BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF A PERMANENT RULEMAKING OF THE OKLAHOMA CORPORATION COMMISSION AMENDING OAC 165:5, RULES OF PRACTICE

CAUSE NO. RM 202000003

JUDICIAL AND LEGISLATIVE SERVICES DIVISION'S PROPOSED RULES AMENDING CHAPTER 5 (As of March 10, 2020)

Changes since March 6, 2020 are highlighted in green

** NOTE: The below change in (a)(3) is the only proposed new change following the March 6, 2020 version. **

(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 Judicial and Legislative Services 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, and/or 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.

(3) Exceptions to Report from the Motor Carrier Citation Docket. Any party of record adversely affected by a recommendation of an Administrative Law Judge on the Motor Carrier Citation Docket shall have five (5) business days from the date the oral recommendation is made to request a report of the Administrative Law Judge for the purpose of filing written exceptions. The request shall be sent jointly to the Administrative Law Judge who issued the recommendation and all other parties of record. Written exceptions shall be filed within ten (10) business days of issuance of the written report. The hearing on the written exceptions shall be heard by an Administrative Law Judge on the next available Motor Carrier Citation Docket or at the Commission en banc's discretion.

(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.