

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

In the matter of the application of John O.) Docket No: 21-CONS-3175-CUNI
Farmer, Inc. for an order authorizing)
unitization and unit operation of the Sutor-) CONSERVATION DIVISION
Ziegler Waterflood Unit to be located in)
Sheridan County, Kansas.) License No: 5135

**ORDER GRANTING MOTION FOR SUMMARY PROCEEDINGS
AND GRANTING AMENDED APPLICATION**

The Commission rules as follows:

I. Procedural Background

1. On February 11, 2021, John O. Farmer, Inc. (Operator) filed an Application requesting an order authorizing unitization and unit operation of the Sutor-Ziegler Waterflood Unit in Sheridan County, under K.S.A. 55-1301 *et seq.*¹ On March 11, 2021, the Commission issued an order setting the matter for a March 25, 2021, prehearing conference.²

2. On March 17, 2021, Operator filed a Motion for Summary Proceedings, requesting that the Commission utilize the summary proceedings available under the Kansas Administrative Procedure Act to grant Operator's Application;³ on March 30, 2021, Staff filed a Response, stating it had no objection to Operator's motion and recommending approval of the Application.⁴

3. On April 16, 2021, Operator filed an Amended Application. On May 10, 2021, Operator filed a Motion for Summary Proceedings regarding its Amended Application; on May 17,

¹ See Application (Feb. 11, 2021).

² See Order Designating Presiding Officer and Setting Prehearing Conference (Mar. 11, 2021).

³ See Motion for Summary Proceedings (Mar. 17, 2021).

⁴ See Response to Motion for Summary Proceedings, ¶¶ 4-5, Prayer (Mar. 30, 2021).

2021, Staff filed a Response, stating it had no objection to Operator’s motion and recommending approval of the Amended Application.⁵

II. Availability of Summary Proceedings

4. As an initial matter, to rule upon Operator’s Motion for Summary Proceedings regarding the Amended Application, the Commission must first determine whether summary proceedings are legally available.⁶ Operator has filed for unitization under K.S.A. 55-1301 *et seq.* Thus, the Commission, under K.S.A. 55-1304, may make an order providing for unitization “after notice and hearing in accordance with the provisions of the Kansas administrative procedure act,” provided various non-procedural requirements dealing with the merits of the application are also met.⁷

5. We turn now to whether “notice and hearing in accordance with the provisions of the Kansas administrative procedure act” will have occurred if the Commission grants Operator’s Amended Application via summary proceedings. To make that determination, we must consider the text of the Kansas Administrative Procedure Act (KAPA).⁸ Under K.S.A. 77-511, a hearing commences when the state agency or presiding officer notifies a party that a prehearing conference or other stage of the hearing will be conducted. In the present matter, the Commission served its Order Designating Prehearing Officer and Setting Prehearing Conference to all parties, informing them that a prehearing conference would be conducted. Thus, a noticed hearing was commenced in accordance with K.S.A. 77-511, a provision of the KAPA; the Commission finds Operator’s amendment of its application does not change this analysis. Accordingly, K.S.A. 55-1304’s procedural requirement of “notice and hearing in accordance with the provisions of the [KAPA]” has been met.

⁵ See Response to Motion for Summary Proceedings on Amended Application, ¶¶ 7-8, Conclusion (May 17, 2021).

⁶ The Commission finds Operator’s Motion for Summary Proceedings regarding the Amended Application supplanted and renders moot Operator’s original motion for summary proceedings.

⁷ See K.S.A. 55-1304.

⁸ K.S.A. 77-501 *et seq.*

6. Under K.S.A. 77-537, a state agency may use summary proceedings, subject to a party's request for hearing on the order, if: (1) the use of those proceedings does not violate any law; (2) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties; (3) based upon an investigation of the facts, beyond receipt of the allegations, the state agency believes in good faith that the allegations will be supported to the applicable standard of proof; and (4) the order does not take effect until after the time for requesting a hearing has expired.

7. The Commission finds no statute prohibits use of summary proceedings. Regarding the second factor, Commission statutes and regulations have already obligated Operator to publish notice of its Amended Application in *The Wichita Eagle* and *The Sheridan Sentinel*, and to notify various persons of the Amended Application. Further, Commission Staff's review is meant to protect the public interest. Thus, the second factor has been met.

8. Regarding the third factor, the Commission can rely here not merely upon receipt of the allegations, but also upon Staff's review of the Amended Application, which recommended granting of the Amended Application and indicated the Amended Application complies with all statutes and regulations.⁹ Finally, the fourth factor can be met; the Commission may readily enough issue an order that does not take effect until after the time for requesting a hearing has expired.

