



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

IN REPLY PLEASE
REFER TO OUR FILE

June 4, 2018

VIA ELECTRONIC FILING

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. Xtreme Energy Company
Docket No. C-2017-2599145
(I&E Memorandum)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Memorandum of the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie M. Wimer
Senior Prosecutor
Attorney ID No. 207522

Enclosure

cc: Honorable Joel H. Cheskis
Michael L. Swindler, Deputy Chief Prosecutor
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	:	

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

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to the directive of the Honorable Joel H. Cheskis at the prehearing conference in this matter held on May 2, 2018, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“PUC” or “Commission”) files this memorandum to address two issues: (1) whether this proceeding should be held in abeyance pending a decision from the Pennsylvania Supreme Court in *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm’n*, Appellant Docket Number 166 WAL 2017; *PIOGA v. Pa. Pub. Util. Comm’n*, Appellant Docket Number 167 WAL 2017 (collectively, “*Snyder Brothers Appeal*”); and (2) whether this proceeding should be conducted using live in-person testimony.

I. The Snyder Brothers Appeal is not determinative of the outcome of this case.

The Snyder Brothers Appeal has no bearing on the substance of this case and the extreme delay that would occur if the matter was held in abeyance pending a decision by the Pennsylvania Supreme Court would not be reasonable. In the instant matter, I&E’s Formal

Complaint against Xtreme Energy Company (“Xtreme”) alleges that Xtreme did not timely file Annual Reports pursuant to the Unconventional Gas Well Impact Fee Act, 58 Pa.C.S. §§ 2301-2318, (“Act 13”) or file any timely dispute regarding Act 13 impact fees and administrative charges for 2014 and 2015 that were imposed by the Commission. Act 13 clearly states that “if no report is filed . . . an assessment of the amount owed may be made at any time.” 58 Pa.C.S. § 2307.

In responsive pleadings, Xtreme has for the first time challenged the imposition of any impact fee and administrative charge for the 2014 and 2015 calendar years based on the timing of the sale and transfer of the wells. In short, Xtreme argues that it was not the producer responsible for compliance with Act 13 obligations for those years.

In stark contrast, the parties in the Snyder Brothers Appeal timely filed Act 13 Annual Reports and timely disputed Act 13 impact fees and administrative charges. *See Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Snyder Brothers, Inc.*, Docket No. C-2014-2402746 (referred to hereafter as the “*Snyder Brothers Commission proceeding*”). Rather, in the *Snyder Brothers Commission proceeding*, I&E and Snyder Brothers disagreed about the merits of the timely filed disputes. Specifically, Snyder Brothers contended that multiple wells qualified as “stripper wells,” as defined in Act 13, by virtue of their production averages. The issue in the *Snyder Brothers Appeal* is a disagreement between the Commission and the appellants concerning the statutory interpretation of the term “stripper well.”

It is undisputed that in the instant case, Xtreme did not file any Act 13 reports for the 2014 and 2015 calendar years nor did it dispute the imposition of the amounts owed with the Commission. The first time that Xtreme challenged the amounts owed is through this proceeding, in which its primarily asserts that it did not own the wells in question at the time the

fees were imposed. Xtreme's attempt to create confusion and delay this matter by claiming that one of its wells qualifies as a "stripper well" should be rejected. The "stripper well" issue is ancillary and potentially irrelevant as this action concerns Xtreme's failure to file annual reports and timely dispute the imposition of Act 13 fees and administrative charges.

Furthermore, based on information and belief, the Pennsylvania Supreme Court does not have any set date by which it must issue a decision in the *Snyder Brothers Appeal* matter. Oral argument in the *Snyder Brothers Appeal* was held on April 11, 2018, and the date by which the Pennsylvania Supreme Court will render its decision is completely unknown and unknowable. As the decision in the *Snyder Brothers Appeal* is not controlling in this matter, as explained above, and because the Pennsylvania Supreme Court may not issue a decision for an extensive period of time, any request to stay or hold in abeyance this proceeding pending the outcome of *Snyder Brothers Appeal* should be denied.

