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-209 (Oil and Gas Conservation Comm'n Docket No. 412, Cause No. 508, Order No. 2)

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 May 7, 2026, amended order from the Oil and Gas Conservation Commission of West Virginia ("Commission"). The amended 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 (the "Act") which provide 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.

At the outset, the Court notes that this case was originally before it in *Hull-Wright v. Arsenal Res., LLC,* No. 25-ICA-410, 2026 WL 1718334 (W. Va. Ct. App. May 1, 2026) (memorandum decision) ("*Arsenal II*"). In that appeal, we determined that the Commission's order lacked sufficient findings and analysis to permit proper appellate

[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.

review, and as a result, vacated the Commission's decision and remanded the matter to the Commission for entry of a new, more detailed order that was appropriate for our review of the merits. *Arsenal II*, 2026 WL 1718334, at *5. The present appeal stems from the amended order entered by the Commission upon remand.

Arsenal filed an application on July 24, 2025, to unitize the oil and gas tracts within a target formation to create the JOsborn 214 Unit, consisting of 368.41 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 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 JOsborn 214 Unit. They objected to Arsenal's application, alleging that Arsenal failed to negotiate with them in good faith. The Commission set an evidentiary hearing on Arsenal's application for August 21, 2025.

Prior to the 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 August 15, 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-

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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[.]

7a(g)(4) (2022).[4] To that end, the report stated that the weighted average monetary bonus paid for the leases was $1,300.59 per net mineral acre; the weighted average royalty percentage for all of Arsenal's leases within the unit was 12.88%, with the highest royalty percentage being 16%; and that the highest royalty percentage for the unit's leases executed within twenty-four months of the application date was 12.5%. The report was entered into the record at the evidentiary hearing.

During the August 21, 2025, evidentiary hearing, the Commission heard testimony from Mr. Baldwin about the parties' negotiations and their respective positions on the issue of good faith, and several exhibits were admitted into the record regarding those negotiations.[5] He was subject to cross-examination. The record shows that petitioners called no witnesses.

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 communications he has with interest owners during negotiations. A copy of that log was included with Arsenal's application and admitted into the record. It reflects that Arsenal's negotiations with petitioners began in 2022 and continued up until Arsenal's filing of its application in July 2025.

Based upon Mr. Baldwin's testimony and the exhibits admitted at the evidentiary hearing regarding the parties' negotiations and the issue of good faith, the Commission made several factual determinations which it included in the order now on appeal.

On September 28, 2022, Arsenal offered all petitioners a lease with a royalty rate of 12.5%, bonus payment of $660 per net acre, and an annual rental payment of $660 per net acre.

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[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.

[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.

Later, on November 12, 2024, Arsenal offered Petitioner Mitchell Garrett an extension of his prior lease with a 14.25% royalty. Mr. Garrett declined the 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 also stated that Arsenal would extend the same offer to Petitioner Betty Garrett Schmidt. Mr. Baldwin testified earlier that he did not offer extensions to the remaining petitioners because their existing leases were "net" leases rather than "gross" leases and therefore did not benefit their mineral interests.

Arsenal made a subsequent lease offer to all petitioners on February 10, 2025. It offered a five-year lease with a $750 per acre bonus, a $160 per acre annual rental, and a 12.5% royalty. This offer also provided for payment of the rental fees upfront. On May 7, 2025, Arsenal sent another 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. This offer likewise provided an upfront rental payment. Mr. Baldwin stated that Arsenal could not offer more than a 12.5% royalty because production data from the unit over the prior six years was unfavorable. Specifically, the expected production from this unit's well is half that of wells in other units. He further explained that, absent the benefit of pre-existing infrastructure such as the well pad, roads, and pipelines, Arsenal could not prudently drill the unit.