9. With the KAPA notice and hearing requirements mandated by K.S.A. 55-1304 being met, and with Operator's Amended Application qualifying for summary proceedings under K.S.A. 77-537, the Commission finds summary proceedings are available and appropriate in this matter.

⁹ See Response to Motion for Summary Proceedings on Amended Application, ¶¶ 7-8, Conclusion.

III. Analysis of Amended Application – Jurisdiction & Legal Standards

10. Summary proceedings being available and appropriate, the Commission now turns to the merits of the Amended Application itself. A review of the Commission’s jurisdiction, and the legal standards the Amended Application must meet, is therefore necessary.

11. To begin, under K.S.A. 74-623, the Commission has exclusive jurisdiction and authority to regulate oil and gas activities. Further, under K.S.A. 55-601 *et seq.* the Commission “is authorized, and it shall be its duty, to regulate the taking of crude oil from any pool within the state of Kansas [so] as to prevent waste in the pool or, independently of waste, to prevent the inequitable or unfair taking of crude oil from the pool by any person and to prevent unreasonable discrimination therein,” and “to prevent unreasonable discrimination in favor of any one pool as against any other pool or pools . . . in the allocation of allowable production among such pools.”¹⁰ And under K.S.A. 55-701 *et seq.* the Commission has essentially the same authorization and duty as it pertains to regulating the taking of natural gas.¹¹

12. The Commission has additional authority under the unitization statutes. Under K.S.A. 55-1301, in addition to the jurisdiction, powers, and duties conferred upon the Commission by K.S.A. 55-601 *et seq.* and 55-701 *et seq.*, the Commission has the jurisdiction, powers, and duties conferred by K.S.A. 55-1301 through 55-1315, which provide processes for unitizing acreage via a Commission order. Under K.S.A. 55-1314, “the provisions of this act shall be supplemental to and a part of articles 6 and 7 of chapter 55 of the Kansas Statutes Annotated.”¹²

13. The unitization statutes make certain demands on an applicant and the Commission. Under K.S.A. 55-1303, there are requirements for what a unit application must contain, including a description of the unit area, a statement of the type of operations contemplated, a copy of the proposed

¹⁰ K.S.A. 55-603.

¹¹ See K.S.A. 55-703.

¹² K.S.A. 55-1314.

plan for unitization, a copy of the proposed operating plan covering supervision and costs, and an allegation of the facts required to be found by the Commission under K.S.A. 55-1304.

14. K.S.A. 55-1304 provides that the Commission must find all three of the following conditions are present before unitizing acreage:

- a. Under K.S.A. 55-1304(a)(1), the primary production from a pool or a part thereof sought to be unitized has reached a low economic level and, without introduction of artificial energy, abandonment of oil or gas wells is imminent; or under K.S.A. 55-1304(a)(2) the unitized management, operation, and further development of the pool or the part thereof sought to be unitized is economically feasible and reasonably necessary to prevent waste within the reservoir and substantially increase the ultimate recovery of oil or gas;
- b. the value of the estimated additional recovery of oil or gas substantially exceeds the estimated additional cost incident to conducting such operations; and
- c. the proposed operation is fair and equitable to all interest owners.

15. K.S.A. 55-1305 provides that the order providing for unitization and unit operation shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations which includes various details listed in K.S.A. 55-1305(a) through K.S.A. 55-1305(l).

16. K.S.A. 55-1305(l) provides that no order of the Commission providing for unitization pursuant to K.S.A. 55-1304(a)(2) shall become effective unless and until the plan for unit operations prescribed by the Commission has been approved in writing by those persons who, under the Commission's order, will be required to pay at least 63% of the costs of the unit operation, and also by the owners of at least 75% of the production or proceeds thereof that will be credited to royalties, and the Commission has made a finding, either in the Order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved.

IV. Analysis of Amended Application – Findings of Fact

17. The Commission shall consider each statutory obligation under K.S.A. 55-1301 *et seq.* pertaining to Operator's Amended Application sequentially. First, upon review of Operator's Amended Application, the Commission finds it contains all items it must under K.S.A. 55-1303.¹³

18. The Commission finds each condition under K.S.A. 55-1304 that must exist for the Commission to make an order providing for unitization does exist, noting that Operator seeks unitization under K.S.A. 55-1304(a)(2).¹⁴

19. The Commission finds the terms and conditions described in Operator's Unit Agreement and Unit Operating Agreement are just and reasonable and include all items required pursuant to K.S.A. 55-1305.¹⁵ The Commission finds that incorporation of Operator's application and exhibits, including the Unit Agreement and Unit Operating Agreement, into this Order will satisfy the requirements of K.S.A. 55-1305.¹⁶ They are incorporated.

