

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

**IN THE MATTER OF THE PROPOSAL OF THE OIL CONSERVATION
COMMISSION, ON ITS OWN MOTION, TO AMEND OIL CONSERVATION
DIVISION RULES 1201, 1203 through 1205, 1207, 1208, 1211, 1212, 1214 and 1220.**

**CASE NO. 13482
Order No. R-12327**

ORDER INITIATING RULEMAKING

BY THE COMMISSION:

This matter having come before the Commission for consideration at a duly called meeting of the Commission on this **14th** day of April, **2005**, the Commission now

FINDS:

1. Section 70-2-7 NMSA 1978 provides that the Oil Conservation Division (the Division) shall prescribe by rule its rules of order or procedure in hearings or other proceedings before it. Section 70-2-6.B NMSA 1978 provides that the Oil Conservation Commission (the Commission) shall have concurrent jurisdiction and authority with the Division to the extent necessary for the commission to perform its duties as required by law.

2. On September 9, 2004, the Commission appointed a committee to review the existing rules concerning procedures for hearings before the Division or the Commission, including particularly procedures for **rulemaking** and **pre-hearing** procedures. The committee so appointed consisted of Commission counsel, David Brooks, Commission Secretary, Florene Davidson, Division counsel, **Gail MacQuesten**, and two attorneys who practice before the Division and the Commission, **William F. Carr** and **W. Thomas Kellahin**.

3. The committee submitted its report and recommendations to the Commission at the regular meeting of the Commission on January 13, 2005. The Commission then instructed the committee to consider certain additional matters, including standing to appear at Division and Commission hearings and representation by counsel. The committee presented its final report and recommendations to the Commission at its regular meeting on **March 8, 2005**.

4. The committee recommended rule changes that would, among other matters,

(a) provide for, and fix the time for submission of, written comments on proposed rule changes;

(b) prescribe a procedure for the Commission to initiate rule changes on its own motion;

(c) require 20-days' notice of adjudicatory hearings, as well as **rulemaking** hearings;

(d) require **pre-filing** of exhibits in advance of division or commission hearings;

(e) require filing of a **pre-hearing** statement in advance of a rulemaking hearing by any party intending to present technical testimony;

(f) provide procedures for disposition of pre-hearing matters, including issuance and quashing of subpoenas and motions for continue, in advance of scheduled division or commission hearings;

(g) provide who may make statements or otherwise participate in division or commission hearings and under what circumstances such persons must be represented by counsel; and

(h) authorize the director of the division to issue interim stays of commission orders.

4. The Commission should convene a public hearing to consider the proposed amendments to Rules 1201, 1203 through 1205, 1207, 1208, 1211, 1212, 1214 and 1220 recommended by the committee.

IT IS THEREFORE ORDERED:

1. The Commission shall conduct a public hearing at its regular meeting on June 9, 2005, or at any subsequent date to which the same may be continued, to consider whether or not to adopt amendments to Division Rules 1201, 1203 through 1205, 1207, 1208, 1211, 1212, 1214 and 1220, as set forth in Exhibit A attached hereto, as proposed by the referenced committee.

2. The Commission counsel and the Commission Secretary, with the assistance of the Division staff, are directed to cause appropriate notices of the public hearing of this matter before the commission to be published in accordance with the laws of New Mexico and Division rules.

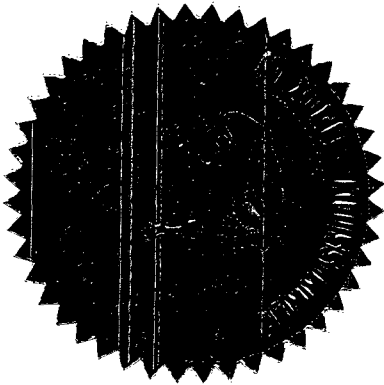
3. The notices so published shall state that any person desiring to file written comments on the proposed rule amendments shall file the same with the Secretary of the Commission not later than five working days prior to the scheduled public hearing, and that

persons desiring to be heard thereon may appear at the public hearing and present testimony or oral statements with respect thereto.

