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June 19, 2014

The Honorable Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: I&E v.Snyder Brothers, Inc., No. C-2014-240276

Dear Secretary Chiavetta:

Enclosed for filing is a Motion for Summary Judgment and accompanying Brief filed on behalf of Respondent in the above captioned matter.

Respectfully submitted,  


Thomas C. Reed  
Counsel for Snyder Brothers, Inc.

cc: Heidi Wushniske, Esquire  
Kevin Moody, Esquire

**RECEIVED**

JUN 19 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,

Complainant,

v.

Snyder Brothers, Inc.,

Respondent  
and

Pennsylvania Independent Oil and Gas Assoc.,

Intervenor.

Docket No.: C-2014-2402746

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JUN 19 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to an Order entered in this matter, now comes the respondent, Snyder Brothers, Inc., (“SBI”), and for its Brief in Support of Motion for Summary Judgment states the following:

**CONCISE STATEMENT OF THE CASE**

Act 13 of 2012 authorizes the Pennsylvania Public Utility Commission (“Commission”) to impose and collect a so-called “impact fee” and “administrative fee” on a “vertical gas well,” which is defined by Act 13 as:

An unconventional gas well which utilizes hydraulic fracture treatment through a single vertical well bore **and produces natural gas in quantities greater than that of a stripper well.** (emphasis added).

An “unconventional gas well,” as defined by Act 13 is “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.”

The term “unconventional formation” is, in turn, defined as:

A geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

To qualify as a “vertical gas well,” upon which an “impact fee” and an “administrative fee” or “spud fee”<sup>1</sup> can be imposed, the well must “produce natural gas in quantities greater than that of a stripper well,” which is defined by Act 13 as:

“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 multilateral well bores at a single well, without regard to whether the production is separately metered.”

SBI is a gas producer located in Armstrong County, Pennsylvania which produces gas from an “unconventional formation” using *only* a single vertical borehole. *It does not drill, nor does it operate any “unconventional gas well” that produces gas through horizontal boreholes.*

**Joint Stipulation Paragraph No. 4 (hereinafter “Joint Stip. No. \_\_\_”).**

Pursuant to Act 13, as an “unconventional gas well” operator, SBI filed an Act 13 Annual Report with the PUC for 2011 and 2012 which listed each “unconventional gas well” it operated or spud during the reporting year, and also documented the production of each listed well. **Joint Stip. No.’s 11 and 19. Joint Exhibits 1 and 4.**

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<sup>1</sup> The “impact fee” for a “vertical well” is calculated by Section 2302(b) of Act 13 and is a function of the number of years such well has qualified as a “vertical well,” and is capped at 20% of amount determined in a given year by Section 2302(b). Section 2302(f). In addition, Section 2303 authorizes the PUC to charge an “administrative fee,” often referred to as a “spud fee” not to exceed \$50.00 per any unconventional well “spud” in the reporting year which constitutes a “vertical well.”

## QUESTION PRESENTED

At this juncture the only issue is whether the following gas wells operated by SBI during the 2011 and 2012 Act 13 Reporting Periods are, by virtue of their reported production for each month of the respective reporting period, which production the parties has stipulated was what each well in fact produced (**Joint Stip. No. 's 12 and 20**), are subject to an Impact and Administration Fee:<sup>2</sup>

For the 2011 Report Period

Permit No's

005-30081  
005-30150  
005-30231  
005-30325  
005-30326  
005-30327  
005-30328  
005-30330  
005-30331  
005-30332  
005-30381  
005-30389  
005-30390  
005-30393  
005-30410  
005-30624  
005-30651  
005-30663  
005-30737  
019-21556  
019-21634  
019-21635  
065-26792  
065-26867

For the 2011 Reporting Period

Permit No.'s:

005-30331  
005-30381  
005-30389  
005-30390  
005-30393  
005-30623  
005-30624  
005-30649  
005-30651  
005-30663  
005-30737  
005-30743  
005-30751  
005-30763  
005-30801  
005-30848  
005-30868  
018-21634  
031-25447  
065-26792  
065-26867

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<sup>2</sup> Other issues which will not require a hearing if SBI's Motion is granted include the issue of whether interest, statutory penalties and civil penalties may be assessed in this case.

The answer to this issue turns on the manner in which the term “stripper well,” which is part of definition of the *res* which is subject to the “fees” being sought in this case, is to be interpreted.

As noted above, the General Assembly defined this term as follows:

“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 multilateral well bores at a single well, without regard to whether the production is separately metered.”

