

K&L GATES

May 23, 2013

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Via Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor
400 North Street
Harrisburg, PA 17120

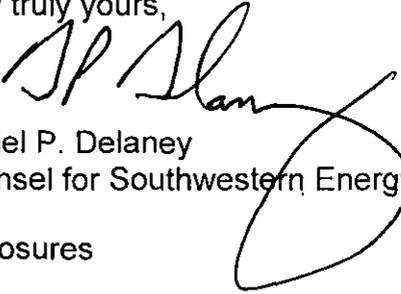
Re: Petition of Southwestern Energy Production Company
for Appeal from Actions of the Commission Staff
Dkt. No. P-2013-_____

Dear Secretary Chiavetta:

Enclosed for filing please find the original of the Petition of Southwestern Energy Production Company ("SEPCO") for Appeal from Actions of the Commission Staff. As explained in the petition, SEPCO is appealing the determinations contained in a letter dated May 3, 2013 from Robert C. Gramola, Director, Bureau of Administrative Services for the Commission. Mr. Gramola's letter is attached as exhibit B to the enclosed petition. A digital copy of the petition and exhibits is contained on the enclosed CD.

As indicated on the enclosed certificate, we have served the Commission Staff with a copy of this petition. Please advise if additional persons or entities should be served with this document.

Very truly yours,


Daniel P. Delaney
Counsel for Southwestern Energy Production Company

Enclosures

c: Robert C. Gramola
Bohdan R. Pankiw, Esq.
John Herzog, Esq.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Southwestern Energy Production :
Company for Appeal from Actions of the : Dkt. No. P-2013-_____
Commission Staff :

**PETITION OF SOUTHWESTERN ENERGY PRODUCTION COMPANY
FOR APPEAL OF ACTIONS OF THE COMMISSION STAFF**

Southwestern Energy Production Company ("SEPCO") hereby petitions for appeal to the Pennsylvania Public Utility Commission ("Commission") pursuant to Section 5.44 of the Commission's regulations, 52 Pa. Code § 5.44, from the determinations of the Commission Staff contained in a certain letter dated May 3, 2013 from Robert C. Gramola to John Nicholas. SEPCO requests that the Commission reverse the determinations contained in the May 3, 2013 letter and direct a refund of an overpayment of \$50,000 made in error by SEPCO in the first year of the well impact fees for wells "spud" in 2011. In support of this request, SEPCO respectfully represents the following.

I. BACKGROUND

1. Southwestern Energy Company ("Southwestern") is an independent energy company primarily engaged in natural gas and crude oil exploration, development and production within North America. SEPCO is a wholly-owned subsidiary of Southwestern, organized under the laws of Arkansas, and engaged in the business of exploring for, and the development of, oil, natural gas, and other hydrocarbons. SEPCO conducts development drilling and exploration programs in several areas of the United States, including Pennsylvania. SEPCO is registered to do business in the Commonwealth and has an office in Tunkhannock, PA. From 2008 to

2012, SEPCO has "spud" approximately 161 unconventional gas wells in the Commonwealth and paid well impact fees under Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (Act 13), totaling approximately \$9,636,450. SEPCO has timely paid to the Commission all unconventional gas well impact fees due pursuant to Act 13. Among the wells developed by SEPCO in Pennsylvania is the Zeffer 2H, API No. 37-115-20720, located in New Milford Township, Susquehanna County, Pennsylvania (the "Zeffer well").

2. As the owner and operator of natural gas wells in Pennsylvania, SEPCO is subject to Act 13 and is required to pay unconventional gas well impact fees for each well it "spuds" in the Commonwealth. "Spud" is defined in Section 2301 of Act 13 as "the actual start of drilling of an unconventional gas well." SEPCO erroneously reported the spud date for the Zeffer well to the Department of Environmental Protection ("Department") as November 25, 2011, when it was actually spud on October 3, 2012. On September 1, 2012, SEPCO paid to the Commission a total first year impact fee for 2011 of \$3,363,600 which included \$50,000 for the Zeffer well. SEPCO subsequently discovered the error and corrected the spud dates for the Zeffer well on both the Department and Commission websites in November 2012.

