



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 20, 2020

**VIA ELECTRONIC FILING**

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

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
West Texas Operating Company LLC d/b/a Xtreme Energy Company  
Docket No. C-2020-3018893  
**I&E Motion for Default Judgment**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's **Motion for Default Judgment** in the above-referenced proceeding. 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,

Stephanie M. Wimer  
Senior Prosecutor  
PA Attorney ID No. 207522  
Bureau of Investigation and Enforcement

SMW/ac  
Enclosures

cc: As per Certificate of Service  
Michael L. Swindler, Deputy Chief Prosecutor  
ra-OSA@pa.gov (Word version)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3018893
	:	
West Texas Operating Company LLC	:	
d/b/a Xtreme Energy Company,	:	
Respondent	:	

**NOTICE TO PLEAD**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion for Default Judgment in the above-captioned matter, pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code § 5.61.

Your Answer must be verified, pursuant to 52 Pa. Code § 1.36, and the original sent to:  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

Additionally, you must serve a copy on the undersigned prosecutor.



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

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 772-8839  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Dated: July 20, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3018893
	:	
West Texas Operating Company LLC	:	
d/b/a Xtreme Energy Company,	:	
Respondent	:	

**MOTION FOR DEFAULT JUDGMENT**

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, and files this Motion for Default Judgment against West Texas Operating Company LLC d/b/a Xtreme Energy Company (“Respondent”) pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103. In support thereof, I&E respectfully represents as follows:

1. I&E commenced this action on February 25, 2020 by filing a Complaint alleging that Respondent failed to pay impact fees and administrative charges, pursuant to 58 Pa.C.S. § 2303(c) of the Unconventional Gas Well Impact Fee Act (“Act 13”), for the wells Respondent operated in Pennsylvania during the 2017 and 2018 calendar years. The Complaint seeks payment of past due impact fees and administrative charges, payment of interest on the past due amounts pursuant to 58 Pa.C.S. § 2308(a), payment of a penalty of 25% of the amounts due pursuant to 58 Pa.C.S. § 2308(b), and the imposition of an administrative penalty of \$10,000 pursuant to 58 Pa.C.S. § 2310 due to the willfulness of Respondent’s violations as this is not the first occasion in which Respondent is the subject of an enforcement proceeding before the Commission related to delinquent Act 13 impact fees.

I&E hereby incorporates by reference the Complaint that it filed in this proceeding on February 25, 2020.

2. On the same date that I&E filed the Complaint, I&E e-mailed a courtesy copy of the Complaint to Michael Hahn, the Vice President of Operations at Xtreme, at the e-mail address routinely utilized by I&E and the Bureau of Administration to communicate with Xtreme: [mhahn@xeogc.com](mailto:mhahn@xeogc.com). This February 25, 2020 e-mail was not returned as being undeliverable and is thus presumed to have been received.

3. On February 26, 2020, the Complaint was sent by Secretarial Letter via certified mail to Respondent at 118 North Main Street, Suite F, Victoria, TX 77901.

4. The tracking information from the certified mailing indicates that Respondent did not receive the Complaint as Respondent moved and left no forwarding address.

5. On June 25, 2020, the Complaint was served by Secretarial Letter upon Respondent through e-mail at [mhahn@xeogc.com](mailto:mhahn@xeogc.com) pursuant to *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020) (providing that service by the Commission on parties shall be exclusively electronic during the pendency of Governor Wolf's Proclamation of Disaster Emergency).

6. Attached to the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days of service of the Complaint.

7. The Notice also advised Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

8. The Notice further provided Respondent with detailed instructions related to filing an answer to the Complaint and included the mailing address of the Secretary's Bureau.

9. The Notice also notified Respondent that if it is a corporation, it is required to be represented by legal counsel pursuant to 52 Pa. Code § 1.21.

10. This June 25, 2020 email was not returned as being undeliverable and is thus presumed to have been received.

11. The twenty (20) days to file an Answer to the Complaint expired on July 15, 2020.

12. Respondent did not file an Answer to the Complaint.

13. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

14. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

15. Respondent's failure to file an Answer to I&E's Complaint should not be treated gingerly merely because it did not secure legal representation. Respondent's election to appear *pro se* in a contested proceeding when it is a corporation is contrary to the Commission's regulation at 52 Pa. Code § 1.21(b), which provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania.

16. The Commission's regulation requiring attorney representation in adversarial proceedings is consistent with Pennsylvania court decisions holding that a corporation must have counsel in order to proceed in any legal action because a corporation cannot represent itself. *See Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994). *See also Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984) (holding that a corporation may appear in court only through an attorney at law admitted to practice before the court).

17. The Commission recently denied an untimely Petition for Reconsideration of a corporate respondent that failed to secure legal counsel in a complaint proceeding initiated by I&E. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. TRBZ Ink LLC*, Docket No. C-2017-2634538 (Order entered February 27, 2020). The corporate respondent sought reconsideration from a Secretarial Letter that sustained I&E's Complaint as the respondent failed to answer the Complaint. The Commission stated that "once I&E issued the Complaint and TRBZ LLC was notified of the consequences of failure to file an Answer, the proceeding became adversarial. Appropriately, the Notice transmitted with the Complaint expressly stated that, if TRBZ LLC was a corporation, it would need to be represented by legal counsel." *Id.* at 6.

