

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

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

In the matter of the application of Neal LaFon) Docket No: 22-CONS-3422-CUNI
Realty Inc. dba Meridian Energy Inc. (Operator))
for an order authorizing the unitization and unit) CONSERVATION DIVISION
operation of the Simon Says Unit to be located in)
Rawlins County, Kansas.) License No: 33937

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

The Commission rules as follows:

I. Procedural Background

1. On May 9, 2022, Operator filed an application for an order authorizing unitization and unit operation under K.S.A. 55-1301 *et seq.*¹ Operator seeks to unitize the Topeka through Arbuckle formations within its proposed unit area in Rawlins County.²

2. On June 14, 2022, Operator filed a Motion for Grant of Application by Summary Proceedings, requesting that the Commission utilize summary proceedings available under the Kansas Administrative Procedure Act to grant Operator's application.³

3. On June 23, 2022 a prehearing conference was held.⁴

4. On June 30, 2022, the Commission issued an Order Requesting Additional Information, querying Operator regarding how the formations proposed to be unitized constituted a pool as defined under K.S.A. 55-1302(b), as K.S.A. 55-1304 only allows the Commission to make an

¹ See Application (May 9, 2022).

² See Application, ¶¶ 3, 4.

³ See Motion for Summary Proceedings (Jun. 14, 2022).

⁴ See Presiding Officer Order Setting Prehearing Conference (Jun. 13, 2022).

order providing for unitization of a pool or part thereof.⁵ Operator's May 9, 2022, application proposed that the Topeka through Arbuckle formations be operated as one unit.⁶

5. On August 5, 2022, Operator filed a response to the Commission's Order;⁷ on August 19, 2022, Commission Staff responded to that,⁸ and on September 16, 2022, Operator filed a reply.⁹

6. In its September 16, 2022, reply, Operator offered an amendment to its application, asking for approval of six distinct units, each covering one of six different formations underlying the proposed unit area.¹⁰ Operator requested the Commission accept its amended application, grant Operator's motion for summary proceedings, and enter an order granting the amended application.¹¹

II. Availability of Summary Proceedings

7. As an initial matter, to rule upon Operator's Motion for Grant of Application by Summary Proceedings, the Commission must first determine whether summary proceedings are legally available. 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.¹²

8. 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 application via summary proceedings. To make that determination, we must consider the text of the Kansas Administrative Procedure Act (KAPA).¹³ Under K.S.A. 77-511, a hearing commences when

⁵ See Order Requesting Additional Information, ¶¶ 5 (Jun. 30, 2022); K.S.A. 55-1304.

⁶ See Application.

⁷ Meridian Energy's First Response to the Commission's Information Request (Operator's Response) (Aug. 5, 2022).

⁸ Response to Operator's First Response to the Commission's Information Request (Staff's Response) (Aug. 19, 2022).

⁹ Reply to Staff's Response to Operator's First Response to Information Request (Operator's Reply) (Sep. 16, 2022).

¹⁰ See Operator's Reply, Exhibit A (First Amendment to Application).

¹¹ See Operator's Reply, at Conclusion.

¹² See K.S.A. 55-1304.

¹³ K.S.A. 77-501 *et seq.*

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 May 24, 2022, Order Designating Presiding 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. Accordingly, K.S.A. 55-1304's procedural requirement of "notice and hearing in accordance with the provisions of the [KAPA]" has been met.

9. 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.

10. 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 application in *The Wichita Eagle* and the *Rawlins County Square Deal*, and to notify various persons of the application. Further, Commission Staff's review is meant to protect the public interest. Thus, the second factor has been met.

11. Regarding the third factor, the Commission can rely here not merely upon receipt of the allegations, but also upon Staff's review of the matter. 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.

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

III. Analysis of Application – Jurisdiction & Legal Standards

13. Summary proceedings being available and appropriate, the Commission now turns to the merits of the application (as amended) itself. A review of the Commission's jurisdiction, and the legal standards the amended application must meet, is therefore necessary.

14. 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."¹⁴ 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.¹⁵

15. 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."¹⁶

¹⁴ K.S.A. 55-603.

¹⁵ See K.S.A. 55-703.

¹⁶ K.S.A. 55-1314.

16. 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 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.

17. 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.

18. 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).

19. 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 Application – Findings of Fact

20. 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 contain under K.S.A. 55-1303.¹⁷

21. 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,¹⁸ noting that Operator seeks unitization under K.S.A. 55-1304(a)(2).¹⁹

22. 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. 55-1305.²⁰ The Commission finds that incorporation of Operator’s application, amended application, and exhibits, including the Unit Agreement and Unit Operating Agreement, into this Order will satisfy the requirements of K.S.A. 55-1305.²¹ They are incorporated.

23. 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

¹⁷ See, e.g., Application ¶ 3 and First Amendment to Application, ¶ 4 (unit area description); Application ¶ 5 (type of operations); Application ¶¶ 10-12 (required allegation of facts).

¹⁸ See, e.g., Response to Operator’s Motion for Summary Proceedings, ¶ 5 (“Staff is satisfied that the grant of such Application complies with the applicable statutory and regulatory requirements.”); Staff’s Response to Operator’s First Response, ¶ 4 (“Staff has considered Operator’s application on a formation by formation basis and determined it would recommend approval of Operator’s applications if Operator was required to file applications for each formation to be part of the unit.”).

¹⁹ See Application, ¶ 10.

²⁰ See, e.g., footnote 18, *supra*.

²¹ See *id*.

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.²²

24. For ease of reference, the Commission notes the proposed units collectively contain the stratigraphic equivalent of top of the Topeka Formation to the bottom of the Arbuckle Formation, with the same expected to be encountered between 3,750 feet and 4,800 inclusive, insofar as the formations underlie the lands and leases to be unitized, specifically the following areas in Township 5 South, Range 33 West, Rawlins County:

- a. N/2 & SE/4 of Section 7; and
- b. N/2 SW/4 of Section 8.²³

25. The Commission finds notice of the application was properly served and published.²⁴

V. Conclusions of Law

26. 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 request that the Commission utilize summary proceedings to approve Operator's amended application is granted; Operator's amended application is granted.

B. The units shall be governed by the terms found in the application as amended and exhibits thereto, including the Unit Agreement and Unit Operating Agreement, which are incorporated by reference.

²² See Application, ¶ 13 and First Amendment to Application, ¶ 4; Response to Operator's Motion for Summary Proceedings, ¶ 5.

²³ See Application, ¶¶ 3, 4 and First Amendment to Application, ¶ 1.

²⁴ See Application ¶ 15; Affidavit of Publication – Wichita Eagle (filed May 13, 2022); Affidavit of Publication – Rawlins County Square Deal (filed May 17, 2022); see also K.S.A. 55-1310. The Commission agrees with Operator's analysis that the amendment to the application did not necessitate additional notice. See Operator's Reply, p. 5.

C. This order does not take effect until after the time for requesting a hearing has expired.²⁵


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.

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).²⁶

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 10/04/2022



Lynn M. Retz
Executive Director

Mailed Date: 10/04/2022

JRM

²⁵ See K.S.A. 77-537.

²⁶ 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

22-CONS-3422-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 10/04/2022.

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

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
k.marsh@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

JONATHAN A. SCHLATTER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY CHTD
300 N MEAD STE 200
WICHITA, KS 67202-2745
jschlatter@morrislaing.com

/S/ KCC Docket Room
KCC Docket Room