General Aspects of the OCC Office of Administrative Proceedings

AND

Appellate Procedures at the OCC

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Eric R. King
General Aspects of the OCC
Office of Administrative Proceedings

Michael Decker
Director and Administrative Law Judge
Oklahoma Corporation Commission
Appellate Procedures before the Oklahoma Corporation Commission
Appellate Procedure at the OCC

• 52 O.S. Sec 149.1 & 149.2
• OAC 165: 5-13-2 (c)
For purposes of OAC 165:5-13-5, all exceptions to reports on hearings on the merits in matters on the CD, PD, EN, SF, PSD and US dockets shall be heard by the Commission en banc unless referred to an Oil and Gas Appellate Referee. Hearing dates for exceptions are to be secured from a docket clerk at the time of filing. The exceptions will be heard on that date or as soon thereafter as may meet the convenience of the Commission. Exceptions in all other matters shall be set before the Commission en banc.
(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

(1) Names of parties of record and their attorneys.
(2) Brief statement of facts establishing jurisdiction of the cause.
(3) Brief summary of the evidence of each party of record who offered evidence.

(4) The pertinent facts as found by the officer upon consideration of all evidence offered.

(5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.

(6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, either orally or in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.
(b) The Administrative Law Judge shall send a copy of the report by regular mail, facsimile, electronic mail or in person to each party of record.

(c) At the expiration of ten (10) days after the report is filed, if no exceptions are filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.

(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file exceptions.
(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.
OAC 165: 5-13-5

Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on any oil and gas related exceptions without a response being filed or hearing oral presentation on said motion.
Exceptions ("Appeal") Time
OAC 165:5-13-5(a)(1) – Motions and Emergencies

(1) Any person adversely affected by a decision of an Administrative Law Judge on the motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Office of General Counsel of his or her intent to lodge exceptions and any request for oral arguments on the exceptions before the Commission en banc. Written exceptions shall not be required.
OAC 165:5-13-5(a)(2) – Merits

(2) Exceptions to the report from the hearing on the merits. Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) days in which to file exceptions to the report before the Commission en banc. To perfect exceptions, written exceptions must be filed within ten (10) days after filing of the Report of the Administrative Law Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after
the expiration of the ten (10) day period for filing the exceptions. In exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) days shall be allowed for the filing of cross exceptions. OAC 165:5-13-2 shall govern the setting of the exceptions. If a party desires the Commission en banc to hear oral arguments on any exceptions, a motion for oral argument of exceptions before the Commission en banc must be filed with the exceptions.
OAC 165:5-13-5(b) – Contents of the Exceptions

(b) **Contents of the exceptions.** For purposes of (a)(2) of this Section, the written exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his exceptions, or to present at the initial hearing on exceptions thereon additional grounds for exceptions from the report. A person taking exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his exceptions a
transcript or what he deems a correct summary of the pertinent evidence, provided that if the transcript is unavailable at the time of filing of the exceptions, then any person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc or the Oil and Gas Appellate Referee to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the exceptions shall be considered based on the summary of evidence in the appealed report.
(c) **Responses to written exceptions.** For purposes of exceptions under (a)(2) of this Section, any other person may file written response to the exceptions within five (5) days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time of the filing of the exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc or the Oil and Gas Appellate Referee, submit the transcript as soon as it is available. In the absence
of a transcript or written summary of evidence submitted by a party of record, the exceptions shall be considered upon the summary of the evidence in the exceptions to the report.
In a case where exceptions are referred to an Oil and Gas Appellate Referee, such Referee shall file a written report, stating a recommendation to the Commission to affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.
OAC 165:5-13-5(e) – Scope of Review of the Commissioners

With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.
Modification of Orders
Amendment of Orders
Post-Order Relief

• OAC 165:5-17-1
• OAC 165:5-17-2
• OAC 165:5-7-6 (spacing)
(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. A copy of the motion, including notice of the date set for hearing, shall be served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) business days written notice to all respondents listed on the affidavit of mailing and all parties of record.
OAC 165:5-17-2 - Post Order Relief (After 10 days)

(a) At any time subsequent to ten (10) days after entry of an order of the Commission, an application to vacate or modify the order, or for any other form of relief from the order, filed by any person, whether or not a party of record in the original cause, shall be treated as a separate cause, and shall be governed by rules applicable to the commencement of a cause. The application shall:
(1) Identify the order sought to be modified or vacated.

(2) State specifically the parts or provisions sought to be modified or vacated.

(3) State specifically the modifications or vacations sought.

(4) State specifically the grounds upon which such relief is sought.

(b) Notice of hearing of the application shall be served and published as required upon the commencement of the cause. The application shall be set for hearing before the Commission or Administrative Law Judge or Public Utility Referee, as provided in this Chapter as to the commencement of a cause.
Order Nunc Pro Tunc
With or without notice or hearing, the Commission may make or cause to be made an order nunc pro tunc to correct any clerical errors, mistakes, or omissions in an order, or as to timely mailing of the order by the commission or otherwise to cause the order to correctly reflect the judgment or action of such Commission.
Administrative Handling (How and Where?)

- OAC 165:5-7-11(g) – Change of Operator
- OAC 165:5-13-3.1
(a) If no protest to a spacing related application is announced at docket call, an applicant for spacing, despacing, increased well density, or location exception may elect for consideration of the merits of the cause without a full evidentiary hearing. Such review of the cause shall be referred to as the optional procedure.

(b) After electing the optional procedure, the applicant shall provide the Administrative Law Judge with a proposed order and documentation.
supporting the application. With respect to documentation, any written testimony shall be presented in the form of a sworn, notarized affidavit which shall be marked as exhibits and entered into the record.

(c) The Administrative Law Judge shall prescribe the time period for completing the record and may request additional evidence as deemed appropriate.

(d) After closing the record, the Administrative Law Judge shall have seven (7) business days in
which to make a recommendation to the Commission concerning disposition of the application.

(e) If the Administrative Law Judge's recommendation is unfavorable, the matter will be automatically set for a full evidentiary hearing before the same administrative law judge. Any exceptions from the report issuing after the full evidentiary hearing will proceed pursuant to OAC 165:5-13-5.
Appeals to the Supreme Court

• Within thirty (30) days from date the Commission Order is entered.
• 52 O.S. Sec 113
• Note: Any subsequent Motions do not extend the time to file the appeal with the Supreme Court.
Eric R. King
One Leadership Square, 15th Floor
211 N. Robinson Ave.
Oklahoma City, OK  73102
(405) 235-5518