

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

In the Matter of the Application of)	Docket No. 22-CONS-3422-CUNI
Meridian Energy Inc. for an Order)	
Authorizing the Unitization and Unit)	CONSERVATION DIVISION
Operation of the Simon Says Unit)	
<u>to be located in Rawlins County, Kansas</u>)	License No. 33937

**FIRST RESPONSE TO
THE COMMISSION'S INFORMATION REQUEST**

Meridian Energy, Inc. ("Operator") submits this First Response to the Commission's Information Request ("Response") in response to the Commission's Order Requesting Additional Information dated June 30, 2022 ("Request Order"). In support of its Response, Operator states and alleges as follows:

BACKGROUND

In the Request Order the Commission cites the definition of "pool" as prescribed by K.S.A. 55-1302(b) as "an underground accumulation of oil and gas in one or more natural reservoirs in communication so as to constitute a single pressure system so that production from one part of the pool affects the pressure throughout its extent."¹ The Commission then requested "further information demonstrating the formations Operator proposes to unitize upon the lands in questions constitute natural reservoirs 'in communication so as to constitute a single pressure system so that production from one part of the pool affects the pressure throughout its extent.' To the extent Operator does not believe the formations are in communication, Operator is directed to explain how it believes the Commission has the legal basis to grant its application[.]"²

¹ Order Requesting Additional Information, ¶ 4.

² *Id.*, at ¶ 5(A).

Operator's Application seeks to unitize those depths beneath the proposed unit area from the top of the Topeka formation to the base of the Arbuckle formation ("Unitized Formations"), which would include the Lansing-Kansas City, Marmaton, and Mississippi formations, among others. Operator submitted its Application pursuant to K.S.A. 55-1304(a)(2), which provides in relevant part that:

"The commission may make an order providing for the unitization and unit operation of such pool or part thereof sought to be unitized, if . . . the commission finds all of the following conditions exist . . .

[(a)(2)] [T]he 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 thereby increase substantially the ultimate recovery of oil or gas." (emphasis added)

Operator's impression of the Request Order is that the Commission is concerned that the singular reference to "the pool" or "such pool" in K.S.A. 55-1304, which is titled "Matters to be found by the Commission precedent to issuance of unitization order", restricts the Commission's authority to grant Operator's Application, because Operator's Application seeks to unitize several formations.

Given the facts before the Commission pertaining to the Application, Operator believes that the Commission possesses the legal authority to grant the Application and order the unitization and unit operation of the Unitized Formations beneath the proposed unit area, regardless if there is one pool or several pools that would be unitized.

LEGAL AUTHORITY

A. Principals of Judicial Efficiency and the Commission's Mandate to Prevent Waste support granting the Application.

The Kansas compulsory unitization statutes ("Act") do not prohibit the Commission from granting a compulsory unitization application that seeks to unitize multiple pools in a single order.

In *Trees*, the Supreme Court found that the legislature “intended for the [Act] to be construed so that unit operations can be fostered and enhanced.” *Trees Oil Co. v. State Corp. Comm’n*, 279 Kansas 209, 229 (2005). The Supreme Court also cautioned against placing emphasis on a single phrase over the purpose of the Act as a whole, “which [is] to avoid economic waste and uneconomical methods of production.” *Id.*, at 229-230. This purpose is consistent with the “overriding obligation of the Commission to prevent waste, foster economic development, and protect correlative rights.” *Id.*, at 231. The Kansas code of civil procedure is likewise to be liberally construed “to secure the just, speedy, and inexpensive determination of every action or proceeding.” K.S.A. 60-102; *Tullis v. Pittsburg State University*, 28 Kan.App.2d 347 (2000); *In the Matter of Marriage of Welliver*, 254 Kan. 801 (1994).

It would be form over substance to emphasize the Act’s singular reference to “the pool” as the basis for denying Operator’s Application. If Operator had simultaneously filed numerous applications seeking to compel separate units for each of the formations included in the Unitized Formations, all beneath the same unit area, the Commission’s perceived concern would be entirely obviated.³ Principles of judicial efficiency and the Commission’s mandate to avoid economic waste, however, stand against the filing of numerous different voluminous applications seeking to do the same thing the present Application aims to accomplish.

There is no doubt economic waste would result if Operator were forced to file numerous largely duplicative applications. For example, the following costs associated with each application would be duplicated: (a) attorney fees to prepare and file each application, (b) printing and copying, and associated postage to serve notice of the application, and (c) newspaper publication

³ It should be noted that the mineral interests and working interests in the unit area are uniformly owned as to all depths, such that the distribution of royalties and allocation of the costs of unit operations as proposed by Operator in its plan of unit operations will be identical among all interested parties, regardless of whether there is one unit or a unit covering each of the Unitized Formations.

fees. Additionally, time would be wasted by counsel, Commission staff, and the Commission itself by duplicating the following acts for each application: (a) processing and docketing each application, (b) conducting prehearing conferences, (c) motion practice, specifically preparing and filing motions for use of summary proceedings, and (d) overall time spent reviewing the applications in order to render and prepare an order on the merits.

