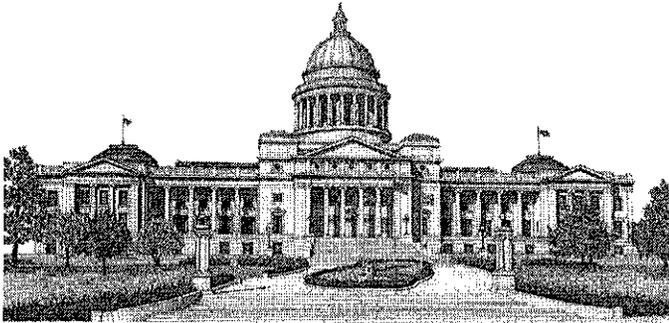


ARKANSAS REGISTER

Transmittal Sheet

Use only for FINAL and EMERGENCY RULES



Secretary of State
Mark Martin
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Oil & Gas Commission

Department 04440

Contact Shane Khoury E-mail Shane.Khoury@aogc.state.ar.us Phone 501-683-5814

Statutory Authority for Promulgating Rules A.C.A 15-71-110

Rule Title: General Rule A2 General Hearing Procedures

Intended Effective Date
(Check One)

Date

- | | | |
|---|---------------------------------------|-----------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204) | Legal Notice Published | <u>11/20/15</u> |
| <input type="checkbox"/> 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment | <u>12/19/15</u> |
| <input checked="" type="checkbox"/> Other <u>7/1/16</u>
(Must be more than 10 days after filing date.) | Reviewed by Legislative Council | _____ |
| | Adopted by State Agency | <u>7/1/16</u> |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Shannon Hunter Shannon.Hunter@aogc.state.ar.us 5/26/2016
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-683-5814 shane.khoury@aogc.state.ar.us

Phone Number E-mail Address

Deputy Director

Title

5/26/16

Date

RULE A-2: GENERAL HEARING PROCEDURES

- a) Execution and Filing
- 1) All applications, except for applications filed by the Director, shall be in writing and state the interests of the application and the general nature of the order requested. Fourteen copies of the application, including exhibits, shall be filed with the Commission Director's office located in Little Rock, Arkansas ("Director's Office"). The application shall be deemed filed when it is received by the Director's Office.
 - 2) All fourteen (14) copies of the applications, including exhibits, except for those filed by the Director, must be received in the Directors Office at least twenty (20) days prior to the first day of regularly scheduled hearing. If the applicant or his/her representative files an electronic version (a .pdf file labeled by the assigned docket number) of the application, including exhibits, on an electronic storage device approved by the Director a minimum of twenty (20) days prior to the first day of the regularly scheduled hearing, the fourteen (14) copies of the applications, including exhibits must be received in the Director's office eighteen (18) days prior to the first day of the regularly scheduled hearing.
 - 3) Every application shall be signed by the applicant or his/her representative and his/her address shall be stated thereon. The signature of the applicant or his/her representative constitutes a certificate by him/her that he/she has read the petition and that to the best of his/her knowledge, information and belief there is good ground to support the same.
 - 4) Unless otherwise provided by General Rule of the Commission, each application, except for applications filed by the Director, shall be accompanied by a five hundred dollar (\$500.00) filing fee made payable to the Arkansas Oil and Gas Commission.
 - 5) The applicant shall also submit a check payable to the Arkansas Oil and Gas Commission in an amount approved by the Commission, not to exceed two dollars (\$2.00) per name of persons named in the application, whose address are known as well as addresses for other persons that the applicant seeks to provide a copy of the order. The applicant shall also provide mailing labels for each person named in the application whose address is known, as well as any other person that the applicant seeks to provide a copy of the order. If the address of the person is unknown, the Applicant shall provide a statement to that affect. All mailing labels shall be provided within three (3) days after the date of the hearing.
 - 6) If after the application is filed, and prior to the hearing date, the Director finds the application deficient relative to the requirements of subsections a) 1) through 4) above, the Director shall return the application to the applicant with a statement as to the deficiencies.
 - 7) If after the application is filed, and prior to the hearing date, the Director determines that additional facts, data, records, or other information are necessary to fully evaluate the application, the Director may require the applicant to submit such necessary facts, data, records or other information.
 - 8) Amendments may be filed at the time of the hearing. However, any amendments filed prior to the hearing date shall be submitted at least ten (10) days prior to the hearing date, and contain a written statement or a clear indication as to what the amendment is being

amended. Any application that is substantially amended, as determined by the Commission, regardless of the time of the amendment, may be continued until the next hearing of the Commission.

