

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility :
Commission, Bureau of :
Investigation and Enforcement : C-2014-2402746
 :
v. :
 :
Snyder Brothers, Inc. :

**BRIEF OF
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION
IN OPPOSITION TO
BUREAU OF INVESTIGATION AND ENFORCEMENT PETITION
FOR INTERLOCUTORY REVIEW AND ANSWER TO A MATERIAL QUESTION**

Kevin J. Moody, Esquire
General Counsel
Pennsylvania Independent Oil & Gas Association
212 Locust Street, Suite 300
Harrisburg, PA 17101-1510
717-234-8525

Date: June 13, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION AND QUESTION PRESENTED 1

II. BACKGROUND 3

III. ARGUMENT 3

 A. The Petition Fails to Meet the Threshold Requirements for Interlocutory
 Review 4

 B. Interlocutory Review of the Question Presented is Improper. 4

 C. Assuming *Arguendo* That Legislative Intent is an Issue, Legislative History
 Supports the Statutory Interpretation of SBI and PIOGA. 5

IV. CONCLUSION AND RELIEF REQUESTED 8

Appendix A – HB 1950 Conference Committee Report

TABLE OF AUTHORITIES

Page(s)

COURT CASES

<i>Commonwealth of Pennsylvania v. Gilmour Manufacturing Company</i> , 822 A.2d 676 (Pa. 2003)	7
<i>Guinn v. Alburtis Fire Co.</i> , 614 A.2d 218 (Pa. 1992)	5
<i>Sphere Drake Ins. Co. v. Phila. Gas Works</i> , 782 A.2d 510 (Pa. 2001)	5

ADMINISTRATIVE CASES

<i>Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act</i> , Docket No. M-2012-2288561 (Reconsideration Order entered July 19, 2012)	6
<i>In Re Knights Limousine Service, Inc.</i> , 59 Pa. PUC 538 (1985)	4
<i>Pennsylvania Public Utility Commission v. Philadelphia Gas Works</i> , Docket Nos. P-2009-2097639; R-2009-2139884, 2010 Pa. PUC LEXIS 723	4,5

ADMINISTRATIVE RULEMAKING

<i>Act 13 of 2012-Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23</i> , Docket No. L-2013-2375551 (Order entered October 17, 2013)	2,3,6
--	-------

STATUTES

Act 13, 58 Pa. C.S. § 2302(b.1)	6
Act 13, 58 Pa. C.S. § 2302(d)	6
26 U.S.C. § 613A(c)(6)	6

REGULATION

52 Pa. Code § 1.33(a)	3
52 Pa. Code § 5.302(b)	3

I. INTRODUCTION AND QUESTION PRESENTED

The Pennsylvania Independent Oil & Gas Association (PIOGA) is the comprehensive trade association representing oil and natural gas interests throughout Pennsylvania.¹ Some PIOGA members are involved in producing natural gas from unconventional formations and are therefore subject to the local impact fee imposed by Act 13 of 2012. PIOGA has been involved with the Commission's implementation of the local impact fee provisions of Chapter 23 of Act 13, having submitted comments – as part of a coalition including the Marcellus Shale Coalition (MSC) and the Associated Petroleum Industries of PA, a division of API (API) (collectively, “Producers”) – to the Commission's March 15, 2012 Tentative Implementation Order at Docket No. M-2012-2288561 and a request for reconsideration of the Commission's May 10, 2012 Final Implementation Order. PIOGA alone also submitted comments to the May 10th order published in the Pennsylvania Bulletin, asking the Commission to address issues concerning disputed impact fees that were not addressed in the final order.

By order dated March 14, 2014, Administrative Law Judge (ALJ) David A. Salapa granted PIOGA's petition to intervene in this prosecution against PIOGA member Snyder Brothers, Inc. (SBI).

In accordance with 52 Pa. Code § 5.302(b), PIOGA submits this brief in opposition to the Bureau of Investigation and Enforcement (BI&E) petition for interlocutory review. BI&E's petition correctly states (p.2) the position of SBI and PIOGA that the wells identified in BI&E's complaint are “stripper wells” not subject to payment of impact fees and administrative charges. BI&E's petition also correctly states (p.2) that the interpretation of Act 13's “stripper well”

¹ Effective April 1, 2010, the Pennsylvania Oil and Gas Association (POGAM) merged into the Independent Oil and Gas Association of Pennsylvania (IOGA of PA) and the name of the organization changed to Pennsylvania Independent Oil & Gas Association (PIOGA).

