



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

IN REPLY PLEASE  
REFER TO OUR FILE

June 6, 2017

Rosemary Chiavetta  
Pa. Public Utility Commission  
2<sup>nd</sup> Floor, 400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105

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

Dear Secretary Chiavetta:

Enclosed for filing is the Reply to New Matter on behalf of the Bureau of Investigation and Enforcement in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

A handwritten signature in blue ink that reads "Heidi L. Wushinske". The signature is written in a cursive style.

Heidi L. Wushinske  
Senior Prosecutor  
Attorney ID No. 93792

Enclosures

cc: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY TO THE NEW MATTER OF XTREME ENERGY COMPANY**

NOW COMES, the Bureau of Investigation and Enforcement (“I&E” or “Complainant”) of the Pennsylvania Public Utility Commission (“Commission”) by and through its prosecuting attorneys, and files this Answer to the New Matter of Xtreme Energy Company (“Respondent” or “Xtreme”), pursuant to 52 Pa. Code § 5.63. In support thereof, I&E avers as follows:

39. Paragraph 39 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

40. With respect to the allegations contained in the first sentence of Paragraph 40, Attachment A to the Complaint speaks for itself and no further response is required. The averment in the second sentence of Paragraph 40 states a conclusion of law to which no response is required. To the extent a response is required, it is denied

41. Paragraph 41 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

42. With respect to the first part of Paragraph 42, this references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied. The averment in the last sentence of Paragraph 42 states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

43. Paragraph 43 references a judicial opinion that speaks for itself and no response is required. Furthermore, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court's opinion referenced in Paragraph 43 (*Snyder Brothers*).

44. Paragraph 44 references statutory text that speaks for itself and no response is required. Moreover, it is denied that 58 Pa. C.S. § 2303(b.1) contains the information quoted. The last sentence of Paragraph 44 states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

45. Denied. It is denied that Samson is the producer responsible for calendar year 2014 Act 13 impact fees and administrative charges and strict proof thereof is demanded at trial. With respect to the allegations contained in the last sentence of Paragraph 45, Attachment A to the Complaint speaks for itself and no further response is required.

46. Paragraph 46 states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, in reference to I&E Complaint, Attachment A, this document speaks for itself and no response is required.

47. Paragraph 47 states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, the last two sentences of Paragraph 47 reference statutory text that speaks for itself and no response is required.

48. Admitted in part and denied in part. It is admitted that the Complaint does not contain information showing the monthly breakdown of daily production data. It is denied that the wells identified in the I&E Complaint do not meet the definition of unconventional gas well subject to impact fees and administrative charges under Act 13 and strict proof thereof is demanded at trial.

49. Paragraph 49 states a conclusion of law to which no response is required. To the extent a response is required, it is denied and strict proof thereof is demanded. Moreover, to the extent that this Paragraph refers to the judicial opinion referenced in Paragraph 43, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court's opinion.

50. Paragraph 50 states a conclusion of law to which no response is required. To the extent a response is required, it is denied and strict proof thereof is demanded. Moreover, to the extent that this Paragraph refers to the judicial opinion referenced in Paragraph 43, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court's opinion.

51. Paragraph 51 states a conclusion of law to which no response is required. Moreover, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court's *Snyder Brothers* opinion. It is denied that the Commission's prior interpretations depart from "the two-year language in the statute."

52. Denied. The allegations contained in Paragraph 52 are denied and strict proof thereof is demanded.

53. Denied. The allegations contained in Paragraph 53 are denied and strict proof thereof is demanded. It is specifically denied that Xtreme Energy did not assume Act 13 obligations until 2016.<sup>1</sup> By way of further answer, it is denied that Xtreme Energy fulfilled its Act 13 obligations for 2016.

54. Paragraph 54 states a conclusion of law to which no response is required. To the extent a response is required, it is denied and strict proof thereof is demanded.

