

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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

CAUSE NO. RM 202100002

JUDICIAL AND LEGISLATIVE SERVICES DIVISION'S  
PROPOSED RULES AMENDING CHAPTER 5

(Changes made since March 4, 2021 are highlighted in yellow - for use at the public hearing on March 19, 2021)

Title 165. CORPORATION COMMISSION  
CHAPTER 5. RULES OF PRACTICE

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL



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

The purpose of this Chapter is to provide procedural rules to govern all proceedings coming before the Corporation Commission for disposition and to address the implementation of an electronic case filing system.

**165:5-1-3. Definitions**

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

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

**"Applicant"** means any person commencing a proceeding.

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

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

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

**"Case" or "cause"** means a proceeding filed with the Court Clerk, for Commission action or relief. The terms "case" and "cause" are used interchangeably herein.

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

**"Commissioner"** means a member of the Commission.

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

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

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

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

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

**"Electronic Case Filing System filer" or "ECF filer"** means an Electronic Case Filing user whose electronic mail address and password can be used to file documents electronically in the Electronic Case Filing System.

**"Electronic Case Filing System user" or "ECF user"** means a person who has registered and been approved to access the Electronic Case Filing System.

**"Electronic filing"** means the tender of documents in Commission proceedings to, and acceptance by, the Court Clerk through the Electronic Case Filing System.

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

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

**"File(d)" or "filing"** means tender of documents in Commission proceedings to, and acceptance by, the Court Clerk. ~~Upon implementation of the Electronic Filing System, electronic filing will be the Commission's preferred filing method pursuant to OAC 165:5-1-5, and all persons tendering documents to the Court Clerk will be expected to tender them electronically to the greatest extent possible as directed by the Court Clerk. Facsimile transfers pursuant to OAC 165:5-1-5(f), shall be construed as electronic filing.~~

**"Filer"** means a person tendering documents to the Commission's Court Clerk for filing in a Commission proceeding, whether submitting those documents in paper or electronically.

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

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

**"Official ECF service list"** means the list, for each case, of designated recipients of ~~mailed documents regarding the Commission's Electronic Filing System~~ electronically mailed notice of filing of pleadings subsequent to the original Application or Complaint. This list does not include pro se persons or other persons entitled to notice who have not elected to accept electronic service, and must receive notice by other means.

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

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

Commission acts.

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

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

**"Pro se" means self-representation in a Commission proceeding without representation by an attorney.**

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

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

(A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;

(B) Transcript of proceedings at all hearings or the electronic recording of hearings or proceedings as provided by OAC 165:5-13-1(d);

(C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;

(D) Exhibits, together with attachments, appendices, and amendments thereto;

(E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;

(F) Exceptions and motions subsequent to the hearing;

(G) Orders or rules of the Commission; and

(H) Any other document or matter relevant to the issues ordered to be included by the Commission.

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

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

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

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

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

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

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

**"Secretary"** means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary

during the absence, inability, or disqualification of the Secretary to act.

**"Staff counsel"** means an attorney with the Commission's Judicial and Legislative Services, or the Commission's Agency Counsel.

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

**"User manual"** means the instructions for the Commission's Electronic Case Filing System.

**"Website"** means the Commission website.

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

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

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

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office ~~located at 440 South Houston, Suite 114, in~~ Tulsa, Oklahoma, at an address listed on the Commission's website ~~74127.~~

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

(e) **Telephonic communication service.** The Judicial and Legislative Services Division shall develop and maintain a system for providing telephone and/or videoconference communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records that are not available in the ECF System, when implemented, or on the Commission's website may be viewed during regular office hours. Copies of public records retained in the Court Clerk's Office may be obtained from 8:00 a.m. to 4:00 p.m.

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

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office. Either regional service office may be selected as the venue when an application is filed.

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

(j) **Court Clerk.** ~~Every~~ Until the Commission implements the ECF System, every oil-and-gas-related document or order tendered to the Court Clerk shall be filed, deposited with, or mailed to the Court Clerk at a regional service office unless the ~~Commission~~ Director of Judicial and Legislative Services, or his or her designee directs otherwise. All documents related to other

matters shall be filed, deposited with, or mailed to the Court Clerk at the Commission's principal office unless the ~~Commission~~ Director of Judicial and Legislative Services, or his or her designee, directs otherwise. ~~All persons filing, mailing or presenting documents, including orders, to the Court Clerk or Judicial and Legislative Services shall enclose a self-addressed postage paid envelope large enough for the return of a file-stamped or processed copy, provided that a document other than a proposed order may be hand-delivered to the Court Clerk during normal business hours without such an envelope so long as a file-stamped copy of the document is immediately obtained by the presenter. Failure to enclose a self-addressed postage paid envelope will result in a file-stamped or processed document not being returned.~~ No document will be mailed to anyone who obtains an immediate file-stamped copy, unless a self-addressed postage paid envelope large enough for the return of a file-stamped or processed copy is included. All documents shall be deemed received upon the date file stamped by the Court Clerk, subject to the provisions of ~~165:5-1-5(f)~~ OAC 165:5-1-5(g). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

