

Comments to the Proposed Legislative Rule 39 C.S.R. 1 "Rules of the Commission"

On June 14, 2019, the Oil and Gas Conservation Commission (OGCC) commenced a thirty-day public comment period and subsequently held a public hearing on July 16, 2019 to accept oral comments on proposed revisions to West Virginia Legislative Rule 39 C.S.R. 1 ("Rule").

OGCC accepted oral comments at the hearing and written comments through July 15, 2019. One written comment was received during the thirty-day comment period and three commenters provided verbal comments at the public hearing. No comments were received after the submission deadline. OGCC addresses both the written and oral comments below.

Written Comments submitted via email and hand delivery by WVONGA and IOGA.

Comment A: As an initial matter, the Associations appreciate the effort the OGCC's office put into developing the Proposed Rule and the Associations support the objective of updating the regulatory process for issuing well work permits for the efficient and effective development of deep shale formations utilizing horizontal drilling.

Response A: Thank you for your comment.

Comment B: Appropriate revisions to the existing regulations addressing spacing of deep wells will encourage investment in West Virginia by providing a more efficient framework for development of deep well formations by horizontal drilling and associated completion techniques. The Associations seek an efficient and predictable regulatory framework to encourage oil and natural gas developers to make long-term strategic investment decisions regarding deep formations in West Virginia. The comments at the public hearing on April 23, 2019 confirmed that the current regulations that require 3,000 ft. spacing between deep wells is impractical and unworkable for horizontally drilled deep wells, as well as the exception hearing process required in order to proceed with the drilling of such wells. The current spacing requirements have been in place since at least 1982, without substantive change.

There is no doubt that the 3,000 ft. spacing requirement for conventional vertical wells established more than a quarter century ago makes no sense in the context of horizontal laterals in deep formations. In fact, imposing conventional vertical well spacing on horizontal wells violates the very purpose of the Oil and Gas Conservation statute. W. Va. Code § 22C-9-1 establishes the legislative purpose as:

(a) It is hereby declared to be the public policy of this state and in the public interest to:

- (1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;
- (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;
- (3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.

Response B: The OGCC agrees that 3000' spacing for deep horizontal unconventional wells may be inappropriate using existing technology.

Comment C: In its Emergency Rule, also filed on June 14, 2019, the OGCC specifically acknowledged that there is virtually unanimous agreement that the 3,000 ft. spacing between horizontal wells to develop the Utica Shale in northern West Virginia is inappropriate. What could also be said is that such spacing fails to promote and encourage exploration and production, fails to encourage maximum recovery and fails to prohibit waste of oil and gas resources.

Response C: Thank you for your comment.

Comment D: However, if, as the Associations suspect, the Proposed Rule is intended to prohibit obtaining a well work permit for any horizontal unconventional deep well unless and until an operational order is applied for, issued and effective or an order establishing special field rules is in place, then the Associations assert that the Proposed Rule is still inappropriate. The effect of the Proposed Rule would be to preclude the drilling of a well more than 3,000 ft. from another deep well, even though that well could be drilled without OGCC intervention. The Proposed Rule is clearly a step backward in promoting the public policy of West Virginia as described in the Oil and Gas Conservation statute quoted above. The Proposed Rule also goes against the public policy of Governor Justice's administration and the West Virginia Legislature of eliminating unnecessary and outdated regulatory burdens on businesses in West Virginia.

Response D: It is not the intent of the OGCC to prohibit the obtaining of a well work permit and in fact it is not within the authority of the OGCC to issue well work permits. However, we do agree that a minimum default spacing is needed and have revised the proposed rule to include a minimum default spacing of 3000' for horizontal unconventional deep wells.

Comment E: The Associations believe that the Proposed Rule simply misses the mark toward an efficient and reliable regulatory framework for development of shale and similar tight formations below the top of the Onondaga formation. Instead of establishing a specific distance, such as 800 or 1,000 feet, as previously proposed by the Associations, between horizontal laterals as the default minimum deep well spacing, the Proposed Rule creates a new procedure that requires an operator to file an application followed by a mandatory public hearing in order to obtain an "operational order" for some limited area at the OGCC's discretion. The Proposed Rule appears to unreasonably seek case-by-case OGCC discretion and approval at the expense of progress toward regulatory certainty and oil and gas development.

Comment F: Either a minimum 800 foot or 1,000 foot spacing between productive intervals would allow an operator to make an informed decision whether to design spacing on that number or seek approval of a shorter distance through an exception location hearing. Likewise, operators that

determine a greater spacing distance is appropriate could choose to use the minimum distance or a higher number for offset wells.

Comment G: The Proposed Rule Should Establish a Minimum Spacing Between Productive Intervals of Horizontal Unconventional Deep Wells

As discussed above, the Associations urge the OGCC to incorporate a default minimum spacing for the productive intervals of horizontal unconventional deep wells. As acknowledged in its Emergency Rule 39 C.S.R. 1, the range of minimum spacing the OGCC has authorized for Utica development has been between 800 and 1,300 feet. We believe that based on OGCC decisions, appropriate default spacing to encourage development where different operators are involved is 1,000 feet between productive intervals of laterals, with setbacks from lease or unit boundaries of 500 feet parallel to the lateral and 75 feet at the toe and heel. We urge adoption of those default distances. Then only if an operator desires to develop using spacing less than those distances would an application for an operational order or well location exception be necessary.

Response to E, F, and G: The OGCC believes that the proposed revisions reduce the need for additional hearings and decreases the regulatory burden as compared to the existing rule language. Further, the OGCC believes, based on evidence provided by operators in hearings, that a firm spacing number has not been established and agreed upon by the industry. Additionally, the OGCC recognizes that the proper spacing is dependent on geography and formation and one spacing number is not appropriate for all formations in all areas. Hence, the OGCC believes that the proposed operational order language provides the flexibility necessary to allow development that meets the mandate of WV Code 22C-9-1. As proposed, the operational order will address heel and toe spacing and gives the OGCC discretion to address productive interval spacing.

Comment H: The Proposed Rule Should Authorize Operators to Utilize Lower Minimum Spacing Between Productive Intervals of the Deep Wells It Operates

Operators should retain the authority to space wells it drills on the basis of its own business judgment even if that spacing is less than the default distance established by legislative rule. Operators should be allowed to take into consideration specific geologic conditions, surface geography, completion design, lease limitations, etc. in developing adjoining units or a multi-well unit. The Associations do not believe that there is a need to establish a minimum spacing between wells owned or operated by the same operator, but if a number is established it should not be more than 250 feet between laterals.

As the Proposed Rule appears to contemplate, the provisions of this shorter spacing authority should also extend to circumstances where two or more operators agree in writing to utilize the spacing requirements applicable to the same operator.

Response H: The OGCC has addressed the issue in the proposed rule changes, however the industry proposal could lead to unnecessary wells being drilled to drain the formations creating waste based on testimony in exception hearings by all operators before the OGCC.

Comment I: The Proposed Rule Should Clearly State that the Minimum Spacing Shall Only Apply to the Productive Interval of Adjacent Horizontal Unconventional Deep Wells

The specified minimum spacing requirements should apply only to the productive interval of the horizontal lateral in the target formation. In order to allow the continued use of multi-well pads with

wellheads often spaced less than 20 feet between each other, the spacing distances should apply to productive interval but not to the wellhead location, non-productive intervals, including the vertical or angled portion of a wellbore, or the heel and toe as addressed below. To impose minimum spacing to wellhead locations or non-productive intervals would undermine the whole purpose of the rule and still require well exception applications for every multi-well pad of horizontal unconventional deep wells. This issue highlights the problem with the general operational order process - it leaves too many unanswered questions that should be addressed in a legislative rulemaking procedure.

