



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

IN REPLY PLEASE
REFER TO OUR FILE

April 19, 2019

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
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as Appendices A through E consisting of: Appendix A – Joint Proposed Findings of Fact; Appendix B – Joint Proposed Conclusions of Law; Appendix C – Joint Proposed Ordering Paragraphs; Appendix D – The Bureau of Investigation and Enforcement’s Statement in Support; and Appendix E – Xtreme Energy Company’s Statement in Support.

Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie M. Wimer".

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

Enclosure

cc: Honorable Joel H. Cheskis
As per Certificate of Service

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, and Xtreme Energy Company, with a mailing address of P.O. Box 2326, Victoria, Texas 77902.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania authorized to collect, administer and distribute impact fees from unconventional gas well producers¹ pursuant to Chapter 23 of Act 13, 58 Pa.C.S. §§ 2301 *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Xtreme is an unconventional gas well producer, as defined in Section 2301 of Act 13, 58 Pa.C.S. § 2301, and operates two unconventional gas wells in Pennsylvania.

5. Sections 2308 and 2309 of Act 13, 58 Pa.C.S. §§ 2308-2309, authorize the Commission to enforce Chapter 23 of Act 13, including the collection of delinquent impact fees.

6. Pursuant to the applicable provisions of Act 13, *supra*, the Commission has jurisdiction over the subject matter and the actions of Respondent in its capacity as an unconventional gas well producer in Pennsylvania.

¹ An "unconventional gas well" is 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. An "unconventional formation" is a "geological shale formation...where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore." *Id.*

II. BACKGROUND

7. Pursuant to Act 13, impact fees were due from unconventional gas well producers by September 1, 2012 for wells spud before January 1, 2012, and April 1 for each subsequent year. 58 Pa.C.S. § 2303(a).

8. Act 13 also authorizes the Commission to impose an annual administrative charge not to exceed \$50 per spud unconventional gas well to cover the actual costs incurred to administer the requirements of Act 13. 58 Pa.C.S. § 2303(c)(1). Administrative charges must be paid with impact fees on April 1 of each year. *Id.*

9. Act 13 further authorizes the Commission to assess interest on producers with delinquent fees. 58 Pa.C.S. § 2308(a).

10. In addition to the assessed interest, the Commission is authorized to add a penalty of 5% of the amount of the fee if the failure to timely pay the fee is for less than one month, with an additional 5% penalty for each additional month or fraction of a month, not to exceed 25% in the aggregate. 58 Pa.C.S. § 2308(b).

11. The Commission may also assess administrative civil penalties of up to \$2,500 per violation for a violation of Chapter 23 of Act 13. 58 Pa.C.S. § 2310. In determining the amount of the penalty, the Commission shall consider the willfulness of the violation and other relevant factors. 58 Pa.C.S. § 2310(a).

12. On April 12, 2017, I&E filed a Formal Complaint (“Complaint”) against Xtreme alleging that Xtreme failed to comply with Section 2303(c) of Act 13, 58 Pa.C.S. § 2303(c), by failing to pay impact fees and administrative charges imposed under Act 13 for its two unconventional gas wells operating in Pennsylvania related to the 2014 and 2015 calendar years. I&E’s Complaint requested that Xtreme be ordered to pay its past due impact fees and

administrative charges in the amount of \$70,600 plus statutory interest and penalties of \$19,768. I&E also requested that Xtreme be ordered to pay an administrative civil penalty of \$21,180, for a total amount due of \$111,548.

13. On May 18, 2017, after receiving a ten-day extension of time to respond, Xtreme filed an Answer and New Matter denying the various material averments of I&E's Complaint. Notably, Xtreme denied being the producer responsible for compliance with Act 13 obligations to pay impact fees and administrative charges for the 2014 and 2015 calendar years, citing a change in the ownership of the wells that it believed rendered Xtreme first responsible for impact fees and administrative charges for the 2016 calendar year. Xtreme also argued that one of its wells identified in the Complaint qualified as a stripper well and was not subject to the Act 13 impact fee.

14. On June 6, 2017, I&E filed a Reply denying the averments raised in Xtreme's New Matter.

15. This matter was originally scheduled for an initial hearing on May 2, 2018 before presiding DCALJ Cheskis, but was converted into a prehearing conference upon consideration of a Motion to Convert the same filed by Xtreme. A prehearing conference was then held on May 2, 2018, following which the parties were asked to submit memoranda of law regarding two issues: (1) whether the hearing should be conducted with live testimony or pre-served written testimony; and (2) whether the proceeding should be held in abeyance pending the Supreme Court's action in *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm'n*, 198 A.3d 1056 (Pa. 2018) ("*Snyder Brothers*"), which challenged the Commission's interpretation of the production levels of stripper wells. The parties submitted their respective memoranda of law on June 4, 2018.

16. On June 25, 2018, the presiding DCALJ issued a prehearing order determining that the matter will not be held in abeyance pending the Supreme Court's action in *Snyder Brothers* and requested that the parties submit an agreed upon schedule for litigating the matter, including the submission of pre-served written testimony. A scheduling order was issued on July 6, 2018 memorializing the litigation schedule that was agreed upon by the parties.

17. On September 4, 2018, I&E filed an Amended Complaint updating allegations against Xtreme to include violations pertaining to the 2016 calendar year. I&E's Amended Complaint requested that Xtreme be ordered to pay its past due impact fees and administrative charges for the 2014, 2015 and 2016 calendar years in the amount of \$100,900 plus statutory interest and penalties of \$28,252. I&E also requested that Xtreme be ordered to pay an administrative civil penalty of \$31,770, for a total amount due of \$160,922. Additionally, on September 4, 2018, I&E served I&E Statement No. 1, the written Direct Testimony of Amy R. Zuvich of the Commission's Bureau of Administration, who served as I&E's witness in this proceeding.

18. On September 27, 2018, Xtreme filed an Answer and New Matter in response to I&E's Amended Complaint denying the various material averments made by I&E.

19. On October 16, 2018, Xtreme served Xtreme Statement No. 1, the written Rebuttal Testimony of Michael Hahn, Xtreme's witness in this proceeding.

20. On October 17, 2018, I&E filed a Reply to Xtreme's New Matter.

21. On October 24, 2018, Xtreme filed a Motion for Protective Order seeking to prohibit disclosure of certain financial information the Company deemed proprietary. On October 25, 2018, DCALJ Cheskis issued an Order granting the Motion for Protective Order.

22. On November 16, 2018, I&E served I&E Statement No. 1-SR, the written Surrebuttal Testimony of Amy R. Zuvich.

23. By Hearing Notice dated December 7, 2018, an evidentiary hearing was scheduled for January 9 and 10, 2019.

24. On December 28, 2018, Xtreme filed a Motion to Compel production of a discovery request to which I&E had objected on the basis that it sought a privileged attorney-client communication.

25. On January 2, 2019, I&E filed an Answer to Xtreme's Motion to Compel defending its position that the material sought is privileged.

26. On January 7, 2019, the Parties announced to DCALJ Cheskis that they had reached a settlement-in-principle with respect to I&E's Complaint proceeding. Xtreme verbally agreed to withdraw its Motion to Compel and the litigation schedule was suspended.

