

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE) CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL)
AND GAS CONSERVATION COMMISSION) DOCKET NO. 0803-RM-02
OF THE STATE OF COLORADO)

FIRST PREHEARING ORDER

The Oil and Gas Conservation Commission of the State of Colorado adopts the following procedures for the conduct of its rulemaking hearing to promulgate regulations pursuant to HB07-1341 and HB07-1298. This prehearing order supersedes Rule 529. where the provisions of the Rule are inconsistent with this order.

PUBLICATION OF PROPOSED RULES

The proposed rules will be posted on the Commission's website <http://cogcc.state.co.us/RuleMaking/2007RuleMaking.cfm> and filed with the Colorado Secretary of State on March 31, 2008. Other relevant information regarding this rulemaking also will be posted on the Commission's website. The proposed rules will be published in the *Colorado Register* on April 10, 2008.

APPOINTMENT OF HEARING OFFICER

The Commission has appointed Joshua B. Epel to serve as hearing officer for this rulemaking to guide prehearing matters.

PARTY STATUS

To participate in this rulemaking hearing as a party, a person or organization must file a written request for party status with the Commission that shall include the following information: (1) name of the applicant and their representative (if different); (2) the street address, electronic mail address, and telephone and facsimile numbers of the applicant or their representative; and (3) a brief summary of any policy, factual, or legal issues the applicant has with the proposed regulations as of the time of filing the application for party status.

Applications for party status must be filed with the Commission by 5:00 p.m. on April 18, 2008, in the manner set out in this prehearing order. The hearing officer will review the requests for party status and applicants will be notified of his decision. The Commission staff will compile a list of all parties, their street addresses and electronic mail addresses and post it on the Commission website.

FILING AND SERVICE REQUIREMENTS

All required documents must be received by those entities requiring to be served as set

out below by 5:00 p.m. on the day they due. All filings must be served on the Commission in hard copy and electronic copy as follows: hard copies for the Commission - the original and 15 copies delivered to Patricia Beaver, Hearing Manager, Docket No. 0803-RM-02, Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203; and, an electronic copy, preferably in portable document format (*pdf*), to marc.fine@state.co.us for posting to the Commission website. Hard copies must also be served on the Department of Law - two copies delivered to Kelly Rees, Colorado Department of Law, 1525 Sherman Street, 7th Floor, Denver, Colorado, 80203. Copies to parties may be served by hard copy or electronic mail. The party service list will be posted on the Commission's website.

PUBLIC PARTICIPATION

The Commission encourages the public to participate in the rulemaking hearing by commenting on the proposed regulations. Persons who do not desire party status, but would like to participate in the rulemaking process, will be able to make their views known to the Commission either by submitting comments in writing in advance of or at the rulemaking hearing, and by speaking during the public comment period allotted during the hearing. The hearing officer may need to limit oral comments at the rulemaking hearing. Therefore, the Commission encourages the public to submit written comments by the deadline stated in the Order. Organized groups of individuals are urged to identify one spokesperson. Speakers are asked to be as concise as possible, and to avoid repeating comments made by others.

If members of the public desire to have the Commission review written material, such documents must be filed with the Commission by May 29, 2008.

PREHEARING CONFERENCE

A prehearing conference will be held on May 15, 2008, from 8:00 a.m. – 12:30 p.m. The conference will take place at the Division of Wildlife, Hunter Education Building, 6060 Broadway, Denver, Colorado, 80216. Attendance at the prehearing conference is mandatory for anyone requesting party status. Failure to participate in person will result in loss of party status, except for good cause as determined by the hearing officer.

The goals of the prehearing conference include: the identification of stipulations; the identification of contested matters and issues to be raised at the hearing; the identification of witnesses and exhibits to be presented by the parties and the staff; and, the formulation of a prehearing order for the rulemaking proceeding. The parties and the staff should make known at the prehearing conference any objections to the procedures or evidence that may be used at the hearing.

A second prehearing order will be prepared at the direction of the hearing officer based upon the prehearing conference. The order shall reflect any rulings made by the hearing officer with respect to procedures to be followed at the hearing, or any other matter. The order will specify the order of presentations and the time allotted for such

presentations, including a time limit for public comment. The second prehearing order will be posted on the Commission's website by May 19, 2008.

The hearing officer may make any necessary or appropriate procedural rulings including setting status conferences or additional prehearing conferences where attendance or participation will be mandatory; any party may appeal such rulings to the Commission at its next meeting, scheduled for May 22, 2008, by filing a written appeal with the Commission as soon as practicable. The hearing officer may also make procedural decisions, outside the prehearing conference, reflected in an order.

Where scheduling allows and it appears that an additional conference would be useful, a decision may be made at the prehearing conference to schedule an additional status conference prior to the hearing.

PREHEARING STATEMENTS AND ALTERNATE PROPOSALS

The Commission staff will file its prehearing statement and statement of basis and purpose on April 18, 2008, by posting it on the Commission website. Each party must file and serve, in the manner set forth in this order, a prehearing statement by May 9, 2008. Any party may also file an alternate proposal. Alternate proposals must be filed and served by May 9, 2008.