Response I: The specified minimum spacing requirements to be contained in an operational order pursuant to 4.2.2 of the proposed language addresses the lateral spacing, toe to toe, heel to heel, and toe to heel setbacks. We agree with some of the comment and have changed language in the proposed rule to address the concern.

Comment J: The Proposed Rule Should Establish Lower Minimum Distances for Toe to Heel, Heel to Heel and Toe to Toe Distances

The Associations also request that minimum spacing heel to heel and toe to toe distances be established at 150 feet. Again this is a default number that could be modified through an operational order or well location exception. The industry uniformly agrees that standard lateral to lateral spacing is not necessary or appropriate for toe to heel, toe to toe and heel to heel spacing.

Response J: See Response to E, F, & G.

Comment K: Operational Orders Should Only Be Modified Upon Application of an Affected Producer

The Proposed Rule undermines the certainty and reliability of an "operational order" by the language "or to prevent substantial harm to the public interest" in §4.2.2.a. The phrase "to prevent substantial harm to the public interest" is overly vague and provides operators with very little confidence that they can rely on an operational order to budget millions of dollars in expenditures for several years in the future. The idea that an operational order could be revised or withdrawn *sua sponte* on a vague and unpredictable standard simply undermines the value of the operational order process. This language, also found in §4.2.2.h., and the even broader language of simply "in the public interest" found in §4.2.2.d allowing for *sua sponte* amendments, reinforces the need for a specific default spacing distance in the Proposed Rule which could only be modified through the legislative rulemaking review procedure.

Response K: The OGCC agrees that the language is unnecessary as it relates to creating new Operational Orders and will be deleted. However, the OGCC believes that the language in 4.2.2.d is necessary.

Verbal comments from the public hearing held on July 16, 2019

Commenter: Dave McMahon on behalf of West Virginia Surface Owner's Rights Organization

Comment L: One is that we like -- generally, we are in favor of the proposed rules, particularly in that they apply to well bores by the same operator.

The most efficient spacing to get the most gas out of the formation is often not the same as we get the quickest economic return to the operator, and so a mineral owner having leverage would insist on wider spacing. It might take longer to get out, but there would be more minerals in the long term, and therefore, a larger royalty. So that would particularly hurt small mineral owners who don't have the ability to negotiate spacing with a sophistication.

So, that's one reason for our mineral owner members. We think that the spacing should be set by rule, not by this new methodology, and not by the operator independently, but also for the surface owners if

you can get more gas out more efficiently with fewer wells, then that means you need fewer wells on fewer surface pads, and therefore, more disturbance on surface owners.

So, we like that in particular that they apply to well bores that are drilled by the same operator under the same leasing unit.

We do not like the ability as allowed under the rule for there to be units declared that are multiple well units. We think each well should have its own unit.

If it's a multiple well unit, and every well in the unit is drilled, then there are not problems. If it's declared to be a multiple well unit, and only one well is drilled, then if that well goes through the Tract A mineral owner, the royalties will be distributed amongst all the owners in the unit, even owners of tracts that are not being drained.

So, using the first person, if that was my tract being drained, and a royalty based on my gas, and if the other well is never drilled, then I won't get the full value of the gas under my property.

Similarly, if I am one of the owners that is not drained -- well, not similarly, but in addition, if I am one of the owners that is not drained, then my well -- my land will be held by production, and I will not be able to -- perhaps a neighboring neighbor and get full value of my land. So I would only get a small percentage of the value, and I would be held by production.

So we generally do support the rule particularly that it applies to all the wells drilled by an owner and its units or leases.

We think they should be single well units for the reasons I've stated. I would further suggest for procedural rule for the Commission, and maybe it's there and I don't know about it, but a mailing list we could sign up for so we hear about meetings of the Commission would be a very useful tool, and I think would inspire more input if you have such a procedural rule, and didn't have to go through the Legislature.

Response L: The intent of the OGCC with the proposed rule allows for more than a 640-acre unit and multiple well units however it limits the size of the unit in those cases to only the area drilled as described in Section 4.2.2.g. Currently the OGCC posts all hearings on the WV Secretary of State's website and the OGCC's website and the commission believes that is appropriate and adequate.

Commenter - Mark Clark on behalf of WVONGA and IOGA

Comment M: The two associations have filed joint comments regarding the proposed Legislative rule, and I have one or two minor changes to insert that are in the last paragraph of 422, and I'm going to hand this in to the Chairman.

After Sub-part A, insert "and C above." Then after Sub-part B, insert "and D respectively."

Our primary comment is desiring a rule establishing distance, appropriate spacing, in the rule as opposed to by operational order, and we also support Mr. McMahon's last point, which I think was the right procedural process that notices of actions or applications to the Commission are published on their website, and we can sign up to receive notices through that.

Response M: See response to comments D through L.

Commenter - Sean Willis on behalf of Tug Hill Operating, LLC

Comment N: Mr. Lay, Sean Willis with Tug Hill. Overall, Tug Hill is supportive of the proposed changes in the rules whereby providing the Commission the ability to consider the operator specific philosophy, the general formation specific reservoir properties that combine the development philosophy and the optimal spacing for each individual area and removing the arbitrary -- any arbitrary distance from the spacing requirements.

I also feel there is support to set a minimum as outlined by the proposal, and are generally supportive of the language outlined here in the best interest of the mineral owners and operators and all the constituents involved.

Response N: Thank you for your comment.

**West Virginia Oil and Natural Gas Association
and
Independent Oil and Gas Association of West Virginia, Inc.**

**Comments to the Proposed Legislative Rule, 39 C.S.R. 1,
"Rules of the Commission"**

To: West Virginia Oil and Gas Conservation Commission
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Charleston WV 25304

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The West Virginia Oil & Natural Gas Association ("WVONGA") and the Independent Oil & Gas Association of West Virginia ("IOGA") appreciate the opportunity to submit the following joint comments on the proposed revisions to legislative rule, Rules of the Commission, 39 C.S.R. 1 ("Proposed Rule") implementing W. Va. Code §22C-9-1 *et seq.* The Proposed Rule was submitted to the West Virginia Secretary of State on June 14, 2019, including a notice that written comments must be submitted to the West Virginia Oil and Gas Conservation Commission ("OGCC"), by 8 a.m., July 15, 2019. WVONGA and IOGA (sometimes jointly referred to herein as "Commenters" or "the Associations") are recognized as representing virtually the entire oil and gas industry in West Virginia. These comments are submitted without prejudice to any member of WVONGA or IOGA submitting comments, including comments that may be inconsistent with these comments, concerning the Proposed Rule.

The Associations

Chartered in 1915, WVONGA is one of the oldest trade organizations in West Virginia, and serves the entire oil and gas industry. The activities of WVONGA members include construction, environmental services, drilling, completion, gathering, transporting, distribution and processing of oil, natural gas and their constituents. WVONGA members operate in almost every county in West Virginia and employ thousands of people across the State, with payrolls totaling hundreds of millions of dollars annually. Members have cumulative investment of nearly ten billion dollars in West Virginia, account for most of the production and recent well work permits, operate more than 20,000 miles of pipeline across the state and provide oil and natural gas to more than 300,000 West Virginia homes and businesses. As such, WVONGA's members have a keen interest in all aspects of regulation associated with oil and gas activities, including the Proposed Rule.

