IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

AMY HULL-WRIGHT, MICHAEL HULL,
BETTY GARRETT SCHMIDT,
Trustee of the Betty Schmidt Revokable Trust,
SUSAN SCHWARTZ, and MITCHELL GARRETT,
Interested Parties Below, Petitioners

v.) No. 26-ICA-152 (Oil and Gas Conservation Comm'n Docket No. 424, Cause No. 535, Order No. 1)

ARSENAL RESOURCES, LLC,
Applicant Below, Respondent

MEMORANDUM DECISION

Petitioners Amy Hull-Wright, Michael Hull, Betty Garrett Schmidt, Trustee of the Betty Schmidt Revokable Trust, Susan Schwartz, and Mitchell Garrett appeal the March 31, 2026, order from the Oil and Gas Conservation Commission of West Virginia ("Commission"). The order granted the application filed by Respondent Arsenal Resources, LLC ("Arsenal") to form a Marcellus shale formation horizontal drilling unit under provisions of the Oil and Gas Conservation Act ("Act") which provides for the forced pooling of mineral interests through a process known as unitization. Arsenal filed a response.[1] Petitioners filed a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Commission's order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

In compliance with the Act, Arsenal filed an application on September 22, 2025, to unitize the oil and gas tracts within a target formation to create the Gamelli 212 Unit, consisting of 502.504 acres. *See* W. Va. Code § 22C-9-7a (2022). At the time of filing, the application stated that Arsenal had obtained consent from enough royalty interest owners

[1] Petitioners are represented by Edmund L. Wagoner, Esq., and Matthew B. Hansberry, Esq. Arsenal is represented by Max C. Gottlieb, Esq., J. Zak Ritchie, Esq., and Maureen F. Gleason, Esq.

and oil and gas operators to satisfy that statutory threshold under the Act.[2] Arsenal further asserted that it made good faith efforts to obtain consent from all locatable interest holders. *See* W. Va. Code § 22C-9-7a(c)(2)(C)(i).[3] The application included an affidavit by T.J. Baldwin, a landman for Arsenal, wherein he attested that Arsenal made good faith offers and efforts to obtain leases or consent to pool from all locatable interest owners. Petitioners own oil and gas interests within the proposed unit. They objected to Arsenal's application, alleging that Arsenal failed to negotiate with them in good faith. The Commission scheduled an evidentiary hearing on Arsenal's application for October 20, 2025.

Prior to the administrative hearing and in compliance with the Act, Mr. Baldwin submitted a confidential summary containing Arsenal's data and information regarding the unit to an independent third-party reviewer selected by the Commission. The reviewer used the information to prepare an economic report dated October 16, 2025, which was submitted to the Commission prior to the evidentiary hearing to assist in its evaluation of Arsenal's application. The report contained the calculation of certain weighted averages based on information from the leases controlled by Arsenal within the subject unit, which the Commission was required to incorporate into the unit orders. *See* W. Va. Code § 22C-9-7a(g)(4) (2022).[4] To that end, the report stated that the weighted average monetary bonus

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[2] *See* W. Va. Code § 22C-9-7a(c)(2)(A) (requiring pre-application consent from royalty owners totaling 75% or more of the net acreage); W. Va. Code § 22C-9-7a(c)(2)(B)(i) (requiring pre-application consent from the oil and gas operators equal to 55% or more of the net acreage owned, leased, or operated by operators and the applicant).

[3] As a prerequisite, this statute states that an applicant must have:

> Made good-faith offers to consent or agree to pool or unitize, and has negotiated in good faith with, all known and locatable royalty owners having executory interests in the oil and gas in the target formation within the acreage to be included in the proposed horizontal well unit who have not previously consented or agreed to the pooling or unitization of the interests and whose interests are not subject to development under § 37B-1-1, *et seq.* of this code[.]