#### **165:5-1-5. Filing of documents**

(a) **Document form.** ~~Electronic filing is the Commission's preferred filing method.~~ All Upon implementation of the ECF System, all persons filing documents with the Court Clerk shall file ~~electronically to the greatest extent possible as~~ through the ECF System, unless otherwise directed by the Court Clerk, or these rules. Documents presented in paper to the Court Clerk will only be accepted and filed if such documents are submitted by a pro se filer or contain confidential information as set forth in subsection (h).

**(b) Document Format.** Documents filed with the Court Clerk by electronic mail or through the ECF System shall be in portable document format ("PDF"), or another format stated in the User Manual. Documents filed in paper format may be printed, typewritten or reproduced by any legible method. All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing and uploading to the ECF System by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. ~~Exact duplicates of any allowed documents must be filed in sections on 8 1/2" X 11" paper to allow for digital processing by the Court Clerk.~~ Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the case number assigned ~~to the cause~~ by the Court Clerk, and document type, e.g., application, motion, response, or brief. ~~The number, on each page.~~ No document may be altered after filing; pages may not be otherwise inserted and no interlineations, additions or deletions may be made. If a filing error is made, the correct document or information, as appropriate, shall be submitted as a separate filing to the Court Clerk as soon as possible ~~and the same number of copies as required for the original filing shall be provided to the Court Clerk.~~

**(b)(c) Filing stricken by motion.** Upon the motion of the Commission or Administrative Law Judge, or the filing of a motion pursuant to OAC 165:5-9-2(b), the Administrative Law Judge is authorized to recommend to the Commission an order to strike the filing of any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such recommendation to grant a motion to strike a filed document, the subject document shall be presented to the Commission for ruling on acceptability for filing.



~~(e)~~(d) **Required information.** The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, ~~facsimile number~~ and electronic mail address, ~~if any, with additional copies as may be required by the Court Clerk. A registered user must provide an electronic mail address at the time the registered user files his or her entry of appearance or other initial filing.~~ All documents, ~~except notices of hearing,~~ signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number. Anyone who disputes the authenticity of any electronic signature may file an objection to the document within five (5) business days of service.

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

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

~~(f)~~(g) ~~Facsimile~~ Electronic Mail transfers.

(1) ~~The~~ Until the Commission implements the ECF System, the Court Clerk shall accept pleadings submitted by ~~facsimile transfer during regular Commission business hours~~ electronic mail, at an address posted to the Commission's website, pending payment of the appropriate filing fees ~~and submission of a proper original and requisite copies within two (2) business days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a).~~ New applications ~~A new case filing~~ must be ~~transferred and completed prior to~~ sent to the Court Clerk by electronic mail before 3:30 p.m. of each business day, otherwise it will have a file stamp reflecting the next regular business day.

(2) Unless otherwise delivered the same day, if an application for emergency relief in a spacing, location exception, increased density or multiunit horizontal well proceeding is submitted by ~~facsimile transfer~~ electronic mail, a copy of such emergency application shall be ~~emailed~~ sent by electronic mail to the Technical Services Department of the Commission at an electronic mail address to be designated by the Director of the Conservation Division, on the date of the ~~facsimile transfer~~ filing.

~~(3) A facsimile shall be deemed filed on the date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within two (2) business days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will not be deemed timely filed. It is the responsibility of the filing party to notify the Court Clerk, upon submission of any original, of any document that has been previously faxed to secure a filing date earlier than the date of submission of the original document. Failure to do so may result in a filing date which does not reflect the submission having been faxed on an earlier date. If any original document requires payment of a fee prior to filing, the cashier must also be notified of the faxed document prior to payment of the required fee.~~

~~(4) Administrative filings and submissions or requests for reconsideration filed on the Oklahoma Universal Service Fund docket cannot be submitted by facsimile.~~

~~(5)~~(3) Until electronic filing is available the Commission implements the ECF System, a CD ~~cause~~ case number may be requested by ~~faxing a request for a cause number that contains~~

sending an electronic mail to the Court Clerk with the entire caption of the proposed application, a statement that only a ~~cause-case~~ number is being requested, and contact information for the party requesting the ~~cause-case~~ number. This will not be considered a ~~fax~~ an electronic mail filing of the application and the date of filing the application will be the date the ~~original documents are complete application is~~ received in the Court Clerk's office. In order to minimize gaps in the numbering of ~~causes-cases~~, the ~~cause-case~~ number requested by ~~fax-electronic mail~~ must be followed by filing original documents containing the exact same caption in the Court Clerk's office or filed by electronic mail, within three (3) business days of the request, or the ~~cause-case~~ number will be cancelled and may not be reused for any purpose.

