



Pennsylvania State Association of Boroughs

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April 5, 2012

Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania 17105-3265

Re: Act 13 of 2012 PUC Tentative Implementation Order

Docket Number: M-2012-2288561

On behalf of the 958 borough communities in the Commonwealth of Pennsylvania, the Pennsylvania State Association of Boroughs submits the following comments on the tentative implementation order for Act 13 dated March 15, 2012. We hope you will find these comments useful as you continue the enormous task of implementing Act 13. PSAB stands ready to offer our assistance to the PUC as the process moves forward.

Section 2302. Unconventional Gas Well Fee.

Page 4, 1st paragraph- Section 2302(a.3) describes the situation when a county does not adopt the impact fee by April 16, 2012 and the ensuing prohibition on receiving any revenues from the impact fee. However, you do not qualify that this only applies to counties with a spud well. We suggest the addition of language such as, "*Section 2302(a.3) provides that a county **with a spud well** that does not adopt an ordinance imposing an unconventional gas well fee by April 16, 2012...*" We believe the inclusion of this language will lessen the confusion of non-hosting counties being prohibited from receiving revenue from the statewide initiatives.

Also in that same paragraph, you state: "*This prohibition on the receipt of funds by the county, which extends to its municipalities, will expire and funds may be received for the calendar year following the adoption of an ordinance imposing the fee.*"

PSAB believes the prohibition described in this paragraph for the county does not fully extend to its municipalities. Notwithstanding the alternative imposition of the impact fee in Section 2302(a.4), the municipalities in such counties certainly will not receive any distributions of revenue under Section 2314(d)(2)&(3). However, such municipalities in counties that have not adopted an impact fee or failed to enact the fee through the alternative imposition are still eligible for revenues through the statewide initiatives in Section 2315. We suggest you clarify this language by striking the words "*which extends to its municipalities*."

Alternative Imposition of the Impact Fee

PSAB has developed a model resolution, similar to the model ordinance for county adoption developed by the County Commissioners Association of Pennsylvania, for adoption of the impact by municipalities. We are attaching the sample resolution for your review and comments.

Page 5, 3rd paragraph- The last sentence in this paragraph references Section 2303(a.3). This is a typo and should read Section 2302(a.3).

Also in the same paragraph, we believe the last sentence should be further clarified. We agree that any municipality that does not adopt a resolution when the fee has been imposed under the alternative imposition will be prohibited from the distributions in Section 2314(d). However, we believe if the county subsequently adopts the impact fee by ordinance, all municipalities should be eligible for distributions and the prohibition under Section 2302(a.4)(5) should be lifted. Therefore, we suggest using the following:

“Thus, except in the case of a county adopting the impact fee ordinance in future years as provided in Section 2302(a.3), Act 13 does not provide for any subsequent opportunity for such municipalities to qualify for distributions under Section 2314(d).”

Calculation of the Fee

Page 6, 2nd paragraph- We agree with the PUC’s interpretation that an unconventional gas well will pay an impact fee for at least the first three years of production. Section 2302(b.1) provides for unconventional wells that are capped or do not produce more than 90,000 cubic feet of gas per day. We believe this is not in conflict with Section 2302(e) which provides for the end to the payment of the impact fee once the well has been plugged and certified by DEP. However, we strongly believe that any well that is spud, plugged, and certified by the DEP all in the same year should at least pay the year one impact fee. The fact that a well does not produce quantities above a stripper well or is plugged will not mitigate the impacts to the communities from the drilling of the well.

It is uncertain from the order if the unconventional vertical wells will be held to the same three year minimum impact fee payment before cessation of the fee due to quantities below a stripper well.

Section 2314. Distribution of Fee.

Page 12, last paragraph- Municipality Budget Report- Your draft “Municipality Budget Report” should fully define the parameters of what is and is not included in the budget for purposes of the anti-windfall cap. Also, the order refers to this report as “Municipality Budget Report,” but the draft form is “2010 Municipality *Approved* Budget Report.” We suggest reconciling these two for consistency.

On the form itself, we suggest clarifying the amount to be submitted is either the final approved 2010 budget by the governing body or the 2010 audit total. Also, add under “Contact Name” a line for the contact person’s title, such as borough secretary, borough manager, etc.

Reporting

Page 13, 2nd paragraph- We suggest clarifying this section to be more explicit that the reporting is only for impact fee revenues received under Section 2302(d) and not for any other funds such

as the statewide initiatives, etc. We suggest clarifying this also on the draft form entitled, “Impact Fee Disbursements Report” and the report’s instructions under number 9.

Again, we note the discrepancy of the report name in the order and on the draft report. We suggest the name of the report should be “Act 13 Impact Fee Disbursements Report.” By using “Unconventional Gas Well Fund Usage Report” one could interpret that to mean the other statewide initiatives since all of the revenue comes from the Unconventional Gas Well Fund.