Formed in 1959, IOGA is a statewide nonprofit trade association that represents companies engaged in the extraction and production of natural gas and oil in West Virginia, as well as the companies that support these extraction and production activities. IOGA was formed to promote and protect a strong, competitive and capable independent natural gas and oil producing industry in West Virginia, while also protecting the natural environment of our state.

IOGA has been in existence during times of boom and bust and its members have a long history of driving innovation in exploration and development of West Virginia's oil and gas reserves. IOGA members operate in virtually every county in West Virginia and have a longstanding tradition of working with state agencies to help regulators understand existing operations and new innovations and how to reasonably and effectively regulate specific activities.

It is in this spirit of experience and partnership with OGCC that WVONGA and IOGA offer these comments.

I. General Comments

As an initial matter, the Associations appreciate the effort the OGCC's office put into developing the Proposed Rule and the Associations support the objective of updating the regulatory process for issuing well work permits for the efficient and effective development of deep shale formations utilizing horizontal drilling.

Appropriate revisions to the existing regulations addressing spacing of deep wells will encourage investment in West Virginia by providing a more efficient framework for development of deep well formations by horizontal drilling and associated completion techniques. The Associations seek an efficient and predictable regulatory framework to encourage oil and natural gas developers to make long-term strategic investment decisions regarding deep formations in West Virginia. The comments at the public hearing on April 23, 2019 confirmed that the current regulations that require 3,000 ft. spacing between deep wells is impractical and unworkable for horizontally drilled deep wells, as well as the exception hearing process required in order to proceed with the drilling of such wells. The current spacing requirements have been in place since at least 1982, without substantive change.

There is no doubt that the 3,000 ft. spacing requirement for conventional vertical wells established more than a quarter century ago makes no sense in the context of horizontal laterals in deep formations. In fact, imposing conventional vertical well spacing on horizontal wells violates the very purpose of the Oil and Gas Conservation statute. **W. Va. Code § 22C-9-1** establishes the legislative purpose as:

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.

In its Emergency Rule, also filed on June 14, 2019, the OGCC specifically acknowledged that there is virtually unanimous agreement that the 3,000 ft. spacing between horizontal wells to develop the Utica Shale in northern West Virginia is inappropriate. What could also be said is that such spacing fails to promote and encourage exploration and production, fails to encourage maximum recovery and fails to prohibit waste of oil and gas resources.

The Proposed Rule maintains the 3,000 ft. spacing for conventional deep wells, but fails to specify a similar default spacing for the newly defined horizontal unconventional deep wells. If the OGCC intends that the Proposed Rule will be interpreted and applied to eliminate any minimum spacing between horizontal unconventional deep wells, then the Associations fully support the Proposed Rule and will safely proceed with development of such wells post haste.

However, if, as the Associations suspect, the Proposed Rule is intended to prohibit obtaining a well work permit for any horizontal unconventional deep well unless and until an operational order is applied for, issued and effective or an order establishing special field rules is in place, then the Associations assert that the Proposed Rule is still inappropriate. The effect of the Proposed Rule would be to preclude the drilling of a well more than 3,000 ft. from another deep well, even though that well could be drilled without OGCC intervention. The Proposed Rule is clearly a step backward in promoting the public policy of West Virginia as described in the Oil and Gas Conservation statute quoted above. The Proposed Rule also goes against the public policy of Governor Justice's administration and the West Virginia Legislature of eliminating unnecessary and outdated regulatory burdens on businesses in West Virginia.

The Associations believe that the Proposed Rule simply misses the mark toward an efficient and reliable regulatory framework for development of shale and similar tight formations below the top of the Onondaga formation. Instead of establishing a specific distance, such as 800 or 1,000 feet, as previously proposed by the Associations, between horizontal laterals as the default minimum deep well spacing, the Proposed Rule creates a new procedure that requires an operator to file an application followed by a mandatory public hearing in order to obtain an "operational order" for some limited area at the OGCC's discretion. The Proposed Rule appears to unreasonably seek case-by-case OGCC discretion and approval at the expense of progress toward regulatory certainty and oil and gas development.

Either a minimum 800 foot or 1,000 foot spacing between productive intervals would allow an operator to make an informed decision whether to design spacing on that number or seek approval of a shorter distance through an exception location hearing. Likewise, operators that determine a greater spacing distance is appropriate could choose to use the minimum distance or a higher number for offset wells.

A. The Proposed Rule Should Establish a Minimum Spacing Between Productive Intervals of Horizontal Unconventional Deep Wells

As discussed above, the Associations urge the OGCC to incorporate a default minimum spacing for the productive intervals of horizontal unconventional deep wells. As acknowledged in its Emergency Rule 39 C.S.R. 1, the range of minimum spacing the OGCC has authorized for Utica development has been between 800 and 1,300 feet. We believe that based on OGCC

decisions, appropriate default spacing to encourage development where different operators are involved is 1,000 feet between productive intervals of laterals, with setbacks from lease or unit boundaries of 500 feet parallel to the lateral and 75 feet at the toe and heel. We urge adoption of those default distances. Then only if an operator desires to develop using spacing less than those distances would an application for an operational order or well location exception be necessary.

B. The Proposed Rule Should Authorize Operators to Utilize Lower Minimum Spacing Between Productive Intervals of the Deep Wells It Operates

Operators should retain the authority to space wells it drills on the basis of its own business judgment even if that spacing is less than the default distance established by legislative rule. Operators should be allowed to take into consideration specific geologic conditions, surface geography, completion design, lease limitations, etc. in developing adjoining units or a multi-well unit. The Associations do not believe that there is a need to establish a minimum spacing between wells owned or operated by the same operator, but if a number is established it should not be more than 250 feet between laterals.

As the Proposed Rule appears to contemplate, the provisions of this shorter spacing authority should also extend to circumstances where two or more operators agree in writing to utilize the spacing requirements applicable to the same operator.

C. The Proposed Rule Should Clearly State that the Minimum Spacing Shall Only Apply to the Productive Interval of Adjacent Horizontal Unconventional Deep Wells

The specified minimum spacing requirements should apply only to the productive interval of the horizontal lateral in the target formation. In order to allow the continued use of multi-well pads with wellheads often spaced less than 20 feet between each other, the spacing distances should apply to productive interval but not to the wellhead location, non-productive intervals, including the vertical or angled portion of a wellbore, or the heel and toe as addressed below. To impose minimum spacing to wellhead locations or non-productive intervals would undermine the whole purpose of the rule and still require well exception applications for every multi-well pad of horizontal unconventional deep wells. This issue highlights the problem with the general operational order process - it leaves too many unanswered questions that should be addressed in a legislative rulemaking procedure.

D. The Proposed Rule Should Establish Lower Minimum Distances for Toe to Heel, Heel to Heel and Toe to Toe Distances

The Associations also request that minimum spacing heel to heel and toe to toe distances be established at 150 feet. Again this is a default number that could be modified through an operational order or well location exception. The industry uniformly agrees that standard lateral to lateral spacing is not necessary or appropriate for toe to heel, toe to toe and heel to heel spacing.

