

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

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

In the matter of the application of Berexco LLC for) Docket No: 23-CONS-3175-CUNI
an order authorizing the unitization and unit operation)
of the Arnold Unit in Stanton County, Kansas.) CONSERVATION DIVISION
)
_____) License No: 34318

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

The Commission rules as follows:

I. Procedural Background

1. On January 3, 2023, Berexco LLC (Operator) filed an application for an order authorizing unitization and unit operation of the Arnold Unit in Stanton County, under K.S.A. 55-1301 *et seq.*¹ On January 10, 2023, the Commission issued an order setting this matter for a January 26, 2023, prehearing conference.²

2. On February 9, 2023, Operator filed a Motion for Grant of Application by Summary Proceedings, requesting that the Commission utilize the summary proceedings available under the Kansas Administrative Procedure Act to grant Operator's application.³

3. On March 1, 2023, Staff filed a Response, stating it had no objection to Operator's motion and recommending approval of the Application.⁴

¹ See Application (Jan. 3, 2023).

² See Order Designating Presiding Officer and Setting Prehearing Conference (Jan. 10, 2023).

³ See Applicant's Submission of Pre-filed Testimony and Motion for Grant of Application by Summary Proceedings (Feb. 9, 2023).

⁴ See Response to Applicant's Submission of Pre-filed Testimony and Motion for Grant off Application by Summary Proceedings, ¶ 5, Prayer (Mar. 1, 2023).

II. Availability of Summary Proceedings

4. 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.⁵

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 application via summary proceedings. To make that determination, we must consider the text of the Kansas Administrative Procedure Act (KAPA).⁶ 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.

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

⁵ See K.S.A. 55-1304.

⁶ K.S.A. 77-501 *et seq.*

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 application in *The Wichita Eagle* and *The Johnson Pioneer*, 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.

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 application, which recommended granting of the application and indicated the application complies with all statutes and regulations.⁷ In addition, the Commission relies upon Operator's pre-filed testimony, which is accepted into the record in the manner requested by Operator.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.

9. 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

10. 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.

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

⁷ See Response to Applicant's Submission of Pre-filed Testimony and Motion for Grant off Application by Summary Proceedings, ¶ 5, Prayer.

⁸ See Applicant's Submission of Pre-filed Testimony and Mtn. for Grant of Application by Summary Proceedings, p. 1.

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

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.”¹¹

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 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

⁹ K.S.A. 55-603.

¹⁰ See K.S.A. 55-703.

¹¹ K.S.A. 55-1314.

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 Application – Findings of Fact

17. 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

¹² See, e.g., Application ¶¶ 2, 3 (unit area description); ¶ 4 (type of operations); ¶ 7 (required allegation of facts).

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,¹³ 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 the top of the Morrow Formation, of Pennsylvanian age, through the top of the Chester Formation, of Mississippian age, as the same is found between 5,016 feet and 5,486 feet, inclusive, in the Arnold E Unit #1-1, API #15-187-21320,¹⁸ insofar as said formation underlies the lands and leases to be unitized, specifically the following areas in Stanton County:

¹³ See, e.g., Response to Applicant's Submission of Pre-filed Testimony and Motion for Grant off Application by Summary Proceedings, ¶ 5 ("Staff is satisfied that the grant of such Application complies with the applicable statutory and regulatory requirements.").

¹⁴ See Application, ¶ 7(a).

¹⁵ See, e.g., Response to Applicant's Submission of Pre-filed Testimony and Motion for Grant off Application by Summary Proceedings, ¶ 5.

¹⁶ See *id.*

¹⁷ See Application, ¶ 8; Response to Applicant's Submission of Pre-filed Testimony and Motion for Grant off Application by Summary Proceedings, ¶ 5.

¹⁸ See Application, ¶ 3. The Commission took administrative notice of its records to determine the API Number, see K.A.R. 82-1-230(h).

- a. SW/4 of Section 6, Township 29 South, Range 40 West;
- b. W/2 of Section 7, Township 29 South, Range 40 West;
- c. S/2 of Section 1, Township 29 South, Range 41 West;
- d. SE/4 of the SE/4 of Section 2, Township 29 South, Range 41 West;
- e. NE/4 of Section 11, Township 29 South, Range 41 West;
- f. N/2 of Section 12, Township 29 South, Range 41 West.¹⁹

22. The Commission finds notice of the application was properly served and published.²⁰

V. Conclusions of Law

23. 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 February 9, 2023, 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 Arnold 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.²¹

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

¹⁹ See Application, ¶ 2.

²⁰ See Application ¶ 9; Certificate of Service and Proof of Publication of Notice – The Wichita Eagle and The Johnson Pioneer (Jan. 26, 2023); see also K.S.A. 55-1310. Operator's request to amend its Application by substituting an updated Notification List is granted. See Applicant's Submission of Pre-filed Testimony and Mtn. for Grant of Application by Summary Proceedings, p. 1.

²¹ See K.S.A. 77-537.


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).²²

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 03/14/2023



Lynn M. Retz
Executive Director

Mailed Date: 03/14/2023

JRM

²² 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

23-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 03/14/2023.

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