INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Haughtland Resources, LLC,
Interested Party Below, Petitioner

v.) 25-ICA-84

SWN Production Company, LLC,
Applicant Below, Respondent

RESPONDENT'S BRIEF

SWN PRODUCTION COMPANY, LLC

By Counsel

Robert M. Stonestreet (W. Va. Bar No. 9370)
Timothy M. Miller (W. Va. Bar No. 2564)
Babst, Calland, Clements & Zomnir, P.C.
300 Summers Street, Suite 1000
Charleston, WV 25301
681-205-8888
681-205-8814 fax
rstonestreet@babstcalland.com
tmiller@babstcalland.com

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I. Introduction and Executive Summary.

The key question presented in this appeal is easy to answer: does the evidence of record presented to the West Virginia Oil and Gas Conservation Commission ("Commission") support the Commission's finding that, prior to filing a unitization application, Respondent SWN Production Company, LLC ("SWN") "made multiple good faith offers" to Petitioner Haughtland Resources, LLC ("Haughtland") to obtain Haughtland's consent to include the subject lease in a pooled unit for the Marcellus Shale formation? The answer to that question is undeniably "yes" because the record includes the following evidence:

- An affidavit of SWN representative, Monty Mayfield, describing three pre-application offers made to Haughtland to obtain consent to include the leased property in a pooled unit for the Marcellus Shale.[1] Those offers were made on the following dates: February 15, 2024, October 2, 2024, and December 5, 2024.
- An email exchange between SWN representative, Paul Bacho, and Haughtland's principal, Brian Corwin, reflecting the specific terms of the offer made on February 15, 2024 to obtain Haughtland's consent to include the leased property in a pooled unit for the Marcellus Shale (payment of $500 per acre).[2]
- A letter from SWN representative, Cooper Farrish, to Mr. Corwin reflecting the specific terms of the offer made on October 2, 2024 to obtain Haughtland's consent to include the leased property in a pooled unit for the Marcellus Shale (payment of $545.31 per acre).[3]
- Testimony by SWN representative, Mr. Mayfield, concerning the offers described above.[4]

[1] D.R. 0224 (Mayfield affidavit); 0234 (exhibit to Mayfield affidavit).
[2] D.R. 0397 (email exchange with Haughtland).
[3] D.R. 0439 (letter to Haughtland)
[4] D.R. 0028 (hearing transcript of Mayfield testimony).

The Court need go no further to resolve this appeal. Under black letter law, the Commission's factual finding that SWN made a good faith effort to obtain Haughtland's consent to pooling is entitled to deference and should not be disturbed unless "clearly wrong" – meaning the finding lacks any evidentiary support. Since there is evidence in the record to support the Commission's finding, this Court should summarily affirm the Commission's order.

Haughtland's assignment of error alleging that the Commission made a legal ruling concerning the validity or scope of Haughtland's lease is a red herring. The Commission did nothing more than acknowledge the existence of the lease and certain facts about the lease that were not in dispute.

II. Statement of the Case.

A. General background.

This appeal arises from an order issued by the Commission on February 13, 2025[5] approving the formation of Gerald Gourley Southwest Unit ("Gourley Unit"), which is a horizontal well unit for the Marcellus Shale formation consisting of 112 separate tracts of real property in Brooke County, West Virginia.[6] A "horizontal well unit" (also known as a "pooled unit") is a collection of multiple tracts of real property for the purpose of oil and gas drilling and/or production, usually via horizontal wells.[7] All the tracts included in a pooled unit are allocated a proportionate share of the revenues generated from wells drilled into the unit based on the amount of acreage in each tract that is included within the unit.[8] For example, assume a pooled unit contains 100 acres that spans across 20 different tracts, and five acres of each tract are within the unit boundary (i.e. each tract contributes 5% of the total unit acreage). Each tract would be

[5] D.R. 0001 – 0012 (Commission's Order).
[6] D.R. 0144 (SWN's application).
[7] West Virginia Code § 22C-9-7a(b)(3).
[8] West Virginia Code § 22C-9-7a(b)(3).

