



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 24, 2014

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

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

Dear Secretary Chiavetta:

Enclosed please find The Bureau of Investigation and Enforcement's Third Prehearing Conference Memorandum in the above referenced matter. Copies have been served on the parties as indicated in the attached certificate of service.

Sincerely,

A handwritten signature in cursive script that reads "Heidi L. Wushinske".

Heidi L. Wushinske, Prosecutor
Bureau of Investigation and Enforcement

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PREHEARING CONFERENCE MEMORANDUM OF THE BUREAU OF
INVESTIGATION AND ENFORCEMENT**

Pursuant to the Third Prehearing Conference Order issued by the Honorable David A. Salapa on October 14, 2014, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) files this initial prehearing conference memorandum.

A. Service List

The following is the Commission's entry on the service list in this matter:

Heidi L. Wushinske
Prosecutor
Bureau of Investigation and Enforcement
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 214-9594
Fax: (717) 783-3458
hwushinske@pa.gov

B. Possible Settlement

The parties have discussed settlement in this case. Because the parties disagree on the definition of “stripper well,” which controls this matter, settlement of this case is not possible.

C. Facts in Dispute

The following facts are in dispute:

1. Whether the wells in contention in this case meet the definition of “stripper well,” as set forth in Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (“Act 13” or “Act”), 58 Pa.C.S. § 2301;
2. The amount of impact fees owed by Snyder Brothers;
3. The amount of administrative fees owed by Snyder Brothers;
4. The amount of civil penalty appropriate in this case;
5. The amount of interest due on past due amounts found to be owed;
6. The amount of statutory penalty found to be owed on past due amounts.

I&E anticipates that items 1-3 will be answered by the resolution of the “stripper well” issue.

D. Joint Stipulation of Facts

The parties have stipulated to many material facts in this case. This stipulation is attached as Attachment A.

E. Hearing Information

1. Proposed plan and schedule of discovery
 - a) That the Commissions regulations regarding discovery be followed without modification.
 - b) That any remaining discovery be completed by November 7, 2014.

2. Proposed schedule for the submission of written testimony, conducting an in-person hearing, and submission of briefs

I&E would like to again request that testimony be conducted *in person*.

- | | |
|-------------------------|--------------------|
| a. Written testimony | November 21, 2014 |
| b. Evidentiary hearings | December 2,3, 2014 |
| c. Close of record | December 3, 2014 |
| d. Main briefs | January 9, 2014 |

3. Names, business addresses, and telephone numbers of witnesses the party expects to call and the subject matter of each witness' testimony

Yvonne Hess
Chief of Finance and Assessments
Fiscal Office
Pennsylvania Public Utility Commission
P.O. Box 3255
Harrisburg, PA 17105-3265
(717) 783-6190

Ms. Hess will testify about the calculation of the Impact Fees and Administrative charges due under Act 13, Snyder Brothers' Annual Reports and other filings, her calculations of the amounts due for 2011 and 2012, the amounts Snyder Brothers paid for 2011 and 2012, the determination of what wells qualify as "stripper wells" under Act 13, and the determination and calculation of interest and penalties under Act 13. Ms. Hess will also offer testimony regarding factors relevant to the calculation of civil penalty, as set forth in the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

I&E reserves the right to call additional witnesses, should new information come to light in this matter.

4. A list of the issues and sub-issues of this proceeding which the party intends to address and a statement of the party's position on each of the issues and sub-issues listed

The issues in this case are as follows:

- a. Whether the wells identified by I&E in its Complaint at numbers 16 and 23 qualify as "stripper wells" under Act 13. I&E's position is that none of the wells identified at numbers 16 and 23 of its Complaint qualify as "stripper wells" under Act 13;
 - b. The amount of civil penalty appropriate for Snyder Brothers' failure to timely pay the full amount of the Impact Fees and Administrative Charges imposed under Act 13. I&E asserts that a civil penalty of \$50,000 is appropriate in this case; and
 - c. The amount of interest and statutory penalty owed by Snyder Brothers. I&E's position is that the amount of interest and statutory penalty is determined by 58 Pa.C.S. § 2308(a),(b).
5. Statement describing the evidence the party proposes to present at hearing, relating the evidence to each of the issues and sub-issues the party intends to address

At this time, I&E intends to offer the following evidence:

Relating to issue a. above, I&E intends to offer:

- the testimony of Yvonne Hess;
- Notice of Amount Due sent to Snyder Brothers;
- Complaint at Docket No. C-2014-2402746 with attachments;
- Respondent's Annual Reports for 2011 and 2012, including Exhibits;
- Money transfer reports showing the amounts that Respondent paid for 2011 and 2012;
- *Clarification Order Regarding Chapter 23*, M-2012-2288561, Order Adopted December 20, 2012;
- *Implementation Order Regarding Chapter 23*, M-2012-2288561, Order Adopted May 10, 2012; and

- any additional relevant documents received in the course of discovery.