~~(g)~~**(h) Confidential documents.** All documents and information considered to be confidential must be clearly marked as such on a cover page of the document. Until such time as the ECF System provides for the electronic filing of documents subject to a protective order or otherwise considered confidential, unredacted documents which contain materials subject to a protective order, or otherwise considered confidential, shall not be filed electronically, but rather submitted in person or by mail to the Court Clerk within one (1) business day of the electronic filing of the cover page. All documents deemed and marked as confidential shall be docketed and retained by the Court Clerk. Until the Commission determines otherwise, the cover page only of such filings will be viewable by the public for identification purposes. The responsibility for following these rules concerning confidential documents and information rests solely with counsel, the parties, or any other filer. The Court Clerk does not have any duty to review documents for compliance with this rule. Paper copies of confidential documents may be returned to the party, or destroyed by agreement of the party, following the issuance of a final order and the expiration of the appeal period.

~~(h)~~**(i) Personal Identifier Information.** If a filer includes personal identifier information such as Social Security numbers, tax identification numbers, financial account numbers, driver's license numbers, dates of birth, addresses or other sensitive information, in any document filed with the Court Clerk, electronically or otherwise, the document becomes a public record as filed, unless otherwise ordered by the Commission. Further, unless otherwise ordered or as otherwise provided by law, every filer, whether filing electronically or otherwise, ~~may~~ shall redact the following information, except the last four digits, in documents prior to filing with the Court Clerk, including but not limited to:

- (1) Social Security numbers;
- (2) ~~taxpayer~~ Taxpayer identification numbers;
- (3) ~~financial~~ Financial account numbers; and/or
- (4) ~~driver's~~ Driver's license numbers.

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

(a) **Computation of time.** In computing any period of time prescribed by statute, by the rules of this Chapter, or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall be omitted and the last day of the designated period shall be included, unless the last day falls on a Saturday, Sunday, or legal holiday or official agency closing, in which case the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday or official agency closing. Additionally, in computing any such period of time of five (5) calendar days or less, any period of time that would otherwise begin to run on a Saturday, Sunday, or legal holiday or official agency closing will begin to run on the next business

day after the day of the act, event, or default from which the designated period of time begins to run. ~~This computation of five (5) calendar days or less shall not be applicable to OAC 165:5-13-5.~~

(b) **Extension of time.** Whenever an act is by the rules of this Chapter or by order of the Commission required or allowed to be done at or within a specified time, the Commission may, in its discretion upon its own motion or upon motion of any person, after notice and hearing, order the period extended if the order therefore is made prior to expiration of the period originally prescribed or as extended by previous order. Statutory time limits ~~can not~~ cannot be extended by the Commission.

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

### **165:5-1-8. Place of hearing**

(a) **General.**

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

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

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

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

(1) All hearings on any oil and gas application including but not limited to appellate hearings shall be held in the regional service office where the application is filed or at the regional service office venue selected for any such application filed through the ECF System. In the case of a protested application where a protestant objects to venue on the basis that the holding of the hearing in a certain regional service office would not be at the convenience of any respondent having standing to protest by statute or rule of the Commission, the Commission shall permit such protesting respondent to present testimony by telephone in the other regional service office or any other approved location.

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

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



## PART 2. ELECTRONIC FILING OF DOCUMENTS

### 165:5-1-11. Scope

- (a) All documents submitted electronically to the Court Clerk for filing in a proceeding shall conform to the rules and User Manual procedures for electronic filing. Any filing not conforming to the rules and User Manual procedures for electronic filing may be rejected by the Court Clerk.
- (b) ~~Users of the Electronic Filing System~~ ECF users and filers shall comply with ~~all~~ applicable Commission rules and the instructions, registration requirements, and for ECF System registration and use set forth in the User Manual for electronic filing appearing on the Commission's website.
- (c) The Director of Administration is authorized to establish, maintain, and update the User Manual.
- (d) The User Manual shall be available on the Commission's website, and may be obtained from the Court Clerk.

