

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 13 of 2012 – Implementation of
Unconventional Gas Well Impact Fee Act

M-2012-2288561

**JOINT PETITION OF
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION,
MARCELLUS SHALE COALITION
and
ASSOCIATED PETROLEUM INDUSTRIES OF PA
FOR
RECONSIDERATION AND CLARIFICATION**

Pursuant to the Commission's regulation at 52 Pa. Code § 5.572, the Pennsylvania Independent Oil and Gas Association (PIOGA), Marcellus Shale Coalition (MSC) and Associated Petroleum Industries of PA, a division of API (API) (collectively, "Producers") submit this joint request for reconsideration and clarification of two matters in the Commission's May 10, 2012 Final Implementation Order concerning Chapter 23 of Act 13, the local impact fee provisions: the three year minimum fee on vertical gas wells and the erroneous description of Producers' comments concerning the allocation of PUC assessments.

In support of their requests, the Producers state as follows:

1. Producers submitted comments to the Commission's Act 13 Tentative Implementation Order.
2. In its May 10, 2012 final order implementing Chapter 23 of Act 13, the Commission determined (p. 7) that an unconventional gas well must pay the impact fee for at least the first three years of production per Section 2302(b.1). The Producers agree with this determination.

Vertical Gas Well Fee

3. The Commission also determined (p. 8) that "vertical unconventional wells (Section 2302(f)) will be treated identically to horizontal unconventional wells including the three year minimum fee, with the exception of the fee amount, which is 20% of the unconventional horizontal gas well impact fee, and the termination of the fee in years 11-15." The Producers disagree with one part of this determination – the three year minimum fee.

4. Producers suggest that in reaching the conclusion that vertical gas wells are subject to the minimum three-year fee of Section 2302(b.1), the Commission erroneously applied its clarification that the production of a well does not determine whether a fee is due¹ to vertical gas wells and (i) failed to give effect to the second part of the “vertical gas well” definition and (ii) misinterpreted the language of Section 2302(b.1).
5. Producers agree that – for non-vertical gas wells, *i.e.*, horizontal unconventional gas wells – well production is not determinative of whether a fee is due.
6. However, a “vertical gas well” *is* defined with respect to production: “an unconventional gas well which utilizes hydraulic fracture treatment through a simple vertical well bore *and produces natural gas in quantities greater than that of a stripper well.*” Section 2301 (emphasis added).
7. The “stripper well” quantity is more than 90,000 cubic feet of gas per day during any calendar month.²
8. Accordingly, well production *is* determinative of whether a vertical gas well is subject to a local impact fee. If a vertical gas well produces an average of 90,000 or less cubic feet of natural gas per day, it is not – by definition – a “vertical gas well” subject to the fee in the first place.
9. The Commission’s determination has the effect of subjecting a vertical gas well that produces an average of *90,000 or less* cubic feet of natural gas per day to the three-year minimum fee, because it is an “unconventional gas well”. As shown below, this result is contrary to the terms of Section 2302(b.1).
10. As the PUC’s order acknowledges (p. 7), Section 2302(f) (“Vertical unconventional gas well fee.”) provides that “[t]he fee for a vertical unconventional gas well shall be 20% of the fee established in *subsections (b) and (c)*, except that the fee under subsection (b)(5) shall not apply.” (Emphasis added). Notably missing in Section 2302(f) is reference to subsection

¹ “[F]or clarity’s sake, pursuant to Section 2302(a), it is the spudding of a well, not the production of that well, which is determinative of whether a fee is due.” Order at 7.

² “Stripper well” is defined as “an unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day during any calendar month, including production from all zones and multi-lateral well bores at a single well, without regard to whether the production is separately metered.”

(b.1), upon which the PUC relies for its determination that vertical gas wells are subject to the three-year minimum fee.

11. Notwithstanding this omission in Section 2302(f), by its terms Section 2302(b.1) does not apply to the vertical gas well fee:

(b.1) 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:

(1) The fee shall be reinstated for a calendar year during which the unconventional gas well produces natural gas in quantities greater than that of a stripper well.

(2) Each calendar year during which a fee is suspended shall not be considered a calendar year following spud for purposes of determining the amount of the fee under subsection (b).

