I'd ask you, as we
18 go through these, if I'm wrong about that and these changes
19 don't reflect our current practice, to please let us know.

20 A. Okay.

21 Q. The changes regarding the dockets. Currently we
22 prepare separate dockets for the Commission and for the
23 Division; is that true?

24 A. Yes.

25 Q. And we send those dockets to all parties who've

1 requested a copy?

2 A. That's right.

3 Q. How do we send them, by mail or e-mail?

4 A. Well both right now, mainly by e-mail.

5 Q. Did we used to send them only by one means?

6 A. We only mailed them, yes.

7 Q. At the time when we were mailing them only, how
8 many were sent out?

9 A. I don't remember the exact figure. It was
10 between 300 and 360. Closer to 360, I believe.

11 Q. When we started to use e-mail as an option, how
12 many -- Do you know how many are sent by e-mail now?

13 A. I do know how many. Sixty-eight.

14 Q. Sixty-eight?

15 A. Uh-huh.

16 Q. And how many by snail mail?

17 A. Fifteen.

18 Q. All right. So the numbers of dockets that we're
19 sending out at all has reduced --

20 A. Right.

21 Q. -- considerably. Do you have any idea why?

22 A. I believe that's because we are putting them on
23 our website, and when we decided that we were going to send
24 most of them by e-mail instead of mailing them, we advised
25 people that they were on the website, and I think that was

1 the reason, it was easy to get them off of the website.

2 Q. For those people who still want individual
3 notification of the dockets, do more prefer e-mail than
4 mail?

5 A. Yes.

6 Q. But mail is still an option?

7 A. Mail is still an option, yes.

8 Q. Let me ask you about publication of rulemaking
9 proceedings in the *New Mexico Register*. Is that done
10 currently?

11 A. Yes, it is.

12 Q. How often is the *Register* published?

13 A. I think it's once a month. I'm not exactly sure.

14 Q. All right, it's not a weekly --

15 A. No.

16 Q. -- thing?

17 A. No.

18 Q. We'd have to check on that.

19 A. Right.

20 Q. But we didn't have a rule in place regarding when
21 we needed to publish in the register; is that right?

22 A. We do not.

23 Q. All right. And the proposed Rule requires
24 publication at least ten days before the hearing?

25 A. Yes.

1 Q. We currently publish our rulemaking proceedings
2 on our website; is that true?

3 A. That's true.

4 Q. And that's something that's fairly recent?

5 A. Right.

6 Q. And it isn't -- it hasn't been an official
7 requirement?

8 A. Right.

9 Q. And the new Rule would make it an official
10 requirement and set a time for doing so?

11 A. Yes.

12 Q. And finally on mailing copies, are you the person
13 responsible for mailing copies of Commission and Division
14 orders?

15 A. Yes.

16 Q. And you currently mail those orders to all
17 parties who have appeared in the case?

18 A. Right.

19 Q. But we had no definition of what it meant to
20 appear in a case; is that right?

21 A. That's correct.

22 Q. So this rule would supply that definition?

23 A. Yes.

24 MS. MacQUESTEN: Thank you, I have no other
25 questions.

1 CHAIRMAN WROTENBERY: Commissioners, any
2 questions of Ms. Davidson?

3 COMMISSIONER LEE: Let me think.

4 CHAIRMAN WROTENBERY: No questions. Thank you
5 very much for your testimony, Ms. Davidson.

6 MS. MacQUESTEN: Unless the Commission has other
7 questions, that concludes our presentation.

8 CHAIRMAN WROTENBERY: Thank you, Ms. MacQuesten.
9 I don't believe there's anybody else here who wants to make
10 a comment on this proposal, but I did see that in the
11 notebook we had a copy of some comments we received from
12 the New Mexico Oil and Gas Association on the proposed
13 Rule, so we will incorporate those comments into the record
14 of this proceeding.

15 I notice that NMOGA has no objections to the
16 proposed rules except for the changes to Rule 1208, and
17 they have specific suggestions there. Would you mind
18 commenting on those, Ms. MacQuesten?

