

WEST VIRGINIA PROCEDURAL RULE
DEPARTMENT OF ENERGY
DIVISION OF OIL AND GAS
CHAPTER 22-1, and 22-B-1
SERIES 9

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE May 14, 1986
ADMINISTRATIVE LAW DIVISION

Title: Hearing and Appeal Procedures

	<u>Page</u>
Section 1. General	1
1.1 Scope	1
1.2 Authority and Related Code Citations	1
1.3 Effective Date	1
1.4 Filing Date	1
2. Hearing and Appeal Procedures	1
2.1 Hearings	1
2.2 Notice	1
2.3 Consolidation of proceedings	2
2.4 Filing and service of documents	2
2.5 Notice of hearings	3
2.6 Presiding officer	3
2.7 Power of presiding officer	3
2.8 Representation at hearings	3
2.9 Conduct of hearings	3
2.10 Hearing to be public	4
2.11 Proposed findings, conclusions and orders	4
2.12 Written orders	4
2.13 Reopening; rehearing; modification	5
2.14 Appeal	6

WEST VIRGINIA PROCEDURAL RULE
DEPARTMENT OF ENERGY
DIVISION OF OIL AND GAS
CHAPTER 22-1 AND 22B-1
SERIES 9

Title: Hearing and Appeal Procedures

Section 1. General

1.1 Scope - This rule shall govern and apply to all hearings before the Division of Oil and Gas under the provisions of W. Va. Code §22B-1 and the Natural Gas Policy Act of 1978.

1.2 Authority and Related Code Citation(s) - W. Va. Code §§22-1-13, 22-1-15; 22-1-16; and 22B-1-2.

1.3 Effective Date -

1.4 Filing Date -

Section 2. Hearing and Appeal Board Procedures

2.1 Hearings - Subject to the provisions of W. Va. Code §22B-1-15 and the Natural Gas Policy Act of 1978, all hearings conducted by the Division shall be conducted in accordance with provisions of W. Va. Code §29A-5 and this rule. If any provision of this rule is inconsistent with any provision of said W. Va. Code §29A-5, the provision of W. Va. Code §29A-5 shall control, except as otherwise provided for hearings under W. Va. Code §22B-1-15 and hearings for certification of gas wells under the Natural Gas Policy Act of 1978.

2.2 Notice - Notice to the public shall be given as follows:

2.2.1 The Division shall file with the Secretary of State's office a Notice containing the time, date and place of all regularly scheduled meetings of the Division.

2.2.2 The Division shall file with the Secretary of State's office a Notice containing the time, date, place and purpose of all special meetings to be held by the Department. Said Notice must be filed with that office at least twenty-four (24) hours in advance.

2.2.3 Copies of all Notices required to be filed by this rule with the Secretary of State's office shall also be delivered to the Capitol News Media Office W-123, State Capitol Building 25311.

Department of Energy
Division of Oil and Gas
Pro. Rule, 22-1 and 22B-1
Series 9, Sec. 2

2.2.4 None of the provisions of this rule shall apply to Division actions taken in the event of an emergency requiring immediate official action.

2.3 Consolidation of Proceedings - The Division may at any time order one proceeding consolidated with any other such proceeding then pending before the Division which involves the same parties and similar issues of law and fact.

2.4 Filing and Service of Documents -

2.4.1 Where to file - All documents required to be filed in a proceeding under W. Va. Code §22-1, the Natural Gas Policy Act of 1978, or this rule shall be filed with the Division of Oil and Gas, West Virginia Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311.

2.4.2 How to File - All filing may be accomplished by personal delivery or first class mail.

2.4.3 When filing effected - Filing is effective upon delivery.

2.4.4 Copies to be served - Copies of all documents filed in any proceeding shall be served upon all other parties to the proceeding.

2.4.5 Method of service; service of attorney - Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, unless otherwise provided in W. Va. Code §22B-1, the Natural Gas Policy Act of 1978, or this rule. Whenever a party is represented by an attorney who has signed any document filed on behalf of such party, service thereafter shall be made upon the attorney and may be made by first class mail.

2.4.6 When service effected - In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing.

2.4.7 Proof of service - All documents required to be served in proceedings under this rule shall be accompanied by proof of service in the form of a certificate of service. This certificate of service shall include a statement of how service was accomplished.

Department of Energy
Division of Oil and Gas
Pro. Rule, 22-1 and 22B-1
Series 9, Sec. 2

2.5 Notice of Hearings - Unless otherwise specified in W. Va. Code §22B-1 or the Natural Gas Policy Act of 1978, no hearing shall be conducted on less than 10 days' written notice to the parties.

2.6 Presiding Officer - The Director, his designee, or a hearing officer employed under W. Va. Code §22B-1-2(c)(6), shall preside over every hearing.

2.7 Power of Presiding Officer - The Presiding Officer over every hearing, subject to the rules set forth in this section, may:

2.7.1 Administer oaths and affirmations;

2.7.2 Rule upon offers of proof and receive relevant evidence;

2.7.3 Permit evidentiary depositions to be taken and read as in civil actions in the circuit courts of this state;

2.7.4 Regulate the course of a hearing;

2.7.5 Dispose of procedural requests or similar matters;

2.7.6 Hold conferences for the settlement or simplification of the issues with the consent of the parties;

2.7.7 Take any other action in connection with such hearing authorized by law.

2.8 Representation at Hearings - A party may represent himself at a hearing or be represented by an attorney at law admitted to practice before the courts of any state or the District of Columbia. In addition, any party which is also an operator may be represented by a full-time employee.

