



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

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January 16, 2015

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 Brief 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 Investigation and Enforcement, :
Complainant :
 :
v. : **Docket No. C-2014-2402746**
 :
Snyder Brothers, Inc., :
Respondent :

**BRIEF OF THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION'S BUREAU OF INVESTIGATION AND
ENFORCEMENT**

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Dated: January 16, 2015

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STATEMENT OF THE QUESTIONS

1. Whether an unconventional gas well that produces more than 90,000 cubic feet of gas average per day in any given month during a calendar year is properly subject to the impact fees and administrative charges applicable to said well under Act 13?

Suggested Answer: Yes

2. Whether the wells Snyder Brothers claims as “stripper wells,” but actually produced more than 90,000 cubic feet of gas average per day in one or more calendar months in 2011 and 2012 were properly subject to the impact fees and administrative charges applicable under Act 13?

Suggested Answer: Yes

3. Whether a civil penalty of \$50,000.00 is appropriate given the relevant factors, such as Respondent’s lack of interest in reading any relevant Commission Orders?

Suggested Answer: Yes

4. Whether the Act 13 impact fees and administrative fees are properly categorized as fees, as opposed to “taxes.”

Suggested Answer: Yes

STATEMENT OF THE CASE/HISTORY OF THE PROCEEDING

Pursuant to its enforcement responsibilities, the Public Utility Commission's ("PUC" or "Commission") Bureau of Investigation and Enforcement ("I&E") issued a complaint against Snyder Brothers, Inc. ("Respondent"), alleging violations of Act 13 of 2012, the Unconventional Gas Well Impact Fee Act ("Act 13"). The complaint alleges that the Respondent failed to identify and pay the applicable impact fees and administrative charges on twenty-four (24) of its unconventional vertical gas wells for 2011 and twenty-one (21) of its unconventional gas wells for 2012. The complaint seeks an order from the Commission directing the Respondent to pay past due impact fees and administrative charges totaling \$507, 586.00 and to pay a civil penalty of \$50,000.00.

Respondent filed an answer and new matter on February 5, 2014, denying the allegations of the complaint. Respondent denied that it failed to identify any unconventional vertical gas wells in 2011 or 2012 that are subject to the impact fees and administrative charges and also denied that it owed any additional impact fees or administrative charges for 2011 or 2012.

In its new matter, Respondent contended that it submitted Annual Reports for calendar years 2011 and 2012 to the Commission as required by Act 13; that it accurately identified all of its unconventional vertical gas wells; and therefore correctly paid the impact Fee and administrative charges on those wells, as required by Act 13.

Respondent's answer sought dismissal of the complaint with prejudice. I&E's response refuted the contentions contained in Respondent's new matter.

In seeking to avoid paying Act 13 impact fees and administrative charges, Respondent argues that the wells identified in the complaint are “stripper wells” and, therefore, not subject to such payments. The applicable statutory provision misinterpreted by the Respondent to make such assertions is Act 13’s definition of “stripper well.” This interpretation is pivotal to the outcome of this case. Act 13 defines a “stripper well” as “[a]n 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.” 58 Pa.C.S. § 2301.

On March 24, 2014, Administrative Law Judge (“ALJ”) David A. Salapa granted the Pennsylvania Independent Oil & Gas Association’s (“PIOGA”) petition to intervene in this case. PIOGA argued *inter alia* that the Commission’s decision in this case would directly affect PIOGA members subject to Act 13 impact fees and that PIOGA and its producer members subject to the Act 13 impact fees would be bound by the Commission’s resolution of the issues involved.

On April 7, 2014, Snyder Brothers filed a petition requesting that it be permitted to escrow the amount of disputed impact and administrative fees owed for 2013 in an interest bearing account with a federally insured bank. I&E filed an answer requesting that the Commission deny the petition for escrow because Act 13 does not provide for any sort of escrow mechanism. PIOGA filed an answer supporting Snyder Brother’s petition for leave to escrow.

Finding that the Commission lacked the authority to order Snyder to escrow funds, ALJ Salapa denied Snyder Brothers petition to escrow in an order dated April 24, 2014.

On June 4, 2014, I&E submitted a petition for interlocutory review and answer to material question. Snyder Brothers and PIOGA filed briefs opposing the acceptance of I&E's petition for interlocutory review. In I&E's petition, it argued that this case resolves around the interpretation of Act 13's definition of "stripper well," which is a legal question material to the outcome of this proceeding. Snyder Brothers and PIOGA filed briefs in opposition to I&E's petition.

On June 19, 2014, Snyder Brothers filed a motion for summary judgment, arguing that it did not owe the amounts that I&E claims it owes. In support of this argument, Snyder Brothers alleged, *inter alia*, that the definition of "stripper well" in Act 13 is unambiguous and clearly states that a well qualifies as a "stripper well" if it does not produce 90,000 cubic feet of gas per day in any month during the reporting period. Alternatively, Snyder Brothers argued that Act 13 impact and administrative fees are in fact taxes and, therefore, any ambiguity in the statute should be construed in its favor.

On June 20, 2014, I&E filed a petition requesting stay of the proceeding until after the Commission rendered a final decision on I&E's petition for interlocutory review. I&E argued, *inter alia*, that the scope of the proceeding would be altered if the Commission ruled on I&E's petition for interlocutory review. Snyder Brothers filed an answer opposing I&E's petition for stay.

On July 7, 2014, ALJ Salapa issued an order staying the proceeding.

By order dated July 24, 2014, the Commission declined to answer the material question and returned the matter to the ALJ.

On July 28, 2014, I&E filed an answer to Snyder Brothers' motion for summary judgment. In its answer, I&E asserted that Snyder Brothers owed the amounts set forth in the notice of amount due and complaint because the wells at issue do not qualify as stripper wells under Act 13 and this interpretation is consistent with Pennsylvania case law and the rules of statutory construction. I&E also refuted Snyder Brothers' contention that Act 13 impact fees are akin to taxes.

On August 27, 2014, ALJ Salapa issued an order denying Snyder Brothers' motion for summary judgment. In this order, ALJ Salapa agreed with I&E that the definition of "stripper well" was not unambiguous, as argued by Snyder Brothers. *Order Denying Motion for Summary Judgment*, p. 16. ALJ Salapa also found that the Commission's interpretations of the terms at issue are entitled to deference since it is the agency charged with enforcing the provisions of Act 13 and its interpretations of the terms "stripper well" and "vertical gas well" are not clearly erroneous. *Id.* at 17. Judge Salapa also rejected Snyder Brothers' argument that Act 13's impact fees were taxes.

The parties stipulated to the material facts of the case and Judge Salapa directed hearings to be held to determine whether the amounts I&E is seeking for past due impact fees, interest, penalties, and administrative charges, totaling \$507,586.00 were correctly calculated and whether the \$50,000.00 civil penalty I&E seeks is appropriate.

On September 11, 2014, the parties filed a joint petition for interlocutory review and answer to a material question. In their joint petition, the parties asked the Commission to answer the following questions:

1. Whether an unconventional gas well which produces less than a daily average of 90,000 cubic feet of gas in only one month of a calendar year is a stripper well within the meaning of that term as set forth in 58 Pa. C.S. § 2301, and not subject to the impact fee for that year; and
2. Whether Act 13 impact fees are fees or “taxes?”

In its brief in support of the joint petition, I&E argued that unconventional gas wells producing less than a daily average of 90,000 cubic feet of gas in only one month of a calendar year were not stripper wells, as defined by Act 13. I&E further argued that Act 13 impact fees were in fact fees, and not taxes. Snyder Brothers and PIOGA also filed briefs in support of the joint motion.

On October 2, 2014, the Commission denied the parties’ joint petition and returned the matter to the ALJ.

On December 4, 2014, Judge Salapa held a hearing at which all parties were present. I&E and Respondent presented the testimony of witnesses regarding whether the amounts I&E is seeking for past due impact fees, interest, penalties, and administrative charges were correctly calculated and whether the \$50,000.00 civil penalty I&E seeks is appropriate.

I&E files this brief pursuant to Judge Salapa’s Prehearing Order #3, which directed simultaneous briefs to be filed on or before January 16, 2015.

SUMMARY OF THE ARGUMENT

The Commission's Fiscal Office applied the correct interpretation of "stripper well" when it billed Snyder Brothers for an additional 24 unconventional vertical wells for calendar year 2011 and 21 unconventional vertical wells for 2012.

An unconventional vertical gas well that produces more than 90,000 cubic feet of gas average per day in any given month during a calendar year does not qualify as a "stripper well" under Act 13. The Commission has clearly stated that if a vertical gas well's production levels qualify it as a vertical gas well during any calendar month in a calendar year, that well will be subject to an impact fee under Act 13. The Commission's interpretation is consistent with Pennsylvania case law and the rules of statutory construction. Snyder Brothers erroneously claims that the wells in dispute in this case qualify as "stripper wells" under Act 13, despite production levels of more than 90,000 cubic feet of gas average per day in one or more calendar months in 2011 and 2012.

Act 13 impact and administrative fees are clearly fees and not taxes. A fee does not become a tax merely because it generates revenue. Pennsylvania Courts have held that fees that don't raise money for the general welfare or contribute to the general fund of the Commonwealth or its municipalities are not taxes. Because Act 13 impact fees are fees and not taxes, Snyder Brothers' interpretations of Act 13 are not entitled to deference.

The record supports the proposed \$50,000.00 civil penalty for Snyder Brothers' failure to timely pay impact fees and administrative charges on all of its qualifying wells. Snyder Brothers did not attempt to make itself aware of the Commission's multiple

Orders relating to Act 13. Moreover, municipalities that would have otherwise received money to offset the impacts of drilling did not receive this money.

Snyder Brothers' cooperation with Commission staff is taken into consideration, since the proposal of a \$50,000.00 civil penalty is significantly less than the maximum statutory penalty.

ARGUMENT

A. I&E's Definition of "Stripper Well" is Correct as a Matter of Law

The Commission has clearly stated that a vertical gas well derives its status based on production levels, which are determined per day during any calendar month. If a vertical gas well's production levels qualify it as a vertical gas well during any calendar month in a calendar year, that well will be subject to Act 13's impact fee. *See Reconsideration Order Regarding Chapter 13*, Docket No. M-2012-2288561 (Order entered July 19, 2012) (*Reconsideration Order*); *Act 13 of 2012-Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23*, Docket No. L-2013-2375551 (Order entered October 17, 2013) (*Rulemaking Order*); 58 Pa. C.S. §§ 2301 and 2302(f). In other words, where, as in this case, an unconventional gas well produces more than an average of 90,000 cubic feet per day in any given month during a calendar year, it does not qualify as a stripper well. Rather, such a well is a vertical well and properly subject to the impact fees and administrative charges under Act 13.

1. The Legal Standard

This interpretation is consistent with Pennsylvania's case law and statutory construction rules, the object of which is "to ascertain and effectuate the General Assembly's intent." *Mercury Trucking, Inc. v. Pa. Pub. Utility Comm'n*, 55 A. 3d 1056, 1067 (Pa. 2012); 1 Pa. C.S. § 1901. While the plain language of a statute is usually the best indicator of legislative intent, there are important exceptions to this rule. First, the General Assembly "intends to favor the public interest as against any private interest."

1 Pa. C.S. § 1922(3), (5). Second, the General Assembly “does not intend a result that is absurd, impossible of execution, or unreasonable.” *Commonwealth v. Shiffler*, 879 A.2d 185, 189-90 (Pa. 2005) (citing 1 Pa. C.S. § 1922(1), (2)). It is necessary to look beyond the language of the statute if the plain meaning would lead to such results. *Mercury Trucking* at 1068.

Likewise, if the words of a statute are unclear or ambiguous, Pennsylvania law directs the interpreter to considerations other than the plain language to discern legislative intent. *Id.* (citing *Commonwealth v. Garzone*, 34 A.3d 67, 75 (Pa. 2012)). These considerations include: the occasion and necessity for the statute, the circumstances under which the statute was enacted; the mischief to be remedied; the object to be attained; the consequences of a particular interpretation; the contemporaneous legislative history; and the legislative and administrative interpretations of such statute. 1 Pa. C.S. § 1921(c).

2. Statutory Interpretation Supports I&E’s Definition of “Stripper Well”

In this case the statute is not clear or unambiguous, which necessitates an examination of the factors set forth in Pennsylvania’s rules of statutory construction. 1 Pa. C.S. § 1921(c); *See also Order Denying Motion for Summary Judgment* at 16. The Commission received multiple questions and requests for clarification during the implementation of its responsibilities under Act 1, including questions from various producers regarding how to determine which vertical wells qualified as stripper wells. Specifically, the Commission received at least six inquiries from producers regarding the classification of stripper wells, and addressed this issue specifically in its

Reconsideration Order (clarifying that if a vertical gas well qualifies as such by producing gas at a level greater than that of a stripper well in any calendar month in a calendar year, that well will be subject to the impact fee) and *Implementation Order* (explaining that calculations to determine stripper well status are to be based on a well's production per day in a calendar month). See *Reconsideration Order* at 4; *Implementation Order Regarding Chapter 23*, p. 7, Docket No. M-2012-2288561 (Order entered May 10, 2012) (*Implementation Order*).

This confusion clearly indicates that the statute is not free from ambiguity and is in need of clarification. This necessitated an *Implementation Order*, *Reconsideration Order*, and *Clarification Order*.

Furthermore, the meaning of the word “any” in Act 13’s definition of “stripper well” is unclear. This is evidenced simply by looking at the dictionary definition of “any.” Merriam-Webster defines “any” as “one or some indiscriminately of whatever kind: a: one or another taken at random, b: every.” <http://www.merriam-webster.com/dictionary/any?show=0&t=1402491607> (last visited January 13, 2015).

The multiple definitions of “any” render Act 13’s definition of “stripper well” ambiguous when applied to a situation such as Snyder Brothers, where wells are producing 90,000 or less cubic feet average per day in some calendar months in a year.

Because the definition of “stripper well” in Act 13 is not free from ambiguity, it is necessary to look to other considerations, such as: the occasion and necessity for the statute; the circumstances under which the statute was enacted; the mischief to be remedied; the object to be attained; the consequences of a particular interpretation; the

contemporaneous legislative history; and the legislative and administrative interpretations of such statute. 1 Pa. C.S. § 1921(c). All of these considerations support the interpretation of “stripper well” advocated by I&E.

First, an examination of the purpose and necessity for the statute supports the definition of stripper well advocated by I&E. Act 13 was enacted to *inter alia* provide for an unconventional gas well fee, distribution of fees and transfers, penalties, and civil penalties. 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 would cause a reduction in the amount of these fees and distributions would clearly frustrate the purpose of the statute. This would be the obvious result of adopting Snyder Brothers’ interpretation of “stripper well” because it would reduce the amount of fees to be distributed by nearly half million dollars, merely from Snyder Brothers’ disputed wells.¹

Second, looking at the object to be attained by Act 13, as it relates to the definition of stripper well, is to provide relief to the municipalities affected by unconventional gas wells. This object is not attained by exempting an active, producing unconventional well from paying impact fees merely because its production falls below 90,000 cubic feet average per day in one calendar month out of twelve. A review of the object to be attained by Act 13 supports I&E’s definition of “stripper well.”

¹ The impact fees and administrative charges due on Snyder Brothers’ disputed wells for 2011 and 2012 total \$391,250.00. There are also disputed wells, and therefore disputed impact fees and administrative charges, for 2013.

Third, the consequence of accepting Snyder Brothers' interpretation of "stripper well" would be that the municipalities affected by unconventional gas wells are deprived of funds distributed from impact fees. Depriving the affected municipalities of funds is clearly not the legislative intent. I&E's definition supports the clearly articulated legislative goals of the statute. Moreover, this definition is congruous with the Commission's decisions that have addressed this issue.

Fourth, the legislative history supports the definition of "stripper well" advocated by I&E. The General Assembly originally defined "stripper well" as "a gas well incapable of producing more than 90,000 cubic feet of gas per day during *a* calendar month, including production from all zones and multilateral well bores at a single well without regard to whether the production is separately metered." General Assembly House Bill 1950 Session of 2011 Printer's No. 2837 (emphasis added).

If the General Assembly had intended the definition of "stripper well" advocated by Snyder Brothers, that a well qualifies as a stripper well if it is incapable of producing more than 90,000 cubic feet of gas per day during one calendar month in a calendar year, it would have simply left the word "a" in the definition. Instead, the General Assembly changed the word "a" to "any," evidencing its intention that a well is not a stripper well by virtue of producing 90,000 or fewer cubic feet in *a* calendar month, but qualifies only when its production falls below these values in each calendar month.

Fifth, the administrative interpretations of “stripper well” support I&E’s definition.² The Commission has clearly stated its interpretation of “stripper well” in both its *Reconsideration Order* and *Proposed Rulemaking Order*, stating that if a vertical gas well’s production levels qualify it as a vertical gas well during any calendar month in a calendar year, that well will be subject to Act 13’s impact fee. *See Reconsideration Order; Proposed Rulemaking Order*; 58 Pa. C.S. §§ 2301, 2302(f). The Administrative Law Judge has also agreed with the Commission’s interpretation. *Order Denying Motion for Summary Judgment* at 16-17. The Commission is the administrative agency tasked with implementing Chapter 23 of Act 13 and its administrative interpretation of “stripper well” clearly supports the definition asserted by I&E.

The Commission’s interpretation of the Public Utility Code is entitled to great deference and should not be reversed unless clearly erroneous. *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm’n*, 63 A. 3d 480 (Pa. Cmwlth. 2013); *1-A Realty v. Pa. Pub. Util. Comm’n*, 63 A.3d 480 (Pa. Cmwlth. 2013). The Commission’s interpretation of “stripper well” is not clearly erroneous for the reasons stated above. The Commission has been charged with implementing and enforcing the provisions of Act 13, as it does the Public Utility Code. Therefore, the Commission’s interpretation of the term “stripper well” as contained in Act 13, is entitled to similar deference.

Moreover, in this case, even if the definition of “stripper well” was unambiguous, it is still necessary to look beyond the plain meaning. Accepting the definition of

² I&E is unaware of any legislative interpretations of “stripper well.” However, as stated previously, the legislature clearly intended for stripper well status to be granted only when production is 90,000 cubic feet or less in each calendar month in a calendar year.

“stripper well” advocated by Snyder Brothers would create a result that favors a private interest over the public interest, by allowing a private entity to withhold impact fees that the statute intended to be dispersed to the affected municipalities. This is contrary to Pennsylvania’s rules of statutory construction. 1 Pa. C.S. § 1922(3), (5).

Accepting the definition that Snyder Brothers puts forth would also create a result that is absurd by allowing a company that produces over 90,000 cubic feet of gas per day in eleven months of the year to fall below (intentionally or unintentionally) in just one month, to avoid paying any impact fee at all. It cannot be presumed that the General Assembly intended to produce such an absurd result when it constructed a statute designed to collect and distribute impact fees from unconventional wells. *Commonwealth v. Shiffler*, 879 A.2d 185, 189-90 (Pa. 2005) (citing 1 Pa. C.S. § 1922(1), (2)). It is necessary to look beyond the language of the statute if the plain meaning would lead to a result that favors private interests over the public or creates an absurd result. *Mercury Trucking* at 1068.

B. The Act 13 impact fees are fees and not “taxes”

Act 13’s impact fees are not “taxes,” but are, as clearly stated in the Act, fees. Nowhere does Act 13 refer to impact fees and administrative charges as a “tax.” Moreover, Act 13 distinguishes between its fees and taxes in section 2318. “The Secretary of the Commonwealth shall, upon the imposition of a severance *tax* on unconventional gas wells in this Commonwealth, submit for publication in the Pennsylvania Bulletin notice of the imposition.” 58 Pa. C.S. §2318(a) (emphasis added).

Thus, the General Assembly clearly differentiated between the Act 13's impact *fees* and taxes.

Unlike a tax, the purpose of Act 13's impact fees is to distribute money to the municipalities affected by unconventional wells. This is very different from the type of revenue generating "impact fee" that has been found to be akin to a tax. *See Building Indus. Ass'n. v. Manheim Twp.*, 710 A.2d 141 (Pa. Commw. 1998). Act 13's impact fees are not akin to a tax because they are not used to generate revenue, but rather to provide distributions to local municipalities to offset environmental and other issues associated with unconventional gas wells.

This Court previously agreed with I&E that Act 13 impact fees are not taxes, specifically finding that Act 13's impact fees do not raise money for the general welfare or contribute to the general fund of the Commonwealth or the affected municipalities. *Order Denying Motion for Summary Judgment* at 17-18. Fees raised for purposes other than these, such as for the cost of local improvements, have been held not to be taxes. *Wheeling and Lake Erie Railway Co. v. Pa. Pub. Util. Comm'n*, 141 F. 3d 88, 96 (3d. Cir. 1998); *Order Denying Motion for Summary Judgment* at 17-18. Because Act 13 impact fees are not taxes, Snyder Brothers' interpretations are not entitled to deference.

C. The Civil Penalty Sought by I&E is appropriate

In *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P.*, Docket No. C-00992409 (Order entered March 16, 2000), the Commission adopted standards to be applied to determine the amount of the civil penalty in slamming cases. The Commission subsequently determined that all violations of the

Public Utility Code and the Commission's regulations should be subject to review under the standards enunciated in *Rosi. Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Order entered December 21, 2000).

The first factor to be considered under the Policy Statement is whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or was merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). There is no evidence to suggest that Respondent's action in this matter should be deemed willful fraud or misrepresentation. Tr. 93.

The second factor to be considered under the Policy Statement is whether the resulting consequences of the conduct at issue were of a serious nature, such as personal injury or property damage. 52 Pa. Code § 69.1201(c)(2). There was no evidence of a personal injury or property damage due to any of the violations. However, the resulting consequence of the conduct is that the affected municipalities were deprived of money that they otherwise would have received to reduce the impact of drilling wells in those communities. Tr. 94.

The third factor to be considered under the Policy Statement is whether the conduct at issue was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). Respondent's Vice President David O'Hara testified that he never read the Commission's Clarification or Implementation Orders in reaching his interpretations of "stripper well," despite the fact that these orders were published. Tr. 67, 83. Mr. O'Hara further testified that to date, he still has not read the Commission's Clarification or Implementation Orders. Tr. 131. I&E submits that it is negligent for a regulated entity to refuse to even

attempt to understand how the Commission interprets statutory provisions relevant to that entity's operations.

The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its internal practices and procedures to address the conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As stated above, Mr. O'Hara testified that as of the time of the hearing, he still had not made efforts to read that Commission's Implementation or Clarification Orders. Tr. 131. If Respondent has no interest in reading the Commission's Orders regarding its interpretations of law relevant to its operations, it is very likely that similar conduct will occur in the future.

The fifth factor to be considered under the Policy Statement relates to the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). There is no evidence in the record indicating that any customers were affected.

The sixth factor to be considered under the Policy Statement is the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Respondent does not have a history of any violations of the Public Utility Code or any other violations before the Commission. Tr. 97. However, payment of the fee is an important aspect of the Commission's jurisdiction over the Respondent and the Respondent has failed to comply.

The seventh factor to be considered under the Policy Statement is whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). In this case, the evidence in the record shows that the Respondent cooperated with the Commission's staff. Tr. 71, 91.

The eighth factor to be considered under the Policy Statement is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E asserts that a civil penalty of \$50,000.00, an amount less than 10% of the amount of past due amounts at issue, will deter future violations, not only in relation to this Company, but to other companies that may be similarly situated.

The ninth factor in the Policy Statement examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). This is a case of first impression before the Commission. Therefore, there are no past Commission decisions to compare.

The tenth factor in the Policy Statement examines other relevant factors. 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor is the reasonableness of the proposed civil penalty. In this case, a penalty of up to \$2,500.00 per unconventional well impact fee and administrative charge could have been assessed for each day that Snyder Brothers failed to make timely payments. 58 Pa.C.S. § 2310. This would have amounted to civil penalties totaling \$912,000.00 per year. Tr. 112. However, given the fact that Snyder Brothers cooperated with Commission staff and there was no evidence of fraud, a lesser penalty is appropriate in this case. The proposed civil penalty of \$50,000.00 takes this into account.

CONCLUSION

This Court should sustain I&E's complaint and grant the relief requested therein. I&E's interpretation of "stripper well" is consistent with Pennsylvania law and the rules of statutory construction, whose objective is "to ascertain and effectuate the General Assembly's intent. Furthermore, this Court should find that Act 13 Impact and Administrative Fees are properly classified as fees and are not taxes. Such a finding is supported by the Act itself, as well as by Pennsylvania case law. Finally, this Court should find that the proposed civil penalty of \$50,000.00 is appropriate given the facts of this case and the applicable standards.

PROPOSED FINDINGS OF FACT

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. Joint Stip. 1.

2. Complainant is the PUC’s Bureau of Investigation and Enforcement. Joint Stip. 1.

3. Respondent, Snyder Brothers, is an oil and gas producer, as defined in Section 2301 of the Act. 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. Joint Stip. 1.

4. Snyder Brothers 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. Joint Stip. 1.

5. On August 15, 2012 Snyder Brothers submitted to the PUC an Annual Report for the year 2011 (“2011 Annual Report”) as required by applicable law. Joint Stip. 1, Joint Ex. 1.

6. The 2011 Annual Report lists each well that Snyder Brothers operated that was potentially subject to the Impact Fee and Spud Fee requirements of Act 13 for the 2011 reporting period. Joint Stip. 1, Joint Ex. 1.

7. Exhibit C to the 2011 Annual Report accurately sets forth the production each well produced in each month of the 2011 reporting period. Joint Stip. 1, Joint Ex 1.

8. Exhibit A to the 2011 Annual Report states that Snyder Brothers believed it operated 18 vertical gas wells during 2011 for which an Impact Fee and Spud Fee was due. Joint Stip. 1, Joint Ex. 1.

9. On or about August 29, 2012, Snyder Brothers 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.” Joint Stip. 1, Joint Ex. 2.

10. On August 30, 2012, Snyder Brothers paid the amount set forth on the 2011 Fee Statement. Joint Stip. 1.

11. On or about August 29, 2012, Snyder Brothers 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.” Joint Stip. 1, Joint Ex. 3; Tr. 62.

12. On August 30, 2012, Snyder Brothers paid the amount claimed due by the 2011 Spud Statement. Joint Stip. 1.

13. On March 27, 2013, Snyder Brothers submitted to the PUC an Annual Report for the year 2012 (“2012 Annual Report”) as required by applicable law. Joint Stip. 1, Joint Ex. 4.

14. The 2012 Annual Report lists each well which Snyder Brothers operated that was potentially subject to the Impact Fee and Spud Fee requirements of Act 13 for 2012 reporting period. Joint Stip. 1, Joint Ex. 4.

15. Exhibit C to the 2012 Annual Report accurately sets forth the production each well produced in each month of the 2012 reporting period. Joint Stip. 1, Joint Ex. 4.

16. Exhibit A to the 2012 Annual Report states that Snyder Brothers believed it operated 28 vertical gas wells during 2012 for which an Act 13 Impact fee or Spud Fee was due. Joint Stip. 1, Ex. 4.

17. On April 8, 2013, Snyder Brothers 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. Joint Stip. 1, Joint Ex. 6.

18. Snyder Brothers has paid the amount requested to be paid by the 2012 Fee Statement. Joint Stip. 1

19. On April 8, 2013, Snyder Brothers received Statement Number 12-35-0000063561-2 (“2012 Spud Statement”), which requested payment in the amount \$1,400 on or before April 1, 2013. Joint Stip. 1, Joint Ex. 6.

20. Snyder Brothers has paid the amount requested to be paid by the 2012 Spud Fee Statement. Joint Stip. 1.

21. The Act 13 Annual Reports rely on a self-reporting system. Tr. 14.

22. After reviewing the data from Snyder Brothers 2012 Annual Report, which was filed in April 2013, the Fiscal Office realized that Snyder Brothers owed for additional wells. Tr. 63.

23. For reporting year 2011, the Fiscal Office identified an additional 24 wells for which fees were due. (Tr. 65).

24. The total amount of impact fees due for these 24 wells was \$240,000.00.
I&E Ex 1.

25. The total administrative fees due for these 24 wells was \$1200.00.
I&E Ex. 1.

26. The total amount of these impact and administrative fees is \$241,200.00.
Tr. 88; I&E Ex. 1.

27. For reporting year 2012, the Fiscal Office identified 21 additional wells for which fees were due. I&E Ex. 1.

28. The total amount of impact fees due for these 21 wells was \$148,000.00.
I&E Ex. 1.

29. The total amount of administrative fees due for these 21 wells was \$1050.00. I&E Ex. 1.

30. The total amount of these impact and administrative fees is \$149,050.00.
Tr. 89; I&E Ex. 1.

31. The difference between what Snyder Brothers paid and what I&E claims it owes is attributable to the difference in interpretation of what constitutes a “stripper well.” Tr. 89.

32. 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 Snyder Brothers (“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. Joint Stip. 1, Joint Ex. 5.

33. Snyder Brothers responded to the Hess E-Mail by advising representatives of the Bureau of Administration that Snyder Brothers disagreed with the PUC’s interpretation of the term “stripper well” set forth in Section 2301, and that each well Snyder Brothers had listed as a “stripper well” in Snyder Brothers’ 2011 Annual Report and its 2012 Annual Report qualified as a stripper well by virtue of its reported monthly production history for such year. Joint Stip. 1; Joint Ex. 1.

34. As required by Act 13, interest was charged on the past due balances. Tr. 70.

35. The interest was calculated according to an interest rate set by the Department of Revenue. Tr. 69.

36. This rate was 3% for 2011 and 2012. Tr. 82, 110.

37. Interest began to accrue on the balance for calendar year 2011 on September 1, 2012. Tr. 81.

38. Interest began to accrue on the balance for calendar year 2012 on April 1, 2013. Tr. 82.

39. Interest was not compounded. Tr. 82.

40. As required by Act 13, a statutory penalty was imposed on fees that were not paid in full. Tr. 70.

41. This statutory penalty was applied at a rate of 5% per month for a maximum of 25%, as directed by Act 13. Tr. 70.

42. The Commission issued Clarification Orders prior to the first year's payment becoming due. Tr. 115.

43. These orders were published. Tr. 115.

44. Snyder Brothers did not file any comments to the Commission's Implementation or Clarification Orders. Tr. 23.

45. A number of other Act 13 producers filed comments to these Orders. Tr. 23.

46. Other than Snyder Brothers, no Act 13 producers have formally contested the definition of stripper well; nor do they have outstanding balances due to this issue. Tr. 115.

47. Snyder Brothers did not seek any outside guidance in reaching its understanding of stripper well. Tr. 131.

48. Even after Snyder Brothers became aware that its definition of stripper well differed from the Commission's, it still did not read the Commission's Clarification or Implementation Orders. Tr. 131.

49. As of the date of the hearing, Snyder Brothers never read the Implementation or Clarification Orders. Tr. 131.

50. There exists no mechanism in Act 13 whereby Snyder Brothers could have paid "under protest" the amount of any impact fees or spud fees which it disputed, or have any successfully disputed "fees" or "charges" returned to it. Joint Stip. 1.

51. 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 if it is later

determined to not be due and owing or otherwise to have been erroneously paid. Joint Stip. 1.

52. For reporting years 2011, 2012, and 2013, no fees are due under Act 13 for the wells permitted at numbers 005-31329, 005-30392, 005-30635, and 005-30944, which were timely disputed by Snyder Brothers, and never utilized hydraulic fracture treatment during the 2011, 2012, or 2013 reporting periods. Tr.55, I&E's Ex. 1.

PROPOSED CONCLUSIONS OF LAW

1. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to make all inquiries and determinations necessary to calculate and collect the fee, administrative charges or assessments imposed under Act 13, including, if applicable, interest and penalties.

2. Respondent is an oil and gas producer, as defined in Section 2301 of Act 13. 58 Pa.C.S. § 2301.

3. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto. 58 Pa.C.S. § 2307

4. Vertical gas wells are subject to the Unconventional Gas Well Impact Fee if they produce sufficient quantities of gas to qualify the well, by definition, as a vertical gas well. Act 13 provides that “the fee for a vertical unconventional gas well shall be 20% of the fee established in subsections (b) (concerning amount of fee) and (c) (concerning annual adjustment of fee)” 58 Pa.C.S. § 2302(f).

5. A “vertical well” is defined as [a]n unconventional gas well that utilizes hydraulic fracture treatment through a single vertical well bore and produces natural gas in quantities greater than that of a stripper well.” 58 Pa.C.S. § 2301.

6. A “stripper well” is defined as “[a]n 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.” 58 Pa.C.S. § 2301.

7. If an unconventional gas well produces more than 90,000 cubic feet of gas average per day in any given month during a calendar year, it does not qualify as a stripper well, pursuant to the meaning of that term as set forth in Act 13. 58 Pa. C.S. § 2301; *Reconsideration Order*, Docket No. M-2012-2288561 (Order entered May 10, 2012); *Implementation Order Regarding Chapter 23*, Docket No. M-2012-2288561 (Order entered May 10, 2012).

8. 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. 58 Pa. C.S. § 2302

9. Each “unconventional gas well” that is spud and not plugged is subject to an administrative fee or spud fee. 58 Pa.C.S. § 2303.

10. 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. 58 Pa.C.S. § 2303(a).

11. The Act provides that, for producers with delinquent fees, the Commission shall assess interest. 58 Pa.C.S. § 2308(a).

12. For the calendar years 2011 and 2012, the interest rate was set at 3.0% pursuant to 61 Pa. Code § 4.2.

13. In addition to the assessed interest, the Commission shall add a penalty of 5% of the amount of the fee if the failure to timely pay is for less than one month, with an additional 5% penalty for each additional month or fraction of a month, not to exceed 25% in the aggregate. 58 Pa.C.S. § 2308(b).

14. The Commission may also assess civil penalties of up to \$2,500.00 per unconventional well impact fee and administrative charge for each day that a producer fails to make and continues to fail to make timely payment. 58 Pa.C.S. § 2310.

15. Respondent was required to file Annual Reports with the Commission listing the number of its spud unconventional gas wells subject to the impact fee for the previous calendar year. 58 Pa.C.S. § 2303(b).

16. The first Annual Report was due by September 1, 2012 (for the 2011 reporting year) and by April 1 for each year thereafter.

17. Respondent violated Act 13 by not timely paying the full amount of the impact fees and administrative charges imposed under the Act for its unconventional gas wells spud before January 1, 2012. 58 Pa.C.S. § 2303(a).

18. Respondent violated Act 13 by not timely paying the full amount of the impact fees and administrative charges imposed under the Act for its unconventional gas wells reported for calendar year 2012. 58 Pa.C.S. § 2303(a).

19. Act 13 impact fees are fees, not taxes. 58 Pa. C.S. § 2318(a); *Wheeling and Lake Erie Railway Co. v. Pa. Pub. Util. Comm'n*, 141 F. 3d 88, 96 (3d. Cir. 1998).

PROPOSED ORDERING PARAGRAPHS

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by the Commission's Bureau of Investigation and Enforcement against Snyder Brothers, Inc. at Docket No. C-2014-2402746 is sustained.

2. That Respondent shall pay its past due impact fees, plus interest and penalties, and administrative charges totaling five hundred seven thousand five hundred eighty-six dollars (\$507,586.00) within thirty (30) days after service of the Commission's Order.

3. That Respondent shall pay a civil penalty of fifty thousand dollars (\$50,000.00) as provided for in Section 2310 of Act 13, 58 Pa.C.S. § 2310, by certified check or money order within thirty (30) days after service of the Commission's Order and forwarded to:

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

4. That the record in this case be marked closed

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement urges this Honorable Administrative Law Judge, after consideration of the record, to find Snyder Brother's, Inc. in violation of each and every count as set forth in I&E's Complaint and grant the relief specified above.

Respectfully submitted,



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(717) 787-5000

Date: January 16, 2015

CERTIFICATE OF SERVICE

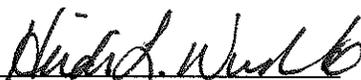
I hereby certify that I am this day serving the foregoing Brief in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

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The Honorable David A. Salapa
Administrative Law Judge
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Dated: January 16, 2015