

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: )

) CASE NO. 13,187

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) )

**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.

\* \* \*

STEVEN T. BRENNER, CCR  
(505) 989-9317

## I N D E X

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

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\* \* \*

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\* \* \*

## A P P E A R A N C E S

## FOR THE COMMISSION:

DAVID K. BROOKS, JR.  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

## FOR THE DIVISION:

GAIL MacQUESTEN  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

\* \* \*

## ALSO PRESENT:

John Bemis  
Assistant Counsel  
New Mexico State Land Office

Richard Ezeanyim  
Chief Engineer  
New Mexico Oil Conservation Division

Michael H. Feldewert  
Holland & Hart, L.L.P., and Campbell & Carr  
Santa Fe, New Mexico

Rachel Jankowitz  
New Mexico Game and Fish  
Santa Fe, New Mexico

Ed Martin  
Bureau Chief  
Data Information and Management Systems  
New Mexico Oil Conservation Division

Bill Olson  
Senior Hydrologist, Hydrogeologist  
Environmental Bureau  
New Mexico Oil Conservation Division

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.

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

4           (Thereupon, these proceedings were concluded at  
5 11:05 a.m.)

6                           \* \* \*


## 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