

TITLE 267 – NEBRASKA OIL AND GAS CONSERVATION COMMISSION

CHAPTER 6 – PRACTICE AND PROCEDURE BEFORE THE COMMISSION

**001 SCOPE AND APPLICATION OF RULES**

**001.01 Scope of Rules**

These rules shall be known and designated as "Rules of Practice and Procedure before the Oil and Gas Conservation Commission of the State of Nebraska," in all proceedings relating to the conservation of oil and gas in the State of Nebraska and to the administration of the Act and all proceedings relating to the geologic storage of carbon dioxide and to the administration of the GS Act.

**002 WHO MAY INSTITUTE PROCEEDINGS**

**002.01 Proceedings Instituted by Commission and Any Interested Person**

The Commission, upon its own motion, or any interested person, may institute proceedings upon any question relating to the conservation of oil and/or gas or to the administration of the Nebraska Oil and Gas Conservation Act.

**003 PARTIES**

**003.01 Petitioner**

The Commission entering its order to show cause or entering its order to initiate a proceeding, or a party other than the Commission instituting a proceeding, shall be known as the Petitioner.

**003.02 Respondent**

Any party against whom a proceeding is instituted shall be known as Respondent.

**003.03 Intervener**

Any party not designated as a petitioner or respondent shall be known as an Intervener.

**004 INSTITUTION OF PROCEEDINGS**

**004.01 Copies**

All proceedings, except those initiated by the Commission on its own motion, shall be instituted by filing six (6) copies of a typewritten or printed application, petition or complaint. An additional copy shall be filed for each party named as a respondent. One (1) copy of the application, petition or complaint shall be mailed by the Secretary to each other party or his attorney of record, if the address of such other party is known or can be determined. One (1) copy shall be mailed to any other person requesting same in writing.

**004.02 Promulgation, Amendment or Repeal of Rules**

Any interested person requesting the promulgation, amendment or repeal of any rule adopted by the Commission shall file an application or a petition therefore, in number as set forth in Rule 6-004.01. The procedure for the submission, consideration and

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disposition thereof shall be the same as in other proceedings commenced by any interested person before the Commission.

004.03 Filing and Docketing

When a proceeding is instituted, the Secretary of the Commission shall assign it a number and enter the proceeding with the date of its filing or the date of the entry of the Commission order instituting such proceeding, on a separate page of a docket provided for such purpose. All pleadings offered subsequent to the institution of a proceeding shall be noted with the date of filing upon the docket page of said proceeding or a continuation thereof.

004.04 Additional Copies

The Secretary may at any time require the party filing, or offering for filing, a pleading to furnish such additional copies of the same as may be deemed necessary.

004.05 Execution

In any proceeding instituted on motion of the Commission, the original application, complaint or order to show cause must be signed by at least two (2) members of the Commission. Any other original application, petition or complaint shall be signed by the person filing it, or his attorney, with mailing address shown.

004.06 Representation by Attorneys

Any attorney duly authorized to practice law before the courts of record of any other state shall, upon motion, be admitted to practice before the Commission, provided it shall appear to the Commission that he has associated and appearing with him in any proceeding before the Commission an attorney who is a resident of Nebraska and regularly admitted to practice in the State of Nebraska.

004.07 Cost of Hearing

A petition filed with the Commission for a public hearing shall be accompanied by a filing fee of twelve hundred dollars (\$1,200.00).

**005 FORM OF PLEADINGS**

005.01 Application, Petition or Complaint

Each original pleading shall show the venue "Before the Nebraska Oil and Gas Conservation Commission" and shall contain a heading showing the names of the petitioner and the respondents, if any. Such pleadings shall be drawn so as to fully and completely advise the Commission in plain language of all of the pertinent facts involved and shall state concisely the matters complained of and what relief or action is sought from the Commission.

005.02 Answers, Protest, Notice of Protest

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Any interested person may appear at the hearing and support, protest or otherwise be heard concerning any such matter provided that any person desiring to protest the granting of the petition shall, at least five (5) days prior to the date of the hearing, file a written protest with the Commission, which shall briefly state the basis of the protest. Any person who files a protest with the Commission shall at the same time serve a copy thereof on the person filing the petition. Such service shall be made by mailing a copy of the protest, postage prepaid, to the petitioner.

