

## CHAPTER II

### RULES OF PRACTICE AND PROCEDURE APPLICABLE TO HEARINGS IN CONTESTED CASES

#### Section 1. Answer or appearance.

(a) The Director or Applicant shall promptly file a responsive pleading to the petition directed to and served upon the opposing party and the Council, not later than five days before the hearing date.

#### Section 2. Docket.

(a) When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such purpose. The Council shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such items shall have noted thereon the docket number assigned, and the date of filing.

#### Section 3. Motions.

(a) The Council or presiding officer may, upon reasonable notice to all parties, hear orally, or otherwise, any motion filed in connection with hearings under these rules.

#### Section 4. Order of Procedure at Hearings.

(a) As nearly as possible, hearings shall be conducted in accordance with the following order of procedure:

(i) The presiding officer shall announce that the Council is open to transact business and call by docket number and title the case to be heard.

(ii) The parties will each be allowed an opening statement to briefly explain their position to the Council and outline the evidence they propose to offer together with purpose thereof.

(iii) Parties' evidence will be heard. Witnesses may be cross-examined by the opposing party or his attorney and by members of the Council and legal counsel for the Council.

(iv) The presiding officer may offer any evidence necessary on behalf of the Council subject to cross examination.

(v) The presiding officer may allow, in his discretion, evidence to be offered in any order.

(vi) The Council may allow, after service of copies on all parties of record, the direct testimony of a witness to be in writing, either narrative or question and answer form, upon the witness being sworn and identifying the written testimony. It may be received into the record as if read, in accordance with W.S. 9-4-108. The witness giving such testimony in writing shall be subject to cross-examination and such evidence shall be received into the record subject to a motion to strike. The written testimony must be served on all other parties in advance to allow a reasonable time to prepare cross-examination.

(vii) Closing arguments of the parties will be made in the manner set by the hearing officer.

(viii) Time for oral argument may be limited by the presiding officer.

(ix) The presiding officer may recess the hearing as required.

(x) After all interested parties have been offered the opportunity to be heard, the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence may be reopened at a later date, for good cause shown, by order of the Council upon motion by a party or on the Council's own motion.

(b) The presiding officer may, at his discretion, require parties to tender written briefs and set the time for filing such briefs.

(c) The presiding officer may declare that the matter is taken under advisement and that the decision and order of the Council will be announced at a later date.

(d) The Council may, at its discretion, appoint a presiding officer, who will then preside during the course of such hearing.

(i) The presiding officer shall, for purposes of that hearing, have all necessary powers normally vested in the Chairman.

#### Section 5. Witnesses at Hearings to be Sworn.

(a) All persons testifying at any hearing before the Council shall stand and be administered the following oath or affirmation by the presiding officer:

“Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in the matter now before the Council, so help you God?”

(i) No testimony will be received from a witness except under oath or affirmation.

#### Section 6. Appearance.

(a) Appearances and representation of parties shall be made as follows:

- (i) An individual may appear and be heard in his own behalf.
  - (ii) A co-partnership may appear and be represented by a co-partner.
  - (iii) A corporation may appear and be represented by a corporate officer or a full-time employee of said corporation.
  - (iv) A municipal corporation or its Board of Public Utilities may appear and be represented by a municipal officer, a member of said Board or a full-time employee of said municipality or Board.
  - (v) An unincorporated association may appear and be represented by any bona fide general officer or full-time employee of such association.
  - (vi) The Department of Environmental Quality may appear and be represented by the Director or Administrator of the relative division, or by the Attorney General or his representative.
  - (vii) Any party to a proceeding may appear and be represented therein by an attorney at law who is duly admitted to practice in Wyoming and an active member of the Wyoming State Bar. Any attorney who is not duly licensed to practice law in Wyoming shall not be entitled to enter his appearance in, prosecute or defend any action or proceeding pending before the Council unless he shall have associated with him in such action or proceeding an active member of the Wyoming State Bar.
- (b) Any person appearing in a proceeding before the Council shall conform to the recognized standards of ethical conduct.