Nevertheless The BI&E contends “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 for Interlocutory Commission Review and Answer, p.3 (emphasis added). Stated another way, BI&E suggests that to qualify as a “stripper well” it must produce a daily average of less than 90,000 cubic feet of gas in each month of the year.

For the reasons set forth below BI&E’s interpretation of the statutory term “stripper well” which it is *currently* advancing is inconsistent with the well settled rules of statutory construction and must be rejected.<sup>3</sup>

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<sup>3</sup> BI&E’s interpretation of the statutory language at issue in this case is, of course, not entitled to any deference as none is due when an agency advances its position in litigation. *ARIPPA v. Pennsylvania Public Utility Commission*, 792 A.2d 636, 660 (Pa.Comm. 2002). This is particularly true in a case where BI&E’s interpretation of how to determine whether a well is a “stripper well” differs from the manner in which the Commission first advised the public how it interpreted this term. In its Tentative Implementation Order entered March 16, 2012 at Docket No. M-2012-2288561 the Commission stated “for purposes of calculating production from a stripper well, the Commission expects producers to simply divide the well’s annual production by the number of days the well is in production in the relevant calendar year.” Tentative Implementation Order, p. 6. Although BI&E’s “views” are not entitled to any deference, the fact that inconsistent interpretations of the relevant statutory language have been issued by the agency for which BI&E works undercuts completely BI&E’s position.

## ARGUMENT

### BI&E's Interpretation of the Term Stripper Well Ignores The Rules of Statutory Construction

The interpretation of statutory language in Pennsylvania is governed by the provisions of 1 Pa.C.S. Chapter 19. 1 Pa.C.S. § 1901.

These principles of statutory construction mandate that the first step in interpretation is to examine the language of the statute itself. If that language is clear and unambiguous, resort to other methods of statutory interpretation is not required. 1 Pa.C.S. § 1921(b), *The School District of Philadelphia v. Department of Education*, 2014 Pa. Lexis 1337 (2014). (“The best indication of legislative intent is the plain language of the statute. When the words of a statute are clear and free from all ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit.”)

In *School District of Philadelphia*, the Supreme Court was called upon to address the validity of an enrollment cap included in a school’s charter. The statute in question provided that:

(d)(1) Enrollment of student in a charter school or cyber charter school shall not be subject to a cap or otherwise limited by any past or future action of a board of school directors, a board of control established under Article VII-B, a special board of control established under section 62 or any other governing authority, unless agreed to by the charter school or cyber charter school as part of a written charter pursuant to section 1720-A.

(2) The provision of this subsection shall apply to a charter school or cyber charter school regardless of whether the charter was approved prior to or approved subsequent to the effective date of this subsection.

24 P. S. § 17-1720-A(d).

In trying to recoup payment for students enrolled in excess of a previously agreed to student population cap, the Walter D. Palmer Leadership Learning Partners Charter School

argued that the statutory language quoted above, which was actually an amendment to the Charter School Law, was not applicable. The Administrative Law Judge, and the Commonwealth Court had agreed with the School that the enrollment cap articulated in (d) (1) was not applicable and awarded the payment. However, the Pennsylvania Supreme Court reversed, opining that the “clear language” of subsections (d)(1) and (d)(2) were applicable and because the Charter School had previously agreed to an enrollment limit, the Charter School could not recoup the payment for enrollment above the cap.

Similarly, in the present case, the language of §2301 as to what constitutes a “stripper well” is sufficiently clear and unambiguous that resort to other methods of statutory interpretation are not required. The General Assembly has defined a “stripper well” as one that “... is incapable of producing more than 90,000 cubic feet of gas per day during any calendar month...” 58 Pa. C. S. §2301 (emphasis added).

Giving the words and phrases used in §2301 their common and approved usage, as 1 Pa. C. S. A. §1903(a) requires, it is clear that the General Assembly meant a stripper well to be one that could not, during any of the several months of the multiple month reporting period, produce more than 90,000 c.f. of gas.<sup>4</sup> Had the General assembly meant to achieve any other result, the linguistic tools for it to do so were readily available. For example, it could have said “every month” or “each month” or “all months.” Instead, it chose a word which even the Commission concedes commonly means “one,” as is clear from the following statement made at page 8, of its Proposed Rulemaking Order dated October 17, 2013, docketed at No. L-2013-2375551, which relates to proposed rules to implement Act 13:

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<sup>4</sup> For example, for the year 2011, SBI reported Well Permit No. 005-30250 (Freehling Unit 1) as a stripper well based on the following reported average daily productions (in mcf) January – 94, February – 89, March – 90, April – 82, May – 82, June – 92, July – 90, August – 88, September – 88, October – 84, November – 79, and December 83. *The Freehling Unit 1 is a “stripper well” because during several months the reported production did not exceed a daily average of 90,000 cubic feet (90 mcf) of gas. See Joint Exhibit No. 1.*

“All vertical gas wells...will be subject to a fee...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 a reporting year. This means that even if a vertical well produces natural gas in quantities greater than a stripper well in only *one* month of a calendar year, that vertical well will be subject to the fee.” (emphasis in the original.)

