

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2402746
	:	
Snyder Brothers, Inc.,	:	
Respondent	:	

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**NOTICE TO PLEAD**

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In accordance with 52 Pa. Code § 5.103(b), a responsive pleading shall be filed within 20 days of the date of service of the following motion for reconsideration.

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

Dated: July 11, 2014

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION  
ANSWER IN OPPOSITION TO I&E MOTION FOR STAY  
AND  
MOTION FOR RECONSIDERATION OF STAY ORDER**

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**To the Honorable David A. Salapa, Administrative Law Judge:**

In accordance with 52 Pa. Code §§ 5.61(a)(1) and 5.103(c), the Pennsylvania Independent Oil & Gas Association (PIOGA) submits this answer in opposition to the Bureau of Investigation and Enforcement (I&E) motion for a stay of the proceeding pending the Commission's disposition of I&E's request for review of and answer to a material question.

In accordance with 52 Pa. Code §§ 5.103(a) and 5.483(a), PIOGA requests reconsideration of the Order Staying Proceeding issued July 7, 2014 by Your Honor, prior to the expiration of the 20-day response period guaranteed to PIOGA per 52 Pa. Code § 5.103(c).

**Answer in Opposition**

PIOGA opposes the I&E motion for stay for the same reasons set forth in the answer of Snyder Brothers, Inc. (Snyder) filed at this docket. In particular, PIOGA supports Snyder's request in ¶16 of its answer that any stay should include a suspension of any claim for interest for the duration of the stay, because the stay is the result of actions taken by I&E – the request for review of and answer to a material question, and the stay request.

As a threshold matter, I&E's request for a stay – although entitled a “petition”<sup>1</sup> – is properly characterized as a motion and subject to the Commission's regulations concerning motions, rather than petitions.<sup>2</sup> Per 52 Pa. Code § 5.41(a), a petition requests “relief under the act or other statute that the Commission administers” and, per 52 Pa. Code § 5.61(e)(2), an answer to a petition must state “the parties' standing to participate in any Commission proceeding resulting from the petition.” On the other hand, per 52 Pa. Code §§ 5.103, a motion is a request for relief made during the course of a proceeding, and there is no requirement that an answer to a motion state the party's standing. Accordingly, I&E's stay request is, as a matter of law under the Commission's regulations, a motion and not a petition. The legal significance of this distinction is explained below.

PIOGA also opposes the motion for stay because it is contrary to the Commission's regulations concerning requests for review of and answer to a material question, and represents an improper attempt to avoid answering PIOGA's discovery concerning unsupported factual allegations raised for the first time in I&E's brief in support of its request for review of and answer to a material question (Supporting Brief). As stated in the Order Staying Proceeding, I&E filed a petition for interlocutory review pursuant to 52 Pa.Code § 5.302 on June 4, 2014 and its Supporting Brief on June 17, 2014.

Not stated in the stay order is the fact that I&E's Supporting Brief did not assert that a stay was necessary, as required by 52 Pa.Code § 5.302(b): “Within 10 days of service of the petition, each party may submit a brief directed to the Commission supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a

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<sup>1</sup> I&E's filing does not set forth the regulatory authority upon which it is based.

<sup>2</sup> In this respect, PIOGA disagrees with Snyder's answer to I&E's stay request.

stay of proceedings is required to protect the substantial rights of a party.” (emphasis added). Clearly, the “may” refers to the filing of a brief and not what the brief must address, if one is filed. If I&E believed a stay of this proceeding was required to protect its substantial rights, it was required to so state in its Supporting Brief. Indeed, in response to a material question petition, the Commission’s options include continuing, revoking or granting a stay of proceedings. 52 Pa. Code § 5.303(a)(1). This confirms that, unless a stay had already been in place when the material question petition was filed, the need for a stay must be addressed in the Supporting Brief per 52 Pa.Code § 5.302(b).

Significantly, the Commission’s regulations provide that “[a] request may be made by motion for relief desired, except as may be otherwise expressly provided in this chapter and Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions).”<sup>3</sup> (emphasis added). As shown above, 52 Pa.Code § 5.302(b) expressly provides that the need for a stay based on a petition for review of and answer to a material question must be addressed in the brief in support of the request for interlocutory review.<sup>4</sup> Accordingly, I&E’s motion for a stay is improper under the Commission’s regulations and may not lawfully be granted.