27. By Notice dated January 8, 2019, DCALJ Cheskis cancelled the evidentiary hearing.

III. ALLEGED VIOLATIONS

28. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Respondent committed the following violations:

- A. Xtreme failed to pay Act 13 impact fees and administrative charges related to the 2014 calendar year for its two unconventional wells located in Pennsylvania. Payment in full of the impact fees and administrative charges for these wells in the amount of \$43,300 was due by April 1, 2015.

If proven, I&E alleges that such conduct would have violated 58 Pa.C.S. § 2303(c) from April 2, 2015, until the impact fees and administrative charges were paid in full. (1 count).

- B. Xtreme failed to pay Act 13 impact fees and administrative charges related to the 2015 calendar year for its two unconventional wells located in Pennsylvania. Payment in full of the impact fees and administrative charges for these wells in the amount of \$30,300 was due by April 1, 2016.

If proven, I&E alleges that such conduct would have violated 58 Pa.C.S. § 2303(c) from April 2, 2016, until the impact fees and administrative charges were paid in full. (1 count).

- C. Xtreme failed to pay Act 13 impact fees and administrative charges related to the 2016 calendar year for its two unconventional wells located in Pennsylvania. Payment in full of the impact fees and administrative charges for these wells in the amount of \$30,300 was due by April 3, 2017.

If proven, I&E alleges that such conduct would have violated 58 Pa.C.S. § 2303(c) from April 4, 2017, until the impact fees and administrative charges were paid in full. (1 count).

29. In response, Xtreme would have contended that ownership of the wells was not transferred to its affiliate, for whom it operates the wells, by the former owner until February 2015 and that permits were not issued by the Department of Environmental Protection (“DEP”) until after April 1, 2015. On this basis, and due to the framework established by Act 13, Xtreme would have argued that its responsibility for payment of impact fees and administrative charges did not take effect until calendar year 2016.²

²² Prior to the issuance of the Supreme Court’s decision in *Snyder Brothers*, Xtreme was also maintaining that one of the wells was exempt from the payment of impact fees and administrative charges on the basis that it was a “stripper well.” See Paragraph 33(F), *infra*.

IV. SETTLEMENT TERMS

30. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,³ the Parties held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's Complaint proceeding, however, a Commission Order approving the settlement shall have the effect of admitting into the record of this proceeding the previously served written testimony of the parties. *See* Paragraph 33(J), *infra*.

31. It is understood that this Settlement is the compromise of the allegations in the Complaint, which I&E intended to prove and that Respondent intended to dispute. However, Respondent fully acknowledges the seriousness of I&E's allegations, namely that failing to timely pay Act 13 impact fees impairs the Commission's ability to fully and timely disburse those fees to counties where unconventional gas well drilling has occurred.

32. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the parties further recognize the benefits of amicably resolving the disputed issues through settlement.

33. I&E and Respondent, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

³ *See* 52 Pa. Code § 5.231(a).

- A. Respondent will pay past due impact fees and administrative charges related to Well No. 111-20277 (Hillegass) and Well No. 111-20272 (Menhorn) in the amount of Sixty-Five Thousand, Six Hundred Dollars (\$65,600) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. Payment of the impact fees and administrative charges, as well as the remaining monetary terms of Paragraph 3, shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number of this proceeding, C-2017-2599145, indicated on the payment, and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

- B. Respondent will pay interest, pursuant to 58 Pa.C.S. § 2308(a), in the amount of One Thousand, Five Hundred and Nine Dollars (\$1,509) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. The interest shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
- C. Respondent will pay a penalty (hereinafter referred to as "Act 13 penalty"), pursuant to 58 Pa.C.S. § 2308(b), in the amount of Twelve Thousand, Five Hundred and Seventy-Five Dollars (\$12,575) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. The Act 13 penalty should not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
- D. Respondent will pay an administrative civil penalty, pursuant to 58 Pa.C.S. § 2310, in the amount of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. The administrative civil penalty should not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
- E. I&E agrees to forego prosecuting Respondent, including seeking the imposition of interest, Act 13 penalties and administrative civil penalties, for any late payments related to the impact fee and administrative charge for Well No. 111-20277 (Hillegass) for the 2017 calendar year.

- F. Respondent and I&E agree that the Supreme Court of Pennsylvania's decision in *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm'n*, 198 A.3d 1056 (Pa. 2018) is dispositive as to Well No. 111-20272 (Menhorn).
- G. Respondent agrees to timely pay the amounts set forth in any invoice sent by the Commission with respect to Well No. 111-20272 (Menhorn) related to the 2017 calendar year. Upon timely payment of this invoice, I&E agrees to forego from prosecuting Xtreme, including seeking the imposition of interest, Act 13 penalties and administrative civil penalties, with respect to any issue regarding the timeliness of Xtreme's Act 13 report and dispute concerning Well No. 111-20272 (Menhorn) related to the 2017 calendar year.
- H. Respondent agrees that it will cease and desist from violating Act 13 and will submit Act 13 reports, disputes and applicable payments by April 1 of each year.
- I. Xtreme agrees that if it fails to comply with a Commission Order that approves any settlement of this matter, the Company will be subject to the remedies set forth in Act 13, including, *inter alia*, a lien placed on its property pursuant to 58 Pa.C.S. § 2308(e), contempt proceedings in Commonwealth Court pursuant to 58 Pa.C.S. § 2309(b), and suspension of well permits pursuant to 58 Pa.C.S. § 2308(c).
- J. The following written testimony and associated exhibits served in this case shall be deemed admitted into the record of this proceeding:
 - Direct Testimony of Amy R. Zuvich – I&E Statement No. 1;
 - Rebuttal Testimony of Michael Hahn – Xtreme Statement No. 1; and
 - Surrebuttal Testimony of Amy R. Zuvich – I&E Statement No. 1-SR.

34. Upon submission of the payments set forth in Paragraph 33(A)-(D), *supra*, I&E's Formal Complaint shall be deemed satisfied and the matter shall be marked closed.

35. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released Respondent from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Respondent failed to comply with the obligations set forth in Act 13 for the 2014, 2015 and 2016 calendar years,

which are the time periods covered by I&E's Complaint. Nothing contained in this Settlement Agreement shall affect the Commission's authority to receive and resolve any future formal or informal complaints filed by any affected party related to the allegations set forth in I&E's Complaint.

36. I&E and Respondent jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, and avoids the time and expense of litigation, which entails hearings, travel for Respondent's witness, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices D and E are Statements in Support submitted by I&E and Respondent, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

37. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

38. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall

be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the Parties within twenty (20) days after entry of an Order modifying the Settlement.

39. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law, beyond those stipulated herein, and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in the Settlement.

40. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

41. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the parties from taking other positions in any other proceeding.

42. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Xtreme Energy Company respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the

19th day of April 2019.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT:



Signature

Senior Prosecutor, J.E

Title

April 19, 2019

Date

FOR XTREME ENERGY COMPANY:



Signature

Counsel

Title

April 19, 2019

Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT,
Complainant

v.

XTREME ENERGY COMPANY,
Respondent

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DOCKET NO. C-2017-2599145

PROPOSED FINDINGS OF FACT

TO THE HONORABLE JOEL H. CHESKIS:

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Xtreme Energy Company (“Xtreme” or “Company”), by their undersigned attorneys, propose the following findings of fact for the sole purpose of supporting the approval of the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) in the above-captioned matter.