#### 165:5-1-11.1. ECF System registration [NEW]

- (a) Only those persons registered as filers with the ECF System shall be authorized to file documents through the ECF System with the Commission.
- (b) Instructions for registering as filers and/or users of the ECF System will be stated in the User Manual.

### 165:5-1-12. Time of filing

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

#### 165:5-1-12.1. Acceptance of filing

- (a) A document shall not be considered to be electronically filed until submitted to the Court Clerk via the ~~Electronic Filing~~ ECF System and a confirmation of electronic filing is generated by the ~~Electronic Filing~~ ECF System.
- (b) Risk of loss of transmission, of non-receipt, or of illegibility is borne by the person transmitting and filing documents electronically.
- (c) Unless otherwise directed by the Court Clerk, payment of any applicable filing fees in the ECF System shall be made by electronic payment prior to the completion of filing.

### 165:5-1-13. Technical failures

- ~~(a) The criteria for declaring a technical failure of the Electronic Filing System shall be posted on the Commission's website.~~
- ~~(b)~~(a) An ECF A-filer whose filing is made untimely as the result of a technical failure of the

~~Electronic Filing~~ ECF System may seek ~~appropriate~~ relief from the Commission by filing a motion with the Court Clerk. If an ECF filer is unable to access the ECF System, the filer should check the Commission's website or contact the Court Clerk's Office to see if a technical failure has been declared.

(b) During a technical failure of the ECF System, documents may be filed in paper or by electronic mail at the discretion and direction of the Director of Judicial and Legislative Services, or his or her designee. During a technical failure, the filer will be responsible for sending any documents to all parties of record and payment of any applicable filing fees.

(c) Failures not originating with the ~~Electronic Filing~~ ECF System, such as phone line problems, problems with the filer's Internet service provider, ~~power outages~~, or hardware or software problems, will not constitute a technical failure ~~or excuse an untimely filing under (a) above~~. ~~The~~ Upon the filing of a motion, the Commission may grant appropriate relief regarding an untimely filed document.

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

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

#### **165:5-1-14.1. Official ECF service list and certificate of service**

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

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

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

(a) Upon the filing of a case, the ECF System will generate the Official ECF Service List. A person will be added to the Official ECF Service List upon the filing of an entry of appearance, in accordance with OAC 165:5-9-4.

(b) After a document is filed in a specific case, the ECF System will automatically send notice of the filing to all persons on the Official ECF Service List.

(c) For any parties, or other persons entitled to notice, who are not included on the Official ECF Service List, the certificate of service shall list the name and address of each such person and state the manner of service.

(d) Service through the ECF System is not effective if the person making service receives notice from the ECF System that the attempted service was not electronically delivered to the person to be served. To be considered effective service, the person making service will need to provide notice by other means available under these rules or by statute, and file a certificate of service reflecting the subsequent service.

**165:5-1-14.2. Documents subject to protective order and other confidential documents**

~~Unredacted documents which contain materials subject to a protective order, shall not be filed electronically, but rather submitted in person or by mail to the Court Clerk until such time as the user agreement maintained on the Commission's website expressly allows the electronic filing of documents subject to a protective order.~~ Unredacted documents which contain materials subject to a protective order, or otherwise considered confidential, shall be filed in accordance with OAC 165:5-1-5(h).

**SUBCHAPTER 7. COMMENCEMENT OF A ~~CAUSE~~ CASE**

**PART 1. GENERAL**

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

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

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

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

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

- (1) The heading, "Before the Corporation Commission of the State of Oklahoma".
- (2) The applicant.
- (3) The relief sought. In the case of a conservation docket or pollution docket ~~cause~~ case, the statement shall contain the legal description of the lands involved in the ~~cause~~ case.
- (4) The docket identifying initials, year prefix, and ~~cause~~ case number, pursuant to OAC 165:5-5-1.
- (5) The title of the document.
- (6) In the case of an enforcement docket ~~cause~~ case, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

- (1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, electronic mail address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the ~~cause~~ case; and the name and address of each person (if any) named as respondent.
- (2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.
- (3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders

alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.

(4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, telephone number, ~~facsimile number~~, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:

(1) He has read the application.

(2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.

(3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the ~~cause case~~ is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.

(g) **Manner of service.** All documents subsequent to the application in a ~~cause may case shall~~ be served on a party of record ~~through the ECF System, or~~ by regular mail, ~~facsimile~~, electronic mail, or in person, except where the rules of this ~~Subchapter Chapter~~ or a statute requires a specific mode of service which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. Service outside the United States and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service ~~through the ECF System, or~~ by mail, ~~facsimile~~ or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this ~~Subchapter Chapter or by statute~~; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

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

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

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier

and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing shall contain the typewritten name of each current Commissioner at the bottom of the notice, which shall serve as the Commissioner's electronic signature, followed by the signature of the person filing the application.