For the report itself, we suggest adding the contact name’s title. Also, you should add the April 15th deadline somewhere on the report or in the instructions.

It should be noted that there are some municipalities that do not have official websites. We suggest language be included in the final order to allow a municipality that does not have an official website to seek a waiver from this requirement from the PUC. Since the PUC will have the municipality’s report online and anyone may request the report under the Open Records Act, we believe this provides sufficient availability for the report. No additional mandate should be placed on these municipalities to create a website to publish their usage report.

Section 3305. Commission.

Advisory Opinions

Page 17, 2nd paragraph- We understand the PUC will accept both proposed and current ordinances for Advisory Opinions. The tentative order states the 120 day deadline for the PUC to issue an opinion is for *proposed* ordinances. Will the PUC have the same deadline for current ordinances? We suggest the addition of language in the final order to clarify the 120 deadline applies or does not apply to an advisory opinion for current ordinances.

Section 3308. Ineligibility.

Page 20, 3rd paragraph- The tentative order provided a procedure to reinstate a municipality’s eligibility for impact fee revenue if their ordinance was found inconsistent with Act 13 or the MPC. We note this procedure was specifically limited to when the Commission makes a determination of inconsistency under Section 3305(b). PSAB believes this should be expanded to include the other possible methods of sanctions such as orders of the Commonwealth or Supreme Courts.

Additionally, we suggest a separate form be created for this request for review. Since an expedited review is critical to a community’s impact fee revenue, we suggest a 30 day review deadline for the PUC to review these amended or repealed ordinances and issue an order to reinstate the municipality’s eligibility for impact fee revenue.

We suggest the final order include an additional provision to provide for municipalities that become ineligible for impact fee funds immediately before the PUC distributes impact fee funds. If the PUC ruled a municipality was ineligible for impact fee revenue and the distribution of funds is within three weeks, the municipality would not have enough time to cure their zoning ordinance to become eligible for the distribution. The timeframes in the MPC with hearings and

advertising requirements do not provide for a quick turnaround. Therefore, we suggest the follow be included in the final order:

If the Commission, Commonwealth Court, or Supreme Court determine a municipality's ordinance is inconsistent with Chapter 32, 33 or the MPC within thirty days of disbursement of impact fee funds under Section 2302(d) of the Act, the municipality shall have an additional 120 days after the date of the disbursement of funds to amend or repeal their ordinance. The municipality may submit their amended or repealed ordinance to the Commission within 5 days of the municipality's official action. The Commission shall review and issue an order within thirty days of receipt. If the inconsistency is determined to have been cured, the Commission shall immediately disburse the impact fee funds to the municipality and reinstate their eligibility for all impact fee revenues.

We also suggest the inclusion of language in the final order providing for the possible scenario that an order of the Commission under Section 3305(b) could be awaiting an appeal to the Commonwealth or Supreme Court during the disbursement of impact fee revenue. If a municipality is successful in its appeal, the Act states they will be eligible to receive impact fee revenue. We believe the municipality should be entitled to receive the missed disbursement of impact fee revenue. Therefore, we suggest the inclusion of the following in the final order:

If an order of the Commission under Section 3305(b) or an order of the Commonwealth Court ruling the inconsistency of a municipal ordinance has been overturned by the Commonwealth Court or the Supreme Court, and all appeals have been exhausted, the Commission shall immediately disburse any impact fee funds withheld from the municipality due to ineligibility under Section 3308 of the Act.

Thank you for the opportunity to comment on the tentative implementation order for Act 13. If you have any questions on our comments, please contact me at (717) 236-9526 ext. 44 or via e-mail at rgrutza@boroughs.org.

Sincerely,

Ron Grutza
Assistant Director of Government Affairs

RESOLUTION NO. ____-2012

PUC DOCKET NO. M-2012-2288561

A Resolution of the Borough of _____ located in the County(ies) of _____

BE IT RESOLVED:

Section 1. The borough of _____ located in the County (ies) of _____ hereby resolves to have the County (ies) of _____ impose an unconventional gas well fee on each unconventional gas well spud in the County (ies) of _____, as authorized in Title 58 (Oil & Gas).

Section 2. Definitions. The following words and phrases when used in this ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Fee." The unconventional gas well fee imposed under section 2302 of Title 58.

"Spud." The actual start of drilling of an unconventional gas well.

"Title 58." Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes as amended by Act of February 14, 2012 (P.L. ____, No.13).

"Unconventional gas well." A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

Section 3. The unconventional gas well fee shall be applicable, and shall be administered, as provided for in Title 58.

Section 4. This resolution shall take effect immediately and shall remain in effect until repealed or amended.

Section 5. A copy of this resolution shall be transmitted to the county(ies) wherein the borough of _____ is located as well as the Public Utility Commission as required by section 2302 (a.4)(2) of Title 58.

Enacted this ____ day of _____, 2012

President of Council

ATTEST: _____
(Title)