Relating to issue b. above, I&E intends to offer:

- *Implementation Order Regarding Chapter 23*, M-2012-2288561, Order Adopted May 10, 2012;
- correspondence showing that Snyder Brothers was aware of this Order;
- Snyder Brothers' compliance history;
- the testimony of Yvonne Hess;
- the annual revenues of Snyder Brothers;
- *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201;
- *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

Relating to issue c. above, I&E intends to offer:

- the testimony of Yvonne Hess;
- Notice of Amount Due sent to Snyder Brothers;
- Complaint at Docket No. C-2014-2402746 with attachments;
- Respondent's Annual Reports for 2011 and 2012, including Exhibits;
- Money transfer reports showing the amounts that Respondent paid for 2011 and 2012;
- *Clarification Order Regarding Chapter 23*, M-2012-2288561, Order Adopted December 20, 2012;
- *Implementation Order Regarding Chapter 23*, M-2012-2288561, Order Adopted May 10, 2012.

I&E reserves the right to present additional evidence, should new information come to light in this matter.

Respectfully submitted,



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717.214.9594
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Adam D. Young
Prosecutor
Attorney #91822

Wayne T. Scott
First Deputy Chief Prosecutor
Attorney # 29133

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: October 24, 2014

Attachment A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Complainant.

Docket No. C-2013-2380697

v.

Snyder Brothers, Inc.,

Respondent.

Snyder Brothers, Inc. (SBI), Respondent, above named, the Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement, Complainant above named, and the Pennsylvania Independent Oil & Gas Association, Intervenor, by and through their respective counsel of record do hereby stipulate to the following facts:

Stipulation of Facts

1. The Pennsylvania Public Utility Commission ("PUC"), with a mailing address of P.O. Box 3265, Harrisburg, PA, 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to make all lawful inquiries and determinations necessary to calculate and collect the fee, administrative charges or assessments imposed by Act 13 of 2012.
2. Complainant is the PUC's Bureau of Investigation and Enforcement, with a mailing address at P.O. Box 3265, Harrisburg, PA 17105-3265.
3. Respondent, SBI is an oil and gas producer, as defined in Section 2301 of the Act 13, 58 Pa.C.S. § 2301 ("Section 2301"), with a principal place of business at One Glade Park East, P.O. Box, 1022, Kittanning, PA 16301.

4. SBI produces gas from "unconventional formations," as defined in Section 2301, using only a single vertical borehole. It does not drill, nor does it operate any "unconventional gas well," as defined in Section 2301, that produces gas through horizontal boreholes.

5. A "vertical gas well" is defined by Section 2301, as follows: "an unconventional gas well which utilizes hydraulic fracture treatment through a single vertical well borehole and produces natural gas in quantities greater than that of a stripper well."

6. A "stripper well" is defined by Section 2301 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 as a single well, without regard to whether the production is separately metered."

7. Each "unconventional gas well" that meets the definition of "vertical gas well" as set forth in Section 2301 is subject to an annual impact fee ("Impact Fee") pursuant to Section 2302 of Act 13, 58 Pa.C.S. § 2302.

8. Each "unconventional gas well" that is spud and not plugged is subject to an administrative fee ("Spud Fee") pursuant to Section 2303 of Act 13, 58 Pa.C.S. § 2303.

9. Impact Fees and Spud Fees imposed by Act 13 became due by September 1, 2012, for unconventional wells spud before January 1, 2012, and April 1 following each calendar year after 2011 for wells spud during those calendar years. Section 2303(a) of Act 13, 58 Pa.C.S. § 2303(a).

10. On August 15, 2012 SBI submitted to the PUC an Annual Report for the year 2011 ("2011 Annual Report") as required by applicable law. A true and correct copy of the 2011 Annual Report submitted to the PUC is attached hereto as Joint Exhibit 1.

11. The 2011 Annual Report lists each well which SBI operated that was potentially subject to the Impact Fee and Spud Fee requirements of Act 13 for the 2011 reporting period.
12. Exhibit C to the 2011 Annual Report accurately sets forth the production each well produced in each month of the 2011 reporting period.
13. Exhibit A to the 2011 Annual Report states that SBI believed it operated 18 vertical gas wells during 2011 for which an Impact Fee and Spud Fee was due.
14. On or about August 29, 2012, SBI received Statement Number 11-35-0000063561-1 from the PUC ("2011 Fee Statement"), stating that the amount of Impact Fees due for the period January 1, 2011 through December 31, 2011 were \$170,000.00 on "17 Vertical Gas Wells." A true and correct copy of 2011 Statement is attached hereto as Joint Exhibit 2.
15. On August 30, 2012 SBI paid the amount set forth on the 2011 Fee Statement.
16. On or about August 29, 2012, SBI received Statement Number 11-35-000006351-2 from the PUC ("2011 Spud Statement"), stating the amount of Spud Fees due for the period January 1, 2011 through December 21, 2011 was \$850.00 on "17 Vertical Gas Wells." A true and correct copy of the 2011 Spud Statement is attached hereto as Joint Exhibit 3.
17. On August 30, 2012 SBI paid the amount claimed due by the 2011 Spud Statement.
18. On March 27, 2013 SBI submitted to the PUC an Annual Report for the year 2012 ("2012 Annual Report") as required by applicable law. A true and correct copy of the 2012 Annual Report submitted to the PUC is attached hereto as Joint Exhibit 4.
19. The 2012 Annual Report lists each well which SBI operated that was potentially subject to the Impact Fee and Spud Fee requirements of Act 13 for 2012 reporting period.

20. Exhibit C to the 2012 Annual Report accurately sets forth the production each well produced in each month of the 2012 reporting period.

21. Exhibit A to the 2012 Annual Report states that SBI believed it operated 28 vertical gas wells during 2012 for which an Act 13 Impact fee or Spud Fee was due.

22. The Bureau of Investigation and Enforcement's position, as stated in an April 12, 2013 e-mail from Ms. Yvonne Hess, a representative of the Bureau of Administration of the PUC, to SBI ("Hess E-Mail") is that a vertical well is not a "stripper well" as defined in Section 2301 if it has reported production in excess of 90 Mcf in any one month of a reporting period. A copy of the Hess E-Mail is attached hereto as Joint Exhibit 5.

23. SBI responded to the Hess E-Mail by advising representatives of the Bureau of Administration that SBI disagreed with PUC's interpretation of the term "stripper well" set forth in Section 2301, and that each well SBI had listed as a "stripper well" in SBI's 2011 Annual Report and its 2012 Annual Report qualified as a stripper well by virtue of its reported monthly production history for such year.

24. On April 8, 2013 SBI received Statement Number 12-35-0000063561-1 ("2012 Fee Statement"), which requested payment in the amount of \$236,000.00 on or before April 1, 2013. A true and correct copy of the 2012 Fee Statement is attached hereto as Joint Exhibit 6.

25. SBI has paid the amount requested to be paid by the 2012 Fee Statement.

26. On April 8, 2013 SBI received Statement Number 12-35-0000063561-2 ("2012 Spud Statement"), which requested payment in the amount \$1,400 on or before April 1, 2013. A true and correct copy of the 2013 Spud Statement is attached hereto as Joint Exhibit 6.

27. SBI has paid the amount requested to be paid by the 2012 Spud Fee Statement.

28. There exists no mechanism in Act 13 whereby SBI could have paid "under protest" the amount of any Impact Fees or Spud Fees which it disputed, or such other manner whereby it could have any successfully disputed "fees" or "charges" returned to it.

29. There exists no mechanism in Act 13 whereby the PUC can "refund" any Impact Fees or Spud Fees which were paid and disbursed to a municipality but thereafter determined to not be due and owing or otherwise to have been erroneously paid.

So stipulated,

Dated: 6/11/14

Thomas C. Reed
Thomas C. Reed, Esquire
Counsel for Snyder Brothers, Inc.

Dated: 6/11/14

Heidi L. Wushinske
Heidi L. Wushinske, Esquire
Counsel for the Bureau of Investigation
and Enforcement

Dated: 6/11/14

Kevin J. Moody
Kevin J. Moody, Esquire
Counsel for PIOGA, Intervenor

CERTIFICATE OF SERVICE

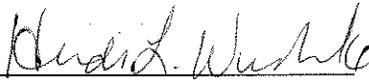
I hereby certify that I am this day serving the foregoing Third Prehearing Conference Memorandum in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Thomas C. Reed, Esquire
Dinsmore & Shohl, LLP
301 Grant Street, Suite 2800
Pittsburgh, PA 15219

The Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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


Heidi L. Wushinske
Prosecutor
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Dated: October 24, 2014