20. The Commission finds pursuant to K.S.A. 55-1305(l) that the plan for unit operations has been approved in writing by those persons who, under the Commission's order, will be required to pay at least 63% of the costs of the unit operation, and also by the owners of at least 75% of the production or proceeds thereof that will be credited to royalties.¹⁷

21. For ease of reference, the Commission notes the proposed unit contains the stratigraphic equivalent of all formations from the top of the Toronto Formation to the base of the Lansing-Kansas City Formation, as the same is found from 3,646 feet to 3,884 feet, inclusive, in the

¹³ See, e.g., Amended Application ¶¶ 4, 5 (unit area description); ¶ 6 (type of operations); ¶¶ 11-13 (required allegation of facts).

¹⁴ See Amended Application, ¶ 5.

¹⁵ See Response to Motion for Summary Proceedings on Amended Application, ¶ 7.

¹⁶ See *id.*

¹⁷ See Amended Application, ¶ 14; See Response to Motion for Summary Proceedings, ¶ 7 ("Staff is satisfied that the grant of such Amended Application complies with the applicable statutory and regulatory requirements").

Sutor #6, API #15-179-21100, insofar as said formations underlie the lands and leases to be unitized, specifically Section 30, Township 8 South, Range 26 West, Sheridan County.¹⁸

22. The Commission finds notice of the application was properly served and published.¹⁹

V. Conclusions of Law

23. For the above reasons, the Commission concludes that Operator's Amended Application was filed in accordance with all pertinent Commission regulations and Kansas statutes, that Operator has demonstrated the conditions necessary to grant its Amended Application, and that the Amended Application should be granted to prevent waste and protect correlative rights.

THEREFORE, THE COMMISSION ORDERS:

A. Operator's May 10, 2021, motion for the Commission to utilize summary proceedings to grant Operator's Amended Application is granted.

B. Operator's Amended Application for an order authorizing the unitization and unit operation of its proposed Sutor-Ziegler Waterflood Unit is granted. The Unit shall be governed by the terms found in the Amended Application and the exhibits, including the Unit Agreement and Unit Operating Agreement, which are incorporated by reference.

C. This order does not take effect until after the time for requesting a hearing has expired.²⁰ Any party may request a hearing on the above issues by submitting a written request, pursuant to K.S.A. 77-537 and K.S.A. 77-542, setting forth the specific grounds upon which relief is sought, to the Commission at 266 N. Main, Suite 220, Wichita, Kansas 67202, within 15 days from the date of service of this Order. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of the right to a hearing.

¹⁸ See Amended Application, ¶¶ 4, 5, 10.

¹⁹ See Amended Application ¶¶ 15-16; Proof of Publication – The Sheridan Sentinel (Apr. 29, 2021); Affidavit of Publication – The Wichita Eagle (Apr. 29, 2021); *see also* K.S.A. 55-1310.

²⁰ See K.S.A. 77-537.

D. If this order takes effect, any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²¹

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 06/10/2021



Lynn M. Retz
Executive Director

Mailed Date: 06/10/2021

JRM

²¹ See K.S.A. 77-529; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 55-1314; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

21-CONS-3175-CUNI

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

electronic service on 06/10/2021.

MARGE SCHULTE
JOHN O. FARMER, INC.
PO BOX 352
RUSSELL, KS 67665-0352
marge.schulte@johnofarmer.com

JAKE EASTES, GEOLOGIST SPECIALIST
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
Fax: 785-271-3354
j.eastes@kcc.ks.gov

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
Fax: 785-271-3354
k.marsh@kcc.ks.gov

CASE MORRIS
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 4
2301 E. 13TH STREET
HAYS, KS 67601-2654
Fax: 785-271-3354
c.morris@kcc.ks.gov

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
Fax: 316-337-6211
j.myers@kcc.ks.gov

DENNIS R. DAVIDSON, ATTORNEY AT LAW
THOMPSON ARTHUR & DAVIDSON
525 NORTH MAIN STREET
PO BOX 111
RUSSELL, KS 67665-0111
Fax: 785-483-3504
dennis.tad@eaglecom.net

/S/ DeeAnn Shupe

DeeAnn Shupe