II. The issue in this proceeding is not complex and does not require pre-filed written testimony or an alternative litigation schedule.

I&E asserts that this case can be best disposed of by holding an in-person hearing with live testimony, spanning one day. The Commission's regulations do not dictate the use of pre-filed written testimony versus live testimony in matters such as the present case. Traditionally, the Commission has directed pre-filed written testimony from experts in complex matters, such as base rate proceedings, rail-highway crossings and pipeline safety matters. Such an approach allows the parties and the presiding Administrative Law Judge ("ALJ") to more thoroughly present and understand complex technical matters.

Conversely, the issue involved in this case is not complex or technical and neither I&E nor Xtreme have proposed the testimony of expert witnesses. The issue in this case is simple:

whether Xtreme failed to file annual reports or pay *any* impact fees or administrative charges, as required under Act 13. I&E's witness, as identified in its prehearing conference memo, will testify as to the facts surrounding Xtreme's failure to file the necessary paperwork and make the requisite payments.

There is Commission precedent for handling a matter such as this *via* live, in-person testimony where the respondent responds directly to I&E's case-in-chief during a one-day hearing. In the *Snyder Brothers Commission proceeding*, the assigned ALJ held a hearing with live testimony, in which I&E presented its case, with the respondent Snyder Brothers offering its defense that same day, immediately following I&E's presentation of its case in chief. Like the Xtreme case, the *Snyder Brothers Commission proceeding* involved one fact witness from each party and no expert witnesses.

Moreover, the *Snyder Brothers Commission proceeding* was a case of first impression before the Commission, as it was the first Act 13 case brought by I&E. None of the parties, nor the ALJ, alleged that Snyder Brothers was prejudiced by the hearing process. Moreover, to I&E's knowledge, no party or court has raised the issue of prejudice due to the holding of a one-day hearing with live testimony from both the complainant and the respondent in the *Snyder Brothers Appeal*. Therefore, I&E asserts that in-person testimony is the appropriate approach in this matter.

I&E likewise opposes Xtreme's prior alternative request to hold the initial in-person hearing for the sole purpose of having I&E present its case-in-chief, with a subsequent date provided for Xtreme to present its defense. I&E is not aware of such a novel approach ever being employed by the Commission in a proceeding before it. Any argument that Xtreme would be prejudiced by having to respond to live testimony on the same day as I&E presents its case

because it would be “put on the spot” is completely meritless. First, Xtreme did not challenge the factual sufficiency of I&E’s Complaint through the filing of Preliminary Objections. Second, any factual questions may be resolved using the Commission’s discovery process as a tool. In fact, Xtreme has taken advantage of discovery as I&E’s answers to Xtreme’s interrogatories are due tomorrow.

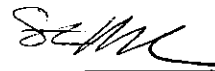
Further, holding a hearing with live, in-person testimony provides a valuable benefit for the fact finder. I&E submits that the credibility of witnesses, especially in a factual dispute such as this matter, may be better evaluated in-person.

Many cases proceed before the Commission with a single day of live, in-person testimony and, to I&E’s knowledge, the Commission has never found that such an approach has prejudiced the respondent. If anything, it would be I&E that is prejudiced by such a delay. Thus, for the reasons detailed above, I&E submits that this matter should proceed with live, in-person testimony presented during a one-day hearing.

III. Conclusion

For the reasons stated above, I&E respectfully requests that the parties be permitted to utilize live, in-person testimony, with Xtreme offering its witness on the same day that I&E offers its witness; and that any request to stay or hold this proceeding in abeyance pending the Pennsylvania Supreme Court's decision in *Snyder Brothers Appel* be rejected.

Respectfully submitted,



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Dated: June 4, 2018

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Electronic Mail:

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