[4] This statute requires an applicant to submit a summary of certain economic data regarding leases and payments within the proposed unit to an attorney or accountant selected by the Commission's chairman who is designated as an "independent, third party." Their role is to review the summary for accuracy and prepare a report for the Commission containing the calculation of certain averages related to the proposed unit, which the Commission is required to include in its order. The statute also provides for the independent reviewer to be paid for their services and permits an applicant to designate the summary it provides as confidential.

paid for the leases was $1,313.26 per net mineral acre; the weighted average royalty percentage for all of Arsenal's leases within the unit was 12.9%, with the highest royalty percentage being 16%; and that the highest royalty percentage for the unit's leases executed with Arsenal within the prior twenty-four months of the application date was 15%. Mr. Baldwin indicated that he had no objection to the calculations contained in the independent reviewer's report; thereafter, the report was made part of the record at the evidentiary hearing.

During the evidentiary hearing, the Commission heard testimony from Mr. Baldwin and Petitioner Susan Schwartz regarding the parties' negotiations and their respective positions on the issue of good faith, and several exhibits were admitted regarding the parties' negotiations.[5] Each witness was subject to cross-examination.

Mr. Baldwin testified that Arsenal initiates negotiations by mailing a lease offer to the owner and, if no response is received, he makes additional efforts to contact the owner by phone or in person in hopes of reaching an agreement. He indicated that as part of this process, he maintains logs documenting the phone calls, emails, and other communications he has with interest owners during negotiations. According to the Commission's order, a copy of that log was included with Arsenal's application, admitted into the record, and the records show numerous communications with petitioners about their mineral interests between 2022 and 2025.

Mr. Baldwin incorporated his testimony from earlier Commission proceedings involving the parties and Arsenal's applications to unitize other units in which petitioners held mineral interests. He explained that because Arsenal sought to lease petitioners' entire mineral interests across several units, he negotiated each lease concurrently under identical terms, and therefore his testimony regarding the negotiations was the same. On cross-examination, petitioners' counsel introduced several exhibits reflecting the parties' negotiations that had been previously identified and admitted in earlier Commission proceedings concerning Arsenal's applications to form two other units containing petitioners' mineral interests. Mr. Baldwin's incorporated testimony and petitioners' exhibits were admitted without objection. Relying on those sources, the Commission made the following findings in the order now on appeal.

Mr. Baldwin indicated that Arsenal has not offered any mineral owner a new lease with a royalty higher than 12.5% in the past two years. However, by letter dated November 12, 2024, Arsenal offered Petitioner Mitchell Garrett an extension of a prior lease

[5] Arsenal also called a geologist and reservoir engineer as witnesses. However, as set forth by the order on appeal, their testimony was scientific in nature, and did not relate to the negotiations between the parties. Their testimony is not challenged in this appeal.

containing a 14.25% royalty. Mr. Garrett declined that offer. The November 2024 letter proposed extending Mr. Garrett's 14.25% lease, paying a $170,000 upfront bonus, and shortening the lease term to two years. The letter noted that the same offer would be extended to Ms. Schmidt.

Mr. Baldwin's prior testimony established that he did not offer extensions to the remaining petitioners because their existing leases were "net" leases rather than "gross" leases, making an extension less favorable than the terms Arsenal was prepared to offer them. He testified that he would not propose an inferior offer to those owners.

On September 28, 2022, Arsenal made identical offers to all petitioners: a one-year lease with a 12.5% royalty, a $660 per acre bonus, and an annual rental of $660 per acre. On February 10, 2025, Arsenal later offered them a five-year lease with a $750 per acre bonus, a $160 per acre annual rental, and a royalty rate of 12.5%. This offer provided for payment of the rental fees upfront.

On April 1, 2025, Petitioner Amy Hull-Wright sent Mr. Baldwin an e-mail objecting to the February 2025 offer due to a reduced rental rate. Mr. Baldwin responded and explained that although the rental rate decreased, the lease term increased from one to five years, resulting in a higher total payment than the 2022 offer. He then offered to match the 2022 rental amount and emphasized the improved terms. When he received no response, he followed up on April 30, 2025, reiterating the favorable terms and requesting additional proposals. He communicated that Arsenal could not increase the royalty beyond 12.5%.