19 MS. MacQUESTEN: I believe their suggestion was
20 to require prehearing statements to be filed sooner rather
21 than later. We were changing -- The current Rule says
22 three days, we were proposing that it be four days, and
23 NMOGA wanted it to be even further out, and I can't recall
24 at this --

25 CHAIRMAN WROTENBERY: I think I saw seven days,

1 although I --

2 MS. MacQUESTEN: I believe you're right, I think
3 it was seven business days, which works out to nine days,
4 at least, because a weekend would interrupt that seven-day
5 period.

6 CHAIRMAN WROTENBERY: Five business days --

7 MS. MacQUESTEN: Five business days?

8 CHAIRMAN WROTENBERY: -- is what they said, yes.

9 MS. MacQUESTEN: My only concern in increasing
10 the amount of lead time for prehearing statements is that
11 our notice provisions are relatively short, and my concern
12 is that if someone is mailed notice on day 20 before the
13 hearing and might not get that notice until day 15 before
14 the hearing, if they then have to file a prehearing
15 statement in a very short period of time, that may work for
16 some people, but for others it may be difficult for them to
17 find an attorney, figure out what their issues are, figure
18 out who their witnesses are and their exhibits, and get all
19 that information into a prehearing statement and filed in
20 time.

21 So that's my only concern about requiring
22 prehearing statements much sooner than the four days that
23 we recommended.

24 CHAIRMAN WROTENBERY: Okay, NMOGA also proposes
25 or requests that the failure to file a prehearing statement

1 bar participation in the proceeding. Do you have any
2 thoughts about that request?

3 MS. MacQUESTEN: The attorney in me loves that
4 suggestion, but I'm concerned that it might be too harsh,
5 especially if the -- given the short notice provisions that
6 we have and the short amount of time the parties would have
7 to file their prehearing statement.

8 I am concerned that we would probably end up with
9 either precluding people from making their case, which I
10 would be concerned about some due-process concerns there,
11 or merely postponing the case until an appeal to the
12 Commission. You may hear cases that people weren't allowed
13 to make at the Division level.

14 CHAIRMAN WROTENBERY: Thank you.

15 Mr. Brooks, is there anything else we need to
16 cover, then, today on this --

17 MR. BROOKS: Well, I have one question that --

18 CHAIRMAN WROTENBERY: -- particular proceeding?

19 MR. BROOKS: -- and I did not bring the drafts of
20 the Rules themselves down here.

21 CHAIRMAN WROTENBERY: That's Exhibit 1.

22 MR. BROOKS: Thank you. Okay, there seems to
23 be -- I believe the Rule was correctly stated by the
24 Division counsel, and this is not something that is a
25 change as I believe the Rule is stated currently. I did

1 not realize that in 1207.A.(1) that the expedited procedure
2 applied to statutory unitization proceedings, and I really
3 don't think it's appropriate for application. I think the
4 substantive things that you have to file are not the
5 appropriate things that you need in a statutory unitization
6 proceeding.

7 But this is not an inadvertent change that's
8 being introduced by this amendment, it's something that is
9 in the Rule the way it is written because of the caption of
10 subsection -- of paragraph 1 in the subdivisions. But in
11 terms of the Commission when they go to rewrite it, they
12 may want to consider whether or not it should be made clear
13 that the 1207.A.(1).(b) procedure is really for compulsory
14 pooling proceedings and may not be appropriate for
15 statutory unitization proceedings.

16 MS. MacQUESTEN: Mr. Brooks, I agree with you. I
17 think that the original language in A.(1).(b) did limit it
18 to pooling cases, and when that language was deleted it
19 opened it up to the possibility of applying to the
20 unitization cases, and I don't think that was the intent.

21 MR. BROOKS: Well, since I was the original
22 draftsman of the first draft of this, it may be another
23 mistake that I made. But if it is, I still need to correct
24 it, so I think we've got something the Commission should
25 consider.