3. Following the discovery and correction of the mistake on the websites concerning the spud date for the Zeffer well, SEPCO had a series of discussions with the Commission Staff in the period November 2012 to April 2013 concerning recovery of the overpayment of \$50,000. On or about November 14, 2012, a Staff representative requested SEPCO to "hold tight" and wait for the Commission to issue a clarification order addressing refunds and other issues, which the Commission did on December 20,

2012. The order, however, was not served on SEPCO. On April 1, 2013, SEPCO paid a total well impact fee to the Commission of \$6,262,850 which included \$35,000 for the Zeffer well. An additional \$10,000 was paid to the Commission as a supplemental well impact fee in response to the Commission's request for a full first year impact fee for the Zeffer well. As a result, SEPCO paid a total of \$95,000 in well impact fees for the Zeffer well when only \$45,000 was required as the first year impact fee for a well actually spud on October 3, 2012.

4. After several additional discussions in April 2013, the Staff recommended that SEPCO write a letter to the Commission Secretary requesting a refund of the impact fee paid on September 1, 2012 for the Zeffer well. John Nicholas, General Manager of SEPCO's Appalachian Division, sent a letter to the Commission Secretary dated April 22, 2013 requesting a refund of the first payment of \$50,000. A copy of Mr. Nicholas's letter is attached to this petition as Exhibit A. Robert C. Gramola, Director, Bureau of Administrative Services for the Commission, issued a letter dated May 3, 2013 denying the refund request. Mr. Gramola's letter is attached to this petition as Exhibit B and states in part:

Based on Act 13's silence regarding refunds, the self-reporting and distribution mechanisms established by Act 13, the Commission's previous treatment of this issue, and Southwestern Energy's failure to challenge or otherwise dispute the 2011 payment until recently, well beyond the 2011 collection/distribution period, the refund request is denied.

See Exhibit B at 2.

II. REASONS FOR GRANTING SEPCO'S APPEAL

5. SEPCO respectfully requests the Commission to reverse the determinations in Mr. Gramola's letter and refund the overpayment of \$50,000 made by SEPCO.

A. The Commission Should Reverse the Determination of the Staff That SEPCO is Not Entitled to a Refund of \$50,000 for the Zeffer Well Because the Commission Collected and Distributed \$50,000 for That Well, Which Was Never Actually "Spud" in 2011 As Required by Act 13.

6. SEPCO is entitled to a refund of an overpaid impact fee of \$50,000 paid on September 1, 2012 on the erroneous basis that the well was spud in 2011 for a well that was actually spud in 2012 and subsequently assessed a year-one impact fee of \$45,000 in 2013 (which SEPCO also paid). The goal of all statutory interpretation is to determine the General Assembly's intent in enacting this statute. See Statutory Construction Act, 1 Pa. C.S. § 1921(a) (object of statutory interpretation is to determine legislative intent). Courts apply the ordinary meaning of words in a statute to determine legislative intent. *Id.* § 1903(a). To determine legislative intent when the words of a statute are unambiguous, the Commission construes the words to the letter without resort to other aids of statutory interpretation. 1 Pa. C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."). *Id.* § 1921(b). If the words of the statute are ambiguous, the General Assembly's intent may be ascertained by reviewing, among other things, the purpose of the legislation at issue, the background against which the General Assembly enacted the legislation, the object of the statute, relevant legislative

history, existing law, and the consequences of one interpretation over others. 1 Pa. C.S. § 1921(c).

7. Act 13 is unambiguous. The impact fee created by the act does not arise until the actual “spudding” of a well. Until that time, there is no obligation to pay the *impact fee under the statute*.

8. To illustrate, under Act 13, an “unconventional gas well” is defined as “[a] bore hole **drilled or being drilled** for the purpose of or to be used for the production of natural gas from an unconventional formation.” 58 Pa. C.S. § 2301. Section 2302(a) provides that “[t]he governing body of a county that has a spud unconventional gas well located within its borders may elect *whether* to impose a fee on unconventional gas wells **that have been spud** in that county.” *Id.* § 2302(a); *see also id.* § 2302(a.2) (requiring that ordinance enacted pursuant to Chapter 23 of Act 13 impose a fee on “each unconventional gas well **spud**” in the county of enactment); *id.* § 2302(b) (setting forth the amount of the fee in year one and thereafter “imposed on every producer and shall apply to unconventional gas wells **spud** in this Commonwealth regardless of when spudding occurred”).