definition “determines the outcome of this case,”² which is what BI&E stated in its prehearing memorandum (p.2).³

Yet the interpretation of the “stripper well” definition is not the question BI&E asks the Commission to answer:

Stripper well. 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.* (Emphasis added)

Through some logic that is not apparent or explained in BI&E’s petition, BI&E “asserts that *pursuant to this definition*, a vertical unconventional gas well that produces more than 90,000mcf [sic] average per day in any month during a calendar year *is obviously capable* of producing more than 90,000mcf [sic] average per day *and is therefore not a ‘stripper well,’* making it subject to the applicable Act 13 impact fees and administrative charges for that well.” BI&E petition, p.3 (emphasis added).

Hence, BI&E asks the Commission to answer the following question:

Whether an unconventional gas well *that produces more than 90,000 mcf [sic] average per day in any given month during a calendar year is properly subject to the impact fees and administrative charges applicable to said well under Act 13?* (Emphasis added)

SBI’s response and PIOGA’s response below explain why this is the wrong question and why the Commission should either (i) determine that the petition and question are improper and therefore return the matter to the ALJ for disposition in the normal course of the proceeding in

² This is true if SBI’s and PIOGA’s interpretation of the stripper well definition is correct, but not if BI&E’s interpretation and the Commission’s present interpretation, as set forth in its October 17, 2013 *Impact Fee NOPR* (discussed *infra*) is correct, because then issues concerning whether SBI must pay statutory penalties and interest, and a civil penalty, remain.

³ “Because the parties disagree on the definition of ‘stripper well,’ *which controls this matter*, settlement of this case is not possible.” (Emphasis added)

accordance with the ALJ's orders or, alternatively, (ii) if the Commission determines that the petition is proper, answer the material question in the negative and enter a final order dismissing the prosecution.

II. BACKGROUND

As mentioned in SBI's response, in its *Impact Fee NOPR*⁴ the Commission has already, at least tentatively but without the benefit of comments or development of an evidentiary record, answered the question presented by BI&E's petition:

In order for the Commission to determine whether a vertical gas well is subject to the impact fee, producers must verify certain production information for the corresponding reporting year to the Commission to ensure that a particular well qualifies as a vertical gas well and is therefore subject to the fee. *July 19, 2012 Reconsideration Order* at 5. All vertical gas wells on the Department of Environmental Protection's (DEP) spud list as of December 31 of each year will be subject to the fee for that year unless the producer verifies to the Commission that a particular well did not produce natural gas in quantities greater than that of a stripper well *during any calendar month* in the reporting year. *Id.* This means that even if a vertical gas well produces natural gas in quantities greater than that of a stripper well in only one month of a calendar year, that vertical well will be subject to the fee for that year. *Id.* Producers must verify on their annual producer report forms filed with the Commission, by April 1 of each year, certain production level information for all vertical gas wells for which a fee is not due. *Id.*⁵

As the Commission is aware, the *Impact Fee NOPR* has not yet been published in the Pennsylvania Bulletin, so the 30-day public comment period has not yet begun.

III. ARGUMENT

In accordance with 52 Pa. Code § 1.33(a), PIOGA hereby incorporates by reference SBI's response to BI&E's petition and adopts SBI's arguments, and provides additional support.

⁴ *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23*, Docket No. L-2013-2375551 (Order entered October 17, 2013).

⁵ *Impact Fee NOPR* at 8 (footnotes omitted; underline emphasis added); see proposed § 131.3(c)(3)(i).

A. The Petition Fails to Meet the Threshold Requirements for Interlocutory Review.

As SBI correctly observes, BI&E's petition simply states, without any support, that "resolution of this question will expedite the proceeding" and, more importantly, makes no showing whatsoever concerning what the Commission has determined is the "central question" concerning whether interlocutory review of a material question is appropriate – "whether interlocutory review is necessary in order to prevent substantial prejudice."⁶ Indeed, in the *PGW Proceeding* the Commission noted "that it does not routinely grant interlocutory review except upon a showing by the petitioner of extraordinary circumstances or compelling reasons."⁷ BI&E has provided no basis for the Commission to grant the interlocutory review requested in this proceeding.