During the August 2025 hearing, the Commission also heard Mr. Baldwin's testimony about Arsenal's additional efforts to negotiate a lease for JOsborn 214 between May 16, 2025, and August 19, 2025. He presented supporting documentation showing his communications with petitioners' counsel and with Mr. Garrett. Mr. Baldwin testified that Arsenal's final offer provided petitioners with a 12.5% royalty and a payment of $900 more per acre than they would receive under the Act. He further explained that petitioners' leases had a Most Favorable Nations (MFN) clause, which would supersede the less favorable terms available through a forced-pooling order. Despite these terms, Arsenal's efforts were unsuccessful because petitioners refused to accept a 12.5% royalty rate. It is undisputed that this issue has stalled all negotiations between the parties. It is also undisputed that Arsenal has not offered any mineral owner within the subject unit a new lease with a royalty higher than 12.5% during the past two years. Mr. Baldwin testified that he believed that Arsenal's efforts satisfy the statutory requirement of good faith.

At the close of evidence, the Commission voted to approve the application and memorialized its ruling in its original order. As previously noted, this Court vacated that order in *Arsenal II*. Upon remand, the Commission entered an amended order dated May 7, 2026. The Commission's order contains several findings regarding the evidence presented at the August 2025 hearing. This includes factual findings squarely addressing the testimony of Mr. Baldwin and delineating the parties' communications and negotiations between 2022 through 2025.

The Commission concluded that the full record supported a finding that Arsenal had satisfied its statutory obligation of negotiating with petitioners in good faith. The Commission found that the evidence showed that the parties engaged in extensive negotiations for several years, including Arsenal revising its offers to several terms requested by petitioners. As an example of Arsenal's concessions, the Commission specifically noted Arsenal's revisions to reflect substantially increased upfront royalty payment to petitioners.

The Commission noted that petitioners' refusal to accept a 12.5% royalty created an impasse in the parties' negotiations. It further observed that the independent reviewer's report confirmed that Arsenal has not paid a royalty above 12.5% in the past two years. The Commission also found credible Mr. Baldwin's testimony that Arsenal's feasibility concerns with the unit's well prevented it from offering a royalty higher than 12.5%. As such, the Commission squarely rejected petitioners' contention that Arsenal was required to offer more than 12.5% to satisfy the statutory requirement of good faith.

In support, the Commission cited 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 noted 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's order ultimately concluded that Arsenal's application satisfied the statutory requirements for approval under West Virginia Code § 22C-9-7a(e)(1).[6] Petitioners' present appeal followed.[7]

[6] 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 requirements of West Virginia Code § 22C-9-7a(c).

[7] During the pendency of this appeal, Arsenal filed various motions with this Court, which prolonged resolution of the matter. Relevant here is a motion to dismiss filed on June 14, 2026, in which Arsenal asserted that petitioners' subsequent actions after the evidentiary hearing and entry of the Commission's final order rendered this appeal moot. We refused that motion by order entered July 24, 2026. Arsenal now attempts to revive the argument on appeal, and we decline to revisit the issue. It is readily apparent that considering Arsenal's argument would require the Court to examine facts outside the

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

> 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 various arguments to support their position that the Commission committed reversible error. We will address these arguments in turn.

To begin, we address petitioners' two arguments concerning the alleged procedural errors committed by the Commission. They contend that the Commission erred by failing to hold a new evidentiary hearing following this Court's remand in *Arsenal II* and further assert that, without such a hearing, one in which they may present all of their evidence, including evidence they claim they were previously prevented from offering, the Commission cannot comply with this Court's mandate. We find no merit in this argument.

Here, petitioners extrapolate selective language from our decision in *Arsenal II* to support their argument. They rely on a fragment taken from a single sentence in which we

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appellate record and would impermissibly place us in the role of fact-finder. Moreover, West Virginia Code § 22C-9-7a(e) expressly contemplates that the Commission's ruling is limited to the facts existing when the application is filed and those presented at the evidentiary hearing; our review on appeal is similarly confined. Because neither party has requested that we vacate the order on appeal and remand the matter to the Commission to reopen the record for consideration of this specific issue followed by the entry of a new order, the matter lies outside the scope of this Court's review of the merits.

