

MEMORANDUM

To: Bill LeMay

From: Lyn Heber 

Re: Proposed Rule 19 NMAC 15 A. 19
Telephone conference attendance of OCC members
ARCO Permian's Comments

Date: October 24, 1996

I have reviewed the additions proposed by Bill Carr on behalf of ARCO Permian. The proposal, of course, diminishes to some extent the authority given to the boards and commissions by the Legislature. As I understand it, the Commission has historically chosen to act only when the all three commissioners are present rather than just its quorum of two. Even so, a party has no grounds to protest that a hearing was heard by only two commissioners. So how could attendance by telephone of one of the three be any more detrimental to a party than a hearing heard by the quorum of two?* Additionally, this Commission would likely use this new flexibility for those meetings at which no evidence is to be taken. It is unlikely the Commission would proceed with a de novo hearing over a party's objection to telephone attendance by one of the Commissioners. Of course, ARCO and others will remind the Commission that future Commissions may not be so sensible.

The aspect of ARCO's proposed language that may be the least acceptable is the requirement that the docket contain the information that a Commissioner may attend by telephone conference. This provision takes away much of the benefit of proposed Rule 19 in that it is often weather conditions, health or some other circumstance that is not known until hours before the scheduled hearing that creates the need for such attendance. ARCO's proposed language would limit such attendance to those hearings where the "difficult or impossible" conditions are known at least a week in advance.

*An argument could be made that more than one member of the OCC could attend a meeting by telephone conference. However, I would advise the OCC that as the statute states, "...a member of a public body may participate in a meeting", I believe such attendance is limited to one member at any one meeting or hearing.

cc: Commissioner Weiss
Commissioner Bailey

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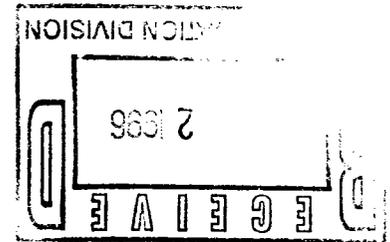
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October 22, 1996

HAND DELIVERED

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505



Re: *New Mexico Oil Conservation Division. Proposal for telephone conference attendance of members at Oil Conservation Commission meetings and hearings.*

Dear Mr. LeMay:

Enclosed for your consideration is the language which ARCO Permian recommends be included in the proposed Oil Conservation Division Rule for telephone conference attendance by Oil Conservation Commission Members.

As you will see from the enclosed, this recommendation would permit parties of record in Commission hearings to object to the participation of members of the Commission by telephone conference at which time the case would be scheduled for hearing at the earliest date on which the Commissioners could attend in person.

It is ARCO's belief that this proposed language would enable Commissioners to participate in most Commission proceedings by telephone. At the same time it would assure parties coming to hearing before the Commission would not be confronted with the obstacles that could arise if they were attempting to present complicated evidence to the Commission in a telephone hearing.

Your consideration of this language is appreciated.

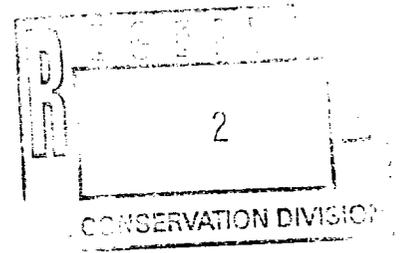
Very truly yours,

WILLIAM F. CARR

enc.

NEW MEXICO OIL CONSERVATION DIVISION RULE 19

19 NMAC 15 A. 19



Pursuant to Section 10-15-1 NMSA 1978, Commission members may participate in Commission meetings and hearings by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or hearing in person. Each member participating by conference telephone or other similar communications equipment must be identified when speaking. All participants must be able to hear each other at the same time. Members of the public attending the meeting or hearing must be able to hear Commission members who speak during the meeting or hearing. The docket for any hearing that is to be conducted by conference telephone shall so state and any party of record in a case set for hearing before the Commission shall have the right to object to the hearing being conducted by telephone conference or similar communication equipment. All objections shall be in writing and shall be filed with the Division's Santa Fe office by 4:30 p.m. on the Friday before a scheduled hearing. On receipt of an objection, the hearing shall be continued to the next available date on which a quorum of the Commission is able to met in person.