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Lowell C. Davis

*Nebraska Bar Association, member*

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# PRACTICE AND PROCEDURE IN ADMINISTRATION OF THE NEBRASKA OIL AND GAS CONSERVATION ACT

Lowell C. Davis\*

## I. INTRODUCTION

The Nebraska Oil and Gas Conservation Act<sup>1</sup> was enacted by the legislature and approved by the governor of Nebraska on April 27, 1959. The act became effective September 28, 1959. Rules were adopted by the commission, after public hearing, which became effective October 17, 1959.<sup>2</sup> During the first two years of its administration the commission heard and issued orders upon eighty-five applications and in addition issued numerous administrative orders. A large majority of the cases heard involved applications for approval of unit operations and secondary recovery projects and exceptions from established well-spacing patterns.

Observation has demonstrated that a very definite pattern has evolved in relation to matters of practice and procedure in the administration of the act. It is proposed here to examine and discuss matters pertaining to this practice and procedure in the light of controlling legislation,<sup>3</sup> the rules of the commission, judicial authorities and personal observations made during the course of such administration.

## II. LEGISLATION AND RULES AFFECTING PRACTICE AND PROCEDURE

The commission is an administrative board as well as a judicial tribunal. It is more than a quasi-judicial body inasmuch

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\* A.B., 1931, LL.B, 1933, University of Nebraska; Member, Nebraska Bar Association.

<sup>1</sup> NEB. REV. STAT. §§ 57-901 to -921 (Supp. 1961).

<sup>2</sup> See Smith, *The Nebraska Oil and Gas Conservation Commission*, 10 NEB. S.B.J. 93 (1961). See also Juhan, *The Administration of the Texas and Colorado Oil and Gas Conservation Statutes*, 31 DICTA 98 (1954); DeBois, *Practice and Procedure Before the Corporation Commission of the State of Oklahoma*, 7 OKLA. L. REV. 173 (1954); Junger, *The Wyoming Oil and Gas Conservation Act*, 13 WYO. L.J. 1 (1958); SULLIVAN, OIL AND GAS LAW § 151 (1955).

<sup>3</sup> The Nebraska Administrative Procedure Act, NEB. REV. STAT. §§ 84-901 to -916 (Supp. 1961), must be carefully considered in analyzing the extent and limitations of authority and powers granted by the Nebraska Oil and Gas Conservation Act.

as it has full and complete judicial authority and powers covering certain matters defined in the act. From a judicial standpoint it is a court of special rather than limited jurisdiction.

The commission is required to prescribe and adopt rules and regulations governing the matter of practice and procedure, including the formal and informal procedures prescribed or authorized by the Administrative Procedure Act,<sup>4</sup> together with forms and instructions, and, so far as deemed practical, supplement its rules with descriptive statements of its procedures.<sup>5</sup>

The commission may act upon its own motion or upon the petition of any interested person.<sup>6</sup> The commission has acted upon its own motion in matters pertaining to revision of rules, requirements for field bottom hole pressure surveys, production and gas/oil ratio tests and other special field rules. It has acted upon its own motion to limit daily field production of oil wells upon showing of imminence of waste,<sup>7</sup> and it has refused to act upon its own motion to limit field production or enforce the ratable purchasing and taking of oil where only correlative rights were involved,<sup>8</sup> preferring in such case to act only upon application and proof of an interested party.

The commission is required by statute to prescribe the form for a petition requesting the promulgation, amendment or repeal of any rule and the procedure for the submission, consideration and disposition of such petitions.<sup>9</sup>

Commission rules identify three classes of parties: (1) The Petitioner—the commission acting upon its own motion or a party other than the commission instituting a proceedings;<sup>10</sup> (2) The

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<sup>4</sup> NEB. REV. STAT. § 84-909(1) (Supp. 1961).

<sup>5</sup> NEB. REV. STAT. § 84-909(2) (Supp. 1961). No procedural forms and instructions or descriptive statements of commission procedures have been issued except those specifically referred to herein.

<sup>6</sup> NEB. REV. STAT. § 57-911(6) (Supp. 1961). NEB. OIL & GAS CONSERVATION COMM'N R. 504.5 (Oct. 1960) (hereinafter cited Rule \_\_\_\_\_) provides that the Application, Complaint or Order to Show Cause in a proceeding instituted by the commission must be signed by at least two commissioners.

<sup>7</sup> Brooks Field Order R-17, No. 60-19, April 23, 1960; Russell Field Order R-32, No. 60-28, Aug. 11, 1960.

<sup>8</sup> *In re* Application of Volentine, No. 61-30, July 18, 1961.

<sup>9</sup> NEB. REV. STAT. § 84-910 (Supp. 1961). No form of petition has been prescribed. See suggested forms of petitions, *infra*, which have been accepted as to form and content. Rule 504.2 provides that the procedure in such cases shall be the same as in other proceedings. See Rule 505.1.

<sup>10</sup> Rule 503.1.

Respondent—any person against whom a proceeding is instituted,<sup>11</sup> and (3) The Intervenor—any person not designated as a petitioner or respondent.<sup>12</sup>

#### A. THE APPLICATION OR COMPLAINT

A proceeding is instituted by filing a typewritten or printed application, petition or complaint with the commission in its offices in Sidney, Nebraska. An original and six copies are required together with one additional copy for each respondent. One copy is mailed by the commission's secretary to each named respondent and copies are made available to any other person requesting them.<sup>13</sup> The party initiating the proceeding is required to furnish as many additional copies as are necessary.<sup>14</sup> Since the applicant will generally know the names and addresses of the parties interested in the application or complaint it is considered good practice for additional copies to be mailed directly to these persons and a certificate of mailing included as a part of the original filing. When the proceeding is instituted, it is assigned a case number and entered upon the commission docket.<sup>15</sup>

Each original pleading must show the venue "Before the Nebraska Oil and Gas Conservation Commission" and contain a caption identifying the petitioner, the respondents<sup>16</sup> and the general subject matter of the application. The pleading must be drawn so as to fully and completely advise the commission in plain language of all the pertinent facts involved and must state concisely the matters complained of and what relief or action is sought from the commission.<sup>17</sup> It must be signed by the applicant or his attorney, with mailing address shown.<sup>18</sup> No acknowledgment or verification is necessary, with the exception

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<sup>11</sup> Rule 503.2.

<sup>12</sup> Rule 503.3.

<sup>13</sup> Rule 504.1.

<sup>14</sup> Rule 504.4.

<sup>15</sup> Rule 504.3.

<sup>16</sup> Rule 505.1.