Each party's prehearing statement is limited to 15 pages excluding written testimony and exhibits. The prehearing statement is required to contain:

- (i) A cover document that contains an executive summary, in layperson's terms, of the staff's or the party's general position and the contents of the prehearing statement. The executive summary shall also summarize any voluminous exhibits and provide a reasonable estimate of the time necessary for presentation.
 - (ii) A specific statement of the factual and legal issues that arise from the rulemaking proposal, and what position is being taken on each such issue and the basis for that position.
 - (iii) A list of the issues to be resolved by the Commission during the hearing.
 - (iv) Copies of all exhibits to be introduced at the hearing.
- (A) Any exhibit included in the prehearing statement will be sent to the individual Commissioners for review prior to the hearing.
- (B) Where the nature of an exhibit is such that providing an electronic mailed copy or fifteen paper copies would be unduly burdensome, the prehearing statement shall describe the exhibit, indicate what evidence is reflected in the exhibit, and indicate that the exhibit shall be available for inspection with the Commission Offices, at the discretion of the hearing officer. Any such exhibit shall also be available for inspection at the prehearing conference and at the hearing. Such exhibit will not be mailed to the Commissioners prior to the hearing, but shall become part of the record of the hearing

absent an objection that is sustained by the hearing officer or the Commission. Parties must provide copies of such exhibits to Commission staff and other parties if requested.

(v) A list of witnesses to be called and a brief description of their testimony, including, where applicable, what exhibits they will discuss or rely upon.

(vi) All testimony to be offered into evidence at the hearing must be provided in writing. Written testimony must be affirmed by the witness. At the rulemaking hearing, witnesses will be asked to summarize their written testimony and respond to questions.

(vii) An alternate proposal must be within the scope of the notice of rulemaking filed by the Commission with the Secretary of State. An alternate proposal must include the text of the proposed rule and a proposed statement of basis and purpose.

REBUTTAL STATEMENTS

Any party and Commission staff may file and serve a rebuttal statement by May 29, 2008. Rebuttal statements are constrained to address topics raised in the prehearing statements of the parties or the staff, and are not to raise new issues or arguments. Rebuttal statements will include an executive summary document. Except for such rebuttal, the Commission does not intend to accept any documentation or exhibits submitted by any party or the staff after May 29, 2008.

ALTERNATE PROPOSALS OFFERED AFTER THE PREHEARING CONFERENCE

If parties and the staff are able to develop consensus positions which may emanate from discussions during or after the prehearing conference and prior to a final Commission action in the proceeding, such proposal may be filed with the Commission as a late alternate proposal until May 29, 2008. Any alternate regulatory language must be within the scope of the notice of rulemaking filed by the Commission and be filed and served as set forth in this order. The Commission, or the hearing officer, must grant leave to submit such alternate proposal for good cause shown, and may consider the timing of the proposal and the hearing, the complexity of the issues, and whether the parties and the staff are or expect to be in agreement on such alternate proposal, in granting or denying such leave.

MOTIONS

Prehearing motions must be filed with the Commission by May 9, 2008. These shall include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination prior to final agency action based on the record, or any matter that may reasonably be disposed of prior to receiving testimony or other evidence.

RULEMAKING HEARING

On May 22, 2008, the Commission will commence the rulemaking hearing. During this portion of the hearing, the Commission will review the proposed order from the

prehearing conference and will consider appeals from any party regarding procedural decisions. No testimony or comment will be taken, no exhibits will be admitted and no deliberations will occur concerning the proposed regulations.

The rulemaking hearing will be continued until June 23 – 27, 2008. During this portion of the hearing, the Commission will accept testimony and public comment, admit exhibits, and conduct deliberations concerning the proposed regulations.

Order of presentation

The prehearing order issued by the hearing officer following the prehearing conference will specify the order of presentations before the Commission and the time allotted for each presentation. Subject to the terms of the prehearing order, the rulemaking hearing generally will involve:

Opening the hearing and disposing of any procedural issues not resolved by the hearing officer, e.g., prehearing motions, remaining party status issues, late filings. The Commission at this time should entertain whether any apparent, potential, or actual conflicts of interest exist.

Presentation by the staff describing the background and basis for the proposed regulations or other matters specified in the prehearing order, or presentation of comments that are offered as staff for the benefit of the Commission, in the discretion of the Commission.

Entertain public comment on the proposed regulations.

Presentations by parties as specified in the prehearing order.

Rebuttal or closing statements as may be provided for in the prehearing order, or in the discretion of the Commission.

Role of the Commission Staff

The Commission staff shall act as staff to the Commission in any rulemaking hearing, and is not a formal party. In fulfilling its role as staff, the Commission staff may, among other things, present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, and make recommendations to the Commission.

Witness presentations

The Commission encourages the general public and party witnesses to make plain, brief and simple statements of their positions. Since written testimony is required prior to the hearing pursuant to the prehearing order, only an oral summary of that testimony should be provided at the hearing.

Cross-examination and objections

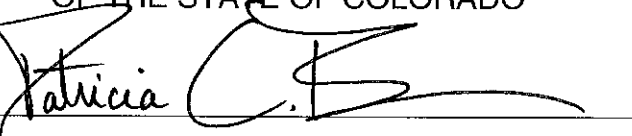
Where the Commission allows participation as a party, a party may make objections, and all witnesses shall be subject to cross-examination by or on behalf of persons who have party status. In all hearings, witnesses shall be subject to cross-examination by or on behalf of the Commission, and the Commission may allow its staff, or legal counsel for the Commission, to conduct cross-examination. Any witness whose oral and/or written testimony a party wishes to have as part of the record shall be available for cross-examination at the rulemaking hearing. Cross-examination time will be deducted from a party's total time allotment for presentation of its positions. Cross-examination should be utilized in a limited manner as it is not an effective mechanism for presenting information to the Commission. The presiding Commissioner may also limit cross-examination to promote an efficient and focused hearing.

Commission staff shall be subject to cross-examination by parties pertaining to its presentation of the proposed rules. Staff's presentation may include presentations by the staff of the Colorado Division of Wildlife and the Colorado Department of Public Health and Environment. CDOW and CDPHE staff shall be subject to cross-examination by parties related to their presentations.

ENTERED this 1st day of April, 2008

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By



Patricia C. Beaver, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
April 1, 2008