b) Notice of Hearing

- 1) The Applicant shall prepare a notice of hearing which shall be issued in the name of the Arkansas Oil and Gas Commission. Such notice shall include a statement pertaining to the legal authority for the hearing; the name of the applicant; the legal description of the property or unit; a statement of the requested action; a listing of interested parties; the time, date and location of the hearing; the Commission assigned docket number; and the contact information of the Commission offices. The notice shall also state that any interested person may file an entry of appearance in the hearing by submitting such entry of appearance in writing to the Hearing Officer or Director, and that thereafter such person shall be deemed a party of record in the proceeding.
- 2) Unless otherwise provided by the Brine Act found in Ark. Code Ann. § 15-76-201 *et. seq.* or General Rule of the Commission, the Applicant shall serve such notice in the following manner:
 - A) By mailing such notice by U.S. Postal service, first-class mail, directed to all interested parties at their last known addresses at least ten (10) days prior to the date of the hearing, but not more than thirty (30) days prior to the date of the hearing; and
 - B) By publication of such notice for at least one (1) day, with the notice appearing at least ten (10) days prior to the date of the hearing, but not more than thirty (30) days prior to the date of the hearing, in the newspaper of general circulation published in each county containing some portion of the land identified in the application.

c) Emergency Hearings

In the event an emergency is found to exist by the Commission which in its judgment requires the making, changing, renewal or extension of an order, special rule, or regulation, without first having a hearing, such emergency order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency order permitted by this section shall remain in force until the date of the next regular Commission hearing set to be held after the emergency rule, regulation or order was issued, or sixty days from its effective date in accordance with the Brine Act found in Ark. Code Ann. § 15-76-307, and, in any event, it shall expire when any order made after due notice and hearing with respect to the subject matter of such emergency order becomes effective.

d) Pre-Hearing Conferences

- 1) Upon his/her own motion, or the motion of a party of record, the Hearing Officer, as designated by the Commission, may convene a meeting of the parties or their counsel in order to:
 - A) Simplify the factual and legal issues presented by the hearing request;

- B) Receive stipulations, admissions of fact and the contents and authenticity of documents;
 - C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
 - D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion thereof.
- 2) Pre-hearing conferences may be held by telephone conference if such procedure is acceptable to all parties.
- e) Hearings
- 1) Every hearing shall be held on a date and at a location established by the Commission, and conducted by a Hearing Officer designated by the Commission. The Hearing Officer shall take all necessary actions to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including but not limited to the following:
 - A) To administer oaths and affirmations;
 - B) To receive relevant evidence;
 - C) To regulate the course of the hearing and the conduct of the parties and their counsel therein;
 - D) To consider and rule upon procedural requests;
 - E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify; and
 - F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record. The Hearing Officer may require that relevant documents be produced to any party of record on his/her own motion or for good cause shown on motion of any party of record.
 - 2) Every person appearing shall enter his/her appearance by stating his/her name and address. Thereafter, such person shall be deemed a party of record.
 - 3) All participants in the hearing shall have the right to be represented by an attorney licensed to practice law in the State of Arkansas. An attorney appearing in a representative capacity in any proceeding hereunder shall file a written notice of appearance identifying his or her name, address and telephone number, and identifying the party represented.
 - 4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.

- 5) The Director, or his/her designee, may appear at any public hearing and shall have the opportunity to question parties or otherwise elicit such information as is necessary to reach a decision on the application.
 - 6) Preliminary Matters: Where applicable, the following shall be addressed prior to receiving evidence:
 - A) The applicant 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.
 - B) Rulings may be made by the Hearing Officer on any pending motions.
 - C) Any other preliminary matters appropriate for disposition prior to presentation of evidence.
 - 7) Every hearing shall be conducted in accordance with the Commission's rules and applicable laws of this State.
- f) Evidence
- 1) Admissibility: A party shall be entitled to present his/her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the presiding Hearing Officer may exclude evidence which is irrelevant, immaterial or unduly prejudicial or repetitious. However, the erroneous ruling on the admissibility of evidence shall not of itself invalidate any rule, regulation or order.
 - 2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of such fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge.
 - 3) Order of Proof: The applicant shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Director or his/her designee, as well as any Commissioner may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.
 - 4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Commission's responsibility for an expeditious decision.
- g) Recording of Proceedings; Testimony

The Commission shall provide a certified court reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Commission as such and included in the record.

h) Postponement or Continuance of Hearing

Any hearing may be postponed or continued for due cause by the Hearing Officer upon his/her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not solely for the purpose of delay. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously. The Applicant may postpone or continue the hearing of an application for three consecutive regularly scheduled Commission meetings without prior approval of the Hearing Officer. After the third consecutive postponement, the application shall be dismissed, unless the Hearing Officer allows an exception for due cause, and the applicant shall be required to re-file in accordance with applicable General Rules in order for an application to be scheduled for a hearing.

i) Default - Failure to Appear.

If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Commission may then proceed to make its decision in the absence of such party. If the failure to appear at such pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Commission is notified of such situation on or before the scheduled pre-hearing conference or hearing, the Hearing Officer may continue or post-pone the pre-hearing conference or hearing. Emergency situations include sudden unavailability of counsel, sudden illness of a party or his representative, or similar situations beyond the parties' control.

j) Administrative Issuance of Default Integration Order for Certain Unleased Mineral Interests.

