



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

April 5, 2012

VIA HAND DELIVERY

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
2nd Floor, Room N-201
Harrisburg, PA 17105

Re: **Docket No. M-2012-2288561**
PSATS Comments on Act 13 Tentative Implementation Order

Dear Ms. Chiavetta: 

Enclosed for consideration by the Public Utility Commission are the original and three copies of the Pennsylvania State Association of Township Supervisors' comments on the Act 13 Tentative Implementation Order entered on March 16, 2012.

Please let me know if you have any questions or would like to discuss these comments.
Thank you.

Sincerely,



David M. Sanko
Executive Director

DMS:meg

Enclosure

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DOCKET NO. M-2012-2288561

PA P.U.C.
SECRETARY'S BUREAU**COMMENTS OF THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS ON ACT 13 TENTATIVE IMPLEMENTATION ORDER**

The Pennsylvania State Association of Township Supervisors (PSATS) respectfully submits these comments in response to the Tentative Implementation Order entered by the Public Utility Commission (the Commission) relating to the implementation of the Unconventional Gas Well Impact Fee Act (Act 13).

PSATS represents 1,455 townships in the Commonwealth of Pennsylvania. Townships comprise 95 percent of the Commonwealth's land area and are home to more than 5.4 million Pennsylvanians – nearly 42 percent of the state's population. These townships are very diverse, ranging from rural communities with fewer than 200 residents to more populated communities with populations approaching 70,000 residents.

PSATS commends the Commission for its diligence and efforts to educate the public about the Commission's efforts to satisfy its Act 13-related administrative responsibilities. PSATS believes that the comments set forth below, which are intended to clarify open issues, minimize future questions from interested parties, and lessen difficulties associated with the implementation of Act 13, should be incorporated into the Final Implementation Order issued by the Commission.

PSATS' specific comments are as follows:

1. In the first paragraph on page 4 of the Tentative Implementation Order, the Commission stated that the prohibition on the receipt of funds by any county that does not adopt an ordinance imposing an impact fee extends to the municipalities within that county. In light of the fact that Section 2302(a.4) provides that municipalities can override a county's refusal to

adopt an impact fee ordinance, PSATS believes that the Commission should state that the prohibition on the receipt of funds extends only to municipalities “that do not adopt resolutions in accordance with Section 2302(a.4) of Act 13 or that have had a zoning ordinance deemed noncompliant by the Commission or court.” In addition, PSATS has prepared a model resolution, a copy of which is enclosed herewith and can also be found at www.psats.org, should the Commission choose to reference it in the Final Implementation Order.

2. In Footnote 8, the Commission stated that “Act 13 does permit counties to receive funds in subsequent years upon adoption of an ordinance imposing the impact fee even if the county failed to adopt such an ordinance previously.” This statement should be amended to clarify that all municipalities within a county that adopts an impact fee ordinance in a future year are also permitted to receive impact fee funds (unless they have had a zoning ordinance deemed noncompliant by the Commission or court). That modification is necessary and appropriate because Section 2302(a.4)(5) provides that a municipality is prohibited from receiving impact fees only if it is located in a county that does not adopt an ordinance imposing an impact fee and it does not adopt a resolution under Section 2302(a.4)(2), (3), or (4). Therefore, the municipal prohibition would be inapplicable if the municipality’s host county adopts an impact fee ordinance in a future year.

3. PSATS concurs with the Commission’s interpretation on page 6 of the Tentative Implementation Order that an impact fee must be paid during the first three years that an unconventional well is producing, regardless of the volume of production from that well.

4. Page 8 of the Tentative Implementation Order references Section 2303(c)(1), which authorizes the Commission to impose an annual administrative charge of not more than \$50 per spud well. Given that Act 13 permits the imposition of the aforementioned

administrative charge and allocates \$1 million annually to the Commission for administrative costs, PSATS believes that the Commission should take all reasonable steps to reduce costs that may otherwise be incurred by outside parties, including municipalities, such as dispensing with the requirement that parties filing a document through the Commission's e-Filing system also submit a paper copy or that parties filing a document in hard copy form submit the original and three copies of the document.