B. Interlocutory Review of the Question Presented is Improper.

The absence of any showing of substantial prejudice to support granting BI&E's petition is explained because the harm falls on the other parties in this prosecution if BI&E's petition is granted. As SBI correctly states, granting the petition will cause substantial prejudice to SBI and PIOGA by eliminating the opportunity for SBI and PIOGA to present their evidence and arguments to the ALJ to obtain an initial impartial decision. The ALJ's Prehearing Order #2 (April 23, 2014) provides for the filing of summary judgment motions by June 20th and answers thereto by July 10th, which as SBI notes provides for a timely resolution of BI&E's question by the ALJ. As BI&E "does not believe that there are any material facts in dispute in this case,"⁸ a motion for summary judgment presented to the ALJ on the issue of the proper interpretation of

⁶ *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639; R-2009-2139884, 2010 Pa. PUC LEXIS 723, *5 (Order entered April 15, 2010) (*PGW Proceeding*).

⁷ *Id.*, at *6 (citing *In re: Application of Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985)).

⁸ BI&E Prehearing Memorandum at 2.

the stripper well definition is the appropriate manner for BI&E to obtain a ruling through the normal course of this proceeding.

In the *PGW Proceeding*, the Commission determined that the petition for interlocutory review was improper where the petitioning parties failed to make any showing that interlocutory review was appropriate, as it would prevent the ALJ from ruling on a motion for summary judgment that was filed by the petitioning parties on the same day as the petition for interlocutory review.⁹ While none of the parties in this prosecution have yet filed a summary judgment motion,¹⁰ the Commission's rationale for ruling the petition improper in the *PGW Proceeding* is equally applicable here. SBI and PIOGA intend to file such a motion by June 20th, as required by the ALJ's Prehearing Order #2. As in the *PGW Proceeding*, the Commission should find that BI&E's petition for interlocutory review presents "no valid reason to preempt the normal process prior to the ALJ's having an opportunity to render his decision."¹¹

C. Assuming *Arguendo* That Legislative Intent is an Issue, Legislative History Supports the Statutory Interpretation of SBI and PIOGA.

BI&E (Petition, p.3) argues that SBI's and PIOGA's statutory interpretation of the stripper well definition "is clearly not what the legislature intended." However, as the definition of stripper well is clear, plain and unambiguous – BI&E makes no claim otherwise – there is no need to examine legislative intent to discern its meaning.¹²

⁹ *PGW Proceeding*, 2010 Pa. PUC LEXIS at *10.

¹⁰ And BI&E's filing of the petition for interlocutory review indicates it has already decided not to do so.

¹¹ *PGW Proceeding*, 2010 Pa. PUC LEXIS at *10.

¹² *Guinn v. Albutis Fire Co.*, 614 A.2d 218, 220 (Pa. 1992) (the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly; the best indicator of legislative intent is the plain language of the statute); *Sphere Drake Ins. Co. v. Phila. Gas Works*, 782 A.2d 510, 513 (Pa. 2001) (when language of statute is clear and unambiguous, it must be given effect in accordance with its plain and common meaning) (citations omitted).

Nonetheless, assuming only for the sake of argument that examination of legislative intent is appropriate, the HB 1950 Conference Committee Report¹³ for what became Act 13 states the following under the “Fee” heading on page 1:

No sooner than 2016, PUC may adjust minimum production necessary to qualify for a stripper well after determining that quantities do not adequately reflect whether a well is producing profit to the driller over expenses.

While this provision was ultimately not included in Act 13, it confirms, along with other provisions in the Conference Committee (CC) Report that are included in Act 13,¹⁴ that the legislature intended to provide favorable impact fee treatment – *i.e.*, imposition of no impact fee – on wells that qualify as stripper wells. This is consistent with what the term “stripper well” means with respect to federal and state tax laws, *i.e.*, favorable tax treatment in some manner.¹⁵

As explained in SBI’s response, BI&E’s interpretation (and the Commission’s present interpretation as set forth in its *Impact Fee NOPR*) turns the statutory definition of stripper well on its head by focusing on what a vertical well is *capable* of producing during any *one* calendar month rather than what it is *incapable* of producing during any *one* calendar month – and by using what a vertical well is capable of producing during any one month *to negate* what the

¹³ The Conference Committee Report is attached hereto as Appendix A, and is referenced in the Commission’s Reconsideration Order Regarding Chapter 23, *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act*, Docket No. M-2012-2288561 (Order entered July 19, 2012), at 4.

¹⁴ CC Report: “Well that pays 3 year spudding fee, but in year 4 does not produce natural gas greater than a stripper well (90 mcf) shall have its fee suspended”; Act 13: § 2302(b.1). CC Report: “Well that is restimulated but qualifies as stripper well is not subject to fee”; Act 13: § 2302(d).

