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, BETTY GARRETT SCHMIDT, SUSAN SCHWARTZ, and MITCHELL GARRETT,
Interested Parties Below, Petitioners

v.) No. 26-ICA-98 (Oil and Gas Conservation Comm'n Docket No. 404-490, Order No. 2)

ARSENAL RESOURCES, LLC,
Applicant Below, Respondent

MEMORANDUM DECISION

Petitioners Amy Hull-Wright, Betty Garrett Schmidt, Susan Schwartz, and Mitchell Garrett appeal the February 25, 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-304, 2026 WL 125974 (W. Va. Ct. App. Jan. 16, 2026) (memorandum decision) ("*Arsenal I*"). In that appeal, we determined that the Commission's order lacked sufficient findings and analysis to permit proper appellate 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

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

the merits. *Arsenal I*, 2026 WL 125974, at *5. The present appeal stems from the order entered by the Commission upon remand.

In accordance with the Act, Arsenal filed an application on May 19, 2025, to unitize the oil and gas tracts within a target formation to create the JOsborn 213 Unit, consisting of 361.52 acres. *See* W. Va. Code § 22C-9-7a (2022). At the time of filing, the application stated that Arsenal had obtained consent from a sufficient number of 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 213 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 July 2, 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 June 30, 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-

[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 $1,425.52 per net mineral acre; the weighted average royalty percentage for all of Arsenal's leases within the unit was 13%, 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 made part of the record at the evidentiary hearing.

During the evidentiary hearing, the Commission heard testimony from Mr. Baldwin and Petitioner Mitchell Garrett 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 reflects that Arsenal's negotiations with petitioners began in 2022 and continued into 2025.

Mr. Baldwin testified that he has not offered any mineral owner a new lease with a royalty higher than 12.5% in the past two years. However, in November 2024, he offered Mr. Garrett an extension of a prior lease containing 14.25% royalty. Mr. Garrett declined that offer. The November 12, 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 same offer was extended to Petitioner Betty Garrett Schmidt. This offer covered Mr. Garrett's

[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.

entire mineral interest of approximately 91 net acres, only 0.16 acres of which lie in the JOsborn 213 Unit.[6]

Mr. Baldwin stated 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.

Mr. Baldwin further described Arsenal's September 28, 2022, offer 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, totaling $120,036 to Mr. Garrett. In its amended order, the Commission found that all offers to Mr. Garrett (except the November 2024 extension) contained the same terms offered to the other petitioners, with total payments varying based on acreage. Arsenal also offered a Most Favorable Nations (MFN) clause ensuring the highest royalty rate of any lease in the unit signed within the prior two years.

Arsenal's records introduced as hearing exhibits show numerous communications with petitioners between 2022 and 2025. Arsenal later offered petitioners a five-year lease with a $750 per acre bonus, a $160 per acre annual rental, and payment of the upfront rental. Under these terms, Mr. Garrett would have received a total payment of $140,333.13 for the acreage he owned. Similarly, Arsenal's payments to the remaining petitioners would depend on the acreage each owned.

On April 1, 2025, Ms. Hull-Wright objected to the February 2025 offer due to a reduced rental rate. Mr. Baldwin 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, reiterating the favorable terms and requesting additional proposals. He noted that Arsenal could not increase the royalty beyond 12.5%.

On May 1, 2025, Ms. Hull-Wright asserted 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 production or extensions,

[6] Arsenal filed applications to form other horizontal drilling units encompassing mineral interests owned by petitioners. Some, if not all, of those applications were granted by the Commission and are being challenged before this Court in separate appeals.

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 all petitioners an offer letter 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 with rental paid upfront. Under these proposed terms, Arsenal would remit $200,060.85 to Mr. Garrett.

Mr. Baldwin testified that the royalty rate was the primary obstacle and that Arsenal could not offer more than 12.5%. He explained that Arsenal is the only operator in the area, and that Arsenal has not entered a new lease with a royalty above 12.5% in six years.

Mr. Garrett also testified regarding his negotiations. After receiving the 2024 extension offer, he requested a $3,000 per acre bonus, which Mr. Baldwin said Arsenal would not accept. He expected a counteroffer. After receiving the February 2025 proposal, Mr. Garrett countered with a 15% royalty, $1,800 per acre, and additional terms, all of which Arsenal accepted except the royalty. He later asked whether his original 14.25% lease could be amended; he then received the May 7, 2025, offer for $2,200 per acre and a 12.5% royalty. The record reflects that this same offer was simultaneously extended to the other petitioners.

