



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

IN REPLY PLEASE
REFER TO OUR FILE

October 17, 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 Reply to New Matter

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply of the Bureau of Investigation and Enforcement to the New Matter of Xtreme Energy Company with regard to the above-referenced proceeding.

Copies are being served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "S M Wimer".

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	:	

**THE REPLY OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
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 (“Xtreme” or “Respondent”), pursuant to 52 Pa. Code § 5.63(a). In support thereof, I&E avers as follows:

57. The averments in Paragraph 57 set forth conclusions of law to which no response is required. By way of further answer, Act 13 speaks for itself. To the extent a response is required, the averments are denied.

58. With respect to the averments set forth in the first sentence of Paragraph 58, Attachment A to the Complaint speaks for itself and no further response is required. The averments in the second sentence of Paragraph 58 state a conclusion of law to which no response is required. To the extent a response is required, the averments are denied.

59. The averments in Paragraph 59 set forth conclusions of law to which no response is required. By way of further answer, Xtreme's reference to "Chapter 13" is unclear. Assuming that Xtreme intended to indicate "Act 13," Act 13 speaks for itself. To the extent a response is required, the averments are denied.

60. The averments in Paragraph 60 set forth conclusions of law to which no response is required. By way of further answer, Act 13 speaks for itself. To the extent a response is required, the averments are denied.

61. The averments in Paragraph 61 reference a judicial opinion that speaks for itself and to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the referenced judicial opinion is the subject of an appeal to the Supreme Court of Pennsylvania in which oral argument was heard on April 11, 2018 and a ruling is pending. *Snyder Bros., Inc. v. Pa. Pub. Util. Comm'n*, 157 A.3d 1018 (Pa. Cmwlth. 2017), petition for allowance of appeal granted, 172 A.3d 1119 (Pa. October 18, 2017) ("*Snyder Brothers*"). Therefore, it is expressly denied that the referenced judicial opinion is the "law of the land" or a resolved matter.

62. The averments in Paragraph 62 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself.

63. Denied. It is denied that Samson is the producer responsible for Act 13 impact fees and administrative charges related to the 2014 calendar year and strict proof thereof is demanded at hearing. By way of further answer, Attachment A to the Amended Complaint speaks for itself and no further response is required.

64. The averments in Paragraph 64 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. It is specifically denied that the Bill of Sale was signed in February 2015 and strict proof thereof is demanded at hearing. By way of further answer, Attachment A to the Amended Complaint speaks for itself.

65. The averments in Paragraph 65 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself.

66. Admitted in part and denied in part. It is admitted that the Amended Complaint does not contain information showing the “monthly breakdown” of daily production data. It is denied that the wells identified in I&E’s Amended Complaint do not meet the definition of unconventional gas wells subject to impact fees and administrative charges pursuant to Act 13. Strict proof thereof is demanded at hearing.

67. The averments in Paragraph 67 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied and strict proof thereof is demanded. By way of further answer, Xtreme failed to submit the requisite Act 13 report to the Commission, which would have shown data regarding Xtreme’s average daily production on a monthly basis during the 2014 calendar year. Xtreme should not be permitted to use the lack of such data as both a sword and a shield against I&E when it was required to provide such data in the Act 13 report that it failed to file.

68. The averments in Paragraph 68 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied and strict proof thereof is demanded. Moreover, to the extent that this Paragraph refers to the aforementioned *Snyder Brothers* matter, it is denied that this legal issue has been resolved as a ruling from the Supreme Court of Pennsylvania remains pending.

69. The averments in Paragraph 69 set forth conclusions of law to which no response is required. To the extent a response is required, it is denied. Moreover, to the extent that this Paragraph refers to the aforementioned *Snyder Brothers* matter, it is denied that this legal issue has been resolved as a ruling from the Supreme Court of Pennsylvania remains pending.

70. Denied. It is denied that Samson is the producer responsible for Act 13 impact fees and administrative charges related to the 2015 calendar year and strict proof thereof is demanded at hearing. By way of further answer, Attachment B to the Amended Complaint speaks for itself and no further response is required.

71. Denied. The averments set forth in Paragraph 71 are denied and strict proof thereof is demanded. It is specifically denied that Xtreme did not assume Act 13 obligations until calendar year 2016.

72. Denied. While only one producer can be responsible for paying the impact fees and administrative charges to the Commission for a particular well in a given calendar year, producers can proportion the fees and charges among themselves in a private agreement. It is denied that “any other approach” would result in the over-

collection of Act 13 impact fees and administrative charges, and strict proof thereof is demanded at hearing.

