

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Dept. of Energy, Div. of Oil and Gas TITLE NUMBER: 38

RULE TYPE: Procedural; CITE AUTHORITY WV Code 22-1-13, etc.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 19

TITLE OF RULE BEING PROPOSED: Hearing and Appeals Procedures

DATE OF PUBLIC HEARING: September 14, 1987 TIME: 10:00 am

LOCATION OF PUBLIC HEARING: Dept of Energy, Region 6 Office

322 Seventyeth St.

Charleston, WV25304

Conference Room, 2nd Floor

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: SAME AS ABOVE

Attn: Tim Greene

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Timothy M. Greene
Tim Greene

WEST VIRGINIA PROCEDURAL RULES
DEPARTMENT OF ENERGY
DIVISION OF OIL AND GAS
CHAPTERS 22-1 AND 22B-1
SERIES 19

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WEST VIRGINIA PROCEDURAL RULES
DEPARTMENT OF ENERGY
DIVISION OF OIL AND GAS
CHAPTERS 22-1 AND 22B-1
SERIES 19

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, 29A-4 and the Natural Gas Policy Act of 1978.

1.2 Authority and Related Code Citations - W. Va. Code §§ 22-1-13, 22-1-15, 22-1-16, 22-1-17, 22B-1-2, 22B-1-4, 22B-1-7, 22B-1-28, and 29A-4-1.

1.3 Effective Date -

1.4 Filing Date -

Section 2. Hearing and Appeal Procedures

2.1 Hearings - Subject to the provisions of W. Va. Code § 22B-1-15, the appeal procedures under W. Va. Code § 22B-1-7(e), and the Natural Gas Policy Act of 1978, all hearings conducted by the Division, including but not limited to proceedings conducted pursuant to W. Va. Code §§ 22B-1-4,

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22B-1-7, 22B-1-28, and 29A-4-1, shall be conducted in accordance with the 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, appeals under W. Va. Code § 22B-1-7(e), and hearings for certification of gas wells under the Natural Gas Policy Act of 1978.

2.2 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.

2.2.1 Consolidation Pursuant to W. Va. Code § 22B-1-3 - If any request shall be made pursuant to W. Va. Code § 22B-1-4 for annulment or revision of findings or an order made by an Oil and Gas Inspector pursuant to W. Va. Code § 22B-1-3, the Division shall set the matter for hearing pursuant to this rule prior to the making by the Director of an order pursuant to W. Va. Code § 22B-1-4(a). All matters arising out of the same violation, or any closely related violation, shall be consolidated and set for hearing under this Subsection.

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2.3 Filing and Service of Documents -

2.3.1 Where to file - All documents required to be filed in a proceeding under W. Va. Code § 22-1, § 22B-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, 322 70th Street, S.E., Charleston, West Virginia 25304.

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

2.3.3 When Filing Effected - Filing is effective upon delivery.

2.3.4 Number of Copies - Except as otherwise provided in these rules, a party shall furnish to the Division an original and two copies of all pleadings and other documents required or permitted to be filed.

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

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2.3.6 Method of service of documents, unless otherwise provided by W. Va. Code § 22B-1, the Natural Gas Policy Act of 1978, or this rule:

2.3.6.1 As to any party having a designated agent, as set forth under W. Va. Code § 22B-1-1(z), service shall be to the designated agent unless otherwise requested in writing by the party, subject to the provisions of Subsections 2.3.6.2, 2.3.6.3 and 2.3.6.4.

2.3.6.2 In the event a party has no designated agent, but has an address known to the Division, service shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, to that address.

2.3.6.3 In the event a party has no designated agent and no address known to the Division, service shall be accomplished by the posting of the document at a conspicuous location upon or near the subject well, well-site, well road, or other oil and gas facility of the party. Further, a copy of the document shall be mailed to the last-known address of the party.

2.3.6.4 Whenever a party is self-represented or is represented by an attorney, and such party or attorney has signed

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any document on behalf of such party, service shall thereafter be made upon such signatory person and shall be made by pre-paid first-class mail.

2.3.7 When Service Effected - In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing. In the case of posting, service is effective twenty days following posting.

2.3.8 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.

2.4 Form of Documents -

2.4.1 Caption - The documents filed in any proceeding conducted under these rules shall be captioned in the name of the person or persons charged with a violation or seeking relief from the Division and may contain or include other information appropriate for the identification of the proceeding, including any docket number assigned to the case.

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2.4.2 Title - After the caption, each such document shall contain a title which shall be descriptive of the document and which shall identify the party by whom the document is submitted.