¹⁵ *See, e.g.*, 26 U.S.C. § 613A(c)(6) (percentage depletion); Colorado, <http://www.colorado.gov/cs/Satellite/Revenue/REVX/1207900867103> (exempt from severance tax); Michigan, http://www.michigan.gov/taxes/0,4676,7-238-43542_43545_65133-304806--,00.html (lower tax rate); North Dakota, <http://www.nd.gov/tax/misc/faq/oilgas/index.html> (reduced rates and/or exemption); Utah, <http://tax.utah.gov/commission/effective/r865-15o-002.pdf> (exemption from tax).

undisputed production levels show the well *was incapable of producing* during any one month,¹⁶ which is the focus of the statutory stripper well definition.

SBI's and PIOGA's This interpretation is clearly inconsistent with the clear, plain and unambiguous terms used in the statutory stripper well definition. While an administrative agency's interpretation of a tax statute is entitled to some deference, that deference exists only where the reviewing court is satisfied that the interpretation, even if set forth in a regulation, tracks the meaning of the tax statute as narrowly construed and does not violate the intent of the legislation; this is because the meaning of a statute is a question of law for the court and, when convinced that the interpretative regulation adopted by an administrative agency is violative of legislative intent, the court disregards the regulatory interpretation.¹⁷

¹⁶ BI&E's assertion that "a vertical unconventional gas well that produces more than 90,000mcf [sic] average per day in any month during a calendar year is obviously capable of producing more than 90,000mcf [sic] average per day and is therefore not a 'stripper well' " shows that production levels – and nothing else – is what BI&E relies upon for its position. This is consistent with the Commission's position. *Impact Fee NOPR* at 8 (quoted above on p.3).

¹⁷ *Commonwealth of Pennsylvania v. Gilmour Manufacturing Company*, 822 A.2d 676, 679 (Pa. 2003).

Appendix A

HB 1950 Conference Committee Report

HB 1950 Conference Committee Report

Fee

- County has 90 days to adopt ordinance authorizing imposition of fee on every spud well
 - If not going to authorize a fee, county must, within 45 days of effective date, make its intentions clear and municipalities may pursue alternative imposition
- Bill provides language for the ordinance
- County that does not impose a fee does not get any funds from distribution
 - Prohibition is in effect until county passes ordinance
 - May receive funds in next calendar year following passage of ordinance
- Alternative imposition by municipalities
 - 90 days after effective date of section, if governing bodies of half of the municipalities representing at least 50% of the county population adopt resolutions imposing an impact fee on unconventional wells, the county-wide impact fee shall take effect
 - Municipalities shall give notice to governing body of county and PUC
- Fee applies to unconventional gas wells spud, regardless of when spudding occurred
 - Gas well spud prior to 2011 shall be considered to have spud in 2011

Average annual price	\$0-2.25	\$2.26-2.99	\$3.00-4.99	\$5-5.99	\$6.00 and higher
Year 1	\$40,000	\$45,000	\$50,000	\$55,000	\$60,000
Year 2	\$30,000	\$35,000	\$40,000	\$45,000	\$55,000
Year 3	\$25,000	\$30,000	\$35,000	\$40,000	\$50,000
Years 4-10	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
Years 11-15	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
Total	\$190,000	\$240,000	\$315,000	\$330,000	\$355,000

- Fee is determined using average annual price of gas
- Well that pays 3 year spudding fee, but in year 4 does not produce natural gas greater than a stripper well (90 mcf) shall have its fee suspended
 - Fee is reinstated for calendar year in which well produces more gas than stripper well
- No sooner than 2016, PUC may adjust minimum production necessary to qualify for a stripper well after determining that quantities do not adequately reflect whether a well is producing profit to the driller over expenses
- Beginning **January 1, 2013**, PUC may adjust fee amounts to reflect upward changes in CPI in the preceding 12 months
 - Fee is adjusted by multiplying annual fee by % increase in CPI rounded to nearest \$100
 - Annual adjustment occurs if total number of wells spud in adjustment year exceeds total number of wells spud in prior year
- Well that is restimulated but qualifies as stripper well is not subject to fee
 - Year in which restimulation occurs is considered first year of spudding for purposes of fee if:

- Producer restimulates previously stimulated well after 10th year of being spud by:
 - Hydraulic fracturing, using additional multilateral well bores, drilling deeper into unconventional formation, or other techniques to expose more of formation of well bore; and
 - Restimulation results in substantial increase in production (more than 90 mcf/day during calendar month)
- If previously capped well or unconventional gas well is reopened and placed into production, all of following apply:
 - Year in which well was capped shall not be considered year after being spud
 - Fee shall be reinstated based upon actual year after being spud
- Fee payments cease upon certification to DEP that well has ceased production and has been plugged

Vertical unconventional gas well fee

- Fee shall not be more than 25% of horizontal well fee
- Fee stops after year 10

Fee due dates

- Fee is due by **April 1**, delinquent after that date
- For calendar year 2011, if ordinance imposing fee is enacted, it is due by **September 1, 2012**

Report

- By **April 1** of year after enactment of ordinance and each **April 1** thereafter, each producer shall submit payment of fee to PUC and a report
- Report shall include:
 - # of spud unconventional gas wells of a producer in each municipality within each county that has a fee
 - Date each unconventional gas well above was spud or ceased production
- PUC may impose annual fee of not more than \$50 per spud well on each reporting producer to pay for actual cost to administer and enforce section
 - Within 30 days of effective date, PUC shall estimate expenditures through 6/30/12 directly attributable to this
 - PUC shall subtract amount of fees imposed above and assess remaining balance on all produced in proportion to number of wells owned by product
 - Producers must pay assessments within 30 days of receipt

Well information

- Within 14 days of effective date of section, DEP shall provide PUC (and a county upon request), a list of all spud unconventional gas wells that have received a drilling permit
 - Provided to PUC on a monthly basis
- Producer shall notify PUC within 30 days after calendar month in which change occurs:
 - Spudding of well
 - Initiation of production at well
 - Removal of well from production

Duties of DEP

- Prior to issuing permit, DEP must determine whether producer has paid all fees for existing wells
- Shall not issue permit to drill unconventional gas well until all fees owed, not in dispute, are paid
- PUC shall provide DEP with all info necessary to determine whether producer has paid all fees

PUC

- Power to make all inquiries and determinations necessary to calculate and collect fee
 - If fee has not been paid in full, it may issue notice of amount due and demand payment
- May challenge the amount of a fee paid within three years after the date the report is filed
 - If no report filed or producer files false or fraudulent report with intent to evade fee, an assessment of amount owed may be made at any time
- Shall assess interest on any delinquent fee
- If payment is not made timely, PUC will add a penalty of 5% of the amount of the fee if failure to file a timely payment is for not more than a month, with additional 5% penalty for each additional month, not to exceed 25% in aggregate
- May assess civil penalty of up to \$2,500 per violation

Recordkeeping

- Producer liable for fee shall keep records, make reports and comply with regs
 - PUC may require producer to make reports, render statements or keep records to determine liability for fee
- PUC shall:
 - Have access to all relevant books, papers and records of producer to verify accuracy and completeness of report

Distribution of fee

- Unconventional Gas Well Fund in Treasury
- Off the top distributions:
 - **County Conservation Districts**
 - For 2011- \$2,500,000
 - 2012- \$5,000,000
 - 2013 and thereafter- \$7,500,000
 - Beginning in 2014, the \$7,500,000 shall be increased by an increase in the CPI
 - ½ distributed for any use consistent with Conservation District Law
 - ½ distributed by State Conservation Commission in manner consistent with Conservation District Law and Allocation Program-Statement of Policy
 - **Fish and Boat-** \$1,000,000
 - **PUC-** \$1,000,000
 - **DEP** for enforcement of acts relating to clean air and clean water- \$6,000,000
 - **PEMA-** \$750,000- emergency response planning, training
 - **State Fire Commissioner-** \$750,000
 - **Rail freight assistance-** \$1,000,000
 - **Natural gas energy development**
 - 2011- \$10,000,000
 - 2012-\$7,500,000

- 2013-\$2,500,000
- Remaining revenues are divided 60% to counties that have imposed fee, and 40% to statewide initiatives