<sup>17</sup> *Ibid.* Applications in letter form have been disapproved by the commission. The sufficiency of a letter form of application, however, has received judicial approval in *Ferguson Trucking Co. v. Nebraska State Ry. Comm'n*, 169 Neb. 851, 101 N.W.2d 444 (1960). The rules specifically set forth specifications which must be alleged in applications for disposal of water, Rule 327, and applications for unit operations and secondary recovery projects, Rule 401.

<sup>18</sup> Rule 504.5.

that applications for disposal of water must be certified.<sup>19</sup> No filing fee is required.

Generally no answer, reply, petition in intervention or other formal pleading, except written motions, are required to be filed and any interested person may appear at the hearing and support, protest or otherwise be heard concerning the matter.<sup>20</sup> An exception to this procedure is found in Rule 327(k) involving applications for disposal of water. In these cases if no fee owner or owner of record as defined in the act, within one-half mile of the disposal well, or the commission itself, files written objection or complaint to the application within fifteen days of the date of the application, the application is granted by administrative letter approval. If objections are filed, however, a hearing must be held.<sup>21</sup>

Upon the filing of an application or complaint concerning any matter within the jurisdiction of the commission it will promptly fix a date for the hearing and cause notice to be given.<sup>22</sup> Hearing dates and deadline dates for filing applications are set at the beginning of each year by a memorandum issued and mailed to all persons listed upon the commission's mailing list.

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<sup>19</sup> Rule 327.

<sup>20</sup> Rule 505.2 At the public hearing on adoption of the rules an attempt was made to require the filing of the formal protests as has been the practice before the Nebraska Railway Commission in order to prevent persons appearing at a hearing without warning and launching a last minute surprise attack. Lawyers experienced in practice before other conservation commissions did not consider such formal protests necessary since they were generally aware of those matters which would be controversial and their suspected adversaries. No undue hardship has appeared as the result of this rule.

<sup>21</sup> The commission treats this type of proceeding as being administrative in nature until and unless objections are filed. Applications are accepted in letter form if the necessary plat and information as required by Rule 327 are included and the application is certified. The application is not formally docketed or noticed for hearing by the commission when originally filed, the applicant's notice to owners of record as defined in the act and fee owners within one-half mile of the proposed disposal well is considered sufficient. See note 33 *infra*. When and if objections are filed the commission will direct the applicant to file a formal application which is then assigned a case number, docketed and noticed for hearing at the next regular hearing date. At that time the application and objections are heard and an order made. While this procedure has proven satisfactory in practice and no objections have been made to it, it does not appear to strictly comply with the procedural requirements of Rule 327 and an amendment of this rule is indicated.

<sup>22</sup> NEB. REV. STAT. § 57-911(6) (Supp. 1961).

No rule, regulation or order, or amendment thereof, except in an emergency, may be made by the commission without public hearing upon at least fifteen days notice.<sup>23</sup> When an emergency requiring immediate action is found to exist, and if good cause is shown, the commission is authorized to issue an emergency order without notice or hearing, which is effective upon promulgation and remains effective for not more than twenty days.<sup>24</sup>

Special hearings have been and may be called and noticed for hearing when hardship or unusual circumstances make such hearing necessary, but the necessity therefor must be real and positively established.<sup>25</sup>

#### B. NOTICE OF HEARING

At the election of the commission notice of hearings may be given either by personal service<sup>26</sup> or by one publication in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice is issued in the name of the state, signed by a member of the commission or its secretary and specifies the style and number of the proceeding, the time and place of the hearing and the purpose of the proceeding.<sup>27</sup> In contested cases, which are defined by section 84-901(3) of the Nebraska Revised Statutes as a proceeding in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, the notice must also state the issues involved. If, because of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they are required to be fully stated as soon as practicable.

If the commission elects to give notice by personal service,

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<sup>23</sup> NEB. REV. STAT. § 57-911(2) (Supp. 1961).

<sup>24</sup> NEB. REV. STAT. § 57-911(3) (Supp. 1961); Rule 506.1. Statutory authority to issue emergency orders without notice or hearing was approved in *Lion Oil Ref. Co. v. Bailey*, 200 Ark. 436, 139 S.W.2d 683 (1940). The commission is very reluctant to issue emergency orders and the emergency requiring such action must be real and should be established by affidavits or other sworn proof.

<sup>25</sup> Only five such special hearings have been granted.

<sup>26</sup> The act does not designate the persons upon whom notice shall be personally served except as provided in NEB. REV. STAT. § 57-911(4) (Supp. 1961) and Rule 506.4 and personal service is not given except in the special cases noted.

<sup>27</sup> NEB. REV. STAT. § 57-911(4) (Supp. 1961); Rule 506.2.

it may be made by any officer authorized to serve summons, or by any agent of the commission, in the same manner as is provided by law for the service of summons in the district courts.<sup>28</sup> Proof of service is required by the agent's affidavit, and proof of service by an officer must be in the form required by law with respect to service of process in civil actions.<sup>29</sup>

Notice of the hearing on an application for the entry of a pooling order or upon a complaint by the commission alleging a violation of the act, or any rule, regulation or order of the commission, must be served on the interested parties in the same manner as service of process in civil actions in the district court.<sup>30</sup> For the purpose of pooling orders, the term "interested parties" is defined to mean those persons who own any oil or gas leasehold, mineral or royalty interest in the tracts to be pooled. In the case of a complaint by the commission, the party or parties against whom the complaint is entered and any other persons found by the commission to be affected by the act complained of are deemed to be the "interested parties."<sup>31</sup>

In addition to the statutory notices referred to above, the rules provide for notice to other persons in the following cases:

(a) Applications for disposal of water:

The applicant is required to give notice of the application by certified mail or by personal service to each owner of record as defined in the act<sup>32</sup> and to other persons within one-half mile of the proposed disposal well who are designated by the commission director. The applicant is further required to certify that mailing or delivery has been accomplished, or give sufficient

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<sup>28</sup> NEB. REV. STAT. §§ 25-507 to -516 (Reissue 1956).

<sup>29</sup> NEB. REV. STAT. § 57-911(4) (Supp. 1961); Rule 506.3.

<sup>30</sup> NEB. REV. STAT. § 57-911(4) (Supp. 1961); Rule 506.4(a). For service upon nonresidents or foreign corporations it is the practice to direct the notice to the sheriff of Cheyenne County, Nebraska, and have him appoint a nonresident person to make such service as his agent. For service upon residents residing reasonably close to Sidney it is the practice to have the sheriff to whom the notice is directed appoint a member of the commission's staff to make service. This procedural requirement is awkward and ambiguous and could very well be simplified by legislative amendment authorizing either personal service by the commission or service by certified mail directed to the interested parties at their last known address as the same appears of record in the county in which the lands are located.

<sup>31</sup> Rule 506.4(a).