noted the Commission's statutory obligation to consider all evidence of record in making its decision. *See Arsenal II*, 2026 WL 1718334, at *4 ("the Commission is expressly obligated to consider all the evidence and determine whether an applicant negotiated in good faith"). Petitioners interpret this language as a directive from this Court requiring a new hearing on remand. That conclusion is incorrect because nothing in our decision imposes such an obligation. Indeed, while *Arsenal II* remanded this matter to the Commission "for further proceedings, consistent with this decision," *id.* at *5, we clarified in a footnote that "this includes holding further hearings *as necessary*." *Id.* at *5 n.13 (emphasis added). This explicitly conditional language was not intended to mandate another hearing. Rather, as the four corners of *Arsenal II* make clear, this Court did not reach the merits of the proceeding, including the sufficiency of the evidence. *See Arsenal II*, 2026 WL 1718334, at *4 n.14, in part ("Likewise, we reiterate our observation in *Arsenal I* that this decision does not address the merits of the underlying decision and should not be interpreted as suggesting the outcome the Commission should reach upon remand.").[8] Instead, we concluded that the Commission's original order lacked the robust development necessary to allow meaningful appellate review.

Petitioners further suggest that our use of the term "all the evidence" means any evidence either party wishes to present. That deduction is flawed. Petitioners fail to recognize that this language appears with a citation indicating that our statement derives from controlling statutory text, West Virginia Code § 22C-9-10(e) (1998), which provides: "After any hearing and consideration of all of the testimony, evidence and record in the case, the commission shall render a decision in writing." *Arsenal II*, 2026 WL 1718334, at *4 n.9 (quoting W. Va. Code § 22C-9-10(e)). Thus, *Arsenal II*'s directive that the Commission consider "all the evidence" on remand refers only to its duty to evaluate all evidence already in the record when issuing its new decision. Contrary to petitioners' position, the phrase neither includes nor contemplates additional evidence a party may wish to introduce. As such, while our remand in *Arsenal II* permitted the Commission to hold additional hearings to the extent it found them necessary, it required only the Commission's

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[8] In *Arsenal I*, we noted:

> Our decision herein does not address the merits and should not [be] interpreted as suggesting the outcome the Commission should reach upon remand. Rather, this decision is predicated upon the necessity of a proper order, containing sufficient findings of facts (including an analysis of conflicting factual contentions in the record) and conclusions of law, from which this Court may afford the Commission's decision, whatever it may be, a meaningful appellate review.

Hull-Wright v. Arsenal Res., LLC, No. 25-ICA-304, 2026 WL 125974, at *5 n.12 (W. Va. Ct. App. Jan. 16, 2026) (memorandum decision).

preparation of a sufficient order based upon the record as it existed at the close of the August 2025 hearing, so that this Court could review that ruling on the merits if the new order were appealed. The Commission therefore fulfilled its obligation under this Court's mandate.

Similarly, we find no merit in petitioners' reliance on certain language from a footnote in *Arsenal II* to support their claim that a new hearing was required on remand. In that footnote, we observed that because the record suggested that Arsenal's counsel "opened the door" on an issue during direct examination of Mr. Baldwin, petitioners' counsel "should" have been permitted to develop the issue fully through cross-examination. *See Arsenal II*, 2026 WL 1718334, at *5 n.12. However, this comment is merely obiter dicta; it holds no precedential value in this case and does not expand the scope of the remand beyond directing the Commission to prepare an adequate order from the existing record. *See Frank A. v. Ames*, 246 W. Va. 145, 161 n.17, 866 S.E.2d 210, 226 n.17 (2021) ("It is well settled in our jurisprudence that language in a footnote generally should be considered obiter dicta which, by definition, is language unnecessary to the decision in the case and therefore not precedential." (citation modified)).

Moreover, as we previously explained, the deficiencies in the Commission's original order prevented us from evaluating the case on the merits. In other words, because the order was insufficient, we could not address petitioners' substantive arguments in the initial appeal. Petitioners' opportunity to establish reversible error and to demonstrate that a new hearing was necessary arose in this appeal. Yet they do not advance any such cognizable arguments.