9. Although the term “spud” is defined in Section 2301 of Act 13 as “the **actual start** of drilling of an unconventional gas well,” 58 Pa. C.S. § 2301, that term also has a well accepted meaning in the industry that informs the Legislature’s intent in passing Act 13. 1 Pa. C.S. § 1903(a) (when a word in a statute has acquired a technical definition in an industry, it is proper to construe the word consistent with that definition). According to *Williams & Meyers*, a leading treatise of oil and gas law, the term “spud” or “spudding in” means “[t]he **first boring of the hole in the drilling** of an

oil well.” Williams & Meyers, Manual of Terms 996 (2012). The Commission has adopted a similar interpretation in its order *Clarification Order Regarding Chapter 23*, opinion at p. 5-6, Dkt. No. M-2012-2288561 (order entered December 20, 2012).

10. Here, SEPCO is entitled to a refund because it submitted \$50,000 for the Zeffer well impact fee based on incorrect information on when the well was spud. SEPCO actually spud the Zeffer well on October 3, 2012. The requirement that SEPCO submit the impact fee for the Zeffer well did not arise as a matter of law until October 3, 2012. SEPCO paid \$50,000 for the Zeffer well based on an erroneous 2011 spud date and paid an additional \$45,000 in 2012 for the Zeffer well based on the actual spud date of October 3, 2012. See 58 Pa. C.S. § 2302(b)(2)(iv). SEPCO has therefore paid a total of \$95,000 in impact fees for the Zeffer well even though SEPCO's total liability under the statute for that well is \$45,000 based on the actual spud date. The Commission collected and distributed \$50,000 in impact fees for the Zeffer well for the 2011 calendar year even though that well was never spud in 2011 as required by the Act. Under these circumstances, the Commission should order a refund. Otherwise, the Commonwealth and the County in which the well is located receive a windfall, and SEPCO and other similarly situated producers have no remedy for overpayment of an impact fee. The General Assembly could not have intended such a result. 1 Pa. C.S. § 1922(l) (General Assembly does not intend a result that is absurd or unreasonable).

11. Accordingly, the Commission should reverse the determination of the Staff that SEPCO is not entitled to a refund of \$50,000 for a well that was never actually “spud” in 2011 as required by Act 13. There is no provision in Act 13 that authorizes the entities that are entitled to funds from impact fees to keep overpaid impact fees.

B. The Commission has Power Under Act 13 and the Public Utility Code to Refund Overpayments of Well Impact Fees.

12. The Staff's determination does not dispute that SEPCO paid \$50,000 more than it should have in impact fees for the Zeffer well. Rather, the Staff's determination suggests that because Act 13 is silent as to refunds of overpaid impact fees, the Commission is without authority to grant a refund. That is incorrect. Although Act 13 does not expressly discuss refunds of well impact fees, SEPCO submits that the Commission has authority to order refunds under Act 13 and the Public Utility Code. Initially, Section 2307(a) of Act 13 provides the Commission with authority to identify whether an overpayment of a well impact fee has occurred. That section provides in pertinent part that the Commission shall have the authority to make all inquiries and determinations necessary to calculate and collect the fee. That authority to investigate and calculate the fee would by necessity include authority to determine whether there had been an overpayment of the fee. The authority in Section 2307 to supervise the calculation and collection of the fee would incorporate the authority to determine an overpayment.

13. Act 13 also incorporates the Commission's authority to exercise equitable remedies available under the Public Utility Code. Section 2308(d) provides that the remedies provided under Act 13 are in addition to any other remedies provided by law or in equity. The Pennsylvania courts have previously held that the Commission's jurisdiction to order refunds is equitable in nature. See *e.g.*, *Lancaster Ice Manufacturing Company v. Pennsylvania Public Utility Commission*, 138 A.2d 262, 263 (Pa. Super. Ct. 1958). The reservation of the Commission's legal and equitable

remedies in Section 2308(d) preserves the Commission's equitable jurisdiction to order refunds of overpayments of well impact fees such as occurred with the Zeffer well.

14. Accordingly, given that the impact fee is based on actual spudding date of the well, and SEPCO paid an impact fee twice for a well that was actually spud in 2012, the Commission has the authority to direct a refund of the overpaid impact fee. There is no provision in Act 13 that forecloses the Commission's ability to order a refund.

C. SEPCO Timely Challenged the 2011 Impact Fee Payment for the Zeffer Well.

15. Finally, Mr. Gramola's letter states on page 2 that SEPCO failed to challenge or otherwise dispute the first payment for the Zeffer well until recently, well beyond the 2011 collection/distribution period. SEPCO is not aware that the Commission has entered an order or issued regulations that address the time period required for a producer to correct the spud date of a well and request a refund of a previously-paid well impact fee. In any event, SEPCO disputes this statement and submits that it did timely notify the Commission in November 2012 concerning the erroneous spud date for the Zeffer well and the overpayment.