The Supreme Court expressly cautioned against placing emphasis over a single phrase when doing so would undermine the purpose of the Act. As demonstrated above, denying the Application on the basis that multiple formations are sought to be unitized would do exactly that.

B. *Trees* ruled that a common “Pool” is created through Wellbore Communication.

It was settled in *Trees* (and by subsequent revision to the Act’s definition of “pool” in response to *Trees*), that a series of vertically separated pools brought into pressure communication through commingling within a common wellbore satisfies the definition of “pool” under the Act. *Trees*, at 231. The plan of unit operations proposed by Operator contemplates drilling its initial vertical test wells on the unit area through all of the formations comprising the Unitized Formations. This will necessarily result in vertical wellbore commingling across the formations sufficient to create a single pool under the Act.

The only remaining question is whether wellbore commingling must exist **before** the filing of an application under the Act, notwithstanding that no such requirement exists. The Supreme Court in *Trees* recognized that “statutes are to be construed to avoid unreasonable results.” *Id.*, at 232. Here, as was the case *Trees*, the legal effect of the Commission denying Operator’s Application on the basis that multiple formations are sought to be unitized would be “immediately

ineffective,” because Operator could respond by drilling its well through the Unitized Formations⁴ and then—having created a pool as a matter of law—re-filing the same Application to achieve the same result sought under the present Application. *See, id.* As demonstrated above, the same “unreasonable result” would result if Operator were forced to file a separate unitization application for each of the formations comprising the Unitized Formations instead of one, which would likewise render a decision to deny the Application “immediately ineffective.”

The proposed plan of unit operations, once implemented, will create a common pool as a matter of law. As such, the proposed plan of unit operations contemplates a common pool sufficient to satisfy the conditions precedent of K.S.A. 55-1304, and the Commission may grant the Application.

CONCLUSION

As the Supreme Court suggested in *Trees*, the Act should not be construed to create procedural obstacles that can be easily hurdled as above demonstrated. Indeed, the overarching purpose of the Act is to promote the economic development of a pool when the extreme minority presents obstacles that cannot be legally overcome. Based on the specific facts presented in the Application and in this Response, the Commission has the legal authority to grant the Application under Supreme Court precedent, principles of judicial efficiency, and to fulfill its mandate to prevent waste and protect correlative rights.⁵ The fact that staff supports the Application, and that no party filed a protest further supports granting the Application. The Commission has the legal authority to grant Operator’s Application as submitted.

⁴ As a current working interest owner, Operator has the present right to drill a well on the proposed unit area through to the base of the Unitized Formations to create a common pool, with or without the consent of the sole non-consenting undivided mineral owner.

⁵ It is worth remembering that Commission Orders do not constitute binding precedent, and that any Order can be tailored to the facts before the Commission that are specific to this Application.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By: 


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VERIFICATION

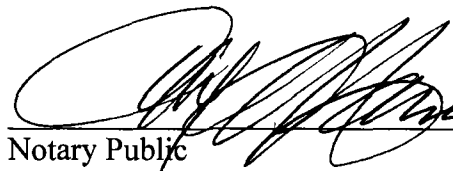
STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Jonathan A. Schlatter, being of lawful age and being first duly sworn upon his oath, deposes and says:

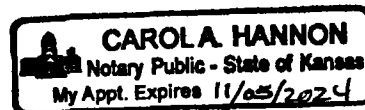
That he is the attorney for Meridian Energy, Inc.; he has read the above and forgoing First Response the Commission's Information Request and is familiar with its contents, and that the statements made therein are true and correct to the best of his knowledge and belief.


Jonathan A. Schlatter

SIGNED AND SWORN to before me this 5th day of August, 2022.


Notary Public

My Appointment expires: 11/05/2024



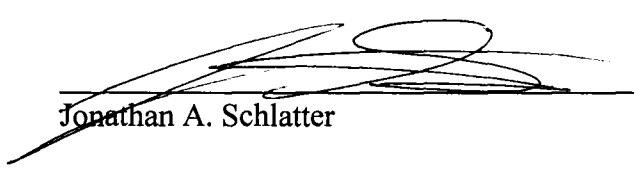
CERTIFICATE OF SERVICE

I, Jonathan A. Schlatter, hereby certify that on this 5th day of August, 2022, I caused the original of the foregoing **First Response to the Commission's Information Request** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused true and correct copies of the same to be emailed to the parties set forth below.

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