

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Act 13 of 2012 – Implementation of
Unconventional Gas Well Impact Fee
Act, Reconsideration Order**

**Public Meeting held July 19, 2012
2288561-LAW
Docket No. M-2012-2288561**

Partial Dissenting Statement of Commissioner Wayne E. Gardner

Before the Commission today are the Petitions for Reconsideration filed by the Pennsylvania State Association of Township Supervisors and the Pennsylvania Independent Oil & Gas Association, the Marcellus Shale Coalition, the Associated Petroleum Industries of Pennsylvania, and Corizzo Oil & Gas, Inc. (collectively, Producers). I agree with my colleagues on the resolution of most of the issues addressed in the Reconsideration Order. However, there is one issue on which I must respectfully dissent. It is whether or not vertical wells must pay an impact fee for a minimum of three years. I believe the Commission's original interpretation of that provision was correct.

Section 2302(b.1) of Act 13, 58 Pa. C.S. § 2301(b), directs that once an unconventional gas well is spud, it must begin paying the impact fee and that it must pay the fee for at least three years even if subsequently capped or producing amounts less than that of a stripper well. In our Final Implementation Order, we stated that this provision applies to all unconventional wells including vertical wells.¹

In the Petition for Reconsideration, the Producers argue that the three-year requirement in Section 2302(b.1) does not apply to those wells which had been classified as vertical wells. The Producers contend that once a vertical well does not produce the minimum amount of gas, it no longer qualifies as a vertical gas well and, therefore, is not subject to the three-year minimum fee. The majority today adopts the argument set forth by the Producers.

I disagree. Section 2301(b), which delineates the fee schedule, provides that the fee adopted by a county or municipality "is imposed on every producer and shall apply to unconventional gas wells spud in this Commonwealth regardless of when spudding occurred." Section 2301(b.1) then provides an exception/clarification regarding the fee to be collected from nonproducing unconventional gas wells: "If a spud unconventional gas well begins paying the fee imposed under this section and is subsequently capped or does not produce natural gas in quantities greater than that of a stripper well within two years after paying the initial fee, then the fee shall be suspended." As such, **all** unconventional gas wells are subject to a fee for a minimum of three years.

According to Section 2301 of the Act, an unconventional gas well is a bore hole drilled for the purpose of the production of gas from an unconventional formation. In Section 2301, an unconventional formation is defined as a specified geological shale formation where natural gas cannot be produced at economic flow rates or volumes except by **vertical** or horizontal wells

¹ See *Implementation Order Regarding Chapter 23, M-2012-2288561* at 8 (May 10, 2012).

stimulated by hydraulic fracturing or other techniques. Finally, a vertical gas well is an unconventional vertical well bore which produces gas in quantities greater than that of a stripper well. Once a vertical well is capped or producing gas in quantities less than that of a stripper well, it then meets the definition of a nonproducing unconventional gas well. As such, it is an unconventional gas well because it is a well bored into an unconventional formation. Therefore, it is subject to an impact fee under Section 2302(b).

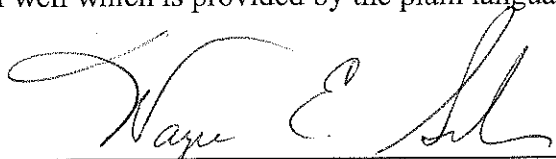
Section 2302(f) provides, in pertinent part, that, the “fee for a vertical unconventional gas well shall be 20% of the fee established in [subsection 2302(b)].” The Producers argue that because Section 2302(f) does not reference the three-year minimum specifically, vertical wells are not subject to the three-year minimum. This reading of the Act ignores the structure and companion provisions contained in § 2302. Section 2302(b) applies to all unconventional wells – horizontal and vertical. Section 2302(f) then makes an exception to the fee structure contained in part (b). One must still apply part (b) in order to determine the fee to be assessed for vertical wells. Because vertical wells which stop producing below stripper well levels remain, by definition, nonproducing unconventional gas wells, Section 2302(b.1) is applicable and vertical wells must also pay the fee for a minimum of three years.

I am cognizant that a concern exists that should this interpretation be adopted, it could result in unconventional vertical bore wells, which never produced, paying 100% of the fee described in § 2302(b) with producing vertical wells paying 20% of that fee. Section 2302(b) provides that the impact fee is to apply to all spud unconventional gas wells. No exception is given for a spud well which never produces amounts over that of a stripper well. Therefore, under Section 2302(b.1), all spud unconventional wells must pay the impact fee for at least three years. Concern has been voiced that because there is no mention in part (b.1) that unconventional vertical bore wells only have to pay 20% of the fee rather than 100%, they must be assessed at 100%. This concern is unfounded and would not be allowed under the Rules of Statutory Construction.

The rules of Statutory Construction dictate that the General Assembly does not intend a result that is absurd or unreasonable, that it intends the entire statute to be effective and certain, 1 Pa. C.S. § 1922(1), and that every statute shall be construed, if possible, to give effect to all its provisions. 1 Pa. C.S. § 1221. Additionally, statutes are in *pari materia* when they relate to the same thing or class of things and must be construed together. 1 Pa. C.S. § 1932. When the relevant provisions are read together, an absurd result is not reached. Section 2302(b) describes the components of the fee for unconventional wells. Section 2302(b.1) speaks to the minimum amount of time a fee can be collected. Section 2302(f) provides a discounted rate methodology for a particular type of unconventional well. Each section has a specific purpose, and when construed together, provides that unconventional vertical bore wells, producing and non-producing, must pay the fee for at least three years, at **20%** of the rate paid by horizontal wells.

The interpretation of these provisions adopted by the majority today fails to give effect to the definition of an unconventional well which is provided by the plain language of the statute.

July 19, 2012
Date



Wayne E. Gardner, Commissioner