

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

M-2012-2288561

**PETITION OF ANADARKO E&P COMPANY LP
FOR AMENDMENT and CLARIFICATION**

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Dated: September 28, 2012

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Pursuant to the Commission's regulations at 52 Pa. Code §5.572, Anadarko E&P Company LP submits this Petition for Amendment and Clarification of three matters in the Commission's May 10, 2012 Final Implementation Order Regarding Chapter 23 of Act 13 and its subsequent Reconsideration Order Regarding Chapter 23 adopted by the Commission on July 19, 2012. Neither of these orders adopted to implement Chapter 23 of Act 13 addresses: 1) whether an unconventional gas well fee is triggered by the setting of a conductor with no drilling, development or production within that conductor; 2) how well impact fees would be determined or refunded when the Pennsylvania Department of Environmental Protection (DEP) reclassifies a well from a horizontal to a vertical unconventional gas well; or 3) whether plugging a well eliminates a fee payable for the year in which it was plugged. Anadarko also requests amendment or clarification regarding dispute processes and enforcement proceedings that may arise regarding these questions.

In support of this request, Anadarko states as follows:

Statement of Interest

1. Anadarko is exploring for and producing natural gas from unconventional formations (as defined in Act 13) in Pennsylvania. It has drilled approximately 223 unconventional gas wells in the Commonwealth that were subject to the impact fee for 2011. This number does not include 76 locations in which only conductors were installed, where no drilling, development or production has occurred.
2. Anadarko timely paid an unconventional gas well fee under Act 13 to the Commission in September 2012.

3. Anadarko owns a number of well pad locations and well sites that are subject to the Commission's Final Implementation Order and its Reconsideration Order, and therefore files this Petition to protect its interest.

Conductor Pipe and Well Fees

Setting a Conductor is Not Spudding a Well.

4. In its May 10, 2012 final order implementing Chapter 23 of Act 13, the Commission determined that fees would be payable on all spud unconventional wells but did not clarify the meaning of the word "spud," which is subject to more than one interpretation. (May Order, p. 6).
5. Anadarko believes that the definition of "spud" in Section 2301 of Act 13 ("The actual start of drilling of an unconventional well") should not apply to setting conductors, where there has been no drilling, development or production of a well within the conductor.
6. Conductors are metal open-ended cylinders, typically approximately 20 inches in diameter, that are set into the ground at depths of usually not more than 40 to 50 feet simply to create a workspace within which to begin drilling a gas well. Conductors are not cemented in place and are not designed to contain or convey gas. Site preparation contractors frequently place conductors in the ground when they prepare the well pad for the driller because it is safer and more efficient than doing so at the start of drilling. The site preparation contractors use specialized equipment to set conductor pipe prior to the arrival of the drilling rig. Once the operator is ready to commence drilling of the well, the drilling rig is mobilized to the site and used to drill and install surface casing, intermediate casing, and production casing to construct the gas well, sometimes many months later.
7. Many operators set conductors for operational convenience and flexibility, long before Act 13 was drafted or signed. Looking back, if operators had known that Act 13 would be enacted and then interpreted to require significant fees for setting conductors, many operators likely would not have set conductors when a well was unlikely to be drilled for some period. They would have postponed setting the conductor until they were ready to actually start drilling a well. A retroactive application of a fee to these circumstances not only misapplies the ordinary meaning of "drilling" a well, it punishes operators for exercising what was sound business judgment and efficient utilization of resources. On the other hand, applying the well fee to drilling the well, rather than to setting conductors, does not deprive the Commonwealth of an impact fee because the fee will be triggered when an unconventional well is drilled.

8. Anadarko therefore requests that the Commission clarify that no unconventional gas well fee is payable on conductor pipe that has been pre-set into the ground unless and until the unconventional well is actually drilling or drilled for production. Similarly, when a conductor has been set, above all conventional formations, and the permit has subsequently expired, there would be no fee triggered until a new permit has been obtained and a well is drilled for production from an unconventional formation.

A Conductor is Analogous to a Non-Producing Vertical Well and a Vertical Stripper Well for Impact Fee Purposes.

9. Even if Act 13 allowed for the imposition of an impact fee on conductors placed at well sites (which Anadarko does not concede), a conductor placed at a well pad without any drilling, development or production from within the conductor should be considered to be a vertical well that does not produce at all or does not produce at levels above a stripper well. An impact fee is not assessed against these types of vertical wells.
10. In its Reconsideration Order, the Commission modified its treatment of vertical wells to acknowledge that vertical wells by definition are limited to those wells that produce natural gas in quantities greater than a stripper well. (July Order, p.3). Vertical wells are only subject to a fee if they produce sufficient quantities of gas to qualify as a “vertical well” by definition under Act 13. The Commission acknowledged that no fee is due from a vertical well that does not meet minimum production levels but did not address or clarify if a conductor pipe, with no drilling, development or production within it, must pay a well fee.
11. The Commission also agreed that a vertical well that falls below designated production levels is no longer a vertical gas well and that there is no minimum three year fee requirement for such wells. (July Order, p.4).
12. The Commission required Producers to supply production information for 2011 to ensure that a particular well qualified as a vertical well and was subject to the fee, but did not address whether locations consisting entirely of conductors, without any production, should not have been subject to an initial fee. (July Order, p.5). The purpose of the impact fee under Chapter 23 of Act 13 is to offset potential impacts associated with drilling unconventional gas wells. By exempting conventional gas wells and low-producing vertical unconventional gas wells from the impact fee, the General Assembly recognized that not all gas wells create these types of potential impacts. The same logic should apply to conductors. If non-producing and low-producing vertical unconventional gas wells are exempt from the fee, it follows that simply placing a conductor at a well pad should be exempt too.