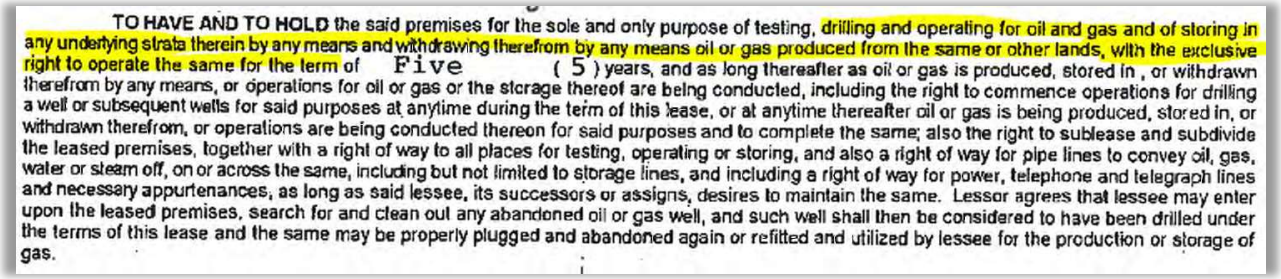
allocated 5% of the production of oil and gas from the unit for purposes of calculating royalties payable to each mineral owner. If the total production from the well during a month was 100,000 cubic feet, then each tract would be considered to have produced 5% of that total (i.e. 5,000 cubic feet). The mineral owner of each tract would then be paid a royalty on 5,000 cubic feet of gas according to the rate established under the applicable lease.

As authorized by West Virginia Code § 22C-9-7a, the Commission has the authority, under specific circumstances, to form pooled units that include properties for which the mineral owner either has not granted a lease or has not agreed to amend an existing lease that lacks authorization for the lessor to include the property in a pooled unit. The statute requires an oil and gas operator to obtain voluntary consent from at least 75% of the mineral owners within a proposed unit, along with at least 55% of the oil and gas operators who have their own development rights for properties within the unit, prior to submitting an application to the Commission to form a pooled unit that includes unleased mineral tracts or leased tracts without pooling rights.[9] With respect to the mineral owners and operators who have not consent to pooling, the applicant must present evidence that it made a good faith attempt to obtain a lease or consent to pool prior to submitting an application for a pooled unit.[10] Upon such a demonstration, the Commission is authorized to form a pooled unit that includes the properties for which the applicant was unable to obtain consent.[11] As part of that process, the Commission determines the amount of compensation to be paid to the non-consenting mineral owners and operators for inclusion of their properties in the pooled unit, which is a function of what mineral owners and operators of other properties within the unit were paid.[12]

[9] West Virginia Code § 22C-9-7a(c)(2)(A) and (B).
[10] West Virginia Code § 22C-9-7a(c)(2)(C)(i) and (ii).
[11] West Virginia Code § 22C-9-7a(c)(5).
[12] West Virginia Code § 22C-9-7a(f)(6) and (7).

B. Evidence presented to the Commission concerning the proposed Gourley Unit.

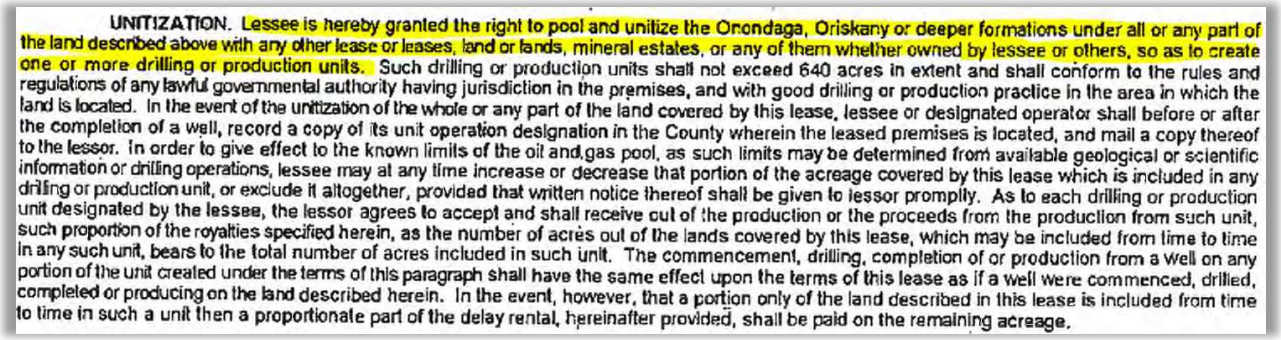
SWN submitted an application to Commission dated December 13, 2024 requesting an order forming the Gourley Unit, which applies to the Marcellus Shale only ("Application").[13] The Application included seven exhibits reflecting various information about the proposed unit.[14] Most relevant here is an affidavit from SWN representative, Monty Mayfield, reflecting SWN's efforts to obtain leases of unleased tracts and consents to pool for tracts governed by a lease that lacks authorization for pooling.[15] Mr. Mayfield's affidavit identified Haughtland as an "Owner with Lease Containing Non-Conforming Pooling Provision."[16] Mr. Mayfield later testified that this means the Haughtland property is governed by an oil and gas lease, but the lease does not reflect sufficient rights for SWN to include it in the proposed Gourley Unit without further consent from Haughtland.[17] As shown in the image below, the Haughtland lease reflects language granting rights for all geologic formations underlying the property:[18]