In its Supporting Brief, I&E for the first time in this proceeding –under the guise of statutory interpretation – alleged that (i) Act 13 impact fee collections and distributions would be “greatly” reduced under the “stripper well” interpretation advanced by Snyder and PIOGA and (ii) “[o]ne can only imagine the ‘scamming potential’ that” the Snyder/PIOGA interpretation would encourage. With respect to the first allegation, I&E did not reference or attach any

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<sup>3</sup> 52 Pa. Code § 5.103(a) (re scope and content of motions).

<sup>4</sup> I&E’s material question petition did not even hint that a stay was required and, as explained below, does not assert that interlocutory review is required to prevent substantial prejudice to its interests or rights.

documents showing the production levels of unconventional vertical gas wells and the effect of the Snyder/PIOGA interpretation on these wells. With respect to the second allegation, I&E did not include even one example of the “scamming potential” allegedly encouraged by the Snyder/PIOGA interpretation, instead expressly leaving it to the Commission (and the ALJ and the other parties) to “imagine” this potential. These unsupported factual allegations could, improperly in PIOGA’s view, influence the Commission’s consideration of the material question. Accordingly, at 11:43 am on Friday, June 20, 2014, PIOGA served discovery (PIOGA Set I) on I&E via email, followed by mailing hard copies, concerning these new and at this point unsupported factual allegations. A copy of that discovery is attached hereto as Exhibit A.<sup>5</sup>

At 4:59 pm on Friday, June 20, 2014 – approximately 5 hours after PIOGA served its Set I on I&E – PIOGA received via email I&E’s motion for stay that had been filed earlier that afternoon. In view of the express requirement in 52 Pa.Code § 5.302(b) that the need for a stay as a result of the pendency of a material question was required to be addressed in I&E’s Supporting Brief, and the fact that I&E did not do so, it is apparent that the genesis of I&E’s belief that it needed a stay was PIOGA’s service of discovery concerning the new factual allegations in I&E’s Supporting Brief and not the pendency of the material question before the Commission.<sup>6</sup> Indeed, I&E’s singular reliance on the “expediting the proceeding” basis for Commission review of its material question petition and not the “preventing substantial

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<sup>5</sup> Although PIOGA believes that facts supporting these new allegations were within the scope of previous discovery served on I&E by Snyder Brothers and therefore should have been previously disclosed, out of an abundance of caution PIOGA served its own discovery concerning these allegations. One of these previous discovery requests is Snyder Brothers-I&E-Document Request 15: “All documents the PUC intends to use at any hearing to establish its claim that Snyder Brothers, Inc., owes additional Impact Fees and /or Administrative Fees for reporting years 2011 and 2012.”

<sup>6</sup> Snyder’s Motion for Summary Judgment and accompanying Brief served Thursday, June 19, 2014, may also have played a role in I&E’s belief.

prejudice” basis (addressed below) further demonstrates that the pendency of the material question petition was not the genesis for I&E’s stay request.

**Motion for Reconsideration**

It requires no citation, and there can be no dispute, that a presiding officer has inherent authority to reconsider a ruling such as the stay order issued in this proceeding, but if citation is required, 52 Pa. Code § 5.483(a) provides ample authority.<sup>7</sup> This is especially so under the circumstances involved in this matter, in view of a presiding officer’s duty set forth in 52 Pa. Code § 5.484(a): “Presiding officers will perform no duties inconsistent with the act, the rules of the Commission, or with their duties and responsibilities.”

The Commission’s regulations guaranteed PIOGA, as a party, 20 days to respond to I&E’s motion for stay: “A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.” 52 Pa. Code § 5.103(c).<sup>8</sup> Neither the Commission nor Your Honor fixed another time for responding to such a motion, even if deemed proper. Accordingly, the issuance of the Order Staying Proceeding on July 7, 2014 violated PIOGA’s due process rights. The issuance of the stay order also denied Your Honor the benefit of a party’s arguments in opposition to the stay. Whether or not Your Honor views PIOGA’s arguments as a “benefit” is beside the point, which is that PIOGA was entitled to make the arguments in its answer above to Your Honor prior to disposition of I&E’s stay request.

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<sup>7</sup> “The presiding officer will have the authority specified in the act, subject to this title. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.”

<sup>8</sup> *See also*, 52 Pa. Code § 5.61(a)(1). PIOGA’s filing today, July 11, 2014, is a still earlier than the 20-day response period, extended by the “mailbox rule” of 52 Pa, Code § 1.56(b) and the “weekend” rule of 52 Pa, Code § 1.12(a) to Monday, July 14.. PIOGA notes that I&E relied upon the mailbox rule in filing its Supporting Brief on June 17<sup>th</sup>, even though I&E is the party that filed and served the material question petition.

