

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 OIL CONSERVATION)	CASE NO. 12,177
DIVISION TO AMEND THE NOTICE)	
REQUIREMENTS THROUGHOUT DIVISION RULES)	
AND ALSO AMENDMENTS TO THE PROCEDURAL)	
RULES FOUND IN PART N (19 NMAC 15.N))	
AND THE AMENDMENTS TO RULES 11 AND 12)	
(19 NMAC 15.A.11 AND 12))	
)	
APPLICATION OF THE OIL CONSERVATION)	CASE NO. 12,201
DIVISION TO ADOPT CERTAIN DEFINITIONS)	
TO BE PLACED IN SECTION A.7)	
(19 NMAC 15.A.7) OF THE DIVISION RULES)	(Consolidated)
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

June 17th, 1999

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, June 17th, 1999, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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I N D E X

June 17th, 1999
Commission Hearing
CASE NOS. 12,177 and 12,201 (Consolidated)

PAGE

REPORTER'S CERTIFICATE

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A P P E A R A N C E S

FOR THE COMMISSION:

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:02 a.m.:

3 CHAIRMAN WROTENBERY: Okay, it's a little after
4 nine o'clock on Thursday, June 17th, 1999. This is a
5 meeting of the Oil Conservation Commission. We're meeting
6 here in the conference room at the offices of the Oil
7 Conservation Division in Santa Fe, New Mexico.

8 I'm Lori Wrotenbery, I'm the Chairman of the Oil
9 Conservation Commission.

10 To my right is Jami Bailey, who represents Land
11 Commissioner Ray Powell on the Commission.

12 To my left is Robert Lee, Commissioner.

13 We also have Lyn Hebert, the Commission's legal
14 counsel, Florene Davidson, the Commission secretary, and
15 then Steve Brenner is going to be serving as our court
16 reporter in keeping a record of our meeting today.

17 I think -- A couple of people have asked me how
18 long we think this meeting will take. I think this one
19 will be fairly short compared to the meetings we've had the
20 last few months.

21 We've got, I think, one main item of business,
22 and that's the adoption of some amendments to the
23 Commission's rules on notice and procedures, and we will
24 proceed to those in a few minutes.

25 We've got some preliminary matters to take care

1 of.

2 I just wanted to make one comment on the proposed
3 amendments to the Commission's Rule 104. There was some
4 confusion associated with the publication of those draft
5 rule amendments, and so we have had a request from the New
6 Mexico Oil and Gas Association for an extra period of time
7 in which to comment on those rules. We will be granting
8 that request.

9 And what I propose that we do today -- There may
10 be some people who have come here ready to testify on
11 those. If somebody is ready to go, we will certainly
12 accept their testimony today for the record.

13 But we will basically continue this matter and
14 take testimony at the next Commission hearing, which will
15 be on July 15th. We will take testimony on Rule 104 on
16 July 15th, and then plan to probably extend the comment
17 period a little bit after that for the taking of any
18 further written comments, and then we will plan to take
19 final action on Rule 104 at the Commission's meeting in
20 August.

21 We just want to make sure everybody has a full
22 opportunity to review the draft amendments and time to
23 analyze them and submit their comments to the Commission.

24 But as I said, when we get to that point we
25 will -- If there is anybody here who is ready to go with

1 testimony on Rule 104, we'll be happy to go ahead and take
2 that and enter that into the record today.

3 We have, just as a first order of business, the
4 minutes from the Commission's last meeting on May 19th,
5 1999. And Commissioners, I believe you've had a chance to
6 review the draft minutes that Florene prepared?

7 COMMISSIONER BAILEY: Yes, I have, and I move
8 that we accept them.

9 CHAIRMAN WROTENBERY: Do I hear a second?

10 COMMISSIONER LEE: I second.

11 CHAIRMAN WROTENBERY: All in favor say "aye".

12 COMMISSIONER BAILEY: Aye.

13 COMMISSIONER LEE: Aye.

14 CHAIRMAN WROTENBERY: Aye.

15 * * *

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17 CHAIRMAN WROTENBERY: And so we'll move right
18 into the discussion on the proposed amendments to the
19 Division's notice rules and procedural rules, and we have
20 these presented in two cases.

21 One is Case 12,177. This is the Application of
22 the Oil Conservation Division to amend the notice
23 requirements throughout Division rules and also amendments
24 to the procedural rules found in Part N and the amendments
25 to Rules 11 and 12.

