IN THE 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-37 (Oil and Gas Conservation Comm'n Docket No. 431, Order No. 1)

ARSENAL RESOURCES, LLC,
Applicant Below, Respondent

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

MEMORANDUM DECISION

Petitioners Amy Hull-Wright, Michael Hull, Betty Garrett Schmidt, Trustee of the Betty Schmidt Revokable Trust, Susan Schwartz, and Mitchell Garrett (collectively "Petitioners") appeal the January 15, 2026, order from the Oil and Gas Conservation Commission of West Virginia ("Commission"). The order granted the applications filed by Respondent Arsenal Resources, LLC ("Arsenal") to form two separate Marcellus shale formation horizontal drilling units 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 in support of the Commission's order.[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, we find that deficiencies within the January 15, 2026, order prevent this Court from engaging in a meaningful appellate review. As explained below, a memorandum decision vacating the January 15, 2026, order and remanding this matter to the Commission for further proceedings is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

On October 16, 2025, in accordance with the Act, Arsenal filed separate applications to unitize the oil and gas tracts within two proposed units - one application proposed formation of the Gamelli 213 Unit, consisting of 514.83 acres, and the other sought

[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.

formation of the Gamelli 214 Unit, encompassing 540.51 acres (collectively "Units"). *See* W. Va. Code § 22C-9-7a (2022). Petitioners' oil and gas interests are located within both of the Units. At the time of filing, both of Arsenal's applications represented that it 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] Each of the applications 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 the oil and gas interests within the Units. Petitioners objected to Arsenal's applications, alleging that Arsenal failed to negotiate with them in good faith. On November 3, 2025, the Commission entered a notice of hearing scheduling an evidentiary hearing on Arsenal's applications for December 2, 2025.

In accordance with Act, Arsenal submitted data and information regarding the Units to an independent third-party reviewer selected by the Commission. The reviewer prepared economic reports for each of the Units on November 25, 2025, and submitted them to the Commission prior to the evidentiary hearing to assist in its evaluation of Arsenal's applications. The report contained the calculation of certain weighted averages based on information from the leases controlled by Arsenal within each of the Units, which the Commission was required to incorporate into the unit orders. *See* W. Va. Code § 22C-9-7a(g)(4) (2022).[4] For Gamelli 213 Unit, the report stated that the weighted average

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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

monetary bonus paid for the leases was $1,690.17 per net mineral acre; the weighted average production royalty percentage for all of Arsenal's leases within this unit was 13.25%, with the highest royalty percentage being 16%; and that the highest royalty percentage for this unit's leases executed within twenty-four months of the application date (November 4, 2025), was 12.5%. The economic report for the Gamelli 214 Unit reflects a weighted average monetary bonus of $1,528.35 per net mineral acre; the weighted average production royalty percentage for all of Arsenal's leases within this unit was 13.20%, with the highest royalty percentage being 20%; and that the highest royalty percentage for this unit's leases executed within twenty-four months of the application date (November 4, 2025), was 12.5%.

On November 18, 2025, Petitioners filed a written request to continue the hearing for the purposes of conducting pre-hearing discovery for the purposes of challenging Arsenal's contention that it negotiated with petitioners in good faith regarding the Units. This request was accompanied by a subpoena drafted by Petitioners' counsel. Petitioners requested that the Commission issue the subpoena in accordance with its subpoena power under West Virginia Code § 29A-5-1 (1964). This subpoena requested to depose Arsenal's corporate officials pursuant to Rule 30(b)(6) and West Virginia Code § 29A-5-1(c) (1964), and to compel document production from Arsenal. Specifically, Petitioners desired to depose Arsenal's corporate representatives on forty-one different topics. These topics included Arsenal's gas purchase and sale strategy, anticipated natural gas liquids production (NGL), its understanding of West Virginia Code § 22C-9-7a, investor relations, projections, and communications. Petitioners also requested an all-encompassing production of Arsenal's corporate records related to all agreements, contracts, permits, communications, data, and other documentation Arsenal possessed regarding any action it took related to the Units, including the information Arsenal used to compile the confidential summary it was required to provide to the independent reviewer for the economic reports. The subpoena also sought Arsenal's documentation regarding comparable horizontal drilling units formed in the surrounding area.

