

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

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

In the Matter of the Application of Merit Energy) Docket No: 20-CONS-3148-CUNI
Company, LLC, for an Order Authorizing the)
Unitization and Unit Operation of the River) CONSERVATION DIVISION
Bend Chester Unit to be located in Finney)
County, Kansas.) License No: 32446

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

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

I. Procedural Background

1. On November 14, 2019, Merit Energy Company, LLC (Operator), filed an application for an order authorizing the unitization and unit operation of the River Bend Chester Unit, Finney County, Kansas, under K.S.A. 55-1301 *et seq.*¹
2. On December 5, 2019, the Commission issued an order setting this matter for a December 18, 2019, prehearing conference.²
3. On December 17, 2019, 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

¹ See Application (Nov. 14, 2019). Subsequent procedural orders (Designating Prehearing Officer; Regarding Electronic Service; Granting Time to Respond) mistakenly identified the location as Haskell County.

² See *Order Designating Prehearing Officer and Setting Prehearing Conference* (Dec. 5, 2019).

³ See *Motion for Summary Proceedings*, at Prayer (Dec. 17, 2019).

4. At the December 18, 2019, prehearing conference, parties agreed to give Commission Staff until January 10, 2020, to respond to Operator's *Motion for Summary Proceedings*.⁴

5. On January 10, 2020, Staff filed a *Response to Motion for Summary Proceedings*. Staff stated it had no objection to Operator's motion and recommended approval of the Application.⁵

II. Availability of Summary Proceedings

6. As an initial matter, to rule upon Operator's *Motion for 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.⁶

7. 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).⁷ 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. Accordingly, K.S.A. 55-1304's procedural requirement of "notice and hearing in accordance with the provisions of the [KAPA]" has been met.

⁴ See *Prehearing Officer Order Granting Staff Additional Time to Respond to Motion for Summary Proceedings* (Dec. 23, 2019).

⁵ See *Response to Motion for Summary Proceedings*, ¶¶ 5-6, Prayer (Jan. 10, 2020).

⁶ See K.S.A. 55-1304.

⁷ K.S.A. 77-501 *et seq.*

8. 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.

9. The Commission agrees with Operator's analysis of the first of the above factors in its *Motion for Summary Proceedings*; 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 *Garden City Telegram*, 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. Regarding the third factor, the Commission can rely here not merely upon receipt of the allegations, but also upon Staff's review of the application, which recommended granting of the application and indicated the application complies with all statutes and regulations.⁸ 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.

10. 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.

⁸ See *Response to Motion for Summary Proceedings*, ¶¶ 5-6, Prayer.

III. Analysis of Application – Jurisdiction & Legal Standards

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

12. 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.”⁹ 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.¹⁰

13. 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.”¹¹

14. 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

⁹ K.S.A. 55-603.

¹⁰ See K.S.A. 55-703.

¹¹ 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.

15. 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.

16. 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).

17. 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

18. 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. 55-1303.¹²

19. 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 explicitly requests unitization under K.S.A. 55-1304(a)(2).¹³

20. 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. 55-1305.¹⁴ 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.

21. 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.¹⁵

22. For ease of reference, the Commission notes the proposed unit contains the Chester formation, the stratigraphic equivalent of which is shown on the logs for the River Bend #6 (API #15-055-22505), insofar as said formation underlies the lands and leases to be unitized, specifically the following areas in Township 24 South, Range 32 West, Finney County, Kansas:

¹² See, e.g., Application ¶ 4 (unit area description); ¶ 6 (type of operations); ¶¶ 11-13 (required allegation of facts).

¹³ See Application, ¶ 11.

¹⁴ See *Response to Motion for Summary Proceedings*.

¹⁵ See Application, ¶ 14; *Response to Motion for Summary Proceedings* ("Staff is satisfied that the grant of such Application complies with the applicable statutory and regulatory requirements").

- a. Section 26: Lot 1, Lot 7, W/2 SW/4, and the Arkansas River riverbed lying in the W/2 W/2;
- b. Section 27: Lot 1, and the Arkansas River riverbed;
- c. Section 34: E/2 NE/4, and SE/4; and
- d. Section 35: W/2 NW/4.¹⁶

23. The Commission finds notice of the application was properly served and published.¹⁷

V. Conclusions of Law

24. 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 motion for the Commission to utilize summary proceedings to grant Operator's application is granted; Operator's application for an order authorizing the unitization and unit operation of its proposed River Bend Chester Unit is granted.

B. The Unit shall be governed by the terms found in the 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.¹⁸

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. 77-52, 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

¹⁶ See Application, ¶¶ 4-5, 10.

¹⁷ See Application ¶ 16, *see also* K.S.A. 55-1310.

¹⁸ See K.S.A. 77-537.

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).¹⁹

E. 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.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 01/28/2020



Lynn M. Retz
Executive Director

Mailed Date: 01/28/2020

JRM

¹⁹ 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

20-CONS-3148-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 01/28/2020.

SCOTT ALBERG, DISTRICT #1 SUPERVISOR
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 1
210 E. FRONTVIEW SUITE A
DODGE CITY, KS 67801
Fax: 785-271-3354
s.alberg@kcc.ks.gov

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

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

JONATHAN A. SCHLATTER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY CHTD
300 N MEAD STE 200
WICHITA, KS 67202-2745
Fax: 316-262-6226
jschlatter@morrislaing.com

/S/ DeeAnn Shupe

DeeAnn Shupe