**006**      **NOTICE OF HEARING**

006.01      Time of Notice; Emergency Orders

Before any rule, regulation, or order, or amendment thereof, shall be made by the Commission, there shall be held a public hearing upon at least thirty (30) days notice at such time and place as may be prescribed by the Commission and any interested person shall be entitled to be heard, except that when an emergency requiring immediate action is found by the Commission to exist, the Commission may issue an emergency order, without notice of hearing, which shall be effective upon promulgation but shall remain effective for no more than thirty (30) days.

006.02      Manner of Notice and Contents

When a proceeding has been instituted, either by the Commission on its own motion or by a party, the Commission shall cause notice of the hearing before the Commission to be given by personal service or by one publication in a newspaper of general circulation in each county where the land affected, or some part thereof, is situated. Said notice shall be issued in the name of the State of Nebraska, shall be signed by a member of the Commission or the Secretary of the Commission and shall specify the style and number of the proceeding, the time and place of the hearing, the purpose of the proceeding and the issues involved.

006.03      Notice by Personal Service

Should the Commission elect to give notice by personal service as provided in Rule 6-006.02, such service may be made by any officer authorized to serve summons, or by any agent of the Commission, in the same manner and extent as is provided by law for the service of summons in civil actions in the District Courts in this State. Proof of Service by such agent shall be by his affidavit and Proof of Service by any officer shall be in the form required by law with respect to service of process in civil actions.

006.04      Service of Notice in Special Proceedings

006.04A      In all cases where

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006.04A1 there is an application for the entry of a pooling order under Section 57-909 R.S. Nebraska, or

006.04A2 there is an application for the entry of a unitization order under Section 57-910 to 57-910.12 R.S. Nebraska, notice of the hearing to be held on such application shall be served on the interested parties as hereinafter defined by certified mail at least thirty (30) days prior to the date of the hearing.

For the purpose of pooling applications filed under Section 57-909, the term, "interested parties," shall mean those persons who own any oil or gas leasehold, mineral or royalty interest in the tracts to be pooled.

For the purpose of unitization applications filed under Section 57-910 to 57-910.12, the term, "interested parties," shall mean those persons whose names are required to be set forth in the application.

For the purpose of Carbon Dioxide Storage, the term "interested parties" shall mean those persons that own the Reservoir estate.

006.04B In all cases where a complaint is made to the Commission that any provision of the Act, or the GS Act, or any rule, regulation, or order of the Commission is being violated, notice of the hearing to be held on such complaint, or order to show cause, shall be served on the interested parties, as hereinafter defined, in the same manner as is provided in the Rules of Civil Procedure for the service of process in civil actions in the District Courts in this State, as the same may be implemented, interpreted and made specific by the Commission.

In such cases the party or parties complained against and such other persons as the Commission finds may be affected by the act, or GS Act complained of shall be deemed the interested party or parties.

006.04C In all cases where there is an application for an exception to an established well spacing pattern, in addition to notice of hearing as required by the Act, or the GS Act, the applicant shall serve notice of hearing upon all interested parties by certified mail. The term "interested parties" shall mean those persons who own

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any leasehold, mineral or royalty interest in contiguous or cornering tracts of the size established in the existing spacing pattern. Applicant shall file a certificate showing the names and addresses of the interested parties, as above defined, upon whom notice has been or is being served.

006.04C1 The Commission may on its own motion establish temporary spacing for wildcat reservoirs after notice and hearing. Notice in such cases shall be by publication in the legal newspaper of the county where the discovery is located.

006.04D In all cases where there is an application for the approval of the commencement of an enhanced recovery project, or approval of any injection well under Chapter 4, in addition to any notice provided for in Rule 6-006.02, notice of the filing of such application shall be given by the applicant by certified mail or by personal delivery of a copy of the said notice to each person owning a fee, leasehold, mineral or royalty interest within the area which will be affected by the operation and of lands directly or diagonally offsetting said area or within one-half (1/2) mile of a proposed injection well, whichever is greater. Such notice shall state the time and place of hearing. Proof of the mailing or service of such notice shall be made by affidavit which shall be filed with the Commission.