5. PSATS agrees with the Commission's statement on page 9 of the Tentative Implementation Order that local governments should address concerns about the accuracy of well information that is submitted to the Commission and Department of Environmental Protection (DEP). PSATS recommends that the Commission and DEP establish a reasonable and straightforward procedure to address such situations.

6. PSATS concurs with the Commission's statement on pages 11-12 of the Tentative Implementation Order that the intent of Act 13 is to distribute 60% of the entire funds remaining in the Unconventional Gas Well Fund after the distributions specified in Sections 2314(c), (c.1), and (c.2). PSATS also concurs with the Commission's interpretation that the denominators referenced in Sections 2314(d)(1), (d)(2), and (d)(3) should refer to the total number of spud unconventional wells subject to the impact fee.

7. On page 13 of the Tentative Implementation Order, the Commission referenced the requirement in Section 2314(h)(2) that municipalities must publish a copy of the Impact Fee Disbursements Report on their publicly accessible websites. Given that some municipalities do not have websites, PSATS believes that the Final Implementation Order should provide that such municipalities must make the Impact Fee Disbursements Reports available where they make

documents available to the public and will not be required to establish a publicly accessible website solely for the purpose of complying with Act 13.

8. On page 15 of the Tentative Implementation Order, the Commission stated that it will render no determinations regarding the environmental regulation of oil and gas operations because such issues are exclusively regulated by the DEP. If this is the case, how will the Commission address requests for advisory opinions and for official reviews of local ordinances that involve questions of whether the local ordinance violates Section 3303 of Act 13, which addresses environmental acts? PSATS believes that it would be inefficient and contrary to Act 13 for the Commission to resolve certain issues relating to local ordinances, while at the same time it defers to the DEP to resolve others.

9. The Tentative Implementation Order states on page 16 that requests for advisory opinions regarding local ordinances must identify the specific section of the proposed ordinance that is in potential conflict with Act 13 or the MPC. PSATS believes that this proposed requirement should be deleted from the Final Implementation Order for at least two reasons. First, a municipality may believe that there are no sections in its proposed ordinance that potentially conflict with Act 13 or the MPC, but still wish to avail itself of the advisory review procedure establishes in Act 13. It should not have to identify a section as potentially invalid if it believes all sections to be valid. Second, the municipality will not receive any comfort that its proposed ordinance, in its entirety, complies with the law if it is required to identify only specific sections for the Commission's review. PSATS believes that municipalities should be permitted to seek the Commission's review of their proposed ordinances in their entirety.

10. PSATS thanks the Commission for its willingness to review requests for advisory opinions regarding previously enacted local ordinances. This will benefit those municipalities that believe that their existing ordinances comply with Act 13 and the MPC, but still wish to obtain the Commission's advisory opinion.

11. On Page 19 of the Tentative Implementation Order, the Commission states that it reserves the right, in its sole discretion, to refer a request for review of a local ordinance to the Office of Administrative Law Judges for an expedited hearing and the development of a record. PSATS believes that it would benefit all interested parties if the Commission were to provide examples of such situations in which an expedited hearing would be appropriate prior to issuing a Final Implementation Order. In addition, PSATS believes that the Final Implementation Order should reflect that municipalities are permitted to participate in all hearings via telephone, if they wish to, in order to minimize costs associated with responding to a request for review of a local ordinance.

12. PSATS commends the Commission for its plan to make all requests for review of local ordinances and all answers thereto available on the Commission's website. Not only will this make the process public and transparent, it will also allow municipalities and other interested parties to review what ordinance language has been approved and/or rejected by the Commission, which should result in fewer requests for review.

