

**Title 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE**

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CHAPTER 5. RULES OF PRACTICE

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[Authority: Okla. Const. Art. IX, Section 18, 17 O.S. Section 40.1, 47 O.S. Section 162, and 52 O.S. Section 101]

[Source: Codified 12-31-91]

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PART 1. GENERAL**165:5-1-1. Purpose**

The purpose of this Chapter is to provide procedural rules to govern all proceedings coming before the Corporation Commission for disposition.

165:5-1-2. Scope

(a) The rules of this Chapter shall be known as the Oklahoma Corporation Commission Rules of Practice, and may be cited as OAC 165:5.

(b) The rules of this Chapter shall govern all proceedings before the Commission, any Oil and Gas Appellate Referee, any Administrative Law Judge, attorney, or other officer or employee of the Commission.

(c) The rules of this Chapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

[**Source:** Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96]

165:5-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Administrative Law Judge" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"Applicant" means any person commencing a proceeding.

"Application" means any written request by an applicant commencing a proceeding for Commission action or relief.

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Commission" means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

"Commissioner" means a member of the Commission.

"Complaint" means the written document that opens a cause and seeks enforcement of an order, rule, or regulation of the Commission or relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

"Confirmation of electronic filing" means the electronic confirmation generated by the Electronic Filing System.

"Document" means any written matter filed in a cause. A "document" includes any attached appendices.

"Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic Filing System" means the Commission's online filing system used to file documents with the Court Clerk in Commission proceedings.

"Electronic mail address" is the primary electronic mail address provided by the registered user. An electronic mail address must have the functionality required by the Electronic Filing System.

"Electronic signature" means a symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

"Filer" means a registered user whose user identification and password are used to file documents electronically.

"Intervenor" means any party of record who is not an applicant or named respondent.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which United States mail is not delivered.

"Official service list" means the list of designated recipients of electronically mailed documents regarding the Commission's Electronic Filing System.

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

"Order" means that which is required or commanded to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

"Party of record" means a person who makes formal appearance either in person or by an attorney at any stage of a cause whether or not seeking affirmative relief.

"Person" means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

"Protestant" means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

"Record" of any proceeding shall consist of the following:

- (A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;
- (B) Transcript of proceedings at all hearings;
- (C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;
- (D) Exhibits, together with attachments, appendices, and amendments thereto;
- (E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;
- (F) Exceptions and motions subsequent to the hearing;
- (G) Orders or rules of the Commission; and
- (H) Any other document or matter relevant to the issues ordered to be included by

the Commission.

"Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

"Register" or "registration" means the process for a person to request authority from the Commission to use the Electronic Filing System.

"Registered user" means a person who has applied for and been approved to use the Electronic Filing System.

"Regular mail" means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

"Respondent list" means a list of named persons against whom relief is sought in a proceeding, or persons who are entitled to receive a notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant". The "Respondent list" is distinguished from the Official service list as defined herein.

"Restricted mail" means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail outside the United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

"Secretary" means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence, inability, or disqualification of the Secretary to act.

"Staff counsel" means the General Counsel or other attorney on the staff of the General Counsel's Office when acting as counsel for the Commission.

"Technical failure" means a malfunction of Electronic Filing System hardware, software, and/or telecommunications facility which results in the inability of a registered user to file a document. It does not include the failure of a registered user's equipment, software, and/or telecommunications facility.

"Website" means the Commission website.

[Source: Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 26 Ok Reg 2493, eff 7-11-09; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001); Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma

73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office located at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** The Office of Administrative Proceedings shall develop and maintain a system for providing telephonic communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records may be viewed during regular office hours. Copies of public records may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office.

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** Every oil-and-gas-related document or order tendered to the Court Clerk shall be deposited with or mailed to the Court Clerk at a regional service office unless the Commission directs otherwise. All documents related to other matters shall be deposited with or mailed to the Court Clerk at the Commission's principal office unless the Commission directs otherwise. All persons mailing or presenting documents, including orders, to the Court Clerk or Office of Administrative Proceedings shall enclose a self-addressed postage paid envelope large enough for the return of a file-stamped or processed copy, provided that a document other than a proposed order may be hand-delivered to the Court Clerk during normal business hours without such an envelope so long as a file-stamped copy of the document is immediately obtained by the presenter. Failure to enclose a self-addressed postage paid envelope will result in a file-stamped or processed document not being returned. No document will be mailed to anyone who obtains an immediate file-stamped copy. All documents shall be deemed received upon the date file-stamped by the Court Clerk, subject to the provisions of 165:5-1-5(f). Filing of any document shall not be complete except upon payment of all

applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

[**Source:** Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2099, eff 7-11-10]

165:5-1-4.1. Open records requests

(a) Records available to the public pursuant to the Oklahoma Open Records Act, 51 O.S. § 24A.1 et seq., may be obtained by directing written requests for records to the respective division directors or their designated appointees. This Section does not apply to records specifically required by the Commission to be kept confidential, including records subject to proprietary agreements, confidentiality orders and sealed exhibits. Charges for copies and research of such records shall be in accordance with OAC 165:5-3-1 and the Open Records Act, 51 O.S. § 24A.5(3).

(b) Any records, reports or information obtained pursuant to the Oklahoma Storage Tank Regulation Act and/or OAC 165:15, 165:16, 165:25, 165:26, 165:27, 165:28 and 165:29 shall be available to the public unless a showing satisfactory to the Commission by any person that the records, reports or information, or a particular part thereof, if made public would divulge production of sales figures, methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such record, report or information or particular portion thereof.

[**Source:** Added at 12 Ok Reg 2005, eff 7-1-95; Amended at 16 Ok Reg 829, eff 3-30-98 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2100, eff 7-11-10]

165:5-1-5. Filing of documents

(a) **Document form.** Electronic filing is the Commission's preferred filing method. All persons filing documents with the Court Clerk are encouraged to file electronically to the greatest extent possible. Documents filed with the Court Clerk in paper format may be printed, typewritten or reproduced by any legible method. All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. Exact duplicates of any allowed documents must be filed in sections on 8 1/2" X 11" paper to allow for digital processing by the Court Clerk. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed documents must have a continuous pagination for the entire document, including exhibits and attachments. The original application shall include all this information, except the docket number, on each page.

(b) **Filing refused.** The Court Clerk is authorized to refuse to accept for filing any

document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such refusal, upon request, the document shall be presented to the Commission for ruling on acceptability for filing.

(c) **Required information.** The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, facsimile number and electronic mail address, if any. A registered user must provide an electronic mail address at the time the registered user files his or her entry of appearance or other initial filing. All documents, except notices of hearing, signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

(d) **Requirement conflicts.** Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.

(e) **Informal communications.** Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.

(f) **Facsimile transfers.** The Court Clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of appropriate filing fee and submission of a proper original and requisite copies within five (5) calendar days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a). New applications must be transferred and completed prior to 4:00 p.m. of each business day. A facsimile shall be deemed filed on date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within five (5) calendar days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will be destroyed and the original documents will not be deemed timely filed.

[**Source:** Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2100, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-6. Time computations and extensions; effective date

(a) **Computation of time.** In computing any period of time prescribed by statute, by the rules of this Chapter, or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall be omitted and the last day of the designated period shall be included, unless the last day falls on a Saturday, Sunday, or legal holiday or official agency closing, in which case the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday or official agency closing.

(b) **Extension of time.** Whenever an act is by the rules of this Chapter or by order of the Commission required or allowed to be done at or within a specified time, the

Commission may, in its discretion upon its own motion or upon motion of any person, after notice and hearing, order the period extended if the order therefore is made prior to expiration of the period originally prescribed or as extended by previous order. Statutory time limits can not be extended by the Commission.

(c) **Effective date of orders.** Every order of the Commission issues and is effective, unless an effective date is otherwise stated in the order, the date such order is signed by the Commissioners or by the Secretary upon approval of the Commissioners. Every order shall contain the language: "Done and performed this ____ day of ____". Periods of time prescribed by the order, or by statute, or by the rules of this Chapter shall run from the "Done and performed" date.

[**Source:** Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 33 Ok Reg 588, eff 8-25-16 (RM 201600002)]

165:5-1-7. Procedure for adoption of rules

(a) The Commission shall comply with all applicable provisions of the Administrative Procedures Act ("APA"), 75 O.S. §250 et seq., and Article IX of the Oklahoma Constitution.

(b) In addition to the statutory requirements of the APA, notice of proposed rulemaking action shall be published one time at least thirty (30) days prior to public hearing in a newspaper of general circulation published in Oklahoma County. If, however, the Commission finds that a rule is necessary as an emergency measure, the Commission may promulgate, pursuant to applicable provisions of the APA, any such rule without notice and hearing.

[**Source:** Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 16 Ok Reg 829, eff 3-30-98 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 21 Ok Reg 2015, eff 7-01-04; Amended at 23 Ok Reg 2226; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-1-8. Place of hearing

(a) General.

(1) The Commission may set a cause for hearing anywhere in the State.

(2) Unless otherwise ordered, all hearings in a cause shall be held at the regional service office where the cause is set for hearing on the merits.

(b) **For non-oil and gas dockets.** Unless otherwise ordered by the Commission, all causes except matters on the CD, PD, and oil and gas related EN dockets shall be set for hearing in Oklahoma City.

(c) For CD, PD, and oil and gas related EN dockets.

(1) All hearings on any oil and gas application including but not limited to appellate hearings shall be held in the regional service office where the application is filed. In the case of a protested application where a protestant objects to venue on the basis that the holding of the hearing in a certain regional service office would not be at the convenience of any respondent having standing to protest by statute or rule of the

Commission, the Commission shall permit such protesting respondent to present testimony by telephone in the other regional service office or any other approved location.

(2) Requests to change the place of a hearing may be made by motion, notice of protest or written response filed with the Court Clerk not less than five (5) days before the scheduled hearing. Applicant's reply to a request to change venue shall be governed by OAC 165:5-9-2. Disposition of requests to change the hearing location may be decided upon documents submitted unless oral arguments are ordered by the Commission.

(3) Failure to timely object to the location of a hearing may be deemed a waiver of the objection. However, the Commission may grant leave to file or otherwise make the objection out of time. Excusable neglect, inexperience with the Commission rules, or other good cause shown shall be grounds for granting such leave.

165:5-1-9. Telephonic testimony

(a) In an unopposed hearing, testimony may be offered by telephone, unless the Commission or Administrative Law Judge determines that the presence of the witnesses in the courtroom is necessary for the effective and efficient presentation of evidence.

(b) In a protested hearing, testimony may be offered by telephone with the consent of all parties of record and the Commission or Administrative Law Judge. It shall be the responsibility of the proponent of telephonic testimony to obtain the required consent before the hearing. No continuance shall be granted for failure to obtain the required consent.

(c) The cost of telephonic communication shall be paid by the party requesting its use.

(d) Each witness testifying by telephone shall be required to sign an affidavit verifying the witness' identity. Said affidavit shall be filed in the cause prior to the issuance of an order. A copy of the filed affidavit shall be submitted to the Commission or Administrative Law Judge. Appendix "J" to this Chapter contains a sample affidavit.

(e) If an interested party intends to participate in the hearing by telephone, said party shall so notify the Applicant, prior to the hearing date.

(f) Applicant or applicant's attorney shall be responsible for announcing at docket call those parties who plan to testify or otherwise participate by telephone.

[**Source:** Added at 11 Ok Reg 4623, eff 9-4-94 (emergency); Added at 12 Ok Reg 2005, eff 7-1-95; Amended at 19 Ok Reg 1941, eff 7-1-02]

165:5-1-10. Out of State Attorneys

An attorney who is not a member of the Oklahoma Bar Association shall comply with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes, prior to appearing before the Oklahoma Corporation Commission.

[**Source:** Added at 22 Ok Reg 488, eff 1-10-04 (emergency); Added at 22 Ok Reg 1730, eff 7-1-05; Amended at 27 Ok Reg 2100, eff 7-11-10]

PART 2. ELECTRONIC FILING OF DOCUMENTS

165:5-1-11. Scope

(a) All documents submitted electronically to the Court Clerk for filing in a proceeding shall conform to the rules and procedures for electronic filing. Any filing not conforming to the rules and procedures for electronic filing may be rejected by the Court Clerk.

(b) Users of the Electronic Filing System shall comply with all applicable instructions, registration requirements, and the user agreement for electronic filing appearing on the Commission's website.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-12. Time of filing

Documents can be electronically filed with the Court Clerk 24 hours a day, seven days a week. Filing a document electronically does not, however, alter the filing deadline for that document. If the Commission or Administrative Law Judge has ordered a document to be filed with the Court Clerk by a time certain, it must be filed by that time. Otherwise, a filing must be completed before midnight Central time on the date it is due to be considered timely filed. The official filing time is the filing time indicated on the confirmation of electronic filing.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-12.1. Acceptance of filing

(a) A document shall not be considered to be electronically filed until submitted to the Court Clerk via the Electronic Filing System and a confirmation of electronic filing is generated by the Electronic Filing System.

(b) Risk of loss of transmission, of non-receipt, or of illegibility is borne by the person transmitting and filing documents electronically.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-13. Technical failures

(a) The criteria for declaring a technical failure of the Electronic Filing System shall be posted on the Commission's website.

(b) A filer whose filing is made untimely as the result of a technical failure of the Electronic Filing System may seek appropriate relief from the Commission. Failures not originating with the Electronic Filing System, such as phone line problems, problems with the filer's Internet service provider, or hardware or software problems, will not constitute a technical failure or excuse an untimely filing. The Commission may grant

appropriate relief regarding an untimely filed document.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-13.1. Correction of electronic filings

A filer cannot make changes to a document after the document has been electronically filed. If a filing error is made, the filer shall contact the Court Clerk as soon as possible with the correct document or filing information, as appropriate.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-14. Signatures on electronically filed documents

(a) Electronic signatures are required on all documents filed electronically. By use of an electronic signature, the person represents that all requirements of the applicable authority requiring the person's signature have been satisfied and all duties and obligations imposed by law have been fulfilled.

(b) An electronic signature placed on a document is deemed to constitute a signature on the document for purposes of all signature requirements imposed and or/any other applicable law. An electronic signature placed on a document shall have the same force and effect as a handwritten signature.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-14.1. Official service list

(a) Each document filed electronically in any proceeding shall clearly state the name, title, address, telephone number, facsimile transmission number (if any), and electronic mail address (if any) of the individual(s) to whom pleadings, notices, and correspondence are to be addressed and who are to be shown on the official service list. The electronic mail address, if any, shall be the address for the official service list. The official service list is not the respondent list and the filer is responsible for designating and updating the electronic mail addresses for the official service list.

(b) Unless otherwise ordered by the Commission, each filer shall be allowed to designate individuals to be included on the official service list for an application.

(c) A filer may change the individual(s) to be shown on the official service list by filing a notice of addition, deletion, or substitution. Each party of record is responsible for ensuring its contact information is current and accurate.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-1-14.2. Documents subject to protective order

Unredacted documents which contain materials subject to a protective order shall not be filed electronically, but rather submitted in person or by mail to the Court Clerk

until such time as the user agreement maintained on the Commission's website expressly allows the electronic filing of documents subject to a protective order.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

PART 3. REVIEW OF ENVIRONMENTAL PERMIT APPLICATIONS

165:5-1-15. Definitions

As used in this Part, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise:

"Administratively complete" means an application that contains the information specified in the application form and rules in sufficient detail to allow the Division to begin technical review.

"Application" means a document prepared in accordance with the rules and the forms and instructions provided by the respective Division and submitted with the expectation of providing that information necessary for review and determination of the permit. The application consists of the initial submittal and all supplements.

"Division" means any operating Division of the Commission that issues environmental permits if such permits are not issued through an individual proceeding.

"Environmental permit" means any permit issued by the Oil and Gas Division, Petroleum Storage Tank Division, and Transportation Division, or their successors, that directly regulates the potential introduction of pollutants into the environment. Permits requiring an individual proceeding are not included in this definition.

"Supplement" means a response to a request for additional information following completeness and technical reviews, and information submitted voluntarily by the applicant.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93 Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99]

165:5-1-16. Review period

Applications for environmental permits shall be either granted or denied within sixty (60) days of receipt of an administratively complete application by the Division responsible for such issuance.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93]

165:5-1-17. Application submittal

Each Division shall make available to the public, for each type of environmental permit required, permit application forms and instructions that clearly delineate the information necessary for a permit application to be deemed administratively complete.

Upon determining that an application is not administratively complete, the Division shall immediately notify the applicant by mail and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Upon such notification, and until receipt of the supplemental information requested, the sixty (60) day environmental permit review period shall be suspended.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93]

165:5-1-18. Extension of review period

The 60-day administrative review period set forth in 165:5-1-16 may be extended:

(1) By written agreement with the applicant pending submission of Division requested supplemental information deemed necessary for adequate Division review.

(2) If circumstances beyond the Division's control prevents it from reaching a determination within sixty (60) days. The applicant shall be notified in writing of the reasons for delay and of the anticipated date of review completion.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93]

165:5-1-19. Withdrawal of application

If the applicant fails to provide the Division requested supplemental information within six (6) months of the request, the application shall be considered withdrawn unless the time is extended by written request for good cause shown.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93]

PART 5. RESPONSE TO CITIZEN ENVIRONMENTAL COMPLAINTS

165:5-1-25. Definitions

The following words or terms, as used in this Part, shall have the following meaning unless the context clearly indicates otherwise:

"Pollution complaint" means any communication, whether verbal or written, from any person not acting within the scope of employment of an environmental regulatory agency, which alleges that any site specific pollution has occurred or is imminent, or that a site specific pollution control law or rule has been violated, and for which the complainant expects action to be taken by an environmental regulatory agency. The term "pollution complaint" as used in this Part shall include anonymous pollution complaints, although the requirements of this Part regarding written or telephonic reply to the complainant shall not apply.

"**Site specific**" means limited in geographical extent to a specific well site, service yard, section of pipe, disposal or other pit, petroleum storage tank, or other such site or facility and its immediate surroundings; or originating from an identifiable and definite source at a specific well site, service yard, section of pipe, disposal or other pit, petroleum storage tank, or other such site or facility.

[**Source:** Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 16 Ok Reg 829, eff 3-30-98 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 33 Ok Reg 588, eff 8-25-16 (RM 201600002)]

165:5-1-26. Receipt of pollution complaints

(a) Any pollution complaint received by the Commission or any of its Divisions, including any regional or district offices, shall be recorded immediately upon receipt in such format as the Commission may designate.

(b) A written acknowledgement of pollution complaint receipt will be sent to the complainant, alleged violator, and other relevant parties, if known, within two (2) business days following receipt of the pollution complaint and shall provide the status of the pollution complaint at that time.

[**Source:** Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-1-27. Review of pollution complaints

(a) The appropriate Divisions of the Commission shall immediately review each pollution complaint and immediately, in writing, refer any pollution complaint concerning a site or facility permitted by or clearly within the jurisdiction of another state or federal environmental agency, to that agency or agencies for resolution.

(b) Pollution complaints that are not referred shall be reasonably and sufficiently investigated, which may include on site inspection, to determine whether or not a response action or actions should be initiated by the Commission.

[**Source:** Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93]

165:5-1-28. Closure

Pollution complaints referred to other agencies, pollution complaints that involve issues not within the Commission's jurisdiction, and pollution complaints that involve issues for which an adequate remedy has already been implemented to the extent possible shall be closed in writing and a copy of the referral or other closure document shall be sent to the complainant, alleged violator, and other relevant parties, if known, within seven (7) days of closure.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93]

165:5-1-29. Pollution complaint resolution

(a) All pollution complaints received by the Commission that are not closed pursuant to 165:5-1-28, and that involve issues over which the Commission has jurisdiction, shall be handled in such manner as to ensure that pollution complaint resolution shall be achieved within 180 days of receipt of the pollution complaint.

(b) Pollution complaint resolution is not achieved until a written determination is made by the Commission, or any duly authorized representative of the Commission, that:

(1) the facts and circumstances of a pollution complaint do not constitute a violation of law or rule within the Commission's jurisdiction; or

(2) the facts and circumstances of a pollution complaint constitute a violation of law or rule within the Commission's jurisdiction but for which an adequate remedy including abatement and mitigation of pollution or appropriate punishment has been implemented to the extent possible; or

(3) the facts and circumstances of a pollution complaint constitute a violation of law or rule within the Commission's jurisdiction and for which an individual proceeding has been initiated before the Commission, an Administrative Law Judge of the Commission, or before a court of competent authority; or

(4) a long term site remediation has been initiated that is expected to take longer than 180 days from receipt of the pollution complaint to complete, and such remediation is being performed pursuant to an administrative or judicial order.

(c) A copy of the written determination shall be sent, within seven (7) days of its preparation, to the complainant, alleged violator, and other relevant parties, if known.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93]

165:5-1-30. Reporting

(a) All pollution complaints as defined in this Part shall be summarized monthly and the previous month's summary reported to the Conservation Commission as required by 27A O.S. § 3-2-107. When a pollution complaint has been resolved as provided in this Part, it shall be reported to the Conservation Commission as resolved and removed from all subsequent monthly reports.

(b) All final judicial decisions regarding pollution complaints will be conveyed to the complainant, alleged violator, and other relevant parties, if known, within seven (7) days of Commission knowledge of the decision and shall also be reported to the Oklahoma Conservation Commission.

(c) All remediations completed in accordance with an administrative or judicial order shall be summarized in writing, including a description of the final outcome and the results of any required final environmental analyses performed on site, and a copy of the summary conveyed to the complainant, alleged violator, and other relevant parties,

if known. The completion of the remediation shall also be reported to the Conservation Commission.

[**Source:** Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 19 Ok Reg 1941, eff 7-1-02]

SUBCHAPTER 3. FEES

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PART 4. ASSESSMENTS ON UNREGULATED ENTITIES

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PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) General.

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:5-

3-31, Use of vacuum.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(H) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. For documents that are being filed in paper form, all associated filing fees must be paid and the documents submitted to the Court Clerk's Office for filing prior to 4:00 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - \$1,000.00

(B) Commercial earthen pit application - \$1,000.00

(C) Commercial soil farming site application - \$1,000.00

(D) Commercial recycling facility application - \$1,000.00

(E) Conservation docket and pollution docket base applications - \$100.00

(F) Permit to drill - \$175.00

(G) Emergency walk-thru permit to drill - \$500.00

(H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant

(I) Permit for one-time land application of water based fluids - \$100.00

(J) Emergency walk-through of permit for one-time land application water based fluids - \$200.00

(K) Application for non-commercial injection or disposal well - \$100.00

(L) Emergency application on the conservation or pollution docket - \$100.00

(M) Tax exemption application filed pursuant to OAC 165:10-21 - \$100.00

(N) Transfers of well operatorship - Forms 1073 and 1073I – single well - \$25.00

(O) Transfers of well operatorship - Forms 1073IMW and 1073MW – multiple

- wells - \$250.00
(P) Notification of intent to plug – Form 1001 - \$100.00
- (2) **Transportation fees.**
- (A) Transportation docket application - \$100.00
(B) Other transportation fees:
- (i) Intrastate license and certificate fees.
(I) Original application filing fee - \$100.00
(II) Sub application filing fee - \$100.00
(III) Renewal application filing fee - \$50.00
(IV) Reinstatement application filing fee - \$100.00
(V) Name change application filing fee - \$50.00
(VI) Identification device or per vehicle fee - \$7.00
- (ii) Deleterious Substance License Permit application filing fee - \$350.00
- (iii) International Fuel Tax Agreement (IFTA) fees.
(I) IFTA decal - \$2.00 per vehicle per decal set
(II) IFTA reinstatement fee - \$100.00
- (iv) Trailer registration processing fee per trailer registered through the IRP System - \$2.00
- (v) Temporary registration and fuel permit fees.
(I) Temporary registration (72 hour trip permit) - \$12.00
(II) Temporary fuel permit (120 hours) - \$25.00
(III) Unladen or hunters permit (45 days) - \$25.00
- (vi) Harvest permit fees (power units only).
(I) Thirty day permit - \$20.00 per axle
(II) Sixty day permit - \$35.00 per axle
(III) 15 day extension - \$8.75 per axle
- (vii) Transportation Network Company annual permit fee - \$5,000.00
- (3) **Utility fee.** Public utility docket application - \$100.00
- (4) **Enforcement fee.** Enforcement docket application - \$100.00
- (c) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in (d) of this Section.
- (d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:
- (1) Certificate of non-development (maximum of one quarter section) - \$10.00
(2) Copies of any file or order -
(A) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
(B) Postage – actual cost
(3) Microfilmed images from coin-operated microfilm reader (coin box) - \$0.25
(4) Batch reproduction on continuing basis (per page) - \$0.25
(5) Copy of any document prepared in OCC offices (per page) - \$0.25
(6) Copy of any Chapter of Commission rules and regulations - \$10.00
(7) Copy of Oil and Gas Conservation rules - \$20.00
(8) Current ownership/lienholder information - \$1.00 per vehicle record page
(9) Computer generated title history - \$5.00 per vehicle
(10) Manual title history - \$7.50 per vehicle

- (11) Copy of lien release - \$7.50 per vehicle
- (12) Certified copy of lien release - \$10.00 per vehicle
- (13) Certified copy of title history - \$10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page.