2.4.3 Signature - The original of each document filed shall be signed at the end by the party submitting the document or, if the party is represented by an attorney, by such attorney. The address and telephone number of the party or the attorney shall appear beneath the signature.

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 ten (10) days' written notice to the parties.

2.5.1 Each written notice of the hearing shall contain the date, time and place of the hearing and a short and plain statement of matters which are to be the subject of or asserted at the hearing. Such notice shall be given in accordance with the provisions of W. Va. Code § 29A-7-2.

2.5.2 The date, time and place of each hearing shall be determined by the Presiding Officer. Any request for

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postponement or relocation of a hearing shall be filed and served on all parties no later than five (5) days prior to the originally scheduled date. Such request may be granted upon showing of good cause.

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;

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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;

2.7.8 Permit discovery depositions.

2.7.9 In any case where the Presiding Officer is not the Director, such Presiding Officer may, on his own motion, and shall, at the request of any party, certify any interlocutory ruling to the Director where he determines (1) that such ruling involves a controlling question of law; and (2) that an immediate decision on the question by the Director may materially advance the ultimate disposition of the matter before him.

2.7.10 In no case shall a Presiding Officer other than the Director enter a final order or decision.

2.8 Representation at Hearings - A party may represent himself at a hearing or be represented by an attorney at law

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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 and other representatives 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 an administrative notice 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 The taking of photographs in or broadcasting or recording of proceedings from any hearing room or so close thereto as to disturb the hearing is prohibited.

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2.9.4 All of the testimony and evidence at any evidentiary hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The Division shall prepare an official record of the case, but it shall not be necessary to prepare a transcript unless required for purposes of rehearing or judicial review or upon request of any party to the hearing. If requested by a party to the hearing, a copy of the transcript shall be furnished to such party at the party's expense. The Division shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence, and such transcription shall be accomplished with all dispatch.

2.10 Hearing to be Public - All hearings to be conducted under these rules shall be open to the public. However, the Presiding Officer may limit the number of persons in attendance as dictated by available space and safety requirements. All attendees shall conduct themselves in an orderly and respectful manner. The Presiding Officer may exclude any person from a hearing for disruptive conduct.

2.11 Proposed Findings, Conclusions and Orders - The Presiding Officer may request the submission by parties of

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proposed findings of fact, conclusions of law and orders, together with a supporting brief or memorandum. Such documents shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

2.12 Written Orders - As soon as practicable after conclusion of a hearing, and within at least 30 days thereof, the Presiding Officer shall consider the evidence and any proposals, briefs, memoranda or other documents filed under Section 2.11 and issue a written order which shall include a statement of:

2.12.1 Findings and conclusions and the reasons therefor on the material issues of fact and law;

2.12.2 The appropriate ruling or order; and

2.12.3 The appeal period and procedures which apply.

2.12.4 In proceedings where the Presiding Officer is not the Director, the Presiding Officer shall issue and serve a copy of the recommended decision upon all parties by certified mail. The record in the case and the original recommended decision shall be forwarded to the Director. Within 15 days of the service of the recommended decision a party adversely

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affected or aggrieved by such decision may file for reconsideration setting out with particularity the grounds for requesting such reconsideration. The Director shall approve, alter, remand or reject the recommended decision and order of the Presiding Officer after considering all requests for reconsideration which may be filed. In the event the Director rejects the recommended decision and order of the Presiding Officer, the Director shall prepare a final decision and order to replace the recommended decision and order rejected.

2.12.5 A copy of the final 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, may be 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

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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 fifteen (15) 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 Applications for modification of written orders, which seek only a change in the date such order shall take effect, shall be made by written petition filed within fifteen (15) days after service of the written order, except that, in the event of unforeseen emergencies satisfactorily shown

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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 fifteen (15) days after such service, an adverse party may file and serve a reply to the petition.

2.13.1.5 Upon filing of the reply or upon the failure of an adverse party to reply within fifteen (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 fifteen (15) days' written notice to all parties, hold such hearing. Within thirty (30) days after consideration of the petition, the replies thereto and the record of the proceeding, the Division shall issue an order either granting, granting in part or denying the relief requested in the petition.

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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 unless the Division orders rehearing or reargument or modifies the written order, in which case, subject to the provisions of W. Va. Code § 22B-1-7(e), the time for appeal 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 or a proceeding under W. Va. Code § 22B-1-7, if an appeal is filed, the Director shall be responsible for certifying and forwarding the entire record of the proceedings to the circuit court. In any proceeding under W. Va. Code § 22B-1-7, if an

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appeal is filed, the Director shall be responsible for certifying and forwarding the entire record of the proceedings to the Water Resources Board.