PROPOSED FINDINGS OF FACT

1. On February 19, 2015, Onshore Royalties, LLC (“Onshore”), which is affiliated with Xtreme, acquired two unconventional gas wells in Pennsylvania from Samson Resources Company known as the Menhorn and Hillegass wells. (I&E Statement No. 1 at 7; Xtreme Statement No. 1 at 3).
2. While Onshore is the owner of the Menhorn and Hillegass wells, Xtreme is the operator and began operating the two wells on February 19, 2015. (I&E Statement No. 1 at 7; I&E Statement No. 1-SR at 17).

3. On April 20, 2015, Xtreme received a permit from the Pennsylvania Department of Environmental Protection (“DEP”) related to the Menhorn well, identified as Well No. 111-20272. (Xtreme Statement No. 1 at 5).

4. On April 23, 2015, Xtreme received a permit from DEP related to the Hillegass well, identified as Well No. 111-20277. (Xtreme Statement No. 1 at 5).

5. April 1, 2015 was the due date for reporting 2014 calendar year well data and paying the Act 13 impact fees and administrative fees associated with the 2014 calendar year. (I&E Statement No. 1 at 22-23).

6. April 1, 2016 was the due date for reporting 2015 calendar year well data and paying the Act 13 impact fees and administrative fees associated with the 2015 calendar year. (I&E Statement No. 1 at 24).

7. April 3, 2017 was the due date for reporting 2016 calendar year well data and paying the Act 13 impact fees and administrative fees associated with the 2016 calendar year because April 1, 2017 was a Saturday. (I&E Statement No. 1 at 27).

8. April 2, 2018 was the due date for reporting 2017 calendar year well data and paying the Act 13 impact fees and administrative fees associated with the 2017 calendar year because April 1, 2018 was a Sunday. (I&E Statement No. 1 at 32).

9. Producers may dispute payment of an impact fee and such disputes are identified in Act 13 reports. (I&E Statement No. 1 at 20-21).

10. The dispute process is not established by Act 13 or Commission regulations and is established by Commission Order. (Xtreme Statement No. 1 at 22-23) and (I&E Statement No. 1-SR at 20).

11. Payment of a disputed impact fee and administrative fee is not owed until the dispute has been resolved and it if has been resolved in the Commission's favor. (I&E Statement No. 1-SR at 22).

12. The Commission's Bureau of Administration did not receive Act 13 reports from Xtreme concerning the 2014, 2015 and 2016 calendar years related to Well No. 111-20272 (Menhorn) and Well No. 111-20277 (Hillegass). (I&E Statement No. 1 at 42).

13. The Commission's Bureau of Administration was not alerted to disputes on any Act 13 reports that Xtreme may have had with respect to payment of the impact fee and administrative fee for the 2014, 2015 and 2016 calendar years related to Well No. 111-20272 (Menhorn) and Well No. 111-20277 (Hillegass). (I&E Statement No. 1 SR at 22-23).

14. Xtreme challenged the payment of the impact fees and administrative charges for the 2014, 2015 and 2016 calendar years for Well No. 111-20272 (Menhorn) and the payment of the impact fees and administrative charges for 2014 and 2015 calendar years for Well No. 111-20277 (Hillegass) by filing an Answer and New Matter on May 18, 2017 and September 27, 2018. (Xtreme Statement No. 1 at 22).

15. If a payment of an impact fee is made, no refunds are available after distribution of the fees by the Commission. (Xtreme Statement No. 1 at 23-24).

16. Xtreme submitted an Act 13 report related to the 2017 calendar year on April 10, 2018, in which Xtreme disputed the impact fee payment for Well No. 111-20272 (Menhorn) averring that the well was a stripper well. (I&E Statement No. 1 at 36).

17. On June 5, 2018, Xtreme submitted a payment to the Bureau of Administration in the amount of \$25,350 in an attempt to pay the 2016 and 2017 impact fees and administrative fees related to Well No. 111-20277 (Hillegass). The Bureau of Administration did not accept the

payment because the amount fell short of the total. (I&E Statement No. 1 at 31; Xtreme Statement No. 1 at 20).

18. On September 26, 2018, Xtreme submitted payment in the correct amount of \$35,500 to pay the 2016 and 2017 impact fees and administrative fees related to Well No. 111-20277 (Hillegass). (Xtreme Statement No. 1 at 21).

19. By check dated April 9, 2019, Xtreme has paid the Commission's invoice for Well No. 111-20272 (Menhorn) in the amount of \$20,350 which was issued following the issuance of the Supreme Court's *Snyder Brothers* decision. (I&E and Xtreme Stipulation).

20. Xtreme has submitted its Act 13 reports for calendar year 2018. (I&E and Xtreme Stipulation).

129 of 2008; *Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

6. Pursuant to Act 13, the Commission has jurisdiction over the subject matter and the actions of Xtreme in its capacity as an unconventional gas well producer in Pennsylvania.

7. A producer is required to file an annual report with the Commission on or before April 1 detailing the number of spud unconventional gas wells for the previous calendar year. 58 Pa.C.S. § 2303(b). *See also Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act, Clarification Order Regarding Chapter 23*, Docket No. M-2012-2288561 (Order entered December 20, 2012) at 11.

8. Along with the Act 13 report, producers are required to submit payment of the impact fee on or before April 1. 58 Pa.C.S. § 2303(a). *See also Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act, Clarification Order Regarding Chapter 23*, Docket No. M-2012-2288561 (Order entered December 20, 2012) at 11.

9. Producers may dispute payment of the impact fee and such disputes should be identified on the Act 13 report. *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act, Clarification Order Regarding Chapter 23*, Docket No. M-2012-2288561 (Order entered December 20, 2012) at 11.

10. The Act 13 impact fee will be imposed on unconventional gas wells if their production exceeds 90,000 cubic feet of natural gas per day for even one month of the year. *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm'n*, 198 A.3d 1056 (Pa. 2018).

11. When a producer for a particular well changes, the producer responsible for filing an Act 13 report on April 1 is responsible for paying the impact fee. *Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act, Clarification Order Regarding*

Chapter 23, Docket No. M-2012-2288561 (Order entered December 20, 2012) at 12.

12. The Commission has the authority to assess interest on producers with delinquent impact fees. 58 Pa.C.S. § 2308(a).

13. The Commission has the authority to add a penalty of 5% of the amount of the fee if the failure to timely pay the fee is for less than one month, with an additional 5% penalty for each additional month or fraction of a month that the fee is untimely paid, not to exceed 25% in the aggregate. 58 Pa.C.S. § 2308(b).

14. The Commission may assess an administrative civil penalty upon a producer of up to \$2,500 per violation for a violation of Chapter 23 of Act 13. 58 Pa.C.S. § 2310. In determining the amount of the penalty, the Commission shall consider the willfulness of the violation and other relevant factors. 58 Pa.C.S. § 2310(a).

15. The Commission encourages and promotes settlements. 52 Pa. Code § 5.231(a).

16. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011) at 11.

17. The Commission's Policy Statement at 52 Pa. Code § 69.1201 sets forth ten factors ("Rosi factors") that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission statute, regulation or order is appropriate, as well as whether a proposed settlement for the violations is reasonable and approval of the settlement agreement is in the public interest. These factors and standards have been considered by the Commission in a prior Act 13 proceeding, *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Snyder Brothers, Inc.*, Docket No. C-2014-2402746 (Order entered June 11, 2015) at 59-68, and are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa. Code § 69.1201(c)(1)-(10).