55. Paragraph 55 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

56. Paragraph 56 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

57. Paragraph 57 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

58. Paragraph 58 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

59. Paragraph 59 states a conclusion of law to which no response is required. To the extent a response is required, it is denied and strict proof thereof is demanded.

60. Paragraph 60 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied. Moreover, it is specifically denied that Act 13 references a calendar year "framework."

61. Paragraph 61 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied. Moreover, it is specifically denied that Act 13 references a "reset date."

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<sup>1</sup> Although Paragraph 53 states that Xtreme Energy "did obtain a permit to operate as a producer under Act 13 until February 19, 2015," it is assumed that Xtreme Energy meant to say that it did *not* obtain a permit to operate as a producer until Act 13 until February 19, 2015, and I&E has replied accordingly.

62. Paragraph 62 states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that the definition of “stripper well” is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court’s *Snyder Brothers* opinion.<sup>2</sup>

63. Paragraph 63 states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court’s *Snyder Brothers* opinion. In addition, I&E lacks sufficient information to admit or deny the allegations in this Paragraph as it is unclear which well number Xtreme is referencing.

64. Paragraph 64 states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court’s *Snyder Brothers* opinion.

65. Paragraph 65 states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that this is a settled matter as the Commission has petitioned the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court’s *Snyder Brothers* opinion. By way of further answer, it is notable that the original owner of the wells that are the subject of I&E’s Complaint did not claim that these wells qualified as stripper wells.

66. Paragraph 66 states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

67. Paragraph 67 states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

68. Admitted in part and denied in part. It is admitted that there is no formal mechanism by which Xtreme could have paid disputed impact fees or administrative charges and successfully had disputed fees or charges refunded. It is denied that Xtreme filed any dispute or attempted to cooperate with the Commission regarding the now disputed impact fees and administrative charges.

69. Admitted in part and denied in part. It is admitted that there is no formal mechanism by which the Commission can refund any impact fees or administrative charges that were subsequently determined to not be due. It is denied that the

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<sup>2</sup> Paragraph 61 states that the well identified as Permit No. 111-20272 did not exceed “90 cubic feet” in daily production during certain calendar months in 2015. It is assumed that Xtreme meant that its well Permit No. 111-20272 did not exceed 90,000 cubic feet in daily production during these months and I&E has replied accordingly.

Commission has never been able to refund impact fees and administrative charges subsequently determined to not be due. It is further denied that Xtreme filed any dispute or attempted to cooperate with the Commission regarding the now disputed impact fees and administrative charges.

70. Paragraph 70 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied. By way of further answer, it is specifically denied that the Commission took “no steps” to determine the applicable interest rate to assess on delinquent impact fees and it is specifically denied that the Commission has “no basis” upon which to order Xtreme to pay interest. Strict proof thereof is demanded at trial.

71. Denied. I&E’s Complaint speaks for itself.

72. Denied. The allegations contained in Paragraph 72 are denied and strict proof thereof is demanded.

73. Denied. The allegations contained in Paragraph 73 are denied and strict proof thereof is demanded. By way of further answer, the allegations contained in Paragraph 73 are speculative, not based on fact, and improperly malign the integrity of I&E and the Fiscal Office.

**WHEREFORE**, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission deny Xtreme's New Matter and request to dismiss the Complaint and find Xtreme in violation of each and every count as set forth in the Complaint.

Respectfully submitted,



Heidi L. Wushinske  
Senior Prosecutor  
PA Attorney ID No. 93792  
717-214-9594

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[hwushinske@pa.gov](mailto:hwushinske@pa.gov)

Date: June 6, 2017

## VERIFICATION

I, Amy Zuvich, Budget Analyst, of the Pennsylvania Public Utility Commission's Fiscal Office ("Fiscal Office"), hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect that the Fiscal Office will be able to prove the same at any hearing held in this matter. 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: June 6, 2017

  
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Amy Zuvich

