

October 27, 2016

Ms. Janet B. Ciccocioppo, CPA  
Director  
Bureau of Performance Audits  
302 Finance Building  
Harrisburg, PA 17120-0018

Dear Director Ciccocioppo:

I am in receipt of the DRAFT findings and recommendations pertaining to the Department of the Auditor General's performance audit of the Pennsylvania Public Utility Commission's (PUC) administration of the Unconventional Gas Well Fees (Act 13 Impact Fees). I want to thank the Auditor General's staff for their courtesy, open dialogue and professionalism throughout the entire audit process.

Upon review of the findings and recommendations, the PUC is in general agreement and pleased that your staff has found the Commission is in compliance with the duties and responsibilities assigned to us under Act 13 of 2012. Since the inception of this program, the PUC has been focused on the mission we were given – to oversee the collection and distribution of more than \$1 billion in impact fees to counties, municipalities and other organizations across Pennsylvania as set forth in the Act.

The work involved in calculating these annual distributions is complex, and, as noted in the Performance Audit findings, "PUC appears to have accurately distributed the impact fees to the conservation districts, state agencies, and counties in accordance with the law." Additionally, with respect to the application of the municipality budget restriction, you also indicate that, "PUC appears to have accurately applied the municipality restriction limit in accordance with the law." Lastly, you indicate, "with the limitation of relying on the self-reporting budgets from the municipalities, PUC appears to have accurately calculated the impact fees distributed to the municipalities in accordance with the law."

We believe it is important to underscore those findings, given the size, scope and potential impact of these funds. The Commission's primary mission regarding this program has been to correctly interpret Act 13 in order to ensure the accurate calculation and disbursement of Impact Fee funds.

***Finding #1--Act 13's lack of clarity regarding proper use, reporting, and monitoring of Impact Fee Funds leads to questionable spending and inaccurate reporting.***

The Commission reserves comment on Act 13's clarity. Any proposed changes to Act 13 are a policy decision for the General Assembly. Suffice it to say that the General Assembly passed Act 13 and tasked the Commission with very targeted and limited duties; i.e., collecting and dispersing the Act 13 monies. The Draft Report properly acknowledges that Act 13:

- Does not permit PUC, or any state agency, to advise local governments on the appropriate use of impact fee funds.
- Fails to authorize PUC, or any state agency, to monitor local government spending.

**Recommendations #1 through #8:**

Recommendations #1 through #8 pertain to the General Assembly and as outlined above, the Commission will continue to carry out all duties and responsibilities the legislature may enact.

**Recommendation #9: Strengthen communications with local governments on the reporting requirements of Act 13 of 2012 and document communications with local governments.**

Agree: The PUC has revised their procedure manual to include the documentation of all communication with the state, county and municipal agencies regarding Act 13 recorded as notes in the database. We note that we held extensive meetings with local governments and organizations representing those entities from the inception of Act 13. This is an ongoing process and PUC staff continues to timely address all inquiries. The PUC implemented, from the inception of Act 13, a separate e-mail account to track all inquiries and responses. Further, the PUC entered into a Memorandum of Understanding (MOU) with the Department of Community and Economic Development (DCED) in 2013 to provide ongoing training to municipalities.

**Recommendation #10: Develop and regularly conduct monitoring of local governments, at least on a sample basis, to ensure spending and reporting of impact fee funds are in compliance with Act 13.**

Disagree: As acknowledged by the Draft Report, the PUC is not authorized "to monitor local government spending." The PUC acknowledged this in its July 19, 2012 *Reconsideration Order Regarding Chapter 23*, Docket No. M-2012-2288561, and in its October 17, 2013 *Proposed Rulemaking Order*, Docket No. L-2013-2375551, wherein we noted that "other state agencies including the Department of Auditor General, Office of Attorney General and County District Attorney Offices, the Department of Community and Economic Development and the State Ethics Commission have general audit authority over county and municipal expenditures. 72 Pa. C.S. § 403. As such, the reported expenditures from the Unconventional Gas Well Fund will be subject to government oversight and audit at the state level." The Commission reached out to several of these state agencies to aid in ensuring compliance, including entering into a MOU with DCED in 2013.