18. When applied in settled cases, the *Rosi* factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa. Code § 69.1201(b). The parties in settled cases will

be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. *Id.*

19. Taking into consideration all of the *Rosi* factors, the Settlement is in the public interest.

**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	:	

**JOINT PROPOSED ORDERING PARAGRAPHS
IN SUPPORT OF SETTLEMENT**

1. That the Joint Petition for Approval of Settlement filed on April 12, 2019 at Docket No. C-2017-2599145 by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Xtreme Energy Company is hereby approved in its entirety without modification.
2. That the following previously served written testimony and associated exhibits are admitted into the record of this proceeding:
 - Direct Testimony of Amy R. Zuvich – Bureau of Investigation and Enforcement Statement No. 1;
 - Rebuttal Testimony of Michael Hahn – Xtreme Energy Company Statement No. 1; and
 - Surrebuttal Testimony of Amy R. Zuvich – Bureau of Investigation and Enforcement Statement No. 1-SR.
3. That the Motion to Compel Production of Document Requested by Set III-9 filed by Xtreme Energy Company on December 28, 2018 is hereby withdrawn.
4. That, in accordance with Section 2303 of Act 13, 58 Pa.C.S. § 2303, and within thirty (30) days of the date this Order becomes final, Xtreme Energy Company shall pay Sixty-Five Thousand, Six Hundred Dollars (\$65,600) related to impact fees and administrative charges

related to the 2014, 2015 and 2016 calendar years. Said payment shall be made by: (1) certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number of this proceeding, C-2017-2599145, indicated on the payment, and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120;

Or (2) wire transfer directly to the Commonwealth of Pennsylvania utilizing wire transfer instructions provided by I&E to Xtreme.

5. That, in accordance with Section 2308(a) of Act 13, 58 Pa.C.S. § 2308(a), and within thirty (30) days of the date this Order becomes final, Xtreme Energy Company shall pay interest in the amount of One Thousand, Five Hundred and Nine Dollars (\$1,509). Payment shall be made in the manner set forth in Paragraph 3, *supra*.

6. That, in accordance with Section 2308(b) of Act 13, 58 Pa.C.S. § 2308(b), and within thirty (30) days of the date this Order becomes final, Xtreme Energy Company shall pay a penalty in the amount of Twelve Thousand, Five Hundred and Seventy-Five Dollars (\$12,575). Payment shall be made in the manner set forth in Paragraph 3, *supra*.

7. That, in accordance with Section 2310 of Act 13, 58 Pa.C.S. § 2310, and within thirty (30) days of the date this Order becomes final, Xtreme Energy Company shall pay an administrative civil penalty in the amount of Fifteen Thousand Dollars (\$15,000). Payment shall be made in the manner set forth in Paragraph 3, *supra*.

8. That Xtreme Energy Company shall cease and desist from violating Act 13, 58 Pa.C.S. §§ 2301 *et seq.*, and shall submit Act 13 reports, disputes and applicable payments by April 1 of each year.

9. That, upon fulfillment of the conditions set forth in Paragraph 32(A)-(D) of the Joint Petition for Approval of Settlement, the Complaint filed by the Pennsylvania Public Utility

Commission's Bureau of Investigation and Enforcement shall be marked satisfied and the above-captioned matter shall be marked closed.

10. That copy of this Opinion and Order shall be served upon the Bureau of Administration.

for sale, profit or commercial use in the Commonwealth. I&E alleged in the Complaint that Xtreme failed to comply with Section 2303(c) of Act 13, 58 Pa.C.S. § 2303(c), by not paying impact fees and administrative charges imposed under Act 13 for its two unconventional gas wells operating in Pennsylvania related to the 2014 and 2015 calendar years. I&E's Complaint originally requested that Xtreme be ordered to pay past due impact fees and administrative charges associated with the 2014 and 2015 calendar years in the amount of \$70,600, as well as statutory interest and penalties totaling \$19,768. I&E also requested that Xtreme be ordered to pay an administrative civil penalty of \$21,180 for a total amount due of \$111,548.

On May 18, 2017, after receiving a ten-day extension of time to respond, Xtreme filed an Answer and New Matter denying the various material averments of I&E's Complaint. Xtreme denied being the producer responsible for compliance with Act 13 obligations related to the payment of impact fees and administrative charges for the 2014 and 2015 calendar years. Xtreme also argued that one of its wells identified in the Complaint qualified as a stripper well¹ and was not subject to the Act 13 impact fee.

On June 6, 2017, I&E filed a Reply denying the averments raised in Xtreme's New Matter.

Pursuant to the directive of the presiding officer, Deputy Chief Administrative Law Judge ("DCALJ") Joel H. Cheskis, the parties submitted memoranda of law on June 4, 2018 concerning two issues: (1) whether a hearing in this matter should be conducted with live testimony or pre-served written testimony; and (2) whether the proceeding should be held in

¹ Act 13 provides that the impact fee is suspended on wells that do not produce natural gas in quantities greater than that of a stripper well. 58 Pa.C.S. § 2302(b.1). Stripper well is defined as an unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day during any calendar month. 58 Pa.C.S. § 2301.

abeyance pending the Supreme Court of Pennsylvania's decision in *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm'n*, 198 A.3d 1056 (Pa. 2018) ("*Snyder Brothers*"), which consisted of a challenge to the Commission's interpretation of the production levels of stripper wells.²

By prehearing order dated June 25, 2018, the presiding DCALJ determined that the matter will not be held in abeyance pending the Supreme Court's decision in *Snyder Brothers* and requested that the parties submit an agreed upon schedule for litigating the matter, including the submission of pre-served written testimony.

On September 4, 2018, I&E filed an Amended Complaint updating allegations against Xtreme to include violations pertaining to the 2016 calendar year. I&E's Amended Complaint requested that Xtreme be ordered to pay past due impact fees and administrative charges related to the 2014, 2015 and 2016 calendar years in the amount of \$100,900 plus statutory interest and penalties of \$28,252. I&E also requested that Xtreme be ordered to pay an administrative civil penalty of \$31,770, for a total amount due of \$160,922. Additionally, on September 4, 2018, I&E served I&E Statement No. 1, the written Direct Testimony of Amy R. Zuvich of the Commission's Bureau of Administration, who served as I&E's witness in this proceeding.

On September 26, 2018, Xtreme submitted payment related to one of its wells, Well No. 111-20277 (Hillegass), for the 2016 calendar year.

On September 27, 2018, Xtreme filed an Answer and New Matter in response to I&E's Amended Complaint denying the various material averments made by I&E.

² On December 28, 2018, the Supreme Court of Pennsylvania issued a decision agreeing with the Commission's interpretation regarding the production levels of stripper wells and decided that the Act 13 impact fee will be imposed on unconventional gas wells with production exceeding 90,000 cubic feet of natural gas per day for even one (1) month of the year.

On October 16, 2018, Xtreme served Xtreme Statement No. 1, the written Rebuttal Testimony of Michael Hahn, Xtreme's witness in this proceeding.

On October 17, 2018, I&E filed a Reply to Xtreme's New Matter.

On October 24, 2018, Xtreme filed a Motion for Protective Order seeking to prohibit disclosure of certain financial information the Company deemed proprietary. Xtreme's Motion was granted by order of the presiding DCALJ dated October 25, 2018.

On November 16, 2018, I&E served I&E Statement No. 1-SR, the written Surrebuttal Testimony of Amy R. Zuvich.

By Hearing Notice dated December 7, 2018, an evidentiary hearing was scheduled for January 9 and 10, 2019.

