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April 11, 2018

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 Motion to Convert the Initial Hearing into a Prehearing Conference with regard to the above referenced matter. The Bureau of Investigation and Enforcement has advised Xtreme Energy that it does not support this Motion. With the Initial Hearing scheduled for May 2, 2018, Xtreme Energy respectfully requests that Administrative Law Judge Cheskis shorten the twenty-day period in the Commission's regulations for responding to motions.

Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

cc: Certificate of Service

**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 :
:

NOTICE TO PLEAD

**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 response to the enclosed **Motion to Convert the Initial Hearing to a Prehearing Conference** of Xtreme Energy Company must be filed within 20 days of the date of service or on such earlier date as prescribed by the Administrative Law Judge.

All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Xtreme Energy and 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, 8th Floor
Harrisburg, PA 17101



Karen O. Moury, Esquire

Date: April 11, 2018

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	:	

**XTREME ENERGY COMPANY'S
MOTION TO CONVERT THE INITIAL HEARING
INTO A PREHEARING CONFERENCE**

TO THE HONORABLE JOEL CHESKIS:

Pursuant to 52 Pa. Code § 5.103, Xtreme Energy Company (“Xtreme Energy”) submits this Motion to Convert the Initial Hearing into a Prehearing Conference. The Initial Hearing is scheduled for May 2, 2018 at 10:00 a.m. Xtreme Energy believes that judicial economy would be served by holding a prehearing conference that permits the parties to discuss with Administrative Law Judge (“ALJ”) Cheskis whether written testimony should be pre-served in this proceeding and whether a presentation of the legal arguments through briefs should await the issuance of an opinion by the Supreme Court of Pennsylvania in the matter of *Snyder Brothers, Inc. v. Pa. Public Utility Commission*, 157 A.3d 1018 (Pa. Cmwlth. 2017), appeals pending at 47 and 48 WAP 2017. Through pre-served testimony, the parties would be better able to determine whether factual stipulations may be reached that would avoid the need for Xtreme Energy’s witness to travel from Texas. Awaiting issuance of the Supreme Court decision in *Snyder Brothers* would enable the parties to apply that ruling to the facts of this case in their respective briefs. In further support hereof, Xtreme Energy avers as follows.

I. BACKGROUND

1. On April 12, 2017, the Bureau of Investigation and Enforcement (“I&E”) filed a Complaint and Amount of Notice Due (“Complaint”) seeking to recover impact fees and administrative charges for calendar years 2014 and 2015 from Xtreme Energy, pursuant to Act 12 of 2012, which amended Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes.

2. On May 18, 2017, Xtreme Energy timely filed an Answer and New Matter. By its Answer and New Matter, Xtreme Energy raised issues concerning the responsibility of the prior well producers during the years in question and whether one of the wells meets the definition of a stripper well and is therefore exempt from the payment of impact fees and administrative charges.

3. I&E filed a Reply to New Matter on June 6, 2017.

4. On March 6, 2018, the Commission issued a Hearing Notice to the parties, scheduling an Initial Hearing for May 2, 2018.

5. By Prehearing Order issued on March 12, 2018, ALJ Cheskis directed the filing of Prehearing Memoranda by April 25, 2018.

6. On April 4, 2018, counsel for Xtreme Energy contacted counsel for I&E to discuss the possibility of requesting that ALJ Cheskis convert the Initial Hearing to a Prehearing Conference. I&E has indicated its preference to proceed with the Initial Hearing as scheduled.

7. In the course of doing preparations for a hearing on May 2, 2018, Xtreme Energy continues to believe that a prehearing conference would promote judicial economy and potentially conserve valuable resources. Therefore, despite the anticipated opposition from I&E, Xtreme Energy respectfully requests that the Initial Hearing scheduled for May 2, 2018 be converted to a Prehearing Conference. Alternatively, Xtreme Energy respectfully requests that the May 2, 2018 Initial Hearing be held for the sole purpose of having I&E present its case-in-chief and that a subsequent date be selected for Xtreme Energy to present its evidence in defense of the Complaint.

II. MOTION

8. Pursuant to Section 5.222 of the Commission's regulations, it is the Commission's policy to arrange for prehearing conferences in non-rate proceedings "to make possible a more effective use of hearing time in formal proceedings...to otherwise expedite the orderly conduct and disposition of the proceedings and to serve the ends of justice and the public interest..." 52 Pa. Code § 5.222(a).