4. At such hearing, the Commission counsel shall present the proposed rule amendments, and the Commission shall consider the same, together with any public comments or testimony filed with the Commission or presented at the hearing as above provided.

5. Jurisdiction of this matter is retained for entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

A handwritten signature in black ink, appearing to read 'Mark E. Fesmire', written in a cursive style.

MARK E. FESMIRE, P.E., CHAIR

A handwritten signature in black ink, appearing to read 'Jami Bailey', written in a cursive style.

JAMI BAILEY, CPG, MEMBER

SEAL

EXHIBIT A TO ORDER INITIATING RULEMAKING
Case No. 13482
Order No. R-12327

19.15.14.1201 RULEMAKING PROCEEDINGS:

A. Before any rule, ~~including~~ a revocation or amendment of ~~an~~ existing rule, ~~shall~~ be made by the division or commission ~~adopts~~, amends or repeals any rule, a public hearing before the commission or a duly appointed division examiner shall be held at such time and place as may be prescribed by the commission in accordance with Section 10-15-1 NMSA 1978; provided that the hearing may be continued in accordance with 19.15.14.1209 NMAC without additional notice.

B. When Any application by the commission, the division, an operator or any interested person applies to adopt, amend or rescind repeal any rule, ~~such application~~ shall constitute a request for ~~rulemaking, and~~. ~~¶~~The division shall publish notice of the proposed rulemaking, stating the date, time and place of the hearing and the date by which public comments thereon must be received. Published notices shall be issued in the name of "The State of New Mexico" and signed by the director of the division, and the seal of the commission shall be impressed thereon. The division shall publish such notice of the proposed hearing:

(1) one time in a newspaper of general circulation in the counties in New Mexico affected by the proposed rule (or if the proposed rule will be of statewide application, in a newspaper of general circulation in this state), with the publication date not less than 20 days prior to the date set for the public hearing;

(2) on the applicable docket for the commission or division hearing at which the matter will be heard, which shall be sent by regular mail or electronic mail not less than 20 days prior to the public hearing to all who have requested such notice, not ~~less~~ than 20 days prior to the ~~public~~ hearing;

(3) one time in the New Mexico register, with the publication date not less than 10 days prior to the public hearing; and

(4) by posting to the division's website not less than 20 days prior to the public hearing.

C. The hearing may be continued in accordance with 19.15.14.1209 NMAC without additional notice.

D. If the rule proposed to be adopted, amended or rescinded repealed is of statewide application, the hearing shall be conducted before the commission in the first instance unless the division director otherwise directs.

DE. Any person may submit written comments on any proposed rule, which comments shall be made a part of the record of the hearing. Such comments must be received by the division not later than five working days before the date when the hearing is scheduled to commence, unless the time for filing such comments is extended. The director

of the division or the commission may extend the time for filing of written comments without other notice than announcement at the public hearing or publication on the division's website.

F. 19.15.14.1201 NMAC shall not apply to special pool rules, which may be adopted, amended or rescinded in adjudicatory proceedings subject to the notice provisions of Sections 1204 and 1207 of 19.15.14 NMAC.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03; A, 06/15/04]

19.15.14.1202 EMERGENCY ORDERS AND RULES:

A. Notwithstanding any other provision of 19.15 NMAC, in the event an emergency is found to exist by the division or commission, which requires adoption of a rule or the issuance of an order without a hearing, such emergency rule or order shall have the same validity as if a hearing had been held before the division or commission after due notice. Such emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding any other provision of 19.15.14 NMAC, in the event an emergency is found to exist by the division or commission, a hearing may be conducted upon any application within less than twenty-three (23) days after the filing thereof, and notice of such hearing may be given within such lesser time than twenty (20) days as the director of the division shall order.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03; A, 06/15/04]