TO HAVE AND TO HOLD the said premises for the sole and only purpose of testing, drilling and operating for oil and gas and of storing in any underlying strata therein by any means and withdrawing therefrom by any means oil or gas produced from the same or other lands, with the exclusive right to operate the same for the term of Five (5) years, and as long thereafter as oil or gas is produced, stored in , or withdrawn therefrom by any means, or operations for oil or gas or the storage thereof are being conducted, including the right to commence operations for drilling a well or subsequent wells for said purposes at anytime during the term of this lease, or at anytime thereafter oil or gas is being produced, stored in, or withdrawn therefrom, or operations are being conducted thereon for said purposes and to complete the same; also the right to sublease and subdivide the leased premises, together with a right of way to all places for testing, operating or storing, and also a right of way for pipe lines to convey oil, gas, water or steam off, on or across the same, including but not limited to storage lines, and including a right of way for power, telephone and telegraph lines and necessary appurtenances, as long as said lessee, its successors or assigns, desires to maintain the same. Lessor agrees that lessee may enter upon the leased premises, search for and clean out any abandoned oil or gas well, and such well shall then be considered to have been drilled under the terms of this lease and the same may be properly plugged and abandoned again or refitted and utilized by lessee for the production or storage of gas.

However, the lease only authorizes pooling for geologic formations below the Marcellus – namely the Onondaga formation and deeper formations (see image below):[19]

[13] D.R. 0141 – 0149 (application).
[14] D.R. 0150 – 0239 (exhibits 1 – 7 to Application).
[15] D.R. 0223 – 0224 (Mayfield affidavit).
[16] D.R. 0234 (exhibit to Mayfield affidavit).
[17] D.R. 0032; D.R. 0100 – 0101 (Mayfield testimony).
[18] D.R. 0257 (lease with highlighting added).
[19] D.R. 0257 (lease with highlighting added).



UNITIZATION. Lessee is hereby granted the right to pool and unitize the Onondaga, Oriskany or deeper formations under all or any part of the land described above with any other lease or leases, land or lands, mineral estates, or any of them whether owned by lessee or others, so as to create one or more drilling or production units. Such drilling or production units shall not exceed 640 acres in extent and shall conform to the rules and regulations of any lawful governmental authority having jurisdiction in the premises, and with good drilling or production practice in the area in which the land is located. In the event of the unitization of the whole or any part of the land covered by this lease, lessee or designated operator shall before or after the completion of a well, record a copy of its unit operation designation in the County wherein the leased premises is located, and mail a copy thereof to the lessor. In order to give effect to the known limits of the oil and gas pool, as such limits may be determined from available geological or scientific information or drilling operations, lessee may at any time increase or decrease that portion of the acreage covered by this lease which is included in any drilling or production unit, or exclude it altogether, provided that written notice thereof shall be given to lessor promptly. As to each drilling or production unit designated by the lessee, the lessor agrees to accept and shall receive out of the production or the proceeds from the production from such unit, such proportion of the royalties specified herein, as the number of acres out of the lands covered by this lease, which may be included from time to time in any such unit, bears to the total number of acres included in such unit. The commencement, drilling, completion of or production from a well on any portion of the unit created under the terms of this paragraph shall have the same effect upon the terms of this lease as if a well were commenced, drilled, completed or producing on the land described herein. In the event, however, that a portion only of the land described in this lease is included from time to time in such a unit then a proportionate part of the delay rental, hereinafter provided, shall be paid on the remaining acreage.

There is no dispute that the Marcellus Shale formation is geologically shallower than the Onondaga, Oriskany, or deeper formations. Thus, the Haughtland lease does not grant rights to include the property in a pooled unit for the Marcellus Shale formation.

With respect to the Haughtland tract at issue, Mr. Mayfield's affidavit identifies three different offers extended to Haughtland to obtain consent to include the tract in a pooled unit for the Marcellus Shale.[20] These were made on February 15, 2024, October 2, 2024, and December 5, 2024. Mr. Mayfield's affidavit further states that "SWN has made good faith offers and efforts to obtain leases with any unleased mineral owners in the proposed Unit, and to obtain consent to pooling and unitization from the owners of interests in the proposed unit that are covered by leases lacking sufficient pooling and unitization provisions[.]"[21]

In response to the Application, Haughtland submitted an "Objection" to the Commission on January 26, 2025 setting forth three grounds for why Haughtland believed the Commission should deny the Application: (1) SWN failed to negotiate in good faith to obtain Haughtland's consent to include its property in a pooled unit for the Marcellus Shale;[22] (2) the proposed unit would result in orphaned acreage, dilution of the hydrocarbon interests, and duplication of