13. Anadarko therefore requests that the Commission clarify its Order to provide that no unconventional gas well fee is payable on conductor pipe that has been pre-set into the ground unless and until the well is actually drilled to an unconventional formation for production.

Reclassification of Wells from Horizontal to Vertical

14. The Commission determined that fees would be calculated based on factors such as “when the well was spud, the number of years the well has been subject to the impact fee and the average annual price of natural gas.” (May Order, p. 6-7). These factors did not include a determination of whether or when a well is reclassified from a horizontal to a vertical well or whether a fee is suspended for the year in which plugging occurs or for some portion thereof.
15. The Commission noted that DEP must provide lists of spud wells to the Commission, updated monthly, but did not acknowledge that DEP might reclassify wells from horizontal to vertical wells that would be subject to a lesser fee. (May Order, p. 11).
16. The Commission requires Producers to self-report to the Commission regarding spudding, production, and removal of wells from production but did not provide for circumstances in which wells are reclassified from horizontal to vertical wells. (May Order, p. 12).
17. The Commission has acknowledged and accepted the reclassification of wells from horizontal to vertical in its determination of well fees payable in 2012. On August 24, 2012, Anadarko provided information to the Commission to certify production information for vertical wells, including those that had been re-classified by DEP. In its payment of well fees, Anadarko did not submit fees for the re-classified vertical wells that did not meet production requirements necessary to qualify as a vertical well under Act 13. The Commission has accepted Anadarko’s payment as complete in accordance with that fee calculation.
18. Anadarko requests the Commission to clarify its Order (i) to acknowledge that re-classification of wells from horizontal to vertical will affect the calculation of impact fees due for such wells, and (ii) to provide reporting mechanisms to account for reclassification of wells from horizontal to vertical wells.

Fees that Cease upon Plugging

19. The Commission addressed the issue of fees ceasing upon plugging, determining that at least an initial fee was payable on each unconventional well spud, but did not clarify if plugging a well would eliminate or reduce the fee payable for the year in which it is plugged, if the initial fee has already been paid. (May, p. 8).
20. Anadarko requests the Commission to clarify that fees are not payable for the year in which wells are plugged because the language of Act 13 is clear that payment of the fee “shall cease upon certification to the department by the Producer that the unconventional gas well has ceased production and has been plugged according to the regulations established by the department.” Section 2302(e) (emphasis added). There is no language in this section to indicate that fees should be paid for the year in which the plugging occurs. The most reasonable interpretation of the language is that fees cease and are not payable for the year in which wells are plugged.

Disputes and Refunds

21. The Commission determined that fees would be submitted by September 1, 2012 and each April 1 thereafter, but did not provide a mechanism by which producers could dispute and withhold well fees without risking the imposition of interest and penalties or enforcement for good faith fee disputes. (May Order, p. 10).
22. The Commission addressed a procedure to challenge the assessment of administrative fees when disputes arise, but did not likewise provide or refer to a process for disputed well fees. (May Order, p. 11, footnote 9).
23. Anadarko suggests that a fee dispute process is necessary and just rather than forcing Producers to pay significant fees for which good faith disputes exist, not knowing whether such fees will ever be refunded if paid, or be subject to mandatory fines if withheld. The process need not be complicated or lengthy, but simply should allow Producers to document and provide information to support their objections to well fees.
24. The Commission did not provide clarification of the mandatory versus discretionary nature of the enforcement provisions in Sections 2307-2309 of Act 13 but stated that additional orders and/or Secretarial Letters would be issued as needed to inform interested parties of future developments regarding these investigation and enforcement processes. (May Order, p. 13).
25. Anadarko requests the Commission to issue such an order or letter to clarify the circumstances in which it will follow formal versus informal procedures to reduce the uncertainty surrounding enforcement risks.

26. The Commission addressed fee collection procedures but did not specify procedures to be followed when a refund of fees would be necessary. (May Order, p. 9-10).

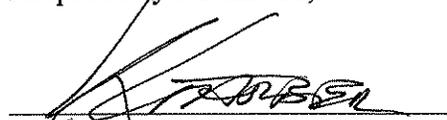
27. Anadarko believes that there will be circumstances in which fees will need to be refunded, especially in this first year where valid questions remain about whether fees were due on conductor pipes.

Conclusion

28. Anadarko respectfully requests that the Commission amend and clarify its Final Implementation Order consistent with the discussion above and issue an order that:

- a. A conductor placed at a well site, with no drilling, placement of casing, or production from within that conductor, is not subject to the unconventional gas well fee set forth in Chapter 23 of Act 13;
- b. Unconventional gas wells that the Pennsylvania Department of Environmental Protection reclassifies from horizontal to vertical wells are eligible for a redetermination of the applicable unconventional gas well fee for those wells and Producers may be eligible for a refund of previously paid fees where appropriate;
- c. Plugging an unconventional gas well eliminates the unconventional gas well fee for year in which the well is plugged; and
- d. Staff will develop informal fee dispute and refund procedures for Producers to follow as needed.

Respectfully Submitted,



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Anadarko E&P Company, LP

Dated: September 28, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2012, I served a copy of the Petition of Anadarko E&P Company, LP for Amendment and Clarification 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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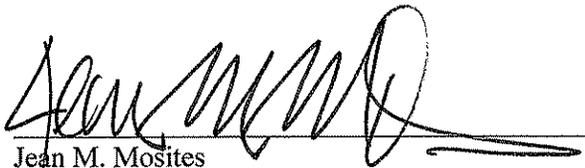
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