By reason of the “vertical gas well” definition, a vertical well that produces an average of *90,000 or less cubic feet* of natural gas per day is not a “vertical gas well”. But the PUC’s determination nonetheless would subject this well to the three-year minimum fee because it is “a spud unconventional gas well” even though it does not produce the volume necessary to qualify as a “vertical gas well” subject to the fee in the first place.

12. Although a vertical gas well is a type of “unconventional gas well,” it is not a “vertical gas well” subject to an impact fee under Act 13 unless it “produces natural gas in quantities greater than [90,000 cubic feet of gas per day during any calendar month].”

Allocation of PUC Assessment

13. The Commission states (pp. 16-17) that the “Producers suggest that the Commission’s assessment be allocated to all producers, not just those that are subject to a fee. Producers’ Comments at 2.¹⁴” The footnote correctly explains that “since all eligible counties have adopted an impact fee, this necessitates that all producers will be subject to assessment.”
14. However, the Commission’s description of the Producers’ position is incorrect – Producers’ argued that the PUC’s assessments should be limited to *producers’ wells subject to the local impact fee* and should not include all producers’ wells:

III. Denominator of Fraction for Local Share Distributions and PUC Assessments

As stated in the Commission's order, Sections 2314(d), (d)(1), (d)(2) and (d)(3) of the Act require that the 60% local share funds remaining in the Unconventional Gas Well Fund, after the specified distributions, be allocated to counties and municipalities by a formula whose denominator is "the number of spud unconventional gas wells in this Commonwealth." The Producers agree with the PUC's determination (Order, p. 12) that the General Assembly intends the entire 60% amount to be distributed to the entities described in these provisions and that, to carry out this intent, these provisions refer to the total number of spud unconventional wells *subject to the Act 13 impact fee*.

The Producers suggest that the same denominator should be used to determine the allocation of any PUC assessment under Sections 2303(c)(2) and (c)(3) to recover its Act 13 administration and enforcement costs not covered by the \$50 administrative fee. (Producers' Comments at 2; emphasis in original).

15. Producers put forth this position to address the possibility of fewer than all eligible counties adopting the impact fee – if that happened, Producers believed that wells in counties *without* the fee should not be included in the PUC's assessments because the PUC's administrative duties associated with the fee would not be invoked for these wells.
16. As all eligible counties have adopted the fee, the Producers' concern has been eliminated.
17. However, Producers believe the record must be clarified so that someone reading only the PUC's order is not under the mistaken impression that Producers suggested that the Commission's assessment be allocated "to all producers."
18. On this issue, the Commission also states (p. 17) that "[n]othing in these provisions [Section 2303] suggests that the assessment is limited to producers subject to the impact fee."
19. Producers also believe the record must be clarified because Section 2303(c)(3) *does* limit the assessment to producers subject to the impact fee: "[T]he commission shall assess the remaining balance *on all producers subject to the unconventional gas well fee* in proportion to the number of wells owned by each producer."³ (Emphasis added).

³ In addition, Section 2303(b)(1) requires a producer's annual report to show "[t]he number of spud unconventional gas wells of a producer in each municipality *within each county that has imposed a fee under this chapter*. (Emphasis added).

VI. Conclusion

The Producers request that the Commission grant reconsideration and clarification of its implementation order entered May 10, 2012, consistent with the discussion above.

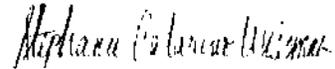
Respectfully submitted,



Kevin J. Moody, Esquire
General Counsel
PIOGA
212 Locust Street, Suite 300
Harrisburg, PA 17101-1510
717-234-8525, ext. 113
Fax: 717-234-8812
kevin@pioga.org



Kathryn Z. Klaber
President
Marcellus Shale Coalition
24 Summit Park Drive
Pittsburgh, PA 15275
(412) 706-5160
Fax: 724 -745-0600
kklaber@marcelluscoalition.org



Stephanie Catarino Wissman
Executive Director
Associated Petroleum Industries
of Pennsylvania
300 N. Second Street, Suite 902
Harrisburg, PA 17101
717-234-7983
wissmans@api.org

Pittsburgh Office

115 VIP Drive, Suite 210
Wexford, PA 15090-7906
724-933-7306

Dated: May 25, 2012