(h) **Payments by Credit Card and other means of electronic funds transfer.**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(6) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

[**Source:** Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 3559, eff 7-12-93; Amended at 11 Ok Reg 3679, eff 7-11-94; Amended at 12 Ok Reg 1003, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2013, eff 7-1-95; Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 13 Ok Reg 2367, eff 7-1-96; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 15 Ok Reg 2939, eff 3-30-98 (emergency); Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 17 Ok Reg 596, eff 12-16-99 (emergency); Amended at 17 Ok Reg 1853, eff 7-1-00; Amended at 23 Ok Reg 2226-7, eff. 7-1-06; Amended at 24 Ok Reg 1781, eff 7-1-07; Amended at 25 Ok Reg. 2181, eff 7-11-08; Amended at 26 Ok Reg 2409, eff 7-11-09; Amended at 29 Ok Reg 947, eff 7-1-12; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001); Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002); Amended at 33 Ok Reg 588, eff 8-25-16 (RM 201600002)]

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) General.

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, money orders, credit cards and other means of electronic funds transfer. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission – Petroleum Storage Tank Division" and will

be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(4) Payments by credit card and other means of electronic funds transfers.

(A) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(B) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(C) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(i) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(ii) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(D) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(E) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(F) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(G) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(H) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(I) "State" means any State, territory, or possession of the United States, the

District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(b) **Fees.**

(1) **Application fee.** The amount of fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is \$100.00.

(2) **Annual fee.** An annual storage tank permit fee shall be charged to all owners of regulated petroleum storage tanks for each storage tank currently in use as follows:

(A) For petroleum storage tanks - \$25.00 per tank.

(B) For noncommercial agricultural underground storage tanks containing petroleum products - \$10.00 per tank.

(C) For any facility installed or permanently abandoned during a calendar year, the full yearly fee shall be assessed.

(D) Billings will be mailed out approximately 60 days in advance of the due date as noted on the billing.

(3) **UST Installer licensing fee.** Any individual who is to be licensed as an underground storage tank installer shall pay the following fees:

(A) Application fee - \$25.00

(B) Examination fee/re-exam fee - \$25.00

(C) License fee (2-Year license) - \$50.00

(D) License renewal fee (2-year license) - \$50.00

(E) If licensed for six months or less - \$25.00

(4) **Remediation Consultant License.** Any individual who qualifies as a Remediation Consultant shall pay the following fees:

(A) Application fee - \$25.00

(B) Examination/re-exam fee - \$25.00

(C) License fee (2-year license) - \$50.00

(D) License renewal fee (2-year license) \$50.00

(E) If licensed for six months or less - \$25.00

(5) **UST Remover licensing fee.** Any individual who is to be licensed as an underground storage tank remover shall pay the following fees:

(A) Application fee - \$25.00

(B) Examination fee/re-exam fee - \$25.00

(C) License fee (2-Year license) - \$50.00

(D) License renewal fee (2-year license) - \$50.00

(E) If licensed for six months or less - \$25.00

(6) **AST Installer licensing fee.** Any individual who is to be licensed as an aboveground storage tank installer shall pay the following fees:

(A) Application fee - \$25.00

(B) Examination fee/re-exam fee - \$25.00

(C) License fee (2-Year license) - \$50.00

(D) License renewal fee (2-year license) - \$50.00

(E) If licensed for six months or less - \$25.00

(7) **Vapor Monitoring Well Technician licensing fee.** Any individual who is to be licensed as a monitoring technician shall pay the following fees:

(A) Application fee - \$25.00

(B) Examination fee/re-exam fee - \$25.00

- (C) License fee (2-Year license) - \$50.00
- (D) License renewal fee (2-year license) - \$50.00
- (E) If licensed for six months or less - \$25.00

(8) **Miscellaneous fees.**

(A) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

- (i) Batch reproduction on continuing basis (per page) - \$0.25
- (ii) Copy of any document prepared in OCC offices (per page) - \$0.25
- (iii) Copies of any file or order –
 - (I) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
 - (II) Postage – actual cost

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

(9) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus

(A) Assess payment of a penalty of 50% of the computed total fee of that application or facility; and/or

(B) Suspend tank operation until payment of any fee or penalty assessed under this subsection.

[**Source:** Added at 16 Ok Reg 829, eff 3-30-98 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99; Amended at 21 Ok Reg 2015, eff 7-1-04; Amended at 27 Ok Reg 2101, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001); Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

PART 3. PUBLIC UTILITY ASSESSMENT FEES

165:5-3-20. Purpose

The purpose of this Part is to assess, pursuant to 17 Okl.St. Ann. §180.11, a fee upon each public utility to provide the level of funding established by the legislature for the Corporation Commission Public Utility Division for the regulation of Oklahoma public utilities.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94]

165:5-3-21. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Director" means the Director of the Public Utility Division of the Oklahoma Corporation Commission.

"Filing tariffs with the Commission" means submission of the tariffs to the Director.

"Fiscal year" means the period beginning July 1 and ending June 30 of each year.

"Public utility" means:

(A) Those companies as defined by 17 O.S. §151, excluding those companies encompassed by paragraph (d) of Section 151.

(B) Any telephone or telecommunications company subject to 17 O.S. §131 et seq., including interexchange telecommunications companies as defined by 165:55-1-4, resellers as defined by 165:56, operator service providers as defined by 165:57, and pay phone service providers as defined by 165:58.

(C) Any association or cooperative corporation doing business under the Rural Electric Cooperative Act except for generation and transmission associations or cooperative corporations, or transmission associations or cooperative corporations.

"Regulated Oklahoma jurisdictional gross operating revenues" means those revenues which are recorded in the accounts of the public utility, resulting from sales of commodities or services provided to Regulated Oklahoma Jurisdictional Customers. For telecommunications companies this shall include, but should not be limited to, revenues received for intrastate services from all Oklahoma and Federal universal service and low income funds for regulated and non-regulated services, revenues received from the Oklahoma Universal Service Fund for Special Universal Services, revenues received from the Oklahoma Universal Service Fund for Primary Universal Services, and revenues received from the Oklahoma Lifeline Fund and Federal Lifeline support received pursuant to 47 CFR Subpart E. The inclusion of revenues described in the previous sentence as Regulated Oklahoma jurisdictional gross operating revenues shall be for the limited purpose of the calculation of allocations for payment into the Public Utility Assessment Fee according to this Part 3 of Subchapter 3 of OAC 165:5 and shall not be construed as affecting the jurisdictional nature of the funds as

determined by the telecommunications companies in accordance with 47 CFR Parts 32 and 36 for separations purposes or other purposes such as determining jurisdictional tax liability.

"Regulated Oklahoma Jurisdictional Customers" means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision, or the United States or the State of Oklahoma, receiving utility service from a public utility pursuant to rates and charges established by, or filed with the Commission and recipients of Special Universal Services as defined in 17 O.S. §139.102.

"Special Universal Services" means the same as is defined in 17 O.S. §139.102.

[**Source:** Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 19 Ok Reg 1941, eff 7-1-02; Amended at 30 Ok Reg 1033, eff 7-1-2013 (RM 201300002); Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-3-22. Fee allocation

(a) Pursuant to 17 O.S. §180.11, an annual fee shall be assessed as follows:

(1) The assessment shall, after excluding the amount allocated to the interexchange telecommunications companies, resellers, pay phone service providers and operator service providers in paragraph (2) of this subsection, be borne by the affected public utilities as follows:

(A) One-half shall be allocated based on that proportion which the total Regulated Oklahoma jurisdictional gross operating revenues of each public utility bears to the total Regulated Oklahoma jurisdictional gross operating revenues of all public utilities; and

(B) One-half shall be allocated based on that proportion which the total number of Regulated Oklahoma Jurisdictional Customers of each public utility bears to the total number of Regulated Oklahoma Jurisdictional Customers of all public utilities.

(2) For interexchange telecommunications companies, resellers, pay phone service providers and operator service providers, the allocation shall be based on the proportion that each interexchange telecommunications company's, reseller's, pay phone service provider's, and operator service provider's total Regulated Oklahoma jurisdictional gross operating revenues bears to the total Regulated Oklahoma jurisdictional gross operating revenues of all public utilities.

(b) The fees assessed pursuant to this Section shall be on a fiscal year basis and shall equal the amount of the budgetary limit for the Public Utility Division established by the legislature for said fiscal year.

(c) After final legislative and gubernatorial approval of the budgetary limit for the Public Utility Division, notice of the annual assessed amount pursuant to (a)(1) and (2) of this Section shall be sent by electronic mail or certified mail, return receipt requested, to each public utility.

[**Source:** Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 18 Ok Reg

2369, eff 7-1-01; Amended at 30 Ok Reg 1033, eff 7-1-2013 (RM 201300002); Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-3-23. (Reserved)

[**Source:** Reserved at 10 Ok Reg 4517, eff 9-1-93 (emergency); Reserved at 11 Ok Reg 3681, eff 7-11-94]

165:5-3-24. Payment of assessments

(a) Each public utility shall pay an assessment in equal amounts on a quarterly basis. For each fiscal year, the first quarterly payment shall be due no later than thirty (30) days from the mailing date of the notice provided by 165:5-3-22(c). Subsequent payments will be due as follows:

- (1) Second quarterly payment due no later than October 1.
- (2) Third quarterly payment due no later than January 1.
- (3) Fourth quarterly payment due no later than April 1.

(b) A public utility may, at its discretion, pay its annual assessment prior to the due date of the quarterly payments.

[**Source:** Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 27 Ok Reg 2102, eff 7-11-10]

165:5-3-25. Reporting requirement

(a) On or before April 1 of each year, each affected public utility shall submit to the Director a report based on the preceding calendar year containing the following data:

- (1) Prior calendar year end Regulated Oklahoma Jurisdictional Customers.
- (2) Total prior calendar year Regulated Oklahoma jurisdictional gross operating revenues.

(b) The reporting requirement set forth in (a)(1) of this Section does not apply to interexchange telecommunication companies.

[**Source:** Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 30 Ok Reg 1033, eff 7-1-2013 (RM 201300002); Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-3-26. Failure to comply

Any public utility which fails or refuses to file the report required by 165:5-3-25 or pay the required assessment within the time and in the manner prescribed by 165:5-3-24 shall be deemed delinquent and may be assessed such fines and penalties as are permitted by Article 9, Section 19 of the Oklahoma Constitution.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94]

165:5-3-27. Fee recovery

(a) Each public utility may recover amounts assessed pursuant to 165:5-3-22(a) by filing tariffs with the Commission and after approval of said tariffs by the Director. Tariffs recovering amounts assessed must meet the following conditions:

- (1) Distribute the recovery equally per customer bill rendered or access line.
- (2) Distribute recovery over the fiscal year for which the assessment is levied.
- (3) Include a provision to true-up any over or under recovery by the public utility of assessed amounts by no later than the end of the following fiscal year.

(b) No public utility may recover any portion of the penalty assessed pursuant to 165:5-3-26, above the amount of fees actually due for the assessed period.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94]

PART 4. ASSESSMENTS ON UNREGULATED ENTITIES

165:5-3-30. Purpose

The purpose of this Part is to assess, pursuant to Section 45 of Senate Bill 575 (1993), a fee in public utility docket causes filed by Unregulated entities, to assist in providing funding to the Public Utility Regulation Revolving Fund.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-3-31. Definitions

The following words and terms, when used in this Part, shall have the following meaning unless the context clearly indicates otherwise:

"**Unregulated entity**" means any person, firm or corporation which is not a public utility as defined in Title 17 O.S. §180.11.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-3-32. Commission determination of assessment

(a) In causes on the Public Utility Docket where the cause was filed by an Unregulated entity, fees may be assessed to the Unregulated entity upon a motion of the Staff of the Public Utility Division made within ninety (90) days after the cause is filed. Notice of the hearing on the motion shall be given to all parties of record in the cause pursuant to Commission rules; provided, however, the final amount of assessment on the

Unregulated entity shall be made within sixty (60) days following the issuance of the final order in the cause, or if a final order is not issued then upon conclusion of the cause whether it be by dismissal or otherwise. If an Unregulated entity makes a material change in its application or adds a separate cause after 90 days, the Commission may make an additional assessment.

(b) In considering whether or not to assess fees to the Unregulated entity, the Commission shall consider, although not be limited to, the following factors:

(1) The benefit(s) to the Unregulated entity if the relief requested by the Unregulated entity is granted.

(2) The benefit(s) to the State of Oklahoma if the relief requested by the Unregulated entity is granted.

(3) The public interest.

(4) Compliance with any other state or federal law under which this Commission has jurisdiction.

(5) Whether the Unregulated entity is a consumer group filing a case on behalf of themselves as consumer/members and the composition of the consumer group.

(c) The Commission shall make a determination of the estimated costs which will be incurred by the Commission for Commission resources and/or consulting services, that are required to process an application.

(d) In the event the actual costs of the Commission are less than the assessed amount, the difference will be refunded to the Unregulated entity.

(e) The Commission shall issue an order which shall include the following:

(1) Whether or not the Unregulated entity will be assessed a fee.

(2) The amount of the fee to be assessed, which shall be no greater than the estimated amount, and which shall not be subject to modification, regardless of the cause being delayed or to which exceptions are filed, except as provided in 165:5-3-32(a).

(3) The date the payment shall be paid.

(f) All Unregulated entities who in their capacity as customers of a regulated utility file a complaint with the Commission seeking compliance with existing Commission rules and regulations and/or Commission approved tariffs shall not be assessed fees beyond the filing fee set forth in 165:5-3-1.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 27 Ok Reg 2102, eff 7-11-10; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-3-33. Option to withdraw application

If the Commission orders that a fee be assessed, the Unregulated entity shall have the option of proceeding with the cause or withdrawing its application. If the Unregulated entity withdraws its application, no assessment beyond the filing fees set forth in 165:5-3-1 shall be required.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-3-34. Payment of assessment

Failure by an Unregulated entity to pay an assessed fee by or on the date ordered by the Commission shall either result in denial of the relief requested by the Unregulated entity without prejudice, after notice and hearing, or postponement of the procedural schedule as directed by the Commission.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

SUBCHAPTER 5. DOCKETS

Section

165:5-5-1. Dockets; identifying initials

165:5-5-1. Dockets; identifying initials

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:

(1) General Docket (GD), which shall consist of causes not coming within the purview of any other docket listed below.

(2) Conservation Docket (CD), which shall consist of causes to prevent waste and protect or adjust the correlative rights of parties owning interests in the common source of supply or unitized management of a common source of supply including, but not limited to, spacing, increased density, location exception, pooling and unitization.

(3) Consumer Services Docket (CS), which shall consist of causes initiated by (A) the Director of the Consumer Services Division against a retail public utility or (B) a customer against the customer's regulated utility provider of telecommunications, electricity, natural gas, water, steam or other regulated service of a public utility seeking to require the utility to abide by approved tariffs, state statutes, Commission rules, or Commission orders. Public utility includes public utilities and telecommunications carriers as defined by 17 Okla. Stat. §§ 41, 139.102 and 151.

(4) Enforcement Docket (EN), which shall consist of causes initiated by the Commission or any of its directors, the Attorney General of Oklahoma, or other affected parties to find parties in contempt of Commission rules or to require compliance of parties with applicable statutes, rules, and Commission orders.

(5) Gas Gathering Docket (GG), which shall consist of causes initiated for determination of reasonable fees and terms or conditions of service related to open access to natural gas gathering systems.

(6) Motor Carrier Citation Docket (MCC), which shall consist of causes initiated by issuance of citations by Commission motor carrier/vehicle officers at roadside, weigh stations or on-site, for alleged violation of state statutes, Commission rules or federal regulations regarding the registration, licensing, certification, or operation of motor carriers or commercial motor vehicles.

(7) Oil and Gas Citation Docket (OGC), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division, seeking to find parties in

contempt of Commission rules as listed in Appendices E and F of OAC 165:10 and to impose the penalties therein.

(8) Petroleum Storage Tank Docket (PSD), which shall consist of causes initiated by the Director of the Petroleum Storage Tank Division or other party seeking relief from Commission rules, disputing PSD decisions regarding jurisdiction, corrective action, licensing, system shutdown, Petroleum Storage Tank Indemnity Fund eligibility or reimbursement.

(9) Petroleum Storage Tank Division Citation Docket (PSC), which shall consist of causes initiated by issuance of citations by Commission fuel inspectors for alleged violation of state statutes or Commission rules regarding operation of petroleum storage tank systems.

(10) Pollution Docket (PD), which shall consist of causes initiated and related to the protection of the environment regarding oil and gas production or the disposal, injection, remediation or storage of deleterious substances produced from oil and gas related activities including, but not limited to, applications for injection wells, commercial disposal wells, disposal pits and recycling.

(11) Public Utility Docket (PUD), which shall consist of causes initiated by the Director of the Public Utility Division, a public utility, or other party with standing concerning any matter relating to public utilities, except rulemaking.

(12) Rulemaking Docket (RM), which shall consist of causes initiated by the Commission or any of its directors for the promulgation, amendment, or repeal of a Commission statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. [75 Okla. Stat. § 250.3(17)] Formal petitions by the public for rulemaking shall be part of the General Docket. If the Commission orders a rulemaking proceeding as a result of such petition, the rulemaking proceeding shall be part of the Rulemaking Docket.

(13) State Fund Plugging Docket (SF), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division seeking authorization to use monies from the Commission's Plugging Fund to plug or replug abandoned wells in the State of Oklahoma.

(14) Transportation Docket (TD), which shall consist of causes initiated by:

(A) an applicant protesting a Transportation Division determination denying a motor carrier's application seeking a license, certificate, or permit from the Transportation Division to lawfully operate as a for-hire or private motor carrier or for a special permit or registration;

(B) an applicant protesting a Transportation Division determination denying its registration or fuel tax application or proposed audit assessment;

(C) an application by the Transportation Division modifying, suspending, canceling or revoking an existing certificate, permit, registration, or license;

(D) an application by the Transportation Division modifying a previously issued order;

(E) an application by the Transportation Division to effect an operational change in a transportation regulated entity;

(F) an interested party protesting a license, certificate, permit or registration being issued or renewed;

(G) an interested party seeking to modify, suspend, cancel, or revoke an existing certificate, permit, registration or license or to assess penalties to a motor carrier, registrant or licensee;

(H) a pipeline operator seeking a pipeline acceptance;

(I) any individual, entity or railroad seeking approval to update, open or close a railroad crossing; or

(J) any interested party seeking relief from the Commission in transportation matters relating to its jurisdiction.

(15) "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, GG, SF and OGC.

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

(1) File-stamp each document received with the date of receipt.

(2) Record every document filed in the cause.

(3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission, an Administrative Law Judge, or the Court Clerk determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket. The Office of Administrative Proceedings shall send the order transferring the application to the proper docket to the applicant, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 16 Ok Reg 829, eff 3-30-98 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2102, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12]

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

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Section
165:5-7-1. General application and notice requirements

PART 3. OIL AND GAS

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- 165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]
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- 165:5-7-24. Commingling of well [REVOKED]
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- 165:5-7-27. Enhancement or addition of injection and disposal wells
- 165:5-7-28. Procedure for aquifer exemption
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- 165:5-7-37. [RESERVED]
- 165:5-7-38. License for pulling pipe and plugging wells
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PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, and the Oil and Gas Conservation Division at OAC 165:5-7-27 (injection and disposal wells), the provisions of this Section shall govern the commencement of a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

- (1) An application.
- (2) A complaint.
- (3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

- (1) The heading, "Before the Corporation Commission of Oklahoma".
- (2) The applicant.
- (3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.

- (4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.
- (5) The title of the document.
- (6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).
- (d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:
- (1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.
 - (2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.
 - (3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.
 - (4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.
 - (5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.
- (e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, telephone number, facsimile number, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:
- (1) He has read the application.
 - (2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.
 - (3) The application is not filed to harass or to cause unnecessary delay or needless expense.
- (f) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.
- (g) **Manner of service.** All documents subsequent to the application in a cause may be served on a party of record by regular mail, facsimile, electronic mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the

corporation. Service outside the United States and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail, facsimile or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, transmitted by facsimile, mailed electronically or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures.

(l) **Content of notice.** The notice shall specify:

(1) The time, date, and place of hearing.

(2) Briefly the general nature of the order, rule, regulation or other relief sought.

(3) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.

(4) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

(1) When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.

(4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 16 Ok Reg 829, eff 3-30-98 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 25 Ok Reg 2179, eff 7-11-08; Amended at 27 Ok Reg 2103, eff 7-11-10]

PART 3. OIL AND GAS

165:5-7-6. Drilling and spacing unit establishment or modification

(a) Notice of hearing relating to drilling and spacing units shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(b) When an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit or the existing drilling and spacing unit.

(c) A plat or plats shall be attached to each application for an order to establish a drilling and spacing unit or units or to extend existing spacing within a common source or sources of supply, which plat shall show the spacing units requested together with any spacing units abutting or overlapping the area to be spaced, and any abutting spacing units in all spaced formations. An amended plat shall be provided at the time of the hearing in the event drilling and spacing units have been established after the application was filed and prior to the hearing to reflect the status of the spacing at the time of the hearing.

(d) An application to extend spacing from an adjacent drilling and spacing unit shall state in the body of the application the order number that created the spacing in the adjacent unit that applies to the common sources of supply which are sought to be extended by the application. Such request to extend spacing and citation to such order number shall be placed in the special relief paragraph of the notice of hearing.

(e) Where a well has not been commenced to or completed in the common source of

supply sought to be spaced, notice of hearing for an order to vacate, alter, amend, extend, or change a prior spacing order shall be served and published as required in (a) of this Section. Such request to vacate, alter, amend, extend, or change a prior spacing order shall be placed in the special relief paragraph of the notice of hearing.

(f) Where two or more orders have issued spacing a common source of supply and such spacing orders have resulted in there being a conflict either as to the size of the unit or as to a common source of supply or a conflict as to the nomenclature of the common source of supply, then the applicant seeking to vacate, alter, amend, or change one of the prior spacing orders shall either file an application to construe and modify the conflicting orders or may amend a relevant application to accomplish the same result. Notice of hearing shall be served and published as required upon the commencement of a proceeding.

(g) The Commission may issue an order establishing horizontal well units for a common source of supply. A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units, and each such unit may be concurrently developed. Notwithstanding the foregoing, the Commission may vacate any non-horizontal drilling and spacing unit upon a proper showing of a change of conditions or change in knowledge of conditions to justify such vacation or deletion, and any such request to vacate or delete any such non-horizontal drilling and spacing unit may be included in and made a part of any application to form one or more horizontal well units.

(1) In any spacing proceeding to establish or form a horizontal well unit, the application filed in such proceeding shall set forth and describe any non-horizontal drilling and spacing unit that exists concurrently with such horizontal well unit, including the well or wells located in any such non-horizontal drilling and spacing unit.

(2) The order entered in such proceeding shall describe any non-horizontal drilling and spacing unit that exists concurrently with the horizontal well unit, including the well or wells located in such non-horizontal drilling and spacing unit. The order establishing or forming a horizontal well unit that exists concurrently with any non-horizontal drilling and spacing unit shall state, based on the evidence presented, that the consent in writing required by subsection (h) of this Section has been obtained and filed or that a waiver of such consent requirement as authorized by subsection (i) of this Section has been granted by the Commission.

(h) No order of the Commission authorizing a horizontal well unit that overlies any existing well, or portion of any existing drilling and spacing unit with any existing well, producing from the same common source of supply shall be entered until:

(1) at least fifty percent (50%) of the ownership having a right to drill in each such well and drilling and spacing unit consents in writing to the formation of such horizontal well unit and such written consent or consents are filed with the Court Clerk of the Commission in the applicable spacing proceeding or otherwise entered

into the record in such proceeding; or

(2) such consent is waived by the Commission. Provided, however, in the event any such order is entered by the Commission without the written consent required above or a waiver of such consent, any horizontal well unit purported to be formed by such order for which such consent is required shall not be effective until such consent is filed with the Court Clerk of the Commission in such spacing proceeding or is otherwise entered into the record of such proceeding or such consent is waived by the Commission. Requests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit. In addition, if the boundaries of the horizontal well unit do not encompass such existing drilling and spacing unit in its entirety, then the application and notice for the horizontal well unit shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the existing drilling and spacing unit.

(i) Any written consent to the order required under subsection (h) of this Section shall not be a waiver of, nor commitment of, any rights of such owners in either the existing production or the proposed horizontal well unit. If the required percentage of consent cannot be obtained, the applicant may make application to the Commission for a waiver of the consent requirement, and upon a showing of good cause by the applicant, the Commission may waive the consent requirement. For purposes of this subsection, a showing of good cause means applicant must present sufficient testimony and evidence, and the Commission must find in the order, that applicant has established the following:

(1) Due diligence was exercised to locate each owner having a right to drill in any existing well and/or any existing drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit;

(2) A bona fide effort was made to obtain the required percentage of consent;

(3) Alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created; and

(4) Any correlative rights or vested rights, or both, of owners in the existing well(s) and/or drilling and spacing unit(s), and in the proposed horizontal well unit, will be adequately protected if the consent requirement is waived and the proposed horizontal well unit created.