The fact that Snyder choose to respond to I&E's request well before the 20-day regulatory deadline cannot adversely affect PIOGA's due process rights. In addition, I&E's motion for stay did not request expedited consideration and, even if it had, such a request would have been significantly undermined by I&E's failure to address the matter of a stay in its material question petition or its Supporting Brief as required by 52 Pa.Code § 5.302(b): As the Commission has waived the 30-day period for consideration of the material question set forth in 52 Pa. Code § 5.303 and stated that it will address the matters raised in the material question petition in the future, there was no compelling need for Your Honor to act on I&E's request prior to the expiration of the 20-day response period, especially when one active party had not yet filed its response. Nor was there a need to act on I&E's request before the July 9<sup>th</sup> public meeting because, if the Commission addressed the material question at that public meeting, I&E's request would have been moot.

The Commission has the following options to address the matters raised in the material question petition: (i) continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties; (ii) determine that the petition was improper and return the matter to the presiding officer; (iii) decline to answer the question; and (iv) answer the question. 52 Pa. Code § 5.303(a). Accordingly, at this time the effect of the Commission's extension of the 30-day consideration period on this proceeding is uncertain. The stay order (p. 7) acknowledges this uncertainty:

If the Commission rules on I&E's petition, it could change the scope of the proceeding. Allowing this proceeding to go forward while I&E's petition is outstanding could lead to additional costs in time and money addressing issues that may be rendered moot by a Commission decision on the petition for interlocutory review.

However, the Commission could just as well determine the question is improper and return the matter to Your Honor for disposition, or decline to answer the question. In either of these

situations, adherence to the established litigation schedule will significantly *advance* the resolution of the proceeding, especially in view of Snyder’s summary judgment motion.

While expediting a proceeding is one of the bases for requesting review of a material question<sup>9</sup> – and the only one relied upon by I&E<sup>10</sup> – the only basis for granting a stay pending Commission review of the material question is “to protect the substantial rights of a party.” 52 Pa. Code § 5.303(b). As shown by the quotation from the stay order on the previous page, granting the stay was based solely to avoid the *potential* for the parties to incur additional costs in time and money – and that would occur only if the Commission answered the material question, which is only one of the three options available to the Commission. But while all parties would spend additional *time* if the stay were not granted, the only parties that would incur additional *monetary costs* are the private parties that oppose the stay and are willing to incur these costs.

I&E’s stay request does not explain how I&E’s avoidance of additional *time* involves the protection of its substantial rights. The avoidance of additional time and money costs by continuing to litigate a proceeding while a material question petition is pending before the Commission is an argument that can be made with respect to any material question pending before the Commission. However, the Commission’s regulations do not provide an automatic

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<sup>9</sup> “The [material question] petition must be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.” 52 Pa.Code § 5.302(a) (emphasis added).

<sup>10</sup> “Moreover, a petition for interlocutory Commission review and answer to a material question is proper when the review will prevent substantial prejudice *or* expedite the proceeding. In this case, the proceeding will be expedited by the Commission answering a material question of law and permitting the parties to proceed with presentation of their factual evidence.” I&E Supporting Brief at 4 (emphasis in original).

stay of the underlying proceeding as a result of the filing of a material question petition.<sup>11</sup> I&E simply has not met its burden of proof to justify a stay.

**Request for expedited consideration**

The Commission’s next two public meetings are Thursday, July 24 and Thursday, August 21, 2014. In view of the uncertainty when the Commission may act on the material question and the potential for I&E’s new unsupported factual allegations<sup>12</sup> in its Supporting Brief to influence the Commission’s consideration, and the substantial prejudice to the due process and other substantive rights of PIOGA and Snyder if the Commission does rely upon these unsupported allegations, PIOGA requests that I&E be directed to answer this motion for reconsideration by a date certain, without regard to the “mailbox” or “weekend” rules, and PIOGA requests that date be Friday, July 18, 2014.

**WHEREFORE**, PIOGA respectfully requests that Your Honor reconsider the Order Staying Proceeding and revoke the stay or, alternatively, grant a limited exception to the order and require I&E to answer PIOGA Set I within 5 days after issuance of the order granting the limited exception.

Respectfully submitted,



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

Dated: July 11, 2014

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<sup>11</sup> See, e.g., Pa. R.A.P. 1736(b): “*Supersedeas automatic*.—Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party, which supersedeas shall continue through any proceedings in the United States Supreme Court.”