<sup>32</sup> NEB. REV. STAT. § 57-903(8) (Supp. 1961).

reason for being unable to do so, and mail or file this certificate with the commission.<sup>33</sup>

(b) Applications for unit operations and secondary recovery projects:<sup>34</sup>

Any person desiring notification of hearings before the commission may request it in writing by filing with the secretary his name and address and designating the area or areas in which he is interested and as to which he desires to receive notices.<sup>35</sup> A docket is mailed out to all persons appearing on the commission's mailing list prior to each monthly hearing date identifying the cases to be heard and the order of hearing.

It seems clear that the requirements for notice are both mandatory and jurisdictional and will be strictly construed.<sup>36</sup>

### C. HEARINGS

Public hearings are held monthly in a hearing room in the Fort Sidney Motor Hotel, Sidney, Nebraska, or in any other location prescribed by the commission, and any interested person is entitled to be heard.<sup>37</sup> All persons who wish to speak for the record are required to register their appearances<sup>38</sup> and are permitted, without being represented by counsel, or being sworn, to make statements supporting or opposing an application. Letters or telegrams written by interested parties to the commission who do not appear personally or by a representative are read into the record.

Any individual may appear on his own behalf before the

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<sup>33</sup> Rule 327(j). The commission will require the applicant to give similar notice to all fee owners of record within one-half mile of the proposed well. See note 88 *infra*.

It is suggested that this notice inform the interested parties of the date the application was filed, that the applicant seeks approval of a produced water disposal project by which such water will be introduced into a certain designated sand at a certain designated depth and legal description and inform the parties that unless they file written objections within fifteen days of the date of the application the commission will be requested to grant the application by administrative letter approval.

<sup>34</sup> Rule 403 and Commission Memorandum No. 8, Feb. 1, 1961. See part III, *infra*.

<sup>35</sup> Rule 506(5), (6).

<sup>36</sup> *In re Application of Richling*, 154 Neb. 108, 47 N.W.2d 413 (1951); *R. B. "Dick" Wilson, Inc. v. Hargleroad*, 165 Neb. 468, 86 N.W.2d 177 (1957).

<sup>37</sup> NEB. REV. STAT. § 57-911(2) (Supp. 1961).

<sup>38</sup> Rule 507.9.



commission without counsel,<sup>39</sup> but no individual may appear on behalf of another person unless he has been previously admitted to practice law in Nebraska<sup>40</sup> or is admitted as a practicing attorney in the courts of record of another state and has a Nebraska attorney associated and appearing with him in such proceeding. Regularly licensed practicing attorneys of other states, the laws of which permit the practice in its courts of attorneys from this state without a local attorney being associated with them, are not required to have local counsel.<sup>41</sup>

Any party who desires a continuance is required to promptly notify the commission stating in detail the reasons why it is necessary. This request should be accompanied by supporting affidavits. The commission may grant a continuance for not to exceed thirty days without the necessity of notice in addition to the original notice of hearing, and the continued application is then included in the next month's docket which is mailed to all persons on the commission's mailing list. The commission may at any time order a continuance on its own motion but only under exceptional circumstances will requests for a continuance be considered unless submitted at least seven days prior to the hearing date.<sup>42</sup>

The commission consists of three members,<sup>43</sup> appointed by the governor,<sup>44</sup> who hear and make orders on all applications filed with the commission. They are assisted at all hearings by the commission director,<sup>45</sup> a staff petroleum engineer and an assistant attorney general who is the legal advisor.<sup>46</sup> Two commissioners constitute a quorum for all purposes.<sup>47</sup>

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<sup>39</sup> See *Vielehr v. Malone*, 158 Neb. 436, 63 N.W.2d 497 (1954).

<sup>40</sup> NEB. REV. STAT. § 7-101 (Reissue 1954); *State ex rel. Johnson v. Childe*, 139 Neb. 91, 295 N.W. 381 (1941), 147 Neb. 527, 23 N.W.2d 720 (1946).

<sup>41</sup> NEB. REV. STAT. § 7-103 (Reissue 1954); Rule 504.6.

<sup>42</sup> Rule 507.1. See *Ferguson Trucking Co. v. Rogers Truck Line*, 164 Neb. 85, 81 N.W.2d 915 (1957). The commission's power to grant or deny requests for continuances is quite broad, and its rulings will not be disturbed unless there is an abuse of discretion. *In re Yellow Cab & Baggage Co.*, 126 Neb. 138, 253 N.W. 80 (1934).

<sup>43</sup> The present commissioners are G. H. Doran, Chairman, of Sidney, Nebraska; Ray L. Smith, of Chappell, Nebraska; and Fred L. Enders, of Kimball, Nebraska. The chairmanship of the commission is rotated annually.

<sup>44</sup> NEB. REV. STAT. § 57-904 (Supp. 1961).

<sup>45</sup> H. N. Rhodes, Sidney, Nebraska.

<sup>46</sup> NEB. REV. STAT. § 57-918 (Supp. 1961).

<sup>47</sup> NEB. REV. STAT. § 57-904 (Supp. 1961); Rule 507.3.

The commission has the power to summon witnesses, issue subpoenas, administer oaths and require the production of records, books and documents for examination at any hearing or investigation conducted by it.<sup>48</sup> Depositions may be taken by the commission or by parties to a proceeding and used before the commission in the same manner and under the same conditions as prescribed in the Nebraska Rules of Civil Procedure relating to the taking and using of depositions in the state courts.<sup>49</sup> Since the provisions of the code of civil procedure do not apply to administrative proceedings, it is at least doubtful if the pre-trial processes for discovery and production of documents<sup>50</sup> or requests for admissions<sup>51</sup> would be available.<sup>52</sup>

Evidence is ordinarily received in the following order: (1) petitioner; (2) respondent or intervenor; (3) commission staff; (4) rebuttal, and (5) statements.

Full opportunity is afforded all persons to present evidence under oath or affirmation and to conduct such direct and cross examination as may be required for a full and true disclosure of facts.<sup>53</sup> While the proceedings and the taking of evidence at hearings is informal, the commission, nevertheless, assumes the dignity of a judicial body and as a matter of policy provides for the exclusion of irrelevant, immaterial or unduly repetitious evidence,<sup>54</sup> and admits and gives probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs.<sup>55</sup> The commission director<sup>56</sup> and its legal advisor generally examine on technical and

<sup>48</sup> NEB. REV. STAT. § 57-912 (Supp. 1961); Rule 507.6.

<sup>49</sup> NEB. REV. STAT. § 84-914(2) (Supp. 1961); Rule 507.7; NEB. REV. STAT. §§ 25-1267.01 to -1267.38 (Reissue 1956).

<sup>50</sup> NEB. REV. STAT. § 25-1267.39 (Reissue 1956).