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

- (1) The caption from the application.
- (2) The time, date, and place of hearing.
- (3) Briefly the general nature of the order, rule, regulation or other relief sought.
- (4) In oil and gas ~~causes~~-cases, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.
- (5) Who to contact for additional information.

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

(n) **Notice by publication.**

- (1) When a ~~cause~~-case other than an oil and gas or Petroleum Storage Tank Division ~~cause~~ case is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.
- (2) In oil and gas ~~cause~~-cases, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.
- (3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the ~~cause~~-case.
- (4) Proof of publication shall be established by an original proof of publication.

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

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

## PART 5. PUBLIC UTILITIES

### 165:5-7-53. Certificate of convenience and necessity and service territory expansions for telephone lines-providing telecommunications services

(a) Pursuant to 17 O.S. §§131, et seq., notice that an application has been filed for a certificate of ~~public~~-convenience and necessity to construct, build, equip or operate public telephone toll or long distance line or lines or any public telephone exchange or exchanges in any territory shall be published once a week for two (2) consecutive weeks in some newspaper of general circulation in each territory affected.



(b) No certificate shall issue until the expiration of thirty (30) days from the date of the first publication of notice. If no protest is filed, the Commission may issue the certificate without a hearing. If a written objection to the application is filed within the thirty day period, the application shall be set for hearing and notice thereof shall be given by the Applicant filing notice of the hearing in the Office of the Commission's Court Clerk and providing said notice to all parties of record and the Attorney General, at least 10 days prior to the hearing.

(c) This Section shall not be construed to require any telephone company to secure such a certificate for any extension within or to any territory already served by it or for any extension into a territory contiguous to a territory already served by it on which it has heretofore filed with the Commission an exchange map showing the territory professed to be served by such telephone company.

(d) Pursuant to 17 O.S. § 131(B) and 17 O.S. § 132, if an applicant intends to provide local exchange telecommunications services, notice of the application is required to be given to each political subdivision with jurisdictional boundaries that includes all or portions of the service area outlined in the application. Notice shall be provided to each public school as listed by the State Department of Education, county clerk, city, municipality, or town within the applicant's proposed service area. Notice may be provided to each political subdivision by electronic mail, when available, or by regular mail. To meet the above statutory notice requirements, notice by electronic mail may be sent to a central entity consisting of political subdivisions, including but not limited to the State Department of Education on behalf of public schools, or a membership organization consisting of county clerks, cities, municipalities, and/or towns on behalf of that organization's members. Applicants are ultimately responsible for notice requirements, and any membership organization who voluntarily agrees to facilitate notice under this section will be doing so as a public service and exempted from any liability or action for notice deficiencies. The applicant shall file a certificate of mailing showing effective notice.

**[NOTE: The previously included paragraph (e) was removed from this proposal.]**

## SUBCHAPTER 9. SUBSEQUENT PLEADINGS

### 165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service to all persons entitled to notice. Service of the motion shall be made through the ECF System to those on the Official ECF service list, by regular mail, ~~faesimile,~~ electronic mail, or in person as provided in this subsection, unless otherwise provided by statute. ~~stating~~ The motion shall state in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a ~~cause~~ case has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement

filed or a prehearing/scheduling order issued, notice shall be given to all persons entitled to notice by the movant by serving at least five (5) business days prior to the date set for hearing. Service of the notice shall be made through the ECF System to those on the Official ECF service list, by regular mail, ~~faesimile~~, electronic mail, or in person, unless otherwise provided by statute. ~~a~~ A copy of the motion and notice ~~on~~ of hearing shall be provided to each respondent.

(B) After the record in the ~~eause~~ case has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given to all persons entitled to notice by the movant by serving, at least five (5) business days prior to the date set for hearing. Service of the notice shall be made through the ECF System to those on the Official ECF service list, by regular mail, ~~faesimile~~, electronic mail, or in person, unless otherwise provided by statute. ~~a~~ A copy of the motion and notice ~~on~~ of hearing shall be provided to all parties of record.

(2) Exceptions to such motions may be lodged in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the ~~eause~~ case has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a ~~eause~~ case shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

(c) **Response/objection to motions.** Any person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said ~~eause~~ case by submitting a proposed order dismissing the ~~eause~~ case to the Judicial and Legislative Services, and all parties of record. Such dismissal shall not dismiss the case as to specifically stated affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has not received notice of the dismissal or who has requested specific affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened at the hearing on the merits in a ~~eause~~ case, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a ~~eause~~ case, the ~~eause~~

case may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a ~~cause~~-case where a motion to dismiss has been filed, notice shall be served on each respondent in the ~~cause~~-case.