1 And then in addition to that, we have Case
2 12,201, the Application of the Oil Conservation Division to
3 adopt certain definitions to be placed in Section A.7 of
4 the Division Rules. And these definitions relate to the
5 amendments to the notice and procedural rules.

6 So I think, if it's okay, we can take both of
7 those up at the same time for the purpose of any
8 discussion.

9 What we did at the last meeting was take
10 testimony on these proposals. We made some changes to the
11 proposed rule amendments based on the testimony that we
12 received and posted the proposed changes on the Division's
13 home page, and then also made those available to anybody
14 that requested a hard copy of those.

15 We also asked anybody that had any additional
16 comments to make to submit those comments in writing. And
17 Mr. Carroll, I don't believe we got any -- No, we did get
18 some additional -- one set of additional comments in
19 writing from the New Mexico Oil and Gas Association; is
20 that right?

21 MR. CARROLL: That's correct.

22 CHAIRMAN WROTENBERY: And I believe everybody's
23 got a copy of those; is that -- Okay.

24 COMMISSIONER BAILEY: You mean like that?

25 CHAIRMAN WROTENBERY: Yes, these were comments

1 dated June 11th. Commissioner Lee, did you get your copy
2 of those?

3 COMMISSIONER LEE: (Nods)

4 CHAIRMAN WROTENBERY: Yes. And there were two
5 specific provisions in here that the New Mexico Oil and Gas
6 Association expressed continued concern about -- I'm sorry,
7 Rand, did you not -- you didn't get a copy of those?

8 MR. CARROLL: Yes, I did.

9 CHAIRMAN WROTENBERY: Oh, okay. Rand or Lyn,
10 would you like to summarize those for the Commission?

11 MS. HEBERT: I'll be happy to summarize the
12 concern that they indicated over the prefiled testimony for
13 the cases before the Commission, and there was an
14 indication that they didn't think that that sort of
15 testimony was necessary, that the Commission had been
16 functioning fine for 40 years without having prefiled
17 testimony.

18 And I believe the discussion had been at the last
19 meeting that this was a discretionary feature and that the
20 Commission would not necessarily be requiring filed
21 testimony in all the cases but probably only in those cases
22 that were more complicated and complex, and to use that as
23 a tool not only for better understanding the issues but
24 also perhaps to make the hearing a little shorter.

25 The other issue that NMOGA disagreed with was the

1 approach to the amount of notice required for certain
2 unorthodox well locations, and eventually it was a
3 situation where you had a unit with -- rectangular spacing
4 unit that had not been developed, so that it was unknown
5 whether those units would be the standup or the laydown
6 units.

7 And NMOGA was suggesting that notice only be
8 given to the actual quarter that was going to be encroached
9 on, that it was definite that those interest owners would
10 be affected, and that it wasn't necessary to give notice to
11 the remaining three quarters, and, as our proposal had it,
12 the two possible affected areas that would have been
13 included in whichever way the rectangles were aligned.

14 And we have discussed that in the Division and
15 with the Examiners and taking into account the fact that
16 the Division is also responsible for protecting correlative
17 rights. It was difficult for us to distinguish why those
18 interests in the other two quarters were different from the
19 quarter that was being encroached on, where it was known
20 that those persons' interest would be affected.

21 So we have maintained in our proposed rules that
22 the interest owners in all three quarters be given notice.

23 And I believe those were the only two issues that
24 were commented on in that letter.

25 CHAIRMAN WROTENBERY: I might just ask, is there

1 anybody here today that would like to make a comment on
2 either of those issues? Those were the two issues that
3 were raised during the latest comment period.

4 MR. FOPPIANO: May it please, the Commission,
5 Rick Foppiano with OXY, also representing NMOGA.

6 I think our comments are self-explanatory, and I
7 don't really have anything to add to those two particular
8 issues.

9 I would, however, like to commend the Commission
10 and the people that worked on this issue in the work group.
11 I think we are very pleased that we had the opportunity to
12 work with the Commission and the Division personnel and
13 other people in the industry to develop a set of notice
14 rules that we feel like are reasonable and would help us
15 get about our business and are still in the interest of
16 conservation, the protection of correlative rights and the
17 prevention of waste.

18 And so I just wanted to thank this Commission for
19 allowing us that opportunity and urge the adoption of the
20 rules as they've been posted.

21 Thank you.

22 CHAIRMAN WROTENBERY: Thank you.

23 Anybody else like to make a comment at this
24 point?

25 In that case, I might just ask the Commissioners

1 if they have any comments that they would like to make on
2 either of these two issues that have been raised by the New
3 Mexico Oil and Gas Association.