<sup>51</sup> NEB. REV. STAT. § 25-1267.41 (Reissue 1956).

<sup>52</sup> While the necessity for such pre-trial processes has not arisen it would appear desirable that provision be made in the rule for the availability thereof. Compare NEB. RY. COMM'N Rule 1.1.

<sup>53</sup> NEB. REV. STAT. §§ 57-912(1); 84-913, -914(4) (Supp. 1961); Rule 507.4.

<sup>54</sup> NEB. REV. STAT. § 57-912(1) (Supp. 1961); Rule 507.4.

<sup>55</sup> NEB. REV. STAT. § 84-914(1) (Supp. 1961); Rule 507.5. The commission is not bound to strictly follow all common-law rules of evidence but its orders are required to be supported by competent and relevant evidence in order to afford the parties a full and fair hearing. See *Chicago & N.W. Ry. v. City of Norfolk*, 157 Neb. 594, 60 N.W.2d 662 (1953).

<sup>56</sup> Since the director is not an attorney his right to examine witnesses might be questioned. However, as long as this interrogation does not become adversary in nature it serves a useful purpose. No objections have been made to it.

legal matters; frequently individual commissioners will inquire on specific points. Records and documents of the commission may be offered and made a part of the record and all documentary evidence may be received in the form of copies, excerpts or by incorporation by reference.<sup>57</sup>

The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. Parties are notified either before or during the hearing, or by reference in preliminary reports, or otherwise, of the material to be so noticed. The parties are afforded an opportunity to contest the facts noticed. The commission may utilize its experience, technical competence and specialized knowledge in evaluating the evidence.<sup>58</sup>

No person is excused from attending and testifying, from producing books, papers and records or from obedience to a subpoena, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person, however, is required to produce any books, papers or records, or to testify in response to any inquiry not pertinent to some question lawfully before the commission for determination. No natural person is subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or in obedience to its subpoena. No person testifying, however, is exempt from prosecution and punishment for perjury committed in so testifying.<sup>59</sup>

In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matters regarding which he may be lawfully interrogated, any district court in the state, upon the application of the commission, may in term time or vacation issue an attachment for such person and compel with such subpoena and to attend before the commission and produce such records, books and documents for examination, and to give his testimony. Such court has the power to punish for contempt

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<sup>57</sup> NEB. REV. STAT. § 84-914(3) (Supp. 1961); Rule 507.4.

<sup>58</sup> NEB. REV. STAT. § 84-914(5) (Supp. 1961); Rule 507.5. *State Oil & Gas Bd. v. Superior Oil Co.*, 202 Miss. 139, 30 So. 2d 589 (1947).

<sup>59</sup> NEB. REV. STAT. § 57-912(1) (Supp. 1961); *but compare* NEB. REV. STAT. § 84-914(1) (Supp. 1961). "It [the agency] shall give effect to the rules of privilege recognized by law."

as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.<sup>60</sup>

A reporter provided by the commission who prepares an official record including testimony and exhibits, is present at all regular hearings. A transcript is furnished to any person requesting it.<sup>61</sup>

The burden of proof is upon the petitioner to establish the required elements of his case by "a preponderance of the reliable probative and substantial evidence" and it would appear that in proceedings instituted by the commission such burden of proof would be upon the commission. While no formal complaints have been filed by the commission based on alleged violations of the act or its rule or disobedience of any order of the commission, it is suggested that the commission will benefit from the experiences of the Nebraska Railway Commission<sup>62</sup> and in such cases will, as petitioner, institute a complaint by petition against an alleged violator, rather than an order to show cause. This petition will set forth the provision of the act, rule or order alleged to have been violated or disobeyed, the facts constituting the violation, and the burden of proving a violation will be upon the commission.

The provision in the Nebraska act pertaining to the quantum of proof states that "no decision shall be rendered, sanction imposed or rule or order issued except on consideration of the whole record or such portion thereof as may be cited by any party *and as supported by and in accordance with a preponderance of the reliable probative and substantial evidence.*"<sup>63</sup> This is a very unusual provision, and a similar one is not to be found in the act of any other state in the United States.

The act, as originally drafted, did not include the words "a preponderance of" but merely required that the decision or order be supported by and in accordance with "the reliable probative and substantial evidence." By amendment, the quantum of proof

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<sup>60</sup> NEB. REV. STAT. § 57-912(2) (Supp. 1961).

<sup>61</sup> NEB. REV. STAT. § 84-913 (Supp. 1961); Rule 507.2.

<sup>62</sup> See Comment, 40 NEB. L. REV. 129, 139-40 (1960); Ferguson Trucking Co. v. Nebraska State Ry. Comm'n, 169 Neb. 851, 101 N.W.2d 444 (1960). Rules 503.1 and 504.5 suggest the availability of "show cause" proceedings.

<sup>63</sup> NEB. REV. STAT. § 57-912(1) (Supp. 1961); Rule 508.2. Presumably the commission's orders are supported by this quantum of proof. A complaint based upon failure of this proof could not be made by motion for rehearing and the failure to meet the quantum would not be material on the hearing on appeal in the district court.

necessary to support an order or decision of the commission has been greatly and unnecessarily enlarged. This is particularly true in view of the fact that appeals from the commission are to the district courts who are required to hold a trial de novo and determine independently all issues of fact and conclusions of law with respect to the validity and reasonableness of the provision, rule, regulation, or order complained of, and who are not bound by any finding of fact or conclusion of law made by the commission.<sup>64</sup>

#### D. ORDERS AND DECISIONS

As a general rule, in noncontested cases, an order or decision is made and entered forthwith. In contested cases, or in cases where there is some doubt as to the propriety of the order requested or its necessity, the commission will take the matter under advisement for further consideration of the record and recommendations of the staff.

The commission is required to enter its orders within thirty days after the hearing and to enter them in full in indexed books kept for that purpose. These books are public records and are open for inspection.<sup>65</sup> Every decision and order adverse to a party to a proceeding, rendered by the commission in a contested case<sup>66</sup> is required to be in writing or stated in the record and accompanied by findings of fact and conclusions of law. The findings of fact consist of a concise statement of the conclusions upon each contested issue of fact.<sup>67</sup> Parties to the proceeding are noti-

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<sup>64</sup> NEB. REV. STAT. § 57-913 (Supp. 1961).