1 CHAIRMAN WROTENBERY: I think that's something we
2 should do in --

3 MR. BROOKS: Yes --

4 CHAIRMAN WROTENBERY: -- our action on the --

5 MR. BROOKS: -- exactly.

6 CHAIRMAN WROTENBERY: -- on the proposal.

7 Anything else, Mr. Brooks?

8 MR. BROOKS: No.

9 CHAIRMAN WROTENBERY: Okay, then we will take
10 this case -- Oh, I'm sorry?

11 MS. MCGRAW: Madame Chair, members of the
12 Commission, I'm Kate McGraw from R.W. Byram, and I may not
13 have a based -- commented on, but I did want to make sure
14 that the changes to Rule 1221 did not preclude the Division
15 from sharing the Commission and Division Orders with R.W.
16 Byram, as it has in the past. I don't know what the
17 practice is, the practical way that those get shared, but I
18 wanted to make sure that the changes in the rule didn't
19 preclude that.

20 CHAIRMAN WROTENBERY: I don't believe we're
21 intending to make any change in that procedure.

22 MS. MacQUESTEN: No, there was no intent to
23 change that procedure. That procedure isn't part of the
24 current Rule and wasn't accounted for in the amendments,
25 but there was no intent to change the current practice.

1 MS. McGRAW: Okay, thank you.

2 CHAIRMAN WROTENBERY: Thank you. Any other
3 questions or comments?

4 Yes.

5 MR. BEMIS: John Bemis with the Land Office.
6 Just for my edification more than anything, is there a
7 paper of general circulation in this state?

8 MS. MacQUESTEN: We were thinking of the
9 *Albuquerque Journal* specifically.

10 MR. BEMIS: I don't know. And I guess the second
11 question would be, if that is true, then that would
12 supplant any notice needing to be in any of the county
13 papers if it's established that that paper is in
14 circulation in a county, somebody could comply with the
15 county thing by, I guess, one paper if it's the *Albuquerque*
16 *Journal*. Some of these other papers may gripe about that
17 from a money standpoint.

18 That's the only thought I had on that Rule, as I
19 heard you all explain it.

20 MS. MacQUESTEN: The way the current Rule is
21 interpreted when the language says that an advertisement
22 must be made in a paper of general circulation of the
23 county, we look to the -- a statute that also deals with
24 notice in county newspapers, and that was interpreted to
25 apply specifically to the county newspaper, and that

1 wouldn't have permitted us to simply advertise in the
2 *Albuquerque Journal* and say, well, it goes to those
3 counties, therefore it's good enough. They really did want
4 specifically county newspapers.

5 So our change to our Rules would say county
6 papers if the rulemaking or application has -- impacts only
7 a county or only a local area, but the statewide paper if
8 it impacts the entire state.

9 So what I wanted to say was, if you have the
10 requirement that you publish in county papers, publication
11 in the *Journal* would not be enough, even under our proposed
12 changes.

13 CHAIRMAN WROTENBERY: Thank you for that
14 clarification. Thank you, John.

15 Anything else?

16 We'll take Case 13,187 under advisement. And I
17 hope we'd be prepared to act on this one in our meeting in
18 January.

19 MR. BROOKS: I would think so.

20 CHAIRMAN WROTENBERY: Okay, so we'll take a
21 very --

22 COMMISSIONER LEE: When in January?

23 CHAIRMAN WROTENBERY: We have not set the
24 schedule yet for the Commission Hearings next year. We
25 will be getting a proposed schedule out to you soon here.

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We will take just a short break so we can make the changes to the pit proposal that we have already discussed.

(Thereupon, these proceedings were concluded at 11:05 a.m.)

* * *

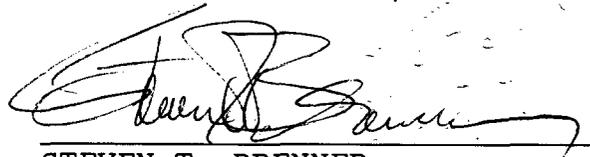
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL December 12th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006