[20] D.R. 0234 (exhibit to Mayfield affidavit).
[21] D.R. 0224 (Mayfield affidavit).
[22] D.R. 0245 – 0247 (Haughtland Objection).

unitization of acreage for the same formation;[23] and (3) Haughtland's tract should be treated as unleased for purposes of the Marcellus Shale formation.[24] Accompanying this Objection are multiple documents, including the October 2, 2024 letter from SWN reflecting the specific terms of one of the offers made by SWN to obtain Haughtland's consent to include the relevant tract in a Marcellus Shale pooled unit.[25]

Another document included with the Objection is a civil complaint filed by Haughtland against SWN in the Circuit Court of Brooke County, West Virginia.[26] In that complaint, Haughtland asserts three claims (1) that SWN breached the lease with Haughtland by including the property in a different pooled unit for the Marcellus Shale - the Nick Ballato Southeast Unit – and drilling a Marcellus Shale well through the Haughtland tract; (2) SWN failed to properly pay royalties to Haughtland based on the production of oil and gas from wells drilled into the Nick Ballato Southeast Unit; and (3) SWN's production of oil and gas from wells underlying the Haughtland tract constitutes conversion (i.e. wrongfully exercising dominion over Haughtland's property).[27] Notably, Haughtland's complaint does not assert a declaratory judgment claim alleging the lease is invalid as to the Marcellus Shale, nor does the "Prayer for Relief" section request such a ruling.[28]

In addition to the Objection, Haughtland submitted to the Commission a "Statement of Brian Corwin – Owner, Haughtland Resources, LLC – Submitted for Inclusion on the Record" ("Corwin Statement").[29] Like the Objection, multiple exhibits were attached to Corwin Statement, including a series of email communications between Mr. Corwin and SWN representative, Paul

[23] D.R. 0247 – 0248 (Haughtland Objection).
[24] DR. 0248 – 0250 (Haughtland Objection).
[25] D.R. 0396 – 0398 (October 2, 2024 letter to Haughtland with offer to obtain pooling rights).
[26] D.R. 0262 – 0277 (complaint).
[27] D.R. 0269 – 0276 (complaint).
[28] D.R. 0275 – 0276 (complaint).
[29] D.R. 0409 – 0418 (Corwin statement).

Bacho, reflecting negotiations over SWN's request for Haughtland to amend the lease to authorize the property to be included in a pooled unit for the Marcellus Shale formation.[30] SWN specifically offered to pay Haughtland $500 per acre to obtain consent to pool.[31]

On January 29, 2025, the Commission held a hearing on the Application.[32] SWN presented testimony from multiple witnesses, including Mr. Mayfield, who testified about SWN's good faith efforts to obtain consent to include Haughtland's tract in the proposed Gourley Unit.[33] Haughtland was afforded the opportunity to question all of SWN's witnesses and to present evidence on its own behalf for the Commission to consider. Haughtland solicited testimony from only Mr. Mayfield[34] and did not present any witnesses on its own behalf.

As required by West Virginia Code § 22C-9-7a(g)(4), the Commission received a financial report from a third-party law firm, Cutright Law, calculating $3,995.13 as the weighted average monetary bonus paid, per net mineral acre, by SWN to other mineral owners in connection with leasing the area of the Marcellus Shale within the boundaries of the proposed unit. By operation of the same statute, and as found by the Commission, the amount payable to royalty owners of leased tracts within the pooled unit who have not consented to pooling equals 25% of that weighted average bonus amount – i.e. $998.78.[35] This figure does not represent any type of market-based amount paid to obtain pooling rights for leases that do not already grant such rights. Rather, it is the result of a simple mathematical calculation prescribed by the statute.

After closing the hearing, the Commission members deliberated in private.[36] Upon their return, the Commission announced a decision to approve SWN's application for the Gourley

[30] D.R. 0425 – 0443 (email exchanges between Haughtland and SWN).
[31] D.R. 0439 (offer to obtain pooling rights).
[32] D.R. 0013 (hearing transcript cover page).
[33] D.R. 0032; D.R. 0100 – 0101 (Mayfield testimony).
[34] D.R. 0097 – 0127 (transcript of Mayfield testimony).
[35] D.R. 0010 (Commission's Order); West Virginia Code § 22c-9-7a(f)(6).
[36] D.R. 0128 (transcript).

Unit.[37] The Commission later entered a written order forming the unit dated February 13, 2025.[38] Haughtland's appeal followed.