Arsenal opposed the request, arguing that the information sought was not relevant to whether it had negotiated in good faith with Petitioners. At the outset of the evidentiary hearing, the Commission stated on the record that it had reviewed Petitioners' request and was denying said request.

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.

Relevant to this appeal, Arsenal presented testimony from Mr. Baldwin, Dave Boyer (geologist) and Brandon Wedde (reservoir engineer).[5] The record and Commission's order reflect that Petitioners did not call any witnesses.

Mr. Baldwin testified about Arsenal's good faith efforts to negotiate with Petitioners and other interest owners within the units. He explained that Arsenal initiates negotiations by mailing a lease offer to an owner and, if no response is received, he makes additional efforts to contact the owner by phone or in person. Mr. Baldwin stated that he asks owners to submit any additional lease terms they would like Arsenal to consider and that he encourages owners to consult with an attorney. Negotiations then continue, with lease terms revised as necessary to reflect any mutually agreed to terms.

With respect to the Units, Mr. Baldwin testified that negotiations have been ongoing since 2015, with additional negotiations occurring in 2016, 2018, 2023, and 2025. He acknowledged that during the past twenty-four months, Arsenal has offered all unleased interest owners, including Petitioners, a royalty rate of 12.5%, and that these terms were largely accepted by other owners, with Petitioners rejecting the offer. Arsenal believed its offers were fair and advantageous to all parties. Petitioners contend that this royalty rate is objectively low under the circumstances and that a higher royalty payment is required to meet the statutory requirement of good faith.

Regarding Petitioners' mineral interests, Mr. Baldwin testified that Arsenal executed two prior leases with them in 2017 covering the subject mineral interests. One lease was with Petitioner Mitchell Garrett individually.[6] Mr. Garrett's 2017 lease provided a royalty rate of 14.25%, and he requested that the same rate be included in Arsenal's 2024 proposed extension of that lease. Mr. Baldwin indicated that Arsenal ultimately revised the extension to include, among other things, Mr. Garrett's original royalty rate and increased his signing bonus to $170,000; however, he explained that the terms of the extension were based on Arsenal's then-available 2024 budget and were contingent upon Mr. Garrett executing the extension before the end of 2024. Mr. Garrett did not sign the extension, and the offer expired.

The other lease was executed in 2017 with Petitioner Susan Schwartz, in her capacity as executrix of the Estate of Nancy S. Hull, and pertained to mineral interests held

[5]The testimony of Mr. Boyer and Mr. Wedde was scientific in nature, did not relate to the negotiations between the parties, and is not challenged in this appeal.

[6]Mr. Baldwin explained that both leases covered the undivided interests in the same tract of land, but Mr. Garrett had a separate lease because he owns a larger portion of the tract.

by Ms. Schwartz, as well as Petitioners Amy Hull-Wright and Michael Hull. That lease provided for a payment of $200 per acre, and a 12.5% royalty. The lease was subsequently surrendered in 2020 because of Arsenal's bankruptcy. Mr. Baldwin testified that he did not offer an extension on that lease because its terms were not favorable for the affected Petitioners, specifically, it was a 12.5% net lease covering all formations for five to ten years. Instead, Arsenal had offered them a new lease for a two-year term, "a couple thousand" dollars per acre, and payment based on gross Marcellus revenue rather than net revenue. According to the record, Arsenal's initial offer to Petitioners was $1,600 per acre with a one-eighth royalty, and its final offer increased those terms to $2,200 per acre with a one-eighth royalty. Petitioners did not accept the offer and following years of unsuccessful negotiations, Arsenal filed its unitization applications.

Mr. Baldwin further testified that Petitioners' primary objection throughout negotiations was Arsenal's reluctance to offer a royalty rate above 12.5%, even though some interest holders had received higher royalty rates in earlier-executed leases. He explained that those higher royalty rates reflected market and economic conditions at the time those leases were negotiated and that all such leases were executed prior to Arsenal's 2020 bankruptcy.