(3) Upon five (5) business days notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

- (A) Failure to prosecute.
- (B) Unnecessary duplication of proceedings or res judicata.
- (C) Withdrawal.
- (D) Moot question or obsolete applications.
- (E) Lack of jurisdiction.
- (F) Failure to submit a proposed order in a timely manner.
- (G) For other good cause shown.

(4) Upon posting by the Judicial and Legislative Services fifteen (15) business days notice on a disposition docket, and emailing notice to all parties of record to a ~~cause~~-case, the Commission may dismiss ~~causes~~-cases for any of the following reasons:

- (A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.
- (B) Failure to set a ~~cause~~-case on a day certain.

#### **165:5-9-6. Continuances**

(a) **General.** The Commission or Administrative Law Judge before whom a ~~cause~~-case is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a ~~cause~~-case may be granted in advance of the date for hearing of the ~~cause~~-case in the following ways:

- (1) As provided in OAC 165:5-9-2(b)(1); or
- (2) The applicant in a ~~cause~~-case may request a continuance at least five (5) business days in advance of a hearing date from the Docket Clerk or, if the ~~cause~~-case has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the ~~cause~~-case has been assigned for hearing, the Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the ~~cause~~-case, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent to all persons entitled to notice by regular mail, facsimile, electronic mail or in person at least five (5) business days prior to the date of the hearing. Service of the notice of continuance shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless

otherwise provided by statute. Such ~~cause-case~~ shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the ~~cause-case~~ shall be heard by the Commission or Administrative Law Judge. Such decision may be noted as part of the order of the Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, ~~written~~ notice of such continuance shall be provided to all respondents. ~~served~~ Service shall be made through the ECF System to those on the Official ECF service list, by regular mail, ~~facsimile,~~ electronic mail, or in person by the person requesting such continuance ~~on all respondents~~ or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the ~~cause-case~~, notice of the continuance date shall be served on all parties of record at least five (5) business days prior to the date the continued ~~cause-case~~ is set for hearing. The movant shall provide proof of service of such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued ~~cause-case~~ on a day certain for a period more than thirty (30) days after last recorded hearing date as shown from the Commission's docket records, the Director of the Judicial and Legislative Services or an Administrative Law Judge may recommend dismissal of the ~~cause-case~~ to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the ~~cause case~~ without prejudice by an Order Dismissing Cause-Case.

(e) **Continuances of the Motor Carrier Citation Docket when the Commission is closed.** In the event the Commission is closed due to inclement weather or other administrative reason on the date and/or time of the Motor Carrier Citation Docket, all citations scheduled to be heard on the Motor Carrier Citation Docket shall be automatically continued to the following month's docket as posted on the Commission's website.

## SUBCHAPTER 11. PREHEARING PROCEDURES

### 165:5-11-1. Deposition and discovery

#### (a) **Depositions.**

(1) Deposition of a witness for use at a hearing may be taken only when ordered upon motion by the Commission or of a person. The order may direct that the deposition of a witness be taken inside or outside the State of Oklahoma.

(2) The order shall state the time and place the deposition shall be taken, and the person taking the deposition shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date scheduled for taking the deposition.

(3) The manner of taking depositions shall otherwise be governed by the laws relating to taking of depositions for use in the District Courts of Oklahoma. Attendance of a witness for taking of his deposition shall be governed by OAC 165:5-11-3, except that the attendance of a witness for deposition shall be required only in the county of his residence.

(4) A deposition may be offered in evidence at the hearing by any person.

#### (b) **Production of documents.**

(1) Upon motion, the Commission may make an order requiring a person to produce designated documents or tangible objects for inspection by respondents or parties of record to the ~~cause~~-case, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing or at a prehearing conference, and production shall be at the principal office of the Commission unless some other place is stated in the order. An order hereunder may be directed to a person not yet a party of record, conditioned that if such person appears at the hearing, the order thereupon will be complied with.

(2) The person applying therefore shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date upon which production is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which production is required unless otherwise agreed by the applicant, respondent and intervenors.

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the ~~cause~~-case, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the ~~cause~~-case.

(4) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the person ordered to make production.

(5) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

**(c) Interrogatories.**

(1) Upon motion of the Commission or of a person, an order may be entered requiring a person to answer in writing under oath certain written interrogatories attached to the order. The answers shall be submitted at the hearing or at a prehearing conference.