III. Summary of Argument.

This Court should affirm the Commission's final order because the record evidence supports the Commission's finding that, prior to filing a unitization application, SWN "made multiple good faith offers" to Haughtland to obtain consent to include the leased acres in a pooled unit for the Marcellus Shale formation[39] The record includes evidence describing three pre-application offers to made to Haughtland to obtain consent to include the leased property in a pooled unit for the Marcellus Shale.[40] The record also includes the actual communications conveying the terms of two of those offers[41] along with testimony by SWN representative, Mr. Mayfield, that all the offers were made in good faith to obtain consent to include the Haughtland leased area in a pooled unit for the Marcellus Shale formation.[42]

The Commission did not make any legal rulings concerning the validity or scope of Haughtland's lease. Rather, the Commission merely observed what nobody disputed – that the lease exists, a portion of the leased area is within a separate Utica Shale pooled unit, and the lease does not include any pooling rights for the Marcellus Shale.

IV. Statement Regarding Oral Argument.

SWN does not believe oral argument is warranted in this case. Resolution of the appeal involves simply determining whether evidence exists in the record before the Commission that would support the Commission's ruling. As noted in the Introduction above and explained below,

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[37] D.R. 0129 – 0130 (transcript reflecting decision on application).
[38] D.R. 0001 – 0011 (Commission's Order).
[39] D.R. 0006 (Commission's Order).
[40] D.R. 0234 (exhibit to Mayfield affidavit).
[41] D.R. 0397; 0439 (communications conveying terms of pooling offers).
[42] D.R. 0028 (transcript of Mayfield testimony).

such evidence is easily identified. Given the deferential standard that governs this Court's review of the Commission's factual findings, oral argument would not aid the Court's decision-making process in this case. Rather, this Court can simply affirm the Commission's order based on the evidence supporting the Commission's order as described in parties' briefs.

V. Argument.

A. Standard of review.

The applicable standard of review for this Court to apply to the Commission's order is set forth in West Virginia Code § 29A-5-4(g):

> The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the statutory authority or jurisdiction of the agency;
>
> (3) Made upon unlawful procedures;
>
> (4) Affected by other error of law;
>
> (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Based on the arguments in the opening brief, Haughtland effectively contends that the Commission was "clearly wrong" and acted in an "arbitrary and capricious" manner in reaching the factual finding that SWN made a good faith effort to obtain Haughtland's consent to pool the leased tract prior to filing a unitization application.[43] The West Virgina Supreme Court has long recognized that the "'clearly wrong' and the 'arbitrary and capricious' standards of review are

[43] Opening Brief at 8 – 9.

deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." *W. Va. Land Res., Inc. v. Am. Bituminous Power Partners*, Ltd. P'ship, 248 W. Va. 411, 413, 888 S.E.2d 911, 913 (2023) (quoting Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)).

To determine whether an agency's factual finding is "clearly wrong," a reviewing court "must evaluate the record of the agency's proceeding to determine whether there is evidence on the record as a whole to support the agency's decision." *Ruby v. Ins. Comm'n*, 197 W. Va. 27, 32, 475 S.E.2d 27, 32 (1996). Evidence to support an agency's conclusion means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *In re Queen*, 196 W. Va. 442, 446, 473 S.E.2d 483, 487 (1996). Courts should not second-guess an agency's factual conclusions drawn from the evidence. "If the Commission's factual finding is supported by substantial evidence, **it is conclusive.** Neither this Court nor the circuit court may supplant a factual finding of the Commission merely by identifying an alternative conclusion that could be supported by substantial evidence." *In re Queen*, 196 W. Va. 442, 446, 473 S.E.2d 483, 487 (1996) (emphasis added). *See also* Syl. Pt. 1, *Francis O. Day Company Inc. v. Director, Division of Environmental Protection*, 191 W. Va. 134, 443 S.E.2d 602 (1994) ("Evidentiary findings made at an administrative hearing should not be reversed unless they are clearly wrong.").

In evaluating whether sufficient evidence exists to support an agency's decision, this Court is not limited to the rationale stated by the agency. Rather, an agency's decision should be affirmed if it is correct on any grounds, even those not articulated in an agency's order. *U. S. Steel Mining Co., LLC v. Helton*, 219 W. Va. 1, 3 n.3, 631 S.E.2d 559, 561 (2005) ("A reviewing court may affirm a lower tribunal's decision on any grounds."); *Yourtee v. Hubbard*, 196 W. Va. 683, 690, 474 S.E.2d 613, 620 (1996) ("In reviewing an appeal of a circuit court's order, we look not to the

correctness of the legal ground upon which the circuit court based its order, but rather, to whether the order itself is correct, and we will uphold the judgment if there is another valid legal ground to sustain it.").

B. Evidence in the record supports the Commission's determination that SWN satisfied the statutory requirements to obtain approval of the Gourley Unit (Assignments of Error Nos. 1 and 2).