19.15.14.1203 INITIATING A RULEMAKING OR ADJUDICATORY PROCEEDING HEARING;

A. The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, the attorney general, any operator or producer or any other person with standing may apply for a hearing commence a rulemaking or adjudicatory proceeding requiring a hearing by filing an application. The application shall be signed by the person seeking the hearing or by an attorney representing that person. Two copies of the application must be filed and shall state:

(1) the name of the applicant;
(2) the address of the applicant or its attorney for service, including an email address and fax number (if available);

(3) the name or general description of the common source or sources of supply or the area affected by the order or rule sought;

~~(3)~~(4) briefly, the general nature of the order or rule sought;

~~(4)~~(5) a list of the names and addresses of persons to whom notice has been sent;

~~(5)~~(6) a proposed notice advertisement for publication;

(7) a statement of the applicant's relationship to the subject matter that provides the basis for the applicant's standing to file the application, and

~~(6)~~(8) any other matter required by these rules or order of the division.

B. Applications for hearing before the division or commission must be in writing and received by the division at least 23 days in advance of the hearing on that application.

C. A person has standing to file an application or to protest an application if standing is specifically provided by law or rule, or if the order or rule requested in the application will affect a legally protected interest of that person that is distinct from the interest of all persons in the subject matter. An organization has standing if a member or members of the organization would have standing, and representing its members with respect to the subject matter of the application is germane to the purposes of the organization.
[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1203, 8-29-03]

19.15.14.1204 PUBLICATION OF NOTICE OF ADJUDICATORY HEARING:

A. The division shall give notice of each adjudicatory hearing before the commission or a division examiner at least twenty days before the hearing by (1) posting notice on the division's website, and (2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings.

B. In addition, the division shall give notice of each hearing before the commission by publication once in accordance with the requirements of Chapter 14, Article 11 NMSA 1978, in a newspaper of general circulation in the counties that are affected by the application or, if the effect of the application will be statewide, in a newspaper of general circulation in this state.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1204, 8-29-03; A, 06/15/04]

19.15.14.1205 CONTENTS OF NOTICE OF ADJUDICATORY HEARING:

A. Published notices shall be issued in the name of "The State of New Mexico" and signed by the director of the division, and the seal of the commission shall be impressed thereon.

B. The notice shall specify: whether the case is set for hearing before the commission or a division examiner; the number and style of the case; the time and place of hearing; and the general nature of the application. The notice shall also state the name of the applicant. If the application seeks to adopt, revoke or amend special pool rules, establish or alter a non-standard unit, permit an unorthodox location, or establish or affect the allowable of any well or proration unit, the notice shall specify each pool or common source of supply that may be affected if the application is granted. If the application seeks compulsory pooling or statutory **unitization**, the notice shall contain a legal description of the spacing unit or geographical area sought to be pooled or **unitized**. In all other cases, the notice shall reasonably identify the subject matter so as to alert persons who may be affected if the application is granted.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1205, 8-29-03; A, 06/15/04]

19.15.14.1206 [RESERVED] [Formerly "PREPARATION OF NOTICES"]

19.15.14.1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice in addition to that required by 19.15.14.1204 NMAC as set forth below:

(1) **Compulsory pooling and statutory unitization.**

(a) Notice shall be given to any owner of an interest in the mineral estate of any portion of the lands proposed to be pooled or unitized whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

(b) When notice is given as required in **Subparagraph (a)** of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC, of an application for compulsory pooling and the application is unopposed by those owners located, the applicant may file under the following alternate procedure. The application shall include the following:

- (i) a statement that no opposition is expected and why;
- (ii) a map outlining the spacing **unit(s)** to be **pooled**, showing the nature and percentage of the ownership interests and location of the proposed well;
- (iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that a diligent search has been conducted of all public records in the county where the well is located and of phone directories, including computer searches;
- (iv) the names of the formations and pools to be pooled (note: this procedure does not apply to an application to pool a spacing unit larger in size than provided in 19.15.3.104 NMAC or applicable special pool orders);
- (v) a statement as to whether the pooled unit is for gas **and/or** oil production (see note under item (iv) of Subparagraph (b) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC;
- (vi) written evidence of attempts made to gain voluntary agreement including but not limited to copies of relevant correspondence;
- (vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;
- (viii) the location and proposed depth of the well to be drilled on the pooled units; and
- (ix) a copy of the authorization for expenditure (AFE) to be submitted to the interest owners in the well.