(2) The person applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each respondent at least ten (10) days prior to the date upon which answer is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which answer is required unless otherwise agreed by the applicant, respondent and intervenors.

**(d) Protective orders.**

(1) The Commission, upon motion, may make such orders relating to discovery as may be necessary or appropriate for the protection of and to prevent hardship to and excessive burden upon a person. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed.

(2) The Commission may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this subsection.

**(e) Discovery in proceedings on the PUD docket.**

(1) Except as otherwise directed by the Commission, in proceedings on the PUD docket the parties of record may also obtain discovery by document request, data request or interrogatory without filing a motion for an order of the Commission. When discovery is sought without a



prior order, the provisions of (b) (3), (4) and (5) of this Section shall apply, and the references to orders therein shall be deemed to mean requests for discovery.

(2) In a proceeding filed pursuant to 17 O.S. § 152(B), 17 O.S. § 137, or 18 O.S. § 438.31 et seq., discovery by document request, data request or interrogatory shall be governed by the provisions of OAC 165:5-7-61. ~~In a proceeding requesting relief pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory shall be in accordance with (e)(3) below.~~

~~(3) In a proceeding requesting relief pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory by the OUSF Administrator shall be answered within ten (10) business days, unless an objection is filed within five (5) business days and a ruling is made establishing a different response time or the applicant and the Administrator agree to a different response time. The filing of an objection shall toll the time to respond pending the ruling on the objection.~~

~~(4)~~(3) In all other proceedings on the PUD docket, responses to any document request, data request or interrogatory shall be due twenty (20) calendar days after receipt of the same, unless:

(A) An objection is filed within ten (10) business days and a ruling is made establishing a different response time. The attorney filing such objection must attest that the objection is not frivolous or for the purpose of delay. The objecting party is not required to respond until an objection is ruled upon. The ruling shall state the time in which to respond; or,

(B) The party requesting discovery and the producing/responding party agree in writing to a different response time.

~~(5)~~(4) The Commission may allow a shorter(4) or longer time for response for good cause shown, but in no event may the Commission order a response to be served in less than ten (10) business days, except as otherwise agreed by the person ordered to respond.

~~(6)~~(5) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next regular business day.

~~(7)~~(6) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, ~~faesimile~~, electronic mail or in person at the same time they are issued or answered.

~~(8)~~(7) Objections to a document request, data request, interrogatory, or the time in which to respond may be presented to the Administrative Law Judge unless otherwise ordered by the Commission en banc. Any ruling by the Administrative Law Judge on an objection may be orally referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1).

~~(9)~~(8) Any objection(s) relating to a discovery request or the time in which to respond shall be set on the next PUD motion docket unless the Administrative Law Judge and the requesting and responding parties of record agree to a different date and time.

~~(10)~~(9) The responding party shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting party any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

**(f) Discovery in proceedings on the OSF docket.**

(1) At any time prior to a determination being filed in an OUSF funding request filed pursuant to 17 O.S. §§ 139.101 et seq., discovery by document request, data request or interrogatory by the OUSF Administrator shall be answered within five (5) business days. The responding party will be provided up to an additional five (5) business days to respond, if requested. The filing

of an objection in response to a discovery request is not be required; however, the responding party may inform the OUSF Administrator that an answer or any supplemental answer will not be provided.

(2) If a request for reconsideration is filed in connection with an OUSF funding request, the Administrative Law Judge or Commission shall establish a discovery response time and allow for objections to discovery requests in a procedural schedule.

(3) For all other cases filed pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory by a party of record shall be answered within ten (10) business days, unless a different response time and objection period is established by the Administrative Law Judge or the Commission.

(4) Objections to discovery requests shall be filed within five (5) business days, and may be presented to the Administrative Law Judge, unless otherwise ordered by the Commission. The objection shall be set on the next available motion docket unless the Administrative Law Judge and the requesting and responding parties of record agree to a different date and time. Any ruling by the Administrative Law Judge on an objection may be orally referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1). The filing of an objection pursuant to this subsection shall toll the time to respond pending the ruling on the objection.

(5) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next business day.

(6) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, electronic mail, or in person at the same time they are issued or answered.

(7) The responding party shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting party any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

~~(g)~~ This Section shall not be interpreted to limit the Commission's authority pursuant to Article IX, Sections 18, 19, and 28 of the Oklahoma Constitution.

~~(g)~~(h) Pursuant to 17 O.S. § 330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted under the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224 through 3237. See also OAC 165:5-21-7.

