

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of the Application of Berexco)
LLC for an Order Authorizing Unitization and)
Unit Operation of the Arroyo Unit in Stanton)
County, Kansas.)
_____) License No: 34318

ORDER GRANTING APPLICATION

Berexco LLC (Operator) has filed an application pursuant to K.S.A. 55-1303 seeking a Commission order authorizing the unitization and unit operation of its proposed Arroyo Unit. No person filed a protest or requested intervention in this matter,¹ and Commission Staff supports Operator's application.² For the reasons described below, the Commission grants the application.

I. Procedural Background

1. On February 8, 2019, Operator filed its application. Operator seeks approval specifically pursuant to K.S.A. 55-1304(a)(2), rather than 1304(a)(1).³

2. After an April 25, 2019, prehearing conference, the matter was scheduled for a May 16, 2019, evidentiary hearing before the Commission.⁴

3. On May 16, 2019, the Commission held its evidentiary hearing and then took the matter under advisement.⁵

4. Notice of the application was published by Operator in *The Wichita Eagle* from February 13 to February 15, 2019, and in *The Johnson Pioneer* on February 14, 2019.⁶ Notice of the

¹ See K.A.R. 82-3-135b; K.S.A. 77-521.

² See Tr. 7:20-22.

³ See K.S.A. 55-1304; Application ¶ 7(a).

⁴ *Prehearing Officer Order Setting Procedural Schedule*, ¶ 2, Ordering Clause A (Apr. 26, 2019).

⁵ See Tr. 23:5-8.

⁶ See Affidavit of Publication – *The Wichita Eagle* and *The Johnson Pioneer* (filed with the Commission Mar. 4, 2019).

hearing was published by Operator in *The Wichita Eagle* on May 1, 2019, and in *The Johnson Pioneer* on May 2, 2019.⁷ Operator mailed notice of hearing pursuant to K.S.A. 55-1310.⁸

5. At hearing, Operator was represented by Thomas M. Rhoads, of his eponymous law office, and Commission Staff was represented by its Litigation Counsel Lauren N. Wright.⁹

II. Jurisdiction & Legal Standards

6. Under K.S.A. 74-623, the Commission has exclusive jurisdiction and authority to regulate oil and gas activities.

7. 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 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

8. 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

⁷ See Affidavit of Publication – *The Wichita Eagle* and *The Johnson Pioneer* (filed with the Commission May 9, 2019).

⁸ See Certificate of Service (May 15, 2019).

⁹ See K.A.R. 82-1-232(a)(2); Tr. 4:9-15.

¹⁰ K.S.A. 55-603.

¹¹ See K.S.A. 55-703.

¹² K.S.A. 55-1314.

9. K.S.A. 55-1303 provides 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 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.

10. 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.

11. 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).

12. 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.

III. Testimony

13. On May 16, 2019, the Commission heard and accepted testimony from the following individuals, each of whom had previously submitted pre-filed testimony:

- a. Operator witness Jessie Fendorf (Fendorf), holder of a 2012 bachelor's of science degree in business administration, and landman for Berexco LLC since 2012;¹³
- b. Operator witness Dana Wreath (Wreath), a petroleum engineer and vice president of Berexco LLC;¹⁴ and
- c. Staff witness Jake Eastes (Eastes), Geologist Specialist and Research Analyst, holder of a 2015 bachelor's degree in geology, a 2017 master's degree in petroleum geology, and employed by the Commission since September 2017.¹⁵

IV. Findings of Fact

14. The Commission shall consider each statutory obligation under K.S.A. 55-1301 *et seq.* pertaining to Operator's application sequentially. First, upon review of Operator's application, the Commission finds it contains all items it must contain under K.S.A. 55-1303. The Commission credits Eastes's testimony, which comes to the same conclusion.¹⁶

15. 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. Eastes testified that all such conditions exist, and Operator's witnesses also provided ample testimony for the Commission to reach such a finding.¹⁷ The Commission credits all testimony on the matter.

¹³ Fendorf's pre-filed testimony was admitted at Tr. 11:3-13.

¹⁴ Wreath's pre-filed testimony was admitted at Tr. 18:25 to 19:10.

¹⁵ Eastes's pre-filed testimony was admitted at Tr. 21:3-7.

¹⁶ See Pre-Filed Testimony of Eastes, 3:8 to 4:21.

¹⁷ See Pre-Filed Testimony of Eastes, 5:10-12; *see generally* Pre-Filed Testimony of Fendorf; Pre-Filed Testimony of Wreath.

16. 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. The Commission credits Eastes's testimony to that effect.¹⁸ The Commission finds that incorporation of Operator's application and all exhibits, including the Unit Agreement and Unit Operating Agreement, into this Order will satisfy the requirements of K.S.A. 55-1305, and all exhibits are so incorporated.

17. 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. The Commission credits Fendorf's testimony that Operator has obtained approval from those responsible for at least 96% of the costs of unit operations, and at least 97% of the royalty interests have approved the plan for unit operations.¹⁹

18. For ease of reference, the Commission notes the proposed unit contains the stratigraphic equivalent of the Morrow Shale through the top of the Mississippian St. Gen formation, as the same is encountered between 5,000 feet to 5,452 feet, inclusive, below the surface of the Pro Farms #21-3 (API #15-187-21163), it being intended that the covered depths include all the stratigraphic equivalent of the Morrow Shale formation, insofar as said formation underlies the lands and leases to be unitized,²⁰ specifically the following areas in Township 29 South, Range 41 West, Stanton County, Kansas:²¹

- a. The southwest quarter of Section 14, the southeast quarter of Section 15, the southeast quarter of Section 17, and the east half of Section 20;

¹⁸ See Pre-Filed Testimony of Eastes, 6:1 to 10:14.

¹⁹ See Tr. 10:13-23; *see also* Pre-Filed Testimony of Fendorf, 5:2-22.

²⁰ See Application, ¶ 3. The Commission took administrative notice of its records to determine the API Number. *See* K.A.R. 82-1-230.

²¹ See Application, ¶ 2.

- b. All of Section 21 and Section 22, and the west half of Section 23;
- c. The north half of the northeast quarter and the north half of the northwest quarter of Section 27; and
- d. The north half of Section 28.

V. Conclusions of Law

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

THEREFORE, THE COMMISSION ORDERS:

- A. Operator's application for an order authorizing the unitization and unit operation of its proposed Arroyo Unit is granted.
- B. 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).²²
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 05/30/2019



Lynn M. Retz
Secretary to the Commission

Date Mailed: 05/30/2019

JRM

²² K.S.A. 55-162; 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

19-CONS-3269-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 05/30/2019.

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