On December 28, 2018, Xtreme filed a Motion to Compel production of a discovery request to which I&E had objected on the basis that it sought a privileged attorney-client communication. On January 2, 2019, I&E filed an Answer to Xtreme's Motion to Compel defending its position that the material sought is privileged.

On January 7, 2019, the Parties announced to DCALJ Cheskis that they had reached a settlement-in-principle with respect to I&E's Complaint proceeding. Xtreme verbally agreed to withdraw its Motion to Compel and the litigation schedule was suspended. By Notice dated January 8, 2019, DCALJ Cheskis cancelled the evidentiary hearing.

On April 12, 2019, I&E and Xtreme (collectively, the "Parties") filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Xtreme in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant I&E Complaint proceeding.

I&E intended to prove the factual allegations set forth in its Complaint at hearing, to which the Company would have disputed. In particular, the Xtreme would have alleged that it was not responsible for impact fees and administrative charges related to the 2014 and 2015 calendar year and that the responsibility to pay these amounts belonged to the prior operator of the wells, which filed for bankruptcy. Xtreme would have further alleged that it disputed payment for one of the wells that it operates related to the 2016 calendar year by virtue of contesting I&E's allegations in this proceeding.

This Settlement Agreement results from the compromises of the Parties. Although I&E and Xtreme may disagree with respect to I&E's factual allegations, the Company recognizes the need to prevent similar allegations from reoccurring by filing Act 13 reports and paying impact fees. Moreover, this Settlement is a "black box," meaning that the parties, after considerable effort, have been able to agree on the amount of impact fees, administrative charges, interest and penalties that Xtreme will pay to amicably resolve the matter. The Settlement Agreement does not specify calculations as to how these amounts were reached, which allowed that the Parties to move forward in resolving certain disputed issues.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits of amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a

reasonable compromise of the issues presented and is in the public interest as it collects impact fees, administrative charges, interest and two types of penalties from Xtreme. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and Xtreme have agreed as follows:

- A. Respondent will pay past due impact fees and administrative charges related to Well No. 111-20277 (Hillegass) and Well No. 111-20272 (Menhorn) in the amount of Sixty-Five Thousand, Six Hundred Dollars (\$65,600) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. Payment of the impact fees and administrative charges, as well as the remaining monetary terms of Paragraph 33 of the Settlement, shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number of this proceeding, C-2017-2599145, indicated on the payment, and sent to:
- Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 Commonwealth Keystone Building
 400 North Street
 Harrisburg, PA 17120
- B. Respondent will pay interest, pursuant to 58 Pa.C.S. § 2308(a), in the amount of One Thousand, Five Hundred and Nine Dollars (\$1,509) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. The interest shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
- C. Respondent will pay a penalty (hereinafter referred to as "Act 13 penalty"), pursuant to 58 Pa.C.S. § 2308(b), in the amount of Twelve Thousand, Five Hundred and Seventy-Five Dollars (\$12,575) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. The Act 13 penalty should not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
- D. Respondent will pay an administrative civil penalty, pursuant to 58 Pa.C.S. § 2310, in the amount of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. The administrative civil penalty should not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
- E. I&E agrees to forego prosecuting Respondent, including seeking the imposition of interest, Act 13 penalties and administrative civil penalties, for any late payments

related to the impact fee and administrative charge for Well No. 111-20277 (Hillegass) for the 2017 calendar year.

- F. Respondent and I&E agree that the Supreme Court of Pennsylvania's decision in *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm'n*, 198 A.3d 1056 (Pa. 2018) is dispositive as to Well No. 111-20272 (Menhorn).
- G. Respondent agrees to timely pay the amounts set forth in any invoice sent by the Commission with respect to Well No. 111-20272 (Menhorn) related to the 2017 calendar year. Upon timely payment of this invoice, I&E agrees to forego from prosecuting Xtreme, including seeking the imposition of interest, Act 13 penalties and administrative civil penalties, with respect to any issue regarding the timeliness of Xtreme's Act 13 report and dispute concerning Well No. 111-20272 (Menhorn) related to the 2017 calendar year.
- H. Respondent agrees that it will cease and desist from violating Act 13 and will submit Act 13 reports, disputes and applicable payments by April 1 of each year.
- I. Xtreme agrees that if it fails to comply with a Commission Order that approves any settlement of this matter, the Company will be subject to the remedies set forth in Act 13, including, *inter alia*, a lien placed on its property pursuant to 58 Pa.C.S. § 2308(e), contempt proceedings in Commonwealth Court pursuant to 58 Pa.C.S. § 2309(b), and suspension of well permits pursuant to 58 Pa.C.S. § 2308(c).
- J. The following written testimony and associated exhibits served in this case shall be deemed admitted into the record of this proceeding:
- Direct Testimony of Amy R. Zuvich – I&E Statement No. 1;
 - Rebuttal Testimony of Michael Hahn – Xtreme Statement No. 1; and
 - Surrebuttal Testimony of Amy R. Zuvich – I&E Statement No. 1-SR.

In consideration of Xtreme's payment of impact fees and administrative charges, interest, an Act 13 penalty and an administrative penalty, and upon Commission approval of the Settlement in its entirety without modification, I&E agrees that it shall be deemed to have released Xtreme from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Xtreme failed to comply with the obligations set forth in Act 13 for the 2014, 2015 and 2016 calendar years, which are the time periods covered by I&E's Complaint. Nothing contained in this Settlement Agreement shall affect the

Commission's authority to receive and resolve any future formal or informal complaints filed by any affected party related to the allegations set forth in I&E's Complaint.

Upon submission of the payments set forth in Paragraph 33(A)-(D) in the Settlement Agreement, I&E's Formal Complaint shall be deemed satisfied and the matter shall be marked closed.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or

statute over which the Commission has jurisdiction is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission previously examined the ten (10) factors set forth in the Policy Statement in determining the applicability of an administrative civil penalty on an Act 13 producer. *See Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Snyder Brothers, Inc.*, Docket No. C-2014-2402746 (Order entered June 11, 2015) (hereinafter referred to as “*Snyder Brothers Commission Order*”). Accordingly, application of the same factors is appropriate here.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

Act 13 further provides that an administrative civil penalty may be assessed by the Commission in the amount of \$2,500 per violation of Act 13. 58 Pa.C.S. § 2310(a). In determining the amount of the penalty, Act 13 requires the Commission to consider the willfulness of the violation as well as other relevant factors. *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. 52 Pa. Code § 69.1201(c)(1). Conduct of a more serious nature may warrant a higher penalty. *Id.* While the alleged misconduct in the instant matter involves failing to submit administrative filings and pay fees, the General Assembly has determined that impact fees are necessary to reimburse municipalities for the local impacts of drilling and the submission of the Act 13 report establishes the amount of the fee that each producer will pay.

Thus, the filing of the Act 13 report and payment of the impact fee are mandatory and crucial to localities impacted by drilling.

Further, I&E was prepared to demonstrate at hearing that the Bureau of Administration made a substantial and time-consuming effort to communicate with Xtreme and attempt to induce the Company into complying with Act 13 over a period of a couple of years, and that I&E's effort and communications were ignored by Xtreme. As such, I&E submits that the alleged conduct included an element of willfulness. Accordingly, the alleged conduct was considered in arriving at the administrative civil penalty of \$15,000 in the Settlement Agreement.