<sup>65</sup> NEB. REV. STAT. § 57-911(5) (Supp. 1961); Rule 508.1. The requirement that the order must be entered within thirty days after the hearing has been construed as not meaning that the final order must be entered within thirty days to be valid, but that the proceeding shall be followed up expeditiously beginning with that time, giving the commission a reasonable time to determine what it will do. See *Superior Oil Co. v. Foote*, 214 Miss. 857, 59 So. 2d 85 (1952); *Superior Oil Co. v. Beery*, 59 So. 2d 689 (Miss. 1952). But in *Chicago & N.W. Ry. v. Save the Trains Ass'n*, 167 Neb. 61, 91 N.W.2d 312 (1958), the Nebraska Supreme Court expressed its disapproval of the failure of the Nebraska Railway Commission to make a timely entry of an order stating that a loss sustained by a delay in the processing of an application where no reason or excuse therefore is given is for all practical purposes the taking of property without due process.

<sup>66</sup> A "contested case" is defined in NEB. REV. STAT. § 84-901(3) (Supp. 1961) to mean a proceeding in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined.

<sup>67</sup> NEB. REV. STAT. § 84-915 (Supp. 1961); Rule 508.1. Findings of basic facts in the order as a foundation for the ultimate facts required by

fied of the decision and order in person or by mail. Mimeographed copies of all orders are mailed to all persons whose name and address appears on the commission's mailing list.

#### E. PROCEEDINGS FOR REHEARING

No provision is made in the Nebraska act for applications to repeal, amend, modify or supplement any order, and the rules specifically forbid such applications or proceedings for rehearings.<sup>68</sup> Applications seeking amendment, modification or seeking to supplement a prior order are permitted as original applications and hearings had thereon after notice as required by law and the commission's rules.<sup>69</sup>

#### F. BRIEFS

The commission may require the submission of briefs and any party desiring to submit a brief may do so. It is required that parties indicate at the close of the testimony whether they desire to file briefs and the subject matter which they propose to cover. The commission will fix a time for filing briefs. Briefs are required to be double spaced, except for citations. Five copies are to be filed with the commission and one copy served upon each party to a proceeding or his attorney of record.<sup>70</sup> Unless the application involves some highly technical or novel legal problems, briefs are seldom necessary or submitted.

Having in mind the above general discussion of matters affecting practice and procedure before the commission it is believed that a detailed analysis of the problems encountered in the preparation of applications and presentation of proof in two of the more common types of proceedings would be beneficial to applicants and attorneys desiring to appear before the commission.

### III. UNIT OPERATIONS AND SECONDARY RECOVERY PROJECTS

This type of proceeding is specifically covered by Commission Rules 401, 402 and 403, and by Commission Memorandum No. 8, February 1, 1961. These rules and memorandum must be carefully

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the act are not required. See *Ferguson Trucking Co. v. Rogers Truck Line*, 164 Neb. 85, 81 N.W.2d 915 (1957); *Young v. Morgan Drive Away, Inc.*, 171 Neb. 784, 107 N.W.2d 752 (1961).

<sup>68</sup> Rule 508.3.

<sup>69</sup> *Carter Oil Co. v. State*, 205 Okla. 374, 238 P.2d 300 (1951).

<sup>70</sup> Rule 508.4.

examined before attempting to institute any such proceeding. Rule 401 provides that an application "may" be filed by any one or more of the parties involved or the operator of the project. Some operators have taken the position that the language of Rule 401 is permissive in nature and does not require administrative approval prior to the commencement of operations. Such approval, however, is mandatory.<sup>71</sup>

A full and complete reservoir study will have been made of the field or pool which is the subject of the proposed unit operation and secondary recovery project. The information and factual data accumulated in this study will be the basis upon which an application is drafted and proof and exhibits prepared and presented. Close communication is thus required between the attorney, the engineer and the geologist from the outset.

#### A. THE APPLICATION AND EXHIBITS

Rule 401 specifies certain allegations and exhibits which must be contained in or attached to an application. A suggested form of application is submitted which contains the basic requirements specified in Rule 401. Of course each application will have to be tailored to its own fact situation and the form herein suggested is illustrative only. Following each paragraph number, in parenthesis, is reference to the applicable provision of Rule 401 which is provided here only for reference and should not be contained in the application to be filed.

#### BEFORE THE NEBRASKA OIL AND GAS CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION )	
OF ..... FOR AP- )	
PROVAL OF UNITIZATION AGREEMENT )	
AND SECONDARY RECOVERY PROGRAM )	CASE NO.
BY WATER FLOOD IN THE ..... )	
FIELD "J" SAND RESERVOIR, ..... )	
COUNTY, NEBRASKA )	

#### APPLICATION

Comes now ....., Applicant, and respectfully shows to the Nebraska Oil and Gas Conservation Commission as follows:

1. Applicant is a ..... corporation duly authorized to transact business as a foreign corporation in the State of Nebraska.

<sup>71</sup> Letter opinion of the attorney general of Nebraska of March 3, 1960 on file with the Nebraska Oil and Gas Commission.

2. The subject matter of the application is the .....  
Field in ..... County, Nebraska, composed of the following described lands:

(Set forth legal description of lands involved).

3. (401(a)) Attached hereto marked Exhibit "A" is a plat showing (a) the area involved, the wells, including drilling wells and dry and abandoned wells, if any, located thereon, all properly designated; (b) the location of injection wells presently proposed; and (c) the designated Notice Area within one-half mile of such injection wells. Attached to Exhibit "A" is a tabulation showing the names and addresses (where such addresses appear of record or are known to Applicant) of all fee owners and owners as defined in the Nebraska Oil and Gas Conservation Act<sup>72</sup> within one-half mile of the proposed injection wells.

4. (401(b), (d) (1), (d) (2)) The operation proposed for which approval is required is that of injecting water into the "J" sand formation, which is the formation from which wells are producing at an average depth between ..... and ..... feet, subsurface. Initial development provides for injection of water into the input wells as shown on Exhibit "A" resulting in a ..... type of water flood.

5. Applicant shows that engineering study and further field development may indicate that changes be made in the location of one or more of the proposed injection wells or that additional input wells will be required to effectively carry out the secondary recovery project. It is therefore requested that the order made herein authorize such changes as may be necessary in the proposed locations and to re-complete, re-enter, drill or convert additional wells for water injection within the unit area upon receipt of approval of the Director.<sup>73</sup>

6. The primary purpose of the proposed secondary recovery program is to increase the ultimate recovery of oil. Preliminary estimates indicate that ..... S.T.B.O. will be recovered by primary depletion method or approximately .....% of the original oil in place. Preliminary estimates indicate that an additional

<sup>72</sup> These owners are defined as "the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or for himself and others" i.e. working interest owners. NEB. REV. STAT. § 57-903(8) (Supp. 1961).

<sup>73</sup> An order based upon this allegation provides: "That approval of the Director shall be obtained by the Unit Operator before re-completing, re-entering, drilling, or converting additional wells for water injection within the Unit Area." "Such additional injection wells must be wells belonging to owners who have signed the Unit Agreement." *Syverson v. North Dakota State Industrial Comm'n*, 111 N.W. 2d 128 (N.D. 1961).