9. Xtreme Energy respectfully asserts that a prehearing conference will aid in accomplishing the goals set forth in Section 5.222 of the Commission's regulations. Among the items listed in the regulations that may aid in expediting the orderly conduct and disposition of the proceeding and furtherance of justice are the submission of direct testimony in advance of the hearing, the simplification of the issues, the exchange and acceptance of service of proposed exhibits and the stipulation of facts not remaining in dispute.

10. At a prehearing conference this proceeding, Xtreme Energy would propose to discuss the submission of pre-served written testimony, which would make possible a more effective use of hearing time. Through pre-served written testimony, the parties would have an opportunity to narrow the scope of issues that must be addressed through live testimony. Also, the submission of pre-served testimony would facilitate the discussion of factual stipulations, which have the potential to alleviate the need for Xtreme Energy's witness to travel from Texas.

11. Also, at a prehearing conference, Xtreme Energy would propose to discuss the possibility of holding the entire proceeding, or at least the briefing stage of this proceeding, in abeyance pending the issuance of a decision by the Supreme Court of Pennsylvania in *Snyder Brothers*. While the issues in *Snyder Brothers* and this proceeding are not identical, the pending Supreme Court decision has the potential to cast light on the proper resolution of the stripper well

exemption raised by Xtreme Energy in its Answer and New Matter. If briefs are filed in this proceeding while that decision is pending, Xtreme Energy will be prejudiced because it will making an argument that is speculating as to the direction in which the Supreme Court might go. Of note, oral argument is scheduled for today's date of April 11, 2018 before the Supreme Court in the *Snyder Brothers* appeal.

12. As an alternative to converting the Initial Hearing into a Prehearing Conference, and in recognition of I&E's desire to proceed with it as scheduled, Xtreme Energy suggests holding the Initial Hearing on May 2, 2018 for the sole purpose of I&E presenting its case-in-chief. This approach may also result in a sufficient narrowing of the issues so that a stipulation of facts can be reached, which again may alleviate the need for Xtreme Energy's witness to travel from Texas.

13. Also, the alternative of holding the Initial Hearing on May 2, 2018 for the sole purpose of I&E presenting its case-in-chief would afford Xtreme Energy an opportunity to prepare responsive testimony for a later hearing date. Otherwise, Xtreme Energy will be prejudiced by needing to respond on the same day to live testimony that has been offered by I&E witnesses on issues involving the Commission's implementation of a complex new law regarding payment of impact fees by unconventional well producers.¹

14. Xtreme Energy submits that I&E would not be prejudiced by a brief delay in these proceedings that would occur from granting this Motion. Although the Complaint was filed approximately one year ago, it does not raise issues of a pressing nature, and for many months following the filing of an Answer and New Matter by Xtreme Energy, the Complaint remained in I&E and was not assigned to the Office of Administrative Law Judge.

¹ 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).

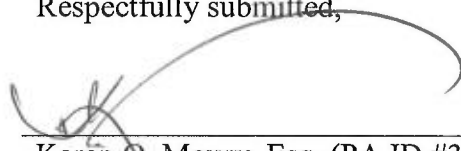
15. Xtreme Energy recognizes that the twenty-day period for responding to motions will expire the day before the scheduled hearing date of May 2, 2018 and that ideally, it should have filed this Motion further in advance of the Initial Hearing. However, Xtreme Energy did attempt to informally address the issues raised herein with I&E a week ago, which was still approximately one month before the Initial Hearing. In learning of I&E's preference to move forward with the Initial Hearing as scheduled, Xtreme Energy began hearing preparations. As a result of undertaking those efforts, Xtreme Energy reached the same conclusion it had reached earlier this month regarding the value of a Prehearing Conference.

16. Since the Initial Hearing is only twenty one days away, Xtreme Energy respectfully requests that ALJ Cheskis shorten the time period in which I&E may respond to this Motion. Alternatively, Xtreme Energy requests that ALJ Cheskis briefly continue the hearing scheduled for May 2, 2018, pursuant to Section 5.202 of the Commission's regulations, to afford I&E the entire twenty-day time period for responding to the Motion. 52 Pa. Code § 5.202.

III. CONCLUSION

WHEREFORE, Xtreme Energy Company respectfully requests that Administrative Law Judge Cheskis convert the Initial Hearing scheduled for May 2, 2018 to a Prehearing Conference, or in the alternative hold the Initial Hearing for the sole purpose of the Bureau of Investigation and Enforcement presenting its case-in-chief.

Respectfully submitted,



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Date: April 11, 2018

Attorneys for Xtreme Energy Company

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Xtreme Energy's Motion to Convert the Initial Hearing into a Prehearing Conference 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
mwindler@pa.gov

Date: April 11, 2018



Karen O. Moury, Esq.