The second factor considered is whether the resulting consequences of Xtreme's alleged conduct were of a serious nature. 52 Pa. Code § 69.1201(c)(2). When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. *Id.* While no personal injury or property damage took place, financial consequences ensued. Had this matter been fully litigated, I&E was prepared to argue that the Commission was unable to promptly disburse approximately \$100,600 in impact fees since 2015 due to Xtreme's failure to timely pay the fees related to the 2014, 2015 and 2016 calendar years.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether Xtreme's alleged conduct was intentional or negligent does not apply since this matter is being resolved by Settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). On April 10, 2018, Xtreme submitted an Act 13 report related to the 2017 calendar year, which had amended the initial report prepared by the Bureau of Administration to dispute impact fees

related to Well No. 111-20272 (Menhorn) on the basis that the well was a stripper well. On April 9, 2019, Xtreme submitted an Act 13 report for the 2018 calendar year. Thus, Xtreme is currently compliant with respect to Act 13 reporting requirements.

On September 26, 2018, Xtreme submitted full payment of impact fees related to the 2016 and 2017 calendar years for Well No. 111-20277 (Hillegass). On April 9, 2019, Xtreme submitted payment for Well No. 111-20272 (Menhorn) related to the 2017 calendar year as Xtreme's dispute was resolved by the Pennsylvania Supreme Court's decision in *Snyder Brothers*.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Utility customers in the traditional sense were not affected by Xtreme's conduct. Local municipalities impacted by drilling were distributed less money in a timely manner due to Xtreme's alleged failure to pay impact fees. Had this matter been litigated, I&E would have argued that Xtreme's violations began on April 1, 2015 for conduct related to the 2014, 2015 and 2016 calendar years.

The sixth factor to be considered relates to the compliance history of the Company. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Xtreme does not have a history of compliance or non-compliance at the Commission since it is a relatively new producer with its affiliate having acquired two wells in Pennsylvania with an effective date of February 19, 2015. The instant action is the first enforcement action filed by I&E against Xtreme.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active

concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.” *Id.* No investigation was required for the purposes of this matter, which involved a failure to submit administrative filings and pay applicable fees.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* Xtreme operates two wells in Pennsylvania with moderate production levels. I&E submits that an administrative civil penalty of \$15,000 is fair and reasonable when compared to the Act 13 interest and penalties set forth in the Settlement, which total \$14,084, and is substantial and sufficient to deter future violations given the size of Xtreme’s operations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). Only one other matter involves a Commission decision regarding an Act 13 enforcement matter. *See Snyder Brothers Commission Order*. In that proceeding, the Commission declined to impose an administrative civil penalty on Snyder Brothers finding that there was “no evidence of bad faith” or “willful misconduct.” *Snyder Brothers Commission Order* at 59, 61. Rather, the Commission characterized Snyder Brothers’ actions as “an attempt to resolve its conflicting interpretation of Act 13 coupled with a willingness to pay the undisputed impact and administrative fees.” *Id.* at 61. I&E submits that the instant matter is distinguishable in that I&E alleges Xtreme was unwilling to provide Act 13 reports and remit impact fee payments, and did not dispute the impact fees that were imposed for the 2014, 2015 and 2016 calendar years. Thus, the \$15,000 agreed-upon administrative civil penalty here serves to distinguish the conduct described in the *Snyder Brothers Commission Order* and represents a harsh penalty within the parameters of Section 2310(a) of Act 13, 58 Pa.C.S. § 2310(a).

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Honorable Deputy Chief Administrative Law Judge recommend approval of, and the Commission approve by Final Order, the Joint Petition for Approval of Settlement, including all the terms and conditions set forth therein without modification.

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
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
stwimer@pa.gov
mwindler@pa.gov

Dated: April 19, 2019

be approved is not a “burden of proof” standard, as is utilized for contested matters.² Rather, the Commission reviews settlements to determine whether the terms are in the public interest.³

This Settlement fully satisfies the Formal Complaint filed by I&E against Xtreme on April 12, 2017 and the Amended Formal Complaint filed by I&E against Xtreme on September 4, 2018 (“Complaint”) in the above-captioned matter. Specifically, the Settlement resolves contentious and complex issues that were raised in this proceeding concerning alleged violations of Chapter 23 of Act 13, 58 Pa.C.S. §§ 2301 *et seq.* and the appropriate level of impact fees, administrative charges, interest, Act 13 penalties and administrative civil penalties that should be paid in connection with two unconventional gas wells operated by Xtreme. In doing so, the Settlement provides for a fair and reasonable resolution of those issues, and it is in the public interest. Xtreme respectfully requests that the Commission approve the Settlement without modification.

II. SUMMARY OF COMPLAINT AND SETTLEMENT

The Complaint involves allegations concerning the payment of impact fees and administrative charges for calendar years 2014, 2015 and 2016 for two unconventional gas wells owned by Xtreme’s affiliate, Onshore Royalties, LLC (“Onshore”) and operated by Xtreme in Pennsylvania. Xtreme received a permit from the Department of Environmental Protection (“DEP”) on April 20, 2015 to operate Well No. 111-20272, known as the Menhorn well. Xtreme received a permit from DEP on April 23, 2015 to operate Well No. 111-20277, known as the Hillegass well.

² *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

³ *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

During the proceeding, Xtreme challenged its responsibility for the payment of impact fees and administrative charges for either the Menhorn or Hillegass well for calendar years 2014 and 2015, citing the ownership change in February 2015 and the issuance of the DEP permits after April 1, 2015. Based upon Xtreme's interpretation of Act 13, it has contended that the prior owner continued to maintain responsibility for the payment of impact fees and administrative charges until calendar year 2016.

In addition, throughout much of the proceeding, Xtreme had maintained that the daily production data for the Menhorn well qualified it for the "stripper well" exemption that is set forth in Act 13. While this proceeding was pending, the Pennsylvania Supreme Court issued the decision in *Snyder Brothers, Inc. v. Pa. Public Utility Comm'n*, 198 A.3d 1056 (Pa. 2018), which Xtreme agrees is dispositive of its dispute concerning the Menhorn well. Therefore, Xtreme would not have continued to pursue that challenge.

Under the Settlement, Xtreme is making substantial monetary commitments, which include: (i) payment of impact fees and administrative charges for the two wells in the amount of \$65,600; (ii) payment of interest in the amount of \$1,509; (iii) payment of an Act 13 civil penalty in the amount of \$12,575; and (iv) payment of an administrative civil penalty in the amount of \$15,000. While Xtreme continues to dispute its legal responsibility for the payment of these amounts for calendar years 2014 and 2015 due to the change in ownership of the wells, it has agreed to make these commitments because of the benefits of amicably resolving the disputed issues through this Settlement.

Particularly given the uneconomic nature of operating the Menhorn well because of its low production levels as compared to the magnitude of the impact fees, Xtreme respectfully submits that the agreement to pay this level of impact fees, administrative charges, interest, Act 13 civil

penalty and administrative civil penalty should be approved by the Commission in full satisfaction of I&E's Complaint. The Settlement also negates the need for the Commission to address and resolve the issues raised in this proceeding and to potentially defend them in subsequent appellate litigation. In this manner, the Settlement avoids the uncertainty of litigation and the associated time and costs of litigation for Xtreme, I&E and the Commission.