(j) If a horizontal well unit formed under subsection (g) of this Section is determined to exist concurrently with any previously formed non-horizontal drilling and spacing unit, or any portion thereof, the order forming such horizontal well unit shall provide that each concurrently existing unit may be separately developed in that a well may be drilled into, completed in, and produce hydrocarbons from the same common source(s) of supply in each such concurrently existing unit, with production from such well to be governed by and allocated pursuant to the applicable unit. If a unit is determined to exist concurrently with another unit and is subject to a prior pooling order, which is in full force and effect, the rights relinquished by a non-participating owner which became vested under such prior pooling order in the same common source(s) of supply shall be

treated and recognized as vested rights in any subsequent pooling proceeding covering such other unit. An owner, who participated as a working interest owner under an existing pooling order covering a unit that exists concurrently with another unit, need not participate or continue to participate as a working interest owner under any other pooling order covering such other unit in order to continue to participate as a working interest owner under such existing pooling order; provided, however, if such owner does not participate as a working interest owner under such other pooling order, such owner shall relinquish its rights to participate in any well drilled under or otherwise covered by such other pooling order.

[**Source:** Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 27 Ok Reg 2104, eff 7-11-10; Amended at 30 Ok Reg 1033, eff 7-1-2013 (RM 201300002); Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001); Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-7-6.1. Horizontal well unitization for shale reservoirs

(a) The application, and the notice of hearing on the application, for an order creating a horizontal well unitization for a shale reservoir pursuant to 52 O.S. §87.9 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon:

- (1) Each person or governmental entity having the right to share in production from the proposed unitization covered by the application; and
- (2) The operator, as shown by the records of the Commission, of each well that is commencing to or currently producing from the shale reservoir in any unit or any separate tract of land for which no unit has been formed for such shale reservoir adjoining, cornering or adjacent to the proposed unitization.

(b) If the applicant is the operator of a well commencing to or currently producing from the shale reservoir in a unit or a separate tract of land for which no unit has been formed for such shale reservoir adjoining, cornering or adjacent to the proposed unitization, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each owner, as shown by the records of the operator, with a working interest in such well in the shale reservoir.

(c) Notice of hearing regarding an application for an order creating a horizontal well unitization for a shale reservoir pursuant to 52 O.S. §87.9 shall be published as provided in OAC 165:5-7-1(n)(2).

(d) The application for an order creating a horizontal well unitization for a shale reservoir shall contain the following:

- (1) The legal description of the lands covered.
- (2) The names and addresses of the applicant and proposed operator or operators of the proposed unitization.
- (3) Allegations concerning the existence of facts relating to the proposed unitization as provided in 52 O.S. §87.9(B).
- (4) A map or plat showing the governmental sections included within the proposed unitization and the location of proposed horizontal well(s) to be drilled for the recovery of oil and gas from the shale reservoir. If applicable, the map or plat should show the location of all other wells, including abandoned and drilling wells and dry holes, within

the shale reservoir.

(5) The name and depth of each shale reservoir to be affected, including any potential associated common source of supply.

(6) A log of a representative well completed in the shale reservoir which is the subject of the application.

(7) A plan of development of the area included within the proposed unitization as provided in 52 O.S. §87.6(B)(11) and 52 O.S. §87.9(E). The plan of development must also address the conditions upon which the unit shall terminate.

(8) Reference to any companion application, identified by the type of requested relief, such as any application for location exception, for pooling, or for any other relief that may be appropriate under the specific facts of a cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for horizontal well unitization.

(e) Each application for an order creating a horizontal well unitization for a shale reservoir shall be limited to two (2) governmental sections, although the size of the unitization may be expanded by including additional governmental sections up to a maximum unit size of four (4) governmental sections for good cause shown pursuant to 52 O.S. §87.9(C).

(f) An order approving an application for a horizontal well unitization for a shale reservoir shall include the elements identified in 52 O.S. §87.9(F) and other applicable portions of 52 O.S. §87.9.

(g) Any pooling application filed pursuant to 52 O.S. §87.9(I) regarding a horizontal well unitization for a shale reservoir shall be filed pursuant to OAC 165:5-7-7.

[Source: Added at 28 Ok Reg 1893, eff 5-19-11 (emergency RM 201100003); Added at 29 Ok Reg 938, eff 7-1-12]

165:5-7-6.2. Multiunit horizontal wells in targeted reservoirs

(a) The application, and the notice of hearing on the application, for an order approving a multiunit horizontal well in a targeted reservoir pursuant to 52 O.S. §87.8 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to share in production from each of the affected units covered by the application.

(b) Notice of hearing regarding an application for an order approving a multiunit horizontal well in a targeted reservoir pursuant to 52 O.S. §87.8 shall be published as provided in OAC 165:5-7-1(n)(2).

(c) The application for an order approving a multiunit horizontal well in a targeted reservoir shall contain the following:

(1) The legal description of the affected units.

(2) The name and address of the applicant and proposed operator of the proposed well.

(3) The name and depth of each targeted reservoir to be affected, including any potential associated common source of supply.

(4) The information required by 52 O.S. §87.8(B)(4).

(5) Allegations concerning the existence of facts relating to the proposed well as

provided in 52 O.S. §87.8(B)(6).

(6) Reference to any companion application, identified by the type of requested relief, such as any application for spacing, for location exception, for increased density, for pooling, for modification of any previous pooling order, or for any other relief that may be appropriate under the specific facts of a cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for multiunit horizontal well(s).

(d) An order approving an application for a multiunit horizontal well in a targeted reservoir shall require the allocation of the reasonable drilling, completion and production costs and of the commingled production and proceeds in accordance with 52 O.S. §87.8(B) and the map(s) addressed in 52 O.S. §87.8(B)(4)(b) must be attached to the order.

(e) Any pooling application filed pursuant to 52 O.S. §87.8(B)(3) involving a multiunit horizontal well for a targeted reservoir shall be filed pursuant to OAC 165:5-7-7.

[**Source:** Added at 28 Ok Reg 1893, eff 5-19-11 (emergency RM 201100003); Added at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-7-7. Pooling

(a) Each pooling application shall include a statement by the applicant that the applicant exercised due diligence to locate each respondent and that a bona fide effort was made to reach an agreement with each such respondent as to how the unit would be developed. The applicant shall present evidence to this effect at the time of hearing.

(b) Notice of hearing for a pooling order, together with the application, shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by restricted mail, upon each respondent.

(c) Notice of hearing for a pooling order shall be published pursuant to 165:5-7-1(n)(2).

(d) An Authorization for Expenditure (AFE) which was prepared or revised within forty-five (45) days of the date of the hearing at which it is offered into evidence shall be submitted at the hearing.

(e) If the applicant anticipates that some other owner of the right to drill may be designated as the operator of the unit well, the body of the application and notice shall so state. In the notice, the request that the applicant or some other owner may be designated operator shall be placed in the special relief paragraph.

(f) No pooling order shall be extended in time except upon the same notice as provided for in the initial application. Such request shall be in the form of a motion filed under the original CD number of the pooling.

(g) Notice of hearing for a redetermination of well costs shall be as provided in the initial application. Such request shall be in the form of a motion filed under the original CD number of the pooling.

[**Source:** Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-8. Exception to escrowing monies for unknown or unlocated owners

(a) Notice of hearing for an order granting an exception for the escrowing of monies in a financial institution for unknown or unlocated owners and permitting the escrowing of such monies in an in-house account shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in the county where the holder's principal office in the state is located.

(b) Notice of hearing shall be served on the Commission's Manager of the Mineral Owners Escrow Account by mail at least ten (10) days prior to the hearing.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 3675, eff 7-11-94]

165:5-7-9. Well location exception

(a) The application and notice of hearing for an order granting a well location exception for a well drilled or to be drilled for oil or gas into any common source of supply at a location other than that authorized by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location has been or is proposed to be moved. The application and notice of hearing shall specify the name(s) of the well(s) and operator(s) of the well(s) towards which the location exception well is moving. The application and notice of hearing also shall be served, in the manner required above, upon the operator of any well located in an adjoining or cornering tract of land or drilling and spacing unit currently producing from the same common source of supply, if the requested well location is closer to the offsetting well than would be permitted under the applicable well location tolerances or requirements. Provided, however, if the applicant, or any other entity to be authorized to drill or otherwise operate the subject well, is the operator of any of the wells identified above, then the application and notice of hearing shall be served, in the manner required above, upon each working interest owner in any such well.

(b) An application and notice of hearing for an order granting a well location exception pursuant to this Section may also include a request for an exception to OAC 165:10-3-28(c)(2). The application and notice of hearing shall be served in the manner required in subsection (a) of this Section, and shall contain the information required in such subsection. Where an application includes requested relief for both a location exception and exception to OAC 165:10-3-28(c)(2), such application shall separately identify respondents for the location exception and respondents for the exception to OAC 165:10-3-28(c)(2).

(c) For any well other than a directionally drilled well or a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual surface location of the well expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has

been drilled.

(d) For a directionally drilled well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the well's entry into and the proposed or actual subsurface location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. For purposes of this section, a directionally drilled well does not include a horizontal well.

(e) For a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(f) The proposed subsurface location for a directionally drilled well or a horizontal well may be described in the application and notice of hearing as no closer than specified footages from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be drilled.

(g) At the time of hearing, a well's location, as set out in the application and notice of hearing, may be changed to another location that is not closer to the boundaries of the drilling and spacing unit or mineral estate(s) described in the application and notice of hearing, that is not closer to any offsetting well the operator of which, or any working interest owner in which, was required to be notified under this section, and that does not require notice to additional operators or working interest owners under this section.

(h) If at the time of the hearing on an application for a directionally drilled well or a horizontal well, the applicant does not have the results of the well survey required by OAC 165:10-3-27, then the Administrative Law Judge may recommend the issuance of an interim order granting the application and, if so, shall consider whether to adjust the allowable based on the potential locations of the well in each common source of supply for which the order is sought. All potential locations shall be considered in the interim order. If the directionally drilled well or the horizontal well is drilled and completed in compliance with the interim order, the well shall be assigned the allowable as set out in the interim order.

(i) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an administrative review by the Commission's Technical Services Department of the following documents, which the applicant must file with the Court Clerk for the record: the directional survey, a final plat showing the actual location of the lateral, and the well completion report. The applicant must also submit a proposed final order to the Commission's Technical Services Department in any cause handled through the administrative review process. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and

completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the cause setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(j) Notice of hearing on an application for an order granting a well location exception for a well drilled or to be drilled for oil or gas at a location other than that authorized by a rule or order of the Commission shall be published pursuant to OAC 165:5-7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 24 Ok Reg 1783, eff 7-1-07; Amended at 27 Ok Reg 2105; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752 (RM 201500002)]

165:5-7-10. Increased well density

(a) Notice of hearing.

(1) For increased well density applications, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing by regular mail upon:

(A) Each person or governmental entity entitled to oil or gas or the proceeds of oil or gas produced from the common source of supply in the drilling and spacing unit for which the application for an increased density well has been filed; and

(B) The operator, as shown by the records of the Commission, of each well which is commencing or currently producing from the same common source of supply in the drilling and spacing unit or any separate tract of land for which no drilling and spacing unit has been formed for such common source of supply adjoining, cornering or adjacent to the drilling and spacing unit for such an increased density well.

(2) If the applicant is the operator of a well commencing or currently producing from the same common source of supply applicable to the increased density well in a drilling and spacing unit or a separate tract of land for which no drilling and spacing unit has been formed for such common source of supply adjoining, cornering or adjacent to the drilling and spacing unit for such increased density well, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of hearing by regular mail upon each owner, as shown by the records of the operator, with a working interest in such well in such common source of supply.

(3) If the applicant is seeking approval of an increased density well to be completed in a common source of supply for which the Commission has established field rules, and for which no application for an increased density well in such common source of supply has been approved by the Commission subsequent to January 1, 1998, and prior to June 21, 1999, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of hearing by regular mail upon the operator, as shown by the records of the Commission, of each well commencing or currently producing from that same common source of supply governed by the field rules.

(4) Where some person other than the applicant may be authorized to drill an increased density well, the notice shall so state.

(5) No person except for those persons provided for in this subsection shall be entitled to notice of the hearing on an application for approval of an increased density well in any drilling and spacing unit.

(b) **Publication of notice.** Notice of hearing for an increased density well shall be published pursuant to 165:5-7-1(n)(2). If the increased density well is to be completed in a common source of supply for which the Commission has established field rules and for which no application for an increased density well in such common source of supply has been approved by the Commission subsequent to January 1, 1998, and prior to June 21, 1999, notice of the hearing shall also be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in each county in which the lands subject to the field rules are located.

(c) **Commingled production.** Where production from an original unit well has been commingled and the operator has failed to obtain a commingling order for that well, an increased density well shall not be produced from the commingled common sources of supply until such time that proof of a commingling order is entered at the hearing for increased density.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 17 Ok Reg 799, eff 12-28-99 (emergency); Amended at 17 Ok Reg 1853, eff 7-1-00]

165:5-7-11. Change of operator

(a) **Scope.** This Section addresses designation of operators under forced pooling orders, location exception orders, and increased density orders.

(b) **Designation of operator under a forced pooling order.** Each order forced pooling the rights and equities in a drilling and spacing unit shall designate at least one operator to operate the well or unit. In addition, the Commission may designate one or more alternate operators in the order.

(c) **Procedure for obtaining a change of operator under a forced pooling order.** Application, notice and hearing shall be prerequisites to the issuance of an order changing or deleting a designation of operator in any forced pooling order. Notice shall be given by certified mail at least fifteen (15) days prior to the hearing to the respondents to the pooling order or to their successors in interest and shall be published as required in OAC 165:5-7-1. Provided, however, this procedure shall not be the exclusive method of obtaining a change of operator under a forced pooling order as the use of the optional procedure set forth in OAC 165:5-7-11(g) below is still available. If such optional Form 1073A application is used, Applicant must still provide personal notice by certified mail to the respondents to the pooling order or their successors in interest as well as notice by publication.

(d) **Optional designation of operator for location exception and increased density orders.** A designation of operator shall not be necessary for an order for either a well location exception or increased well density. In any situation where a location exception or increased density order designates an operator, the Commission may issue an order

either appointing a successor operator or removing the designation of operator provision.

(e) **Procedure for obtaining a change in operator designation regarding increased density and location exception orders.** Application, notice and hearing shall be prerequisites to issuance of an order changing or deleting a designation of operator; provided, that no application, notice, or hearing shall be required to change or delete the designation of operator in increased density or location exception orders when:

(1) The interest of the currently designated operator is transferred to its subsidiary or parent company, or a subsidiary of a parent company;

(2) The interest of the currently designated operator is transferred to a surviving or resulting corporation or business entity due to, respectively, a merger, consolidation or reorganization involving the transferor and transferee. As used in this paragraph, "business entity" means a domestic or foreign partnership, whether general or limited; limited liability company; business trust; common law trust, or other unincorporated business; or

(3) The currently designated operator undergoes a name change. The relief afforded by this paragraph is not applicable to situations where the name change involves the following conditions:

(A) The assignment of a new Federal Employer Identification number by the Internal Revenue Service to the new company;

(B) The name change is accompanied by a change in the majority of partners in a partnership;

(C) The name change is associated with a divorce between a husband and wife when the husband and wife comprise a partnership;

(D) The name change is associated with the death of one spouse in a partnership comprised of a husband and wife;

(E) The name change involves a sole proprietorship; or

(F) The name change is associated with such other circumstances where the Commission determines upon application, notice and hearing that the relief provided in this paragraph is not applicable, or that an exception to any exclusion should be granted.

(G) As used in this subsection, the term "partnership" means a domestic or foreign partnership, whether general or limited.

(4) In such events, the parent, subsidiary, surviving or resulting corporation or business entity or currently designated operator who has undergone a name change shall be substituted as designated operator upon filing and approval of Form 1073, required by OAC 165:10-1-15.

(f) **Amendment of multiple orders.** The applicant may use one application to amend two or more orders, even though the orders grant different types of relief. For purposes of this Chapter, such an application shall be considered as an application for a single form of relief.

(g) **Use of Optional Form 1073A application.**

(1) An applicant shall have the option to use Commission Form 1073A for the application and Form 1073B for notice of application or Form 1073C for notice of hearing.

(2) The Form 1073A shall include the following information:

- (A) The order number and type of order.
- (B) The name and legal description of the applicable well or drilling and spacing unit.
- (C) The OTC operator numbers of the current operator and the proposed operator.
- (D) The OTC lease number and API number.
- (E) The classification of the well.

(3) If the space provided on the form is insufficient to include the necessary information related to amendment of multiple orders, then the applicant shall attach to the form an exhibit with the necessary information.

(h) **Personal notice requirements for location exception and increased density orders.** With respect to a location exception or increased density order, the applicant shall mail or deliver a copy of the application and notice of hearing to each current working interest owner in the well.

(i) **Special notice provisions applicable to notices of hearing.** For purposes of this Section, the notice of hearing shall contain a special provision apprising the respondent of the requirements for protests under (j) of this Section.

(j) **Requirements for protests.** Any person desiring to protest an application shall have fifteen (15) days after receipt of notice in which to file a written protest to the application. Failure to submit a written protest within the fifteen (15) day period shall be deemed consent to the granting of the application. If the application is protested within the fifteen (15) days allowed, the applicant shall have the notice of hearing published pursuant to 165:5-7-1(n)(2).

(k) **Summary disposition of unprotested applications.** Applications not contested may be disposed of by announcement, without necessity of counsel appearing.

(l) **Compliance with Form 1073 requirement.** The order changing the operator designation shall be deemed equivalent to filing of the Form 1073, required by 165:10-1-15 if the order contains the information required by (g)(2) of this Section.

[**Source:** Amended at 9 Ok Reg 2323, 6-25-92; Amended at 10 Ok Reg 2591, 6-25-93; Amended at 17 Ok Reg 799, eff 12-28-99; Amended at 17 Ok Reg 1853, eff 7-1-00; Amended at 21 Ok Reg 2017, eff 7-01-04]

165:5-7-12. Applications; determination of allowables

(a) **Scope.** Any applicant seeking relief under 165:10-13-5, 165:10-13-8, 165:10-15-1(g), 165:10-15-1(h), 165:10-15-16, and 165:10-15-18 shall have the option to proceed under either (b) through (i) of this Section or 165:5-7-1 and other applicable rules of practice.

(b) **Application.** The application shall be submitted on Form 1030 to the Technical Department of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105-4993 for filing with the Commission.

(c) **Exhibits.** The applicants shall submit at the time of filing of the application all exhibits and data.

(d) **Notice of application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of application to substantially comply with the example shown in Appendix H to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application upon:

(A) The operator of the well subject to the application if the applicant is not the operator of the subject well.

(B) All operators of wells offsetting the well for which the relief is requested.

(C) All working interest owners of all offset wells operated by the applicant, if the applicant is the operator of the subject well.

(4) **Publication of notice.** The applicant shall have the notice of application published pursuant to 165:5-7-1(n)(2).

(5) **Proof of notice.** The applicant shall submit a certificate of mailing and an affidavit of publication to show compliance with the requirements of this Section.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk of the Commission its protest which shall be entitled "Protest" and which shall contain the following information:

(A) Caption from application.

(B) Title - Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The Protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) **Protest periods.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period, which shall run for fifteen (15) days from the date of the latest of the following events:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date on which the last publication was made.

- (D) The date of completion of service of process on all respondents in the cause.
- (2) **Additional protest period.** After expiration of the protest period, an additional fifteen (15) day protest shall run if:
- (A) The applicant amends the application to change the location or nature of the requested relief; or
 - (B) The applicant files amended applications in order to re-notice original parties, or initially notice new parties to the application.
 - (C) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.
- (g) **Unprotested applications.**
- (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.
 - (2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or file exceptions to the report pursuant to 165:5-13-5.
- (h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.
- (i) **Protested applications.**
- (1) **Hearing required.**
 - (A) A hearing shall be required on each timely protested application except as provided in (h) of this Section.
 - (B) A hearing may also be requested by the subject operator upon denial of the administrative application by the Technical Department of the Oil and Gas Conservation Division of the Commission.
 - (2) **Notice of hearing.** The applicant shall obtain a hearing date from the Office of Administrative Proceedings. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.
 - (3) **Contents of notice.** The notice of hearing shall contain the date, time, and place of hearing.
 - (4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix I to this Chapter.

[Source: Amended at 10 Ok Reg 2591, 6-25-93; Amended at 19 OK Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2106, eff 7-11-10]

165:5-7-13. Applications filed under the Production Revenue Standards Act, 52 O.S. Section 570.1, et seq.

- (a) Each application for relief under 165:10-27-8 and 165:10-27-9 shall be filed in the Office of the Court Clerk and assigned a number on the Conservation Docket (CD).
- (b) The applicant shall serve a copy of the application and notice of hearing, by regular mail, upon each named respondent and the operator of the well. If the applicant is the operator of said well, then notice shall be served on each working interest owner in the well.

(c) Notice of hearing filed pursuant to this Section shall be published Pursuant to 165:5-7-1(n).

[Source: Added at 10 Ok Reg 2589, eff 6-25-93]

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 13 Ok Reg 2371, eff 7-1-96; Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 20 Ok Reg 2297, eff 7-15-03; Amended at 21 Ok Reg 2018, eff 7-1-04; Amended 23 Ok Reg 2228, eff 7-1-06; Amended at 25 Ok Reg 2183, eff. 7-11-08]

165:5-7-15. Tertiary crude oil recovery project certification

(a) Each application for certification of a tertiary recovery project under the provisions of the Crude Oil Windfall Profit Tax Act of 1980 shall be verified by an authorized person and shall be on a form prescribed by the Commission.

(b) The application, with additional copies as may be required by the Court Clerk, shall be filed with the Court Clerk. A true copy of each document or record required to support the application for certification shall be attached to the application and to each copy of the application.

(c) Notice that an application has been filed shall be published by the applicant pursuant to 165:5-7-1(n)(2). This notice must specify that a party may protest the certification sought by filing said protests with the Commission within fifteen (15) days of the publication of the notice.

(d) If written objection to the application is filed within fifteen (15) days after the notice is published, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of an application. If no objection is filed and the applicant does not request a hearing, the matter shall be presented administratively to the Conservation Division. The Conservation Division shall verify the authenticity and correctness of each material statement in the application and the authenticity of each supporting document and file the report and recommendation with the Court Clerk.

[Source: Amended at 10 Ok Reg 2591, 6-25-93]

165:5-7-16. Priority schedule for supply demand imbalance

(a) Notice of hearing for an order relating to the priority schedule for supply demand imbalance in relation to a single well shall be published pursuant to 165:5-7-1(n)(2).

(b) Notice of hearing for an order relating to the priority schedule for supply demand imbalance, where an exception for a single well is sought or where it is sought to classify a well in a different priority, together with the application, shall be served by the applicant not less than fifteen (15) days prior to the hearing, by regular mail, upon any purchaser or purchasers from the well and to all operators of offsetting wells in sections adjoining the section where the well is located which are producing from the same

common source of supply. In addition, the operator of any well producing from the same common source of supply located in the same section as the well which is the subject of the application shall be given the same notice as required in this Section. Where the applicant is also the operator of an offsetting well, then the applicant shall mail the application and notice to all working interest owners in the offsetting well as required in this Section.

(c) Notice of hearing for a system-wide deviation from the priority schedule shall be published pursuant to 165:5-7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, 6-25-93]

165:5-7-17. Ratable sharing of revenues; order of enforcement

(a) Notice of hearing for an order of enforcement relating to ratable sharing of revenues shall be published pursuant to 165:5-7-1(n)(2).

(b) Notice of hearing for an order of enforcement relating to ratable sharing of revenues shall be served by the applicant not less than fifteen (15) days prior to the hearing, by regular mail, upon each interest owner in the well.

[Source: Amended at 10 Ok Reg 2591, 6-25-93]

165:5-7-18. Natural Gas Policy Act determinations [REVOKED]

[Source: Revoked at 13 Ok Reg 2367, eff 7-1-96]

165:5-7-19. NGPA - additional well in existing proration unit [REVOKED]

[Source: Revoked at 13 Ok Reg 2367, eff 7-1-96]

165:5-7-20. Unitized management of a common source of supply

(a) Notice of hearing for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail upon each person who would be entitled to share in the production from the proposed unit.

(b) Notice of hearing for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall be published pursuant to 165:5-7-1(n)(2).

(c) Provision for amending or terminating the unit shall be in the Plan of Unitization. To amend the Plan of Unitization, the order creating the unit shall be amended and notice shall be as provided for an application seeking an order creating a unit pursuant to 52 O.S. §§287.1, et seq. When a unit is terminated in accordance with the terms of the Plan of Unitization, a copy of the certificate of dissolution filed in the county in which the lands are located shall also be filed with the Commission. In such causes, no Commission action shall be required to terminate a unit if terminated in accordance with the Plan of

Unitization. Where the Plan of Unitization does not provide for amendment or termination of a unit, an application may be filed seeking relief from the order creating the unit and notice shall be given as provided for the filing of an application in the original cause.