## **SUBCHAPTER 17. POST ORDER RELIEF**

### **165:5-17-1. Within 10 days; motion**

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order. However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state:

- (1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.
- (2) The specific modifications or other relief sought by the motion.
- (3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. The movant is required to serve copies of the motion and notice of hearing on all respondents and parties of record at least five (5) business days prior to the hearing date. The motion and notice of hearing ~~can~~ shall be served through the ECF System to those on the Official ECF service list, by regular mail, ~~facsimile~~, electronic mail, or in person.

## SUBCHAPTER 31. PROCEDURES FOR THE MOTOR CARRIER CITATION DOCKET [NEW]

### 165:5-31-1. General provisions [NEW]

(a) The rules of this Subchapter shall govern the administration of the Motor Carrier Citation ("MCC") docket. In every MCC hearing conducted under the authority of this Subchapter, all other relevant rules within OAC 165:5 shall remain in effect unless the rule conflicts with a provision herein.

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

### 165:5-31-3. Requesting a hearing [NEW]

(a) An administrative hearing on the regularly scheduled MCC docket will be provided after a hearing is requested pursuant to the rules of this Subchapter. The instructions for requesting a hearing will be provided upon the issuance of a citation.

(b) Hearing requests shall be submitted to the Transportation Division by electronic mail or by using an electronic form authorized by the Transportation Division. A pro se person requesting the hearing may mail a paper copy of the form to the Transportation Division.

(c) Unless otherwise ordered by the Commission, for any case in which the motor carrier fails to submit a valid hearing request, the allegations contained in the citation will be presumed to be true, and the citation will constitute the prima facie evidence of the related violation of state statute, Commission order, or rule.

(d) All hearing requests must be received by the Transportation Division within ten (10) calendar days after the citation is issued.

(e) The hearing request form shall include the following information:

(1) The name of the person requesting the hearing;

(2) The citation number;

(3) The party's contact information, including the mailing address, telephone number, and email address (if any) that is to be used to contact the party for the hearing;

(4) The name, mailing and electronic mail address, and telephone number of the party's attorney, if any;

(5) The name(s) of any witness(es) appearing on behalf of the party requesting the hearing, along with a brief statement of the testimony to be offered by the witness and the telephone number and electronic mail address that is to be used to contact that witness; and

(6) A written statement describing the basis for contesting the citation.

(f) The party requesting a hearing is responsible for ensuring the Transportation Division receives the required information when submitting the form requesting a hearing. Any supplemental

material must be submitted no later than three (3) business days prior to the scheduled hearing date. The Transportation Division will work with the person requesting the hearing to ensure that each requirement for requesting a hearing was completed.

(g) Prior to the hearing date, the Transportation Division will present each incomplete hearing request form to the Administrative Law Judge for a preliminary review. If the Administrative Law Judge determines that the hearing request form is incomplete, the request may be rejected and a hearing will not be granted, subject to the regular right of post order relief pursuant to OAC 165:5-17-1.

**165:5-31-5. Hearing procedures [NEW]**

(a) The primary method of conducting MCC hearings shall be by telephone and/or videoconference. Testimony may be offered only by telephone or videoconference, unless the Commission or an Administrative Law Judge determines that the presence of the witnesses in the courtroom is necessary for the effective and efficient presentation of evidence or argument.

(b) MCC hearings shall be conducted in accordance with OAC 165:5-1-9(d)-(l); however, the witness affidavit identified in OAC 165:5-1-9(m) shall not be required.

(c) During the hearing, the Administrative Law Judge shall call both the Transportation Division's attorney and the party or the party's attorney, if any, at the telephone number provided by the party. If the party requesting the hearing, or the party's attorney, fails to answer or participate in the hearing after two (2) attempts by the Administrative Law Judge to contact the party by telephone, the Administrative Law Judge may continue the hearing to a date certain, conduct the hearing without the party present, or find the party "guilty" by default.

(d) The Administrative Law Judge shall call the witnesses, if any, at the telephone number provided by the party requesting the hearing. If the witness fails to answer or participate in the hearing after two (2) attempts by the Administrative Law Judge to contact the witness by telephone, the Administrative Law Judge may exclude the witness and continue with the hearing.

(e) A hearing may be continued at the discretion of the Administrative Law Judge pursuant to OAC 165:5-9-6, without a Commission order. Emergencies may be considered by the Administrative Law Judge on a case-by-case basis. If the Commission is closed, continuances shall be resolved in accordance with OAC 165:5-9-6(e).

(f) At the conclusion of the hearing, the Administrative Law Judge will issue a recommendation in accordance with OAC 165:5-13-4(f). Exceptions to the recommendation may be taken in accordance with OAC 165:5-13-5(a)(3).