BEFORE THE STATE CORPORATION COMMISION

FOR THE STATE OF KANSAS

In the matter of the Application of	)	Docket No. 24-CONS-3103-CUNI
Cannady Oil Corporation for an order	)	CONSERVATION DIVISION
Authorizing the Unitization and Unit	)	License No.: 5303
Operation of the Irons Morrow Sand	)	
Unit in Clark County, Kansas	)	

MOTION FOR RECONSIDERATION

COMES NOW, the Bair, Mahieu and O'Brien Protestors, Mark Mahieu, Michelle Mahieu, Estate of Eddie V. Mahieu, Estate of Linda L. Mahieu, Thomas O'Brien as Trustee of the John and Alice O'Brien Trust, and John Bair as Trustee of the John L. Bair Trust, by and through their counsel, Michelle Mahieu of Mahieu Elder Law PA, and respectfully move for reconsideration of the Final Order issued July 2, 2024 in this matter. In support of said motion, Defendants state and allege as follows.

I. Application of the Statute is in error

The Final Order acknowledges that K.S.A. 55-1304 requires the Operator to prove economic feasibility and reasonable necessity of unitization to prevent waste, that the value of the additional recovery substantially exceeds the estimated additional cost, and that the proposal is fair and equitable to all interest owners. The Operator has the burden to prove each of those things by substantial competent evidence. In the Final Order, the Commission found that Canady, Saenz and Eastes' testimony was "credible and convincing," but then stated that Protestors had not presented any testimony contradicting the conclusions of Canady, Saenz and Eastes – the

Commission twice pointed to the absence of contradictory evidence from Protestors as support for its order. See Final Order at paragraphs 14 and 15. The Commissioners have misapplied the statute. Protestors are not required to rebut the testimony of the Operator and his witnesses. There is no rebuttable presumption in this statute, but the Commission has written one in with this decision. The Commission is obliged to examine the evidence adduced by Operator and determine whether it is substantial competent evidence of economic feasibility, reasonable necessity, additional recovery will substantially exceed cost, and fairness to all interest holders. In the absence of substantial competent evidence, the application must be denied. The Commission has failed to properly apply K.S.A. 55-1304 by accepting the evidence adduced by Operator as substantial and competent, and by reading a rebuttable presumption into the statute, thereby shifting the burden of proof to Protestors.

II. Burden of Proof is on Operator to show substantial competent evidence and that burden is not met

The Operator's burden of proof is substantial competent evidence and the standard has not been met. See Lario Oil & Gas Co. v KCC, 57 Kan.App.2d 184, 450 P.3d 353 (Aug. 23, 2019). The evidence relied on by the Commission includes eight exhibits to the pre-filed testimony of Operator Grant Canady, hearing testimony of Grant Canady, pre-filed testimony of Robert Saenz, and hearing testimony of Robert Saenz. All eight exhibits attached to Canady's pre-filed testimony were prepared by Grant Canady.

The Commission found that Canady "testified at length regarding how the Operator's plan was economically feasible and necessary to prevent waste." It cites to Canady's pre-filed testimony at pages 6-8. The cited testimony as to *necessity* is thus:

6/23 Q Is it necessary to install a waterflood at this time?

7/1 A Yes. Installation of a secondary recovery unit is needed to prevent loss of wellbores and

reserves. Failure to install a waterflood at this time would cause waste.

The cited testimony as to *economic feasibility* is thus:

7/16 Q Please explain Exhibit 7.

17 A Exhibit #7 shows the secondary recovery cashflow projection of the proposed Irons

18 Morrow Sand Unit. In addition to the remaining primary performance of the proposed

19 Irons Morrow Sand Unit wells, Exhibit #7 shows our projection of the estimated

20 incremental secondary oil that we believe will be recovered over approximately 17 years

21 by the installation of this waterflood. It is estimated that installing the Irons Morrow Sand

22 Unit waterflood will increase the total recovery by about 200,000 stock tank barrels of oil. 8/1 Q What is the estimated investment required to install the proposed Irons Morrow Sand

2 Unit 1 waterflood, and does the estimated recovery justify this investment?

3 A Yes. It is estimated that it will cost approximately $1,725,000 to install this project.

4 Economic runs indicate the water flood project will result in a net income that totals over

5 $6,200,000 (after the payout of the capital investment), using an average oil price of $65

6 per barrel.

7 Q Is it your further testimony that that the proposed operations are economically feasible, 8 and are necessary to prevent waste and protect correlative rights?

9 A Yes.

This testimony is not substantial competent evidence. It is self-serving, conclusory statements without even a naked allegation that they are based on something more objectively provable. The Commission also relies on Mr. Saenz's hearing testimony echoing Mr. Canady's conclusions and on Mr. Eastes's pre-filed testimony and hearing testimony, also echoing Mr. Canady's conclusions. Interestingly, in Mr. Canady's pre-filed testimony at page 3, lines 6-9, Mr. Canady admits there was substantial competent evidence that could have been submitted: electric logs, drilling reports, production reports, drill stem test data, and completion reports. He claimed his production estimates were based on primary production, analogous water-floods, and the nature of the formations, but presented no evidence of those matters either. Instead of supporting his application with hard evidence, he chose to present only trial exhibits – summarized information – pre-drawn conclusions: a map of the wells (Exh. 1), a one-page well-log (Exh. 2), an isopach map (Exh. 3), a production curve showing primary and "anticipated" secondary recovery (Exh. 4), a "table" the summarizes cumulative and daily production (Exh. 5), the "planned" waterflood pattern and location of tanks and injection wells (Exh. 6), "projections" for "estimated" secondary recovery (Exh. 7), and the owners' list (Exh. 8). Canady did not present a single item other than the one-page well log at Exhibit 2 that was not totally subjective and conclusory. He did not

present a single page of original business data or reports. He just conveniently summarized it all in a series of trial exhibits that prove nothing and are not "evidence."