(d) The application for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall contain the following:

- (1) The names and addresses of the operator or operators of the unit.
 - (2) A plat showing the lease, group of leases or unit(s) included within the proposed unit; the location of the proposed injection well or wells and the location of all oil and gas wells, including abandoned and drilling wells and dry holes; and the names of all operators offsetting the area encompassed within the unit.
 - (3) The common source of supply in which all wells are currently completed.
 - (4) The name, description, and depth of each common source of supply to be affected.
 - (5) A log of a representative well completed in the common source of supply.
 - (6) A description of the existing or proposed casing program for injection wells, and the proposed method of testing casing.
 - (7) A description of the injection medium to be used, its source and the estimated amounts to be injected daily.
 - (8) For a unit with an allocated pool, a tabulation showing recent gas-oil ratio and oil and water production tests for each of the producing oil and gas wells.
 - (9) The proposed plan of development of the area included within the unit.
- (e) A copy of the application, without the attachments provided in (d)(1) through (9) of this Section, and notice of hearing shall be mailed to the owner or owners of the surface of the land upon which the unit is located. A copy of the application, with attachments and notice of hearing shall be mailed to each operator offsetting the unit as shown on the application.

[Source: Amended at 10 Ok Reg 2591, 6-25-93]

165:5-7-21. Unitized management of a common source of supply; brine and associated gas

(a) Notice of hearing for an order creating a unit pursuant to 165:10-3-40 shall be served by the applicant no less than twenty (20) days prior to the date of the hearing, by regular mail upon each person who would be entitled to share in the production from the proposed unit.

(b) Notice of hearing for an order creating a unit pursuant to 165:10-3-40 shall be published pursuant to 165:5-7-1(n)(2).

(c) Provision for amending or terminating the unit shall be in the Plan of Unitization. To amend the Plan of Unitization, the order creating the unit shall be amended and notice shall be as provided for an application seeking an order creating a unit pursuant to 165:10-3-40. When a unit is terminated in accordance with the terms of the Plan of Unitization, a copy of certificate of dissolution filed in the county in which the lands are located shall also be filed with the Commission. In such causes, no Commission action shall be required to terminate a unit if terminated in accordance with the Plan of Unitization. Where the Plan of Unitization does not provide for amendment or termination

of a unit, an application may be filed seeking relief from the order creating the unit and notice shall be given as provided for the filing of an application in the original cause.

(d) The application for an order creating a unit pursuant to 165:10-3-40 shall contain the following:

(1) The names and addresses of the operator or operators of the unit.

(2) A plat showing the lease, group of leases or unit(s) included within the proposed unit, the location of the known proposed injection well or wells, and the location of all existing brine wells including abandoned, drilling and dry holes, and the names of all operators offsetting the area encompassed within the unit producing from or injecting into the common source of supply affected by the unit.

(3) The common source of supply in which all wells are currently completed.

(4) The name, description, and depth of each common source of brine supply to be affected.

(5) A log of a representative well completed in the common source of supply.

(6) The proposed plan of development of the area included within the unit.

(7) The approval of fifty-five percent (55%) of the ownership named in the unit application has been obtained, or will be obtained prior to the unit becoming effective.

(e) A copy of the application, with attachments, and notice of hearing shall be served by regular mail to each person who would be entitled to share in production from the proposed unit, and to each operator offsetting the unit as shown on the application.

(f) Category B surety shall be a requirement of a person, company, corporation, partnership, etc., filing an application to produce brine for the extraction of minerals and the reinjection of minerals and the reinjection or disposal of the effluent. The amount of surety shall be twenty-five thousand (\$25,000) dollars per well or a maximum of one hundred thousand (\$100,000) dollars for each authorized operator.

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-22. Multiple zone completions [REVOKED]

[Source: Amended at 25 Ok Reg 2183, eff. 7-11-08]

165:5-7-23. Production through multiple choke assembly [REVOKED]

[Source: Amended at 25 Ok Reg, eff. 7-11-08]

165:5-7-24. Commingling of well [REVOKED]

[Source: Amended at 25 Ok Reg 2184, eff. 7-11-08]

165:5-7-25. Vacuum at the wellhead [REVOKED]

[Source: Amended at 27 ok Reg 2107, eff 7-11-10]

165:5-7-26. [RESERVED]

165:5-7-27. Enhancement or addition of injection and disposal wells

(a) Each application for the approval of a newly drilled or newly converted injection well or disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

(1) Plat.

(A) Noncommercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing spacing unit or well within one-half (1/2) mile of each enhanced recovery injection or disposal well with a requested injection rate of less than five thousand barrels per day, and each operator of a producing spacing unit or well within one (1) mile of each enhanced recovery injection or disposal well with a requested injection rate of five thousand barrels per day or more.

(B) Commercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing spacing unit or well within one (1) mile of each disposal well.

(2) If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.

(B) The depth of the injection or disposal interval indicating both the top and bottom.

(C) The geological name of the injection or disposal zone.

(D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or an

equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission sworn evidence and data in support of such findings. The Commission, when issuing a permit approving fluid injection, shall consider the following:

- (i) Maximum injection rate.
- (ii) Maximum surface injection pressure.
- (iii) Injection fluid.
- (iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) Proposed operating data:

- (A) Daily injection rates and pressures.
- (B) Geologic name, depth, and location of injection fluid source.
- (C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.
- (D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to the following:

- (1) The owner of the surface of the land on which the proposed injection or disposal well is to be located;
- (2) For a proposed commercial disposal well, to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well;
- (3) For a noncommercial injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of such proposed well;
- (4) For a noncommercial injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of such proposed well;
- (5) For a noncommercial horizontal injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of the lateral of such proposed well; and
- (6) For a noncommercial horizontal injection or disposal well with a requested

injection rate of five thousand (5,000) barrels per day or more, or a horizontal commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of the lateral of such proposed well.

(d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:

- (1) PD or tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10 acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum B/D or MCF/D injection rate.
- (9) The type of well (injection, disposal, commercial).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter may be approved administratively by the Manager of Underground Injection Control.

(f) Any operator of a commercial disposal well facility shall file with the Manager of Document Handling for the Conservation Division an agreement to properly plug the well and reclaim the site upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(g) The Commission shall establish the amount of surety in the order or permit for the authority to operate a commercial disposal well facility. The amount of surety shall be based on factors such as the depth of the well, dimensions of the facility, and costs of plugging the well, reclamation, monitoring, plugging of monitor wells, any pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by order or permit of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(h) Operators of commercial disposal well facilities authorized prior to the effective date of subsections (f) and (g) must either comply with those subsections or close such facilities within one (1) year of the effective date of those subsections.

(i) Optionally, the operator can file a Unit-wide Application for Injection (Form 1015U)

that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit-wide permit that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit-wide criteria, the UIC permit can be issued immediately without additional area of review, notice, or protest period.

[**Source:** Amended at 9 Ok Reg 2327, eff 6-25-92; Amended at 11 Ok Reg 3685, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97 (emergency); Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 26 Ok Reg 2493, eff 7-11-09; Amended at 27 Ok Reg 2107, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 30 Ok Reg 1033 eff 7-1-2013 (RM 201300002); Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-7-28. Procedure for aquifer exemption

(a) Each application for an order designating a USDW as an exempted aquifer shall comply with the requirements of OAC 165:5-7-1.

(b) Within two (2) days after filing an application, the applicant shall file with the Court Clerk and submit to the Director of Underground Injection Control (UIC) for the Conservation Division the following:

(1) Plat of the governmental section(s) underlain by the aquifer with the production for the area designated thereon.

(2) Copies of completions records (1002A) for the oil and gas disposal and injection well(s) in the aquifer or a tabulation of the wells indicating the following information, if available, from public records:

(A) Dates the wells were drilled.

(B) The present status of the wells.

(3) Analysis of total dissolved solids for the waters produced from the aquifer to be exempted.

(4) An affidavit stating that the aquifer does not currently serve as a source of drinking water.

(5) Prefiled testimony, as provided in 165:5-13-3(j), by sworn statement, that the aquifer cannot now or has no reasonable future prospect of serving as a source of drinking water because:

(A) It is mineral, hydrocarbon or geothermal energy producing.

(B) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical.

(C) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) Prefiled testimony, as provided in 165:5-13-3(j), by sworn statement, as to the hydrological connection of the aquifer to any other aquifer or portion thereof with a TDS content of 5,000 ppm or less.

(7) The requirements of (4) and (5) of this subsection may be waived by the Director of UIC (Underground Injection Control) if the applicant intends to present the information by testimony at the time of hearing.

- (8) Any order issued pursuant to this Section granting an application shall set forth the legal description of the lands underlain by the exempted aquifer and describing the exempted aquifer by approximate depth.
- (c) Notice of public hearing shall be made by publication in the county(ies) where the aquifer is located and in Oklahoma County not less than thirty (30) days prior to the hearing date. The notice shall substantially conform to Appendix A to this Chapter. In addition, the notice shall contain a statement that supporting exhibits are available from the Court Clerk for review or copying, under the cause number.
- (d) Notice of Hearing, together with a copy of the application, shall be served by the applicant by regular mail, no less than thirty (30) days prior to the hearing, upon the chief executive officer of each incorporated town or municipality, chairman of any rural water district in the area covered by the application, the Oklahoma Water Resources Board, and the Oklahoma State Department of Health, Water Supply Branch.
- (e) Objection to granting the application or notice of interest in the cause must be filed no less than five (5) days prior to hearing.
- (f) The Commission upon the filing of an application under this Section, shall designate a panel to serve as Administrative Law Judges in the matter, with a designated chairman, pursuant to the rules of the Commission. The panel shall be composed of three (3) members, one with each of the following qualifications:
- (1) An attorney experienced in oil and gas matters.
 - (2) A geologist.
 - (3) An engineer.
- (g) The panel shall make its recommendation to the Commission based upon the record in the cause.
- (h) All exceptions to the recommendation of the panel shall be directly to the Commission en banc.

[Source: Amended at 27 Ok Reg 2109, eff 7-11-10]

165:5-7-29. Request for exception to certain underground injection well requirements

- (a) Each application for an exception to 165:10-5-1 through 165:10-5-10 shall comply with the requirements of OAC 165:5-7-1(a) through (g).
- (b) Each application shall be filed at the UIC Department and shall be verified by a duly authorized representative of the operator. The application and one complete set of attachments, with additional copies as may be required by the Court Clerk, shall be furnished to the Court Clerk.
- (c) The application shall be accompanied by the information required in 165:5-7-27(b). The Manager of UIC may waive any particular information depending on the nature of the exception.
- (d) Notice of the application shall be published pursuant to 165:5-7-1(n)(2).
- (e) If a written objection to the application is filed within fifteen (15) days after the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and if the Commission does not require

a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall file his report and make his recommendations.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-30. Amending existing orders authorizing injection for enhanced recovery, saltwater disposal, or LPG storage wells

(a) Each application for an amendment to an existing order shall be filed on Form 1015 and comply with the requirements of OAC 165:5-7-27(a) and (b).

(b) The application shall also include a statement of facts explaining in detail the nature of and the reason for the amendment, and shall be signed by a duly authorized agent of the operator.

(c) Notice of the application relating to the nature of the amendment shall be published pursuant to OAC 165:5-7-1(n)(2). The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10-acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum B/D or MCF/D injection rate.
- (9) The type of well (injection, disposal, commercial, LPG storage).

(d) If a written objection to the application is filed with the Commission within fifteen (15) days after notice of the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required in OAC 165:5-7-1. If no objection is filed and if the Commission does not require a hearing, the application may be approved administratively by the Manager of Underground Injection Control

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2109, eff 7-11-10]

165:5-7-31. Injection of reserve pit fluids

(a) Each application for the approval of the onsite injection of reserve pit fluids (i.e., drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed by the well operator on Form 1015-T and shall be verified by a duly authorized representative of the operator. The application and one complete set of attachments, with additional copies as may be required by the Court Clerk, shall be furnished to the Court Clerk, who shall mail one copy to the Department of Pollution Control.

(b) The application for approval of reserve pit fluid injection shall include:

- (1) Driller's log.
- (2) Electric or radioactivity log (if run).
- (3) Cement bond log (if run).

- (4) Schematic diagram of well showing:
 - (A) Total depth of well.
 - (B) Depths of tops and bottoms of casing and cement.
 - (C) Size of casing.
 - (5) Certificate of service to surface owner.
 - (6) Proof of publication.
 - (7) Operating data:
 - (A) Maximum pressure.
 - (B) Volume of fluids to be injected.
 - (8) Additional information, as the Commission may require.
- (c) Notice shall be provided by mailing or delivering a copy of the application to the owner(s) of the surface of the land on which the injection or disposal well is located and to each operator of a producing leasehold within one-half (1/2) mile of the well location.
- (d) If a written objection to the application is filed within fifteen (15) days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall file his report and make his recommendations.
- (e) Any operator applying for temporary emergency authority to inject fluids into the annular space shall give written notice to:
- (1) The Underground Injection Control Department.
 - (2) The surface owner.
 - (3) Each operator of a producing leasehold within one-half (1/2) mile of the well location at least five (5) days prior to the emergency hearing or submit a signed letter of consent from said parties.

[Source: Amended at 9 Ok Reg 2327, eff 6-25-92]

165:5-7-32. [RESERVED]

165:5-7-33. Extension of time for closure of a noncommercial pit

- (a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-7-16 to extend time for closure of a pit.
- (b) **Application form.** The applicant shall prepare the application in a form which complies with OAC 165:5-7-1.
- (c) **Affidavit.** The applicant shall attach to the application an affidavit explaining the applicant's reasons for the extension.
- (d) **Site inspection.** The applicant shall be responsible for obtaining a site inspection by representative of the Conservation Division.
- (e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.

(f) **Dismissal for noncompliance.** Failure to complete the application, submit the affidavit and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.

(g) **Notice of the Application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix B to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Soil Conservation District.

(B) Each surface owner and surface lessee of the tract on which the pit is located.

(4) **Publication.** Publication of the notice of the application is required.

(5) **Proof of notice.** The applicant shall submit a certificate of service.

(h) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The Protestant shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.

(B) Title: protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) **Protest period.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date of completion of service of process on all respondents in the cause.

(D) Site inspection of the facility.

(j) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.

(k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(l) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix C to this Chapter.

[Source: Amended at 27 Ok Reg 2110, eff 7-11-10]

165:5-7-34. Waiver of pit closure requirements

(a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-7-16(e)(9) to exempt an operator from responsibility for closure of a pit and transfer to the surface owner responsibility for maintenance and closure of the pit.

(b) **Names required.** Each application under this Section shall be filed in the name of the well operator and the surface owner of the land on which the pit is located.

(c) **Surface owner signature.** The application shall not be approved without the signature of the surface owner on the application.

(d) **Application form.** The applicants shall prepare the application with a caption in a format which complies with Appendix D to this Chapter.

(e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.

(f) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.

(g) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.

(D) The name, address, and telephone number of the applicant or its

- representative, whom anyone may contact for additional information concerning the application.
- (2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix D to this Chapter.
- (3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:
- (A) The Soil Conservation District.
 - (B) Each adjacent surface owner and surface lessee.
- (4) **Proof of notice.** The applicant shall submit a certificate of service.
- (h) **Protests.**
- (1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.
- (2) **Late protests.**
- (A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.
 - (B) The Commission may reinstate a late filed protest upon motion for good cause shown.
- (3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall contain the following information:
- (A) Caption from application.
 - (B) Title: Protest.
 - (C) Name, address, and telephone number of protesting parties.
 - (D) Reasons for protest.
- (4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.
- (i) **Protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:
- (1) Filing of the application.
 - (2) Filing of all required exhibits.
 - (3) The date of completion of service of process on all respondents in the cause.
 - (4) Site inspection of the facility.
- (j) **Unprotested applications.**
- (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.
- (2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.
- (k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (j)(1) of this Section.
- (l) **Protested applications.**
- (1) **Hearing required.** A hearing shall be required on each timely protested

application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix E to this Chapter.

[Source: Amended at 27 Ok Reg 2110, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-7-35. Operation of commercial pit, commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application for authority to operate a commercial pit under 165:10-9-1, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 shall comply with the application requirements of OAC 165:5-7-1(a) through (e). The Commission will not accept an application for an emergency order approving a commercial facility that requires a permit under OAC 165:10-9-1, OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Exhibits.** At the time of the filing of the application, the applicant shall submit all exhibits and data.

(c) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice, and perform the site inspection within sixty (60) days after the date of filing of the application may be grounds for dismissal of the application.

(d) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The date and time for a site inspection to be made by the applicant, a Commission representative and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix F to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Oklahoma Conservation Commission, 2800 North Lincoln, Suite 160, Oklahoma City, Oklahoma 73105.

(B) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the site of the proposed facility.

(4) **Newspaper publications.** The applicant shall publish the notice of the application:

- (A) Two times in a newspaper of general circulation in Oklahoma County, Oklahoma.
- (B) Two times in a newspaper of general circulation in each county where the proposed facility will be located.
- (5) **Proof of notice.** The applicant shall submit a certificate of service and affidavits of publication.
- (e) **Protests.**
 - (1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.
 - (2) **Late protests.**
 - (A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.
 - (B) The Commission may reinstate a late filed protest upon motion for good cause shown.
 - (3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall be entitled protest and which shall contain the following information:
 - (A) Caption from application.
 - (B) Title: Protest.
 - (C) Name, address, and telephone number of protesting parties.
 - (D) Reasons for protest.
 - (4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.
- (f) **Protest periods.**
 - (1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for thirty (30) days from the last of the following events to occur:
 - (A) Filing of the application.
 - (B) Filing of all required exhibits.
 - (C) The date on which the last publication was made.
 - (D) The date of completion of service of process on all respondents in the cause.
 - (E) Site inspection of the proposed facility.
 - (2) **Additional protest period.**
 - (A) After expiration of the protest period, an additional ten (10) day protest shall run:
 - (i) If the applicant amends the application to change the location of the facility or increase its size; or
 - (ii) If the applicant files amended exhibits changing the design of the facility.
 - (B) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.
- (g) **Unprotested Applications.**
 - (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (h) of this Section.

(2) **Notice of hearing.** The applicant shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Pollution Abatement. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix G to this Chapter.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 3685, eff 7-11-94; Amended at 25 Ok Reg 2179, eff 7-11-08; Amended at 27 Ok Reg 2111, eff 7-11-10]

165:5-7-35.1. Change of operator regarding commercial pit, commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application requesting the issuance of an order changing a designation of operator in an order authorizing a commercial pit under 165:10-9-1, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 (collectively "commercial facility") shall comply with the application requirements of OAC 165:5-7-1(a) through (e).

(b) **Notice of application.** Notice of the application for a change of operator regarding a commercial facility shall be published one time in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which the subject lands are located. The notice shall include the following information:

(1) The legal description of the commercial facility.

(2) The name and physical mailing address of the current operator of the commercial facility and the name and physical mailing address of any entity to whom transfer of operation of such facility is sought.

(3) The name, physical mailing address, telephone number, electronic mail address and facsimile number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(4) The notice must also include the following language:

(A) Written protests to the relief sought must be filed with the Court Clerk's Office, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, submitted to the applicant or its representative and to the Manager of the

Pollution Abatement Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, within fifteen (15) days of the later of the date of publication of the notice of application and service of the application and notice of application on all respondents in the cause. Written protests must specify the name of the applicant, cause number, reasons for protest, and the name(s), physical mailing address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of the protestant(s).

(B) If there are no written protests to the application and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review without a hearing, and if the application is protested, then any protestants shall receive notice of hearing.

(c) **Procedure.**

(1) If a written protest to the application is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department within fifteen (15) days of the later of the date the notice of application is published and service of the application and notice of application on all respondents in the cause, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof given in the same manner required in the filing of an application on the Pollution Docket.

(2) If no written protest is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review.

(d) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application on:

(1) The Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P. O. Box 52000, Oklahoma City, Oklahoma 73152-2000,

(2) The Oklahoma Conservation Commission, 2800 North Lincoln Boulevard, Suite 160, Oklahoma City, Oklahoma 73105.

(3) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the facility.

(e) **Proof of notice.** The applicant shall file a certificate of service and affidavit(s) of publication with the Commission's Court Clerk's Office.

[Source: Added at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752 eff 8-27-15 (RM 201500002)]

165:5-7-36. Road oiling [REVOKED]

[Source: Amended at 25 Ok Reg 2185, eff. 7-11-08]

165:5-7-37. [RESERVED]

165:5-7-38. License for pulling pipe and plugging wells

- (a) The application for a license for pulling pipe and plugging wells shall state:
- (1) The name of the applicant.
 - (2) The names and addresses of all partners, chief officers, and directors.
 - (3) The experience of applicant.
 - (4) Evidence of financial responsibility of the applicant.
 - (5) The counties in which the applicant will operate.
- (b) Notice that an application has been filed shall be published by the applicant in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in the county where the applicant's principal place of business is located. The notice shall include:
- (1) The name of the applicant.
 - (2) Generally what operations the applicant intends to conduct.
 - (3) That applicant is financially responsible.
 - (4) The counties in which applicant will operate.
- (c) If a written objection to the application is filed within fifteen (15) days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Field Operations who shall file a report and make recommendations to the Commission.
- (d) A license may be suspended or revoked for good cause upon application, after notice and hearing.

[Source: Amended at 9 Ok Reg 2327, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2113, eff 7-11-10]

165:5-7-39. Staff applications for state funds to conduct remedial action

- (a) **Scope.** This Section establishes the procedure for applications by Commission staff to plug wells and repair or close commercial pits.
- (b) **Forms.**
- (1) The applicant shall have the option to use the following forms:
 - (A) Form SFP2000 (Application).
 - (B) Form SFP2001 (Notice of Hearing).
 - (C) Form SFP2002 (Emergency Application).
 - (D) Form SFP2003 (Emergency Order).
 - (E) Form SFP2004 (Final Order).
 - (2) Use of said forms shall be deemed compliance with all procedural rules of the Commission.
- (c) **Referral of cause to the Oil and Gas Conservation Division.** Upon filing of the application, the cause shall be assigned to a geologist or engineer in the Oil and Gas Conservation Division. It shall be the responsibility of the designee to:
- (1) Give proper notice of the application.
 - (2) Acquire affidavits and any other exhibits showing the status of the facility operator and the condition of the facility.

- (3) Prepare specifications and estimate of costs for remedial action.
- (4) Report his findings to the Commission.
- (d) **Emergency application.** In an emergency, the applicant may file an emergency application for funds to conduct necessary remedial action. The Commission shall hear such applications with or without notice. At the time of hearing, the Commission shall receive the exhibits and recommendation required in (c) of this Section. The Commission shall rule on the request as to deems appropriate.
- (e) **Hearing on the merits.**
 - (1) The matter shall be set before the Commission en banc or such Administrative Law Judge as the Commission shall assign.
 - (2) At the hearing, the Commission shall:
 - (A) Receive any exhibits not previously entered into evidence.
 - (B) Inquire of the designee as it deems necessary.
 - (C) Rule on the application as it deems appropriate.
 - (3) Where the Commission has issued an emergency order in the cause, the applicant may move that the emergency order be made a final order. The Commission may grant such a request if further funds are not needed to accomplish the remedy.

165:5-7-40. Oil and gas conservation and pollution rulemakings

Notice of an application to make or prescribe or to alter, amend, or modify a rule or regulation relating to oil and gas conservation or to pollution matters shall be published one time at least fifteen (15) days prior to the hearing or prior to the commencement of the comment period, whichever is applicable, in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in Tulsa, Oklahoma.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-41. Orders relating to oil and gas pollution

- (a) An application for an order relating to oil and gas operations, see OAC 165:10, and notice of hearing thereof shall be served by the applicant by restricted mail upon the named respondent.
- (b) Notice of hearing for an order relating to oil and gas operations under the provisions of OAC 165:10 shall be published pursuant to 165:5-7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-41.1. Complaint under 52 O.S., Sections 24.4 and 24.5, against a natural gas gatherer

- (a) Any action by the Commission under 52 O.S. §§ 24.4 and 24.5, shall be initiated by the filing of a Formal Complaint by the aggrieved party, following which the Commission shall conduct a hearing and take such evidence as is necessary to determine the merits of the Complaint; provided no hearing shall be conducted during such time as there is in

effect an agreement of the parties for submission of the subject of the Complaint to the informal dispute resolution procedure under Subchapter 23 of this Chapter, if such agreement also expressly extends the one hundred twenty (120) day period of (c) of this Section. "Complaint" or "Formal Complaint" for these purposes does not include a Notice of Intent to Mediate or other pleading or papers filed under the informal dispute resolution procedure.

(b) The Complainant shall send notice of hearing of the Complaint and a copy of the Formal Complaint to the gatherer by registered or certified mail with return receipt requested at least twenty (20) days prior to such hearing, but in no event shall the hearing be less than thirty (30) days from the filing of the Complaint.

(c) Proceedings instituted under this Section shall be completed and a final, appealable order entered by the Commission within one hundred twenty (120) days of the filing of the Formal Complaint with the Commission's Court Clerk, unless such date is extended by the agreement of the parties. All matters to be determined by the Commission relative to a complaint filed under this Section shall be heard on an expedited basis.

