

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

M-2012-2288561

**PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION
PETITION FOR LEAVE
TO FILE ANSWER TO PETITION FOR RECONSIDERATION AND CLARIFICATION
OF
THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS**

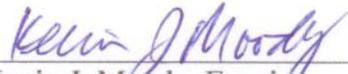
Pursuant to 52 Pa. Code § 5.103, the Pennsylvania Independent Oil and Gas Association (PIOGA) hereby requests leave to file the attached answer (Appendix A) in support of the Pennsylvania State Association of Township Supervisors' (PSATS) request for reconsideration and clarification of the Commission's order concerning the cap on local impact fee disbursements under subsection 2314(e) of Act 13. In support of its request, PIOGA states the following:

1. The Commission's order was entered May 10, 2012, and PSATS' petition was filed Friday, May 25, 2012, and served that day by first class mail on PIOGA.
2. Pursuant to the Commission's regulations at 52 Pa. Code §§ 1.56(a)(1),(b) and 5.572(e), PIOGA's answer to PSATS's petition was due Thursday, June 7, 2012.
3. At the June 7, 2012 Public Meeting, the Commission granted reconsideration of PSATS' petition, and one filed by PIOGA on other issues, to preserve the Commission's authority to review and consider the petitions on the merits in accordance with Pa.R.A.P. 1701(b)(3).
4. As of June 7, 2012, no answers had been filed to the PSATS' petition, and as of yesterday, Thursday, June 14, 2012, no answers to PSATS' petition have been posted to the Commission's online docket.
5. PIOGA understands that one of the reasons for the 10-day response time for reconsideration petitions is the need for the Commission to determine whether to grant reconsideration within the 30-day period provided by Pa.R.A.P. 1701(b)(3). In this case, the Commission made that determination without having the benefit of interested commentators' responses to the PSATS petition.

6. During the 10-day response period PIOGA was considering filing an answer to PSATS' petition but due to the press of other urgent matters concerning the natural gas industry requiring the attention of PIOGA and its members – including: implementation of Act 127; the Act 13 litigation; Section 1307(f) proceedings of The Peoples Natural Gas Company and Equitable Gas Company; Peoples' base rate case; development of Department of Environmental Protection rules concerning erosion and sedimentation controls, air quality, water management, waste management and recycling, and well construction; implementation of Department of Conservation and Natural Resources streambed ownership policy; and Fish and Boat Commission wild trout stream designations – PIOGA was unable to determine its course of action with respect to PSATS' petition within that time frame.
7. Permitting PIOGA to file the attached answer does not prejudice other interested commentators or provide an advantage to PIOGA because there were no answers filed to which PIOGA is responding.
8. Permitting PIOGA to file the attached answer is consistent with the Commission's June 7 order to further review and consider the merits of PSATS' petition, as PIOGA's answer provides the Commission with additional information on the merits.
9. Permitting PIOGA to file the attached answer is also consistent with the Commission's regulation at 52 Pa. Code § 1.2(a), which requires the liberal construction of the regulations for the just determination of PUC proceedings and authorizes the Commission to disregard an error or defect of procedure that does not affect the substantive rights of the parties, and § 1.2(c), which authorizes the Commission to waive a regulatory requirement when appropriate, provided the waiver doesn't adversely affect a substantive right of a party. As this matter is akin to a rulemaking, and no other commentator filed an answer, and PIOGA's answer supports PSATS' petition, the substantive rights of the commentators are not adversely affected by the Commission's acceptance of PIOGA's answer at this point.
9. The Commission's accepting PIOGA's answer will give the Commission a fuller record upon which to base its decision on the merits of PSATS' petition, from a commentator that is sometimes viewed as adverse to the entities represented by PSATS .

WHEREFORE, for all the foregoing reasons, PIOGA requests that the Commission grant this petition and accept for filing its answer, attached hereto as Appendix A, to the petition for reconsideration and clarification filed by the Pennsylvania State Association of Township Supervisors.