County distribution

- 36% to counties in which spud unconventional gas wells are located
 - Amount for each county determined using formula that divides number of spud wells in county by number of spud wells in state and multiplies the percentage by \$ available
- 37% to qualifying municipalities- same formula
- 27% to qualifying municipalities- amount available determined by dividing number of spud unconventional gas wells in county by number of spud unconventional gas wells in state and multiplying % by amount available for distribution
 - 50% to municipalities that have spud wells or are contiguous with a municipality in which a spud well is locate or are within 5 linear miles of a spud unconventional gas well
 - 50% to each qualifying municipality using formula that divides the population of eligible municipality within county by total population of all eligible municipalities within county and multiplies resulting percentage by amount allocated
 - 50% to each qualifying municipality using a formula that divides highway mileage of municipality by total highway mileage of all eligible municipalities within county and multiplies that percentage by amount allocated
 - 50% to each qualifying municipality in county regardless of whether an unconventional gas well is located in the municipality:
 - 50% based on population in municipality as % of population in county
 - 50% based on highway mileage in municipality as % of highway mileage in county
 - Restriction- amount allocated to qualifying municipalities shall not exceed \$500,000 or 50% of total budget for the prior fiscal year beginning with 2010 budget year
 - Any remaining money shall be deposited in the Housing Affordability and Rehabilitation Enhancement Fund
- **Housing Affordability and Rehabilitation Enhancement Fund**- off the top of county money
 - 2011- \$2,500,000
 - 2012 and thereafter- \$5,000,000
 - Provide support to projects in county in which unconventional gas wells are located that increase availability of housing for low-income and moderate-income individuals and families
 - Provide rental assistance in county where wells are located
 - No less than 50% of funds shall be used in 5th-8th class counties
- Counties and municipalities shall use funds only for following purposes associated with natural gas production:
 - Construction, reconstruction, maintenance, repair or roadways, and public infrastructure
 - Water, storm water and sewer systems
 - Emergency preparedness and public safety
 - Environmental programs, trails, parks, recreation, flood plain management, conservation districts
 - Preservation and reclamation of surface and subsurface waters

- Tax reductions (including homestead exclusions)
- Projects to increase availability of safe and affordable housing
- Records management, geographic information systems and IT
- Delivery of social services
- Judicial services
- County or municipality capital reserve fund
- Career and technical centers for training of workers in oil and gas industry
- Local or regional planning initiatives

Statewide initiatives

- Creation of Marcellus Legacy Fund
- 40% of remaining revenue after off-the-top distributions are made
 - 20% to CFA for:
 - Acid mine: damage, abatement and cleanup and mine reclamation- priority given to projects which recycle and treat water for use in drilling operations
 - Orphan or abandoned oil and gas well plugging
 - Projects complying with Pa Sewage Facilities act
 - Greenways, rec trails, open space
 - Establish baseline water quality data on private water
 - Watershed programs
 - Up to 25% of funds may be used for flood-control projects
 - 10% to ESF
 - 25% to Highway Bridge Improvement Restricted Account in Motor License Funds to counties to be distributed to fund the cost of the replacement or repair of locally owned at-risk deteriorating bridges
 - Funds distributed to counties proportionately based on population
 - Each county receives a minimum of \$40,000
 - 1st or 2nd class county may submit plan to PennDOT to use it funds for bridges owned by public transportation authority
 - 25% for water and sewer projects – in 2011 and thereafter
 - 50% to Pa Infrastructure Investment Authority
 - 50% to H2O Pa to be used by CFA
 - Prohibition on grants for projects located in a city or county of 1st or 2nd class shall not apply to these funds
 - 15% for planning, acquisition, development rehab and repair of greenways, rec trails open space
 - Funds may be used to acquire lands for rec or conservation purposes and land damaged or prone to drainage by storms or flooding
 - Distributed based on county population
 - Minimum of \$25,000 per county
 - 5% to DCED in 2011, 2012, and 2013 for projects relating to liquid natural gas
 - 5% to HSCA starting in 2014 and thereafter
- Funds distributed shall not be used for PR, outreach not directly related to project implementation, communications, lobbying or litigation
- DEP and DCNR shall review applications for funding as requested by CFA
- Small business- producers shall provide maximum practicable contracting opportunities for diverse small businesses, including MBE, WBE and veteran owned businesses

Oil and Gas Lease Fund

- Funds appropriated under the Fiscal Code shall be distributed before allocations here
- **Environmental Stewardship**
 - 2013-\$20,000,000
 - 2014 and each year thereafter- \$35,000,000
- **HSCA**
 - 2015- \$5,000,000
 - 2016 and thereafter- \$15,000,000

