**Section 240.131 Unitization Hearings**

a) Commencement of Action

 Where separately owned tracts of land are underlain by all or a portion of a common pool of oil or gas or both, an interested person may petition the Department for an order unitizing those tracts, that is to combine those tracts within a unified operation, pursuant to Section 23.3 of the Act. The petition for a unitization order shall contain the following:

1) *A legal description of the land and geologic description of the reservoirs within the proposed unit area;*

2) *The names of all persons owning or having an interest in the oil and gas rights in the proposed unit area as of the date of filing the petition, as disclosed by the records in the office of the recorder for the county or counties in which the unit area is situated, and their addresses, if known. If the address of any person* or the name of any owner *is unknown, the petition shall so indicate* and shall state whether due diligence was used in locating the unknown address or unknown owner;

3) *A statement of the type of operations contemplated for the unit area;*

4) *A copy of a proposed plan of unitization signed by persons owning not less than* *51%* *of the working interest underlying the surface within the area proposed to be unitized, which the petitioner considers fair, reasonable and equitable; said plan of unitization shall include (or provide in a separate unit operating agreement, if there be more than one working interest owner, a copy of which shall accompany the petition) the following:*

A) *A plan for allocating to each separately owned tract in the unit area its share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost;* the plan shall include the participation factors for each tract and a detailed description of the methodology and supporting data used to calculate the participation factors.

B) *A provision indicating how unit expense shall be determined and charged to the several owners, including a provision for carrying or otherwise financing any working interest owner who has not executed the proposed plan of unitization and who elects to be carried or otherwise financed, and allowing the unit operator, for the benefit of those working interest owners who have paid the development and operating costs, the recovery of not more than 150% of such person's actual share of development costs of the unit plus operating costs, with interest. Recovery of the money advanced to owners wishing to be financed, for development and operating costs of the unit, together with such other sums provided for herein, shall only be recoverable from such owner's share of unit production from the unit area.*

C) *A procedure and basis upon which wells, equipment, and other properties of the several working interest owners within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor.*

D) *A plan for maintaining effective supervision and conduct of unit operations, in respect to which each working interest owner shall have a vote with a value corresponding to the percentage of unit expense chargeable against the interest of such owner.*

E) A summary of the total cumulative production to date, the estimated additional total recoverable reserves from the proposed unit and the estimated total development cost and operating cost of the unit;

5) The name and addresses of the proposed operator or operators of the unit;

6) A map showing the tracts or group of leases included within the proposed unit area, the location of the proposed injection well or wells and the name, permit number, and location of all oil and gas wells, including abandoned wells, active wells and dry holes and the reservoirs in which all such wells are currently completed, and the names of all operators offsetting the proposed unit area and the name, description and depth of the producing zones in those areas;

7) A map showing the structure of the geologic horizon that best represents the structure of the proposed reservoirs to be unitized;

8) A listing of the reservoirs to be unitized and a map showing the productive portion, thickness, and extent of each reservoir;

9) An induction or electric log of a representative well completed in the proposed unitized reservoirs;

10) A description of the injection medium to be used, its source and the estimated amounts to be injected daily;

11) A description of the proposed plan of development of the area included within the unit;

12) An allegation of the facts required to be found by the Department under Section 23.5 of the Act. The required facts are as follows:

A) *That the unitized management and operation is economically feasible and reasonably necessary to increase the ultimate recovery of oil and gas, to prevent waste, and to protect correlative rights;*

B) *That the value of the estimated ultimate additional recovery of oil and gas will exceed the estimated additional cost, if any, incident to conducting the unit operation;*

C) *That the areal extent of the pool or pools, or parts thereof, has been reasonably defined and determined by drilling operations, and the unitization and operation of such will have no substantially adverse effect upon the remainder of the pool or pools, or parts thereof;*

D) That the allocation of unit production to each separately owned tract is fair, reasonable and equitable to all owners of oil and gas rights in the unit area;

E) That the determination and allocation of unit expense is fair, reasonable and equitable to the working interest owners; and

F) That the compensation or adjustment for wells, equipment and other properties of the working interest owners is fair, reasonable and equitable.

b) Execution and Filing

1) The petition for an order creating a unit pursuant to Section 23.3 of the Act shall be sent to the Department at One Natural Resources Way, Springfield IL 62702.