(d) When a Formal Complaint has been filed and the Complainant seeks to continue its existing gathering service, the Commission, upon motion of the Complainant, subject to the provisions of 52 O.S. § 24.5 (E), may enter an interim order requiring continuation of gathering service under the fees and terms and conditions of service of the last expired contract, if any, during the pendency of the complaint or set an interim fee and terms and conditions of continued service. Notice and hearing of such motion shall be in accordance with OAC 165:5-9-2(b), and any interim order entered by the Commission shall be temporary and subject to a final determination of the merits of the Complaint.

(e) When a Formal Complaint has been filed, the Commission, upon motion of either party, may enter an order requiring the other party to produce designated documents or data, not privileged, which are in such party's care, custody and control, and which are relevant to the subject matter of the Complaint, for inspection and copying at a location stated in the order. Notice and hearing of such motion shall be in accordance with OAC 165:5-9-2(b), and any order entered shall direct production of the designated documents within ten (10) days of the date of such order. A copy of the order must be served by regular mail on the party required to produce the designated documents at least five (5) days prior to the date upon which production is required. This provision shall be in addition to any prehearing procedures provided under Subchapter 11 of this Chapter.

[Source: Added at 13 Ok Reg 2371, eff 7-1-96; Amended at 17 Ok Reg 596, eff 12-6-99 (emergency); Amended at 17 Ok Reg 1853, eff 7-1-00]

165:5-7-42. Oil and gas conservation and pollution causes other than specifically provided

Notice of hearing for an order relating to oil and gas conservation or pollution, that is otherwise not specifically provided for in this Chapter, shall be published pursuant to 165:5-7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

PART 5. PUBLIC UTILITIES**165:5-7-50. Interim public utility rate relief**

(a) In order to obtain interim public utility rate relief, the applicant shall show:

- (1) That a proceeding before the Commission for an increase in rates will consume a considerable length of time.
- (2) That the rates in effect do not yield a reasonable rate of return or yield sufficient coverage ratios.

(b) Notice of hearing of an application for interim rate relief shall be published once each week for two (2) consecutive weeks at least fifteen (15) days prior to hearing in a newspaper of general circulation published in each county in which are located utility customers affected thereby, unless the Commission directs otherwise.

165:5-7-51. Applications affecting public utility rates

(a) In utility rate cases where a general rate increase is sought, the applicant shall make a good faith effort to serve notice of the proposed rate change by mailing notice to all affected utility customers, unless the Commission directs otherwise. The notice shall:

- (1) Contain information concerning the nature of the proposed changes and the effect of the changes on customer billing.
- (2) Give the date and location of the hearing to be held.

This notice may be included in regular customer billings but in any case shall be served at least fifteen (15) days prior to the date of hearing. A customer entitled to such a notice shall not be a respondent within the definition of 165:5-1-3 unless such customer enters an appearance in the cause pursuant to 165:5-13-3(c).

(b) Notice of hearing of an application for approval of any schedule, rate, charge, classification, rule or regulation which will directly or indirectly alter charges made for service performed, shall be published once each week for two (2) consecutive weeks at least fifteen (15) days prior to hearing in a newspaper of general circulation published in each county in which are located utility customers affected thereby, unless the Commission directs otherwise.

165:5-7-52. Public utility certificate of authority for issuance of securities

(a) Any public utility, as defined in 17 O.S. §181, desiring to issue securities or to create liens to secure evidences of indebtedness pursuant to the above statute, shall file an application setting forth:

- (1) The amount and character of the proposed securities or liens.
- (2) The general purposes for which they are to be issued or created, including a description and statement of the value of any property or services that are to be received in full or partial payment for the securities or in a proper case the evidence of indebtedness to be secured by the lien or liens.

- (3) Any property or services already received by the public utility, the cost of which is to be reimbursed to the public utility by the proceeds of such securities or evidences of indebtedness.
 - (4) The most recent balance sheet of the public utility certified by their independent auditor.
- (b) The application shall be verified by the public utility's president or vice president or by the signers of its articles of organization if it has not yet elected officers.

165:5-7-53. Certificate of convenience and necessity for telephone lines

- (a) Pursuant to 17 O.S. §§131, et seq., notice that an application has been filed for a certificate of public convenience and necessity to construct, build, equip or operate public telephone toll or long-distance line or lines or any public telephone exchange or exchanges in any territory shall be published once a week for two (2) consecutive weeks in some newspaper of general circulation in each territory affected.
- (b) No certificate shall issue until the expiration of thirty (30) days from the date of the first publication of notice. If no protest is filed, the Commission may issue the certificate without a hearing. If a written objection to the application is filed within the thirty-day period, the application shall be set for hearing and notice thereof shall be given by the Applicant filing notice of the hearing in the Office of the Commission's Court Clerk and providing said notice to all parties of record and the Attorney General, at least 10 days prior to the hearing.
- (c) This Section shall not be construed to require any telephone company to secure such a certificate for any extension within or to any territory already served by it or for any extension into a territory contiguous to a territory already served by it on which it has heretofore filed with the Commission an exchange map showing the territory professed to be served by such telephone company.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-7-54. Certificate of convenience and necessity for water transportation lines

- (a) Notice that an application has been filed for a certificate of convenience and necessity for water transportation lines shall be given by restricted mail or personal service to:
- (1) The chief executive officer of the municipality or municipalities affected, if any.
 - (2) The board of county commissioners in any county the line enters or traverses.
 - (3) Any water transportation company having a water transportation line in any county in which the proposed line is to be built or having a transportation line in any county or counties having a common boundary at any point to any county in which the proposed line is to be built.
- (b) Notice of an application for a certificate of convenience and necessity for water transportation lines shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in each county affected.
- (c) No certificate shall issue until the expiration of forty-five (45) days from the date of the first publication of notice. If a written objection to the application is filed within the

forty-five (45) day period, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no protest is filed, the Commission may issue the certificate.

(d) Except as otherwise specifically provided in this Section, applications filed hereunder shall be governed by the provisions of the Administrative Procedures Act.

165:5-7-55. Assignment of certificate of convenience and necessity; water transportation line

(a) The holder of a certificate of convenience and necessity to construct, build or equip a water transportation line or amendments thereto may file its application seeking the consent of the Commission to assign, lease or alienate such certificate. Such certificate may be assigned, leased or alienated only when the physical assets of the water transportation company or that part thereof covered by the certificate are assigned, leased or alienated to the same assignee to assign a certificate of convenience and necessity.

(b) The application shall be set for hearing and notice shall be given in writing at least ten (10) days prior to the date of the hearing to all persons who are served by the facilities covered by the certificate which is sought to be transferred.

(c) The notice shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in each county in which the line is located.

(d) Except as otherwise specifically provided in this Section, applications filed hereunder shall be governed by the provisions of the Administrative Procedures Act.

165:5-7-56. Extension of water transportation service

(a) Notice of hearing for extension of water transportation service shall be given by mail at least ten (10) days prior to the date of hearing to all persons holding certificates nearest to those requesting service and to the municipal officers of all municipalities served or to be served by such water transportation companies.

(b) Notice of hearing for extension of water transportation service shall be published once a week for two (2) consecutive weeks in a newspaper or newspapers of general circulation in the county or counties in which the line is proposed to be constructed.

(c) Except as otherwise specifically provided in this Section, applications filed hereunder shall be governed by the provisions of the Administrative Procedures Act.

165:5-7-57. Acquisition, control, or merger of domestic public utilities

(a) An application for approval of the acquisition, control or merger of a domestic public utility, pursuant to 17 O.S. §§191.1 et seq., excluding gas utilities, and an electric cooperative, pursuant to 17 O.S. §158.50, shall include the following additional information, made under oath or affirmation:

- (1) The name and address of each acquiring party and all affiliates thereof; and
 - (A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (a)(1) of this Section.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests.

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application.

(4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.

(5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition.

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.

(10) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest.

(b) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (a) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (a) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(c) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change. Hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers at least twenty (20) days prior to the date of the hearing.

(d) Any merger or other acquisition of control shall be deemed approved unless the Commission has, within thirty (30) days after the conclusion of such hearing, entered an order disapproving the merger or other acquisition of control.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 25 Ok Reg. 2185, eff. 7-11-08]]

165:5-7-58. Utility or transportation rulemaking and other general orders (REVOKED)

[Source: Revoked at 11 Ok Reg 3675, eff 7-11-94]

165:5-7-59. Reciprocity of final orders between states - telephone

(a) **Southwestern Bell Telephone Company.** When any exchange is served by a central office or offices located in an adjacent state and the lesser of ten percent (10%) or five hundred (500) of the customers served by such exchange are located in Oklahoma, except when the exchange has fewer than five hundred (500) customers the ten percent (10%) limitation shall not apply, the basic local exchange services within the Oklahoma portion of such exchange shall be furnished at the rates and charges prescribed for the adjacent state within which such central office or offices are located; provided that:

(1) The Company shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state within which such central office or offices are located, or within ten (10) days of the effective date of this Section.

(2) The Company shall include with the notice an impact statement as directed by this Commission.

(3) The rates and charges prescribed by an order of the Regulatory Agency of such adjacent state, after a hearing on the merits has been held in such adjacent state, shall be filed with the Corporation Commission of the State of Oklahoma.

(4) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall become lawfully effective for the Oklahoma customers served by such exchange upon the same date when such rates and charges are effective in the adjacent state.

(b) **Other Telephone Companies with multi-state exchanges.** When any exchange is served by a central office or offices located in an adjacent state and the lesser of ten percent (10%) or five hundred (500) of the customers served by such exchange are located in Oklahoma, except when the exchange has fewer than five hundred (500) customers the ten percent (10%) limitation shall not apply, the rates, charges and terms and conditions of service within the Oklahoma portion of such exchange shall be those prescribed by the Regulatory Agency of the adjacent state within which such central office or offices are located; provided that:

(1) The Company shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state within which such central office or offices are located, or within ten (10) days of the effective date of this Section.

(2) The Company shall mail notice to the customers located within Oklahoma stating that the customer may contact the Oklahoma Corporation Commission regarding any objections to the proposed rate increase.

(3) The Company shall include with the notice an impact statement as directed by this Commission.

(4) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall become lawfully effective for the Oklahoma customers served by such exchange upon the same date when such rates and charges are effective in the adjacent state.

165:5-7-60. Reciprocity of final orders between states – electric companies

When any electric company serves less than ten percent (10%) of its total customers or five hundred (500) of its members for rural electric cooperatives within the State of Oklahoma, the rates, charges, and terms and conditions of service within the Oklahoma portion of such service territory shall be those prescribed by the regulatory agency of the adjacent state within which the central office of the electric company is located; provided that:

- (1) The electric company shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state where such central office or offices are located.
- (2) The electric company shall publish or provide actual notice to the customers located within Oklahoma stating that the customer may contact the Commission regarding any objection to the proposed rate increase.
- (3) The consumers shall be individually notified of the date when the thirty-day time period will lapse and that any protest must be entered prior to that date with the Director of Public Utilities, Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Oklahoma 73105.
- (4) The electric company shall comply with all rules and regulations prescribed by the Commission or in the absence of that compliance shall clearly indicate by footnoting on the filed tariffs and/or terms and conditions of service, any and all departures from the Commission's Rules and Regulations Governing Electric Utilities, OAC 165:35, which are currently in effect.
- (5) Such rates and charges prescribed by an order of the Regulatory Agency of such adjacent state, after hearing on the merits have been held in such adjacent state, shall be filed with the Corporation Commission of the State of Oklahoma.
- (6) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall be lawfully effective for the next regular billing for the Oklahoma customers served by the rural electric distribution cooperative.

[Source: Amended at 27 Ok Reg 2113, eff 7-11-10; Amended at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-7-61. Procedures for causes filed pursuant to OAC 165:70

(a) **Purpose.** The purpose of this Section is to establish procedures regarding rate change causes filed on the Public Utility Docket pursuant to OAC 165:70 which will allow the Oklahoma Corporation Commission to fulfill its responsibility to process rate changes within the time prescribed by Title 17 O.S. (Supp. 1993) § 152 et seq.

- (1) This Section shall apply to all parties to the proceeding, including the utility, the Commission Staff, the Attorney General and any intervening party of record.
- (2) To the extent this Section conflicts with other Sections of the Commission's Rules of Practice, OAC 165:5, the procedures established in this Section shall control.

(b) **Definitions.** The definitions set forth in OAC 165:70-1-2 shall be deemed applicable to this Section.

(c) **Intervening party requirement.**

(1) The Commission Staff, the Attorney General and any intervening party of record shall conform their testimony and exhibits to the format set forth in OAC 165:70-5-4. A waiver of any requirements of Chapter 70 shall be obtained as outlined in OAC 165:70-3-6.

(2) Any interested person seeking to intervene pursuant to OAC 165:5-9-4 shall request permission to intervene no later than ninety (90) days following the filing date of the application for a general rate change. The filing or granting of any Motion to Intervene shall not be grounds to delay, continue or extend any hearing date, deadline or time limit set or to be set in a proceeding.

(3) If the Commission does not rule on a motion to intervene within twenty (20) days from the date the motion to intervene is filed, the motion to intervene shall be deemed to have been granted.

(d) **Data requests/responses.** Any party, including but not limited to the utility, the Commission Staff, the Attorney General and any other intervening party of record, shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time. Any data requests received after 3:00 p.m. shall be deemed received the next regular business day.

(1) Data requests submitted by any party prior to the date of filing the application package shall be deemed received the date the application package is filed pursuant to OAC 165:70-3-1.

(2) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(3) The party served with the data request shall notify the issuing party within five (5) business days of receipt of the requests that the ten (10) business day requirement or otherwise agreed-upon response time cannot be met and provide an explanation for the delay. The party served with the data request shall commit, at the time of such notification, to a response date.

(4) Any objection(s) relating to a data request or the date a response is to be provided shall be presented by the objecting party within five (5) business days of receipt of the data request. If the parties are unable to reach a resolution regarding the dispute within three (3) business days of the date of the objection, the objecting party shall file a written objection and a hearing on all such objections shall be set on the next Public Utility Motion Docket. It shall be the responsibility of the objecting party to notify the Commission or the Administrative Law Judge that the matter will appear on the Docket.

(e) **General instructions regarding testimony and exhibits.** The following instructions are applicable to all classes of utilities, the Commission Staff, the Attorney General and any intervening party of record who filed testimony and exhibits regarding a general rate change filed pursuant to OAC 165:70:

(1) All schedules and exhibits shall be mathematically correct and properly cross-referenced.

(2) All schedules and exhibits shall be designated as provided in 165:70-5-4.

(3) Headings on all schedules and exhibits shall clearly indicate the party's name, the nature and content of the schedule, the test period covered and the cause number.

(4) All schedules and exhibits shall be typed and/or clearly legible.

(f) Filing of responsive and rebuttal testimony, notice of major issues to be raised and oral surrebuttal.

(1) The Commission Staff, the Attorney General and any intervening party of record seeking to present evidence shall file responsive testimony and exhibits no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. Any party seeking only to cross-examine witnesses shall file a statement of position no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. At the time of filing testimony the Commission Staff, the Attorney General and any intervening party of record shall, upon request, provide a copy of the workpapers which support the recommendations contained in their testimony to the requesting party of record. The workpapers shall be organized and presented in the same format as required of the utility by Part 5 of OAC 165:70-5.

(2) If the utility elects to present rebuttal testimony, the rebuttal testimony shall be filed by the one hundred fortieth (140) day subsequent to the filing date of the application for a general rate change.

(3) A hearing on the merits shall commence no later than the one hundred fiftieth (150th) day subsequent to the date the application for a general rate change was filed pursuant to OAC 165:70-3-1.

(4) Parties filing direct testimony pursuant to this subsection (f) may present oral rebuttal testimony to any issue raised for the first time during the hearing. Parties filing responsive testimony pursuant to this subsection (f) may present oral surrebuttal.

(5) Nothing in this Section shall preclude the trier of fact from permitting parties who filed testimony to present oral surrebuttal regarding issues raised for the first time in oral testimony presented during the hearing, if deemed appropriate.

(g) Hearings regarding intervention, waiver of requirements, deficiencies, the confidentiality agreement and/or protective order. Any hearings regarding motions to intervene disputes related to the Waiver of Requirements contained in OAC 165:70, Deficiencies, the Confidentiality Agreement and/or the need for a protective order shall be set before the Commission en banc, since time is of the essence in resolving these disputes.

(h) Amending an application.

(1) A utility may not significantly amend an application for a general rate change filed pursuant to OAC 165:70 after it has been docketed by the OCC Court Clerk, except as provided in this subsection.

(2) An amendment may be accommodated by withdrawing the initial filing and substituting a new, amended filing in place of the original cause, which will establish a new filing date. An amended filing must conform to the requirements of OAC 165:70-5-1 and will be subject to the sanctions in OAC 165:70-5-2.

(3) For purposes of this Section, an amendment shall be deemed "significant" if it

changes the test year, or if it requests more than a five percent (5%) increase in the previously requested revenue requirement, unless such changes are the result of arithmetical error or are mandated by law.

(4) A utility may incorporate a significant change without refiling an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

(i) **Limitations on active applications for a general rate change.**

(1) A utility may not have more than one active general rate change application pending before the Commission at any one time, unless the Commission has failed to issue a final order upon the first application within two hundred seventy (270) days of that application's filing date. This shall not prohibit the utility from filing a new application for a general rate change if the utility can show its financial integrity or service reliability is materially impacted during the period from the closing of the record to the time in which the Commission makes a final determination on an active rate application.

(2) A cause which has been remanded to the Commission by the Oklahoma Supreme Court after appellate review shall not be deemed an active general rate change application pursuant to this Section.

[Source: Added at 11 Ok Reg 3687, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2113, eff 7-11-10; Amended at 33 Ok Reg 588, eff 8-25-16 (RM 201600002)]

PART 7. MOTOR CARRIERS

165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses

Applications for an intrastate for-hire motor carrier license or intrastate private carrier license, renewal of an intrastate for-hire motor carrier license or renewal of an intrastate private motor carrier license and a household goods certificate or a renewal of a household goods certificate shall be processed administratively unless a protest is filed with the Court Clerk's office or the staff of the Transportation Division requests the application be set for hearing.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 23 Ok Reg 506, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2225, eff 7-1-06; Amended at 27 Ok Reg 2115, eff 7-11-10]

165:5-7-66. Termination of bus service [REVOKED]

[Source: Revoked at 14 Ok Reg 2474, eff 7-1-97]

165:5-7-67. Termination of railroad agency service [REVOKED]

[Source: Revoked at 17 Ok Reg 1853, eff 7-1-00]

**165:5-7-68. Collective ratemaking procedure/guidelines for motor carriers
[REVOKED]**

[Source: Revoked at 14 Ok Reg 2474, eff 7-1-97]

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

Section

- 165:5-9-1. Response to initial pleading
- 165:5-9-2. Subsequent pleadings
- 165:5-9-3. Emergency applications
- 165:5-9-4. Intervention and parties of record
- 165:5-9-5. Joinder and consolidation of parties and proceedings
- 165:5-9-6. Continuances

165:5-9-1. Response to initial pleading

(a) **Scope.** Except where otherwise specifically provided in this Chapter, including the Petroleum Storage Tank Division at OAC 165:5-21-5 and OAC 165:5-21-6, the provisions of this Section govern pleadings filed after a cause has been commenced by an application.

(b) **Form.** Every document in opposition to an application shall be styled a "Response" and shall contain:

(1) **Caption.** The response shall contain the same caption as in the application.

(2) **Body.** The response shall contain four numbered paragraphs, as follows:

(A) **Parties.** The respondent shall be identified, including:

(i) Name, address, and telephone number of his attorney or designated representative.

(ii) Nature of his interest in the subject matter of the cause.

(B) **Allegations of fact.** Response to the allegations of fact shall include:

(i) Admissions of all allegations of fact admitted by the respondent.

(ii) Specific denial of any allegations of fact respondent alleges and expects to prove to be untrue.

(iii) Allegations of all other facts necessary or appropriate to support respondent's position. Failure to deny specifically any allegation of fact will not relieve the person making the allegation of the burden of proving it.

(C) **Legal authority.** Citations of statutes, rules, orders, and decided cases in support of the response or in opposition to the granting of the relief sought in the application.

(D) **Relief sought.** A brief statement of the relief sought by respondent, including any affirmative relief sought which is not set out in the application.

(c) **Subscription.** The response shall be signed by the respondent, or an authorized agent of the respondent, or by the attorney for the respondent, and shall set out the

mailing address, telephone number, facsimile number, electronic mail address and bar identification number, of the person so signing it, as applicable.

(d) **Time for filing.** Response to an application may be filed at or before the date of the hearing. Any person appearing at the hearing, as the Commission or Administrative Law Judge may deem appropriate, may be heard and permitted to offer evidence whether or not he has filed a written response or other pleading, except as provided in OAC 165:5-19-1.

(e) **Default.** Any named respondent who fails to file response within the time specified shall be deemed in default, and the Commission or Administrative Law Judge may proceed to hear the cause without further notice to a person in default. Except as provided in OAC 165:5-19-1, no applicant will by default of an adverse respondent be relieved from the burden of proving the material allegations of fact upon which his claim for relief is based.

[**Source:** Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 16 Ok Reg 829, eff 3-30-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2115, eff 7-11-10]

165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service by regular mail, facsimile, electronic mail or in person as provided in this subsection, stating in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a cause has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given by the movant by serving at least five (5) business days prior to the date set for hearing by regular mail, facsimile, electronic mail or in person a copy of the motion and notice on each respondent.

(B) After the record in the cause has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given by the movant by serving, at least five (5) business days prior to the date set for hearing, by regular mail, facsimile, electronic mail or in person a copy of the motion and notice to all parties of record.

(2) Exceptions to such motions may be lodged in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the cause has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a cause shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

(c) **Response/objection to motions.** Any person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Such dismissal shall not dismiss the cause as to affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has failed to receive notice of the dismissal or who has requested affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened at the hearing on the merits in a cause, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a cause, the cause may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a cause where a motion to dismiss has been filed, notice shall be served on each respondent in the cause.

(3) Upon five (5) business days notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

(A) Failure to prosecute.

(B) Unnecessary duplication of proceedings or res judicata.

(C) Withdrawal.

(D) Moot question or obsolete applications.

- (E) Lack of jurisdiction.
 - (F) Failure to submit a proposed order in a timely manner.
 - (G) For other good cause shown.
- (4) Upon posting by the Office of Administrative Proceedings fifteen (15) business days notice on a disposition docket, and mailing notice to all parties of record to a cause, the Commission may dismiss causes for any of the following reasons:
- (A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.
 - (B) Failure to set a cause on a day certain.

[Source: Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2116, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12]

165:5-9-3. Emergency applications

(a) **Filing.** After an application for emergency relief is filed with the Court Clerk, it may be placed on the Commission's Emergency Docket. The requisite number of file-stamped copies of the application shall be submitted to the Commission on or before 2:00 P.M. of the day preceding the hearing. No application for emergency relief shall be accepted for filing by the Court Clerk without a base application being previously filed. No base application shall be dismissed without hearing subsequent to the issuance of an emergency order in the same cause. A motion to dismiss shall be filed. Emergency applications for motor carrier causes shall be set for hearing in accordance with the provisions of the Commission rules and regulations governing motor carriers, OAC 165:20. The Commission will not accept an application for an emergency order approving a commercial facility that requires a permit under OAC 165:10-5-5, OAC 165:10-9-1, OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Notice.** Notice of hearing on an emergency application shall be served on all parties otherwise entitled to notice under the base application not less than five (5) business days prior to the date of the emergency hearing; provided that, if the applicant has received written approval from all parties of record and respondents, the provisions of this Section shall not apply. Notice of hearing on motor carrier emergency applications shall be set on the Commission docket as prescribed by law.

(c) **Exception.** In order to protect the public health and safety, the Commission may issue an emergency order without notice and hearing and without the filing of a base application.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 25 Ok Reg 2179, eff 7-11-08; Amended at 27 Ok Reg 2117, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12]

165:5-9-4. Intervention and parties of record

(a) Any person, not subject to subsection d of this Section, interested in the subject matter of a cause may become a party of record by filing a motion for intervention, which shall be accompanied by a notice of hearing and set for hearing on the next motion docket or as agreed to by the parties of record and the Commission or Administrative Law Judge. The Commission or an Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.

(b) An intervention shall follow the form provided elsewhere in this Chapter for an application or a response. An intervention may seek affirmative relief.

(c) Each motion to intervene, accompanied by the notice of hearing, shall be served to all parties of record.

(d) The following persons shall become a party of record by filing an entry of appearance or orally stating an entry of appearance at any proceeding regarding the cause:

(1) A person named as a respondent,

(2) A person entitled to individual notice in a cause,

(3) A person seeking to intervene with the agreement of the applicant, all parties of record, and the Commission or Administrative Law Judge, or

(4) The Attorney General.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2117, eff 7-11-10]

165:5-9-5. Joinder and consolidation of parties and proceedings

(a) An application may join two or more separate requests for relief or Commission action, or may request two or more types of action or relief in the alternative. An application relating to oil and gas conservation or pollution shall seek only one type of relief.