E. Operational Orders Should Only Be Modified Upon Application of an Affected Producer

The Proposed Rule undermines the certainty and reliability of an "operational order" by the language "or to prevent substantial harm to the public interest" in §4.2.2.a. The phrase "to prevent substantial harm to the public interest" is overly vague and provides operators with very little confidence that they can rely on an operational order to budget millions of dollars in expenditures for several years in the future. The idea that an operational order could be revised or withdrawn *sua sponte* on a vague and unpredictable standard simply undermines the value of the operational order process. This language, also found in §4.2.2.h., and the even broader language of simply "in the public interest" found in §4.2.2.d allowing for *sua sponte* amendments, reinforces the need for a specific default spacing distance in the Proposed Rule which could only be modified through the legislative rulemaking review procedure.

II. Specific Comments to Proposed Rule

The Associations also propose the addition of two new definitions and the specific revisions to the Proposed Rule to implement the foregoing general comments and to clarify and improve its terms (the proposed revisions are reflected as underlining for additions and strike through for deletions):

1. "Conventional Deep Well" means a deep well permitted in accordance with article 6, chapter 22 of the West Virginia Code, drilled to a depth below the top of the Onondaga formation which does not meet the definition of a Horizontal Unconventional Deep Well at subsection 2.16 targeting a non-shale type reservoir whether drilled vertically or horizontally.

This revision is consistent with the definition in the statute and places all deep wells in either the conventional or unconventional definitions.

2. "Horizontal Unconventional Deep Well" means a deep well permitted in accordance with either article 6 or article 6A, chapter 22 of the West Virginia Code, drilled to a depth below the top of the Onondaga formation utilizing horizontal drilling techniques and targeting a shale or low permeability reservoir.

This revision is consistent with the revision to "conventional deep well" and covers a horizontal well into a shale or low permeability reservoir that is not required to be permitted under article 6A.

3. "Operational Order" means an order issued by the Commission upon application of one or more operators to define the area to be covered by the order, establish minimum horizontal unconventional well spacing, to include distances between laterals which will be controlled by the same operator, establish minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe, heel to heel, or toe to heel setbacks for units of the same operator, establish minimum distances between wells adjacent to other operators and minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe,

heel to heel, or toe to heel setbacks for units in cases where different operators are involved which have not entered into a written agreement to utilize the minimum distances for the same operator.

This is a new definition for the term "operational order" for clarity since it is used throughout the Proposed Rule.

4. "Productive Interval" of a horizontal unconventional deep well for purposes of setback and spacing limitations, but not for purposes of a determination of lease royalty payments, means the perforated length of a well bore in the target formation, as shown on a directional survey, projected vertically to the surface.

This is a new definition for the term "productive interval" because it is an important term in the context of defining spacing and these comments use the term multiple times.

5. 4.2.2 Horizontal Unconventional Deep Wells

To prevent waste, protect correlative rights, and to prevent substantial harm to the public interest, in the absence of an application for special field rules or special field rules approved by the Commission establishing drilling units or authorizing different horizontal unconventional deep well spacing or location patterns for a particular field, pool, geographic area, or parts thereof, the productive interval of each new horizontal unconventional deep well shall be:

(a) no less than 1,000 feet from the productive interval measured perpendicularly from a previously permitted horizontal unconventional deep well operated by a different operator;

(b) no less than 250 feet from the productive interval measured perpendicularly from a previously permitted horizontal unconventional deep well operated by the same operator;

(c) no less than 500 feet from a lease or unit boundary measured perpendicularly for wells operated by different operators; and

(d) no less than 125 feet from a lease or unit boundary measured perpendicularly for wells operated by the same operator;

In addition, the distance between the heel or toe of a new horizontal unconventional deep well shall be no less than 150 feet from the heel or toe of a previously permitted horizontal unconventional deep well and no less than 75 feet from a lease or unit boundary;

Provided further, that in circumstances where two or more operators agree in writing to lesser spacing than required in subpart (a) above, such lesser spacing shall not be less than the minimum spacing established in subpart (b) above.

This revision implements the comments regarding establishing a default spacing for the productive intervals of a horizontal unconventional deep wells in a similar way that the conventional deep wells have a default spacing distance.

6. 4.2.2.a The Commission, at the request of an operator, ~~or to prevent substantial harm to the public interest,~~ may establish a geographic area by formation ~~or formations,~~ establishing an Operational Order for horizontal unconventional deep wells. Any operator

intending to apply for an Operational Order, shall ~~send~~submit to the Commission and application for Operational Order on a form developed by the Commission along with a request for public hearing along with the application which shall include the applicant's name, address, description of the area, map generally depicting the area to be covered by the request, requested well spacing and setback distances from lease or unit boundaries, and the geological formation or other formations to be considered for the Operational Order ~~to the Commission~~. The map should be of a scale sufficient to identify the area for a Class II legal advertisement.

This revision clarifies that the application differs from a well work application and incorporates a requirement for requested well spacing and setback distances. The revision also implements the Associations comments that the OGCC should not retain the vague and undefined authority to create, modify or withdraw an operational order except upon an application from an operator.

7. 4.2.2.b The Commission shall set a day, time, and place for the public hearing to be not less than twenty (20) days but no more than forty-five (45) days. The Commission shall provide written notice of the application for Operational Order to operators having permits issued within the proposed area of the Operational Order and publish a Class II legal advertisement in the county newspaper(s) for which the proposed Operational Order would affect stating the date, time, and location of the public hearing on the application for an Operational Order. In addition to the opportunity to appear at the scheduled hearing, any operator may file written comments on the requested application for an Operational Order.

This revision requires the OGCC to notify other operators in the area covered by a proposed Operational Order that an application for an Operational Order has been submitted for that area.

8. 4.2.2.c At the hearing any operator ~~of land with operating rights in oil and gas within the requested area or~~ offset operator affected by the request as to the spacing of deep wells within the requested Operational Order area may present evidence. That evidence shall be technical in nature and define characteristics of the reservoir to be covered by the Operational Order.

This revision deletes the words "of land" and relies on the definition of operator which relates to development of oil and gas estates.

9. 4.2.2.d Within ~~20~~ 45 days after the application for the Operational Order has been filed ~~of the hearing~~, the Commission ~~may~~ shall issue an Operational Order for a defined area or dismiss the application, after considering all the evidence presented in support and in opposition to the Operational Order. The Operational Order may be amended from time to time by the Commission at the request of one or more operators having operating rights in oil and gas in the area covered ~~affected by the Operational Order in the public interest~~ after notice and public hearing.

This revision clarifies that the OGCC must issue an order within 45 days of the filing of an application for an operational order or deny the application (similar to §6.3.c of the rule). The required issuance of an order provides the applicant(s) the opportunity to appeal the decision. The revision also clarifies that amendments to an order shall be made upon application by one or

more operators having operating rights in oil and gas within the covered area and not on the OGCC's own initiative.

10. 4.2.2.e The Operational Order will: define the area to be covered by the order, establish minimum horizontal unconventional well spacing, to include distances between laterals which will be controlled by the same operator, establish minimum distances between wells adjacent to other operators, establish minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe, heel to heel, or toe to heel setbacks for units of the same operator, establish minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe, heel to heel, or toe to heel setbacks for units in cases where different operators are involved.

This revision clarifies that setbacks from the toe and heel should also be part of the Operational Order.

11. 4.2.2.f ~~Adjacent~~ Operators within the Operational Order area may enter into a written agreement setting agreed upon lateral, toe, and heel spacing so long as they do not reduce that spacing below the minimum distances allowed between for wells controlled by the same operator set by the Operational Order for that area. The executed memorandum of agreement with the spacing terms must be submitted to the commission with each application for which the operator is relying on the agreement.