4 I'll just say, in my view of it, with respect to
5 the question of notice on unorthodox well locations, we did
6 try very hard to articulate a basis for distinguishing the
7 interest owners in these prospective adjoining spacing
8 units, and just could not come up with a way that we felt
9 comfortable -- with a basis we felt comfortable with, for
10 distinguishing those owners that are just across the well
11 from others that might be eventually joined in the spacing
12 unit, and particularly in light of the recent court cases
13 that we have had, that have basically directed the
14 Commission to define some of the notice requirements more
15 broadly than they have in the past. We just felt like we
16 couldn't justify the change that is requested by NMOGA.

17 But I would be interested in hearing the thoughts
18 of the other Commissioners on that point.

19 COMMISSIONER BAILEY: I agree with the Division's
20 logic on the basis of notice to other owners who can be
21 impacted within that spacing area. I think we're charged
22 with protection of correlative rights, and it's not our
23 prerogative to distinguish those who are more affected from
24 those who are lesser affected.

25 So I agree with the Division's logic.

1 CHAIRMAN WROTENBERY: Commissioner Lee?

2 COMMISSIONER LEE: (Nods)

3 CHAIRMAN WROTENBERY: Okay. In that case, we are
4 not proposing any further change to that particular notice
5 requirement.

6 And then I just wanted to comment too on the
7 concerns that have been expressed about the use of prefiled
8 testimony.

9 I will say that we've heard some, I think, valid
10 concerns about the potential for abuse of this particular
11 procedure and about the possibility that in some cases this
12 procedure may add unnecessary burdens to the participants
13 in the Commission's hearing. And certainly we intend to be
14 sensitive to those kinds of concerns.

15 It's my view that the Commission really already
16 has this authority to require prefiled testimony, just as
17 part of its inherent power to govern the conduct of
18 proceedings before it. And we are trying to include this
19 provision in here just to alert parties that in some
20 circumstances the Commission may use this procedure.

21 We do intend to use it only in certain
22 extraordinary circumstances, in extremely complex cases,
23 for instance, where we think it may be of value to the
24 Commission in the conduct of its proceedings and may
25 increase the efficiency of the Commission's proceedings.

1 But we will -- We do intend to use it carefully,
2 so that we avoid abuses and don't add unnecessary burdens
3 to the process.

4 You know, for all of those reasons I would like
5 to leave it in there. In fact, we are using it in a couple
6 of proceedings this summer on kind of a trial basis, and we
7 will see how those go and may never use it again, I don't
8 know. We're going to see if it delivers some of the
9 benefits that we think it will deliver in those kinds of
10 cases. And if so, we may use it again in the future, but
11 just don't know yet at this point.

12 So we would like to see that in there, just a
13 statement of what we think is already the Commission's
14 authority.

15 COMMISSIONER BAILEY: I think it's to the benefit
16 of the parties of the very complex cases, because they have
17 the opportunity to explain fully so that the Commissioners
18 have enough time to understand what all the subtleties are
19 and the ramifications of some of the arguments.

20 I think it can only benefit the parties to have
21 the Commissioners that much more knowledgeable before they
22 walk in to the hearing.

23 CHAIRMAN WROTENBERY: Commissioner Lee, do you
24 have --

25 COMMISSIONER LEE: If we cannot decide to do it

1 in the hearing room, we always can postpone it, so I don't
2 see any problems.

3 CHAIRMAN WROTENBERY: Okay. So on that issue
4 too, we're proposing to leave that provision in the
5 proposal as we recommend that it be adopted by the
6 Commission today.

7 But we will be careful. We will use that
8 authority very carefully, I assure you.

9 And then I just wanted to bring up a couple of
10 points -- Florene, do you have the draft orders? Okay,
11 great.

12 We did -- In one last review of the proposed
13 rules, we did identify some areas where we had typos, some
14 punctuation that needed to be corrected.

15 Also, I went through and -- This is one of my pet
16 peeves. Where we had used the term "the Director, in *his*
17 discretion", I changed the "his"'s to gender neutral.

18 So those changes have been incorporated into the
19 rule, but I've consulted with both Rand and Lyn, and they,
20 I think, have agreed that none of those changes were
21 substantive in nature.

22 There was one question that I had about the --
23 one provision of the rule as it was posted on the Internet,
24 and that was the provision on *ex parte* communications. Do
25 you want to turn to that? It was Rule 1223, the very last

1 one in the proposal.