16. As explained above, SEPCO did notify the Commission Staff concerning the incorrect spud date for the Zeffer well and the well impact fee overpayment on or about November 14, 2012. SEPCO attempted to work with the Staff to resolve this issue in an informal manner and SEPCO appreciates the Staff's efforts to resolve this issue. On or about November 14, 2012, the Staff advised SEPCO to "hold tight" and take no action since the Commission would be issuing a clarification order addressing refunds and other issues. The Commission did enter its *Clarification Order Regarding Chapter 23* at Dkt. No. M-2012-2288561 on December 20, 2012. A copy of the order,

however, was never served on SEPCO. SEPCO again contacted the Staff in March 2013 concerning the overpayment for the Zeffer well and the impact fee due on that well on April 1, 2013. After several discussions with the Commission Staff, SEPCO paid the \$45,000 first year impact fee for 2012 for the Zeffer well as a result of the corrected spud date of October 3, 2012.

17. Contrary to the statements in Mr. Gramola's May 3, 2013 letter, SEPCO notified the Commission Staff to challenge the 2011 Zeffer well impact fee payment soon after the spud date was corrected on the Department and Commission's websites. SEPCO believes that it notified the Commission of the issue with the Zeffer well spud date and the fee overpayment as soon as possible under the circumstances. Even assuming for argument's sake that SEPCO first notified the Commission about the refund issue by letter from John Nicholas dated April 22, 2013, any delay between the time of overpayment in September 2012 and the date of that letter would not foreclose SEPCO's ability to request a refund for the overpayment, particularly when the statute sets no deadline for such a request and the purported delay resulted in no prejudice to the rights of the Commission or others.

18. It should also be noted that the procedure described in the Commission's December 20, 2012 order regarding the accuracy of a producer's annual report would not resolve the issue identified with the incorrect spud date for the Zeffer well. The Commission states at page 11 of the order that it will address such a dispute via the dispute mechanism established at Sections 2307-2313 of Act 13, 58 Pa. C.S. §§ 2307-2313, with these provisions enforced consistent with the Commission's general rules of practice and procedure found at 52 Pa. Code, Chapters 1, 3 and 5. SEPCO submits

that none of these cited sections of Act 13 apply to a situation where a producer identifies a mistake concerning a well's spud date and the producer subsequently corrects the spud date after paying the well impact fee based on an incorrect spud date. The Commission's December 20, 2012 order does not address this issue and the Order does not provide a dispute resolution procedure to resolve it.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, SEPCO respectfully requests that the Commission enter an order which:

1. Grants this Petition for Appeal and reverses the determinations contained in the Staff's May 3, 2013 letter, and
2. Directs the payment of a refund of \$50,000 to reimburse SEPCO for the erroneous payment of a well impact fee for the Zeffer well on September 1, 2012, and
3. Grants any additional relief that is just and reasonable under the circumstances.

Respectfully submitted,



Daniel P. Delaney
PA Attorney I.D. 23955
George A. Bibikos
PA Attorney I.D. 91249

Counsel for Southwestern Energy
Production Company

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Dated: May 23, 2013

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Southwestern Energy Production :
Company for Appeal from Actions of the : Dkt. No. P-2013-_____
Commission Staff :

VERIFICATION

I, Barbara Critchlow, hereby state that I am Senior Staff Regulatory Analyst for Southwestern Energy Production Company, that I am authorized to make this Verification on behalf of the Company in this matter, that the information set forth in the Petition is true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements in this Verification are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 5-21-13

Barbara Critchlow
Barbara Critchlow

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EXHIBIT A

Letter Dated April 22, 2013 from John Nicholas,
General Manager, Appalachian Division of SEPCO,
to Commission Secretary Chiavetta

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SEPCO
2350 N Sam Houston Pkwy E
Suite 125
Houston, Texas 77032
www.swn.com

Certified Mail

April 22, 2013

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Attn: Ms. Rosemary Chiavetta
Secretary of PUC

RE: Overpayment of Impact Fee
Zeffert 2H, API No. 37-115-20720
New Milford Township, Susquehanna County, PA

Dear Ms. Chiavetta,

We recently discovered that this well was erroneously reported as being spud on November 25, 2011 when it was actually spud on October 3, 2012. This oversight resulted in an overpayment of \$50,000 to cover the first year impact fee for 2011. Once we discovered an error had been made, we corrected the dates in both the DEP and PUC websites. As a result, we paid another first year impact fee of \$45,000 for 2012.