While this interpretation of the term stripper well is, SBI submits, incorrect, it does confirm that the Commission reads the word “any” to mean “one,” not “every.” Thus to the extent BI&E reads the word “any” to mean “every,” one position it apparently is now advancing, this position is inconsistent with the Commission’s.

Frankly, SBI appears to be the only person that has consistently interpreted the word “any” to mean what it quite clearly means in the context of the statutory definition of “stripper well” namely, “one.”

BI&E’s interpretation of the term “stripper well,” ignores the rule that words in a statute are to be given their common and approved usage. 1 Pa.C.S. § 1903 (words should be construed in accordance with the common usage); *Mickle v. City of Philadelphia*, 707 A.2d 1124, 1126 (Pa. 1997) (court must give plain meaning to words used in statute). When intending to convey the concept that something must happen or not happen “every” or “all” or “each” day of the week or month of the year, people simply do not commonly say it must happen or not happen “any day” or “any month.”

The term “stripper well” is defined by the General Assembly, in pertinent part, as “an unconventional gas well *incapable of producing* more than 90,000 cubic feet of gas per day *during any calendar month...*” (emphasis added). BI&E, however, contends the statute requires it to focus on “capability” because a well which produces 90,000 cubic feet of gas per day in any calendar month is “obviously” capable of producing 90,000 cubic feet per day, presumably for the entire reporting period. BI&E’s interpretation thus also can be viewed as

defining the term “stripper well” as “an unconventional gas well that is incapable *of* producing more than 90,000 cubic feet of gas per day during *each calendar month of the year*.”

Regardless of how BI&E’s position is articulated, it turns the English language on its head to suggest that “*incapable*” means “**capable**” or that “*any calendar month*” means “**each** calendar month.”

BI&E’s interpretation also suffers from other statutory construction problems. First, it does not give each of the words used in the statute meaning, as required by 1 Pa.C.S. § 1921(a). Specifically, BI&E’s interpretation does not account for the words “incapable” or “...any calendar month.” Instead, it focuses on a well’s “capability” and on “each” month.

BI&E’s interpretation also assumes, without providing any factual basis, that a well that has produced more than 90,000 cubic feet per day of gas in any given month must, perforce, be capable of producing a similar amount of gas in every month and thus, apparently, is never “incapable” of producing less than that amount in “any month” of the year.<sup>5</sup>

BI&E’s interpretation also reads into the General Assembly’s definition of the term “stripper well” a presumption namely, that capability to produce gas at a certain level in any one month establishes this ability to produce at the same or higher level for all other months of the

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<sup>5</sup> While it is not yet known whether BI&E will seek to obtain a summary judgment in its favor, one of its positions is such that it clearly cannot argue that there are no undisputed “material facts” simply because the issue of whether it is “obvious” that a well which has an average daily production in excess of 90,000 cubic feet in one month must be “capable” of similar production in every other month of the year is disputed by the facts to which BI&E have already stipulated. For example, for Well Permit No. 005-30081 (Tregaskes Unit 1) SBI reported a daily average of 94,000 cubic feet (94 mcf) of gas during only one month of the reporting period; for each other month of that reporting period a daily average of less than 90,000 cubic feet (90 mcf) was reported. See Joint Exhibit 1. See also affidavit of David C. O’Hara wherein he states that for both 2011 and 2012 Reporting Years SBI did not “[take], and did not direct anyone else to take, any actions or inactions designed or intended to reduce the economic production of gas from any well” it contends is not subject to an impact fee. Therefore, the production figures reported by SBI for the 2011 and 2012 Reporting Years reflect the monthly maximum capacity of each of its wells, thus documenting that in any month in which a well did not produce at least 90,000 cubic feet of gas it was “incapable” of producing more than that amount of gas in that month.

year. It does so however without, to date, offering any factual basis to connect the known fact, production in one month in excess of 90,000 cubic feet of gas, to the assumed fact, this same well is capable of producing at this same level in any other month. While legislatures can create statutory presumptions, there must be “some rational connection between the fact proven and the ultimate fact presumed.” *Rich Hill Coal Company v. Bashore*, 7 A.2d 302, 313 (Pa. 1939). Given this caveat, and the absence of any offered “proof” as to why what is “obvious” to BI&E should be obvious to anyone else, BI&E’s construction of the term stripper well is, SBI submits, completely without merit.