In light of the applicable standard of review, the question for this Court to answer is whether the record evidence supports the Commission's finding that, prior to filing a unitization application, SWN "made multiple good faith offers" to Haughtland to obtain consent to include the leased acres in a pooled unit for the Marcellus Shale formation?[44] The answer to that question is undeniably "yes" because the record includes the following evidence:

- An affidavit of SWN representative, Monty Mayfield, describing three pre-application offers to made to Haughtland to obtain consent to include the leased property in a pooled unit for the Marcellus Shale.[45] Those offers were made on the following dates: February 15, 2024, October 2, 2024, and December 5, 2024.
- An email exchange between SWN representative, Paul Bacho, and Haughtland's principal, Brian Corwin, reflecting the specific terms of the offer made on February 15, 2024 to obtain Haughtland's consent to include the leased property in a pooled unit for the Marcellus Shale (payment of $500 per acre).[46]
- A letter from SWN representative, Cooper Farrish, to Mr. Corwin reflecting the specific terms of the offer made on October 2, 2024 to obtain Haughtland's consent to include the leased property in a pooled unit for the Marcellus Shale (payment of $545.31 per acre).[47]

[44] D.R. 0006 (Commission's Order).
[45] D.R. 0234 (exhibit to Mayfield affidavit).
[46] D.R. 0397 (email exchange with Haughtland regarding pooling offer).
[47] D.R. 0439 (letter to Haughtland regarding pooling offer).

- Testimony by SWN representative, Mr. Mayfield, that these offers were good faith efforts to obtain consent to include the Haughtland leased area in pooled unit for the Marcellus Shale formation.[48]

Under black letter law, so long as the Commission's factual finding that SWN made a good faith effort to obtain Haughtland's consent to pooling is supported by evidence in the record, that finding is entitled to deference and should not be disturbed. Since there is evidence in the record to support the Commission's finding, this Court should summarily affirm the Commission's order.

Rather than reckon with this reality, Haughtland attempts to side-step the record evidence in multiple ways. None of Haughtland's contentions have merit.

1. Haughtland ignores evidence in the record reflecting the details of offers made to obtain pooling rights.

Haughtland pretends that the evidence cited above does not exist by claiming that "[t]here is nothing in Mr. Mayfield's Affidavit or oral testimony, nor anywhere else in the record, that could conceivably allow the [Commission] to determine that SWN made any 'good faith offers to Haughtland.'"[49] That is patently untrue. As indicated above, the evidence before the Commission included the specific details of two of the three offers made to Haughtland, plus Mr. Mayfield's testimony that SWN made good faith efforts.[50] The Commission is entitled to accept and rely upon this evidence, which supports the Commission's finding that SWN did make a good faith effort to obtain Haughtland's consent to pooling prior to filing a unitization application.

[48] D.R. 0028 (transcript of Mayfield testimony).
[49] Opening Brief at 12.
[50] D.R. 0028 (transcript of Mayfield testimony); 0397 (pooling offer); and 0439 (pooling offer).

2. The source of evidence in the record is irrelevant.

Haughtland claims that "SWN failed to present any evidence to the [Commission] regarding the substance of any alleged offers."[51] Who presented such evidence is irrelevant. The question is whether there is any evidence in the record "regarding the substance of any alleged offers." The answer is yes as noted above. The written correspondence reflecting two of the three offers to Haughtland are in materials submitted to the Commission and made part of the record considered by the Commission.[52]

3. Pooling compensation ordered by the Commission is not a reflection of "market rate" and Commission members are equipped to determine whether pooling offers are in "good faith."

Haughtland argues that the $545.31 per acre offer made to Haughtland cannot be considered in good faith because the Commission ultimately ordered payment of $998.78 per acre to Haughtland.[53] This argument fails because $998.78 is an arbitrary figure established under the unitization statute. West Virginia Code § 22C-9-7a(f)(6) states as follows: "With respect to royalty owners of leased tracts who have not consented to pooling or unitization, the commission shall require that unitization consideration be paid to executive interest royalty owners in an amount equal to 25 percent of the weighted average monetary bonus amount on a net mineral acre basis[.]" The independent law firm that prepared the economic calculations required by statute, Cutright Law, calculated two different "weighted average monetary bonus" amounts.[54] As stated in Cutright's report, one figure, $3,995.13, was derived by using lease bonus amounts actually paid by SWN.[55] The second figure, $3,238.33, was derived from bonuses paid for leases that are now controlled by SWN (i.e. existing leases that SWN acquired rather than new leases that SWN

[51] Opening Brief at 12.
[52] D.R. 0397; 0439 (correspondence reflecting details of pooling offers made).
[53] Opening Brief at 14. The Commission's finding is set forth at D.R. 0010.
[54] D.R. 0241 – 0243 (Cutright Law economic analysis).
[55] D.R. 0242 (Cutright Law economic analysis).

signed).[56] The Commission chose to adopt the higher figure of $3,995.13, and 25% of that figure is $998.78.[57] Had the Commission adopted the lower figure of $3,238.33, the unitization consideration payable to Haughtland would have been $809.58. There is no evidence indicating that either of these figures reflect any kind of "market rate" or other benchmark against which this Court could rightly measure the amounts offered by SWN to obtain pooling rights for the Haughtland lease.