III. APPLICATION OF POLICY STATEMENT FACTORS

An application of the factors and standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201 shows that the Settlement in this proceeding is in the public interest. The Policy Statement, which sets forth various factors and standards that are used in evaluating settled cases, is a codification of the Commission's decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000). These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest.⁴ Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict of a fashion to settled cases, and the parties in settled cases are afforded flexibility in reaching amicable resolutions to complaints as long as the settlement is in the public interest.⁵ The Settlement's provision for the payment of an administrative civil penalty in the amount of \$15,000 sufficiently addresses the issues raised in this proceeding, particularly when considered in connection with the payment of \$65,600 in impact fees, a significant portion of which continues to be disputed, and the payment of an Act 13 penalty in the amount of \$12,575.

⁴ 52 Pa. Code §69.1201(a).

⁵ 52 Pa. Code §69.1201(b).

A. Factor One – Nature of Allegations

The first factor that is considered under the Policy Statement is whether the allegations were of a serious nature, such as willful fraud or misrepresentation, as opposed to administrative or technical errors.⁶ Although the timely payment of impact fees by unconventional gas well producers are critical to the Commission's distribution of funds under Act 13, Xtreme submits that any conduct that would have been determined to constitute a violation was the result of administrative errors rather than willful fraud or misrepresentation.

1. Lack of Familiarity with Act 13

Initially, Xtreme's witness, Michael Hahn, testified that Xtreme was not familiar with Act 13 or impact fees in Pennsylvania when the wells were acquired by its affiliate, Onshore. Specifically, Xtreme was not aware of the Commission's Act 13 website, had not been served by the Commission's Act 13 implementation orders and received no information from the Commission when the Department of Environmental Protection ("DEP") issued the permits. According to Mr. Hahn's testimony, Xtreme was not aware of the possibility that it may be obligated to pay impact fees pursuant to Act 13 until it received the Complaint that was served by the Secretary of the Commission on April 17, 2017. Mr. Hahn explained that in conducting due diligence to acquire the properties, Xtreme relied on its historical experience as a producer in ten different states, which included a review of tax implications, such as severance taxes that are assessed on natural gas production. However, the due diligence process did not uncover the Act 13 impact fees since they are not characterized as tax. He noted that because no other state in which Xtreme has operated or currently operates has an "impact fee," this particular inquiry was

⁶ 52 Pa. Code §69.1201(c)(1).

not made.⁷ This testimony suggests the conduct underlying the Complaint was not of a nature as to be characterized as willful fraud or misrepresentation.

2. Legitimate Challenges to Responsibility for Payment of Act 13 Fees

Further, it is important to recognize that upon receiving I&E's Complaint, Xtreme engaged Pennsylvania counsel and timely responded by raising specific challenges to the allegations contained in the Complaint.⁸ Those challenges were later supported by Xtreme's testimony.

a. *Ownership Change*

Specifically, Mr. Hahn testified that Onshore did not complete a purchase of the wells until the transaction was closed on February 19, 2015.⁹ For at least all of 2014, Samson Energy Corp. ("Samson"), the prior owner, was still the operator of the wells.¹⁰ Further, Samson's operation of the wells continued into 2015, as the Department of Environmental Protection ("DEP") did not issue permits to Xtreme to operate the wells until April 20, 2015 and April 23, 2015.¹¹ Therefore, it is Xtreme's position that it had no Act 13 obligations until calendar year 2016.

As Xtreme did not operate the well in 2014, it did not have the production data or earn any revenues.¹² Additionally, the Commission has indicated that the producer who is responsible for filing the report on April 1 of a given year is responsible for paying the impact fee related to operations that occurred during the prior calendar year.¹³ As Mr. Hahn explained, given that Xtreme did not start operating the wells until 2015, it makes no sense to view Xtreme as the producer who is responsible for filing the report on April 1, 2015 for the preceding calendar year.¹⁴

⁷ Xtreme Statement No. 1 at 6-7.

⁸ Xtreme Statement No. 1 at 11-12.

⁹ Xtreme Statement No. 1 at 3-4.

¹⁰ Xtreme Statement No. 1 at 3-4, 16.

¹¹ Xtreme Statement No. 1 at 5; Xtreme Exhibit 2.

¹² Xtreme Statement No. 1 at 15.

¹³ Xtreme Statement No. 1 at 17.

¹⁴ Xtreme Statement No. 1 at 17.

With respect to calendar year 2015, Xtreme noted that Act 13 does not provide guidance for handling the scenario where multiple entities operate a well in a given calendar year. Moreover, 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 would result in the over-collection of Act 13 impact fees and administrative charges by the Commission.¹⁵ As Mr. Hahn noted, Act 13 does not: (i) authorize the Commission to impose a reporting requirement or impact fee on an entity that assumes the operation of a previously spud unconventional gas well during or after January 1 of the particular calendar year; (ii) contain any provision requiring an entity that assumes the role of operator of a previously spud unconventional gas well during or after January 1 of the particular year to file reports or make impact fee payments for that calendar year; or (iii) 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 or after January 1 of the particular calendar year.¹⁶

If this matter had continued to be litigated, Xtreme would have argued that absent any guidance in Act 13 for how to assign responsibility for reporting and payment obligations when two or more entities operate a well during a given calendar year, the most reasonable approach is to assign such responsibility to the operator of record as of January 1 of the particular calendar year.¹⁷ In Xtreme's view, this approach is consistent with the framework of Act 13, which is based on calendar years beginning January 1, 2012.¹⁸ For example, Act 13 requires the

¹⁵ Xtreme Statement No. 1 at 18.

¹⁶ Xtreme Statement No. 1 at 18.

¹⁷ Xtreme Statement No. 1 at 19-20.

¹⁸ 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*, Docket No. L-2013-2375551 (Proposed Rulemaking Order entered October 17, 2013).

Commission to annually adjust the fee amounts beginning on January 1, 2013 to reflect any upward changes in the Consumer Price Index, for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months.¹⁹ If the Commission had accepted this argument to use the January 1 reset provisions of Act 13 as a basis for using January 1 of each year to assign responsibility for reporting and payment obligations, Xtreme would have owed no impact fees for either well for the calendar years of 2014 and 2015.

b. *Stripper Well Exemption*

Additionally, Xtreme challenged payment of the impact fees and administrative charges for the Menhorn well for all three years in dispute on the basis that the well produced less than 90,000 cubic feet of gas per day during certain calendar months and is therefore a stripper well and is not subject to payment of those fees.²⁰ Xtreme's position was consistent with the Commonwealth Court decision reversing the prior Commission holding.²¹ Xtreme acknowledges that the Pennsylvania Supreme Court has since overruled the Commonwealth Court and reinstated the Commission's original views concerning the stripper well definition, which are consistent with I&E's position in this proceeding.²² Indeed, Xtreme has agreed as part of the Settlement that the Supreme Court's decision is dispositive of the issues that it raised during this proceeding.²³ That legal outcome, however, does not change the fact that Xtreme had a legitimate basis upon which to challenge the Commission's invoicing of the Menhorn well, particularly since Xtreme's position was consistent with the prevailing law as espoused by the Commonwealth Court. In fact, as

¹⁹ 58 Pa.C.S. §2302(c).

²⁰ Xtreme Statement No. 1 at 12; 58 Pa.C.S. §2301.

²¹ *Snyder Brothers, Inc. v. Pa. Public Utility Comm'n*, 157 A.3d 1018 (Pa. Cmwlth. 2017), 2017 Pa. Commw. LEXIS 92. During most of this proceeding, appeals were pending in the Pennsylvania Supreme Court at 47 and 48 WAP 2017.