Mr. Garrett testified that the royalty rate was his primary objection. He admitted through his testimony that prior to 2025 he had never requested a specific royalty percentage, acknowledged multiple communications with Mr. Baldwin after each offer, and stated that no agreement was reached. He testified that he would not sign a lease with a 12.5% royalty because he does not believe such an offer reflects good faith.

At the close of evidence, the Commission voted to approve the application and entered its original order. As previously noted, this Court vacated that order in *Arsenal I*. Upon remand, the Commission prepared a proposed amended order and provided it to the parties for their review.

Petitioners filed written objections to the Commission's proposed order and requested further hearing before the Commission. Petitioners objected to the order primarily based upon their belief that the evidence did not support the Commission's decision and that the record was not completely developed. Arsenal filed a response addressing petitioners' objections to the proposed order and objecting to their request for further hearing. The Commission never formally ruled on petitioners' objections or request

for further hearing. Instead, the Commission entered its amended order on February 25, 2026, which is the subject of this appeal.[7]

The Commission's order includes several findings regarding the evidence presented at the evidentiary hearing. This includes factual findings squarely addressing the testimony of Mr. Baldwin and Mr. Garrett, and delineating the parties' communications and negotiations between 2022 through 2025. The Commission found that the totality of the evidence demonstrated that the parties engaged in extensive negotiations for several years that included Arsenal revising its offers to several terms requested by petitioners, as well as included favorable terms that petitioners did not request. The record established that the only concession Arsenal would not provide was a royalty rate above 12.5%, and that the lack of concession on this issue was petitioners' basis for rejecting all of Arsenal's lease offers. The Commission found Mr. Baldwin's explanation for the discrepancy in the higher royalty percentages provided in unit leases executed years prior, and the 12.5% provided for in more current leases credible, and contrary to Mr. Garrett's position, such an offer under the facts of this case did not constitute a lack of good faith.

Instead, 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's order ultimately concluded that Arsenal's application satisfied the statutory requirements for approval under West Virginia Code § 22C-9-7a(e)(1).[8] Petitioners' present appeal followed.

[7] On appeal, the parties treat the Commission's entry of its amended order as a de facto denial of petitioners' filing. Nevertheless, the lack of a formal ruling by the Commission does not affect the outcome of this appeal.

[8] 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).

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 four assignments of error. The first three 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 failing to conduct further hearing on remand. For reasons set forth below, we find no merit in any of these contentions.

First, on the issue of good faith, petitioners argue that the Commission has a non-delegable duty to make that determination. They contend that the Commission's good faith finding was not supported by the evidence. 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

[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.

urge this Court to revisit *Haughtland* and adopt a bright-line, objective standard for determining good faith in these cases.

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, both Mr. Baldwin and Mr. Garrett 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.").

Petitioners' final assignment of error contends that the Commission erred by not holding a further evidentiary hearing after the matter was remanded in *Arsenal I*. They argue that West Virginia Code § 22C-9-7a(g)(3) required the Commission, as a matter of due process, to hold an additional hearing and take further evidence before ruling on Arsenal's application. Petitioners further claim that additional hearing was imperative because the Commission prevented their attempts to put on evidence and effectively question Arsenal's witnesses. In a parallel argument, they assert that the Commission's amended order alone cannot satisfy due process, cure errors committed by the Commission below, or support the granting of Arsenal's application.

Petitioners' arguments are unsupported by citation to the record or adequate authority and contain only cursory analysis. In place of a properly developed argument, they offer the mere assertion that they were prevented from presenting their evidence below and that the Commission's amended order is insufficient to correct errors below or support the Commission's ultimate decision. Critically, they fail to cite the record to direct the Court's attention to specific instances in the record where such alleged error occurred, and do not precisely explain what evidence they were not allowed to present, let alone show any resulting prejudice.

Our decision in *Arsenal I* was squarely based on the inadequacies of the Commission's original order and our mandate on remand was for the Commission to further explain its decision through a more developed order and expressly stated that our ruling offered no opinion on the merits of the Commission's decision. *Arsenal I*, 2026 WL 125974, at *5 n.12. Nothing in that order required the Commission to hold further hearing. Therefore, the Commission complied with the Court's directive by entering the amended order.

While petitioners maintain further hearing was required upon remand due to alleged procedural errors by the Commission, because we did not address the merits in *Arsenal I*, we find that contention is unsupported.[10] Rather, petitioners' opportunity to establish procedural error and the necessity for further hearing before the Commission was in this appeal through the assertion of the proper assignment of error followed by corresponding argument. As set forth herein, petitioners have not done so.

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 JOsborn 213 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

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[10] As we pointedly noted in *Arsenal I*:

> 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.

Arsenal I, 2026 WL 125974, at *5 n.12.