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-38 (Oil and Gas Conservation Comm'n Docket No. 424-534, 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 of 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 (the "Act"), which permits 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 September 22, 2025, pursuant to the provisions of the Act, Arsenal filed an application to unitize the oil and gas tracts within a target formation to create the Gamelli

[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.

211 Unit ("Unit"), consisting of 515.62 acres.[2] *See* W. Va. Code § 22C-9-7a (2022). Petitioners' oil and gas interests are located within the Unit. At the time of filing of its application, Arsenal noted that it had obtained consent from enough royalty interest owners and oil and gas operators to satisfy that statutory threshold under the Act.[3] 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).[4] 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 the oil and gas interests within the Unit. Petitioners objected to Arsenal's application, and alleged that Arsenal failed to negotiate with them in good faith. On September 25, 2025, the Commission entered a notice of hearing and set an evidentiary hearing on Arsenal's application for October 20, 2025.

In accordance with the Act, Arsenal submitted 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 applications. The report contained the calculation of certain weighted averages based on information from the leases controlled by Arsenal within Gamelli 211 and 212 Units, which the Commission incorporated into the orders relating to each of those Units.

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[2]On this same date, Arsenal also filed a separate application requesting to form the Gamelli 212 Unit. The Commission heard both applications at the same evidentiary hearing and entered separate orders ruling on each application. Petitioners filed a different appeal regarding Gamelli 212 (Case No. 26-ICA-152), which this Court will address by separate decision.

[3]*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).

[4]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[.]

See fn. 2 *supra; see also* W. Va. Code § 22C-9-7a(g)(4) (2022).[5] As to the Unit, the report stated that the weighted average monetary bonus paid for the leases was $1,415.81 per net mineral acre; the weighted average production royalty percentage for all of Arsenal's leases within the unit was 12.77%, with the highest royalty percentage being 16%; and that the highest royalty percentage for the unit's leases executed within the prior twenty-four months of the application date (September 22, 2025), was 12.5%.

Relevant to this appeal, Arsenal presented testimony from Mr. Baldwin, Dave Boyer (geologist), Brandon Wedde (reservoir engineer), and Petitioner Susan Schwartz.[6] The record reflects that Petitioners did not call any witnesses.

Mr. Baldwin testified about Arsenal's good faith efforts to negotiate with Petitioners and other mineral interest owners within the Unit. 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 previously detailed his negotiations with Petitioners in related proceedings involving different unit applications and that the details of those negotiations apply equally to the present unit.[7] He also noted that his efforts to negotiate with Petitioners were documented and attached as an exhibit to Arsenal's application,

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[5]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.

[6]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.

[7]Mr. Baldwin requested that his earlier testimony be incorporated into the record of this Unit proceeding, and the Commission's order indicates that it was considered. However, transcripts from those proceedings are not included in this unit's administrative record, and the Commission's order lacks specific and detailed discussion of that testimony in the order on appeal. Although this issue was not raised as error on appeal, and the omission does not affect our resolution of the present appeal, we emphasize that an appellate court cannot engage in supposition. Accordingly, we remind counsel that in future cases, the record on appeal must contain those records and the specific facts from which the Commission relied.

which reflected that negotiations began in late 2022, continued into mid-2025, and included Arsenal's submission of revised offers for Petitioners' consideration. Mr. Baldwin indicated that Arsenal's negotiations with Petitioners stalled because Petitioners have consistently insisted on receiving a royalty percentage higher than the 12.5% royalty Arsenal was offering. According to the record, Petitioners demanded a lease with a royalty rate matching the unit's highest existing royalty rate of 16%, as reflected in a lease Arsenal executed with a mineral interest owner in 2018. Mr. Baldwin explained that the higher royalty rates within the unit reflected market conditions at the time those leases were negotiated. He acknowledged that during the past twenty-four months, Arsenal has offered all unleased interest owners, including petitioners, a 12.5% royalty rate based on existing market conditions, and he expressed his belief that Arsenal's offers were made in good faith. Petitioners contend that the offered royalty rate is objectively low under the circumstances and that a rate of no less than 16% is required to satisfy the statutory requirement of good faith in this case.

Petitioners' counsel cross-examined Mr. Baldwin regarding his good faith negotiations with Petitioners. Arsenal's counsel objected to several questions, and the Commission sustained some objections while overruling others. At times, the Commission noted that certain questions did not appear relevant but nevertheless allowed Petitioners to develop portions of the record for potential appellate review. For example, the Commission permitted Petitioners, over Arsenal's objection, to question Mr. Baldwin and introduce exhibits concerning the royalty rates in other unit leases, including leases executed in the 1980s. The Commission extended this latitude to evidence regarding leases contained in units outside of the Gamelli 211 Unit. Petitioners contend that these documents show Arsenal can pay a higher royalty rate and therefore has not acted in good faith.

Ms. Schwartz testified that Arsenal's final offer included a 12.5% royalty and a bonus payment of about $2,100, divided into two installments. She acknowledged that, as executor of their mother's estate, she had executed a 2017 lease on behalf of the estate that also contained a 12.5% royalty. She stated that Arsenal's initial offer in this matter was for a 12.5% royalty and that she did not submit a counteroffer. Instead, she asked Arsenal to revise the offer to include more favorable lease terms, including a higher royalty rate. She explained that although she did not know exactly what the other Petitioners told Arsenal representatives during negotiations, she personally never stated that they would refuse to sign a lease with a royalty below 16%. She did, however, acknowledge that Petitioners' central concern throughout negotiations was their belief that a 12.5% royalty did not constitute a good faith offer.

At the close of evidence, the Commission voted to approve Arsenal's application and memorialized its ruling by order entered on January 15, 2026. In this order, the

Commission made findings regarding the evidence presented[8] and included a finding that Arsenal had established that prior to filing its application, it negotiated in good faith with the applicable mineral interest owners. The Commission ultimately concluded that Arsenal's application satisfied the statutory requirements for approval under West Virginia Code § 22C-9-7a(e)(1).[9] This appeal followed.[10]

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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[8]We observe that the January 15, 2026, order does not include findings addressing Ms. Schwartz's testimony. We remind the Commission to avoid such omissions in future orders; however, we find that the absence of such findings here is harmless. Here, Ms. Schwartz's testimony merely confirmed earlier witness statements concerning Petitioners' belief that a 12.5% royalty did not constitute a good faith offer in this case. Under these limited circumstances, such omission does not affect our ruling.

[9]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).

[10]During the pendency of this appeal, Arsenal filed various motions with this Court, which have prolonged the 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 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, we conclude that the matter lies outside the scope of this Court's review of the merits.

(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 present several arguments related to their contention that the Commission erred in its determination that Arsenal negotiated with them in good faith.[11] Conversely, Arsenal argues that the Commission's decision was proper and supported by the record.

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.[12] Specifically, the January 15, 2026,

[11]We note that Petitioners' choice of argument headings 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.

[12]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

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.[13]

Accordingly, based on the foregoing, we vacate the Commission's January 15, 2026, order related to the formation of the Unit 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.

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of such principles previously outlined in *Arsenal I*, we have not included the same references in the instant case.

[13]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 424, Cause No. 534, 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-149. However, when the Commission entered the March 31, 2026, order, it lacked jurisdiction, as the original January 15, 2026, order (Docket No. 424-534. 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 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.

ISSUED: November 10, 2026

CONCURRED IN BY:

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