(c) All submittals required shall be accompanied by sworn and notarized statements by those persons who prepared the **submittals**, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) All unopposed pooling applications will be set for hearing. If the division finds the application complete, the information submitted with the application will constitute the record in the **case**, and an order will be issued based on the record.

(e) At the request of any interested person or upon the division's own initiative, any pooling application submitted shall be set for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

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

- (i) the division-designated operator;
- (ii) in the absence of an operator, any lessee whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application is filed; and
- (iii) in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application was filed.

(b) In the event the operator of the proposed unorthodox well is also the operator of an existing adjoining spacing unit and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then "affected persons" include all working interest owners in that spacing unit.

~~(b)~~(c) If the proposed location is unorthodox by being located closer to the outer boundary of the spacing unit than permitted by 19.15.3.104 NMAC or applicable special pool orders, notice shall be given to the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

~~(c)~~(d) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than provided in special pool orders, notice shall be given to all affected persons.

(3) Non-standard proration unit. Notice shall be given to all owners of interests in the mineral estate to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the one-half quarter section (for 80-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations), or section (for 640-acre pools or formations) in which the non-standard unit is located and to such other persons as required by the division.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, notice shall be given to:

- (i) all division-designated operators in the pool; and
- (ii) all owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, notice shall be given to:

- (i) all division-designated operators in the pool; and
- (ii) all division-designated operators of wells within the same formation as the pool and within one (1) mile of the outer boundary of the pool which have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. Notice shall be given to all potash lessees, oil and gas operators, oil and gas lessees and unleased mineral

interest owners within the designated potash **area**. (a) through (d). The material on unorthodox locations was moved to Paragraph (2) of Subsection A of 19.15.14.1207 NMAC.

(6) **Downhole** commingling. Notice shall be given to all owners of interests in the mineral estate in the spacing unit if ownership is not common for all commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. Notice shall be given to any surface owner within one-half mile of the site.

(8) Surface commingling. Notice shall be given as prescribed in 19.15.5.303 NMAC.

(9) Adjudications not listed above. Notice shall be given as required by the division.

B. Type and content of notice. Any notice required by 19.15.14.1207 NMAC shall be sent by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the date of hearing of the application and shall include a copy of the application, the date, time and place of the hearing, and the means by which protests may be made. When an applicant has been unable to locate all persons entitled to notice after exercising reasonable diligence, notice shall be provided by publication, and proof of publication shall be submitted at the hearing. Such proof shall consist of a copy of the legal advertisement that was published at least five working days before the hearing in a newspaper of general circulation in the county or counties in which the property is located **or**, if the effect of the application is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit signed by the applicant or its authorized representative, that: (a) the notice provisions of 19.15.14.1207 NMAC have been complied with; (b) the applicant has conducted a good-faith diligent effort to find the correct address of all persons entitled to notice; and (c) pursuant to 19.15.14.1207 NMAC notice has been given at that correct address as required by 19.15.14.1207 NMAC. In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as required in 19.15.14.1207 NMAC may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the date, time and place of the hearing. No further notice is required.