Petitioners' counsel cross-examined Mr. Baldwin on the issue of good faith, including questions regarding his prior negotiations with Petitioners and information contained in the economic reports prepared by the independent reviewer. Arsenal's counsel objected to portions of the questioning, and the Commission sustained some objections and overruled others. Moreover, at times, the Commission noted that while certain lines of questioning did not appear relevant, it nevertheless permitted Petitioners to develop portions of the record for purposes of appellate review.

However, the Commission did not permit Petitioners' counsel to elicit confidential information supplied by Arsenal to the independent reviewer for the purposes of cross-examining Mr. Baldwin on the issue of good faith. This included identifying certain interest owners within the subject Units and surrounding unit formations, as well as the specific royalty rates and payments provided under their respective leases, some of which exceeded the offers made to Petitioners. The Commission explained that the information was confidential by statute and was not subject to disclosure to the Commission or other parties; access to that information was limited to each unit's economic report. *See* W. Va. Code § 22C-9-7a(g)(4). It also noted that Petitioners' questions were not based on any objection to the findings contained in either economics report, and further recognized that the reports adequately described the relevant lease information while maintaining confidentiality.

The Commission further noted that it understood Petitioners' position that Arsenal could not establish good faith because it declined to honor their request to increase the royalty above one-eighth. However, it stated on the record that it was required to determine

good faith as set forth in West Virginia Code § 22C-9-7a and explained by this Court in *Haughtland Resources, LLC v. SWN Production Co., LLC*, No. 25-ICA-84, 2025 WL 3162008 (W. Va. Ct. App. Nov. 12, 2025) (memorandum decision). Under those authorities, the Commission expressed its opinion that a party's dissatisfaction with certain lease terms does not establish a lack of good faith, particularly in a case such as this, where the facts show that Arsenal attempted to negotiate leases with Petitioners for several years before filing its unitization applications. The Commission additionally observed that, under those authorities, the applicable good faith standard did not contemplate its evaluation of the terms contained in every existing lease within a unit. Considering the Commission's explanation, Petitioners' counsel chose to end his questioning of Mr. Baldwin.

At the close of evidence, the Commission voted to approve Arsenal's applications and memorialized its ruling by order entered on January 15, 2026. In its order, the Commission made findings regarding the evidence presented and found that, among other things, Arsenal had established that prior to filing its application, it negotiated in good faith with the applicable mineral interest owners. The Commission ultimately concluded: "Pursuant to West Virginia Code § 22C-9-7a(e)(1), the Commission has evaluated and considered all requirements set forth therein and concluded that the Applications comply with the statute."[7] This appeal followed.[8]

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

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

[8]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 May 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 denied that motion by order entered June 16, 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 appellate record and would impermissibly place this Court 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.

> 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).

In this appeal, Petitioners assert that the Commission committed certain errors in the proceedings below. We have consolidated Petitioners' arguments where appropriate for purposes of this decision.[9] Petitioners contend that the Commission erred in denying their request for discovery and the Commission failed to properly determine the statutory issue of good faith. Conversely, Arsenal argues that the Commission's decision was proper and supported by the record.

[9]Petitioners' brief before this Court raises several assignments of error; however, their brief fails to address each of them in its argument section as required by the West Virginia Rules of Appellate Procedure. Specifically, Petitioners' argument section does not address their assignments of error contending: "The [Commission] erred by granting [Arsenal's] application because Arsenal did not establish it met the requirements of the [Act]" and "The [Commission] failed to adequately articulate the bases for its decision to deny Petitioners' request for discovery and continuance." *See* Syl. Pt. 6, *Addair v. Bryant*, 168 W. Va. 306, 284 S.E.2d 374 (1981) (citation modified) ("assignments of error that are not argued in the briefs on appeal may be deemed by this Court to be waived."); W. Va. R. App. P. 10(c)(7) (stating that the brief "must contain an argument clearly exhibiting the points of fact and law presented . . . citing the authorities relied on, under headings that correspond with the assignments of error," and that this Court "may disregard errors that are not adequately supported by specific references to the record on appeal.") Accordingly, we deem these issues waived and will not consider them.