006.04E All notices required by this Rule shall be given as soon as practicable after the filing of the application, but in any event at least fifteen (15) days prior to the date of hearing. Service of notice shall be deemed complete as of the date of mailing.

006.04F All notices required by this Rule shall contain the following statements: "Any person desiring to protest the granting of the application shall, at least five (5) days prior to the date of the hearing, file a written protest with the Commission, which shall briefly state the basis of the protest. Any person who files a protest with the Commission shall at the same time serve a copy thereof on the person filing the application. Such service shall be by mailing a copy of the protest, postage prepaid, to the applicant. Complete copies of the application in the above-styled cause may be obtained from the Nebraska Oil and Gas Conservation Commission, P. O. Box 399, Sidney, Nebraska 69162."

006.04G In all cases where there is an application for Geologic Storage, in addition to notice of hearing as required by the Act, the applicant shall serve notice of hearing upon

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all interested parties. The term "interested parties" shall mean those persons who own any reservoir estate, leasehold, mineral, royalty interest and land overlying the storage reservoir and within one-half mile of the storage reservoir boundaries. Applicant shall file a certificate showing the names and addresses of the interested parties, as above defined, upon whom notice has been or is being served.

006.04H In all cases where there is an application for Geologic Storage, the notice of hearing shall include a statement that amalgamation of all storage reservoir estates is required to operate the storage facility, that the commission may require that the storage reservoir estates owned by nonconsenting owners be included in the storage facility and subject to geologic storage, and that the amalgamation of storage reservoir estates will be considered at the hearing.

006.05 Additional Notices

When any proceeding other than those referred to in Rules 6-004.01 and 6-006.04 has been instituted in addition to the service or publication of the notice of hearing as required by the Act, or the GS Act, the applicant shall mail to each respondent or interested party and to all persons who have requested notification of such proceeding, as provided in Rule 6-006.06, a written notice of hearing. The term "Interested Party" shall mean those persons who own any leasehold, mineral or royalty interest in the lands affected.

006.06 Request for Notices

Any person desiring notification by mail from the Secretary of the hearings before the Commission shall request same in writing by filing with the Secretary his name and address and designating the area or areas in which interested and as to which he desires to receive such notices.

**007 HEARINGS**

007.01 Examiners

The Commission may appoint one or more examiners who may conduct any of its hearings in accordance with Section 57-905(12). All hearings may be set for hearing before an Examiner except:

007.01A Matters which the Commission or the Director believes should be heard before the Commission.

007.01B Matters in which the application or a motion pursuant to which the hearing is held specifically requests that the hearing be heard before the Commission; provided that

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such motion is filed at least five (5) days prior to the hearing.

007.01C Matters involving the adoption or change of any rule or regulation.

007.01D Matters initiated on the motion of the Commission for the enforcement of any rule, regulation, order or statutory provision.

007.02 Continuances

Any party who desires a continuance shall, immediately upon receipt of notice of the hearing or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Commission in writing of said desire, stating in detail the reasons why such continuance is necessary. Any such party may be required to submit affidavits in support of such request. The Commission or its examiners, in passing upon a request for continuance, shall consider whether such request was promptly made. For good cause shown, a continuance not to exceed thirty (30) days may be granted without the necessity of notice in addition to the original notice of hearing. The Commission or its examiners may at any time order a continuance on its own motion. Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted at least seven (7) days prior to the hearing date. The Secretary shall notify all interested parties immediately of the granting of a continuance.

007.03 Conduct of Hearings; Transcript

A transcript of the testimony shall be made and upon request and payment therefore a copy thereof will be furnished any person requesting the same. Any person testifying in response to a subpoena issued by the Commission or its examiners and any person testifying in support of any application or a petition or a complaint or a motion, or in opposition thereto, shall be required to do so under oath or affirmation which may be administered by any member of the Commission or its examiners.