..... S.T.B.O. will be recovered as the result of the proposed secondary recovery operations resulting in an estimated recovery of .....% of the original oil in place.

7. (401(d) (3)) Attached hereto marked Exhibits "B-1" to "B-....," inclusive, are the logs of the proposed intake wells with description of the casing and cementing thereof.

8. (401(d) (4)) All injection wells have or will be pressure tested during cementing operations by setting a packer on tubing above the perforations, filling the annulus with water and pressure testing to 2000 pounds per square inch gage.

9. (401(d) (5)) Water supply wells, as shown on Exhibit "A" have or will be drilled to an estimated depth of ..... feet. It is estimated that approximately ..... B.O.W. per day will be required. Said water wells have been or will be registered with the Department of Water Resources of The State of Nebraska.

10. (401(c)) Attached hereto marked Exhibit "C" is a copy of the Unit Agreement which has been or will be executed or ratified by a majority of the affected parties.

11. (401(d) (6)) ..... whose address is ....., will be the sole operator of the project.

12. Applicant believes, and therefore alleges, that said Unit Agreement and Secondary Recovery Project are in the public interest, protective of correlative rights, reasonably necessary to increase ultimate recovery and to prevent waste of oil and gas and that this Commission should enter an order so finding and approve the same as herein set forth.

WHEREFORE, Applicant prays that this matter be set for hearing, that notice of such hearing be given as provided by law and that upon such hearing an order be entered approving said Unit Agreement and Secondary Recovery Project.

Dated this ..... day of ....., 19.....

.....(Applicant)  
By .....(Attorney or Officer)  
.....(Address)

Name and address of Nebraska Counsel: .....

An original and six copies of the application are required to be filed with the commission together with a sufficient number of additional copies to be served by the commission upon offset owners as hereinafter noted.

## B. THE NOTICE

Upon the filing of the application the commission gives it a docket number and causes a notice of hearing to be published in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated.<sup>74</sup> In addition to this notice *the applicant* is required to mail, by certified mail, or by personal delivery, a copy of a notice setting out the time, place and subject matter of the hearing to all fee owners, mineral owners and owners as defined in the act within one-half mile of the proposed intake well or wells who have not consented in writing to the formation of the unit and/or the commencement of the secondary recovery or pressure maintenance project.<sup>75</sup> A suggested form of notice is as follows:

## NOTICE

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

On the ..... day of ....., 19....., ..... filed an Application with the Nebraska Oil and Gas Conservation Commission for an Order approving a Unit Agreement and Secondary Recovery Project by water flood in the ..... Field "J" Sand Reservoir ..... County, Nebraska, composed of the following described lands: (set forth legal description of lands involved).

Pursuant thereto the Commission has set said matter for hearing at the Fort Sidney Motor Hotel, in Sidney, Nebraska, on the ..... day of ....., 19....., at the hour of ten o'clock A.M. At said time and place the Commission will be requested to enter an order as requested in said Application. All persons interested in such matter are invited to appear and be heard.

..... (Applicant)  
By ..... (Attorney or Officer)  
..... (Address)

The *applicant* is further required to mail, by certified mail, one copy of the *complete application* to all owners, as defined in the act, within one-half mile of the proposed injection wells, or *within the proposed unit area*, who have not consented in writing

<sup>74</sup> Rule 506.2; NEB. REV. STAT. § 57-911(4) (Supp. 1961).

<sup>75</sup> Rule 403; Commission Memorandum No. 8 (b) (2), Feb. 1, 1961; See note 87 *infra*.

to the formation of the unit and/or the commencement of the proposed secondary recovery or pressure maintenance project.<sup>76</sup>

The identification of the fee owners, mineral and working interest owners and their addresses within the unit area presents no great problem since such information is readily available from the respective operator's lease records. The identification of the names and addresses of such owners outside the unit area and within the one-half mile radius from the input wells presents a very real, practical problem, sometimes involving considerable time and expense, necessitating a record title check from the county records where such information is not accurately obtainable from other sources.

The commission will mail a complete copy of the application to all working interest owners who offset the proposed unit area, either directly or diagonally, who have not consented in writing to the formation of the unit and the commencement of the secondary recovery or pressure maintenance project and who have not been notified by the applicant as noted above.<sup>77</sup>

The applicant is required to attach a certificate to the application showing the names and addresses of the parties to whom he has mailed notice or copies of the application.<sup>78</sup> A suggested form of such certificate is as follows:

#### CERTIFICATE

..... certifies, upon information and belief, that the persons designated in the Tabulation of Ownership attached to Exhibit "A" of the Application, at the addresses indicated, are all of the fee owners, mineral owners and owners as defined in the Act within one-half mile of the proposed intake well or wells.

The following named persons have consented in writing to the formation of the unit and the commencement of the secondary recovery project:<sup>79</sup>

*Name*

*Address*

He further certifies that on the ..... day of ....., 19....., copies of the attached Notice were mailed by certified mail to all of the persons designated in the Tabulation of Ownership attached

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<sup>76</sup> Commission Memorandum No. 8 (b) (3), Feb. 1, 1961.

<sup>77</sup> Commission Memorandum No. 8 (b) (4), Feb. 1, 1961.

<sup>78</sup> Rule 403.

<sup>79</sup> This showing is necessary in order to advise the commission of those persons to whom it is not required to mail a copy of the application as provided in Memorandum No. 8 (b) (4), Feb. 1, 1961. See note 80 *infra*.

to Exhibit "A" of the application, at the addresses indicated except those persons last above listed.

He further certifies that on the ..... day of ....., 19....., a complete copy of the application, with exhibits attached, was mailed, by certified mail, to the following named persons, at the addresses indicated, they being all of the owners, as defined in the Act, within one-half mile of the proposed injection wells, or within the proposed unit area:

Name

Address

Dated this ..... day of ....., 19.....

It is very important that the requirements of notice and service of copies of the application, as required by the act and the rules, be strictly satisfied. These requirements are both mandatory and jurisdictional.<sup>80</sup>

#### C. THE EXHIBITS FOR HEARING AND PRESENTATION OF PROOF

Several standard exhibits should be prepared and offered into evidence at the hearing:

(1) Exhibit "A": The plat referred to in paragraph 3 of the application.

(2) Exhibit "B": The injection well logs referred to in paragraph 7 of the application.

(3) Exhibit "C": The Unit Agreement and Ratifications referred to in paragraph 10 of the application.