(b) A complaint may join two or more grounds of complaint, whether or not arising out of the same transaction, but each separate action complained of shall be separately stated and numbered.

(c) Two or more complainants may join in one complaint if their respective complaints are against the same person or persons and involve substantially the same subject matter and grounds.

(d) The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just.

(e) Upon motion of a person, or upon its own motion, with or without notice, the Commission may order a person to be joined as a party of record and to appear in a proceeding. The movant shall cause a copy of such order to be served by regular mail, facsimile, electronic mail or in person upon such party of record.

(f) Upon motion of a person, or upon its own motion with or without notice, the Commission may order a proceeding dismissed as to one or more parties of record.

[Source: Amended at 27 Ok Reg 2117, eff 7-11-10]

165:5-9-6. Continuances

(a) **General.** The Commission or Administrative Law Judge before whom a cause is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a cause may be granted in advance of the date for hearing of the cause in the following ways:

(1) As provided in OAC 165:5-9-2(b)(1); or

(2) The applicant in a cause may request a continuance at least five (5) days in advance of a hearing date from the Docket Clerk or, if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent by regular mail, facsimile, electronic mail or in person at least five (5) days prior to the date of the hearing. Such cause shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the cause shall be heard by the Commission or Administrative Law Judge. Such decision may be noted as part of the order of the Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, written notice of such continuance shall be served by regular mail, facsimile, electronic mail or in person by the person requesting such continuance on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record at least five (5) days prior to the date the continued cause is set for hearing. The movant shall provide proof of service of such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued cause on a day certain for a period more than thirty (30) days after last recorded hearing date as shown from the Commission's docket records, the Director of the Office of Administrative Proceedings or an Administrative Law Judge may recommend dismissal of the cause to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the cause without prejudice by an Order Dismissing Cause.

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2118, eff 7-11-10]

SUBCHAPTER 11. PREHEARING PROCEDURES

Section

- 165:5-11-1. Deposition and discovery
- 165:5-11-2. Prehearing conference
- 165:5-11-2.1. Initial screening conference ("ISC")
- 165:5-11-3. Commission subpoena

165:5-11-1. Deposition and discovery

(a) Depositions.

(1) Deposition of a witness for use at a hearing may be taken only when ordered upon motion by the Commission or of a person. The order may direct that the deposition of a witness be taken inside or outside the State of Oklahoma.

(2) The order shall state the time and place the deposition shall be taken, and the person taking the deposition shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date scheduled for taking the deposition.

(3) The manner of taking depositions shall otherwise be governed by the laws relating to taking of depositions for use in the District Courts of Oklahoma. Attendance of a witness for taking of his deposition shall be governed by OAC 165:5-11-3, except that the attendance of a witness for deposition shall be required only in the county of his residence.

(4) A deposition may be offered in evidence at the hearing by any person.

(b) Production of documents.

(1) Upon motion, the Commission may make an order requiring a person to produce designated documents or tangible objects for inspection by respondents or parties of record to the cause, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing or at a prehearing conference, and production shall be at the principal office of the Commission unless some other place is stated in the order. An order hereunder may be directed to a person not yet a party of record, conditioned that if such person appears at the hearing, the order thereupon will be complied with.

(2) The person applying therefore shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date upon which production is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which production is required unless otherwise agreed by the applicant, respondent and intervenors.

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the cause.

(4) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the person ordered to make production.

(5) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

(c) Interrogatories.

(1) Upon motion of the Commission or of a person, an order may be entered requiring a person to answer in writing under oath certain written interrogatories attached to the order. The answers shall be submitted at the hearing or at a prehearing conference.

(2) The person applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each respondent at least ten (10) days prior to the date upon which answer is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which answer is required unless otherwise agreed by the applicant, respondent and intervenors.

(d) Protective orders.

(1) The Commission, upon motion, may make such orders relating to discovery as may be necessary or appropriate for the protection of and to prevent hardship to and excessive burden upon a person. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed.

(2) The Commission may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this subsection.

(e) Discovery in proceedings on the PUD docket.

(1) Except as otherwise directed by the Commission, in proceedings on the PUD docket, the parties of record may also obtain discovery by document request, data request or interrogatory without filing a motion for an order of the Commission. When discovery is sought without a prior order, the provisions of (b) (3), (4) and (5) of this Section shall apply, and the references to orders therein shall be deemed to mean requests for discovery.

(2) In a proceeding filed pursuant to 17 O.S. § 152(B), 17 O.S. § 137, or 18 O.S. § 438.31 et seq., discovery by document request, data request or interrogatory shall be governed by the provisions of OAC 165:5-7-61. In a proceeding requesting relief pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory shall be in accordance with (e)(3) below.

(3) In a proceeding requesting relief pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory by the OUSF Administrator shall be answered within ten (10) business days, unless an objection is filed within five (5) business days and a ruling is made establishing a different response time or the applicant and the Administrator agree to a different response time. The filing of an objection shall toll the time to respond pending the ruling on the objection.

(4) In all other proceedings on the PUD docket, responses to any document request, data request or interrogatory shall be due twenty (20) calendar days after receipt of the same, unless:

(A) An objection is filed within ten (10) business days and a ruling is made establishing a different response time. The attorney filing such objection must attest that the objection is not frivolous or for the purpose of delay. The objecting party is not required to respond until an objection is ruled upon. The ruling shall state the time in which to respond; or,

(B) The party requesting discovery and the producing/responding party agree in writing to a different response time.

(5) The Commission may allow a shorter or longer time for response for good cause shown, but in no event may the Commission order a response to be served in less than ten (10) business days, except as otherwise agreed by the person ordered to respond.

(6) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next regular business day.

(7) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(8) Objections to a document request, data request, interrogatory, or the time in which to respond may be presented to the Administrative Law Judge unless otherwise ordered by the Commission en banc. Any ruling by the Administrative Law Judge on an objection may be orally referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1).

(9) Any objection(s) relating to a discovery request or the time in which to respond shall be set on the next PUD motion docket unless the Administrative Law Judge and the requesting and responding parties of record agree to a different date and time.

(10) The responding party shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting party any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

(f) This Section shall not be interpreted to limit the Commission's authority pursuant to Article IX, Sections 18, 19, and 28 of the Oklahoma Constitution.

(g) Pursuant to 17 O.S. § 330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted under the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224 through 3237. See also OAC 165:5-21-7.

[Source: Amended at 12 Ok Reg 2015, eff 7-1-95; Amended at 16 Ok Reg 829, eff 3-30-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2118, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-11-2. Prehearing conference

(a) **Objective.** The Commission, with or without request of any party of record, may order the parties of record or their attorneys to appear at a designated time for a prehearing conference. The conference shall be attended by the parties of record or their attorneys who have full knowledge of the cause and who have authority to bind their clients by stipulations. The conference shall meet to consider:

- (1) Simplification of the issues and amendments to documents.
- (2) Presentation of issues of law, adjudication of which may simplify or eliminate issues of fact.
- (3) Admissions and stipulations of fact which will avoid unnecessary evidence and testimony. No stipulation, settlement or agreement between the parties of record, their attorneys, or representatives, with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by these rules to appear for them, and thereafter made a part of the record or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This Section shall not limit a party of record's ability to waive, modify or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.
- (4) Identification of documents to be offered at the hearing.
- (5) Identification of and numerical limit upon experts and other witnesses.
- (6) Discovery and production of documents, records, data and other information.
- (7) Audit, investigation and visitation by the Commission or its representatives.
- (8) Other matters as may aid in trial of the cause.

(b) **Notice.** Notice of the time and place of a prehearing conference shall be as prescribed by order of the Commission and shall be served by regular mail, facsimile, electronic mail or in person upon all parties of record by the person requesting the prehearing conference or by the Commission.

(c) **Preliminary order.** Actions taken at the prehearing conference may be embodied in a preliminary order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record, whether or not present, unless modified to prevent manifest injustice.

[Source: Amended at 27 Ok Reg 2119, eff 7-11-10]

165:5-11-2.1. Initial Screening Conference ("ISC")

(a) The following public utility causes may be set before the Commission for screening to determine if the Commission will retain that cause or refer the cause to an Administrative Law Judge for hearing. The Initial Screening Conference may apply to the following public utility causes:

- (1) Applications for general rate change.
- (2) Applications involving utility restructuring and/or competitive issues.
- (3) Other causes as may be decided by the Commission.

(b) The conference will be conducted as an on-the-record proceeding, open to the public and will convene to consider:

- (1) Whether the cause is judicial or legislative in nature.

- (2) Identification of preliminary issues of law and fact including any policy issues.
 - (3) Discussion of the Public Utility Division Staff's participation in the cause and designation of advisory/deliberating counsel and counsel assigned to represent the Public Utility Staff.
 - (4) Whether the cause will be heard by the Commission, the Commission with a Public Utility Referee, or referred to an Administrative Law Judge for hearing.
 - (5) Any procedural matters including notice requirements.
 - (6) Any other matters that may assist in the disposition of the cause.
- (c) Deliberating counsel shall give notice of the time and place of the Initial Screening Conference to the Public Utility Division Director, the Attorney General, all parties of record, and any respondents named in the application not less than five (5) days prior to the Initial Screening Conference.
- (d) Actions taken at the Initial Screening Conference may be embodied in a preliminary procedural order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record unless otherwise ordered by the Commission.

[Source: Added at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2120, eff 7-11-10]

165:5-11-3. Commission subpoena

- (a) **Subpoena.** The Commission, upon motion of a person or upon motion of the Commission, may order the Secretary to issue a subpoena in the name of the Commission in any pending cause requiring attendance of a witness from any place in the State to the place of hearing. Praeceptum for subpoena shall be filed with the Court Clerk and the order of the Commission endorsed thereon.
- (b) **Subpoena Duces Tecum.** A subpoena may require the witness to produce at the hearing books, records, accounts, papers and other documents and tangible objects, which shall be described with reasonable particularity in the subpoena. A subpoena duces tecum directed to a person not an individual may direct that the records be produced by an officer or employee responsible therefor.
- (c) **Service of subpoena.** A subpoena may be served by a law enforcement officer, by an attorney, or by any other person competent to make an oath; and the person serving the same shall attach his affidavit of the person served, and the time and manner of service. Service also may be made in any other manner provided by law. A person may be served by leaving a copy thereof at the principal place of business of the person, with the person or an employee who customarily serves as the secretary or receptionist of the person. A subpoena shall be served on a witness not less than five (5) days prior to hearing.
- (d) **Return.** The original subpoena, with affidavit of service thereon, shall be filed with the Court Clerk. The attendance of a witness shall not be enforced unless the original subpoena is on file at the time of the hearing.
- (e) **Fees.** The attendance of a witness will not be enforced unless the person causing subpoena to be issued tenders the witness fee provided by law for a witness subpoenaed to testify in the district courts of Oklahoma. Attendance of a witness shall not be enforced at the second or subsequent day of hearing unless the person causing the subpoena to be issued tenders additional mileage to and from the place of hearing.

The payment of fees shall not be required when a subpoena is issued on behalf of the Commission.

(f) **Testimony.** A witness present at a hearing pursuant to subpoena may be called to testify by the Commission or Administrative Law Judge or by any party of record.

(g) **Protective orders and orders quashing subpoenas.** The Commission may make any orders with respect to subpoena and attendance of a witness as may be appropriate for the protection of persons, including an order quashing subpoena, excusing attendance of witnesses, or limiting documents to be produced.

(h) **Subpoenas regarding the Petroleum Storage Tank docket.** Pursuant to 17 O.S. § 330, subpoenas may be issued in proceedings on the Petroleum Storage Tank docket pursuant to the provisions of 12 O.S. § 2004.1. See also OAC 165:5-21-8.

[Source: Amended at 16 Ok Reg 829, eff 3-30-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2120, eff 7-11-10]

SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS

Section

- 165:5-13-1. Sessions and hearings
- 165:5-13-2. Setting of causes
- 165:5-13-2.1. Appointment of Public Utility Referee
- 165:5-13-3. Hearings
- 165:5-13-3.1. Optional procedure for spacing related applications
- 165:5-13-4. Report of Administrative Law Judge
- 165:5-13-5. Exceptions to Report of Administrative Law Judge

165:5-13-1. Sessions and hearings

(a) **Open to public.** All official sessions and public hearings of the Commission or any Administrative Law Judge will be open to the public and will be held in its official courtrooms at the principal office in Oklahoma City, Oklahoma, the regional service office in Tulsa, Oklahoma, or at such other place as provided by law or designated by the Commission.

(b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.

(c) **Courtroom conduct.** Conduct of attorneys before the Commission shall be governed by the applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person, witness, attorney, or other representative may be subject to punishment for contempt.

(d) **Record of hearing.** A stenographic and electronic record will be made of all proceedings before the Commission or an Administrative Law Judge. A transcript of proceedings will be made by a court reporter at the request and expense of the person

ordering it; or at the request of the Commission, in which case a copy will be made for any person requesting it, at that person's expense.

[Source: Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 27 Ok Reg 2121, eff 7-11-10]

165:5-13-2. Setting of causes

(a) **General.** All hearings on the merits shall be set before an Administrative Law Judge, unless otherwise ordered by the Commission.

(b) **Specially set.** By a motion, the applicant or any party of record or respondent may, at any time up to commencement of a hearing, request of the Commission that a cause be specially set before the Commission for hearing. The Commission may advance any cause by sua sponte order at any time.

(c) **Exceptions.** For purposes of OAC 165:5-13-5, all exceptions to reports on hearings on the merits in matters on the CD, PD, EN, SF, PSD and US dockets shall be heard by the Commission en banc unless referred to an Oil and Gas Appellate Referee. Hearing dates for exceptions are to be secured from a docket clerk at the time of filing. The exceptions will be heard on that date or as soon thereafter as may meet the convenience of the Commission. Exceptions in all other matters shall be set before the Commission en banc.

(d) **Authority of Administrative Law Judge.** An Administrative Law Judge shall exercise all of the powers of the Commission in the conduct of a cause. An Administrative Law Judge shall rule upon admission of evidence, and objections thereto, and upon any other motion or objection arising during the pendency of the cause until the issuance of the report of the Administrative Law Judge. Review of a ruling of an Administrative Law Judge shall be by exceptions pursuant to OAC 165:5-13-5, and any objection to a ruling or other action of such Administrative Law Judge not included in such exceptions and amendments thereto, shall be deemed to have been waived.

(e) **Hearings on the PUD docket.** All hearings in causes filed pursuant to OAC 165:70 or 18 O.S. §438.31 et seq. shall be given priority status on the PUD docket in order to comply with 17 O.S. §152, 17 O.S. §137 (l) and 18 O.S. §438.31 et seq.

(f) **Hearings on the Petroleum Storage Tank docket.** All hearings regarding the exercise of the Commission's adjudicative authority pursuant to the Oklahoma Storage Tank Regulation Act, 17 O.S. §§301 through 317 and the Oklahoma Petroleum Storage Tank Release Indemnity Program, 17 O.S. §§ 350 through 358, shall be given priority status on the Petroleum Storage Tank docket ("PSD") in order to comply with 17 O.S. § 330 for the Commission to hear each case within one hundred eighty (180) days from the date of filing. See also OAC 165:5-21-9.

[Source: Amended at 12 Ok Reg 2015, eff 7-1-95; Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 16 Ok Reg 829, eff 3-30-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2121, eff 7-11-10]

165:5-13-2.1. Appointment of Public Utility Referee

- (a) In Public Utility cases, the Commission may determine that a cause is of such public interest that the Commission may sua sponte appoint a Public Utility Referee to serve as the Administrative Law Judge with and/or for the Commission conducting the hearing process in the cause.
- (b) The Public Utility Referee shall confer with and assist the Commissioners on all matters regarding the pending cause.
- (c) The Public Utility Referee may assist the Commission in conducting the hearing of the cause in accordance with all other provisions of this Chapter; except that all provisions of this Chapter providing for exceptions of any nature are not applicable.
- (d) Upon conclusion of the hearing of the cause, the Commissioners may seek the assistance of the Public Utility Referee in reaching a determination in the cause.

[Source: Added at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2121, eff 7-11-10]

165:5-13-3. Hearings

- (a) **Conduct of hearing.** Every hearing shall be conducted by the Commission, by an Administrative Law Judge or as provided at OAC 165:5-13-2.1. The Commission or Administrative Law Judge shall call the cause for hearing, after which proceedings shall be had as provided in this Section.
- (b) **Scope of hearings.** The Commission, Administrative Law Judge or Public Utility Referee may state the purpose and scope of the hearing, or the issues upon which evidence will be heard.
- (c) **Appearances.** Every person appearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record, unless specified otherwise. An individual may appear on his own behalf. A corporation may appear only by its attorney; provided, that a representative other than an attorney may appear on behalf of a corporation for the sole purpose of making a statement or indicting corporate policy. Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in the proceeding.
- (d) **Preliminary matters.** The following shall be addressed prior to receiving evidence:
- (1) The applicant, or staff counsel, may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.
 - (2) Ruling may be made on any pending motions, including requests pertaining to discovery.
 - (3) Stipulations of fact and stipulated exhibits shall be received. No stipulation, settlement, or agreement between the parties of record, their attorneys, or representatives with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by the rules of this Chapter to appear for them and thereafter made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing

their written approval. This Section does not limit a party of record's ability to waive, modify, or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Parties of record may, in the discretion of the Commission or Administrative Law Judge, make opening statements where appropriate.

(5) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

(e) **Rules of evidence.** The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so. The Commission or Administrative Law Judge may exclude evidence upon objection made thereto, or the evidence may be received subject to final ruling by the Commission. An exception will be deemed to be preserved by a party of record objecting to evidence upon an adverse ruling thereon. The Commission or Administrative Law Judge may exclude inadmissible evidence on his own motion and may direct cumulative evidence be discontinued.

(f) **Order of proof.** The applicant or complainant who institutes a cause may open and close the proof. Staff counsel may open and close a cause instituted by the Commission or a staff member. Intervenors may be heard immediately following parties of record with whom allied in interest. In all cases, the Commission or Administrative Law Judge shall designate the order of proof.

(g) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one attorney for each party of record. The Commission or Administrative Law Judge shall designate the order of examination and may limit the scope of examination and cross-examination.

(h) **Adverse party.** A party of record may call an adverse person or an officer or employee of an adverse person, in which case the witness may be impeached and otherwise cross-examined.

(i) **Record.** All testimony shall be taken on the record.

(j) **Prepared testimony.** Written testimony of a witness in form of questions and answers, or a narrative statement may be received in lieu of direct examination upon authentication by the witness under oath. In order to be received and relied upon at the hearing, such testimony and exhibits shall be filed and served upon all parties of record not less than five (5) days prior to the hearing, unless otherwise ordered by the Commission for good cause shown. The witness shall be subject to cross-examination. A written or oral statement by or a communication from any person, or a statement or resolution of a political subdivision, trade association, civic organization, or other organization may be received without cross-examination, but will be considered only as argument and not as proof of any recitation of facts contained therein.

(k) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

- (3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.
- (4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.
- (5) The Commission or Administrative Law Judge may require that documents such as rate compilations, statistical or technical data, and tabulated material be filed at a designated time prior to the hearing.
- (6) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by the Commission, staff counsel, and other parties of record.
- (7) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.
- (8) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.
- (l) **Exhibits.** All exhibits shall be identified by docket and cause number prior to submitting to the Commission.
- (m) **Summary exhibits.** An exhibit consisting of a compilation or summary of evidence, records, data, statistics, or other similar information may be received in evidence in addition to or in lieu of the evidence summarized, provided:
- (1) The evidence summarized has been admitted in evidence, or is admissible; and
 - (2) If the evidence summarized has not been admitted, the person offering the summary exhibit has made the evidence summarized available for inspection by all other parties of record, or the information is published in a generally recognized publication which is available to all parties of record. It shall be the responsibility of a person offering a summary exhibit to comply with this subsection in advance of the hearing, and failure to make the evidence summarized available for inspection shall be grounds for refusal to admit the exhibit.
- (n) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for later decision.
- (o) **Briefs.** The Commission or Administrative Law Judge may require or allow the filing of briefs by the parties of record, and may designate the order and time for filing briefs and reply briefs.
- (p) **Reopening the record.** Any person may file and serve, by regular mail, on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction. A motion to reopen shall be filed and served in the same manner as provided in OAC 165:5-9-1(b). The motion and notice shall include a statement that if

the Administrative Law Judge grants the motion, the record may be reopened the same day or on some other day as the Commission may determine.

(q) **Corrections to transcript.** In all proceedings, an official reporter shall make a stenographic and electronic record of the hearing. Errors claimed to be in a transcription of either a contested or uncontested hearing shall be noted in writing and suggested corrections may be offered to the Commission or Administrative Law Judge who presided at such hearing within ten (10) days after the transcript is filed, unless the Commission or Administrative Law Judge shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the Commission or Administrative Law Judge. If not objected to within twelve (12) days after being offered, the Commission or Administrative Law Judge shall direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the Commission or Administrative Law Judge, with the aid of argument and testimony from the parties of record, shall then determine the manner in which the record shall be changed, if at all.

(r) **Preparation of report or order.** The Commission or Administrative Law Judge may permit or direct any party or parties of record to prepare a proposed report or order in any protested cause. In unprotested causes, the applicant shall prepare and submit a proposed Commission order.

[**Source:** Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 27 Ok Reg 2121, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

165:5-13-3.1. Optional procedure for spacing related applications

(a) If no protest to a spacing related application is announced at docket call, an applicant for spacing, despacing, increased well density, or location exception may elect for consideration of the merits of the cause without a full evidentiary hearing. Such review of the cause shall be referred to as the optional procedure.

(b) After electing the optional procedure, the applicant shall provide the Administrative Law Judge with a proposed order and documentation supporting the application. With respect to documentation, any written testimony shall be presented in the form of a sworn, notarized affidavit which shall be marked as exhibits and entered into the record.

(c) The Administrative Law Judge shall prescribe the time period for completing the record and may request additional evidence as deemed appropriate.

(d) After closing the record, the Administrative Law Judge shall have seven (7) business days in which to make a recommendation to the Commission concerning disposition of the application.

(e) If the Administrative Law Judge's recommendation is unfavorable, the matter will be automatically set for a full evidentiary hearing before the same administrative law judge. Any exceptions from the report issuing after the full evidentiary hearing will proceed pursuant to OAC 165:5-13-5.

[**Source:** Added at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2123, eff 7-11-10]

165:5-13-4. Report of Administrative Law Judge

(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

- (1) Names of parties of record and their attorneys.
- (2) Brief statement of facts establishing jurisdiction of the cause.
- (3) Brief summary of the evidence of each party of record who offered evidence.
- (4) The pertinent facts as found by the officer upon consideration of all evidence offered.
- (5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.
- (6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, either orally or in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.

(b) The Administrative Law Judge shall send a copy of the report by regular mail, facsimile, electronic mail or in person to each party of record.

(c) At the expiration of ten (10) days after the report is filed, if no exceptions are filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.

(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file exceptions.

(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

[Source: Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2123, eff 7-11-10]

165:5-13-5. Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas or transportation related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on any oil and gas or transportation related exceptions without a response being filed or hearing oral presentation on said motion.

- (1) **Oral exceptions regarding motions and emergency matters.** Any person adversely affected by a decision of an Administrative Law Judge on the

motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Office of General Counsel of his or her intent to lodge exceptions and any request for oral arguments on the exceptions before the Commission en banc. Written exceptions shall not be required. Oral exceptions shall be set for hearing before the Corporation Commission sitting en banc unless referred to an Oil and Gas Appellate Referee or an Administrative Law Judge regarding matters involving issues addressed in Chapters 10, 15, 16, 20, 25, 26, 27, 28, 29, 30 and/or 32. Oral exceptions in all other matters shall be set for hearing before the Commission sitting en banc. Oral exceptions will be set on the next regularly scheduled day for such matters unless:

(A) The parties agree to another date; or

(B) The Commission specifies otherwise.

(2) **Exceptions to the report from the hearing on the merits.** Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) business days in which to file exceptions to the report before the Commission en banc. To perfect exceptions, written exceptions must be filed within ten (10) business days after filing of the Report of the Administrative Law Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) business day period for filing the exceptions. In exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) business days shall be allowed for the filing of cross exceptions. OAC 165:5-13-2 shall govern the setting of the exceptions. If a party desires the Commission en banc to hear oral arguments on any exceptions, a motion for oral argument of exceptions before the Commission en banc must be filed with the exceptions.

(b) **Contents of the exceptions.** For purposes of (a)(2) of this Section, the written exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his exceptions, or to present at the initial hearing on exceptions thereon additional grounds for exceptions from the report. A person taking exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his exceptions a transcript or what he deems a correct summary of the pertinent evidence, provided that if the transcript is unavailable at the time of filing of the exceptions, then any person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the exceptions shall be considered based on the summary of evidence in the appealed report.

(c) **Responses to written exceptions.** For purposes of exceptions under (a)(2) of this Section, any other person may file written response to the exceptions within five (5) business days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time

of the filing of the exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of a transcript or written summary of evidence submitted by a party of record, the exceptions shall be considered upon the summary of the evidence in the exceptions to the report.