**Finding#2: PUC's lack of verification of budget amounts caused inaccurate distributions of impact fee funds to certain municipalities.**

Disagree as stated. By way of further response, the PUC has only those powers granted it under Act 13. The PUC does not have statutory authority to audit and penalize municipalities for inaccurate budget reports. However, as noted below, the PUC does agree with the recommendation below on communication and training of municipalities.

**Recommendation #1: Establish a policy to obtain the approved fiscal budget from each municipality that is allocated to receive impact fee funds over the restriction limit to ensure the budget amount used in the calculation of impact fee distributions are consistent, accurate, and according to guidelines.**

Disagree: The PUC has always had a policy on receipt of municipality budgets. Submission of budget data requires an affidavit that the information is true and correct to the best of the submitter's knowledge. The Act currently does not give the Commission the authority to require the entities to supply their supporting documentation for the "approved" budget amounts they submit. In our July 19, 2012 Reconsideration Order, the Commission clarified, based on comments from various municipalities, that "final approved budget" was the proper terminology. Further, we noted that municipalities are required to file an Annual Audit and Financial Report with the Department of Community and Economic Development, and that the Auditor General has general audit authority over the county and municipal accounts. 72 P.S. §403. As such, the final approved budgets and actual expenditures will be subject to government oversight at the state level.

**Recommendation #2: Provide training to municipalities to reinforce PUC's guidelines for determining and reporting budget amounts.**

Agree in part: The PUC has provided multiple training opportunities for the municipalities in the past through the township, borough and county commissioner associations, and will continue to do so in the future. We are currently developing a webinar for budget reporting that will be available for review by the municipalities on the Commission's website. Due to the large employee turnover in municipalities new employees will be able to review this training at any time on our website. Additionally, the PUC entered into an MOU with DCED in 2013 to provide ongoing training to municipalities.

**Recommendation#3: Document communications, including attempts to communicate, with local governments to evidence PUC's diligence in obtaining required information.**

Agree: The PUC has revised its procedures manual to include the documentation of all communication with the state, county and municipal agencies regarding Act 13 which will be recorded as notes in the database. We note that since the inception of Act 13, we established a separate email account to track all inquiries and responses.

**Recommendation 4: Obtain the approved fiscal budgets for every municipality that is affected by the restriction provision to verify the budget amount reported is accurate prior to distributing impact fee funds each year.**

Disagree: Without any statutory authority for the Commission to audit entities or sanction entities for non-compliance, the PUC is unable to effectively verify reports. Additionally, due to the limited time frame of one month to obtain this information, including any suggested verification, it would be impossible to meet deadlines as established by Act 13.

***Recommendation 5: Obtain the approved fiscal budgets for every municipality that was affected by the restriction provision from 2011 to present to ensure the payments made to the municipalities were in accordance with law and PUC guidance.***

Disagree: Currently there is no mechanism in the law enabling the PUC to have audit authority or to redistribute funds based on errors found in reporting once the funds are distributed in any given year. Therefore, there is no mechanism whereby the Commission can ensure the information with total confidence.

***Recommendation 6: Correct any overpayments or underpayments to municipalities and adjust the amounts deposited into the Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund, accordingly.***

Disagree: Currently there is no mechanism in the law enabling the PUC to have audit authority or to redistribute funds based on errors found in reporting once the funds are distributed in any given year. Therefore, there is no mechanism whereby the Commission can ensure the information with total confidence.

Thank you again for your time and effort in this performance audit. My staff looks forward to meeting and discussing this audit during the exit conference.

Sincerely,

Gladys M. Brown  
Chairman

cc: Mr. Andrew G. Place, Vice Chairman, PUC  
Mr. John F. Coleman, Jr., Commissioner, PUC  
Mr. Robert F. Powelson, Commissioner, PUC  
Mr. David W. Sweet, Commissioner, PUC  
Mr. Jan H. Freeman, Executive Director, PUC  
Mr. Robert Gramola, Director of Administration, PUC  
Mr. Brian Lyman, CPA, Bureau of Audits, Comptroller Operations  
Mr. John M. Lori, CPA, Deputy Auditor General for Audits, Department of the Auditor General