WEST VIRGINIA CODE: §22C-9-7

§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one discovery deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commission by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool. Each application shall contain such information as prescribed by reasonable rules proposed by the commission in accordance with the provisions of section five of this article.

(2) Upon the filing of an application to establish drilling units, the commission shall provide notice to all interested parties in accordance with this subsection. If the application does not conform to the existing rules of the commission, then the commission shall set a hearing and provide notice to all interested parties. If the application conforms to the rules of the commission, the commission shall provide notice of the filing of the application to all interested parties. Each notice shall describe the area for which a spacing order is to be entered in recognizable, narrative terms; contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing, if any; include a statement that any party has a right to a hearing before the commission; and include a statement that any request for hearing must be filed with the commission within fifteen days of receipt of notice. If no request for hearing has been received within the fifteen days following receipt of the notice, the commission may proceed to process the application. If a request for hearing has been received by the commission, then the commission shall set a hearing and provide notice to all interested parties.

(3) The commission shall determine the area to be included in such spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. The commission shall consider:

(A) The surface topography and property lines of the lands underlaid by the pool to be included in such order;

(B) The plan of deep well spacing then being employed or proposed in such pool for such lands;

(C) The depth at which production from said pool has been found;

(D) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil or both;

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(E) The maximum area which may be drained efficiently and economically by one deep well; and

(F) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commission in determining the proper deep well drilling units therefor.

If the commission determines that drilling units should be established, the commission shall enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commission shall include in such order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commission shall be smaller than the maximum area which can be drained efficiently and economically by one deep well: Provided, That if there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commission may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.

(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commission finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commission is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commission may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production from such pool.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commission from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commission to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any order modifying a prior order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order:

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Provided, That drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well: Provided, however, That the commission may exceed the acreage limitation by ten percent if the applicant demonstrates that the area would be drained efficiently and economically by a larger drilling unit.

(8) After the date an application to establish drilling units has been filed with the commission, no additional deep well shall be commenced for production from the pool until the order establishing drilling units has been made, unless the commencement of the deep well is authorized by order of the commission.

(9) The commission shall, within forty-five days after the filing of an application to establish drilling units for a pool subject to the provisions of this section, enter an order establishing such drilling units, dismiss the application, or for good cause, continue the application process.

(10) As part of the order establishing a drilling unit, the commission shall prescribe just and reasonable terms and conditions upon which the royalty interests in the unit shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent order integrating the royalty interests.

(11) If a hearing has been held on an application submitted pursuant to this subsection, the order shall be a final order. If no hearing has been held, the commission shall issue a proposed order and shall provide a copy of the proposed order, together with notice of the right to appeal and request a hearing, to all interested parties. Any party aggrieved by the proposed order may appeal the proposed order to the full commission and request a hearing. Notice of appeal and request for hearing shall be made in accordance with section ten of this article within fifteen days of entry of the order. If no appeal and request for hearing has been received within fifteen days, the proposed order shall become final.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, the commission shall set a hearing and provide notice to all interested parties. Each notice shall describe the area for which an order is to be entered in recognizable, narrative terms; contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. After the hearing, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable and in no event shall drilling be initiated on the tract of an unleased owner without the owner's written consent.

(2) All operations, including, but not limited to, the commencement, drilling or operation of a

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deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a deep well drilled thereon.

(3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including a reasonable charge for supervision and for interest on past-due accounts, by all those who elect to participate therein.

(4) No drilling or operation of a deep well for the production of oil or gas shall be permitted upon or within any tract of land unless the operator shall have first obtained the written consent and easement therefor, duly acknowledged and placed on record in the office of the county clerk, for valuable consideration of all owners of the surface of such tract of land, which consent shall describe with reasonable certainty, the location upon such tract, of the location of such proposed deep well, a certified copy of which consent and easement shall be submitted by the operator to the commission.

(5) Upon request, any such pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect:

(A) Option 1. To surrender such interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commission; or

(B) Option 2. To participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commission to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling, completing, equipping and operating a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any

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leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling, completing, equipping and operating a deep well, the commission shall determine and apportion the costs, within ninety days from the date of written notification to the commission of the existence of such dispute.

(8) The commission shall, within forty-five days after the filing of an application, enter an order, dismiss the application, or for good cause, continue the application process.

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