18. The filing of I&E's Complaint triggered a contested proceeding. Respondent is a corporation, was notified of the requirement to obtain legal counsel and failed to do so to its own detriment.

19. Moreover, the instant enforcement proceeding is the second complaint matter initiated by I&E against Xtreme within a three-year time frame concerning Xtreme's failure to pay Act 13 impact fees. The prior case, *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Xtreme Energy Company*, Docket No. C-2017-2599145, was resolved by

the filing of a Joint Petition for Approval of Settlement on April 19, 2019, which was approved by the Commission by Final Order entered June 17, 2019 (hereinafter referred to as “June 17, 2019 Order”).

20. Notably, Respondent failed to adhere to *any* of the terms of the Commission-approved settlement in the proceeding docketed at C-2017-2599145 and the Commission collected \$0 in past due impact fees, administrative charges, interest and penalties despite ordering Respondent to pay the same.

21. I&E undertook several actions to enforce the Commission’s June 17, 2019 Order, including referring the matter to the Pennsylvania Department of Environmental Protection (“DEP”), which resulted in the suspension of Respondent’s well operating permits in Pennsylvania pursuant to 58 Pa.C.S. § 2308(c). *See* DEP’s October 9, 2019 Press Release at: [https://www.media.pa.gov/pages/DEP\\_details.aspx?newsid=1270](https://www.media.pa.gov/pages/DEP_details.aspx?newsid=1270). The suspension of Respondent’s well operating permits by DEP has not incentivized Respondent to pay past due impact fees, interest and penalties due to the Commission.

22. Pursuant to 58 Pa.C.S. § 2308(e), on August 30, 2019, I&E filed a Praecipe to Enter Judgment upon Pennsylvania Public Utility Commission Order before the Court of Common Pleas of Somerset County, thereby placing a lien on Respondent’s property in Somerset County for the non-payment of Act 13 impact fees, interest and penalties that I&E sought to collect in the proceeding docketed at C-2017-2599145. I&E served the Praecipe on Respondent’s former legal counsel and received no response.

23. On September 11, 2019, I&E also referred the matter to the Commission’s Law Bureau and recommended the initiation of a contempt proceeding before the

Commonwealth Court to seek enforcement of the Commission's June 17, 2019 Order, pursuant to 58 Pa.C.S. § 2309(b).

24. For the reasons set forth above, I&E's Complaint in the instant proceeding should be sustained. Respondent should not be afforded any leniency for its failure to comply with Commission procedural regulations as Respondent has demonstrated a pattern of routinely defying Act 13 and this Commission's Orders.

25. I&E respectfully requests that the Commission enter a Default Order against Respondent that directs Respondent to pay a total of \$88,754.50 as detailed below:

- a. Respondent be ordered to pay its past due impact fee and administrative charge related to the 2017 calendar year in the amount of \$20,350;
- b. Respondent be ordered to pay its past due impact fee and administrative charge related to the 2018 calendar year in the amount of \$40,700;
- c. Respondent be ordered to pay interest<sup>1</sup> at an interest rate of 4.0% of the amount due for a sum of \$2,442 pursuant to 58 Pa.C.S § 2308(a).
- d. Respondent be ordered to pay a penalty<sup>2</sup> of 25% of the amount due for a sum of \$15,262.50 pursuant to 58 Pa.C.S. § 2308(b).
- e. Respondent be ordered to pay an administrative civil penalty<sup>3</sup> of \$10,000 pursuant to 58 Pa.C.S. § 2310 given the willfulness of Respondent's violations; and

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<sup>1</sup> Act 13 provides that, for producers with delinquent fees, the Commission shall assess interest. 58 Pa.C.S. § 2308(a). For the calendar years 2017 and 2018, the interest rate was set at 4.0% pursuant to 61 Pa. Code § 4.2.

<sup>2</sup> Pursuant to 58 Pa.C.S. 2308(b), in addition to the assessed interest, the Commission shall add a penalty of 5% of the amount of the fee if the failure to timely pay 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.

<sup>3</sup> Pursuant to 58 Pa.C.S. § 2310, the Commission may assess civil penalties of up to \$2,500 for each unpaid impact fee for each day that a producer fails to make and continues to fail to make timely payment. In determining the amount of the penalty, the Commission shall consider the willfulness of the violation and other relevant factors.

- f. The Commission grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
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Date: July 20, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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West Texas Operating Company LLC	:	
d/b/a Xtreme Energy Company,	:	
Respondent	:	

**VERIFICATION**

I, Amy R. Zuvich, Chief of the Finance and Assessment Division of the Pennsylvania Public Utility Commission’s Bureau of Administration, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: July 20, 2020



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Amy R. Zuvich,  
Chief of Finance and Assessments  
Finance and Assessment Division  
Bureau of Administration  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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West Texas Operating Company LLC	:	
d/b/a 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).

Notification by Electronic Mail:

Michael Hahn  
West Texas Operating Company LLC  
d/b/a Xtreme Energy Company  
118 North Main Street, Suite F  
Victoria, TX 7790  
[mhahn@xeogc.com](mailto:mhahn@xeogc.com)



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

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
Harrisburg, PA 17120  
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Dated: July 20, 2020