1) The Director is authorized to issue an administrative order integrating unleased mineral interest owners in any unit where there is not a well capable of production if all of the following criteria are met:

- A) An application is filed with the Director that includes all of the information required in General Rule A-3 b) 2) A) though G);
- B) Each mineral interest sought to be integrated is less than one (1) net mineral acre;
- C) The cash bonus and royalty rate requested by the applicant are equal to or greater than the highest and/or best cash bonus and royalty terms that the applicant has knowledge of that have been offered and accepted, or contracted for, for any acreage within the unit(s) where the well is located (as defined in Section (a)(2) of General Rule B-3), including any acreage within the unit(s) subject to leases or other agreements with a fee mineral owner covering lands located in more than one unit.
- D) The applicant specifies which Model Form Operating Agreement approved by the Commission it seeks to use, with Paragraph III.1.A.(1) of the COPAS:
 - i) Not to exceed more than \$7,500.00 for a drilling well rate and \$750.00 dollars for a producing well when the proposed well is a dry natural gas well; or

- ii) Not to exceed more than \$4,500.00 for a drilling well rate and \$450.00 dollars for a producing well when the proposed well is a liquid hydrocarbon well.
 - E) The applicant provides an affidavit or other documentary evidence to support a reasonable risk factor penalty, and the requested risk factor does not exceed 400%.
 - F) No earlier than ten (10) business days prior to, and no later than three (3) business days prior to, the filing of the application, the applicant shall send to affected mineral interests owners, whose mailing addresses may reasonably be ascertained, a notice of the application's filing and verify such mailing by affidavit, setting out the names and addresses of all owners and the date(s) of mailing.
 - G) The applicant shall also submit proof of publication of such notice of the applications in a newspaper of general circulation within the county or counties within which the unit is located that appeared at least one time no earlier than ten (10) days prior to filing the application, and no later than the date of filing the application.
 - H) Any owner, so noticed shall have the right to object to the granting of such application within fifteen (15) days after the date of receipt of the application by the Commission. Each objection must be made in writing and filed with the Director. If a timely written objection is filed, then the applicant shall be promptly furnished a copy and such application shall be denied, unless the objection is withdrawn within the original fifteen (15) day time period after receipt of the application. If the application is denied under this section, the applicant may request to have the application referred to the Commission for determination in accordance with General Rules A-2 and A-3, and other applicable hearing requirements, except that no additional fee is required.
 - I) If no timely objection is received, or if one is received and withdrawn within the original fifteen day time period after receipt of the application, the Director is authorized to approve the application administratively.
- 2) An application may be referred to the Commission for determination when the Director deems it necessary that the Commission make such determination for the purpose of protecting correlative rights of all parties, in order to prevent waste, or for any other reason. Promptly upon such determination, and not later than fifteen (15) days after receipt of the application, the Director shall give the applicant written notice, citing the reason(s) for referral to the full Commission for determination. If the application is referred under this section, the applicant shall file a request for a hearing, in accordance with General Rules A-2 and A-3, and other applicable hearing requirements, except that no additional filing fee is required.
- 3) If the Applicant has satisfied all applicable provisions, the Director has not notified the applicant of the determination to refer the application to the Commission within the fifteen (15) day period in accordance with the foregoing provisions, and if no objection is received at the office of the Commission within the fifteen (15) days as provided for in

subsection j)1)H) above, the application shall be approved and an administrative default order shall be issued by the Director.

k) Voting

- 1) In order for the Commission to adopt a motion approving an application as applied for, or as amended by either the applicant or a Commissioner, there must be:
 - A) A quorum present;
 - B) A majority of the votes cast must be in favor of the motion outlining the proposed order; and
 - C) At least five (5) votes cast must be in favor of the motion outlining the proposed order.
- 2) If a motion approving the application as applied for, or as modified by either the applicant or a Commissioner does not receive the votes required in subparagraphs 1) A) through C) above, and no subsequent or substitute motion receives the votes required in subparagraphs 1) A) through C) above, then the application shall be deemed to be denied by the Commission.
- 3) If an application is deemed to be denied by the Commission in accordance with subparagraph i) 2) above, the Commission shall enter an order of denial, which may be appealed as a final decision under the Arkansas Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*
- 4) Nothing in this subparagraph shall limit the Commission's authority to continue any application for due cause.

l) Commission's Order--Final Administrative Decision

Within 30 days of the close of the hearing record, the Commission shall issue findings of fact, conclusions of law and final administrative decision of the Commission signed by the Director. The Commission shall have continuing jurisdiction for the purposes of enforcement, and/or modifications or amendments to the provisions of all orders. Any appeals shall be governed by the Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*

m) Notice of Order--Recordation

Within 30 days after an order has been issued, a copy of such order shall be mailed by the Commission to each interested party at his/her last known address or his/her attorney of record, and filed in accordance with the Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*

n) Official Record

In every case of adjudication, the official record shall be compiled in accordance with the Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*