(d) Contents of the Oil and Gas Appellate Referee or Administrative Law Judge Reports. In a case where exceptions are referred to an Oil and Gas Appellate Referee or Administrative Law Judge, such Referee or Administrative Law Judge shall file a written report, stating a recommendation to the Commission to affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.

(e) Scope of review by the Commissioners. With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.

[Source: Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 16 Ok Reg 829, eff 3-30-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2124, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14 (RM 201400001); Amended at 32 Ok Reg 752 eff 8-27-15 (RM 201500002)]

SUBCHAPTER 15. ORDERS

Section

- 165:5-15-1. General form and procedure
- 165:5-15-2. Unitization orders
- 165:5-15-3. Pooling orders
- 165:5-15-4. Location exception orders for increased density wells
- 165:5-15-5. Increased density orders
- 165:5-15-6. Location exception orders
- 165:5-15-7. Emergency orders
- 165:5-15-8. Interim order for horizontal well drilling and spacing unit [REVOKED]
- 165:5-15-9. Termination of horizontal well unit [REVOKED]

165:5-15-1. General form and procedure

(a) **Contents of orders.** The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

- (1) Caption, cause number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and order type, e.g., emergency order, final order, etc.
- (2) Appearances.
- (3) Date and place of all hearings.
- (4) Summary of allegations of applicant, and of all other parties of record.
- (5) Summary of evidence of applicant, and of all other parties of record.
- (6) Findings of fact, containing all ultimate facts found to have been established.
- (7) Conclusions of law, containing:
 - (A) All legal conclusions found to be applicable to the facts; and
 - (B) The directive of the order stated in concise and mandatory language.
- (8) Signature of the Secretary certifying as to all Commissioners participating in making the order.
- (9) Seal of the Commission.
- (10) Date of filing, and effective date where appropriate.

(b) **Duty to send orders.** The Court Clerk shall immediately mail or otherwise deliver a copy of the order to the applicant. Except where otherwise specifically provided in this Chapter, the applicant shall thereafter mail or otherwise deliver a copy of the order within five (5) days of the receipt of the order to all parties of record and to each respondent in the cause. Where an attorney has appeared of record for a person, service shall be on the attorney.

(c) **Effectiveness of order.** The issuance of or effectiveness of an order or its enforcement will not be stayed or postponed by the filing of any motion for rehearing or for other relief therefrom. The Commission may by order stay any order pending further hearing, and may stay or postpone the effective date thereof, or enforcement thereof for such time and on such terms as may be just.

(d) **Order titles and numbers.** An order of the Commission, descriptively titled, shall be issued for all motions and other matters set for hearing, except for continuances, and all such orders shall be given an order number.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2125, eff 7-11-10]

165:5-15-2. Unitization orders

In addition to the requirements of 52 O.S. §§287.1-287.15, to each order authorizing and providing for the unitized management, operation, and further development of oil and gas properties pursuant to the Unitized Management of Common Sources of Supply Act (52 O.S. §§ 287.1 - 287.15) shall be attached a plat showing the outside boundaries of the surface area included in such order.

165:5-15-3. Pooling orders

(a) **Termination of order.** A pooling order shall contain language to the effect that if operations for the drilling of the well are not commenced within the time designated, the order shall terminate except as to the payment of cash bonuses.

(b) **Affidavit of mailing.** The applicant or other responsible person shall file with the Court Clerk, within ten (10) days from the date of the pooling order, an affidavit stating that a copy of said order was mailed within three (3) days from the date of the order, unless the Commission directs otherwise, to all parties of record and respondents whose addresses are known. The name and address, if known, of each respondent in the proceeding who has not previously been dismissed shall be set out in the affidavit.

(c) **List dismissed person.** The pooling order shall list all persons dismissed in the cause.

(d) **Elections.** A pooling order shall contain language to the effect that the respondents shall have at least twenty (20) days from the date of the order in which to communicate an election to the applicant or other responsible person as to the option selected under the order, unless the Commission directs otherwise. A respondent in a pooling order shall be deemed to have made a timely election if, as provided in the pooling order, the respondent has delivered his election by timely mailing as indicated by postmark of the U.S. Postal Service on or before the last day allowed in the order, or timely delivery as otherwise provided in the pooling order. The election shall be directed to the person designated in the pooling order to receive elections.

(e) **Escrow accounts.** A pooling order which pools interests of unknown or unlocated owners shall contain language to the effect that if any payment of bonus, royalty payments, or other payments due and owing under the order cannot be made because the person entitled to it cannot be located or is unknown, then the bonus, royalty payments, or other payments shall be paid into an escrow account in a financial institution within ninety (90) days after the order and shall not be commingled with any funds of the applicant or operator; that the Commission shall retain jurisdiction to grant to financially solid and stable holders an exception to the requirement that funds be paid into an escrow account with a financial institution and permit such holder to escrow such

funds within such holder's organization; that responsibility for filing reports with the Commission as required by law and Commission rule as to bonus, royalty, or other payments deposited into escrow accounts shall be with the applicable holder; that such funds deposited in said escrow accounts shall be held for the exclusive use of, and sole benefit of, the person entitled to it; and that it shall be the responsibility of the operator to notify all other holders of this provision and of Commission rules regarding unclaimed monies under pooling orders.

(f) **Exhibit list of respondents.** A pooling order shall contain an attached exhibit listing all respondents or interests in the following manner:

(1) **Known respondents.** List all known respondents by name and address.

(2) **Unknown and/or unlocatable respondents.** List all respondents, with last known address if available, or if there are none so state under this section of the exhibit.

(3) **Respondents listed for curative reasons only.** List all respondents or if none so state under this section of the exhibit.

(g) **Horizontal wells: election.** A pooling order for a horizontal well unit which overlies existing production from the same common source of supply as the horizontal well unit shall provide that if any owner should elect not to participate in the development of the horizontal spacing unit, said owner's interest in the production from the well or drilling and spacing unit which existed prior to the formation of the horizontal well unit shall not be affected.

(h) **Horizontal wells: conversion.** A pooling order for a horizontal well unit which overlies existing production from the same common source of supply as the horizontal well unit may not provide for the conversion of an existing producing oil or gas well into the permitted well for the horizontal well unit unless all working interest owners in such existing well consent to such conversion. A pooling application for such conversion shall include a statement that all working interest owners in such well have agreed in writing to such conversion.

[**Source:** Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 27 Ok Reg 2125, eff 7-11-10]

165:5-15-4. Location exception orders for increased density wells

(a) **Required language; allowable restrictions.** A location exception order for an increased density well where allowable restrictions have been imposed shall contain language obligating the applicant to:

(1) Maintain a monthly allocation schedule for the well which schedule shall show the method used in calculating the allowable, production and the status as to overage or underage.

(2) Furnish a copy of the schedule to each offsetting operator who entered an appearance in the cause.

(3) File with the Gas Department of the Oil and Gas Conservation Division, no later than February 15 each year, a summary of the schedule showing the allowable and

production for the calendar year and the status as to overage and underage as of December 31.

(b) **Termination of order.** A location exception order for an increased density well shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order.

165:5-15-5. Increased density orders

(a) **Required language; allowable restrictions.** An increased density order where allowable restrictions have been imposed shall contain language obligating the applicant to:

(1) Maintain a monthly allocation schedule for the well which schedule shall show the method used in calculating the allowable, production and the status as to overage or underage.

(2) Furnish a copy of the schedule to each offsetting operator who entered an appearance in the cause.

(3) File with the Gas Department of the Oil and Gas Conservation Division, no later than February 15 each year, a summary of the schedule showing the allowable and production for the calendar year and the status as to overage and underage as of December 31.

(b) **Termination of order.** An increased density order shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order.

165:5-15-6. Location exception orders

A location exception order shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order. For directionally drilled wells, the location of the entry into and exit from the common source of supply must be specified.

[SOURCE: Amended at 26 Ok Reg 2409, eff 7-11-09]

165:5-15-7. Emergency orders

An emergency order shall state, in addition to applicable provisions of OAC 165:5-15-1, the following:

(1) The emergency or circumstances necessitating the order.

(2) Any notice given or hearing held prior to entry of the order.

(3) That the order is temporary, and subject to final determination of the cause.

(4) The time limitations of the order, which shall be the date set for hearing or another day certain.

(5) Continuance of the hearing shall not serve to extend an emergency order.

(6) Any person affected by an emergency order may file written application for a hearing thereon, stating the precise grounds for objection to the order, which hearing may be held upon such notice to other persons as the Commission shall direct.

(7) An order shall be issued determining the merits of any application for emergency relief relating to a Conservation Docket proceeding within thirty (30) days from the filing of the application.

(8) An order granting emergency relief relating to a Conservation Docket proceeding shall be effective for a period not to exceed ninety (90) days.

[Source: Amended at 17 Ok Reg 2299, eff 7-1-00]

165:5-15-8. Interim order for horizontal well drilling and spacing unit [REVOKED]

[Source: Amended at 27 Ok Reg 2126, eff 7-11-10]

165:5-15-9. Termination of horizontal well unit [REVOKED]

[Source: Amended at 27 Ok Reg 2126, eff 7-11-10]

SUBCHAPTER 17. POST ORDER RELIEF

Section

165:5-17-1. Within 10 days; motion

165:5-17-2. After 10 days; application

165:5-17-3. Motions related to public utility orders

165:5-17-4. Nunc Pro Tunc

165:5-17-5. Appeals

165:5-17-1. Within 10 days; motion

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order. However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state:

(1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.

(2) The specific modifications or other relief sought by the motion.

(3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. The movant is required to serve copies of the motion and notice of hearing on all respondents and parties of record at least five (5) business days prior to the hearing date. The motion and notice of hearing can be served by regular mail, facsimile, electronic mail or in person.

[Source: Amended at 27 Ok Reg 2126, eff 7-11-10; Amended at 33 Ok Reg 588, eff 8-25-16 (RM 201600002)]

165:5-17-2. After 10 days; application

(a) At any time subsequent to ten (10) days after entry of an order of the Commission, an application to vacate or modify the order, or for any other form of relief from the order, filed by any person, whether or not a party of record in the original cause, shall be treated as a separate cause, and shall be governed by rules applicable to the commencement of a cause. The application shall:

- (1) Identify the order sought to be modified or vacated.
- (2) State specifically the parts or provisions sought to be modified or vacated.
- (3) State specifically the modifications or vacations sought.
- (4) State specifically the grounds upon which such relief is sought.

(b) Notice of hearing of the application shall be served and published as required upon the commencement of the cause. The application shall be set for hearing before the Commission or Administrative Law Judge or Public Utility Referee, as provided in this Chapter as to the commencement of a cause.

[Source: Amended at 27 Ok Reg 2126, eff 7-11-10]

165:5-17-3. Motions related to public utility orders

An order of the Commission, granted to a public utility pursuant to 17 O.S. §§181 through 189, approving the issuance of securities or the creation of liens on property in this state to secure the payment of evidences of indebtedness shall not be vacated or modified pursuant to motion or application to vacate or modify filed by any person other than the public utility.

165:5-17-4. Nunc Pro Tunc

With or without notice or hearing, the Commission may make or cause to be made an order nunc pro tunc to correct any clerical errors, mistakes, or omissions in an order, or as to timely mailing of the order by the Commission or otherwise to cause the order to correctly reflect the judgment or action of such Commission.

165:5-17-5. Appeals

All causes on appeal shall be as prescribed by the applicable rules of the Supreme Court of Oklahoma. All appellate petitions, motions, briefs and other filings shall be served on the Commission by mail addressed to the General Counsel of the Commission.

[Source: Amended at 27 Ok Reg 2126, eff 7-11-10]

SUBCHAPTER 19. CONTEMPT

Section

165:5-19-1. Contempt procedure

165:5-19-2. Waiver or reduction of fines and penalties upon small business

165:5-19-1. Contempt procedure

(a) **Commencement.** A cause filed for contempt for disobedience to or violation of law or a rule, regulation, order, or judgment of the Commission shall be commenced by the filing of a verified complaint.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.

(2) Each law, order, rule, regulation of which violation is charged.

(3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

(1) The name of the complainant and the date the complaint was filed.

(2) A brief description of the nature of the complaint.

(3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by mailing the citation for contempt by certified mail to the respondent's last known address as listed in Commission records. The respondent is responsible for notifying the Commission notified of any change of address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:

(1) Signed for by any person at the address listed.

(2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94]

165:5-19-2. Waiver or reduction of fines and penalties upon small business

(a) **Fines and penalties may be waived against small business.** Pursuant to 75 O.S. § 506, any fine or penalty levied against a small business pursuant to the contempt procedure provided in this Subchapter may be waived or reduced by the Commission if:

- (1) The small business corrects the violation within thirty (30) days of receiving a complaint, summons and notice of citation for contempt, or other form of citation; or
- (2) The violation was the result of an excusable misunderstanding of the Commission's interpretation of a rule.

(b) **Circumstances when no waiver or reduction may occur.** A waiver or reduction of a fine or penalty may not occur under any of the following circumstances:

- (1) A small business has been notified of the violation of a statute or Commission rule by the Commission pursuant to proper procedure and has been given a prior opportunity to correct the violation on a prior occasion;
- (2) A small business fails to exercise good faith in complying with the statute or Commission rule;
- (3) A violation involves willful or criminal conduct;
- (4) A violation results in serious health, safety, or environmental impact; or
- (5) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

(c) **Small business defined.** For the purposes of the waiver or reduction of a fine or penalty pursuant to 75 O.S. § 506, the term "small business" means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees.

[Source: Added at 20 Ok Reg 2301, eff 7-15-03]

**SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK
DOCKET**

Section

165:5-21-1.	Purpose
165:5-21-2.	Scope
165:5-21-3.	Application and notice requirements for Petroleum Storage Tank cases
165:5-21-4.	Response to application
165:5-21-5.	Motions
165:5-21-6.	Discovery
165:5-21-7.	[RESERVED]
165:5-21-8.	Subpoenas
165:5-21-9.	180 days
165:5-21-10.	Advancement

**SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK
DOCKET**

165:5-21-1. Purpose

The purpose of this Subchapter is to provide rules to govern proceedings filed before the Commission concerning the Oklahoma Storage Tank Regulation Program and the Petroleum Storage Tank Release Indemnity Program. Accordingly, all procedural rules necessary to initiate, regulate and litigate the above stated programs have been centralized in this Subchapter for user friendliness, with the exception of the rules contained in Chapter 5 which are "general" rules of procedure. To avoid repetitive rule language, the following rules apply to all proceedings subject to this Subchapter:

- (1) OAC 165:5-1-3 (Definitions)
- (2) OAC 165:5-1-4 (Office location; office hours; records)
- (3) OAC 165:5-1-5 (Filing of documents)
- (4) OAC 165:5-1-6 (Time computations and extensions; effective date)
- (5) OAC 165:5-1-8 (Place of hearing)
- (6) OAC 165:5-1-9 (Telephonic testimony)
- (7) OAC 165:5-5-1 (Dockets; identifying initials)
- (8) OAC 165:5-9-3 (Emergency applications)
- (9) OAC 165:5-11-3 (Prehearing conference)
- (10) OAC 165:5-13-1 (Sessions and hearings)
- (11) OAC 165:5-13-2 (Setting of causes)
- (12) OAC 165:5-13-3 (Hearings)
- (13) OAC 165:5-13-4 (Report of Administrative Law Judge)
- (14) OAC 165:5-13-5 (Exceptions to Report of the Administrative Law Judge)
- (15) OAC 165:5-15-1 (General form and procedure [orders])
- (16) OAC 165:5-15-7 (Emergency orders)
- (17) OAC 165:5-17-1 ([Post order relief] Within 10 days)
- (18) OAC 165:5-17-2 (After 10 days; applicants)
- (19) OAC 165:5-17-4 (Nunc Pro Tunc)
- (20) OAC 165:5-17-5 (Appeals)

(21) OAC 165:5-19-1 (Contempt procedure)

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2127, eff 7-11-10]

165:5-21-2. Scope

(a) The rules of this Subchapter shall be known as the Oklahoma Corporation Commission Rules of Practice for the Petroleum Storage Tank Division, and may be cited as OAC 165:5-21-1 et seq.

(b) The rules of this Subchapter shall govern all proceedings concerning the Petroleum Storage Tank Division before the Commission, any Administrative Law Judge, attorney, or other officer or employee of the Commission.

(c) The rules of this Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-3. Application and notice requirements for Petroleum Storage Tank cases

(a) Every case will start with the filing of an application in the Court Clerk's Office. The following must be on the application:

- (1) A caption with the heading of "Before the Corporation Commission of the State of Oklahoma."
- (2) The name of the applicant(s).
- (3) The relief sought (what the applicant wants done).
- (4) The docket and case number.

(b) The application must have four numbered parts as follows:

- (1) The first part must have (i) the applicant's name, address, and telephone number of his attorney or designated representative; (ii) the nature of the applicant's interest in the subject matter of the case; and (iii) the name and address of each person (if any) named as respondent(s).
- (2) The second part must have the allegation of facts which are important to the case. The allegations must be stated simply in numbered subparagraphs as necessary for clarity.
- (3) The third part must have the citations of statutes, rules, orders, and decided cases authorizing the relief sought.
- (4) The fourth part must have a short and concise statement of what the applicant(s) wants the Commission to do.

(c) The application must be signed by the applicant or, an authorized agent of the applicant or by the attorney for the applicant. The address and telephone number of the person signing must be under the signature. The person signing the application shall be deemed to certify that:

- (1) He has read the application; and

- (2) To the best of his knowledge, formed after reasonable inquiry, the facts contained in the application are true; and
- (3) That the application is not filed to harass or to cause unnecessary delay or needless expense.
- (d) A document may be served on a party of record by regular mail or in person. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney.
- (e) Every application and notice of hearing shall be served on the respondent and the Office of General Counsel by certified mail by the person filing the application; publication is not required. Thereafter, every document shall be served by regular mail upon all parties.
- (f) A certificate of service will be included on every document. The certificate shall contain a list of the persons to whom a copy of the document was mailed, postage prepaid, or to whom it was hand delivered.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-4. Response to application

- (a) The response to an application shall contain the same caption as in the application and shall contain four numbered parts as follows:
- (1) The first part will give the name of the respondent, address and telephone number of his attorney or designated representative and the nature of his interest in the subject matter of the case.
- (2) The second part will be a response to the allegations of fact. It will include (i) admissions of specific allegations of fact; (ii) specific denial of any allegations of fact and (iii) a statement of all other facts necessary or appropriate to support respondent's position. Failure to deny specifically any allegation of fact will not relieve the person making the allegation of the burden of proving it.
- (3) The third part states the citations of all statutes, rules, orders, and decided cases in support of the response or in opposition to the granting of the relief sought in the application.
- (4) The fourth part must give a short and concise statement of what the respondent wants the Commission to do.
- (b) The response shall be signed by the respondent or by the attorney for the respondent, and will include the address and telephone number of the person signing.
- (c) The Petroleum Storage Tank Division must file a response to an application within twenty (20) days of the receipt of the application.
- (d) Amendment of a document may be permitted at any time. An amendment may take the form of a substitute document, an amendment or supplement, or any correction(s) by addition or deletion of language. A response may be made to an amended document, but it is not required.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-5. Motions**(a) Pleadings other than the application or response shall be made by motion.**

(1) Each motion shall state in plain language the action or relief sought and the facts and circumstances upon which the motion is based.

(2) All motions, including motions to dismiss and motions for summary judgment, will be set on a regularly scheduled motion docket to be heard by an Administrative Law Judge unless otherwise directed by the assigned Administrative Law Judge.

(3) The filing of a motion will not automatically delay the hearing on the merits.

(4) The Court Clerk will advise the person filing the motion when it will be heard and what Administrative Law Judge will hear it. A notice of the time of hearing must be included on the motion document, below the certificate of mailing.

(5) The notice of hearing shall be sent to other parties of record by regular mail at least five (5) days prior to the date set for hearing.

(6) All motions will be decided by the Administrative Law Judge.

(b) Reply to motions. Any person may file and serve a reply to any motion at any time before the motion is heard.

(c) Specific motions.

(1) **Motion to Intervene.** Any person with a substantive interest in the subject matter of a case may become a party by filing a motion for intervention.

(A) The Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.

(B) The Administrative Law Judge will not grant intervention if the motion is filed less than 20 days before the date of the hearing on the merits.

(C) The filing or granting of any motion to intervene shall not be grounds to delay any hearing date or time limit set in a proceeding.

(D) An intervention may seek affirmative relief.

(2) **Motion to Dismiss or Motion for Summary Judgment.**

(A) The applicant may dismiss his application with or without prejudice at any time. The dismissal shall not dismiss the cause as to affirmative relief sought by any respondent.

(B) At any time prior to the hearing on the merits a respondent may file a motion to dismiss or a motion for summary judgment.

(C) A case may be dismissed by agreement of all parties or recommended for dismissal with or without prejudice by the Administrative Law Judge upon a motion by the Administrative Law Judge or any party of record.

(D) Upon five (5) days notice to parties of record, the Administrative Law Judge may entertain motions to dismiss or summary judgment for any of the following reasons:

(i) Failure to state facts which would justify any Commission action

(ii) A showing that facts set out by the parties, including materials in attached affidavits, answers to interrogatories, documents produced or testimony elicited in deposition show that it is possible for only one party to win.

(iii) Failure to prosecute.

(iv) The case has already been decided.

- (v) The question is moot.
 - (vi) Lack of jurisdiction.
 - (vii) Failure to submit a proposed order in a timely manner.
 - (viii) For other good cause shown.
- (3) **Motion for Joinder and/or Consolidation.** Upon motion, a case may:
- (A) Have two or more complainants joined in one complaint if their respective complaints are against the same person(s) and involve substantially the same subject matter and grounds;
 - (B) Have a person ordered joined as a party of record and to appear in a proceeding; and
 - (C) Have consolidation of two or more cases for hearing.
- (4) **Motion for Continuance.** Pursuant to 17 O.S. § 330, no more than two (2) continuances shall be granted by the Commission in any case unless further continuance is agreed to by all of the parties actively participating in the case.
- (A) The Commission may grant additional continuances upon the showing of exigent or extraordinary circumstances.
 - (B) Notice of the continuance date shall be served on all respondents and parties of record and shall be sent by regular mail at least five (5) days prior to the date of the hearing.
 - (C) Every continuance shall be to a specific day.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-6. Discovery

Pursuant to 17 O.S. §330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted pursuant to the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224-3237. No motion to permit discovery is required. Parties or their attorneys may issue notices for deposition or requests for production as provided in the discovery code. Discovery must start early in the case and be done promptly, as the hearing on the merits must be heard within one hundred eighty (180) days. A party who has been slow or neglectful in pursuing discovery shall not delay the hearing to finish such discovery.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-7. RESERVED

[Source: Reserved at 16 Ok Reg 829, eff 3-30-99 (emergency); Reserved at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-8. Subpoenas

Pursuant to 17 O.S. §330, all cases filed on the Petroleum Storage Tank docket may have subpoenas issued pursuant to the provisions of 12 O.S. § 2004.1. No motion to allow subpoenas is required.

- (1) References in the statute to "clerk" refer to the Court Clerk of the Commission.
- (2) References in the statute to "court" refer to the Commission.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-9. 180 days

Hearings on merits shall be within one hundred eighty (180) days from the date the application was filed. The Administrative Law Judge may extend this date, if requested by person(s) other than Commission employees or representatives, upon a showing by such person(s) of exigent or extraordinary circumstances.

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-10. Advancement

A case may be advanced and heard directly by the Commissioners upon a showing that there is a matter of general applicability at issue in the case and that an early resolution of the dispute by the Commissioners will help resolve other conflicts, thereby avoiding costly litigation of other cases. The Commissioners may take and resolve the entire case or they may resolve only the issue of general applicability and return the rest of the case to the Administrative Law Judge for an evidentiary hearing on the other issues in the case

[Source: Added at 16 Ok Reg 829, eff 3-30-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

SUBCHAPTER 23. INFORMAL RESOLUTION OF NATURAL GAS GATHERING DISPUTES

Section

- | | |
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SUBCHAPTER 23. INFORMAL RESOLUTION OF NATURAL GAS GATHERING DISPUTES

165:5-23-1. Scope

The Commission encourages the resolution and early settlement of all disputes about natural gas gathering services in the most effective manner possible. Commission employees are charged with the responsibility to promote resolution and settlements of such disputes, consistent with the public interest. This Subchapter establishes a voluntary, non-binding informal procedure to be available either before or after the filing of a Formal Complaint to encourage the resolution of disputes regarding gas gathering. In this voluntary procedure, Participants are not required to be represented by an attorney. The provisions of OAC 165:5-1-2(b) are not applicable to this Subchapter.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-2. Definitions

The following words and phrases, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Complainant" means an aggrieved party, pursuant to 52 O.S. §§ 24.4 and 24.5, who seeks to have a dispute regarding natural gas gathering services resolved by the Commission. Any informal dispute resolution procedure initiated by said Complainant shall be a neutral process as it affects the Participants, and shall only occur as a result of the agreement of the Participants.

"Conservation Division" means the Oil and Gas Conservation Division.

"Formal Complaint" means a complaint filed under 52 O.S. §§ 24.4 and 24.5 and OAC 165:5-7-41.1.