This revision is designed to clarify the intent of the paragraph that the limitation on written agreements is to the spacing for development by the same operator and not spacing for development between different operators. The revision also deletes the term "adjacent" which is unnecessary and not defined.

12. 4.2.2.g Horizontal unconventional deep well unit sizes established by the ~~Commission~~ may exceed 640 acres provided that the unit size is no greater than the area covered by the entire length of the well plus the length of the Operational Order toe and heel setbacks, multiplied by the lateral spacing between wells, plus 10%. ~~Unit size may also be increased beyond the 10% to insure no lease acreage is stranded by the operator's development plan.~~ Multiple well units are allowed under the same guidelines as single well units.

This revises a sentence that utilizes vague and undefined terms. Insuring that "no lease acreage is stranded" is outside the authority of the OGCC. Likewise, the OGCC does not have authority to require "operator's development plans." Development plans are subject to the business judgment and discretion of the operator.

13. 4.2.2.h The Operational Order for the defined area shall be enforceable until amended by a new Operational Order covering that area or part thereof which may be requested by any operator of land having operating rights in oil and gas within the proposed area, or offset operator affected by the Operational Order, ~~or by the Commission to prevent substantial harm to the public interest by hearing as defined in this rule.~~

This revision is to conform with revisions to §4.2.2.a removing the authority of the OGCC to issue and amend operational orders, *sua sponte*, and to conform with revisions to §4.2.2.c by removing the words "of land" and to conform with the revisions to §4.2.2.d that applications for amendments to an Operational Order are limited to operators having operating rights in oil and gas within the covered area.

14. 4.3.c. The location at which deep oil or gas wells have been drilled or could be drilled in accordance with the applicable Operational Order, special field order or rule, directly or diagonally offsetting the proposed exception.

The Commission, after notice and hearing, may grant or deny the application and require the withholding or approve issuing of a permit pursuant to subsection 4.4 of this rule.

No exception shall prevent any operator from drilling a deep oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by any applicable Operational Order or special field rules ordered by the Commission.

This revision simply clarifies that, consistent with §4.2.2.i, exception to location of wells may be requested in the context of operational orders, as well as special field orders or rules.

WVONGA and IOGA request that these comments be given serious and careful consideration and would be willing to meet to discuss these comments. We look forward to reviewing the response to comments required pursuant to the West Virginia Administrative Procedures Act.

Respectfully Submitted,

West Virginia Oil and Natural Gas Association

Independent Oil and Gas Association
of West Virginia, Inc.

By: *Anne C. Blankenship*
Its: Executive Director

By: *Charlie Bard*
Its: Executive Director

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

PROPOSED 2020 LEGISLATIVE RULE 39CSR1

HELD JULY 16, 2019
COOPERS ROCK TRAINING ROOM
DEP HEADQUARTERS
CHARLESTON, WEST VIRGINIA

2:10 P.M.

Donna H. Miller
Court Reporter

GARRETT REPORTING SERVICE
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A P P E A R A N C E S

ON BEHALF OF OGCC:

BARRY LAY
SUSAN ROSE
ROBERT RADABAUGH
JOHN GRAY
601 - 57th Street
Charleston, WV 25304

BY PHONE:

DOUG DeMARTINO
SEAN WILLIS

P R O C E E D I N G S

1 MR. LAY: The West Virginia Oil and Gas
2 Conservation Commission, the public hearing on
3 proposed 2020 Legislative Rules. Today is July 16th,
4 2019.

5 Good afternoon everyone. Thank you for
6 coming today. My name is Barry Lay, and I'm the
7 Chairman of the Oil and Gas Conservation Commission.

8 The purpose of this public hearing is
9 to receive public comments on the record regarding
10 the proposed Oil and Gas Conservation Commission
11 rule changes.

12 Unlike a public meeting, I will not be
13 responding to questions. All comments received will
14 be addressed in a response to comments, the document
15 that will be part of the official record for the
16 Secretary of State's website.

17 If you want to submit oral comments
18 today, we do have a sign-in sheet to allow that to
19 happen.

20 I will state when the floor is open for
21 comments and will call on you. When calling on you,
22 please state your name clearly, and indicate if you
23 are representing any group or organization.

1 If possible, please keep your comments
2 on the topic and try to limit it to ten minutes.
3 Now, if this is in fact the list, we could allow a
4 little bit longer than ten minutes.

5 The public hearing for the proposed
6 Legislative Rule 39CSR1 will now come to order on
7 this 16th day of July, 2019, at the West Virginia
8 Department of Environmental Protection headquarters.

9 Comments and testimony will be accepted
10 until the close of this hearing, and will be made
11 part of the rulemaking record.

12 Any questions regarding revisions to
13 the rules should be included with your comments, and
14 any such questions will be addressed as part of the
15 response to the comments in the rulemaking record.

16 For the purpose of this public -- the
17 purpose of this public hearing is to accept comments
18 on the proposed revisions to Rule 39CSR1. The floor
19 is now open for comments, and does anyone else wish
20 to add their name to the speaker list?

21 That being the case, the first name on
22 the list is Mr. David McMahon.

23 MR. DAVID McMAHON: Good morning. My name
24 is David McMahon. I am an attorney. I am co-

1 founder of the West Virginia Surface Owners' Rights
2 organization. About a-third of our members also own
3 minerals, some minerals under them usually from an
4 old, old lease.

5 I will first say, if I understood, some
6 people have submitted written comments, which I have
7 not seen so I will not be able to respond to those
8 at this point, and I would want to say three things.
9 One is that we like -- generally, we are in favor of
10 the proposed rules, particularly in that they apply
11 to well bores by the same operator.

12 The most efficient spacing to get the
13 most gas out of the formation is often not the same
14 as we get the quickest economic return to the
15 operator, and so a mineral owner having leverage
16 would insist on wider spacing. It might take longer
17 to get out, but there would be more minerals in the
18 long term, and therefore, a larger royalty. So that
19 would particularly hurt small mineral owners who
20 don't have the ability to negotiate spacing with a
21 sophistication.

22 So, that's one reason for our mineral
23 owner members. We think that the spacing should be
24 set by rule, not by this new methodology, and not by

1 the operator independently, but also for the surface
2 owners if you can get more gas out more efficiently
3 with fewer wells, then that means you need fewer
4 wells on fewer surface pads, and therefore, more
5 disturbance on surface owners.

6 So, we like that in particular that
7 they apply to well bores that are drilled by the
8 same operator under the same leasing unit.

9 We do not like the ability as allowed
10 under the rule for there to be units declared that
11 are multiple well units. We think each well should
12 have its own unit.

13 If it's a multiple well unit, and every
14 well in the unit is drilled, then there are not
15 problems. If it's declared to be a multiple well
16 unit, and only one well is drilled, then if that
17 well goes through the Tract A mineral owner, the
18 royalties will be distributed amongst all the owners
19 in the unit, even owners of tracts that are not
20 being drained.

21 So, using the first person, if that was
22 my tract being drained, and a royalty based on my
23 gas, and if the other well is never drilled, then I
24 won't get the full value of the gas under my

1 property.

2 Similarly, if I am one of the owners
3 that is not drained -- well, not similarly, but in
4 addition, if I am one of the owners that is not
5 drained, then my well -- my land will be held by
6 production, and I will not be able to -- perhaps a
7 neighboring neighbor and get full value of my land.
8 So I would only get a small percentage of the value,
9 and I would be held by production.

10 So we generally do support the rule
11 particularly that it applies to all the wells
12 drilled by an owner and its units or leases.