The isopach map would be drawn differently by every single person who attempted a rendering. It conveniently includes tract 5, even though it barely includes tract 5. It conveniently includes tract 1, although it barely includes tract 1. This is not scientific or objectively replicable. It is not evidence of anything except Mr. Canady's desire to get the wells on tracts 1 and 5 into his project.

The Commission accepts Canady as an expert because he is a petroleum engineer with "decades of oil field experience." It likewise accepted Saenz because he is a petroleum geologist with decades of oil field experience. Evidence adduced at hearing, but not mentioned in the Final Order is that neither Mr. Canady nor Mr. Saenz has successfully operated a well in Kansas. Canady has 20 wells that are averaging 1.2 barrels per day. He has no successful production history in this State, and if he has been successful in other states, he could have and should have offered evidence of that success. Either Mr. Canady is not really an expert or, if he is, his opinion is not credible based in whole or in part on his historical performance in the Kansas oil and gas industry.

Canady is the Operator, a working interest holder and a royalty interest holder in this proposed unitization. In fact, Exhibit 8 reveals that Canady and his family hold all the working interests in tracts 2, 3 and 4, all the royalty interests on tract 4, and the lion's share of the royalty interest on tracts 2 and 3. Mr. Saenz also owns working interests on tract 2. The interests of the owners of tracts 1 and 5 and infinitesimal by comparison. What Mr. Canaday does not own is any surface interest. His overwhelming personal stake in this project – more so than any other individual or group of interest holders – makes the fact that his "evidence" is all demonstrative trial exhibits, prepared and presented from his point of view and not actual data or reports, even more suspect.

In addition, evidence was adduced at trial from Mrs. Byerley that Mr. Canaday was careless, lax and unresponsive to the care and restoration of her property during a previous lease. He left pieces of the failed project on the surface, refused to clean it up and thereby continued to occupy her property long after his lease expired. This is every land owner's nightmare, and now he wants leave to occupy her property once again without her permission and this Commission appears to have granted it. Mr. Canaday had that lease for five years and failed to even attempt production. He then spent several years trying to convince anyone who would listen that the lease was actually extended for some reason known only to him. Canaday's behavior as to the prior lease is highly relevant, because it reveals the extent to which his "plan" and the Commission's order ignores the Constitutional rights of tract 1 and 5 surface owners in this thinly disguised taking. Canaday's proposed unitization project is not equitable to all interest holders in the least and the fact that they are not forced to pay out of pocket for a forced stake in this project is not proof of equity.

Finally, Canady testified that his project would fail if the wells on tracts 1 and 5 were not included. In truth, Canaday could pay for additional wells just over the line in Tract 2. They would still be on the south end of his project for the purpose of water movement and based on the income projections, the cost would not be disproportionate. If this project is as potentially profitable as he claims, there is no way he would tank it instead of drilling his own wells.

WHEREFORE, counsel for the Bair Protestors requests that the Commission reconsider its order in the above-styled matter and issue a new order denying unitization, or, in the alternative, excluding tracts 1 and 5 from the unitization.

Respectfully submitted,

/s/ Michelle Mahieu

Michelle Mahieu, #19324
Mahieu Elder Law PA
100 Military Ave., Ste. 112

Dodge City, KS 67801
(620) 225-6789
mmahieu@mahieulaw.com

CERTIFICATE OF SERVICE

24-CONS-3103-CUNI

I, the undersigned, certify that a true copy of the attached **MOTION FOR RECONSIDERATION** has been served to the following by means of first class mail and/or electronic service on July 17, 2024.

Andrew J. French, Chairperson
C/O JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
j.myers@kcc.ks.gov

Dwight D. Keen
C/O JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
j.myers@kcc.ks.gov

Annie Kuether
C/O JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
j.myers@kcc.ks.gov

ROBERT J. McFADDEN, Attorney
FOULSTON SIEFKIN LLP
1551 N. Waterfront Parkway
Suite 100
Wichita, KS 67206
rmcfadden@foulston.com

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION

CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
k.marsh@kcc.ks.gov

JAKE EASTES, GEOLOGIST SPECIALIST
KANSAS CORPORATION COMMISSION
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
j.eastes@kcc.ks.gov

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

ROBERT EISEHNAUER
JOHNSTON, EISENHAUER, EISENHAUER & LYNCH, LLC
113 E. THIRD – P.O. BOX 825
PRATT, KS 67124
Johnston.eisenhauer@gmail.com

/s/ Michelle Mahieu

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Michelle Mahieu, #19324