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).

2.15 Time - In computing any period of time prescribed or allowed by this rule, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday when the offices of the government of this state are closed, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday when the offices of the government of this State are closed.

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2.16 Ex Parte Communications -

2.16.1 There shall be no ex parte communication with respect to the merits of any case not concluded, between the Presiding Officer and any of the parties, representatives, or other interested persons.

2.16.2 In the event an ex parte communication in violation of this rule occurs, the Director or the Presiding Officer may make such orders or take such action as fairness requires, upon notice and hearing.

2.16.3 All ex parte communications in violation of this rule shall be placed on the public record of the proceedings.

2.17 Inquiries concerning filing requirements, the status of cases before the Presiding Officer, or docket information shall be directed to the Division of Oil and Gas, West Virginia Department of Energy, 322 70th Street, S.E., Charleston, West Virginia 25305, Phone (304) 348-3741.

2.18 Amendments -

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2.18.1 The formal requirements for pleadings are not required to be observed in documents, answers or any other papers filed with the Division and amendments or supplemental statements may be made and filed at any time prior to a scheduled hearing as long as the documents are filed and served as called for under these rules at least ten (10) days prior to the scheduled hearing date. If a party desires to file amended or supplemental statements less than 10 days before the scheduled hearing of the matter, the party or his representative shall make a written request to the Presiding Officer to file those amendments along with the amendments. Said request will set forth with particularity the reason for the need to file such documents at the late date. The Presiding Officer will then allow or disallow the filing based solely in his discretion as justice might require.

2.18.2 A further and better statement of any cause or ground of complaint or defense, or a further and better statement of particulars of any matter stated, in any document, may in any case be ordered at the discretion of the Presiding Officer.

2.19 Discovery -

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2.19.1 Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a pending proceeding. The party requesting discovery shall have the burden of showing the necessity and relevancy of any materials, answers or testimony desired. All requests for public records directed to the Division of Oil and Gas shall be in accordance with the provisions of W. Va. Code § 29B-1.

2.19.2 Discovery shall be completed as soon as reasonably practicable after commencement of a proceeding, by a date to be established by the Presiding Officer. For good cause shown, the Presiding Officer may permit the time for discovery to be extended.

2.19.3 Parties may obtain discovery of any relevant matter, not privileged, that is admissible evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

2.19.4 Upon application by a party or by the person from whom discovery is sought or upon its own motion, the Presiding Officer may, for good cause shown, make any order limiting discovery to prevent undue delay or to protect a party or person from annoyance, oppression, or undue burden or expense.

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2.19.5 Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories. If the parties are unable to agree thereto, the time, place, and manner of taking depositions shall be governed by the order of the Presiding Officer.

2.19.6 Any party may serve written interrogatories or requests for admission upon another party. A party served with written interrogatories or a request for admission shall answer such interrogatories or request within fifteen (15) days of service unless the proponent of the interrogatories or request agrees to a longer time, or unless the Presiding Officer by order specifies a different time or excuses the party from answering on good cause shown. Interrogatories shall be answered under oath. For good cause shown, the Presiding Officer may order a party to produce and permit inspection, copying, or photographing of designated documents or objects.

2.19.7 Waiver of Evidentiary Presentation -

2.19.7.1 Any party who desires to submit written pleadings, comments or information in lieu of an evidentiary hearing may submit such documents for the Presiding Officer's

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consideration in the matter in the event hearing is waived as provided in Subsection 2.19.7.2 of this Section.

2.19.7.2 Parties entitled to an evidentiary hearing may waive such right in writing, but unless all entitled parties file timely waivers, a hearing will be conducted. Such waivers must be unequivocal and request the Presiding Officer to decide the matter at issue on the pleadings and written record of the case, including any stipulations the parties might enter or any documents filed in accordance with Subsection 2.19.7.1 of this Section.

2.19.7.3 When a hearing is waived under the provisions of this Section, the written record in the case shall be submitted to the Presiding Officer for review and decision.

2.20 Administrative Notices -

2.20.1 The Director may require by administrative notice the filing with the Division for its review such documents, papers, reports and records as the Director may deem necessary to decide issues in proceedings under this rule.

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2.20.2 The Presiding Officer may by administrative notice require the appearance in proceedings under this rule of any party, or any other person with knowledge directly related to issues involved in the proceeding.