To date, \$95,000 has been paid in first year well impact fees on the subject well. We are requesting the first payment of \$50,000 be refunded.

Your assistance in resolving this matter is greatly appreciated. If further assistance is needed, please contact Barbara Critchlow at 281/618-6153 or barbara_critchlow@swn.com.

Regards,

SOUTHWESTERN ENERGY PRODUCTION COMPANY

John Nicholas
General Manager, Appalachia Division

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The Right People doing the Right Things,
wisely Investing the cash flow from our
undiscovered Assets, will create Value.

EXHIBIT B

Letter Dated May 3, 2013 from Robert C. Gramola, Director,
Commission Bureau of Administration, to
John Nicholas, General Manager, Appalachian Division of SEPCO

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 3, 2013

John Nicholas
SWN Production Company
2350 N Sam Houston Pkwy E
Suite 125
Houston, TX 77032

Re: Overpayment of Impact Fee, Zeffler 2H, API No. 37-115-20720
New Milford Township, Susquehanna County, PA

Dear Mr. Nicholas:

Your letter dated April 22, 2013, has been referred to me for response. In your letter, you indicated that Southwestern Energy Production Company ("Southwestern Energy") erroneously reported the above referenced well as being spud on November 25, 2011 and therefore paid the \$50,000 first year impact fee for 2011 for this well. Southwestern Energy recently discovered that this well was actually spud on October 3, 2012. Southwestern Energy corrected the spud date in the Department of Environmental Protection's and Commission's databases. As a result, Southwestern Energy paid the \$45,000 first year impact fee for 2012 for this well. Southwestern Energy requests that the \$50,000 first year impact fee for 2011 be refunded. Southwestern Energy had not challenged payment of the 2011 fee or requested a refund of that fee until its recent discovery.

The Unconventional Gas Well Impact Fee Act of 2012 (Act 13), which amends Title 58 (Oil and Gas), of the Pennsylvania Consolidated Statutes, provides, *inter alia*, for imposition of an impact fee. The original \$50,000 impact fee for horizontal unconventional gas wells was due on September 1, 2012. 58 Pa. C.S. § 2303(a). Act 13 provides that distribution of the fee to appropriate entities shall occur within 3 months after the fee due date. 58 Pa. C.S. § 2314(d).

Act 13 is silent regarding refunds. Indeed, in its Clarification Order entered December 20, 2012, Docket No. M-2012-2288561, the Commission specifically noted that Act 13 does not provide for a refund mechanism. In that Order, the Commission recognized that Act 13 provides that producers must self-report their financial liability (fees due), which report, if deficient, would be subject to subsequent Commission enforcement action. Based on the self-reporting mechanism established by Act 13, the

Commission did not envision a situation where refunds would be required. As noted earlier, Act 13 requires distribution of the impact fee within 3 months of the payment due date. Pursuant to Act 13, 100% of the collected fee is distributed to eligible entities, with no reserve. 58 Pa. C.S. § 2314.

Based on Act 13's silence regarding refunds, the self-reporting and distribution mechanisms established by Act 13, the Commission's previous treatment of this issue, and Southwestern Energy's failure to challenge or otherwise dispute the 2011 payment until recently, well beyond the 2011 collection/distribution period, the refund request is denied.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code § 5.44, file a petition with the Commission within twenty (20) days of the date of this letter. If no timely appeal is taken, this action will be deemed to be the final action of the Commission.

Sincerely,



Robert C. Gramola
Director, Bureau of Administrative Services

cc. Bohdan R. Pankiw, Chief Counsel

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Southwestern Energy Production :
Company for Appeal from Actions of the : Dkt. No. P-2013-_____
Commission Staff :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the parties listed below by hand delivery, in accordance with the requirements of Section 1.54 (relating to service by a participant).

Robert C. Gramola, Director
Bureau of Administration
PA Public Utility Commission
Commonwealth Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17101

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John Herzog, Esq.
Assistant Counsel
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Daniel P. Delaney
PA Attorney I.D. 23955

Counsel for Southwestern Energy
Production Company

Dated: May 23, 2013

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