13. In the discussion of Section 3308 on page 20, the Commission referenced that once a local government cures a local ordinance that is inconsistent with Act 13 or the MPC, the local government will be restored to the list of municipalities eligible to receive funds under Chapter 23 of Act 13. The Department should state in the Final Implementation Order that the

municipality's restoration to the list of municipalities eligible to receive impact fee funds will take effect as of the date of passage of the curative ordinance.

14. The draft Municipality Approved Budget Report (Exhibit C) states that municipalities must provide the Commission the amount of their 2010 "Total Approved Budget" so that the Commission can properly determine the amount to be distributed to each municipality. Section 2314(e) of Act 13 provides that the amount allocated to each municipality 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." Thus, the Commission's proposed use of the term "Total Approved Budget" is inconsistent with the language of Act 13 and would unfairly penalize many municipalities. For example, a municipality may have approved its 2010 budget in late 2009, but then experienced unforeseen events in 2010, such as flooding, snowstorms, new mandate compliance, lawsuits, etc., that forced it to increase its total budget expenditures from what was originally approved. Therefore, Exhibit C should request that municipalities provide the Commission with their year-end budget number, not the "Total Approved Budget" at the beginning of the year.

15. In the draft Instructions for Unconventional Gas Well Fund Usage Report (Exhibit D), the term "organization" used in Nos. 9 and 10 should be changed to read "county or municipality" to more accurately describe the entities that will be responsible for completing the report. With respect to the statement that the "amounts will be subject to audit", PSATS notes that municipalities' budgets and expenditures are already subject to audit by elected auditors or outside auditing firms.

PSATS appreciates the Commission's consideration of the above comments. Should the Commission have any questions regarding any of PSATS's comments, please do not hesitate to contact me. Thank you.

Respectfully submitted,



David M. Sanko
Executive Director
Pennsylvania State Association of
Township Supervisors
4855 Woodland Drive
Enola, PA 17025
(717) 763-0930

Dated: April 5, 2012

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***PLEASE BE ADVISED THAT THIS RESOLUTION CANNOT BE ADOPTED UNTIL AFTER APRIL 16th AND ONLY NEEDS TO BE ADOPTED IF YOUR COUNTY DOES NOT ADOPT THE IMPACT FEE.**

TOWNSHIP OF _____

_____ COUNTY, PENNSYLVANIA

RESOLUTION NO. _____

PUC DOCKET NO. M-2012-2288561

A RESOLUTION OF THE TOWNSHIP OF _____, _____ COUNTY, PENNSYLVANIA, TO HAVE _____ COUNTY IMPOSE AN UNCONVENTIONAL GAS WELL FEE.

BE IT ADOPTED:

Section 1. Resolution Pursuant to Title 58 Regarding Unconventional Gas Well Fee.

The _____ in the county of _____ hereby resolves to have the county impose an unconventional gas well fee on each unconventional gas well spud in the county.

[MEMBER NOTE: The above language is mandated by Act 13 of 2012 (House Bill 1950). Therefore, townships should consult their solicitors or PSATS before making changes to this language.]

Section 2. Definitions.

The following words and phrases when used in this resolution shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Fee." *The unconventional gas well fee imposed under section 2302 of Title 58.*

"Spud." *The actual start of drilling of an unconventional gas well.*

"Title 58." *Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes as amended by Act of February 13, 2012 (P.L. __, No. __).*

"Unconventional gas well." *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.*

Section 3. Applicability and Administration.

The unconventional gas well fee shall be applicable, and shall be administered, as provided for in Title 58.

Section 4. Effective Date.

This resolution shall take effect immediately and shall remain in effect until repealed or amended.

Section 5. Transmittal.

A copy of this resolution will be transmitted to the county of _____ and the Public Utility Commission, as required in Title 58.

ADOPTED this _____ day of _____, 2012, by the Supervisors of _____ Township, _____ County.

BOARD OF SUPERVISORS
_____ TOWNSHIP

[insert name]
Chairman, Board of Supervisors

ATTEST:

[insert name]