2 And in that case, the way it was posted on the
3 Internet, it said that parties shall not discuss the
4 substantive issues involved in the proceedings with any
5 Commissioner or Examiner, and it's the "any Examiner" part
6 of that language that I'm a little bit concerned about.

7 I definitely agree that they should not discuss
8 the issues with the Examiner assigned to make a
9 recommendation, assigned to hear the case. But it seemed
10 to me a little too broad to prohibit the parties from
11 talking to any one of our designated Hearing Examiners.

12 So I propose that we change that to clarify that
13 it's the Division Examiner appointed to hear the case that
14 is the person of concern in this particular provision. I
15 realize that that will mean we'll need to make very clear,
16 very early on, who it is that is appointed to hear the
17 case, and we will work on that internally to make sure
18 that's clear to everybody.

19 But there are some circumstances in some types of
20 cases where I think parties may need to discuss technical
21 matters or procedural matters with somebody on our staff,
22 and I think they should have the ability to contact some --
23 one of the Hearing Examiners that will not be involved in
24 that case for that purpose.

25 And so that's the only substantive change that I

1 myself would propose that we make.

2 I've gone ahead and taken the liberty of
3 incorporating that change in the draft order, so I hope
4 that would be acceptable to the other Commissioners.

5 We do have draft orders adopting the proposed
6 changes. I might just give the other Commissioners an
7 opportunity to take a look at these. And as I said, we've
8 got an order in each of the two cases that I mentioned, one
9 relating to the notice and procedural rules, the other
10 relating to the definitions.

11 MR. CARROLL: Chairman Wrotenbery?

12 CHAIRMAN WROTENBERY: Yes?

13 MR. CARROLL: I was thinking this thought, and a
14 member of industry also mentioned it to me, so I'll mention
15 it now, that I don't know if we need it in the rule to have
16 a prohibition against the Examiner approach, to prevent
17 that Examiner from discussing with the other Examiner of
18 the case. And that could be, I guess, an internal Division
19 policy.

20 CHAIRMAN WROTENBERY: It's definitely an internal
21 Division policy. I'm trying to think, is there some
22 language that you would suggest? I mean, I look at that as
23 in some sense covered by this language, because that would
24 be -- It would be indirect communication, but it would be a
25 form of communication between the parties and the Examiner.

1 MR. CARROLL: I think you can just make it an
2 internal policy that if one Examiner is approached to talk
3 about a case, that he can't discuss it with the assigned
4 Examiner in that case.

5 CHAIRMAN WROTENBERY: Any other thoughts on that
6 particular point?

7 MS. HEBERT: I would just say I agree with Mr.
8 Carroll that ordinarily rules are reserved for those
9 actions that affect people other than state government.

10 CHAIRMAN WROTENBERY: Uh-huh. Okay, we'll make
11 that very clear in our internal policy.

12 Commissioner Bailey, I noticed you were looking
13 very closely at these rules. These are the --

14 COMMISSIONER BAILEY: The ones that were posted
15 on the Internet.

16 CHAIRMAN WROTENBERY: -- the ones that were
17 posted on the Internet, with the exception of the change in
18 the *ex parte* provisions and those typographical and
19 editorial changes.

20 COMMISSIONER BAILEY: It's my intent to sign
21 these orders. Shall I go ahead and put my signature on it?

22 CHAIRMAN WROTENBERY: Yeah, I might, I guess, ask
23 for a motion that we go ahead and adopt the order as it has
24 been presented here today.

25 COMMISSIONER BAILEY: I so move.

1 CHAIRMAN WROTENBERY: Do I hear a second?

2 COMMISSIONER LEE: Second.

3 CHAIRMAN WROTENBERY: All in favor say "aye".

4 COMMISSIONER BAILEY: Aye.

5 COMMISSIONER LEE: Aye.

6 CHAIRMAN WROTENBERY: Aye. I think we did both
7 of those at one time.

8 Okay, job well done, thank you.

9 (Thereupon, these proceedings were concluded at
10 9:25 a.m.)

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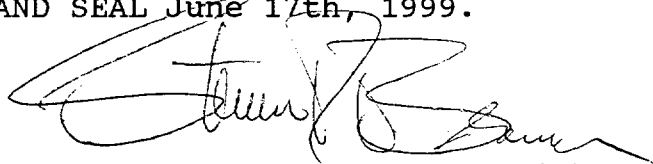
CERTIFICATE OF REPORTER

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 June 17th, 1999.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002