2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or his or her representative constitutes a certificate that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there is good ground to support the petition. The petition shall be accompanied by a non-refundable application fee in the amount of $2,500.

3) If the Department finds the petition deficient relative to the requirements of subsection (a), subsection (b)(2) or Section 240.250(b), the petition shall not be accepted and the Department shall return the petition to the applicant with a statement as to the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. A returned petition shall not be considered filed until the deficiencies have been cured.

c) Notice of Hearing

1) *Upon the receipt of an accepted petition for unitization, the Department shall fix the time and place for a public hearing, which shall be no less than 30 days nor more than 60 days after the date of the filing of said petition.* The Department shall prepare a notice of hearing, which *shall issue in the name of the State of Illinois and shall be signed by the Director. Such notice shall specify the number and style of the proceedings, the time and place of the hearing, the purpose of the hearing, the name of the petitioner, and a legal description of the lands contained within the proposed unit area.* (Section 23.4 of the Act) The notice shall also state that any interested person may file an entry of appearance in the hearing by submitting an entry of appearance in writing to the Department and that person shall be deemed a party of record in the proceeding.

2) The Department shall mail the notice to the petitioner who shall then serve notice in the following manner:

A) By mailing the notice by U.S. Postal Service certified mail, return receipt requested, *directed to the persons named in the petition at their last known addresses* at least 20 days prior to the hearing; and

B) *By publication of such notice for service on those persons whose addresses are unknown or whose names are unknown, once each week for 2 consecutive weeks,* with the first notice appearing at least 20 days prior to the hearing, *in a newspaper of general circulation published in each county containing some portion of the proposed unit area.* (Section 23.4 of the Act)

3) Whenever the Department determines that a notice of hearing should be served upon a person because the granting or denying of the relief requested in the petition would materially affect that person's rights or property, the Department shall cause notice to be sent to the person, as provided in this subsection (c).

d) Pre-Hearing Conferences

1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:

A) Simplify the factual and legal issues presented by the hearing request;

B) Receive stipulations and admissions of fact and of the contents and authenticity of documents;

C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and

D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion.

2) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all parties.

e) Hearing

1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:

A) To administer oaths and affirmations;

B) To receive relevant evidence;

C) To regulate the course of the hearing and the conduct of the parties and their counsel;

D) To consider and rule upon procedural requests;

E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify; and

F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record. The Hearing Officer may require that relevant documents be produced to any party of record on his or her own motion or for good cause shown on motion of any party of record.

2) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in the Circuit Court.

3) All participants in the hearing shall have the right to be represented by counsel.

4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.

5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.

6) Preliminary Matters: When applicable, the following shall be addressed prior to receiving evidence:

A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of service of the notice of hearing, proof of publication and orders previously entered in the cause.

B) Ruling may be made on any pending motions.

C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.

f) Evidence

1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received but the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by statute, if it is of a type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.

3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.

g) Record of Proceedings; Testimony

 The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.

h) Postponement or Continuance of Hearing

 A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing at least 3 business days prior to the scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

i) Default

 If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at a pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.131(h). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.

j) Order

1) Upon the conclusion of any hearing held under this Section, the Hearing Officer, after consultation with the Department representatives, shall prepare an order disposing of the petition, which shall be presented to the Director for entry. The Department shall render a decision within 30 days after the hearing unless all parties that have appeared agree to waive this requirement.