Natural Gas Energy Development Fund

- Grants
 - 2012-2013- May not exceed \$10,000,000
 - \$5,000,000 shall be allocate for local transportation organizations
 - 2013-2014- \$7,500,000
 - And anything unused from 2012-2013
 - 50% for local transportation organizations
 - 2014-2015- \$2,500,000
 - And anything used from 2013-2014
- Creates Natural Gas Energy Development Program
 - Funds to be used for competitive grants
 - Projects must provide or demonstrate:
 - Plan to convert 5 or more fleet vehicles into eligible vehicles or purchase 5 or more eligible vehicles
 - Statement of projected usage of natural gas in gasoline or diesel gasoline equivalents
 - Cost of project
 - Source and amount of funds to be contributed by applicant
 - Intent to maintain operations in state for not less than 6 years
 - Vehicle will be registered in state
 - Utilization of federal funds to extend funds are available
 - Whether or not utilization of natural gas fueling facility is accessible to public

Development (Chapter 32)

- Notice to all surface owners and water purveyors within 3000 feet of vertical well bore
- Surface owner and political subdivision get 24 hours' notice

Setbacks

- 500 feet from well bore to building or water well, without written consent of owner
- 1000 feet from well bore to any existing water well, surface water intake, reservoir or other water supply extraction point used by a water purveyor without the written consent of the water purveyor
- 300 feet from vertical well bore or 100 feet from edge of well pad, whichever is greater, from any blue lined stream, spring or body of water
 - Edge of disturbed area associated with unconventional well must maintain 100 foot setback from edge of any solid blue lined stream, spring or body of water

- 300 feet from any wetlands greater than 1 acres in size and edge of disturbed area must maintain 100 ft setback
- DEP may consider comments by municipalities and storage operators but they have no right to appeal DEP's decision
- DEP may establish additional protective measures for the storage of hazardous chemicals and materials intended to be used or that have been used in unconventional gas wells within 750 feet of a solid blue lined stream, spring or body of water

Restoration

- Site shall be restored within 9 months- removing or filling all pits and removing all drilling supplies and equipment not needed for production
- Restoration period may be extended by DEP, not to exceed 2 years
- Rebuttable presumption for pollution of water supply from unconventional gas well:
 - Water supply is within 2,500 feet of unconventional vertical well bore; and
 - Pollution occurred within 12 months after the later of completion, drilling, stimulation or alteration of unconventional gas well

Chemical disclosure requirement

- Operator of well shall complete chemical disclosure registry form and post form on the registry
 - Must indicate trade secrets and confidential proprietary info as such on the form
- Everything but trade secrets and confidential proprietary info submitted to DEP is a public record

Bonding

- Total well bore length less than 6,000 feet:
 - Up to 50 wells- \$4,000 per well, no bond in excess of \$35,000
 - 51-150- \$35,000 plus \$4,000 per well for each well in excess of 50, not to exceed \$60,000
 - 151-250- \$60,000 plus \$4,000 per well for each well in excess of 150, not to exceed \$100,000
 - More than 250- \$100,000 plus \$4,000 per well for each well in excess of 250, not to exceed \$250,000
- Total well bore length of at least 6,000 feet:
 - Up to 25 wells- \$10,000 per well, not exceed \$140,000
 - 26-50 wells- \$140,000 plus \$10,000 per well for each well in excess of 25, not to exceed \$290,000
 - 51-150- \$290,000 plus \$10,000 per well in excess of 50, not to exceed \$430,000
 - 150+- \$430,000 plus \$10,000 per well in excess of 150, not to exceed \$600,000

Criminal Penalties

- General violation- Summary offense- Fine of not more than \$1,000, or up to 90 days imprisonment or both
- Willful violation- misdemeanor and fine of not more than \$5,000 or imprisonment up to a year or both

Civil Penalties

- Shall not exceed \$25,000 plus \$1,000 for each day during violation continues

- Violation arising from construction, alteration, or operation of unconventional well, \$75,000 plus \$5,00 for each day violation continues
- Liability- if person other than well operator renders a service or product to well or well site, that person is liable with the well owner or operate for violations