2.9 Conduct of Hearing -

2.9.1 Conduct of attorneys before the Division shall be the same as required of attorneys before the Circuit Courts of the State of West Virginia. Any person testifying in response to a subpoena or subpoena duces tecum issued by a Presiding Officer and any person testifying in support of an application or in opposition thereto shall be required to do so under oath or affirmation administered by the Presiding Officer. Witnesses

shall be examined with courtesy and respect, and their good faith shall be presumed.

2.9.2 Smoking shall not be permitted in the hearing room during session or during recess.

2.9.3 Electronic recording of any hearing is prohibited except as may be required by the Division for preserving a record thereof for the use of the Division in connection with the matter being heard. The taking of photographs in or broadcasting of proceedings from any hearing room or so close thereto as to disturb the hearing is prohibited.

2.9.4 At the presiding officer's discretion, or on motion of any party, a transcript of testimony shall be taken and preserved as part of the permanent record. The person requesting that a transcript be made shall bear the cost of transcription. Parties may examine the official transcript or purchase copies thereof from the court reporter or Division.

2.10 Hearing to be Public - All hearings to be conducted under these rules shall be open to the public.

2.11 Proposed Findings, Conclusions and Orders - The Presiding Officer may request the submission by parties of proposed findings of fact, conclusions of law and orders, together with a supporting brief. Such proposals and briefs shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

2.12 Written Orders -

2.12.1 As soon as practicable after conclusion of a hearing, the Presiding Officer shall consider the evidence and any proposals or briefs filed under Section 2.11 and issue a written order which shall include a statement of:

2.12.1.1 findings and conclusions and the reasons therefor on the material issues of fact and law; and

2.12.1.2 the appropriate ruling or order granting the permit, granting the permit for an alternate location, or denying the permit.

2.12.2 A copy of the order shall be served by certified mail upon all parties at the time the order is issued.

2.13 Reopening; Rehearing; Modification -

2.13.1 The decision in any proceeding except a proceeding for certification of gas wells under the Natural Gas Policy Act of 1978, maybe reopened, reheard, or modified as provided below:

2.13.1.1 Applications for reopening a proceeding after hearing and before written order shall be made by petition filed prior to service of an order. Such petition shall state specifically the grounds relied upon and, if it be for the purpose of introducing additional evidence, shall also state the nature and purpose of the evidence to be introduced.

2.13.1.2 Applications for rehearing after issuance of a written order shall be made by petition filed within 30 days after service of such order. Such petition shall state specifically the grounds relied upon and, if any written order is sought to be vacated, reversed or modified by reason of:

2.13.1.2.1 matters arising since the issuance of such order,

2.13.1.2.2 consequences which would result from compliance with the Division's order, or

2.13.1.2.3 facts not in the possession of the petitioner prior to issuance of such order, such reasons shall also be stated.

2.13.1.3 Application for modification of written orders, which seek only a change in the date such order shall take effect, shall be made by petition filed within 30 days after service of the written order, except that, in the event of unforeseen emergencies satisfactorily shown by the petitioner, such relief may be sought informally by telegram or otherwise, upon notice to all parties or attorneys who appeared in the proceeding.

2.13.1.4 A copy of each petition filed under this section shall be served on all other parties to the original proceeding and such petition shall be accompanied by a certificate showing service upon such parties. Within 15 days after such service, an adverse party may file and serve a reply to the petition.

Department of Energy
Division of Oil and Gas
Pro. Rule, 22-1 and 22B-1
Series 9, Sec. 2

2.13.1.4 Upon filing of the reply or upon the failure of an adverse party to reply within 15 days after service of a copy of the petition on such party, the Division shall consider the petition, the replies thereto, and the record of the proceeding, and, if it determines a hearing upon the petition to be necessary, shall, after 10 days' written notice to all parties, hold such hearing. As soon as practicable after consideration of the petition, the replies thereto and the record of the proceeding, the Division shall issue an order either granting in part or denying the relief requested in the petition.

2.13.1.6 The filing of a petition seeking rehearing or reargument after issuance of a written order or modification of a written order pursuant to sections 2.13.1.1 or 2.13.1.2 shall not stay the time for appeal of such written order to the circuit court unless the Division orders rehearing or reargument or modifies the written order, in which case, the time for appeal pursuant to W. Va. Code §22B-1-40 shall begin to run anew after the Division's final action.

2.13.2 The decision in a proceeding for certification of gas wells under the Natural Gas Policy Act of 1978 is only subject to protest before the Federal Energy Regulatory Commission under Part 275 ("Commission Determinations and Review of Jurisdictional Agency Determinations") of the applicable regulations promulgated by that Commission, 18 C.F.R. § 275.201-206.

2.14 Appeal -

2.14.1 In any proceeding except a proceeding for certification of gas wells under the Natural Gas Policy Act of 1978, if an appeal is filed, the Director shall be responsible for certifying and forwarding the entire record of the proceedings to the circuit court.

2.14.2 In a proceeding for certification of gas wells under the Natural Gas Policy Act of 1978, a direct appeal to the courts from a decision by the Division is not possible. The person aggrieved by the decision of the Division must file a protest before the Federal Energy Regulatory Commission as indicated in Section 2.13.2. Thereafter, the final decision of that Commission is appealable to a United States Court of Appeals under the provisions of Section 19(b) of the Natural Gas Act, 15 U.S.C. §717r(b).