[1-1-86...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1207, 8-29-03; A, 06/15/04]

19.15.14.1208 PLEADINGS, COPIES, AND PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE;

A. For pleadings and correspondence filed in cases pending before a division examiner, two copies must be filed with the division. For pleadings and correspondence filed in cases pending before the commission, five copies must be filed with the division. The division will disseminate copies to the members of the commission. The party filing the pleading or correspondence shall at the same time either hand deliver or transmit by ~~facsimile~~ or ~~electronic~~ mail to any serve a copy of such pleading or correspondence upon each party who has entered an appearance therein in the case on or prior to the working day immediately preceding the day when such pleading or correspondence is filed or the its attorneys of record, a copy of the pleading or ~~correspondence~~. Service shall be accomplished by hand delivery or transmission by facsimile or electronic mail, except that service upon a party who has not filed a pleading containing a FAX number or email address may be made by ordinary first class mail. An appearance of any interested party shall be made either by letter addressed to the division or in person at any proceeding before the commission or before a division examiner, with notice of such appearance to the parties of record. Any written entry of appearance or other initial pleading filed by a party other than the applicant shall include the address of the party or its attorney for service, including an email address and fax number (if available).

B. Parties to an **adjudicatory** proceeding who intend to present evidence at the hearing shall file a pre-hearing statement, and serve a copy thereof on opposing other parties or their counsel of record in the manner provided in Subsection A of 19.15.14.1208 NMAC, at least four days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00p.m., Mountain Time, on the Friday preceding the scheduled hearing. The statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing (and in the case of expert witnesses, their fields of expertise); the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing. Copies of all exhibits that any party to an adjudicatory proceeding proposes to offer in evidence at the hearing shall be filed and served with that party's pre-hearing statement. Witnesses not identified in a pre-hearing statement, or exhibits not filed and served therewith, may be excluded from evidence unless the party offering such evidence makes a satisfactory showing of good cause for failure to disclose the same.

C. In rulemaking proceedings, any party intending to offer technical testimony at the hearing shall file with the division a pre-hearing statement and copies of exhibits in the manner and within the time provided in subsection B of 19.15.14.1208 NMAC but shall not be required to serve copies thereof on any other party.

D. Motions for continuance shall be filed and served no later than the date for filing the pre-hearing statement, unless the reasons for requesting a continuance arise subsequent to such date, in which event the motion shall be filed as expeditiously as possible after the moving party becomes aware of the need for a continuance,
[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1208, 8-29-03; A, 06/15/04]

19.15.14.1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE:

Any hearing before the commission or a division examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1209, 8-29-03; A, 06/15/04]

19.15.14.1210 CONDUCT OF HEARINGS:

A. Hearings before the commission or a division examiner shall be conducted without rigid formality. A transcript of testimony shall be taken and preserved as a part of the permanent records of the division. Any person testifying shall do so under oath. However, relevant unsworn comments and observations by any interested party will be designated as such and included in the record.

B. The division director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness must be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the presence of the witness at hearing is waived upon notice to and without objection of the parties. Pages of the prepared written testimony shall be numbered and contain line numbers on the left-hand side.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1210, 8-29-03]

19.15.14.1211 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PRE-HEARING PROCEDURE;

A. The commission or any member thereof and the division director or the division director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, and records in any proceeding before the commission or division. A subpoena will be issued for attendance at a hearing upon the written request of any party. In case of the failure of a person to comply with the subpoena issued, an attachment of the person may be issued by the district court of any district in the state. Any person found guilty of testifying falsely at any hearing may be punished for contempt. The director or the director's authorized representative shall, upon request of a party, issue a subpoena for the production of books, papers or other tangible things in advance of the hearing. Any motion for protection or to quash any such subpoena may be considered as a pre-hearing motion pursuant to subsection C of 19.15.14.121.1 NMAC or may be reserved for consideration at the hearing on the merits, in the discretion of the director or the examiner assigned to hear the case. Subpoenas for the deposition of witnesses in advance of the hearing of a case shall be issued only in extraordinary circumstances, upon motion for good cause shown.