On May 1, 2025, Ms. Hull-Wright replied that Arsenal's offers were below market and asked for a lease matching the highest royalty and bonus in the unit. Mr. Baldwin responded that Arsenal's offer matched the royalty percentage used in all leases signed in the unit within the past five years. On May 7, 2025, Ms. Hull-Wright demanded $2,000 per acre and a 16% royalty. Mr. Baldwin explained that although Arsenal had older leases from 2016-2018 with higher royalties, those were maintained through lease terms related to production or extensions, and Arsenal could not offer new leases on those terms. He stated that he received approval to offer $2,200 per net acre in bonus and delay rental payments. That same day, Arsenal mailed an offer letter to all petitioners proposing a 12.5% royalty, a two-year lease, a $1,000 per acre bonus, and a $600 per acre annual rental, totaling $2,200 per acre.

According to Mr. Baldwin, petitioners' primary objection during negotiations was the 12.5% royalty, which was the most Arsenal could offer. He explained that Arsenal is the only operator drilling in the area, and that Arsenal has not entered a new lease with a royalty above 12.5% in six years.

Additionally, the Commission's order notes that petitioners' counsel introduced documentation related to past leases and agreements between Arsenal and certain mineral owners both within and outside the proposed unit, some of which contain higher royalty rates. The Commission admitted these exhibits over the objections of Arsenal's counsel, who argued that the documents were irrelevant to the parties' negotiations and to the determination of good faith. Petitioners asserted that the documents demonstrated Arsenal's ability to pay a royalty rate above 12.5% and that, to satisfy the requirement of good faith, the rate must be at least 16%.

Arsenal called Ms. Schwartz to testify regarding her negotiations with the company. She acknowledged that she previously signed a lease with Arsenal in 2017 that contained a 12.5% royalty rate. Ms. Schwartz further confirmed that she did not receive the November 2024 letter offering a 14.25% royalty, nor had she ever received such an offer at any time. She testified that throughout her negotiations with Arsenal, it was consistently represented that the company could not offer a royalty rate above 12.5%. She also confirmed that Ms. Hull-Wright negotiated on her behalf.

At the close of evidence, the Commission voted to approve Arsenal's application and to form the Gamelli 212 Unit. However, before the Commission entered a final order, it was notified of an amended economic report submitted by the independent reviewer on December 1, 2025. Notably, the amended report changed the calculation of the highest royalty percentage for the leases Arsenal executed within twenty-four months of the application date, reducing it from 15% to 12.5%. Petitioners objected to the amended report, asserting that because Mr. Baldwin testified at the evidentiary hearing that he had no reason to dispute the original report's findings, Arsenal was bound by the 15% royalty rate. Petitioners submitted a proposed order incorporating that higher rate. The Commission took no action on the proposed order and instead entered an order reopening the record and setting the matter for further hearing on the amended report.

The hearing was held on February 25, 2026, and Mr. Baldwin was Arsenal's lone witness. He testified that the same independent reviewer had prepared an economic report for Arsenal's application to form another unit, Gamelli 213. Mr. Baldwin explained that he prepared the summary materials submitted to the reviewer for both the Gamelli 212 and Gamelli 213 units. When submitting the Gamelli 213 summary, he informed the reviewer that certain mineral interests overlapped both units and that although one overlapping interest was subject to leases with a royalty rate above 12.5%, an outside operator, not Arsenal, had assumed control of those leases within the prior twenty-four months. Arsenal did not hold or control those leases. Mr. Baldwin further testified that, apart from providing the Gamelli 213 summary and alerting the reviewer to the overlapping interests, he had no further contact with the independent reviewer and did not learn of the amended Gamelli 212 report until he was preparing for the Gamelli 213 hearing. The amended Gamelli 212 report and the Gamelli 213 report were admitted into the record.

On cross-examination, Mr. Baldwin consistently stated that he did not know the basis for the reviewer's amended report. He testified that he could only speculate that the amendment was intended to correct a clerical error once the reviewer understood that Arsenal did not control the overlapping interest bearing the higher royalty rate and that, therefore, that rate had to be excluded from the twenty-four-month calculation. Mr. Baldwin indicated that he did not object to the 15% royalty rate in the original report because he trusted the reviewer's work and deferred to the report's findings. The record shows that Arsenal's counsel objected to several questions from petitioners' counsel that sought insight into the reviewer's internal process or reasoning. The Commission sustained those objections, noting that Mr. Baldwin had already testified that he lacked personal knowledge of the reviewer's methodology and does not prepare the economic report.