Respectfully submitted,



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Dated: June 15, 2012

APPENDIX A

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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**ANSWER OF
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION
IN SUPPORT OF
PETITION FOR RECONSIDERATION AND CLARIFICATION
OF
PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS**

The Pennsylvania Independent Oil and Gas Association (PIOGA) hereby submits this answer in support of the request for reconsideration and clarification of the Pennsylvania State Association of Township Supervisors (PSATS) concerning the cap on local impact fee disbursements pursuant to subsection 2314(e) of Act 13. PIOGA respectfully asserts that PSATS' positions both have legal merit and should be adopted by the Commission. PSATS' positions also maximize the amount of local impact fees a municipality is entitled to receive and so are more consistent with the purpose of Act 13 to provide municipalities with adequate resources to address the uncompensated local impacts associated with unconventional gas well drilling. In support of its position, PIOGA states the following:

1. PSATS timely requested reconsideration and clarification of two Commission determinations:
 - the local impact fees municipalities are entitled to receive are fixed under subsection 2314(e) at their 2010 budgets, adjusted solely for upward increases in the Consumer Price Index (CPI) per subsection 2314(c) (PSATS' Petition, ¶ 21); and
 - the budget may be either the "originally approved" or "finally approved" total budget (PSATS' Petition, ¶s 34-36).

Fixed 2010 Budget

2. With respect to the first issue, the Commission need look no further than the language in subsection 2314(e) that "[t]he amount allocated to each municipality under subsection [2314](d) shall not exceed the greater of \$500,000 or 50% of the total budget **for the prior fiscal year** beginning with the 2010 budget year **and continuing every year thereafter . . .**" PIOGA

submits that the emphasized language is the limitation, not the following phrase referencing the 2010 budget.

3. That following phrase referencing the 2010 budget is consistent with the directive in subsection 2314(d) that “from the fees **collected for 2011** and each year thereafter, 60% of the revenue remaining in the fund **from fees collected for the prior year** are hereby appropriated for the purposes authorized under subsection (g).” The reference to the 2010 budget year merely clearly states the first “prior year”, as the local impact fees are initially collected for 2011.
4. The word “beginning” also indicates that the reference to the 2010 budget year is to make clear that 2010 is the first “prior year” budget for purposes of the cap.
5. PIOGA agrees with PSATS’s position that the Commission’s contrary determination runs counter to the purpose of Act 13 to provide municipalities with the resources to adequately address the local impacts associated with unconventional gas well drilling. There is no legal or policy reason for a restrictive interpretation of subsection 2314(e) that caps disbursements to address such changing impacts to a single budget year, much less the budget year preceding the initial year for which the fee is imposed.
6. PSATS also requests the Commission to confirm that the CPI adjustment applies to the \$500,000 cap as well (PSATS’ Petition, ¶ 19). PIOGA agrees with PSATS’ position and suggests that the CPI adjustment language in subsection 2314(e) modifies the preceding word “greater” rather than only the phrase “50% of the total budget for the prior fiscal year” and thus applies to both the \$500,000 and 50% budget caps.
7. There is also no legal or policy reason for a restrictive interpretation of subsection 2314(e) that limits the inflation adjustment to only one of the two caps on local impact fee disbursements.

“Originally” or “Finally” Approved Budget

8. With respect to the second issue, the plain meaning of the word “total” is “1 constituting the (or a) whole: entire; 2 complete”.¹ This supports the use of a municipality’s “finally approved” budget as the “total” budget for purposes of the subsection 2314(e) cap because the “finally approved” budget – not the “originally approved” budget, if amended – represents the municipality’s “whole” or “entire” budget.

¹ Webster’s New World Dictionary (Third College Edition 1988) at 1413.

9. As municipalities are permitted to amend their budgets (PSATS' Petition, ¶s 37-38), the Commission should clarify that the "finally approved" budget for the prior fiscal year is the "total budget" upon which the cap is based.

Conclusion

PIOGA requests that the Commission grant the request for reconsideration and clarification of the Pennsylvania State Association of Township Supervisors consistent with the discussion above.

Respectfully submitted,



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Dated: June 15, 2012

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PIOGA's Petition for Leave and Appendix A in Docket No. M-2012-2288561 on the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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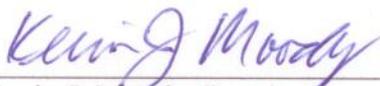
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