"Mediator" means an individual, mutually agreeable to the Participants, selected from a list of mediators maintained by the Commission who are certified under the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq. The list of certified mediators shall include, but not be limited to, members of the Oil and Gas Conservation Division staff. Any mediator selected by the Participants shall remain neutral and shall not advocate the position of any Participant in an informal dispute resolution procedure.

"Informal dispute resolution procedure" means a non-judicial, voluntary, non-binding and informally conducted mediation procedure for resolution of disputes regarding gas gathering. Such mediations will be conducted under the provisions of the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq.

"Participant(s)" means the Complainant or Respondent, or both, in the informal dispute resolution procedure.

"Respondent" means the gatherer whose conduct is the subject of a Notice of Intent to Mediate.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00; Amended at 27 Ok Reg 2127, eff 7-11-10]

165:5-23-3. Form and service of a Notice of Intent to Mediate; reply by Respondent

(a) Prior to or after the filing of a Formal Complaint under 52 O.S. §§ 24.4 and 24.5, a Complainant seeking redress under this Subchapter may commence the informal dispute resolution procedure by filing a Notice of Intent to Mediate. The Notice of Intent to Mediate shall be made in the form prescribed by the Commission and shall contain the following information:

- (1) The Complainant's name;
- (2) The Complainant's company name;
- (3) The Complainant's address;
- (4) The Complainant's company phone number, e-mail address, and facsimile number;
- (5) The date and time of the complaint including the name and address, and the telephone number and fax number, if known, of the Respondent with whom the Complainant has a dispute;
- (6) A description of the dispute;
- (7) The time period of the problem described in the dispute;
- (8) The current status of the negotiations between the parties;
- (9) Description of the actions taken by the Complainant to resolve the problem;
- (10) The relief sought by the Complainant;
- (11) The legal description, county name and name of the well(s) involved in the dispute; and
- (12) The names of representatives of the Respondent with whom the Complainant has talked regarding the dispute.

(b) No filing fee shall be charged by the Office of Administrative Proceedings to the Complainant for filing the Notice of Intent to Mediate, however, it shall charge a \$5.00 fee to each Participant to an informal dispute resolution procedure.

(c) If the Notice of Intent to Mediate is filed after the filing of a Formal Complaint, the Notice of Intent to Mediate shall contain a statement of the Complainant's desire to commence the informal dispute resolution procedure, the information contained in OAC 165:5-23-3 (a)(8) and (a)(9), and shall reference the claims pled and relief sought in the Formal Complaint.

(d) Attached to the Notice of Intent to Mediate may be any documentary evidence the Complainant wishes to submit.

(e) The Complainant shall send by registered mail, facsimile, or deliver a copy of the Notice of Intent to Mediate and all attached documents to the Respondent at the same time that the Notice of Intent to Mediate and any attached documents are filed with the Commission.

(f) Within ten (10) days of receiving the Notice of Intent to Mediate, the Respondent shall file in writing either a notice that it does not agree to participate in the informal dispute resolution procedure or a reply that it agrees to participate in the informal dispute resolution procedure, in which event Respondent shall respond to the Notice of Intent to Mediate and Respondent may attach to its reply any documentary evidence which it wishes to submit. The Respondent shall file its notice or reply and any attached

documentary evidence with the Commission's Court Clerk and shall send by registered mail, facsimile, or deliver a copy of the notice or reply, and all attached documents, to the Complainant at the same time the notice or reply is filed with the Court Clerk.

(g) Either the Complainant or the Respondent may withdraw its agreement to participate in the informal dispute resolution procedure at any time.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-4. Administration of the informal dispute resolution procedure

(a) Upon the filing of a Notice of Intent to Mediate, the dispute shall be assigned an informal dispute case number by the Commission's Court Clerk, which shall maintain files pertaining to the matter. The parties to the dispute will select a mutually agreeable mediator from the list of certified mediators maintained by the Commission. The Notice of Intent to Mediate shall be forwarded to the selected mediator, and the dispute will be submitted to the informal dispute resolution procedure unless the Complainant or Respondent notifies the Commission's Court Clerk that one, or both, of said parties does not wish to participate.

(b) Upon the parties agreeing to mediate, the Mediator shall arrange for a mediation conference between the Respondent and the Complainant within fifteen (15) days of the filing of the Notice of Intent to Mediate. At the mediation conference, the parties shall:

(1) Inform the Mediator that the dispute has been resolved and the Notice of Intent to Mediate is withdrawn; or

(2) Inform the Mediator that the Complainant and/or Respondent no longer wishes to participate in the informal dispute resolution procedure; or

(3) If the Participants have agreed to the informal dispute resolution procedure, the Mediators shall proceed with the mediation conference between the Participants. At such conference, or any subsequent conference agreed to by the Participants, the purpose of the Mediator is to assist in the resolution of the dispute by facilitating the development of facts, determination of Participants' positions, and resolution of issues underlying the dispute.

(c) Any informal dispute resolution procedure instituted under this Subchapter shall be completed within sixty (60) days of the filing of the Notice of Intent to Mediate, unless extended by the mutual request of the Respondent and Complainant.

(d) The Commission shall not act upon any anonymous Notice of Intent to Mediate under this Subchapter.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-5. Confidentiality of communications in the informal dispute resolution procedure

(a) All Notices of Intent to Mediate, Replies and all attached documentary evidence filed with the Commission's Court Clerk, as well as all communications, notes, records, and

statements, whether oral or written, made, given or furnished by any Participant or Mediator in the course of an informal dispute resolution procedure are privileged and confidential, and are not discoverable or admissible as evidence in any administrative or judicial proceeding unless such communications, notes, records or statements are otherwise discoverable or admissible independent of the informal dispute resolution procedure.

(b) No Participant or Mediator shall be required to testify about any aspect of the informal dispute resolution proceeding relating to or arising out of the informal dispute resolution procedure or be required to disclose any information considered to be privileged and confidential under subsection (a) of this Section.

(c) A Mediator shall not communicate with a Commission administrative law judge or any Commissioner concerning any material or substantive aspect of an informal dispute made confidential by this Section.

(d) No administrative law judge shall be assigned to a formal hearing or other formal investigation of a complaint if that person has directly or indirectly obtained information relating to or concerning such complaint which is confidential under this Subchapter.

(e) Administrative law judge(s) assigned as Mediator(s) under this Subchapter shall not serve as an administrative law judge in any Formal Complaint based upon or arising out of the same dispute or facts described in the Notice of Intent to Mediate which was forwarded to the assigned Mediator. Any Conservation Division staff member(s) assigned as Mediator(s) under this Subchapter shall not serve as a technical advisor on any Formal Complaint based upon or arising out of the same dispute or facts described in the Notice of Intent to Mediate which was forwarded to the assigned Mediator. However, service as a Mediator shall not be deemed a conflict in other matters assigned to the Conservation Division docket.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-6. Helpline

Prior to filing a Formal Complaint, parties complaining about natural gas gathering services may register such complaints with the Conservation Division using the Commission Gas Gathering Helpline. Conservation Division staff shall answer calls to the Helpline from 8:00 a.m. to 4:30 p.m. on all regular Commission business days. The Helpline shall record the information sought in OAC 165:5-23-3(a) of this Subchapter, shall instruct the caller that a Notice of Intent to Mediate containing the same information must be filed to commence the informal dispute resolution procedure and that the Notice of Intent to Mediate and any attachments must be served by registered mail, facsimile or personal delivery on the Respondent, and shall inform the caller that there is no filing fee charged for a Notice of Intent to Mediate, but a \$5.00 fee per participant will be charged for any informal dispute resolution procedure that is commenced. Any Complainant calling the Helpline will be referred to appropriate Conservation Division staff for further information. The Helpline shall neither record nor act upon any anonymous complaints under this subsection.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00; Amended at 30 Ok Reg 1033, eff 7-1-2013 (RM 201300002)]

SUBCHAPTER 25. MOTOR CARRIER TAX AND REGISTRATION PROTESTS

Section

- 165:5-25-1. Purpose and general overview of motor carrier taxpayer/registrant protest procedure
- 165:5-25-2. Applications for hearing
- 165:5-25-3. Representation and participation in administrative proceedings
- 165:5-25-4. Burden of proof
- 165:5-25-5. Effective date of the Subchapter

165:5-25-1. Purpose and general overview of motor carrier taxpayer/registrant protest procedure

(a) The purpose of this Subchapter is to give the International Fuel Tax ("IFTA") taxpayer ("taxpayer") or International Registration Plan ("IRP") registrant ("registrant"), or the taxpayer's/registrant's representative an opportunity to resolve "IFTA" or "IRP" disagreements with the Commission.

(b) Taxpayers/Registrants who wish to challenge a liability assessed or other adverse actions by the Transportation Division, or to seek a refund of taxes or fees, shall file a written protest with the Transportation Division within thirty (30) days from the date of notification of the adverse action. Notification is deemed to be the date of the notice of the adverse action. A protest by the taxpayer/registrant should include the reason(s) for the protest.

(c) The Transportation Division shall respond to the protest within thirty (30) days of receipt of the protest. The response shall advise the taxpayer/registrant the status of the review of the protest and advise of any additional documentation needed.

(d) The taxpayer/registrant may contest the Transportation Division's final decision within thirty (30) days from the date of the mailing of the notice. The taxpayer/registrant must file an application with the Commission's Court Clerk's office in accordance with OAC 165:5-25-2 to contest the final decision.

165:5-25-2. Applications for hearing

Taxpayer or Registrant applications for hearing shall be filed with the Commission's Court Clerk's Office. Applications shall be in writing, signed by the taxpayer/registrant, or an authorized representative thereof, and shall set out therein:

- (1) The name, mailing address, physical address, telephone number, e-mail address, and social security number or employer's identification number of the taxpayer/registrant;
- (2) A statement of the amount of the deficiency as determined by the Transportation Division in the proposed assessment, the nature of the tax or fee and the amount thereof in controversy, or the denial of base state registration;
- (3) A clear and concise statement of each item in dispute;

- (4) The argument and any legal authority upon which each item in dispute is made; provided, that the taxpayer/registrant shall not be bound or restricted in such hearing, except on exceptions, to the arguments and legal authorities contained and cited in said applications or presented in the initial hearing;
- (5) A statement of the relief sought by the taxpayer/registrant;
- (6) A verification by the taxpayer/registrant or his duly authorized agent that the statements and facts contained therein are true; and
- (7) In a refund claim, a statement as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief explanation of the mistake.

[Source: Added at 23 Ok Reg 506, eff 12-19-05 (emergency); Added at 23 Ok Reg 2225, eff 7-1-06; Amended at 27 Ok Reg 2127, eff 7-11-10]

165:5-25-3. Representation and participation in administrative proceedings

(a) Representation. In an administrative proceeding the taxpayer/registrant may represent himself/herself at any stage of the proceeding or may be represented by:

- (1) A corporation;
- (2) An attorney;
- (3) An accountant, but only in a tax protest matter; or,
- (4) A representative who has been pre-approved by the Commission to represent the taxpayer/registrant.

(b) Proper showing may be required. If a taxpayer/registrant wants to be represented by someone other than himself, an attorney, or an accountant, the Administrative Law Judge may require that such other person, before being recognized as a representative of the taxpayer/registrant, make a proper showing of necessary qualifications to enable the representative to render such services to the taxpayer. Upon such showing by the representative, the Administrative Law Judge may certify the representative.

165:5-25-4. Burden of proof

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the taxpayer/registrant to show in what respect the action or proposed action of the Commission is incorrect. If, upon hearing, the taxpayer/registrant fails to make a prima facie case, the Administrative Law Judge may recommend that the Commission deny the application solely upon the grounds of failure to prove sufficient facts which would entitle the taxpayer/registrant to the requested relief.

165:5-25-5. Effective date of the Subchapter

The provisions of this Subchapter shall govern all proceedings and cases commenced after this Subchapter becomes effective, and all subsequent proceedings in cases then pending, except to the extent that in the opinion of the Commission or the Administrative Law Judge, the application of this Subchapter in a pending case would not be feasible or would create an injustice.

[SOURCE: Added in 23 Ok Reg. 2228-2229, eff 7-1-06]

**SUBCHAPTER 27. PROCEDURES FOR PIPELINE SAFETY DEPARTMENT
ENFORCEMENT ACTIONS****PART 1. GENERAL**

Section

- 165:5-27-1. Purpose
- 165:5-27-2. Scope
- 165:5-27-3. Definitions
- 165:5-27-4. Statutory citation

PART 3. ENFORCEMENT

- 165:5-27-10. Enforcement actions
- 165:5-27-11. Penalties
- 165:5-27-12. Discovery
- 165:5-27-13. Subpoenas
- 165:5-27-14. Aggrieved persons

PART 1. GENERAL**165:5-27-1. Purpose**

The purpose of this Subchapter is to provide procedural rules to govern proceedings before the Commission to enforce the provisions of the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq. regarding excavation or demolition on or near or directly over the location of, and notice of damage to, oil and natural gas physical facilities which are described by the currently effective definition of "pipeline" in 49 C.F.R. § 192.3 and "pipeline" and "pipeline system" in 49 C.F.R. § 195.2, pursuant to 63 O.S. § 142.13. The following rules apply to all enforcement actions subject to this Subchapter:

- (1) OAC 165:5-1-3 (Definitions)
- (2) OAC 165:5-1-4 (Office location; office hours; records)
- (3) OAC 165:5-1-4.1 (Open records requests)
- (4) OAC 165:5-1-5 (Filing of documents)
- (5) OAC 165:5-1-6 (Time computations and extensions; effective date)
- (6) OAC 165:5-1-8 (Place of hearing)
- (7) OAC 165:5-1-9 (Telephonic testimony)
- (8) OAC 165:5-1-11 through OAC 165:5-1-14.2 (Electronic Filing of Documents)
- (9) OAC 165:5-5-1 (Dockets; identifying initials)
- (10) OAC 165:5-9-2 (Subsequent pleadings)
- (11) OAC 165:5-9-3 (Emergency applications)
- (12) OAC 165:5-9-4 (Intervention and parties of record)
- (13) OAC 165:5-9-5 (Joinder and consolidation of parties and proceedings)
- (14) OAC 165:5-9-6 (Continuances)
- (15) OAC 165:5-11-2 (Prehearing conference)
- (16) OAC 165:5-13-1 (Sessions and hearings)

- (17) OAC 165:5-13-2 (Setting of causes)
- (18) OAC 165:5-13-3 (Hearings)
- (19) OAC 165:5-13-4 (Report of Administrative Law Judge)
- (20) OAC 165:5-13-5 (Exceptions to Report of Administrative Law Judge)
- (21) OAC 165:5-15-1 (General form and procedure [orders])
- (22) OAC 165:5-15-7 (Emergency orders)
- (23) OAC 165:5-17-1 ([Post order relief] Within 10 days; motion)
- (24) OAC 165:5-17-2 (After 10 days; application)
- (25) OAC 165:5-17-4 (Nunc Pro Tunc)
- (26) OAC 165:5-17-5 (Appeals)
- (27) OAC 165:5-19-2 (Waiver or reduction of fines and penalties upon small business)

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-2. Scope

(a) This Subchapter shall be known as the Oklahoma Corporation Commission Rules of Practice for Pipeline Safety Department enforcement actions and may be cited as OAC 165:5-27-1 et seq.

(b) This Subchapter shall govern all proceedings concerning Pipeline Safety Department enforcement actions arising under the Act and the implementing rules of the Commission.

(c) This Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

(d) Nothing in this Subchapter shall be construed to modify or limit any private right of action arising under the Oklahoma Underground Facilities Damage Prevention Act and enforceable in the district courts of this State.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-3. Definitions

In addition to terms defined in 63 O.S. § 142.2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq.

"**Pipeline**" means pipeline as defined in 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2.

"**Pipeline system**" means "pipeline system" as defined in 49 C.F.R. § 195.2.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-4. Statutory citation

Citations to the Act, 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2 in this Subchapter refer to the most recent codifications of the Act and such sections of the Code of Federal Regulations.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

PART 3. ENFORCEMENT**165:5-27-10. Enforcement actions**

(a) **Commencement.** A cause filed under this Subchapter by the Pipeline Safety Department to enforce the Act as provided in 63 O.S. § 142.13 and for contempt for disobedience to or violation of an order or judgment of the Commission shall be commenced by the filing of a verified complaint.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.

(2) Each law, order, rule, regulation of which violation is charged.

(3) A description of the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

(1) The name of the Director of the Transportation Division and the date the complaint was filed.

(2) A brief description of the nature of the complaint.

(3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by personal service or by mailing the citation by certified mail to the respondent's last known address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:

(1) Signed for by any person at the address listed.

(2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter an appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

(j) Nothing in this Subchapter shall prevent the Commission's Pipeline Safety Department from attempting pre-contempt remediation of alleged violations through the Notice of Probable Violation procedure found in Subchapter 13 of OAC 165:20.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-11. Penalties

(a) If the Commission concludes that the Respondent has committed a violation of the Act, it may enter an order requiring the Respondent to take action to correct the violation, to submit to damage prevention training, imposing penalties not to exceed maximums provided by law, or to fashion other remedies as the interests of justice may require.

(b) Penalties imposed under subsection (a) shall not exceed maximum amounts provided by 17 O.S. § 6.1.

[Source: Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-12. Discovery

Discovery for Pipeline Safety Department enforcement actions shall be conducted pursuant to the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224-3237. No motion to permit discovery is required. Parties or their attorneys may issue notices for deposition or requests for production or interrogatories as provided in the Oklahoma

Discovery Code.

[**Source:** Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-13. Subpoenas

In all Pipeline Safety Department enforcement actions, subpoenas may be issued and served in the manner provided in district courts according to 12 O.S. § 2004.1. No motion to allow subpoenas is required.

- (a) References in the statute to "clerk" refer to the Court Clerk of the Commission.
- (b) References in the statute to "court" refer to the Commission.

[**Source:** Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

165:5-27-14. Aggrieved persons

Any person aggrieved by a violation of the Act may submit to the Manager of the Pipeline Safety Department of the Commission written information on a form available on the Commission's website relating to an alleged violation or violations and requesting an investigation by the Pipeline Safety Department.

[**SOURCE:** Added at 32 Ok Reg 752, eff 8-27-15 (RM 201500002)]

APPENDIX A. GENERAL NOTICE OF HEARING

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:)	
)	
RELIEF SOUGHT:)	CAUSE NO.
LEGAL DESCRIPTION)	
(WHERE APPROPRIATE):)	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting that the Commission (set out the nature of the application and the relief sought).

NOTICE IS FURTHER GIVEN that the Applicant in this cause is requesting the following special relief: See 165:5-7-11(g), 165:5-7-20(e), 165:5-7-21(e) or 165:5-7-22(e)).

NOTICE IS FURTHER GIVEN that this cause be set before an Administrative Law Judge for hearing, taking of evidence and reporting to the Commission.

NOTICE IS FURTHER GIVEN that this cause will be heard before an Administrative Law Judge on the _____ docket at the Corporation Commission, (insert the address of the appropriate regional service office), Oklahoma, at __:__ __m. on the ___ day of , 20__, and that this notice be published as required by law and the rules of the Commission.

NOTICE IS FURTHER GIVEN that the Applicant and interested parties may present testimony by telephone. The cost of telephonic communication shall be paid by the person or persons requesting its use. Interested parties who wish to participate by telephone shall contact the Applicant or Applicant's attorney, prior to the hearing date, and provide their name and phone number.

NOTICE IS FURTHER GIVEN for information concerning this action, contact (Name of Attorney--not firm name; or individual signing the application), (Address), (City), (State), (phone number).

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 4623, eff 9-4-94 (emergency); Revoked and reenacted at 12 Ok Reg 2005, eff 7-1-95; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]

APPENDIX B. NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR CLOSURE OF NONCOMMERCIAL PIT

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
RELIEF SOUGHT: EXTENSION OF)	
TIME FOR CLOSURE OF)	
NONCOMMERCIAL PIT UNDER)	
165:10-7-16)	CAUSE P.D. NO. _____
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S):)	

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant waiving closure requirement for pits at the above-captioned location.

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-34, said protest period being not less than fifteen (15) day's service of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and a representative of the Field Operations' staff on the ___ day of ____, 20___. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested, then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-34.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (phone number).

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of ____, 20__.

APPENDIX C. NOTICE OF HEARING FOR EXTENSION OF TIME FOR CLOSURE OF NONCOMMERCIAL PIT

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	CAUSE P.D. NO.
RELIEF SOUGHT: EXTENSION OF)	
TIME FOR CLOSURE OF)	
NONCOMMERCIAL PIT UNDER)	
165:10-7-16.)	
)	
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S): (List location to)	
nearest 10 acre tract))	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at ___ :__ a.m. on the ___ day of _____, 20__.

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]

APPENDIX D. NOTICE OF APPLICATION FOR WAIVER OF PIT CLOSURE

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICANTS:)	
)	
RELIEF SOUGHT: WAIVER OF PIT)	
CLOSURE REQUIREMENT UNDER)	
165:10-7-16.)	CAUSE P.D. NO.
)	
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S):)	

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant a waiver of the closure requirement for pit(s) at the above captioned location.

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-34, said protest period being not less than fifteen (15) days after service of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and a representative of the Field Operations Department staff on the ____ day of _____, 20___. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested, then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-34.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (phone number).

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ____ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 31 Ok Reg 959, eff 9-12-14 (RM 201400001)]

APPENDIX E. NOTICE OF HEARING FOR WAIVER OF PIT CLOSURE

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	CAUSE P.D. NO.
RELIEF SOUGHT: WAIVER OF PIT)	
CLOSURE REQUIREMENTS UNDER)	
165:10-7-16.)	
)	
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S): (List location to)	
nearest 10-acre tract)	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at ___ a.m. on the ___ day of _____, 20__.

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]

**APPENDIX F. NOTICE OF APPLICATION FOR AUTHORITY AUTHORIZING
COMMERCIAL PIT/SOIL FARMING/RECYCLING FACILITY**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:)	
)	
RELIEF SOUGHT: ORDER AUTHORIZING)	
COMMERCIAL PIT(S), COMMERCIAL)	CAUSE PD NO. _____
SOIL FARMING SITE AND/OR)	
COMMERCIAL RECYCLING FACILITY)	
(as appropriate))	
)	
LEGAL DESCRIPTION(S):)	
(LIST LOCATION OF PROPOSED)	
SITE(S) TO NEAREST 10 ACRE TRACT))	

**NOTICE OF APPLICATION FOR AUTHORITY TO OPERATE COMMERCIAL PIT(S),
COMMERCIAL SOIL FARMING SITE AND/OR
COMMERCIAL RECYCLING FACILITY**

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant authority to operate a commercial pit(s), a commercial soil farming site and/or a commercial recycling facility (as appropriate) at the above-captioned location(s).

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-35, said protest period being not less than thirty (30) days after publication of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and the Pollution Abatement staff on the ____ day of _____, 20___. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-35.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (telephone number) (electronic mail address).

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 30 Ok Reg 1033, eff 7-1-2013 (RM 201300002)]

**APPENDIX G. NOTICE OF HEARING FOR AUTHORITY AUTHORIZING
COMMERCIAL PIT/SOIL FARMING**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:)	
)	
RELIEF SOUGHT: ORDER AUTHORIZING)	
COMMERCIAL PIT(S) AND/OR)	CAUSE PD NO. _____
COMMERCIAL SOIL FARMING)	
(as appropriate))	
)	
LEGAL DESCRIPTION(S):)	
(LIST LOCATION OF PROPOSED)	
SITE(S) TO NEAREST 10 ACRE TRACT))	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at __:__ a.m. on the __ day of _____, 20__.

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this __ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]

APPENDIX H. NOTICE OF APPLICATION FOR DETERMINATION OF ALLOWABLES

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	
RELIEF SOUGHT:)	CAUSE NO. _____
)	
LEGAL DESCRIPTION:)	

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order (state the nature of the relief sought).

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk's Office within the protest period prescribed by 165:5-7-12, said protest period being not less than fifteen (15) days of this notice.

NOTICE IS FURTHER GIVEN that if the application is unopposed, then it shall be referred to the Oil and Gas Conservation Division of the Commission for review without hearing and that if the application is opposed, then any objectors shall receive notice of hearing as prescribed by 165:5-7-12.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of attorney -- not firm name -- or individual signing this application), (address), (city), (state), (telephone number).

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]

APPENDIX I. NOTICE OF HEARING FOR DETERMINATION OF ALLOWABLES

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	
RELIEF SOUGHT:)	CAUSE NO. _____
)	
LEGAL DESCRIPTION:)	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Conservation Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at ___:___ __m. on the _____ day of _____, 20__.

CORPORATION COMMISSION OF OKLAHOMA

Chairman

Vice Chairman

Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Secretary of the Commission

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]

APPENDIX J. WITNESS IDENTIFICATION FORM

I, _____, did hereby under oath in Cause Number _____,
(name)

before Administrative Law Judge _____ on _____.
(date)

My unassisted testimony was presented by phone from _____.
(location)

(Witness Signature)

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My Commission expires:

[Source Added at 11 Ok Reg 4623, eff 9-4-94 (emergency); Added at 12 Ok Reg 2005, eff 7-1-95; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00]