2.21 Burden of Proof -

2.21.1 In proceedings under this rule, the party initiating the proceeding shall have the burden of proving his case by a preponderance of the evidence. Provided, however, that in any enforcement proceeding, the Division shall have the burden of proving its case by a preponderance of the evidence.

2.22 Motions -

2.22.1 Unless made during a hearing, all motions shall be in writing, contain a short and plain statement of the grounds on which it is based, and set forth the relief sought. Motions may be accompanied by appropriate supporting material or discussion of the reasons for granting the motion.

2.22.2 A statement in opposition to a motion may be filed by any party within ten (10) days after the date of service.

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2.22.3 Any motion, except for motions relating to jurisdiction or directed verdict or for a motion for reconsideration of the final decision of the Director, made less than ten (10) days before the commencement of an evidentiary hearing shall contain a showing of good cause for the motion not having been filed prior to the ten (10) days period.

2.22.4 Unless ordered or permitted by the Presiding Officer, oral argument on motions will not be heard.

2.22.5 A copy of all decisions and orders prepared or approved by the Director shall be served, by certified mail, upon all parties and, unless the decision and/or order provides otherwise, the decision and order so served shall become effective immediately upon service.

Section 3. Rules Applicable to Proceedings Initiated upon Petition for Declaratory Ruling

3.1 Scope - The rules in this Section govern and are applicable to proceedings initiated pursuant to W. Va. Code § 29A-4-1 on petition of any interested person, being any person owning an interest under the jurisdiction of the Division of Oil and Gas pursuant to W. Va. Code § 22B-1, for a declaratory ruling to be issued by the Division of Oil and Gas with respect to the

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applicability to any person, property or state of facts of any rule or statute enforceable by the Division of Oil and Gas. In addition to the rules contained in this Section, the general rules of practice before the Division of Oil and Gas contained in this rule relating to hearings held by the Division of Oil and Gas contained in Section 2 are also applicable to such proceedings.

3.2 Initiation of Proceedings -

3.2.1 Proceedings for a declaratory ruling pursuant to W. Va. Code § 29A-4-1, shall be initiated by filing a written petition for declaratory ruling with the Division of Oil and Gas.

3.3 Answer -

3.3.1 Any party, other than the Director, desiring to participate in the proceeding in opposition to the petition for declaratory ruling shall file an answer within fifteen (15) days of service of such petition.

3.4 Contents of Petition and Answer -

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3.4.1 A petition for declaratory ruling and an answer shall comply with applicable general requirements and shall contain:

3.4.1.1 A short, plain statement of (i) such party's position with respect to each issue of law or fact which the party contends is pertinent to the applicability to a person, property or state of facts of any rule or statute enforceable by the Division and (ii) the construction of the rule or statute advanced by such party;

3.4.2 Documents may be attached to pleadings as exhibits.

3.5 Proceedings After Petition; Decision and Order -

3.5.1 Upon receipt of a petition for declaratory ruling the Director may cause an investigation of the matter to be made as deemed appropriate and may appoint a Presiding Officer for all proceedings relating to such petition. If the Director declines to issue a declaratory ruling in response to such petition, he shall notify all parties in writing within thirty (30) days, stating the reason(s) therefor.

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3.5.2 In the event a party has requested a hearing in the petition or an answer, the Presiding Officer shall give notice of and conduct such hearing in accordance with the provisions of these rules. In the event the party has waived a hearing in accordance with the provisions of Subsection 2.19.7 of these rules, the Presiding Officer shall promptly consider the pleadings and all documents submitted therewith by the parties.

3.5.3 Within thirty (30) days after conclusion of the hearing or after consideration of the pleadings and documents filed therewith in the event a hearing is waived, the Presiding Officer shall issue a written decision and order incorporating therein findings of fact and conclusions of law stating the applicability to any person, property or state of facts of the rule or statute enforceable by the Division of Oil and Gas which is the subject of the petition. Such decision and order shall state whether or not such ruling is binding between the Division of Oil and Gas and the petitioner. Such ruling shall not be binding upon any person other than the petitioner.

3.5.4 In proceedings where the Presiding Officer is not the Director, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Director

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for his review. The Director shall within thirty (30) days of receipt of the decision approve, alter and approve or reject the decision and order of the Presiding Officer. In the event the Director rejects the decision and order of the Presiding Officer, the Director shall forthwith prepare a decision and order to replace the decision and order rejected.

3.5.5 A copy of all decisions and orders prepared or approved by the Director shall be served, by certified mail upon all parties and each order so served shall become effective upon service.