13 We think they should be single well
14 units for the reasons I've stated. I would further
15 suggest for procedural rule for the Commission, and
16 maybe it's there and I don't know about it, but a
17 mailing list we could sign up for so we hear about
18 meetings of the Commission would be a very useful
19 tool, and I think would inspire more input if you
20 have such a procedural rule, and didn't have to go
21 through the Legislature.

22 Thank you very much.

23 MR. LAY: Thank you, David. The next
24 speaker is Mr. Mark Clark.

1 MR. MARK CLARK: Thank you. I won't even
2 take up as much time as Dave. My name is Mark Clark
3 with Spilman, Thomas and Battle, on behalf of West
4 Virginia Oil and Natural Gas Association, and the
5 Independent Oil and Gas Association of West
6 Virginia, Inc.

7 The two associations have filed joint
8 comments regarding the proposed Legislative rule,
9 and I have one or two minor changes to insert that
10 are in the last paragraph of 422, and I'm going to
11 hand this in to the Chairman.

12 After sub-part A, insert "and C above."
13 Then after sub-part B, insert "and D respectively."

14 Our primary comment is desiring a rule
15 establishing distance, appropriate spacing, in the
16 rule as opposed to by operational order, and we also
17 support Mr. McMahon's last point, which I think was
18 the right procedural process that notices of actions
19 or applications to the Commission are published on
20 their website, and we can sign up to receive notices
21 through that.

22 That's all I have.

23 MR. LAY: Thank you. The next speaker is
24 Mr. Sean Willis with Tug Hill on the phone.

1 MR. SEAN WILLIS: Mr. Lay, Sean Willis
2 with Tug Hill. Overall, Tug Hill is supportive of
3 the proposed changes in the rules whereby providing
4 the Commission the ability to consider the operator
5 specific philosophy, the general formation specific
6 reservoir properties that combine the development
7 philosophy and the optimal spacing for each
8 individual area and removing the arbitrary -- any
9 arbitrary distance from the spacing requirements.

10 I also feel there is support to set a
11 minimum as outlined by the proposal, and are
12 generally supportive of the language outlined here
13 in the best interest of the mineral owners and
14 operators and all the constituents involved.

15 So, with that, I will close comments.

16 MR. LAY: Thank you, Mr. Willis. The last
17 speaker is Mr. Doug DeMartino with Tug Hill, as
18 well.

19 MR. DOUG DeMARTINO: Thank you, Barry.
20 Sean and my comments are similar. We are supportive
21 of the proposed new rule, and again, I defer to
22 Sean.

23 MR. LAY: Okay. That is all of the
24 comments that we have. I'll give one last call.

1 Anyone else have any comments for the meeting?
2 okay. There being nothing further, the public
3 hearing on proposed Rule 39CSR1 is concluded. Thank
4 you.

5
6 * * * *

7 CONCLUDED AT 2:20 P.M.

8 * * * *

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Donna H. Miller, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing was duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof.

I do certify that the said hearing was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of proceedings had.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 17th day of
July, 2019.

Donna H. Miller
Notary Public

My commission expires October 1, 2023.

**West Virginia Oil and Natural Gas Association
and
Independent Oil and Gas Association of West Virginia, Inc.**

**Comments to the Proposed Legislative Rule, 39 C.S.R. 1,
"Rules of the Commission"**

To: West Virginia Oil and Gas Conservation Commission
601 57th Street SE
Charleston WV 25304

Via E-mail: Susan.W.Rose@wv.gov

The West Virginia Oil & Natural Gas Association ("WVONGA") and the Independent Oil & Gas Association of West Virginia ("IOGA") appreciate the opportunity to submit the following joint comments on the proposed revisions to legislative rule, Rules of the Commission, 39 C.S.R. 1 ("Proposed Rule") implementing *W. Va. Code §22C-9-1 et seq.* The Proposed Rule was submitted to the West Virginia Secretary of State on June 14, 2019, including a notice that written comments must be submitted to the West Virginia Oil and Gas Conservation Commission ("OGCC"), by 8 a.m., July 15, 2019. WVONGA and IOGA (sometimes jointly referred to herein as "Commenters" or "the Associations") are recognized as representing virtually the entire oil and gas industry in West Virginia. These comments are submitted without prejudice to any member of WVONGA or IOGA submitting comments, including comments that may be inconsistent with these comments, concerning the Proposed Rule.

The Associations

Chartered in 1915, WVONGA is one of the oldest trade organizations in West Virginia, and serves the entire oil and gas industry. The activities of WVONGA members include construction, environmental services, drilling, completion, gathering, transporting, distribution and processing of oil, natural gas and their constituents. WVONGA members operate in almost every county in West Virginia and employ thousands of people across the State, with payrolls totaling hundreds of millions of dollars annually. Members have cumulative investment of nearly ten billion dollars in West Virginia, account for most of the production and recent well work permits, operate more than 20,000 miles of pipeline across the state and provide oil and natural gas to more than 300,000 West Virginia homes and businesses. As such, WVONGA's members have a keen interest in all aspects of regulation associated with oil and gas activities, including the Proposed Rule.

Formed in 1959, IOGA is a statewide nonprofit trade association that represents companies engaged in the extraction and production of natural gas and oil in West Virginia, as well as the companies that support these extraction and production activities. IOGA was formed to promote and protect a strong, competitive and capable independent natural gas and oil producing industry in West Virginia, while also protecting the natural environment of our state.

IOGA has been in existence during times of boom and bust and its members have a long history of driving innovation in exploration and development of West Virginia's oil and gas reserves. IOGA members operate in virtually every county in West Virginia and have a longstanding tradition of working with state agencies to help regulators understand existing operations and new innovations and how to reasonably and effectively regulate specific activities.

It is in this spirit of experience and partnership with OGCC that WVONGA and IOGA offer these comments.

I. General Comments

As an initial matter, the Associations appreciate the effort the OGCC's office put into developing the Proposed Rule and the Associations support the objective of updating the regulatory process for issuing well work permits for the efficient and effective development of deep shale formations utilizing horizontal drilling.

Appropriate revisions to the existing regulations addressing spacing of deep wells will encourage investment in West Virginia by providing a more efficient framework for development of deep well formations by horizontal drilling and associated completion techniques. The Associations seek an efficient and predictable regulatory framework to encourage oil and natural gas developers to make long-term strategic investment decisions regarding deep formations in West Virginia. The comments at the public hearing on April 23, 2019 confirmed that the current regulations that require 3,000 ft. spacing between deep wells is impractical and unworkable for horizontally drilled deep wells, as well as the exception hearing process required in order to proceed with the drilling of such wells. The current spacing requirements have been in place since at least 1982, without substantive change.

There is no doubt that the 3,000 ft. spacing requirement for conventional vertical wells established more than a quarter century ago makes no sense in the context of horizontal laterals in deep formations. In fact, imposing conventional vertical well spacing on horizontal wells violates the very purpose of the Oil and Gas Conservation statute. W. Va. Code § 22C-9-1 establishes the legislative purpose as:

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.

In its Emergency Rule, also filed on June 14, 2019, the OGCC specifically acknowledged that there is virtually unanimous agreement that the 3,000 ft. spacing between horizontal wells to develop the Utica Shale in northern West Virginia is inappropriate. What could also be said is that such spacing fails to promote and encourage exploration and production, fails to encourage maximum recovery and fails to prohibit waste of oil and gas resources.