Another well settled rule of construction ignored by BI&E is that when statutory language is clear and unambiguous, resort to other methods of statutory interpretation (such as suggested by the BI&E) is not required; indeed they are NOT to be considered. 1 Pa.C.S. § 1921(b), *Herd Chiropractic Clinic, P.C. v. State Farm Mut. Auto. Ins. Co.*, 64 A.3d 1058, 2013 Pa. LEXIS 304 (Pa 2013), (“When the words of a statute are clear and free from all ambiguity, [\*912] the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

The General Assembly’s definition of the term “stripper well” is clear and concise. The statute articulates the relevant daily production needed to be deemed a stripper well in terms of a daily average production in *any* (not each) month, it speaks of no “presumptions.”

There is absolutely nothing in the statutory language which suggests that to be considered a “stripper well” a well must produce a daily average of gas less than 90,000 cubic feet of gas in each month of the year or that a well which produces more than 90,000 cubic feet of gas in any one month of the year, but not in others, cannot be a “stripper well.”

The language of Section 2301 defining “Stripper well” does not say such a well is, as suggested by BI&E “an unconventional gas well that is in *incapable of producing* more than 90,000 cubic feet of gas per day *during each calendar month of the year.*” The clear and unambiguous language of the statutory definition of “stripper well” defines it in terms of production amounts in any month, not some longer period of time.

Despite the above rules of construction, BI&E necessarily is suggesting there is sufficient ambiguity in the statutory language to necessitate resort to speculating as to legislative intent. Initially, it should be noted that where the statutory language is clear and unambiguous, the statutory language is, itself, the best indication of legislative intent. 1 Pa. C. S. §1921(b). Only if the language is ambiguous are other interpretive devices to be used to ascertain “legislative intent.” *Commonwealth v. Raban*, 85 A.3d 467; 2014 Pa. LEXIS 414 (Pa. 2014).<sup>6</sup>

In any event, because the imposition of an impact fee is the imposition of a tax and the term “stripper well” is part of the definition of what is “taxable,” the statutory language at issue must, if any “ambiguity exists” (which, as noted, is not the case here) be strictly construed in favor of the impact fee payor namely SBI. *Building Indus. Ass’n v. Manheim Twp.*, 710 A.2d 141 (Pa. Commw. Ct. 1998). As the Commonwealth Court stated in *Building Indus. Ass’n.*,

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<sup>6</sup> Apparently no longer completely comfortable with its initial “interpretation” of the statutory term at issue, IE&B has now suggested to the Commission, in a recently filed Brief in support of its Petition for Interlocutory Commission Review and Answer, yet another theory namely, that the word “any” can, in some contexts mean “every,” and that since an earlier version of Act 13 (HB 1950 PN 2368) used the phrase “a month,” the change to the phrase “any month” in the final version of Act evidenced a “legislative intent” to expand the number of wells that could be defined as a “vertical well” and thus “taxable.” First, there is nothing in the actual legislative history for Act 13, which supports this hypothesis. *See, e.g.*, the Conference Report issued by the conferees which lead to the issuance of the version of HB 1950 that became law, which is attached hereto. Second, there is nothing IE&B can point to which suggests the conferees (as opposed to the Legislative Reference Bureau (“LRB”)) made this minor change and, because the LRB refuses to disclose those instances where it makes non-substantive wording changes on its own, there is no way to confirm this. Moreover, and most importantly, it belies common sense for the General Assembly to intentionally select a word which in some contexts might be viewed as open to different interpretations in a taxing statute, where any ambiguities are to be construed against the taxing body. Clearly, a far more logical choice of words would have been “each month” or “every month,” if the “intent” of the General Assembly was, as may be argued by BI&E, to expand the number of “taxable” “vertical wells” in the final version of HB 1950.

“[A]n impact fee is a government charge or fee used to generate revenue; it is, therefore, a tax.”

Consequently, because “impact fees” are “taxes” the language of the statute imposing or exempting the imposition thereof must be strictly construed, 1 Pa. C. S. A. §1928(b) (3).

Accordingly, all reasonable doubt as to the meaning of the language must be construed in favor of the taxpayer and against the assessing or taxing body. *In re Estate of Ross*, 815 A.2d 30, 2002 Pa. Commw. LEXIS 1005 (Pa. Commw. Ct. 2002), app. Den. 573 Pa. 713, 827 A.2d 1203, 2003 Pa. LEXIS 1265 (2003).