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<sup>80</sup> See note 34 *supra*. The right of owners of small mineral interests to notice of a hearing to consider pooling tracts to form a drilling block was upheld in *Placid Oil Co. v. North Central Texas Oil Co.*, 206 La. 693, 19 So. 2d 616 (1944). The court stated: "Such notice is due particularly to parties having a mineral interest in only a part of the area intended to be unitized, or having a greater mineral interest in one part than in another part of the area intended to be unitized." *Id.* at 710; 19 So. 2d at 621.

In *Day v. State Corp. Comm'n*, 185 Kan. 165, 341 P.2d 1028, *rehearing denied*, 185 Kan. 382, 345 P.2d 651 (1959), the failure to set forth the names and addresses of certain record title owners, in an application filed with the Kansas Commission so that the commission could serve notice of hearing upon them as required by law was held to have deprived these persons of their right to be heard with the result that the commission was without power and authority to make any order binding upon them. See also *Matzen v. State Corp. Comm'n*, 185 Kan. 206, 341 P.2d 1031, *rehearing denied*, 185 Kan. 404, 345 P.2d 630 (1959); *Moore Oil, Inc. v. Snakard*, 150 F. Supp. 250 (W.D. Okla. 1957).

(4) Exhibit "D": A structure contour-isopach map of the Unit Area showing (a) the structure contours at the top of the producing formation and (b) isopachs of net oil sand. (Frequently it is more desirable to have a separate contour and isopach map to provide greater clarity in explaining the factual datum shown thereon.)

(5) Exhibit "E": A Statistical Data Sheet showing:

- (a) General:
  - Time of discovery
  - Discovery well
  - End of development
  - Spacing pattern
  - Number of wells producing
  - Number of wells shut-in
  - Number of dry holes
  - Average depth to top of pay
  - Producing formation
  - Type structure
  - Producing mechanism
- (b) Reservoir Characteristics:
  - Productive area
  - Average net pay thickness
  - Productive sand volume
  - Productive sand volume—swept area
  - Average porosity
  - Average permeability
  - Connate water saturation
  - Original bottom-hole pressure
  - Present bottom-hole pressure (Est.)
  - Original oil-water contact-Sea level datum
  - Present oil-water contact-Sea level datum (Est.)
- (c) Crude Oil Characteristics:
  - Gravity
  - Bubble point pressure (Est.)
  - Original solution GOR (Est.)
  - Original FVF (Est.)
- (d) Recovery and Reserves:
  - Total oil originally in place
  - Ultimate primary recovery- bbls.
  - Ultimate primary recovery- % O.O.I.P.
  - Cumulative oil production
  - Remaining primary reserve
  - Primary depletion
  - Current production rate

Remaining life-present method  
 Estimated secondary recovery-bbbls.  
 Estimated secondary recovery-B/A-F  
 Estimated secondary recovery-% O.O.I.P.  
 Estimated ultimate primary and secondary  
 recovery-bbbls.  
 Estimated ultimate primary and secondary recovery  
 % O.O.I.P.  
 Remaining primary and secondary reserves  
 Estimated water flood life.

(6) Exhibit "F": Plot showing decline curve and estimated secondary recovery production curve vs. time (three cycle semi-log by time in years and months.)

There is no standard size for such exhibits as "A," "D" and "F." Master exhibits not to exceed three feet by three feet are usually adequate. A highly recommended exhibit procedure is to use smaller plat-exhibits which can be made parts of a complete exhibit brochure contained in a nine inch by eleven and one-half inch manuscript binder. A minimum of ten such brochures should be available, six for the commission, one for the witness, one for the examining attorney, one for the record and additional copies for other interested persons who may request copies of the exhibits.

Usually only two witnesses are required—the petroleum engineer and the landman having charge of the unit agreement and ratifications. The professional qualifications of both should be made a part of the record. The oral testimony (especially in non-contested cases) should be restricted to only such matters as may be absolutely necessary to make a reasonably clear prima facie case demonstrating that the unit agreement and secondary project are in the public interest, protective of correlative rights, reasonably necessary to increase ultimate recovery and to prevent waste.

The following is suggested as a general outline for the presentation of proof:

*The opening statement:* This should include a brief general statement of the subject matter of the application and compliance with notice requirements.

*The Petroleum Engineer:*

- (1) Qualifications
- (2) Identification and explanation of Exhibit "A"
  - (a) Identification of unit area
  - (b) Identification of producing, drilling and dry wells

- (c) The formations from which wells are producing or have produced
- (d) The name, description and depth of the formations to be affected
- (3) Identification and explanation of Exhibit "D"
- (4) Identification and explanation of Exhibit "F"
- (5) Identification and explanation of Exhibit "E"
  - (a) The datum shown on Exhibit "E" should be by reference correlated into Exhibits "D" and "F"
  - (b) Specific reference should be made to the datum referred to under subdivision (d) of this Exhibit—"Recovery and Reserves"
- (6) Full description of proposed operation
- (7) Identification and explanation of Exhibit "B"
  - (a) Description of the casing and cementing of such wells
  - (b) Method of testing casing
- (8) Source of water and amounts to be injected
  - (a) Registration of water wells with the Department of Water Resources, Lincoln, Nebraska
- (9) Opinion statement that the unit agreement and secondary recovery project are in the public interest, protective of correlative rights, reasonably necessary to increase ultimate recovery and prevent waste

*The Landman:*

- (1) Identification
- (2) Identification of Exhibit "C"
  - (a) Percentage of execution<sup>81</sup>
- (3) Name and address of unit operator

A closing statement is usually not made unless it becomes necessary to explain or reconcile evidentiary matters arising as the result of conflicting testimony.

#### IV. EXCEPTION OR UNORTHODOX LOCATIONS

A second common type of proceeding is the application for an exception or unorthodox well location. This frequently becomes necessary when subsurface information indicates that an authorized location will result in a marginal or noncommercial well whereas a proposed exception will be structurally more desirable. Some operators are not familiar with the administrative

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<sup>81</sup> The commission may approve the application summarily at the hearing but will require not less than 75% execution of the Unit Agreement before the order becomes effective.

procedures which must be followed in such cases and frequently, without benefit of qualified legal counsel, attempt to make these applications and process them. This occasionally results in procedural errors and delay.

The commission rules require that all wells drilled to sources of supply at estimated depths in excess of 2500 feet for which no spacing pattern has been established by existing wells shall be drilled on forty acre legal subdivisions or equivalent lots and not less than 500 feet from the boundaries of such legal subdivision,<sup>82</sup> or if drilled to estimated depths of 2500 feet or less shall not be drilled closer than 300 feet from the boundaries of a forty acre legal subdivision or equivalent lot.<sup>83</sup> Where it is desired to drill a well not in conformance with the above requirements approval of the commission must be obtained.