The Proposed Rule maintains the 3,000 ft. spacing for conventional deep wells, but fails to specify a similar default spacing for the newly defined horizontal unconventional deep wells. If the OGCC intends that the Proposed Rule will be interpreted and applied to eliminate any minimum spacing between horizontal unconventional deep wells, then the Associations fully support the Proposed Rule and will safely proceed with development of such wells post haste.

However, if, as the Associations suspect, the Proposed Rule is intended to prohibit obtaining a well work permit for any horizontal unconventional deep well unless and until an operational order is applied for, issued and effective or an order establishing special field rules is in place, then the Associations assert that the Proposed Rule is still inappropriate. The effect of the Proposed Rule would be to preclude the drilling of a well more than 3,000 ft. from another deep well, even though that well could be drilled without OGCC intervention. The Proposed Rule is clearly a step backward in promoting the public policy of West Virginia as described in the Oil and Gas Conservation statute quoted above. The Proposed Rule also goes against the public policy of Governor Justice's administration and the West Virginia Legislature of eliminating unnecessary and outdated regulatory burdens on businesses in West Virginia.

The Associations believe that the Proposed Rule simply misses the mark toward an efficient and reliable regulatory framework for development of shale and similar tight formations below the top of the Onondaga formation. Instead of establishing a specific distance, such as 800 or 1,000 feet, as previously proposed by the Associations, between horizontal laterals as the default minimum deep well spacing, the Proposed Rule creates a new procedure that requires an operator to file an application followed by a mandatory public hearing in order to obtain an "operational order" for some limited area at the OGCC's discretion. The Proposed Rule appears to unreasonably seek case-by-case OGCC discretion and approval at the expense of progress toward regulatory certainty and oil and gas development.

Either a minimum 800 foot or 1,000 foot spacing between productive intervals would allow an operator to make an informed decision whether to design spacing on that number or seek approval of a shorter distance through an exception location hearing. Likewise, operators that determine a greater spacing distance is appropriate could choose to use the minimum distance or a higher number for offset wells.

A. The Proposed Rule Should Establish a Minimum Spacing Between Productive Intervals of Horizontal Unconventional Deep Wells

As discussed above, the Associations urge the OGCC to incorporate a default minimum spacing for the productive intervals of horizontal unconventional deep wells. As acknowledged in its Emergency Rule 39 C.S.R. 1, the range of minimum spacing the OGCC has authorized for Utica development has been between 800 and 1,300 feet. We believe that based on OGCC

decisions, appropriate default spacing to encourage development where different operators are involved is 1,000 feet between productive intervals of laterals, with setbacks from lease or unit boundaries of 500 feet parallel to the lateral and 75 feet at the toe and heel. We urge adoption of those default distances. Then only if an operator desires to develop using spacing less than those distances would an application for an operational order or well location exception be necessary.

B. The Proposed Rule Should Authorize Operators to Utilize Lower Minimum Spacing Between Productive Intervals of the Deep Wells It Operates

Operators should retain the authority to space wells it drills on the basis of its own business judgment even if that spacing is less than the default distance established by legislative rule. Operators should be allowed to take into consideration specific geologic conditions, surface geography, completion design, lease limitations, etc. in developing adjoining units or a multi-well unit. The Associations do not believe that there is a need to establish a minimum spacing between wells owned or operated by the same operator, but if a number is established it should not be more than 250 feet between laterals.

As the Proposed Rule appears to contemplate, the provisions of this shorter spacing authority should also extend to circumstances where two or more operators agree in writing to utilize the spacing requirements applicable to the same operator.

C. The Proposed Rule Should Clearly State that the Minimum Spacing Shall Only Apply to the Productive Interval of Adjacent Horizontal Unconventional Deep Wells

The specified minimum spacing requirements should apply only to the productive interval of the horizontal lateral in the target formation. In order to allow the continued use of multi-well pads with wellheads often spaced less than 20 feet between each other, the spacing distances should apply to productive interval but not to the wellhead location, non-productive intervals, including the vertical or angled portion of a wellbore, or the heel and toe as addressed below. To impose minimum spacing to wellhead locations or non-productive intervals would undermine the whole purpose of the rule and still require well exception applications for every multi-well pad of horizontal unconventional deep wells. This issue highlights the problem with the general operational order process - it leaves too many unanswered questions that should be addressed in a legislative rulemaking procedure.

D. The Proposed Rule Should Establish Lower Minimum Distances for Toe to Heel, Heel to Heel and Toe to Toe Distances

The Associations also request that minimum spacing heel to heel and toe to toe distances be established at 150 feet. Again this is a default number that could be modified through an operational order or well location exception. The industry uniformly agrees that standard lateral to lateral spacing is not necessary or appropriate for toe to heel, toe to toe and heel to heel spacing.

E. Operational Orders Should Only Be Modified Upon Application of an Affected Producer

The Proposed Rule undermines the certainty and reliability of an "operational order" by the language "or to prevent substantial harm to the public interest" in §4.2.2.a. The phrase "to prevent substantial harm to the public interest" is overly vague and provides operators with very little confidence that they can rely on an operational order to budget millions of dollars in expenditures for several years in the future. The idea that an operational order could be revised or withdrawn *sua sponte* on a vague and unpredictable standard simply undermines the value of the operational order process. This language, also found in §4.2.2.h., and the even broader language of simply "in the public interest" found in §4.2.2.d allowing for *sua sponte* amendments, reinforces the need for a specific default spacing distance in the Proposed Rule which could only be modified through the legislative rulemaking review procedure.

II. Specific Comments to Proposed Rule

The Associations also propose the addition of two new definitions and the specific revisions to the Proposed Rule to implement the foregoing general comments and to clarify and improve its terms (the proposed revisions are reflected as underlining for additions and strike through for deletions):

1. "Conventional Deep Well" means a ~~deep well permitted in accordance with article 6, chapter 22 of the West Virginia Code,~~ drilled to a depth below the top of the Onondaga formation which does not meet the definition of a Horizontal Unconventional Deep Well at subsection 2.16 targeting a non-shale type reservoir whether drilled vertically or horizontally.

This revision is consistent with the definition in the statute and places all deep wells in either the conventional or unconventional definitions.

2. "Horizontal Unconventional Deep Well" means a ~~deep well permitted in accordance with either article 6 or article 6A, chapter 22 of the West Virginia Code,~~ drilled to a depth below the top of the Onondaga formation utilizing horizontal drilling techniques and targeting a shale or low permeability reservoir.

This revision is consistent with the revision to "conventional deep well" and covers a horizontal well into a shale or low permeability reservoir that is not required to be permitted under article 6A.

3. "Operational Order" means an order issued by the Commission upon application of one or more operators to define the area to be covered by the order, establish minimum horizontal unconventional well spacing, to include distances between laterals which will be controlled by the same operator, establish minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe, heel to heel, or toe to heel setbacks for units of the same operator, establish minimum distances between wells adjacent to other operators and minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe,

heel to heel, or toe to heel setbacks for units in cases where different operators are involved which have not entered into a written agreement to utilize the minimum distances for the same operator.

This is a new definition for the term "operational order" for clarity since it is used throughout the Proposed Rule.

4. "Productive Interval" of a horizontal unconventional deep well for purposes of setback and spacing limitations, but not for purposes of a determination of lease royalty payments, means the perforated length of a well bore in the target formation, as shown on a directional survey, projected vertically to the surface.

This is a new definition for the term "productive interval" because it is an important term in the context of defining spacing and these comments use the term multiple times.