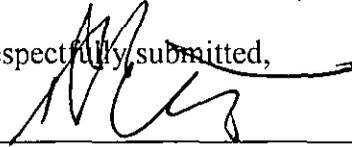
Most assuredly, the interpretation given Section 2301 by the BI&E is far from a “strict” reading of that section’s definition of the term “stripper well” and, without a doubt, fails to resolve any, let alone all, reasonable doubt as to the meaning of that definition in favor of SBI, the taxpayer, and against the taxing body.

### CONCLUSION

BI&E’s interpretation of §2301 is without any factual support in the record. Furthermore, because SBI’s interpretation comports with the plain language of the statute, SBI has correctly characterized its wells and owes no additional impact or administrative fees for the 2011 and 2012 reporting periods. Thus, summary judgment dismissing Complainant’s requests for monetary and other relief is warranted and appropriate.

For the foregoing reasons, it is respectfully requested that Complainant’s claims for additional payment of impact and administrative fees for reporting years 2011 and 2012 as to SBI be dismissed.

Respectfully submitted,



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Counsel for Snyder Brothers, Inc.

Dated: June 19, 2014

**RECEIVED**

JUN 19 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of	:	
Investigation and Enforcement	:	C-2014-3402746
	:	
v.	:	
	:	
Snyder Brothers, Inc.	:	

**AFFIDAVIT OF DAVID C. O'HARA**

Before me, the undersigned authority, did personally David C. O'Hara, who being personally known to me, and being duly sworn according to law, did state as follows:

1. My name is David C. O'Hara and if called to testify in the above captioned matter I would testify as follows.

2. I am submitting this affidavit in connection with a Motion for Summary Judgment in the above captioned matter filed by SBI.

3. I am a Vice President of Snyder Brother's Inc. ("SBI"), an oil and gas producer, with its principle offices located at One Glade Park East, P.O. Box 1022, Kittanning, Pennsylvania, 16201. My duties as a Vice President include being the person primarily responsible for overseeing the day to day operation of SBI's various gas drilling activities, including the wells listed on Joint Exhibits 1 and 4, which are attached to my affidavit.

4. During the 2011 Reporting Period SBI's goal was to maximize the economic production of natural gas from each well listed on Exhibit C to Joint Exhibit 1.

5. During the 2011 Reporting Period SBI took no, and did not direct anyone else to take, any actions or inactions designed or intended to reduce the economic production of gas from any well listed on Exhibit C to Joint Exhibit 1.

6. During the 2012 Reporting Period SBI's goal was again to maximize the economic production of natural gas from each well listed on Exhibit C to Joint Exhibit 4

7. During the 2012 Reporting Period SBI took no, and did not direct anyone else to take, any actions or inactions designed or intended to reduce the economic production of gas from any well listed on Exhibit C to Joint Exhibit 1.

Dated: 6-18-2014

David C. O'Hara  
David C. O'Hara

SWORN TO and SUBSCRIBED BEFORE  
ME THIS 18<sup>th</sup> DAY OF June, 2014.

Leslie S. Chvala  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Leslie S. Chvala, Notary Public  
East Franklin Township, Armstrong County  
My Commission Expires January 28, 2018

## 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
<b>Total</b>	<b>\$190,000</b>	<b>\$240,000</b>	<b>\$315,000</b>	<b>\$330,000</b>	<b>\$355,000</b>

- 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 10<sup>th</sup> 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 5<sup>th</sup>-8<sup>th</sup> 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
    - 1<sup>st</sup> or 2<sup>nd</sup> 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 1<sup>st</sup> or 2<sup>nd</sup> 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 \$10,00 per well for each well in excess of 25, not to exceed \$290,00
  - 51-150- \$290,000 plus \$10,00 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 bot
- 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

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served upon the persons listed below this 19 day of June, 2014 in the manner indicated:

SERVICE BY FIRST CLASS MAIL ADDRESSED TO:

Heidi L. Wushinske, Esquire  
P.O. Box 3265  
Harrisburg, PA 17105-3265

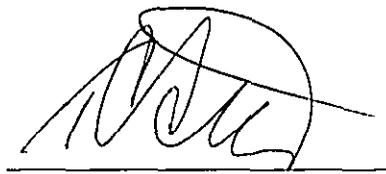
Kevin J. Moody, Esquire  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101-1510

AND VIA E-MAIL TO Ms. Wushinske and Mr. Moody.

hwushniske@pa.gov

kevin@pioga.org

Dated: June 19, 2014



Thomas C. Reed, Esquire

**RECEIVED**

JUN 19 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU