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May 18, 2017

**Via Electronic Filing**


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

Re: Pa. P.U.C. Bureau of Investigation and Enforcement v. Xtreme Energy Company  
Docket No. C-2017-2599145

Dear Secretary Chiavetta:

On behalf of Xtreme Energy Company ("Xtreme Energy") enclosed for electronic filing please find its Answer and New Matter to Complaint and Notice of Amount Due with regard to the above referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

cc: Certificate of Service


**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Xtreme Energy's Answer and New Matter and Notice of Amount Due upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email and/or First Class Mail**

Heidi L. Wushinske, Esq.  
Michael L. Swindler, Esq.  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[hwushinske@pa.gov](mailto:hwushinske@pa.gov)  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Date: May 18, 2017

  
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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement, : Docket No. C-2017-2599145  
Complainant :  
v. :  
Xtreme Energy Company, :  
Respondent :  
:

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**NOTICE TO PLEAD**

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**TO: Pa. Public Utility Commission  
Bureau of Investigation and Enforcement  
Heidi L. Wushinske, Senior Prosecutor  
Michael L. Swindler, Deputy Chief Prosecutor  
P.O. Box 3265  
Harrisburg, PA 17105-3265**

You are hereby notified that a reply to the new matter in the enclosed **Answer and New Matter** of Xtreme Energy Company must be filed within 20 days of the date of service.

All pleadings, such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Xtreme Energy, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101



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Karen O. Moury, Esquire

Date: May 18, 2017

Attorneys for Xtreme Energy Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	Docket No. C-2017-2599145
Complainant	:	
v.	:	
	:	
Xtreme Energy Company,	:	
Respondent	:	

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**XTREME ENERGY COMPANY'S  
ANSWER AND NEW MATTER TO COMPLAINT AND  
NOTICE OF AMOUNT DUE**

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Pursuant to 52 Pa. Code § 5.61, Xtreme Energy Company (“Xtreme Energy”) submits this Answer and New Matter to the Complaint and Notice of Amount Due (“Complaint”) of the Bureau of Investigation and Enforcement (“I&E” or “Complainant”), which was filed with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on April 12, 2017. By this Answer and New Matter, Xtreme Energy respectfully requests dismissal of the Complaint on the grounds that Xtreme Energy was not a producer as defined by Act 13 of 2012 during calendar year 2014 and was not the producer responsible for compliance with any Act 13 obligations to pay impact fees or administrative charges for calendar year 2015. In short, I&E seeks to recover impact fees and administrative charges for calendar years 2014 and 2015 from the current operator of the wells rather than attempting to collect these payments from Samson Energy Corp. (“Samson”), which is the former operator of the wells and responsible for them but filed for bankruptcy in 2015. Further, one of the wells identified in the Complaint is a stripper well and is not subject to the requirements of Act 13. In further support hereof, Xtreme Energy avers as follows.

## ANSWER

### I. PARTIES AND JURISDICTION:

1. To the best of Xtreme Energy's knowledge and belief, the name and contact information in Paragraph 1 of the Complaint are true and accurate.

2. To the best of Xtreme Energy's knowledge and belief, the name and contact information in Paragraph 2 of the Complaint are true and accurate.

3. Admitted in part and denied in part. It is admitted that Xtreme Energy is currently operating as an unconventional well producer as defined in Section 2301 of Act 13, 58 Pa. C.S. §2301. It is denied, however, that Xtreme Energy was an unconventional well producer as defined by Section 2301 of Act 13 on January 1, 2014 or January 1, 2015, which are the dates that are relevant for purposes of the payment of impact fees and administrative charges for the 2014 and 2015 calendar years.

4. The averments in Paragraph 4 of the Complaint set forth legal conclusions to which no response is required. The provisions of the applicable Commonwealth statutes and regulations speak for themselves. To the extent that a response is required, the allegations are denied for the reasons set forth in Paragraph 3 of this Answer.

### II. BACKGROUND

5. The averments in Paragraph 5 of the Complaint, although conclusions of law to which no response is required, are admitted. By way of further answer, Chapter 23 of Act 13 speaks for itself. 58 Pa. C.S. Ch. 23.

6. The averments in Paragraph 6 of the Complaint, although conclusions of law to which no response is required, are admitted. By way of further answer, Section 2303(a) of Act 13 speaks for itself. 58 Pa. C.S. §2303(a).

7. The averments in Paragraph 7 of the Complaint, although conclusions of law to which no response is required, are admitted. By way of further answer, Section 2303(c)(1) of Act 13 speaks for itself. 58 Pa. C.S. §2303(c)(1).

8. The averments in Paragraph 8 of the Complaint, although conclusions of law to which no response is required, are admitted. By way of further answer, Section 2303(c)(1) of Act 13 speaks for itself. 58 Pa. C.S. §2303(c)(1).

9. The averments in Paragraph 9 of the Complaint set forth legal conclusions to which no response is required. To the extent an answer is required, it is denied that Paragraph 9 contains a complete description of Section 2308(a), which requires the Commission to determine an interest rate. It is further denied that it is appropriate for the Commission to rely on the interest rate set forth in 61 Pa. Code § 4.2, which is the annual rate of interest for underpayments of tax, as established by the Secretary of the Treasury of the United States. By way of further answer, Section 2308(a) of Act 13 speaks for itself. 58 Pa. C.S. §2303(a).

10. The averments in Paragraph 10 of the Complaint, although conclusions of law to which no response is required, are admitted. By way of further answer, Section 2308(b) of Act 13 speaks for itself. 58 Pa. C.S. §2303(b).

11. The averments in Paragraph 11 of the Complaint set forth legal conclusions to which no response is required. By way of further answer, Section 2310 of Act 13 speaks for itself. 58 Pa. C.S. §2310.

12. Denied. It is specifically denied that Xtreme Energy was required to file an Annual Report on April 1, 2015 or April 1, 2016. To the contrary, it is averred that Xtreme Energy had no obligation to file an Annual Report on April 1, 2015 or April 1, 2016. By way of further answer, it is averred that to the extent that the Act 13 reporting requirement was applicable to the wells

identified in the Complaint, Samson was required to file Annual Reports on April 1, 2015 and April 1, 2016, as it was the responsible producer and operator of those wells on January 1, 2014 and January 1, 2015.

13. Admitted. It is admitted that, to date, Xtreme Energy has not filed Annual Reports for calendar years 2014 or 2015. By way of further answer, it is averred that Xtreme Energy has no obligation under Act 13 to file Annual Reports for calendar years 2014 or 2015.

14. Admitted in part and denied in part. Upon reasonable investigation, Xtreme Energy is without sufficient information or knowledge to form a belief regarding the averments of Paragraph 14 concerning the activities of the Commission's Fiscal Office or the wells' previous owners, and demands proof thereof, if relevant, at hearing. Although it is admitted that the effective date of the purchase of the wells by Xtreme Energy from Samson was November 1, 2014, it is denied that the effective purchase date triggered any obligations under Act 13. To the contrary, it is averred that the bill of sale was not signed until February 19, 2015, and that a permit was not issued to Xtreme Energy by the Department of Environmental Protection ("Department") until after that date. It is further averred that to the extent the wells identified in the Complaint are subject to Act 13 requirements, Xtreme Energy did not assume those obligations until calendar year 2016.

15. Denied. It is specifically denied that Xtreme Energy operated two unconventional wells during the calendar year 2014. To the contrary, it is averred that Xtreme Energy did not receive a permit to operate as a producer as defined by Section 2301 of Act 13 until February 2015. It is further averred that the well operated at permit number 111-20272 meets the statutory definition of a "stripper well" as that term is defined in Section 2301 of Act 13. 58 Pa. C.S. § 2301.

16. Denied. It is specifically denied that Xtreme Energy operated the wells identified in Paragraph 16 during calendar year 2014. To the contrary, it is averred that Samson operated the wells identified in Paragraph 16 during calendar year 2014. 58 Pa. C.S. § 2301.

17. Denied. It is specifically denied that Xtreme Energy owes impact fees on the wells identified in Attachment A of the Complaint. To the contrary, it is averred that to the extent that impact fees are due on those wells for calendar year 2014, Samson is legally obligated to make those payments.

18. Denied. For the reasons set forth in Paragraphs 15-17 of this Answer, it is specifically denied that Xtreme Energy owed any impact fees on April 1, 2015. To the contrary, it is averred that to the extent that impact fees are due on the wells identified in Attachment A of the Complaint for calendar year 2014, Samson is legally obligated to make those payments.

19. Admitted. It is admitted that Xtreme Energy has not paid impact fees for calendar year 2014. By way of further answer, it is averred that Xtreme Energy does not owe any impact fees for calendar year 2014. To the contrary, it is averred that to the extent that impact fees are due on the wells identified in Attachment A of the Complaint for calendar year 2014, Samson is legally obligated to make those payments

20. The averments of Paragraph 20, although conclusions of law to which no response is required, are admitted. By way of further answer, Section 2303(c)(1) of Act 13, 58 Pa. C.S. § 2303(c)(1), and the referenced Commission order speak for themselves.

21. Denied. For the reasons set forth in Paragraphs 15-17 of this Answer, it is specifically denied that Xtreme Energy operated two wells subject to Act 13 administrative charges for calendar year 2014. To the contrary, it is averred that to the extent that administrative charges are due on those wells for calendar year 2014, Samson is legally obligated to make those payments.

22. Denied. For the reasons set forth in Paragraphs 15-17 of this Answer, it is specifically denied that Xtreme Energy owed any administrative charges on April 1, 2015. To the contrary, it is averred that to the extent that administrative charges are due on the wells identified in Attachment A of the Complaint, Samson is legally obligated to make those payments.

23. Admitted. It is admitted that Xtreme Energy has not paid administrative charges for calendar year 2014. By way of further answer, it is averred that Xtreme Energy does not owe any administrative charges for calendar year 2014. To the contrary, it is averred that to the extent that administrative charges are due on the wells identified in Attachment A of the Complaint, Samson is legally obligated to make those payments.

24. Admitted. It is admitted that Xtreme Energy has not filed a dispute contesting the payment of impact fees or administrative charges for calendar year 2014. By way of further answer, it is averred that the Commission has not established a process through which a well operator can dispute assessed impact fees or administrative charges.

25. Denied. It is specifically denied that Xtreme Energy was the responsible producer during calendar year 2015. To the contrary, it is averred that since Xtreme Energy was not operating the unconventional wells identified in Attachment B of the Complaint on January 1, 2015, it is not the responsible producer for purposes of Act 13 obligations. It is further averred that Act 13: a) does not address the situation where an entity assumes the role of operator during a calendar year for a previously spud well; b) does not require an entity that assumes the role of operator for a previously spud well during a calendar year to file a report or make impact fee payments for that calendar year; and c) does not contain any provision to address a situation where multiple entities operate wells during a calendar year. It is also further averred that the well operated at permit number 111-20272 meets the statutory definition of a “stripper well” as that

term is defined in Section 2301 of Act 13 and is not subject to the requirements to pay impact fees and administrative charges.

24.<sup>1</sup> Admitted in part and denied in part. It is specifically denied that Xtreme Energy's operation of wells for a portion of the 2015 calendar year renders it responsible for impact fees on those wells for the 2015 calendar year. To the contrary, it is averred that since Xtreme Energy was not operating the unconventional wells identified in Attachment B of the Complaint on January 1, 2015, it is not the responsible producer for purposes of Act 13 obligations. It is further averred that Samson, as the operator on January 1, 2015, is the responsible producer for complying with any Act 13 obligations associated with these wells during calendar year 2015.

25.<sup>2</sup> Denied. It is specifically denied that Xtreme Energy owes impact fees on the wells identified in Attachment B of the Complaint. To the contrary, it is averred that to the extent impact fees are due on those wells, Samson is legally obligated to make those payments. It is further averred that Act 13 does not require an entity that assumes the role of operator during a calendar year, for a previously spud well, to pay impact fees.

26. Denied. For the reasons set forth in Paragraphs 15-17 of this Answer, it is specifically denied that Xtreme Energy owed any impact fees on April 1, 2016. To the contrary, it is averred that to the extent that that impact fees are due on the wells identified in Attachment B of the Complaint for calendar year 2015, Samson is legally obligated to make those payments.

27. Admitted. It is admitted that Xtreme Energy has not paid impact fees for calendar year 2015. By way of further answer, it is averred that Xtreme Energy does not owe any impact fees for calendar year 2015. To the contrary, it is averred that to the extent that impact fees are

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<sup>1</sup> The Complaint numbers two different paragraphs as 24.

<sup>2</sup> The Complaint numbers two different paragraphs as 25.

due on the wells identified in Attachment B of the Complaint for calendar year 2015, Samson is legally obligated to make those payments.

28. The averments of Paragraph 28, although conclusions of law to which no response is required, are admitted. By way of further answer, Section 2303(c)(1) of Act 13 and the referenced Commission order speak for themselves. 58 Pa. C.S. § 2303(c)(1).

29. Denied. For the reasons set forth in Paragraphs 15-17 of this Answer, it is specifically denied that Xtreme Energy operated two wells subject to Act 13 administrative charges in calendar year 2015.

30. Denied. For the reasons set forth in Paragraphs 15-17 of this Answer, it is specifically denied that Xtreme Energy owed any administrative charges on April 1, 2016.

31. Admitted. It is admitted that Xtreme Energy has not paid administrative charges for calendar year 2015. By way of further answer, it is averred that Xtreme Energy does not owe any administrative charges for calendar year 2015. To the contrary, it is averred that to the extent that any administrative charges are due for the wells identified in Attachment B of the Complaint for calendar year 2015, Samson is legally obligated to make those payments.

32. Admitted. It is admitted that Xtreme Energy has not filed a dispute contesting the payment of impact fees or administrative charges for calendar year 2015. By way of further answer, it is averred that the Commission has not established a process through which a well operator can dispute assessed impact fees or administrative charges.

33. Admitted in part and denied in part. It is admitted that the Commission's Fiscal Office sent statements for calendar years 2014 and 2015 to Xtreme Energy. It is denied that the amounts contained in those statements are owed by Xtreme Energy. To the contrary, Xtreme Energy avers that it owes none of the charges contained in those statements. It is further averred

that to the extent that these charges are due and payable, Samson is legally obligated to make the payments.

### **III. ALLEGED VIOLATIONS**

#### **COUNT ONE**

34. The responses in this Answer to the averments contained in Paragraphs 1-33 of the Complaint are incorporated as if fully set forth herein.

35. Paragraph 35 sets forth legal conclusions to which no response is required. To the extent an answer is required, the allegations of Paragraph 35 are denied. It is specifically denied that Xtreme Energy violated any provision of Act 13 or that it is obligated to pay impact fees and administrative charges for the wells listed in Paragraph 16 of the Complaint for the calendar year of 2014.

#### **COUNT TWO**

36. The responses to Paragraphs 1-33 are incorporated as if fully set forth herein.

37. Paragraph 37 sets forth legal conclusions to which no response is required. To the extent an answer is required, the allegations of Paragraph 37 are denied. It is specifically denied that Xtreme Energy violated any provision of Act 13 or that it is obligated to pay impact fees and administrative charges for the wells listed in Paragraph 24 of the Complaint for the calendar year of 2015.

### **IV. RELIEF REQUESTED**

38. Paragraph 38 contains a request for relief to which no response is required. By way of further answer, Xtreme Energy denies that any relief should be granted to I&E since it has not violated Act 13.

WHEREFORE, Xtreme Energy respectfully requests that the Complaint be dismissed in its entirety, with prejudice, on the basis that Xtreme Energy is not responsible for any Act 13 impact fees or administrative charges for calendar years 2014 or 2015.

#### NEW MATTER

39. Section 2302(b) of Act 13 authorizes the imposition of impact fees on producers for unconventional gas wells spud in this Commonwealth regardless of when the spudding occurred. Section 2302(b) further provides that unconventional gas wells spud before the fee is imposed shall be considered to be spud in the calendar year prior to imposition. 58 Pa. C.S. § 2302(b).

40. The horizontal unconventional gas wells that are the subject of the Complaint, which are identified by their Permit Numbers of 111-20272 and 111-20277, were spud on June 3, 2009 and July 17, 2009, respectively.<sup>3</sup> Having been spud in 2009, the wells that are the subject of the Complaint were considered to have been spud in 2011.

41. For wells spud prior to January 1, 2012, the initial fee imposed by Chapter 13 was due by September 1, 2012. Subsequent fees were and are due on April 1, 2013 and each April 1 thereafter. 58 Pa. C.S. § 2302(a). Therefore, the initial impact fees for the wells in question, to the extent they were required, were due on September 1, 2012. Subsequent impact fees, to the extent they were required, were due on April 1, 2013 and each April 1 thereafter.

42. Section 2301 of Act 13 defines an “Unconventional gas well” as “[a] bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.” 58 Pa. C.S. § 2301. Act 13 further defines “Stripper well” as “[a]n unconventional gas well incapable of producing more than 90,000 cubic feet (“cf”) of gas per day

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<sup>3</sup> I&E Complaint, Attachment A.

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.” *Id.* Under the plain language of the definitions of unconventional gas well and stripper well in Section 2301, a horizontal unconventional gas well falls within the definition of stripper well if it is incapable of producing more than 90,000 cf of gas per day during any calendar month.

43. The Commonwealth Court recently confirmed that under the plain language of Section 2301 of Act 13, impact fees may not be imposed if the unconventional gas well produces less than 90,000 cf per day during any calendar month. *Snyder Brothers, Inc. v. Pennsylvania Public Utility Commission*, 2017 Pa. Commw. LEXIS 92, No. 1043 C.D. 2015 (Slip Opinion filed March 29, 2017) (“*Snyder Opinion*”).

44. Pursuant to Section 2302(b.1) of Act 13, “[i]f a spud unconventional gas well begins paying the fee imposed under this section and...does not produce natural gas in quantities greater than that of a stripper well within two years after paying the initial fee, then the fee shall be suspended.” 58 Pa. C.S. § 2303(b.1). Under the plain language of this provision, impact fees are suspended if an initial payment was made on September 1, 2012 and the unconventional gas well produced less than 90,000 cf of gas per day during any calendar month during 2014.

#### 2014 Calendar Year

45. During calendar year 2014, to the extent that any impact fees and administrative charges are due under Act 13 for the wells identified in the Complaint, Samson is the responsible producer. Samson – not Xtreme Energy – operated the well on January 1, 2014 and throughout the remainder of 2014. Indeed, Samson is listed as the operator for the well permits identified in the Complaint for all months in 2014.<sup>4</sup>

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<sup>4</sup> I&E Complaint, Attachment A.

46. The effective date of the sale of November 1, 2014 has no bearing on whether Xtreme Energy is a producer for purposes of Act 13. As noted by I&E, the bill of sale was not signed until February 19, 2015 and Samson was listed as the operator of the wells identified in the Complaint through January 2015.<sup>5</sup>

47. Since Xtreme Energy did not obtain a permit from the Department until February 2015, it did not even meet the threshold requirement of the statutory definition of producer set forth in Section 2301 of Act 13 during calendar year 2014. Section 2301 of Act 13 defines “Producer” as “[a] person or its subsidiary, affiliate or holding company that holds a permit or other authorization to engage in the business of severing natural gas for sale, profit or commercial use from an unconventional gas well in this Commonwealth. The term shall not include a producer that severs natural gas from a site used to store natural gas that did not originate from the site.” 58 Pa. C.S. § 2301 (emphasis supplied).

48. Further, for calendar year 2014, the Complaint does not contain information showing the monthly breakdown of daily production data or otherwise demonstrate that either well identified in the Complaint meets the definition of an unconventional well that is subject to impact fees and administrative charges under Act 13.<sup>6</sup> Specifically, the Complaint does not allege that either well produced more than 90,000 cf per day during every calendar month in 2014.

49. As the Complaint does not contain any information alleging that either well produced more than 90,000 cf per day during every calendar month in 2014, it fails to set forth a basis upon which the Commission can find that impact fees and administrative charges were due and owing under Act 13.

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<sup>5</sup> I&E Complaint, Attachment A.

<sup>6</sup> I&E Complaint, Attachment A.

50. Even if either well identified in the Complaint produced more than 90,000 cf of gas per day during every calendar month in 2014, any obligation of the responsible producer would have been suspended as of September 2014 to the extent that either well produced less than 90,000 cf per day during any calendar month.

51. The Commission's prior interpretations of Section 2302(b.1) of Act 13, which would require a minimum of three years of impact fee payments prior to being suspended due on the basis of production data,<sup>7</sup> are not consistent with this plain language of Section 2302(b.1) of Act 13 and are not controlling in this proceeding. Particularly in view of the *Snyder Opinion*, it is clear that the Commonwealth Court has required the Commission to adhere to the plain language of Act 13. Moreover, the Commission's prior interpretations offer no rationale for their departure from the two-year language in the statute.

#### 2015 Calendar Year

52. During calendar year 2015, to the extent that any impact fees and administrative charges are due under Act 13 for the wells identified in the Complaint, Samson is the responsible party because it was the producer as of January 1, 2015 and was listed as the operator for the well permits identified in the Complaint in January 2015.<sup>8</sup>

53. Xtreme Energy did obtain a permit to operate as a producer under Act 13 until February 19, 2015. Therefore, to the extent that the wells identified in the Complaint are subject to Act 13 requirements, Xtreme Energy did not assume those obligations until calendar year 2016.

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<sup>7</sup> See *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act*, Docket No. M-2012-2288561 (Implementation Order entered May 12, 2012); *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23*, Docket No. L-2013-2375551 (Proposed Rulemaking Order entered October 17, 2013).

<sup>8</sup> I&E Complaint, Attachment B.

54. Only one producer can be responsible for the impact fees and administrative charges for a particular well in a given calendar year under Act 13. Any other approach, particularly since Act 13 does not establish any pro rata arrangement between or among producers, would result in the over-collection of Act 13 impact fees and administrative charges by the Commission.

55. Act 13 does not address how to handle a situation when multiple entities operate a well during a particular calendar year or when a well is transferred from one entity to another during a calendar year. Rather, under Section 2304(b) of Act 13, the only notification requirements applicable to updates or changes are for producers subject to the fee to notify the Commission within 30 days after a calendar month in which an unconventional gas well is spud, production is initiated at an unconventional gas well or an unconventional gas well is removed from production. 58 Pa. C.S. § 2304(b).

56. Nothing in Act 13 authorizes the Commission to impose a reporting requirement or an impact fee on an entity that assumes the operation of a previously spud unconventional gas well during a calendar year or after January 1 of the particular calendar year.

57. Act 13 also contains no provisions requiring an entity that assumes the role of operator of a previously spud unconventional gas well during a calendar year, or after January 1 of the particular calendar year, to file reports or make impact fee payments for that calendar year.

58. Act 13 likewise does not describe any event that triggers the reporting or payment obligations of an entity that assumes the role of operator of a previously spud unconventional gas well during a calendar year, or after January 1 of the particular calendar year.

59. Absent express guidance under Act 13 as to how to assign responsibility for impact fees and administrative charges when multiple entities operate a well during a given calendar year,

it is reasonable and appropriate to assign such responsibility to the producer of record as of January 1 of the particular calendar year.

60. The framework for Act 13, including reporting of unconventional gas wells and payment of impact fees, is based on calendar years, beginning on January 1, 2012. *See, e.g.* 58 Pa. C.S. §§ 2302(b), 2302(c), 2303(a)(2) and 2303(b). *See also generally Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act*, Docket No. M-2012-2288561 (Implementation Order entered May 12, 2012); *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23*, Docket No. L-2013-2375551 (Proposed Rulemaking Order entered October 17, 2013).

61. Additionally, January 1 of each year is established as a reset date under Act 13. Specifically, Section 2302(c) requires the Commission to annually adjust the fee amounts beginning January 1, 2013 to reflect any upward changes in the Consumer Price Index for the Pennsylvania, New Jersey, Delaware and Maryland are in the preceding 12 months. 58 Pa. C.S. § 2302(c).

#### Stripper Well

62. Further, the data attached to the Complaint shows that one of the wells that is the subject of this proceeding meets the definition of a stripper well and is therefore exempt from the payment of impact fees and administrative charges. Specifically, according to the monthly breakdown for daily production of the wells during 2015, the well identified as Permit No. 111-20272 did not exceed 90 cubic feet in February 2015, April 2015, August 2015, September 2015, November 2015 or December 2015.<sup>9</sup>

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<sup>9</sup> I&E Complaint, Attachment B.

63. Under the plain language of the definition of stripper well in Section 2301 of Act 13, 58 Pa. C.S. § 2301, and the *Snyder Opinion*, no impact fees or corresponding administrative charges are owed by Xtreme Energy for this well.

64. Alternatively, any obligation of the responsible producer to pay impact fees for the well identified as Permit No. 111-20272 would have been suspended as of September 2014 to the extent that the well produces less than 90,000 cf per day during any calendar month.