Petitioners' counsel also attempted to question Mr. Baldwin regarding the data supporting the Gamelli 212 Unit application. Arsenal's counsel objected, arguing that such questioning exceeded the narrow scope of the hearing, which was limited to the amended report and Mr. Baldwin's testimony from the October 20, 2025, administrative hearing. Counsel further argued that the underlying data had been available to petitioners since the application's filing and could have been explored at the October 2025 hearing. The Commission sustained the objection.[6] Petitioners presented no witnesses. Thereafter, the Commission once again voted to approve Arsenal's application, and memorialized its ruling in the order now on appeal.

The Commission's order includes several findings addressing the evidence presented at the October 2025 and February 2026 hearings. These findings address the testimony of Mr. Baldwin and Ms. Schwartz and delineate the parties' communications and negotiations between 2022 and 2025. The Commission found that the totality of the evidence demonstrated that the parties engaged in extensive negotiations over several years, during which Arsenal revised its offers to include multiple terms requested by petitioners, as well as additional favorable terms not requested by them. The record established that the only concession Arsenal declined to make was increasing the royalty rate above 12.5%, and that petitioners rejected all of Arsenal's offers on that basis. The Commission found Mr. Baldwin's explanation for the discrepancy between higher royalty percentages in older leases and the 12.5% rate reflected in more recent leases credible and

[6] On this issue, the February 25, 2026, hearing transcript reflects a brief exchange between petitioners' counsel and the Commission. During that exchange, counsel stated that his line of questioning was intended to challenge Mr. Baldwin's credibility. A Commission member responded that, because Mr. Baldwin was testifying under oath, his credibility was entitled to absolute deference and could not be challenged. That statement is wholly inaccurate and unsupported by law. Although this mischaracterization does not affect the outcome of this appeal, we note it to ensure that similar misstatements of the law do not recur.

concluded that, contrary to petitioners' position, the offer in this case did not constitute a lack of good faith.

The order also addressed both the original and amended economic reports. On this issue, the Commission found that the amended economic report was necessary to correct a clerical error in the original report regarding the highest royalty percentage contained in any Arsenal lease executed within the preceding twenty-four months. The Commission further noted that the amended report was required to comply with the statutory requirements of West Virginia Code § 22C-9-7a(g)(4), which mandates that the report include "the highest production royalty percentage in the unit in connection with other leases in the same target formation controlled by the applicant . . . within the 24 months preceding the application date." W. Va. Code § 22C-9-7a(g)(4)(C)(iii); *see also* W. Va. Code § 22C-9-7a(f)(7)(B)(ii) (requiring that unleased mineral owners who elect to be considered leased receive a production royalty "equal to the highest production royalty percentage in connection with other leases in the same target formation controlled by the applicant . . . within the 24 months preceding the application date"). As a result, the Commission found the amended report credible and adopted its findings.

Developing its findings further, the Commission noted its statutory duty to determine good faith and this Court's prior explanation of that duty in *Haughtland Res., LLC v. SWN Prod. Co., LLC*, No. 25-ICA-84, 2025 WL 3162008, at *5 (W. Va. Ct. App. Nov. 12, 2025) (memorandum decision) (citation modified) (referencing the Supreme Court of Appeals of West Virginia's reliance on a Black's Law Dictionary definition: "Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage."). Based on those authorities, the Commission observed that under the Act, good faith does not require an applicant, such as Arsenal, to accede to every demand made by a mineral owner during negotiations. As such, the Commission concluded that the record supported the finding that Arsenal had satisfied its statutory obligation of good faith. The Commission concluded that Arsenal's application satisfied the statutory requirements for approval under West Virginia Code § 22C-9-7a(e)(1).[7] This appeal followed.

In this appeal, our review is governed by the State Administrative Procedures Act, which states:

[7] West Virginia Code § 22C-9-7a(e)(1) mandates that the Commission consider a specific set of factors when evaluating applications. Among those factors is whether the applicant complies with the requirements of West Virginia Code § 22C-9-7a(c).

> 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:
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> (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.

W. Va. Code § 29A-5-4(g) (2021); *accord* W. Va. Code § 22C-9-11(a) (1998) (stating that West Virginia Code § 29A-5-4 governs judicial review of Commission orders).