007.04 Quorum

Two (2) members of the Commission constitute a quorum for the transaction of business.

007.05 Presentation and Consideration of Evidence

Full opportunity shall be afforded all persons registering their appearances to present evidence in support of their case or defense 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 facts. Any evidence which is not irrelevant, immaterial, incompetent or unduly repetitious may be received and made a part of the record in the case, including records and documents in the possession of the Commission of which it desires to

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avail itself. No other factual information or evidence will be considered in the determination of a case.

Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

#### 007.06 Judicial Notice

The Commission or its examiners may take notice of judicially cognizable fact and in addition may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports, or otherwise, of the material so noticed. They shall be afforded an opportunity to contest such facts and material so noticed. The Commission or its examiners may utilize their experience, technical competence and specialized knowledge in evaluating the evidence and may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs.

#### 007.07 Subpoenas and Production of Records

The Commission or its examiners may upon its own motion or upon application of any interested party issue subpoenas requiring attendance of witnesses and the production of books, papers and other instruments to the same extent and in the same manner and in accordance with the procedure provided in the Nebraska Rules of Civil Procedure which authorizes issuance of subpoenas by Clerks of the District Courts.

#### 007.08 Depositions

Depositions may be taken by the Commission or its examiners or by parties to a proceeding and used before the Commission in the same manner and under the same conditions prescribed in the Nebraska Rules of Civil Procedure relating to the taking and using of depositions in the Courts of this State.

#### 007.09 Disposition by the Commission or its examiners may be made of any contested case by stipulation, agreed settlement, consent order or default.

#### 007.10 Registration of Appearances of Hearings

All persons who wish to speak for the record at any public hearing before the Commission or its examiners shall register their appearance at the door on a form to be provided by the Commission. Other persons present may register their appearance. The registration form when completed shall be handed to the reporter whose duty it shall be to see that each person desiring to speak has completed and deposited with him such form. The registration form shall contain spaces for the following information: (1) name, (2) address, (3) person the registrant is representing, (4) capacity in which the registrant appears and (5) the interest of the registrant in the proceeding. Such registration form must be signed. Below the signature there shall be a space for registrant to indicate that he

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wishes to order a copy of the transcript and will pay the cost of making such copy. The request for a copy of the transcript may be completed at the conclusion of the hearing or such later time as may be agreeable. At the conclusion of the hearing all registration cards shall be kept as a part of the record.

#### **008 ORDERS AND DECISIONS**

##### 008.01 Time of Entry; Contents

The Commission or its examiners shall enter its order within thirty (30) days after the hearing and cause the same to be indexed in books to be kept for that purpose. Every decision and order adverse to a party to the proceeding, rendered by the Commission or its examiners in a contested case, shall be in writing and accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his attorney of record.

##### 008.02 Any person having an interest in property affected by an order issued by an examiner and who is dissatisfied with such order may appeal to the Commission by filing a petition on appeal to the Commission within fifteen (15) days of the entering of the examiner's order. The Commission shall hold a hearing on the appeal within forty-five (45) days of the filing of an appeal to the Commission and issue its order within fifteen (15) days after the hearing.

##### 008.03 Quantum of Proof Required

No decision shall be rendered, sanction imposed or rule or order issued except on consideration of the whole record or such portions thereof as may be cited by any party and is supported by and in accordance with a preponderance of the reliable probative and substantial evidence.

##### 008.04 Proceedings for Re-Hearing

No applications or proceedings for re-hearing before the Commission shall be filed except in accordance with Section 57-905(12).

##### 008.05 Briefs

The Commission or its examiners may require the submission of briefs, and any party desiring to submit a brief may do so. The parties shall indicate at the close of the testimony whether they desire to file briefs and the subject matter proposed to be covered. The time for filing briefs will be fixed by the Commission or its examiners. Briefs shall be double spaced except for citations. Five (5) copies shall be filed with the Commission and one (1) copy served upon each party to the proceeding or his attorney of record requesting the same.

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**Statute: 57-905; 57-911**

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CHAPTER 7 – GEOLOGIC STORAGE OF CARBON DIOXIDE