The parties herein have recently presented this Court with similar arguments regarding other Commission orders forming different Units in the related cases of *Hull-Wright, et al v. Arsenal Resources, LLC*, No. 25-ICA-304, 2026 WL 125974 (W. Va. Ct. App. Jan 16, 2026) (memorandum decision) ("*Arsenal I*") and *Hull-Wright, et al v. Arsenal Resources, LLC*, No. 25-ICA-410, 2026 WL 1718334 (W. Va. Ct. App. May 1, 2026) (memorandum decision) ("*Arsenal II*"). In both *Arsenal I* and *Arsenal II*, we explained that the Commission's orders on appeal were inadequate for the purposes of meaningful appellate review, as the orders failed to offer any findings by the Commission or analysis of the competing arguments of the parties as to Arsenal's good faith negotiations with Petitioners. Because of such deficiencies, the orders on appeal in both *Arsenal I* and *Arsenal II* were vacated and those matters were remanded to the Commission. Similarly, in the instant case, our review reveals that the Commission's January 15, 2026, order is insufficient to permit meaningful appellate review.[10] Specifically, the January 15, 2026, order makes no findings as to the date and amount of the offers made by Arsenal to Petitioners, and fails to offer analysis regarding the weight and credibility of the evidence presented below. Rather, the January 15, 2026, order only offers conclusory statements and does not embody the Commission's role as the trier of fact.[11]

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[10]We note that this Court, in *Arsenal I*, provided the parties with a detailed explanation of the established precedent regarding the necessity for Commission orders to contain proper findings of fact and conclusions of law. Because the parties herein are aware of such principles previously outlined in *Arsenal I*, we have not included the same references in the instant case.

[11]After the instant case was appealed to this Court, Arsenal submitted a proposed amended order to the Commission, which included findings of fact and analysis related to the parties' good faith negotiations. Petitioners objected to entry of the proposed amended order. However, over Petitioners' objection, the amended order was entered by the Commission on March 31, 2026 (Docket 431, Cause Nos. 549-550, Order No. 2). Following entry of the March 31, 2026, order, Petitioners timely appealed that order, which is now docketed before this Court as 26-ICA-151. However, when the Commission entered the March 31, 2026, order, it lacked jurisdiction, as the original January 15, 2026, order (Docket No. 431, Cause Nos. 549-550, Order No. 1) was already on appeal to this Court. As the March 31, 2026, order was not properly entered by the Commission, in an order issued contemporaneously with this decision, we vacate such order and remand this matter to the Commission for further proceedings consistent with this decision.

Additionally, we note that Arsenal filed a Motion for Limited Remand before this Court, seeking a limited remand of this matter to the Commission for the purpose of entry of the proposed amended order. Petitioners objected to the Motion for Limited Remand, arguing there existed no procedural mechanism within the West Virginia Rules of Appellate Procedure permitting such a limited remand and questioned the Commission's

Accordingly, based on the foregoing, we vacate the Commission's January 15, 2026, order related to the formation of the Units and remand the matter to the Commission for further proceedings consistent with this decision. On remand, the Commission shall consider all of the evidence as the trier of fact and thereafter enter a new order ruling upon Arsenal's application, as required by the Act and other relevant statutes. The new order shall contain sufficient findings of fact and conclusions of law to facilitate a meaningful appellate review should either party seek to file a new appeal. As we are mindful of the parties' need for a resolution of this matter, we hereby direct the Clerk of this Court to issue the mandate contemporaneously.

Vacated and Remanded.

ISSUED: November 10, 2026

CONCURRED IN BY:

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

jurisdiction to enter said order while the instant appeal was pending before this Court. The Motion for Limited Remand was denied by this Court's order dated April 28, 2026.