We also find additional flaws in petitioners' argument that *Arsenal II* required a new hearing to allow them to present evidence they claim they were unable to introduce below. Notably, petitioners did not call a single witness at the administrative hearing and did not direct this Court to any place in the record where they vouched the evidence they now assert was improperly excluded. *See* W. Va. Code § 29A-5-2(a) (permitting a party to vouch the record as to excluded testimony or evidence). They likewise fail to identify the specific portions of the record on which they base their argument. *See* W. Va. R. App. P. 10(c)(7). Further, petitioners did not file a written request for a hearing with the Commission on remand. *See* W. Va. Code § 22C-9-7a(g)(3) ("Upon request of any interested party or the commission, the commission shall conduct a hearing and receive evidence regarding the application."). As such, we conclude that petitioners did not take the steps necessary even to preserve these issues for appellate review.[9]

[9] This does not mean the Court would have found merit in those arguments; rather, we simply note that preservation of the error is the first step in placing an issue in the proper posture for appellate review. After that, a party still bears the burden of establishing

Petitioners' second procedural argument contends that the Commission committed reversible error by violating West Virginia Code § 29A-5-3 (1964)[10] when it entered the order on appeal without first affording them an opportunity to file exceptions to the Commission's proposed ruling. Petitioners generally contend that they would have noted their exceptions to the Commission's evaluation of the evidence on the issue of good faith. Although the circumstances surrounding the Commission's entry of the order may amount to a technical violation of the statute, we conclude that, in this case, any such error is harmless. "Error is harmless when it is trivial, formal, or merely academic, and not prejudicial to the substantial rights of the party assigning it, and where it in no ways affects the outcome of the trial." *Reed v. Wimmer*, 195 W. Va. 199, 209, 465 S.E.2d 199, 209 (1995). In this appeal, petitioners' argument is discounted by the fact that they have failed to show any prejudice they suffered because of the alleged procedural error. Instead, they simply question the Commission's view of the evidence. The absence of prejudice is further compounded by the fact that petitioners appealed the decision to this Court and, thus, were not denied the opportunity to challenge the merits of the Commission's decision. Accordingly, petitioners have not demonstrated reversible error on these grounds.

Petitioners' final argument targets the Commission's substantive findings related to the evidence and Arsenal's statutory obligation of good faith. The crux of petitioners' argument is that this Court's decision in *Haughtland* imposes a subjective and unworkable standard, and as a result, the Commission's decision is erroneous because it is not based upon application of an objective good faith standard. Therefore, they maintain the evidence does not support the Commission's decision. However, instead of providing the Court with proper argument, petitioners inappropriately state that they are incorporating their

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reversible error through the presentation of a properly articulated argument supported by appropriate citation and analysis.

[10] This statute provides:

> Every final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. Prior to the rendering of any final order or decision, any party may propose findings of fact and conclusions of law. If proposed, all other parties shall be given an opportunity to except to such proposed findings and conclusions, and the final order or decision shall include a ruling on each proposed finding. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of the order or decision and accompanying findings and conclusions shall be served upon each party and his attorney of record, if any, in person or by registered or certified mail.

arguments from their appellate brief from *Arsenal II*. They then proceed to offer the general assertion that *Haughtland* is bad law, and this Court is required to replace it with a bright-line rule to govern the Commission's good faith determination in these cases.

As an initial matter, we do not endorse petitioners' attempt to incorporate arguments from briefing in a prior case. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure states that the brief "must contain an argument clearly exhibiting the points of fact and law presented . . . citing to the authorities relied on." It further provides that "the argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal," and that this Court "may disregard errors not adequately supported by specific references to the record on appeal." *Id.* (citation modified). Relying on this principle, the Supreme Court of Appeals of West Virginia has declined to consider a petitioner's attempt to incorporate by reference arguments from one part of the same brief in support of other arguments in the brief. *See E.B. v. W. Va. Reg'l Jail*, No. 16-0090, 2017 WL 383779, at *5 (W. Va. Jan. 27, 2017) (memorandum decision). However, even to the extent the Court considers the arguments related to good faith raised in petitioners' brief in *Arsenal II*, we find no error.

As an initial matter, 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 already actionable under West Virginia law. However, petitioners fail to explain why the existence of fraud claims 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)). 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, Mr. Baldwin testified at the hearing to the detailed 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. 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.").

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