#### A. THE APPLICATION AND EXHIBITS

The rules do not prescribe any specific allegations or exhibits to be included in or made a part of the application. Here again each application will have to be tailored to its own fact situation. A suggested form of such application is as follows:

#### BEFORE THE NEBRASKA OIL AND GAS CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION )	
OF ..... FOR AN EXCEPTION )	
TO RULE 313 TO PERMIT THE DRILLING )	
OF A TEST WELL AT A LOCATION ..... )	
FEET FROM THE ..... LINE AND )	CASE NO.
..... FEET FROM THE ..... LINE OF )	
SECTION ....., TOWNSHIP, ..... )	
NORTH, RANGE ....., ..... COUNTY, )	
NEBRASKA )	

#### APPLICATION

Comes now ....., Applicant herein and respectfully requests authorization to drill a test well for oil in the ..... Field, ..... County, Nebraska, as an exception to Commission Rule 313(b) and in support thereof alleges and shows:

1. The present spacing pattern for all wells in the location area is that wells be located in the approximate center of each forty acre legal subdivision.

<sup>82</sup> Rule 313(b).

<sup>83</sup> Rule 313(c) as amended by Order R-61, Jan. 18, 1961.



2. Applicant proposes to drill a test well for oil at a location ..... feet from the ..... line and ..... feet from the ..... line of Section ....., Township ..... North, Range ....., ..... County, Nebraska, and believes and therefore alleges that from present geologic and engineering evidence available said exception location will be structurally more desirable (or topographically more desirable), will better and more effectively evaluate the producing possibilities of the property and afford the best opportunity for production of oil in commercial quantities.

3. Attached hereto, marked Exhibit "A," is a map of said field showing the proposed location in its relationship to other wells therein described.

4. Applicant further believes, and therefore alleges, that allowance of the exception herein requested would be in the public interest, is reasonably necessary to increase ultimate recovery of oil, avoid the drilling of unnecessary wells, prevent waste and will not affect the correlative rights of any interested persons.

WHEREFORE, Applicant prays that this matter be set for hearing, that notice of hearing be given as required by law and that upon such hearing an order be entered approving and allowing the drilling of a well at the above described location as an exception to Commission Rule 313(b).

Dated this ..... day of ....., 19.....

..... (Applicant)  
By ..... (Attorney or Officer)  
..... (Address)

Name and Address of Nebraska Counsel: .....

An original and six copies of the application are to be filed with the commission.

## B. THE NOTICE

In addition to the notice of hearing published by the commission in a newspaper of general circulation in the county where the land affected or some part thereof is situated,<sup>84</sup> Rule 506.4(b)<sup>85</sup> now provides that *the applicant* shall serve notice of hearing upon all interested parties by certified mail with return receipt re-

<sup>84</sup> Rule 506.2.

<sup>85</sup> See note 28 *supra*. Order R-105 amending Commission Rules of Practice and Procedure, No. 61-42, Oct. 17, 1961.

quested.<sup>86</sup> "Interested parties" are defined as being "those persons who own any leasehold, mineral or royalty interest in contiguous or cornering tracts of the size established in the existing spacing pattern." If no spacing pattern has been established this additional notice is not required. An applicant is usually aware of the existence of an established spacing pattern in the affected area and can determine whether special notice must be served. In the absence of such information inquiry should be made to the commission director.

Here again the identification of such interested parties usually requires a record title check from the county records where such information is not accurately obtainable from other sources.

The applicant is required to include a certificate with the application showing the names and addresses of the interested parties upon whom notice of hearing has been or is being served. A suggested form of such certificate is as follows:

#### CERTIFICATE

..... certifies, upon information and belief, that the following named persons, exclusive of applicant, at the addresses indicated, are all of the persons, who appear of record or are known to applicant, who own any leasehold, mineral or royalty interest in contiguous or cornering tracts of the size established in the existing spacing pattern:

*Name*

*Address*

He further certifies that on the ..... day of ....., 19....., a copy of the attached Notice was mailed to the above named persons by certified mail with return receipts requested.

Dated this ..... day of ....., 19.....

Since at least fifteen days notice is required before the commission may make an order at a public hearing, in the absence of an emergency,<sup>87</sup> it is considered desirable, if not required, that the notices be mailed at least *eighteen* days prior to the hearing date.<sup>88</sup>

<sup>86</sup> The suggested form of notice, as set forth for use in cases involving Unit Operations and Secondary Recovery Projects may properly be used in Exception cases with appropriate change in text.

<sup>87</sup> NEB. REV. STAT. § 57-911(2) (Supp. 1961).

<sup>88</sup> NEB. REV. STAT. § 25-534 (Supp. 1961) provides that service by mail is complete upon mailing and that wherever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him

### C. THE EXHIBITS FOR HEARING AND PRESENTATION OF PROOF

Only one standard exhibit is usually necessary in this type of proceeding—a contour structure map drawn on the top of the proposed producing sand. This will include the matters shown on Exhibit "A" of the application, gas-oil and water-oil contacts where applicable, and such other matters as may be properly shown on the map to visually demonstrate, from subsurface information available, that an authorized location will result in a marginal or noncommercial well whereas the proposed exception location will be structurally more desirable and present a better opportunity to obtain commercial production. An isopach map of net pay sand is frequently very valuable and where sufficient information is available to permit its preparation this map and the information shown thereon should be offered as an exhibit and made a part of the record.

Usually only a petroleum engineer or geologist is used as a witness. After proper qualification, his testimony should be brief, concise and restricted to the identification of the map exhibits and a statement, for the record, of the matters shown thereon. This testimony will be directed toward proof of the ultimate fact of the necessity for the proposed exception location and the conclusion that the drilling of a well at such exception location is reasonably necessary to increase ultimate recovery, avoid the drilling of unnecessary wells, prevent waste and will not affect correlative rights.

The Nebraska Oil and Gas Conservation Commission and its staff have and are performing a very useful service to the oil and gas industry in Nebraska. Its hearings are conducted in a dignified, judicial atmosphere with sufficient informality to insure that all interested parties have an opportunity to be heard and that each record properly reflects facts and scientific conclusions upon which an order may be properly predicated.

### V. CONCLUSION

The act and the commission's rules may very well be, in some respects deficient. As those deficiencies become apparent, or as new technological processes or judicial interpretations are forthcoming indicating procedural changes, such changes will be made. Additional administrative interpretations of existing rules of practice and procedure may be expected. It is important, therefore,

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and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

that persons having matters to come before the commission and especially lawyers proposing to present such matters have, and maintain, a complete understanding of the statutory provisions and the commission's rules. This article has been prepared and is presented in the hope that it will better define and clarify practice and procedure before the commission and by so doing enable the industry, the bar and the commission to administer more effectively the declared public policies of conservation of oil and gas in Nebraska.