B. A pre-hearing conference may be held prior to the hearing on the merits in cases pending before the division or the commission either upon request of a party or upon notice by the division director or a division examiner. The pre-hearing conference will be to narrow issues, eliminate or resolve other preliminary matters and to encourage settlement. The division director or the division examiner may issue a pre-hearing order following the pre-hearing conference. The director or examiner shall cause written or oral notice of such

pre-hearing conference to be given to the applicant and to all other parties who, at the time such conference is scheduled, have filed appearances in the case,

C. The director or any hearing examiner may rule on motions that are necessary or appropriate for disposition prior to hearing on the merits. If the case is pending before the commission, the director shall rule on any such motion; provided that the director may refer any such motion for hearing by a hearing examiner specially designated for such purpose who, if the case is a *de novo* application, shall not have participated in the case prior to the filing of the application for *de novo* hearing. Prior to ruling on any such motion, the director or examiner shall give written or oral notice to any party who has filed an appearance in the case and who may have an interest in the disposition of such motion (except any party who has indicated that it does not oppose such motion), and shall allow any such interested party an opportunity, reasonable under the circumstances, to respond thereto. The director or examiner may conduct a hearing on any such motion, following written or oral notice to all interested parties, either at a pre-hearing conference or otherwise. If oral testimony is received at any such hearing, a record shall be made thereof as at other hearings.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1211, 8-29-03]

19.15.14.1212 RULES OF EVIDENCE AND EXHIBITS: APPEARANCE PRO SE OR BY COUNSEL;

A. Full opportunity shall be afforded all interested parties properly appearing at a hearing before the commission or division examiner to present evidence and to cross-examine witnesses. In general, the rules of evidence applicable in a trial before a court without a jury shall be applicable, provided that such rules may be relaxed, where, by so doing, the ends of justice will be better served. No order shall be ~~made~~ that is not supported by ~~competent~~ legal ~~evidence~~.

B. Parties introducing exhibits at hearings before the commission or a division examiner must provide a complete set of exhibits for the court reporter, each commissioner or division examiner and other parties of record; provided that in rule making proceedings copies of exhibits shall be furnished at the hearing only to parties who have filed pre-hearing statements indicating that they will present technical testimony.

C. Individual parties with standing may appear and participate in hearings either *pro se* or through counsel. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities may appear as parties only through counsel. No person may act as counsel before the division or the commission except an attorney licensed to practice law in the State of New Mexico. A non-attorney may appear as a representative of a federal, state or tribal governmental agency or political subdivision in any proceeding, or as a representative of any person or organization in a rulemaking proceeding, if the purpose of such appearance is only to make a statement. In a rulemaking proceeding, any member of the public may appear on his or her own behalf to make a statement without regard to standing. Persons appearing to make a statement who are not otherwise qualified to enter an appearance may not present evidence nor cross-examine witnesses.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1212, 8-29-03]

19.15.14.1213 DIVISION EXAMINERS' QUALIFICATIONS AND APPOINTMENT:

The division director shall appoint division examiners. Each division examiner so appointed shall be a member of the staff of the division. Each individual appointed as a division examiner must have at least six years of experience as a geologist, petroleum engineer or licensed lawyer, or at least two years of such experience and a college degree in geology, engineering or law; provided however, that nothing herein shall prevent any member of the commission from serving as a division examiner.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1213, 8-29-03]

19.15.14.1214 REFERRAL OF CASES TO DIVISION EXAMINERS:

The division director may refer any matter or proceeding to a division examiner for hearing in accordance with these rules. The division ~~examiner appointed~~ to hear any ~~specific case~~ shall be ~~designated~~ by name.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1214, 8-29-03]

19.15.14.1215 DIVISION EXAMINER'S POWER AND AUTHORITY:

The division director may limit the powers and duties of the division examiner in any particular case to such issues or to the performance of such acts as the director deems expedient; however, subject only to such limitations as may be ordered by the director, the division examiner to whom any matter is referred under these rules shall have full authority to hold hearings on such matter in accordance with these rules. The division examiner shall have the power to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including administering oaths to witnesses and receiving testimony and exhibits offered in evidence subject to such objections as may be imposed. The division examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify same to the director as hereinafter provided.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1215, 8-29-03]