5. 4.2.2 Horizontal Unconventional Deep Wells

To prevent waste, protect correlative rights, and to prevent substantial harm to the public interest, in the absence of an application for special field rules or special field rules approved by the Commission establishing drilling units or authorizing different horizontal unconventional deep well spacing or location patterns for a particular field, pool, geographic area, or parts thereof, the productive interval of each new horizontal unconventional deep well shall be:

(a) no less than 1,000 feet from the productive interval measured perpendicularly from a previously permitted horizontal unconventional deep well operated by a different operator;

(b) no less than 250 feet from the productive interval measured perpendicularly from a previously permitted horizontal unconventional deep well operated by the same operator;

(c) no less than 500 feet from a lease or unit boundary measured perpendicularly for wells operated by different operators; and

(d) no less than 125 feet from a lease or unit boundary measured perpendicularly for wells operated by the same operator;

In addition, the distance between the heel or toe of a new horizontal unconventional deep well shall be no less than 150 feet from the heel or toe of a previously permitted horizontal unconventional deep well and no less than 75 feet from a lease or unit boundary;

Provided further, that in circumstances ^{and (c)} where two or more operators agree in writing to lesser spacing than required in subpart (a) ^{and (d)} above, such lesser spacing shall not be less than the minimum spacing established in subpart (b) ^{and (d)} above, respectively,

This revision implements the comments regarding establishing a default spacing for the productive intervals of a horizontal unconventional deep wells in a similar way that the conventional deep wells have a default spacing distance.

6. 4.2.2.a The Commission, at the request of an operator, ~~or to prevent substantial harm to the public interest,~~ may establish a geographic area by formation or formations, establishing an Operational Order for horizontal unconventional deep wells. Any operator

intending to apply for an Operational Order, shall ~~send~~submit to the Commission and application for Operational Order on a form developed by the Commission along with a request for public hearing ~~along with the application~~ which shall include the applicant's name, address, description of the area, map generally depicting the area to be covered by the request, requested well spacing and setback distances from lease or unit boundaries, and the geological formation or other formations to be considered for the Operational Order ~~to the Commission~~. The map should be of a scale sufficient to identify the area for a Class II legal advertisement.

This revision clarifies that the application differs from a well work application and incorporates a requirement for requested well spacing and setback distances. The revision also implements the Associations comments that the OGCC should not retain the vague and undefined authority to create, modify or withdraw an operational order except upon an application from an operator.

7. 4.2.2.b The Commission shall set a day, time, and place for the public hearing to be not less than twenty (20) days but no more than forty-five (45) days. The Commission shall provide written notice of the application for Operational Order to operators having permits issued within the proposed area of the Operational Order and publish a Class II legal advertisement in the county newspaper(s) for which the proposed Operational Order would affect stating the date, time, and location of the public hearing on the application for an Operational Order. In addition to the opportunity to appear at the scheduled hearing, any operator may file written comments on the requested application for an Operational Order.

This revision requires the OGCC to notify other operators in the area covered by a proposed Operational Order that an application for an Operational Order has been submitted for that area.

8. 4.2.2.c At the hearing any operator ~~of land~~ with operating rights in oil and gas within the requested area or offset operator affected by the request as to the spacing of deep wells within the requested Operational Order area may present evidence. That evidence shall be technical in nature and define characteristics of the reservoir to be covered by the Operational Order.

This revision deletes the words "of land" and relies on the definition of operator which relates to development of oil and gas estates.

9. 4.2.2.d Within ~~20~~ 45 days after the application for the Operational Order has been filed of the hearing, the Commission ~~may~~ shall issue an Operational Order for a defined area or dismiss the application, after considering all the evidence presented in support and in opposition to the Operational Order. The Operational Order may be amended from time to time by the Commission at the request of one or more operators having operating rights in oil and gas in the area covered affected by the Operational Order in the public interest after notice and public hearing.

This revision clarifies that the OGCC must issue an order within 45 days of the filing of an application for an operational order or deny the application (similar to §6.3.c of the rule). The required issuance of an order provides the applicant(s) the opportunity to appeal the decision. The revision also clarifies that amendments to an order shall be made upon application by one or

more operators having operating rights in oil and gas within the covered area and not on the OGCC's own initiative.

10. 4.2.2.e The Operational Order will: define the area to be covered by the order, establish minimum horizontal unconventional well spacing, to include distances between laterals which will be controlled by the same operator, establish minimum distances between wells adjacent to other operators, establish minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe, heel to heel, or toe to heel setbacks for units of the same operator, establish minimum lease or unit boundary setbacks parallel to the lateral and at the toe and heel, toe to toe, heel to heel, or toe to heel setbacks for units in cases where different operators are involved.

This revision clarifies that setbacks from the toe and heel should also be part of the Operational Order.

11. 4.2.2.f ~~Adjacent~~ Operators within the Operational Order area may enter into a written agreement setting agreed upon lateral, toe, and heel spacing so long as they do not reduce that spacing below the minimum distances allowed between for wells controlled by the same operator set by the Operational Order for that area. The executed memorandum of agreement with the spacing terms must be submitted to the commission with each application for which the operator is relying on the agreement.

This revision is designed to clarify the intent of the paragraph that the limitation on written agreements is to the spacing for development by the same operator and not spacing for development between different operators. The revision also deletes the term "adjacent" which is unnecessary and not defined.

12. 4.2.2.g Horizontal unconventional deep well unit sizes established by the Commission may exceed 640 acres provided that the unit size is no greater than the area covered by the entire length of the well plus the length of the Operational Order toe and heel setbacks, multiplied by the lateral spacing between wells, plus 10%. ~~Unit size may also be increased beyond the 10% to insure no lease acreage is stranded by the operator's development plan.~~ Multiple well units are allowed under the same guidelines as single well units.

This revises a sentence that utilizes vague and undefined terms. Insuring that "no lease acreage is stranded" is outside the authority of the OGCC. Likewise, the OGCC does not have authority to require "operator's development plans." Development plans are subject to the business judgment and discretion of the operator.

13. 4.2.2.h The Operational Order for the defined area shall be enforceable until amended by a new Operational Order covering that area or part thereof which may be requested by any operator of land having operating rights in oil and gas within the proposed area, or offset operator affected by the Operational Order, ~~or by the Commission to prevent substantial harm to the public interest by hearing as defined in this rule.~~

This revision is to conform with revisions to §4.2.2.a removing the authority of the OGCC to issue and amend operational orders, *sua sponte*, and to conform with revisions to §4.2.2.c by removing the words "of land" and to conform with the revisions to §4.2.2.d that applications for amendments to an Operational Order are limited to operators having operating rights in oil and gas within the covered area.

14. 4.3.e. The location at which deep oil or gas wells have been drilled or could be drilled in accordance with the applicable Operational Order, special field order or rule, directly or diagonally offsetting the proposed exception.

The Commission, after notice and hearing, may grant or deny the application and require the withholding or approve issuing of a permit pursuant to subsection 4.4 of this rule.

No exception shall prevent any operator from drilling a deep oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by any applicable Operational Order or special field rules ordered by the Commission.

This revision simply clarifies that, consistent with §4.2.2.i, exception to location of wells may be requested in the context of operational orders, as well as special field orders or rules.

WVONGA and IOGA request that these comments be given serious and careful consideration and would be willing to meet to discuss these comments. We look forward to reviewing the response to comments required pursuant to the West Virginia Administrative Procedures Act.

Respectfully Submitted,

West Virginia Oil and Natural Gas Association

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