2) The order shall grant the petition for unitization if based on the record the Hearing Officer finds all of the following:

A) *That the unitized management and operation is economically feasible and reasonably necessary to increase the ultimate recovery of oil and gas, to prevent waste, and to protect correlative rights;*

B) *That the value of the estimated ultimate additional recovery of oil and gas will exceed the estimated additional cost, if any, incident to conducting the unit operation;*

C) *That the areal extent of the pool or pools, or parts thereof, has been reasonably defined and determined by drilling operations, and the unitization and operation of such will have no substantially adverse effect upon the remainder of the pool or pools, or parts thereof;*

D) *That the allocation of unit production to each separately owned tract is fair, reasonable and equitable to all owners of oil and gas rights in the unit area;*

E) *That the determination and allocation of unit expense is fair, reasonable and equitable to the working interest owners;* and

F) *That the compensation or adjustment for wells, equipment and other properties of the working interest owners is fair, reasonable and equitable*. (Section 23.5 of the Act)

3) If the petition is granted the order shall provide for the authorization of the unit and unitized operation, as proposed by the petitioner, upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and that are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners, and for the protection of correlative rights and the prevention of waste. The order shall state the time the unit operation shall become effective and the manner in which and the circumstances under which the unit operation shall terminate.

4) Except as provided in subsection (j)(5), the order shall deny and dismiss the petition for unitization if, based on the record, the Hearing Officer finds that the petitioner has failed to establish the requirements for formation of a unit set forth in subsection (j)(2). An order denying and dismissing a petition for unitization shall be entered within 30 days after the hearing. *Such order shall set forth the reasons for dismissal, and the same shall be promptly filed by the petitioner, if notice was filed under* Section 23.3(2) of the Act, *in the recorder's office of the county or counties wherein the land is situated.* (Section 23.6 of the Act)

5) As an alternative to denying the petition for unitization, the Department may issue an interim order outlining the substantive deficiencies that must be cured by the petitioner in order to avoid dismissal. If the petitioner supplies the information requested by the Department, a new hearing shall be scheduled in order to examine the documents. If the petitioner fails to comply with the interim order, the petition shall be denied. The Department shall send notice of the hearing to all parties of record.

k) *Approval of Plan of Utilization − Effective Date of Order*

 *No order of the Department providing for unit operations shall become effective unless and until the plan of unitization has been approved in writing by those persons who, under the order, will be required to pay at least* *51%* *of the unit expense, and also by the persons owning at least* *51%* *of the unit production or proceeds thereof that will be credited to interests which are free of unit expense, including but not limited to, royalties, overriding royalties, carried interests, net profit interests, and production payments, and the Director has made such a finding, either in the order providing for unit operations or in a supplemental order, that the plan of unitization has been so approved; provided, however, that if any person is obligated to pay* *51%* *or more, but less than 100% of the unit expense, the approval of that person and at least one other such person shall be required; and if one person entitled to production or proceeds thereof will be credited to interests which are free of unit expense, owns* *51%* *or more, but less than 100%, the approval of that person and at least one other such person shall be required. If the plan of unitization has not been so approved at the time the order providing for unit operations is issued, the Department shall, upon petition and notice, hold such supplemental hearings as may be required to determine if and when the plan of unitization has been so approved and shall issue a supplemental order evidencing such approval. If the requisite number of persons and the requisite percentage of interests in the unit area do not approve the plan of unitization within a period of 6 months from the date on which the order providing for unit operations is made, such order shall be revoked by the Department unless for good cause shown the Department extends said time for an additional period of time not to exceed one year.* (Section 23.8 of the Act)

l) *Notice of Order − Recordation*

 Within 10 days after an order has been issued, a copy of the order shall be mailed by the Department to each person or his or her attorney of record who has entered an appearance in the matter pursuant to which the order is issued. The petitioner shall cause to be recorded in the office of the county clerk of the county or counties in which the unit is situated a copy of the order providing for unit operations.

m) Order − Final Administrative Decision

 The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 38 Ill. Reg. 18717, effective August 29, 2014)