19.15.14.1216 HEARINGS THAT MUST BE HELD BEFORE COMMISSION:

Notwithstanding any other provisions of these rules, the hearing on any matter shall be held before the commission if:

- A. it is a hearing pursuant to Section 70-2-13 NMSA 1978; or
- B. the division director desires the commission to hear the matter.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1216, 8-29-03]

19.15.14.1217 [RESERVED]

[9-15-55...2-1-96; Repealed 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1217, 8-29-03]

19.15.14.1218 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING:

Upon the conclusion of any hearing before a division examiner, the division examiner shall promptly consider the proceedings in such hearing, and based upon the record of such hearing the division examiner shall prepare a written report with recommendations for the disposition of the matter or proceeding by the division. Such report shall either be accompanied by a proposed order or shall be in the form of a proposed order and shall be submitted to the division director with the certified record of the hearing.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1218, 8-29-03]

19.15.14.1219 DISPOSITION OF CASES HEARD BY DIVISION EXAMINERS:

After receipt of the report of the division examiner, the division director shall enter the division's order disposing of the matter.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1219, 8-29-03]

19.15.14.1220 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

A. When an order has been entered by the division pursuant to a hearing held by a division examiner, a party of record adversely affected by the order has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the order is issued the party files with the division a written application for such hearing. If an application is filed, the matter or proceeding shall be set for hearing before the commission.

B. Any party requesting a stay of a division or commission order must file the ~~request~~ a motion with the division and provide ~~copies~~ of the ~~request~~ to the parties of ~~record~~ or their attorneys in the ~~case~~ at the time the request is ~~filed~~ serve copies thereof upon all other parties who have appeared in the case as provided in subsection A of 19.15.14.1208 NMAC. The request motion must have attached a proposed stay order. The director may grant a ~~stays~~ pursuant to such a motion (or upon his or her own initiative after according all parties who have appeared in the case notice and an opportunity to respond) under other ~~circumstances~~ if such a stay is necessary to prevent waste, protect correlative rights, protect public health ~~and~~ or the environment or prevent gross negative consequences to any affected party. Any order of the director staying an order of the commission shall be effective only until the commission acts on the motion.

C. Any party of record adversely affected by the order issued by the commission after hearing may apply for rehearing pursuant to 19.15.14.1222 NMAC.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1220, 8-29-03]

19.15.14.1221 COPIES OF COMMISSION AND DIVISION ORDERS:

Within 10 days after an order, including any order granting or refusing rehearing or order following rehearing, has been issued, a copy of such order shall be mailed by the division to each party or its attorney of record. For purposes of 19.15.14.1221 NMAC only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the division or by entering an appearance on the record at a hearing.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1221, 8-29-03; A, 06/15/04]

19.15.14.1222 **REHEARINGS:**

Within 20 days after entry of any order of the commission any party of record adversely affected thereby may file with the division an application for rehearing on any matter determined by such order, setting forth the respect in which the order is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within 10 days after it is filed and failure to act within such period shall be deemed a refusal and a final disposition of such application. In the event the rehearing is granted, the commission may enter a new order after rehearing as may be required under the circumstances.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1222, 8-29-03]

19.15.14.1223 **EX PARTE COMMUNICATIONS:**

A. In an adjudicatory proceeding, except for filed pleadings, at no time after the filing of an application for hearing shall any party, interested participant or their representatives communicate regarding the issues involved in the application with any commissioner or the division examiner appointed to hear the case when all other parties of record to the proceedings have not had the opportunity to be present.

B. The prohibition in Subsection A of 19.15.14.1223, above, does not apply to those applications that are believed by the applicant to be unopposed. However, in the event that an objection is filed in a case previously believed to be unopposed, the prohibition in A, above, is immediately applicable.

[7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1223, 8-29-03]