Abandoned well plugging fund

- All money collected from violations goes into fund

Chapter 33- Local Ordinances relating to Oil and Gas Operations

- All local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 are superseded
- Environmental acts are of statewide concern and occupy the entire field of regulation to the exclusion of all local ordinances
- Local ordinances shall allow for the reasonable development of oil and gas resources
 - Local ordinance shall:
 - (1) Allow well and pipeline location assessment operations in accordance with all state and federal laws and regulations relating to the storage and use of explosives
 - (2) May not impose conditions, requirements or limitations on oil and gas operations that are more stringent than other industrial uses in boundaries of local government
 - (3) May not impose conditions, requirements or limitations on heights, screening, fencing, lighting or noise that are more stringent than other industrial uses in boundaries of local government
 - (4) Review period for permitted uses that does not exceed 30 days for complete submissions or 120 days for conditional uses
 - (5) Shall authorize oil and gas operations, other than activities at impoundment areas, compressor station and processing plants as permitted use in all zoning
 - May prohibit (or permit as a conditional use) well or well sites otherwise permitted above within a residential district if the well site cannot be places so that the wellhead is at least 500 feet from any existing building
 - In residential area:
 - Well site may not be located so that outer edge of well pad is closer than 300 feet from existing building; and
 - Oil and gas operations, except as set out above in (5) and the placement, use and repair of oil and gas pipelines, water pipelines, access roads or security facilities, may not take place within 300 feet of an existing building
 - (6) Shall authorize impoundment areas used for oil and gas operations as permitted use in all zoning districts provided that edge of impoundment area shall not be located closer than 300 feet from existing building
 - (7) Shall authorize natural gas compressor stations as a permitted use in agricultural and industrial zoning districts and as a conditional use in all other zoning districts if it meets the following criteria:
 - Located 750 feet or more from nearest existing building or 200 feet from nearest lot line, whichever is greater, unless waived by owner; and

- Noise level does not exceed 60 dbA at nearest property line
 - (8) Shall authorize a natural gas processing plants as permitted use in industrial zoning district and as conditional use in agricultural zoning district if it:
 - Located 750 feet or more from nearest existing building or 200 feet from nearest lot line, whichever is greater, unless waived by owner; and
 - Noise level does not exceed 60 dbA at nearest property line
 - (9) Shall impose restrictions on vehicular access routes for overweight vehicles authorized under Vehicle Code or MPC
 - (10) May not impose limits or conditions on subterranean operations or hours of operation of compressor stations and processing plants or hours of operation for the drilling of oil and gas wells or the assembly and disassembly of drilling equipment
 - (11) May not increase setback distances set forth in Chapter 32
- Review of local ordinance, prior to enactment, done by PUC
 - Local government that enacts a fee in violation of MPC or Chapters 32 or 33, is ineligible to receive funds until ordinance is amended or repealed

Chapter 35- Responsibility for fee

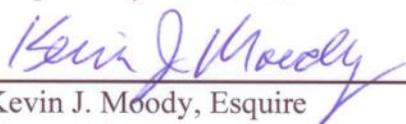
- Producer may not make fee or any other levy an obligation of landowner or leaseholder
- Provision in agreement in existence prior to effective date of section which violates language above is declared to be illegal and shall be null and void

IV. CONCLUSION AND RELIEF REQUESTED

Accordingly, PIOGA respectfully requests that the Commission determine BI&E's petition and question to be improper and return the matter to the ALJ for disposition in the normal course of the proceeding in accordance with the ALJ's orders.

In the alternative, if the Commission determines that the petition is proper, PIOGA respectfully requests that the Commission answer the material question in the negative and enter a final order dismissing the prosecution.

Respectfully submitted,



Kevin J. Moody, Esquire

General Counsel

PIOGA

212 Locust Street, Suite 300

Harrisburg, PA 17101-1510

(717) 234-8525

Date: June 13, 2014

CERTIFICATE OF SERVICE

I hereby certify that this day, June 13, 2014, I served a copies of the foregoing PIOGA Brief in Opposition on the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

VIA E-MAIL & FIRST CLASS MAIL

THE HONORABLE DAVID A. SALAPA
ADMINISTRATIVE LAW JUDGE
PA PUBLIC UTILITY COMMISSION
P.O. BOX 3265
HARRISBURG, PA 17105-3265
dsalapa@pa.gov

HEIDI L. WUSHINSKE, ESQUIRE
WAYNE T. SCOTT, ESQUIRE
PA PUBLIC UTILITY COMMISSION
BUREAU OF INVEST. & ENFORCEMENT
PO BOX 3265
HARRISBURG PA 17105-3265
hwushinske@pa.gov
wascott@pa.gov

VIA E-MAIL

DAVID C. O'HARA
VICE PRESIDENT
SNYDER BROTHERS, INC
PO BOX 1022
KITTANNING, PA 16201
dave.ohara@snydercos.com

THOMAS C. REED, ESQUIRE
DINSMORE & SHOHL LLP
ONE OXFORD CENTER
301 GRANT STREET, SUITE 2800
PITTSBURGH, PA 15219
thomas.reed@dinsmore.com



KEVIN J. MOODY, ESQUIRE
PIOGA