The Commission did not need to receive evidence of market conditions to determine SWN's offers were made in good faith. Four of the five Commission members are required by statute to have experience in oil and gas. *See* West Virginia Code § 22C-9-4(a). Two of the members are officials with the West Virginia Department of Environmental Protection: the Director/Secretary of the Department and the Chief of the Office of Oil and Gas within the Department. *Id.* Of the three other members, one shall be "an independent producer" and the other "shall possess a degree from an accredited college or university in engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry," who serves as the Chair of the Commission. *Id.* These individuals possess expertise within the oil and gas industry and are well equipped to evaluate whether offers to obtain pooling rights are made in good faith.

4. Offers to obtain pooling rights for Haughtland's entire lease qualify as good faith efforts.

Relegated to a footnote, Haughtland contends that offers to obtain pooling rights for the entire lease, which includes acreage beyond the areas proposed for the Gourley Unit, "cannot support a finding of good faith even if they were relevant for purposes of the Application."[58]

[56] D.R. 0242 (Cutright Law economic analysis).
[57] D.R. 0009 (Commission's Order).
[58] Opening Brief at 14, n. 4.

Haughtland cites no law in support of this proposition – likely because there is none. In addition the absence of any legal support, Haughtland's position makes no sense. The unitization statute requires good faith efforts to obtain consent to pooling from mineral owners "having executory interests in the oil and gas in the target formation within the acreage to be included" in the proposed pooled unit. West Virginia Code § 22C-9-7a(c)(2)(C)(i). Offers to amend a lease to grant pooling rights to all the acreage governed by a lease perforce includes any portion of the leased area that would be "within the acreage to be included" in a proposed unit. In other words, if a lease governs 50 acres and only 25 of those acres are proposed to be included in pooled unit, good faith efforts to obtain a lease amendment granting rights to pool the entire lease would necessarily include the 25 acres designated for a proposed unit. There is no statutory or other legal basis for the Commission to refuse to consider offers to obtain pooling rights for an entire lease when evaluating whether an applicant satisfied the "good faith" obligation. Likewise, there is no basis for this Court to do so either.

5. This Court need not make new law establishing types of evidence that must be submitted to the Commission.

Haughtland asks this Court to essentially make new law establishing the type and substance of information that an applicant must submit to the Commission to support a finding that good faith efforts to obtain consent to pooling were made prior to pursuing unitization.[59] Specifically, Haughtland asks this Court to effectively re-write West Virginia's unitization statute to mirror statutes and regulations adopted by other states. That includes a requirement for applicants to submit evidence reflecting the details of offers made to obtain pooling rights along with evidence to demonstrate that such offers were "consistent with fair market value as indicated by comparable

[59] Opening Brief at 15 – 20.

arms'-length leases."[60] "[T]his Court should instruct the OGCC, similar to the guidance provided by the Texas and Oklahoma courts, that the OGCC's determination must be based at least on evidence of the actual offer made and the prevailing market."[61] The Court should decline Haughtland's invitation because it would be wholly improper to judicially impose evidentiary criteria for the Commission to apply when making determinations as to whether an applicant satisfied the statutory good faith requirement for pursuing pooling rights.

When promulgating the statute establishing the process by which the Commission may form pooled units, the Legislature did not create evidentiary criteria for the Commission to apply when making factual findings. The judicial branch should not impose requirements on the Commission that the Legislature chose to omit. *See Banker v. Banker*, 196 W. Va. 535, 547, 474 S.E.2d 465, 477 (1996) ("Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted."); *Bevins v. W. Va. Office of the Ins. Comm'r*, 227 W. Va. 315, 327, 708 S.E.2d 509, 521 (2010) ("It is not the province of the courts to make or supervise legislation, and a statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled or rewritten." (cleaned up) (quoting *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 145, 107 S.E.2d 353, 358 (1959)). Imposing standards of what evidence an applicant must submit to the Commission to establish good faith efforts to obtain pooling rights would effectively re-write the statute, which is something courts should not do.

Moreover, as Haughtland acknowledges in its brief, the Commission has statutory authority to promulgate regulations, should it decide to do so, to implement the statutes within the

[60] Opening Brief at 16.
[61] Opening Brief at 19.

Commission's authority.[62] Such regulations must go through the rulemaking process, which requires legislative approval. *See* West Virginia Code § 22C-9-5 ("The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code . . . .."). Whether the Commission could, or should, promulgate valid regulations establishing the evidentiary standard that Haughtland proposes is not a question before this Court. However, it is certainly not this Court's role to unilaterally impose evidentiary standards on the Commission by judicial declaration that neither the Commission nor the Legislature have adopted through their respective law-making processes.

C. The Commission's observation of the existence of a lease does not constitute a legal finding concerning the validity of the lease (Assignment of Error No. 3).

In what amounts to barely two pages of discussion, Haughtland accuses the Commission of making a legal determination concerning the validity or scope of the subject lease between Haughtland and SWN.[63] As mentioned above, Haughtland has a separate civil action pending that challenges whether the lease conveys rights to develop the Marcellus Shale formation underlying the leased property.[64] During the unitization hearing, the Commission rightly advised Mr. Corwin that the Commission lacked the authority to make any legal rulings concerning the scope of its lease with SWN.[65] In its final order, the Commission acknowledged Haughtland's objections, which included a description of the Haughtland lease and observed that the lease does not grant pooling rights for the Marcellus Shale formation, which no party disputed.[66] The Commission also acknowledged that a separate pooled unit for the Utica Shale formation (Samuel Hubbard North

[62] Opening Brief at 19.
[63] Opening Brief at 20 – 22.
[64] D.R. 0278 – 0286 (complaint).
[65] D.R. 0106 (transcript).
[66] D.R. 0006 (Commission's Order).

Unit) includes a portion of the leased area.[67] The final order does not reflect any conclusions of law concerning the lease. Rather, the final order identifies the compensation to be paid to both unleased mineral owners and mineral owners who did not grant pooling rights without specifying which of these groups would encompass Haughtland's lease with SWN.[68]

Haughtland contends that the Commission's recognition of its lease and the absence of pooling rights for the Marcellus Shale formation somehow amounts a legal ruling concerning the scope or validity lease.[69] Such a position is untenable. The Commission's mere acknowledgment of the lease does not constitute a legal ruling about the lease. The Commission just observed what nobody disputed – that the lease exists, a portion of the leased area is within a Utica Shale pooled unit, and the lease does not include any pooling rights for the Marcellus Shale formation. There is simply no basis to legitimately claim that the Commission's final order reflects legal rulings concerning the scope or validity of the lease.

* * *

[67] D.R. 0006 (Commission's Order).
[68] D.R. 0009 – 0010 (Commission's Order).
[69] Opening Brief at 22.

V. Conclusion.

For all the reasons set forth above, this Court should affirm the Commission's order in all respects. Substantial evidence exists in the record to support the Commission's factual finding that SWN made good faith efforts to obtain Haughtland's consent to include its property in pooled unit for the Marcellus Shale formation prior to submitting a unitization application. The Commission's observations about the subject lease do not constitute legal rulings concerning the scope or validity of the lease.

SWN Production Company, LLC

By Counsel,

/s/ *Robert M. Stonestreet*
Robert M. Stonestreet, Esquire (WVSB #9370)
Timothy M. Miller, Esquire (WVSB #2564)
Babst Calland, P.C.
300 Summers Street, Suite 1000
Charleston WV 25301
681-205-8888
rstonestreet@babstcalland.com
tmiller@babstcalland.com

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Haughtland Resources, LLC,
Interested Party Below, Petitioner

v.) 25-ICA-84

SWN Production Company, LLC,
Applicant Below, Respondent

CERTIFICATE OF SERVICE

The undersigned, as counsel for SWN Production Company, LLC, hereby certifies that a true and correct copy of the ***Respondent's Brief*** was filed on this 12th day of June, 2025, through this Court's File & ServeXpress system which will send an electronic notification to counsel of record as follows:

Kerri C. Sturm, Esq.
Clark Hill PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219
412-394-2306
ksturm@clarkhill.com
Counsel for Petitioner Haughtland Resources, LLC

John R. Whipkey, Esq.
Clark Hill PLC
1290 Suncrest Towne Centre
Morgantown, WV26505
412-394-2318
jwhipkey@clarkhill.com.com
Counsel for Petitioner Haughtland Resources, LLC

J. Anthony Edmond Jr., Esq.
Edmond & Baum, PLLC
1300 Market Street, Suite 102
Wheeling, WV 26003
aedmond@edmondbaumpllc.com
Counsel for Haughtland Resources, LLC

Paul J. Atencio, Esq.
Christopher J. Hall, Esq.
Atencio Hall, PLLC
409 Elk Street, Suite 100
Carnegie, PA 15106
Counsel for Respondent SWN Production Company, LLC

/s/ Robert M. Stonestreet
Robert M. Stonestreet (W. Va. Bar No. 9370)