#### Section 7. Intervention.

- (a) Any person interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding relating to other than surface coal mining operations pending before the Council may petition for leave to intervene in such proceeding prior to or at the date of hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the same should conform to the requirements for a formal petition. Leave will not be granted unless Council shall determine that the party requesting to intervene is adversely affected by the action, has a legal right under the Environmental Quality Act or the Wyoming Administrative Procedure Act.
- (b) For proceedings related to surface coal mining operations, any person may petition for leave to intervene as a full party or, if desired in a limited capacity, at any stage of a proceeding conducted by the Council. The petition shall include the basis for intervention and shall be granted to any person who either could have initiated the proceeding or has an interest which may be adversely affected by the outcome of the proceeding. Regardless of these bases, intervention may be granted whenever appropriate, after consideration of the nature of the issues, the adequacy of the existing parties representation of petitioner's interest, the ability of the petitioner to present relevant evidence and argument, and the effect of intervention on the implementation of the Act. The extent

and terms of participation by an intervenor in a limited capacity shall be determined by the Council.

(c) If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to have notice, appear at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the case.

(d) The party intervening must give notice of such intervention to all other parties to the appeal.

#### Section 8. General Hearing Rules.

(a) Every party shall be accorded the right to appear and testify in person or by counsel or other duly qualified representative. If testifying on behalf of another person or several persons, such person shall present to the hearing officer evidence he is a qualified representative thereof.

(b) Every person testifying shall, at the Council's discretion, be qualified prior to testifying. Such qualification will include ascertaining the residency, occupation, background, education, and expertise of said person.

(c) All parties shall have the right to respond and present evidence and argument on all issues involved.

(d) No person shall be required to report, inspect, or perform any investigative act except as authorized by law.

(e) All persons required to submit data or evidence shall be either entitled to retain the data or evidence or upon payment of a reasonable cost may procure a copy thereof.

(f) All irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(g) Effect to the rules of privilege shall be given as recognized by law. Documentary evidence may be received in the form of copies of excerpts, if the original is not available. All copies are subject to being compared with the original.

(h) The presiding officer shall:

(i) Administer oaths and affirmations.

(ii) Issue subpoenas.

(iii) Rule upon offers of proof and receive relevant evidence.

(iv) Take or cause to be taken depositions.

(v) Preside over the hearing and regulate its proceedings.

(vi) Preside over and set the time for such pre-hearing conferences as he deems necessary.

(vii) Dispose of procedural requests. The presiding officer may be assisted by a representative of the Attorney General's Office when such assistance is deemed necessary.

(viii) The presiding officer shall officially open and officially close the hearing.

#### Section 9. Subpoenas.

(a) Subpoenas requiring the attendance of witnesses from any place in the State of Wyoming at any designated place of hearing or for the production of books, papers, or other documents may be issued by the presiding officer upon written application of any party or upon motion of the presiding officer in accordance with the Wyoming Rules of Civil Procedure and Administrative Procedure Act.

(i) Items sought shall be set forth with particularity.

(ii) All subpoenas shall be served by personal delivery or by certified mail return receipt required, to the party served.

(iii) Cost of the subpoenas shall be paid by the party requesting the service.

#### Section 10. Depositions.

(a) In all contested areas coming before the Council, the taking of depositions and discovery shall be available to the parties and to the Council on its own motion in accordance with the provisions of W.S. 9-4-107(g).

(b) The Council, for the purposes of allowing orderly presentation of evidence, may govern the conduct of discovery and the time limitations involved.

#### Section 11. Witness Fees.

(a) Witnesses who are summoned before the Council are entitled to the same fees as are paid for like service in the District Courts of the State of Wyoming. Such fees shall be paid by the party at whose insistence the testimony was taken.

#### Section 12. Decision and Order.

(a) The Council shall make a written decision and order in all cases, which decision shall contain findings of fact and conclusions of law based exclusively on the record and include the vote on the decision. The decision and order of the Council shall be placed in the record of the case which shall be retained by the Council.

#### Section 13.

(a) The Council may, in its discretion, allow any pleadings to be amended or corrected, or any omission therein to be supplied.

Section 14. Applicability of Rule of Civil Procedure.

(a) The Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules shall apply to matters before the Council.