

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

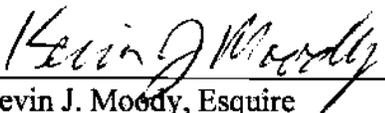
Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement, Complainant	:	
	:	
v.	:	Docket No. C-2014-2402746
	:	
Snyder Brothers, Inc., Respondent	:	

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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 to strike.

  
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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: August 6, 2014

**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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**PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION  
MOTION TO STRIKE  
UNSUPPORTED FACTUAL ASSERTION**

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

In accordance with 52 Pa. Code § 5.103(a) and (b), the Pennsylvania Independent Oil & Gas Association (PIOGA) moves to strike an unsupported factual assertion in the Bureau of Investigation and Enforcement's (I&E) brief in support of its answer to Snyder Brothers, Inc.'s (Snyder) motion for summary judgment. In support of its request, PIOGA states the following:

1. On June 19, 2014, Snyder filed its motion for summary judgment and supporting brief in accordance with the established litigation schedule.
2. On July 28, 2014, I&E filed its answer and supporting brief in opposition to the Snyder summary judgment motion.
3. On page 9 of its brief, I&E makes the following factual assertion in the context of its statutory construction argument:

Because one of the primary purposes of Act 13 is to collect impact fees and provide disbursements to the municipalities affected by unconventional gas wells, an interpretation that greatly reduces the amount of these fees and distributions would be at odds with the purpose of the statute. Accepting Snyder Brothers' interpretation of 'stripper well' would do just that. (Emphasis added).

4. The factual assertion that Snyder's (and PIOGA's) statutory interpretation would "greatly reduce[ ] the amount of" fees and distributions under Act 13 is not made in any verified pleading in this matter.

5. As shown by I&E's response to PIOGA-I-1, attached hereto as Exhibit A, I&E has no evidentiary support for the factual assertion that the Snyder/PIOGA statutory interpretation would "greatly reduce[ ] the amount of" fees and distributions under Act 13.

6. PIOGA acknowledges that the Snyder/PIOGA interpretation would greatly reduce<sup>1</sup> the impact fees that would be due *from Snyder* under the Commission/I&E interpretation according to the I&E complaint, ¶s 17-19 and 24-26) of the I&E complaint: (i) for 2011, \$410,00 due per Commission/I&E v. \$170,00 due per Snyder/PIOGA (58.5% reduction) ; and (ii) for 2012, \$385,000 due per Commission/I&E v. \$236,000 due per Snyder/PIOGA (38.7% reduction).

7. However, I&E has not provided any evidence showing: (i) that the percentage reductions of impact fees in Snyder's situation is the same for any other similarly situated producer or for all similarly situated producers; (ii) how many other wells for which the impact fee was paid under the Commission/I&E interpretation would not pay the fee under the Snyder/PIOGA interpretation; or (iii) any other evidence to support its factual assertion that the Snyder/PIOGA statutory interpretation would "greatly reduce[ ] the amount of" fees and distributions under Act 13. *See* Exhibit A.

8. Indeed, I&E's response to PIOGA-I-1 indicates that I&E no longer asserts that the Snyder/PIOGA interpretation would "greatly" reduce the amount of fees available for distribution under Act 13 because I&E's response doesn't acknowledge that I&E's statement in

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<sup>1</sup> "greatly – 1. in or to a great degree; much . . . 2. in a great manner. <http://dictionary.reference.com/browse/greatly>; and "great: 1. unusually or comparatively large in size or dimensions: *A great fire destroyed nearly half the city.* 2. large in number, numerous: *Great hordes of tourists descend on Europe each summer.* 3. unusual or considerable in degree, power, intensity, etc.: *great pain.* <http://dictionary.reference.com/browse/great>.

its brief describes and quantifies the reduction in the amount of fees available for distribution under Act 13 as “great”:

PIOGA-I&E-1: Is it I&E’s position that SBI’s interpretation of the stripper well definition would greatly reduce the amount of impact fees available for distribution? (Emphasis added).

I&E Response: I&E asserts that impact fees available for distribution would be reduced under Snyder Brothers’ interpretation of “stripper well.” (Emphasis added).

9. Although PIOGA agrees with Snyder that statutory construction of the term “stripper well” is improper because the term “any” is not ambiguous – a position that the Commission cannot refute because it has, correctly in PIOGA’s view, interpreted the word “any” in this context as meaning “one” consistent with the Snyder/PIOGA interpretation<sup>2</sup> – to the extent Your Honor and the Commission nevertheless engage in statutory construction on this issue, I&E’s unsupported factual assertion could, improperly in PIOGA’s view, influence Your Honor’s and the Commission’s analysis. While PIOGA agrees that I&E correctly sets forth the applicable statutory standards *if* statutory construction is required, PIOGA disagrees that the amount of the reduction in fees – whether great or not – is an appropriate measure of compliance with any of these standards. The Act 13 purpose of collecting and disbursing impact fees based on the number of unconventional gas wells is explicitly related to the definitions of stripper well, unconventional gas well and vertical gas well. So the amount of impact fees due per the proper legal interpretation of these terms as intended by the General Assembly – whatever the amount –

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<sup>2</sup> *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23, Docket No. L-2013-2375551 (Order entered October 17, 2013) at 8:*

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.* [July 19, 2012 *Reconsideration Order at 5*] 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.*

further that purpose in accordance with the intent of the General Assembly based upon the words used by the General Assembly. Accordingly, the amount of reduction in impact fees per the Snyder/PIOGA interpretation is simply irrelevant.

**WHEREFORE**, for the reasons set forth above, PIOGA respectfully requests that Your Honor strike from I&E's brief in support of its answer to Snyder's summary judgment motion the sentences set forth in ¶3 above.

Respectfully submitted,



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

Dated: August 6, 2014

# Exhibit A

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement

v.

Snyder Brothers, Inc.  
Docket No.: C-2014-2402746

Responses of the Bureau of Investigation and Enforcement  
To PIOGA's Interrogatories and Request for Documents – Set I  
Respondent Yvonne Hess

PIOGA-I&E-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.

Response:

I&E asserts that impact fees available for distribution would be reduced under Snyder Brothers' interpretation of "stripper well."

- a) The basis for this position can be found in Act 13, which sets forth a formula by which impact fees are calculated and exempts wells that qualify as "stripper wells" from paying these impact fees.
- b) I&E has not quantified the impact of Snyder Brothers' definition of "stripper well" for any company other than Snyder Brothers, as that is the sole subject of this proceeding. I&E's calculations can be found in paragraphs 17-19 and 24-26 of its Complaint. The documents used to arrive at these calculations are as follows: the formula set forth in Act 13, which establishes the dollar amount of impact fees and administrative charges; the definitions in Act 13 that determine which wells are subject to the fees and charges; and Snyder Brothers' Annual Reports and accompanying exhibits for calendar years 2011 and 2012. These Annual Reports have already been made a part of the record and were attached to I&E's complaint.

## CERTIFICATE OF SERVICE

I hereby certify that this day, August 6, 2014, I served copies of the foregoing Pennsylvania Independent Oil & Gas Association Motion to Strike Unsupported Factual Assertion 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

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