65. Even under the Commission's prior interpretations of Section 2302(b.1) of Act 13, which would require a minimum of three years of impact fee payments prior to being suspended due on the basis of production data,<sup>10</sup> any obligation to make payments would have been following the third payment in April 2015, making no payments due in April 2016.

#### Other Issues

66. The impact fees and administrative charges imposed by Act 13 constitute a "tax" within the meaning of that term as used in 1 Pa. C.S. § 1928(b)(3), and as such, any ambiguity must be resolved in favor of Xtreme Energy. *In re Estate of Ross*, 815 A.2d 30, 2002 Pa. Commw. LEXIS 1005 (Pa. Commw. Ct. 2002), *app. den.* 573 Pa. 713, 827 A.2d 1203, 2003 Pa. LEXIS 1265 (2003).

67. Moreover, granting the relief requested by I&E would result in the infliction of a penalty on Xtreme Energy, which implicates the rule of lenity and the rule of statutory construction. Absent any specific authority for the Commission to impose an impact fee on an entity that assumes the operation of a previously spud unconventional gas well during a calendar

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<sup>10</sup> See *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act*, Docket No. M-2012-2288561 (Implementation Order entered May 12, 2012); *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23*, Docket No. L-2013-2375551 (Proposed Rulemaking Order entered October 17, 2013).

year, or after January 1 of the particular year, the statute must be construed in favor of Xtreme Energy. *Snyder Opinion* at p. 21-22.

68. No mechanism exists whereby Xtreme Energy could have paid the disputed impact fees or administrative charges under protest or such other manner whereby it could have any successfully disputed fees or charges returned to it.

69. No mechanism exists where the Commission can refund any impact fees or administrative charges that were paid and are subsequently determined to not be due and owing or otherwise to have been erroneously paid.

70. Under Section 2308(a), the Commission is authorized to assess interest on delinquent impact fees at the rate determined under Section 2307(a). 58 Pa. C.S. § 2308(a). Section 2307(a) empowers the Commission to “make all inquiries and determinations necessary to calculate and collect the fee, administrative assessments imposed under this chapter, including, if applicable, interest and penalties.” 58 Pa. C.S. § 2307(a). Yet, the Commission has taken no steps to determine the applicable interest rate to assess interest on delinquent impact fees. Therefore, the Commission has no basis upon which to order Xtreme Energy to pay interest if it is determined that impact fees were delinquent.

71. The Complaint fails to allege any facts that would support imposing any type of “civil penalty” against Xtreme Energy.

72. The Complaint seeks to enforce the payment of any impact fees and administrative charges that are owed for the wells identified in Attachment A and Attachment B of the Complaint for calendar years 2014 and 2015 from the wrong party.

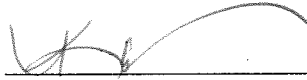
73. Upon information and belief, Xtreme Energy avers that I&E is seeking payment from the current operator of these wells due to the bankruptcy filing made by Samson, the producer

that is responsible for any impact fees and administrative charges that are due under Act 13 for calendar years 2014 and 2015.<sup>11</sup>

### CONCLUSION

WHEREFORE, Xtreme Energy respectfully requests that this Commission (i) dismiss the Complaint in its entirety; (b) deny all of the relief requested by I&E; and (c) grant any other relief to Xtreme Energy that is deemed to be reasonable and appropriate.

Respectfully submitted,



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Date: May 18, 2017

Attorneys for  
Xtreme Energy Company

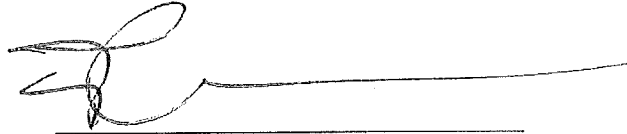
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<sup>11</sup> <https://www.bloomberg.com/news/articles/2015-09-17/kkr-s-samson-resources-files-bankruptcy-as-shale-bet-sours> (last accessed May 16, 2017) (Samson made a Chapter 11 bankruptcy filing on September 15, 2015).

**VERIFICATION**

I, Michael Hahn, hereby state that: (1) I am Vice President of Operations for Xtreme Energy Company; (2) I am authorized to verify the facts in this document on behalf of Xtreme Energy Company; and, (3) the facts set forth in this document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: May 18, 2017

A handwritten signature in black ink, appearing to read 'Michael Hahn', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Michael Hahn  
Vice President of Operations  
Xtreme Energy Company