73. The averments in Paragraph 73 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself.

74. The averments in Paragraph 74 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself.

75. The averments in Paragraph 75 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself.

76. The averments in Paragraph 76 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself.

77. Denied. It is denied that the Commission has not provided express guidance on how to assign responsibility for impact fees and administrative charges when more than one entity operates a well during a given calendar year. It is further denied that January 1 is the date that triggers the assignment of Act 13 responsibilities to a particular producer. Strict proof thereof is demanded at hearing.

78. The averments in Paragraph 78 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself. Moreover, it is specifically denied that

Act 13 either expressly, or by implication, includes a framework that is based on calendar years beginning on January 1, 2012.

79. The averments in Paragraph 79 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, Act 13 speaks for itself. Moreover, it is specifically denied that Act 13 either expressly, or by implication, includes a “reset date.”

80. Admitted. By way of further answer, payment for the well operated at permit number 111-20277 related to production that occurred during the 2016 calendar year was due on April 1, 2017, and, therefore, Xtreme’s payment was one (1) year, five (5) months, and twenty-five (25) days late. Moreover, payment for the well operated at permit number 111-20277 related to production that occurred during the 2017 calendar year was due on April 2, 2018, and, therefore, Xtreme’s payment was five (5) months and twenty-four (24) days late. Xtreme did not dispute payment of the impact fees and administrative charges for the aforementioned well related to production that occurred during the 2016 and 2017 calendar years, and yet, Xtreme still failed to make timely payment.

81. The averments in Paragraph 81 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, it is denied that the definition of “stripper well” is settled as a ruling in *Snyder Brothers* remains pending before the Supreme Court of Pennsylvania.

82. The averments in Paragraph 82 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By

way of further answer, it is denied that the definition of “stripper well” is settled as a ruling in *Snyder Brothers* remains pending before the Supreme Court of Pennsylvania.

83. The averments in Paragraph 83 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, it is denied that the definition of “stripper well” is settled as a ruling in *Snyder Brothers* remains pending before the Supreme Court of Pennsylvania. In addition, I&E lacks sufficient information to admit or deny the allegations in Paragraph 83 as it is unclear which well Xtreme is referencing.

84. The averments in Paragraph 84 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, it is denied that the definition of “stripper well” is settled as a ruling in *Snyder Brothers* remains pending before the Supreme Court of Pennsylvania.

85. The averments in Paragraph 85 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, it is denied that the definition of “stripper well” is settled as a ruling in *Snyder Brothers* remains pending before the Supreme Court of Pennsylvania. Moreover, it is notable that the original owner of the wells that are the subject of I&E’s Amended Complaint never claimed that these wells qualified as stripper wells.

86. The averments in Paragraph 86 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

87. The averments in Paragraph 87 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

88. Admitted in part and denied in part. It is admitted that there is no formal mechanism by which Xtreme could have, under protest, *paid* disputed impact fees or administrative charges. By way of further answer, the mechanism in existence for disputing such fees and charges does not require that the fees and charges be paid when disputed. In fact, the Commission refrains from seeking the collection of impact fees or administrative charges that are disputed until the dispute is resolved; no “up-front” payment is required for disputed impact fees and administrative charges. It is denied that Xtreme filed any dispute or attempted to cooperate with the Commission with regard to impact fees and administrative charges related to the 2014, 2015 and 2016 calendar years, which Xtreme only challenged after I&E filed the instant complaint proceeding seeking to collect the outstanding amounts.

89. Denied. It is denied that no mechanism or procedure exists where the Commission can refund any impact fees or administrative charges that were paid and subsequently determined to be not due or erroneously paid. Strict proof thereof is demanded at hearing.

90. The averments in Paragraph 90 set forth conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, it is specifically denied that the Commission took “no steps” to determine the applicable interest rate in which to assess delinquent impact fees. It is also specifically denied that the Commission has no basis upon which to order Xtreme to pay interest. Strict proof thereof is demanded at hearing.

91. Denied. I&E’s Amended Complaint speaks for itself.

92. Denied. The averments set forth in Paragraph 92 are denied and strict proof thereof is demanded.

93. Denied. The averments set forth in Paragraph 93 are denied and strict proof thereof is demanded.

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 Amended Complaint and find Xtreme in violation of each and every count as set forth in the Amended Complaint.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8839
stwimer@pa.gov

Date: October 17, 2018

Pennsylvania Public Utility
Commission, Bureau of Investigation
and Enforcement,
Complainant

v.

Xtreme Energy Company,
Respondent

Docket No. C-2017-2599145

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:

Karen O. Moury, Esquire
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
cshultz@eckertseamans.com

Counsel for Xtreme Energy Company



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

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Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
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stwimer@pa.gov

Dated: October 17, 2018