²² *Snyder Brothers, Inc. v. Pa. Public Utility Comm'n*, 198 A.3d 1056 (Pa. 2018).

²³ Settlement, ¶33F.

Xtreme's witness further explained, the Commonwealth Court's interpretation of the stripper well exemption makes sense from a business perspective. Specifically, as shown by the confidential data submitted by Mr. Hahn, it would be uneconomic to operate a well that produces less than 90,000 cubic feet of gas per day in any calendar month and pay the impact fees of the magnitude imposed by the Commission pursuant to Act 13.²⁴

B. Second Factor – Consequences of Alleged Actions

The second factor that is evaluated under the Policy Statement is whether the resulting consequences of the alleged actions were of a serious nature, such as whether personal injury or property damage was involved.²⁵ No allegations have been raised about personal injury or damage. Indeed, as Mr. Hahn testified, it is difficult to envision consequences of a violation of Act 13 involving \$109,000 in impact fees and administrative charges being of a serious nature when the Commission oversees the safe, reliable and adequate provision of public utility services that have the potential to cause significant personal injury and property damage.²⁶ Therefore, this mitigating factor supports the negotiated civil penalty.

C. Third Factor – Intentional vs. Negligent

The third factor identified by the Policy Statement is whether the conduct at issue was deemed intentional or negligent.²⁷ Since this factor is only considered in evaluating litigated cases, it is not relevant in reviewing the Settlement.

²⁴ Xtreme Statement No. 1 at 13-14; Xtreme Exhibit 3.

²⁵ 52 Pa. Code §69.1201(c)(2).

²⁶ Xtreme Statement No. 1 at 29.

²⁷ 52 Pa. Code §69.1201(c) (3).

D. Fourth Factor – Modifications to Internal Practices and Procedures

The fourth factor that is considered under the Policy Statement is whether Xtreme has made efforts to modify its internal practices and procedures to address the allegations at issue and prevent similar conduct in the future. These modifications may include improving company techniques.²⁸ In April 2018, Xtreme modified its procedures by using the Commission's dispute process to challenge the Menhorn impact fee for the 2017 calendar year rather than awaiting the initiation of an I&E proceeding or the filing of another amended complaint.²⁹ Xtreme also paid the fee for the Hillegass well for the 2016 and 2017 calendar years while this proceeding was pending.³⁰ Additionally, Xtreme has paid the Menhorn impact fee for the 2017 calendar year as invoiced by the Commission following issuance of the *Snyder Brothers* decision by the Pennsylvania Supreme Court.³¹ Further, Xtreme has submitted its Act 13 report for calendar year 2018.³² On the basis of these facts, Xtreme submits that this factor supports the negotiated civil penalty.

E. Fifth Factor – Number of Affected Customers/Duration of Alleged Violations

The fifth factor that is evaluated under the Policy Statement is the number of customers who were affected and the duration of the alleged violations.³³ Here, no customers were affected. While the Commission's distribution of funds from impact fees was delayed, the amount in dispute is relatively small considering the amount of funds that were distributed by the Commission during the years in question. Specifically, the Act 13 revenues were over \$223 million in 2014-2015.³⁴

²⁸ 52 Pa. Code §69.1201(c) (4).

²⁹ I&E Statement No. 1 at 36.

³⁰ Xtreme Statement No. 1 at 20-22; Xtreme Exhibit 6.

³¹ Settlement, Appendix A, Proposed Finding of Fact No. 19 (I&E and Xtreme Stipulation).

³² Settlement, Appendix A, Proposed Finding of Fact No. 20 (I&E and Xtreme Stipulation).

³³ 52 Pa. Code §69.1201(c) (5).

³⁴ Xtreme Statement No. 1 at 9.

Upon Xtreme's payment of the disputed amount, those funds will be available for distribution in a manner that is consistent with Act 13.

F. Sixth Factor – Compliance History

The sixth factor is the compliance history of Xtreme. As this proceeding is Xtreme's first encounter with the Commission where violations were alleged, this factor weighs in favor of the negotiated civil penalty.

G. Seventh Factor – Cooperation

The seventh factor that is considered under the Policy Statement is whether Xtreme cooperated with the Commission's informal investigation.³⁵ As no informal investigation was conducted in this proceeding, this factor is not relevant. Although Xtreme acknowledges that it did not use the Commission's prescribed "dispute process" until April 2018, it notes that this particular process was not mandated by Act 13 or by regulations promulgated by the Commission.³⁶ Moreover, if Xtreme had paid any of the fees that it was challenging and they had been distributed by the Commission, no refund would have been available.³⁷ The significant point is that when served with the Complaint, Xtreme set forth legitimate challenges to the allegations that it was required to pay impact fees and administrative charges for the wells in question.³⁸

H. Eighth Factor – Deter Future Violations

The eighth factor that is evaluated under the Policy Statement is the amount of civil penalty that is necessary to deter future violations.³⁹ The record shows that Xtreme is a small drilling and fracking company that employs five people, and for purposes of this proceeding, is an

³⁵ 52 Pa. Code §69.1201(c) (7).

³⁶ Xtreme Statement No. 1 at 22-23.

³⁷ Xtreme Statement No. 1 at 23-24.

³⁸ Xtreme Statement No. 1 at 28.

³⁹ 52 Pa. Code §69.1201(c) (8).

unconventional well producer operating two horizontal wells in Pennsylvania.⁴⁰ Additionally, Xtreme presented confidential information through Mr. Hahn to show the devastating financial effect that the penalties sought by I&E would have on its operations.⁴¹

I. Ninth Factor – Past Commission Decisions

Since the enactment of Act 13, only one other matter has been the subject of an enforcement action. As that case involved the interpretation of a stripper well, no civil penalty was imposed on the producer.⁴² This factor is of little significance in evaluating the negotiated civil penalty in this proceeding.

J. Tenth Factor – Other Relevant Factors

In summary, an evaluation of the factors in the Policy Statement shows that the Settlement is in the public interest and that it should be approved without modification. Xtreme had legitimate challenges to the imposition of impact fees and administrative charges with respect to one of the wells, which was only recently resolved by the Supreme Court's Snyder Brothers decision. Further, Xtreme continues to have valid reasons for disputing the imposition of Act 13 fees for calendar years in which it did not own or operate the wells. Not only does the Settlement sufficiently address the issues raised in this proceeding and fully satisfy I&E's Complaint, it avoids the uncertainty and attendant costs of litigation and allows Xtreme to focus on its unconventional gas well operations.

IV. CONCLUSION

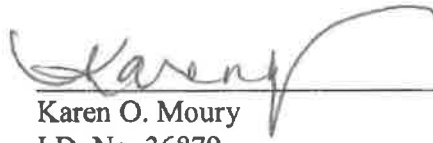
WHEREFORE, based upon the foregoing, Xtreme Energy Company respectfully requests that the Commission approve the Joint Petition for Approval of Settlement without modification.

⁴⁰ Xtreme Statement No.1 at 1.

⁴¹ Xtreme Statement No. 30-31; Xtreme Exhibit 11.

⁴² I&E Statement No. 1 at 47-48.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karen O. Moury", is written over a horizontal line.

Karen O. Moury
I.D. No. 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

Dated: April 19, 2019

Counsel for Xtreme Energy Company

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:

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

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
mwindler@pa.gov

Dated: April 19, 2019