<sup>12</sup> These allegations are that (i) Act 13 impact fee collections and distributions would be “greatly” reduced under the “stripper well” interpretation advanced by Snyder and PIOGA and (ii) “[o]ne can only imagine the ‘scamming potential’ that” the Snyder/PIOGA interpretation would encourage. See p. 3 above.

## CERTIFICATE OF SERVICE

I hereby certify that this day, July 11, 2014, I served copies of the foregoing Pennsylvania Independent Oil & Gas Association Answer in Opposition to I&E Motion for Stay and Motion for Reconsideration of Stay Order upon 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

HON. DAVID A. SALAPA  
ADMINISTRATIVE LAW JUDGE  
P.O. BOX 3265,  
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### VIA E-MAIL

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\_\_\_\_\_  
KEVIN J. MOODY, ESQUIRE

# Exhibit A

June 20, 2014

**Via Email & First Class Mail**

Heidi L. Wushinske, Prosecutor  
PA Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg PA 17105

RE: PA PUC, Bureau of Investigations and Enforcement v. Snyder Brothers, Inc.  
Docket No. C-2014-2402746

Dear Ms. Wushinske:

Enclosed are two copies of PIOGA's Set I to BI&E in the above-referenced matter. Copies have been served as shown on the certificate of service.

Please communicate any objections or questions concerning these requests as soon as possible. Thank you.

Very truly yours,



Kevin J. Moody  
General Counsel

KJM/tp  
Enclosure

cc: Certificate of Service  
Rosemary Chiavetta, Secretary (letter and Certificate of Service only) (via eFile)  
ALJ Salapa (letter and Certificate of Service only)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the PIOGA Set I to BI&E upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA E-MAIL**

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Date: June 20, 2014

  
\_\_\_\_\_  
Kevin J. Moody, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**PIOGA  
INTERROGATORIES and REQUEST FOR PRODUCTION OF DOCUMENTS  
SET I  
TO BUREAU OF INVESTIGATIONS AND ENFORCEMENT**

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The Pennsylvania Independent Oil & Gas Association (PIOGA) hereby propounds the following interrogatories and document requests upon the Bureau of Investigations and Enforcement (BI&E) those employees, agents or consultants who may be cognizant of the requested facts and who are authorized to answer on behalf of BI&E.

**INSTRUCTIONS**

- (a) As used herein, the words “documents,” “materials,” “studies,” and “analyses” shall include, but are not limited to, the original and all copies of workpapers, memoranda, reports, books, manuals, instructions, directives, records, forms, notes, letters, notices, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, meetings or other communications, bulletins, transcripts, diaries, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, worksheets, and all drafts, preliminary versions, alterations,

modifications, revisions, changes, amendments, and written comments concerning the foregoing.

- (b) As used herein, “describe”, “explain”, “identify” and “specify” mean to set forth fully, in detail and unambiguously, each and every fact of which BI&E has knowledge relevant to the answer called for by the request.
- (c) As used herein, “relates to” or “relating to” mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.
- (d) If BI&E believes that any request set forth in these interrogatories and document requests is ambiguous or unclear in any way, please notify the undersigned PIOGA counsel as soon as possible so that the request may be properly clarified prior to the preparation of a written response.

**PIOGA  
INTERROGATORIES and REQUEST FOR PRODUCTION OF DOCUMENTS  
SET I TO BI&E**

**Docket No. C-2014-2402746**

- 1) Is it BI&E's position that SBI's interpretation of the stripper well definition would greatly reduce the amount of impact fees available for distribution?
  - a) If so, please describe the basis for this position and explain how SBI's interpretation of the stripper well definition would greatly reduce the amount of impact fees available for distribution.
  - b) If so, please quantify the reduction and provide all calculations, documents, materials, studies and analyses related to your response.
  
- 2) Is it BI&E's position that SBI's interpretation of the stripper well definition provides the potential for scamming to avoid payment of the impact fee?
  - a) If so, please explain all the scamming potential that one can imagine could be encouraged by SBI's interpretation of the stripper well definition and provide all calculations and documents, materials, studies and analyses related to your response.
  - b) Is it BI&E's position that, for the wells and production identified in BI&E's complaint, SBI has engaged in the type of scamming BI&E believes may result from SBI's interpretation of the stripper well definition? If so, please explain the basis for this position and provide all calculations, documents, materials, studies and analyses related to your response.

Respectfully submitted,

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717-234-8525, ext. 113

Dated: June 20, 2014