On appeal, petitioners assert six assignments of error.[8] The first five relate to their general contention that the Commission erred in its determination that Arsenal satisfied its obligation of good faith. Petitioners elected to consolidate and frame those issues differently for presentation in the argument section of their brief.[9] Petitioners' final assignment of error contends that the Commission erred by adopting the amended economic report. We conclude below that each of these assertions is unfounded.

First, petitioners maintain that Arsenal failed to meet the statutory requirements of good faith. In support, they state that the Commission has a non-delegable duty to make

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[8] While petitioners' brief lists a seventh assignment of error contending the Commission erred when it failed to adopt their proposed final order, that issue was not identified and argued by petitioners in the argument section of their brief. Accordingly, the issue is waived. *See* Syl. Pt. 6, *Addair v. Bryant*, 168 W. Va. 306, 284 S.E.2d 374 (1981) ("Assignments of error that are not argued in the briefs on appeal may be deemed by this Court to be waived.").

[9] We note that petitioners' choice of argument heading on this issue does not reflect their stated assignments of error as required. *See* W. Va. R. App. P. 10(c)(7) (requiring, in part, that the brief's argument section contain "headings that correspond with the assignments of error" and affording the Court discretion to disregard arguments for such noncompliance). While we dispose of this appeal on other grounds, we direct that all counsel shall comply with all requirements of the West Virginia Rules of Appellate Procedure in future filings with this Court.

that determination. They contend that the Commission failed to establish or apply a rational standard for assessing good faith under the Act. Petitioners further argue that the Commission improperly relied on *Haughtland*, and that even if reliance on *Haughtland* were appropriate, the decision imposes an unworkable, subjective standard. They therefore urge this Court to revisit *Haughtland* and adopt a bright-line, objective standard for determining good faith in these cases. They likewise contend that the evidence does not support the Commission's decision.

We decline petitioners' invitation to revise the understanding of good faith set out in *Haughtland*. Petitioners first argue that reliance on the definition of good faith cited in that case—the absence of malice and a design to defraud or seek an unconscionable advantage—renders the "good faith" language in West Virginia Code § 22C-9-7a(c)(2)(C)(i) surplusage. In support, petitioners assert that fraud is actionable under West Virginia law and argue that the law already recognizes a duty of good faith and fair dealing. However, petitioners fail to explain why the existence of fraud claims and the implied covenant of good faith and fair dealing between parties to a contract renders the use of "good faith" in West Virginia Code § 22C-9-7a superfluous. Of course, a party to a contract can attempt to void that contract by claiming fraudulent inducement. *See* Syl. Pt. 6, *Chesapeake Appalachia, L.L.C. v. Hickman*, 236 W. Va. 421, 781 S.E.2d 198 (2015) ("Fraud in the procurement of a deed or contract always renders it voidable." (citation modified)). Additionally, a party can argue a breach of the implied covenant of good faith and fair dealing as part of a breach of contract claim. *See Evans v. United Bank, Inc*., 235 W. Va. 619, 627-28, 775 S.E.2d 500, 508-09 (2015) (recognizing that claim based on implied covenant of good faith and fair dealing cannot survive absent a breach of contract claim). However, the good faith requirement in West Virginia Code § 22C-9-7a(c)(2)(C)(i) requires the Commission to consider an applicant's conduct, including the absence of the intent to defraud, in negotiations that have not resulted in a contract. Therefore, we find no merit in petitioners' assertion that the use of *Haughtland*'s understanding of good faith renders the reference to good faith in West Virginia Code § 22C-9-7a(c)(2)(C)(i) superfluous.

Petitioners also argue that the Court should abandon *Haughtland*'s understanding of good faith in favor of requirements imposed by other states' unitization acts. Particularly, petitioners point to appellate court decisions from Texas and Oklahoma interpreting their respective unitization statutes and argue that we should reinterpret "good faith" in line with those decisions. Specifically, they ask the Court to incorporate a requirement of fair market value into the definition of good faith. However, we rejected almost this exact argument in *Haughtland* itself, recognizing that "these states have different legal requirements for offers to non-consenting interest owners within a proposed unit." *Haughtland*, 2025 WL 3162008, at *5 n.10. As we recognized in that case, in the absence of a statute or regulation requiring the Commission to evaluate proposed leases against fair market value, it is not this Court's place to impose that requirement. *See* Syl.

Pt. 2, *Huffman v. Goals Coal Co.*, 223 W. Va. 724, 679 S.E.2d 323 (2009) ("This Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation."). Accordingly, we find no basis to revisit *Haughtland*.

We also find no merit in petitioners' argument that the record does not support the Commission's finding of good faith. As detailed above, at the October 20, 2025, hearing, Mr. Baldwin incorporated his prior testimony detailing the lease negotiations between Arsenal and petitioners, in which Arsenal made multiple increasing offers to petitioners. Exhibits introduced at the hearing provided further detail on Arsenal's extensive, multi-year negotiation effort. While Mr. Baldwin conceded that Arsenal was unwilling to increase its royalty offer above 12.5%, he also testified that it was not economically feasible to offer a higher rate. Ms. Schwartz also testified that she previously accepted a lease with a 12.5% royalty. While petitioners maintain that Arsenal should have offered a higher royalty, based on the extensive evidence in the record regarding Arsenal's negotiation efforts, we cannot say that the Commission's finding of good faith is clearly wrong. *See Williamson v. W. Va. Bd. of Reg. Nurses*, No. 23-ICA-172, 2024 WL 1729976, at *6 (W. Va. Ct. App. Apr. 22, 2024) (memorandum decision) (citation modified) ("an appellate court does not reweigh the evidence.").

Next, petitioners argue that the Commission failed to consider their evidence or to permit complete cross-examination. However, petitioners do not cite to the record or even identify any particular evidentiary ruling with which they take issue. This argument is superficial and insufficient to establish error on appeal. *See State v. Kaufman*, 227 W. Va. 537, 555 n.39, 711 S.E.2d 607, 625 n.39 (2011) (citation modified) ("A skeletal argument, really nothing more than an assertion, does not preserve a claim."); *State v. Lilly*, 194 W. Va. 595, 605 n.16, 461 S.E.2d 101, 111 n.16 (1995) ("Casual mention of an issue in a brief is cursory treatment insufficient to preserve the issue on appeal."). As such, we decline to address the merits of this argument.

Petitioners' final argument contends that the Commission erred by accepting the amended economic report. In support, they offer the overarching contention that the report could not be accepted as true without substantiating that the original report did, in fact, contain a clerical error. Petitioners claim that this change prejudiced them by reducing the calculation of the highest royalty percentage for the leases Arsenal executed within twenty-four months of the application date from 15% to 12.5%. According to petitioners, Arsenal has presented nothing more than conjecture on the issue and, thus, the report is not credible. We disagree.

The Supreme Court of Appeals of West Virginia has explained that the deference due to an administrative agency's factual findings "extends to evidentiary findings made at administrative hearings." *Groves v. Cicchirillo*, 225 W. Va. 474, 478, 694 S.E.2d 639,

643 (2010); *see* Syl. Pt. 1, *Francis O. Day Co. v. Dir., Div. of Env't Prot. of W. Va. Dep't of Com., Lab. & Env't Res.*, 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."). Below, the Commission adopted the amended report based on the conclusion that the original economic report erroneously considered leases that were not within Arsenal's control in the twenty-four months prior to the application, and that the amended report corrected this error. While petitioners contend that this was mere conjecture, this finding has support in the record. As detailed above, the Commission held a second hearing in this case to address the amended economic report. At that hearing, Mr. Baldwin testified that he informed the third-party reviewer that the data for both the Gamelli 212 and Gamelli 213 units included certain mineral interests overlapping both units and that one overlapping interest leased by another operator could have been the source of the higher royalty included in the original report. The Commission also pointed to Mr. Baldwin's prior testimony that Arsenal had not signed a lease with a royalty above 12.5% in the unit in the prior two years. Given this evidence, we cannot find that the Commission was clearly wrong in adopting the amended economic report.

Based on the foregoing, we conclude that petitioners have failed to affirmatively establish error on any issue, and as a result, we decline to disturb the Commission's decision to grant Arsenal's application with respect to the Gamelli 212 Unit.

Accordingly, we affirm. The Clerk of this Court is hereby directed to issue the mandate contemporaneously herewith.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White