



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

IN REPLY PLEASE
REFER TO OUR FILE

November 13, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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-
I&E Formal Complaint

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Formal Complaint of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced matter.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie M. Wimer", written in a cursive style.

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

SMW/jfm
Enclosure

cc: Michael L. Swindler, Deputy Chief Prosecutor, Bureau of Investigation & Enforcement
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. Pursuant to *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 20, 2020), you must eFile your Answer using the Commission’s website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage.

Additionally, please electronically serve a copy on:

Stephanie M. Wimer, Senior Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
stwimer@pa.gov

B. If you fail to answer this Complaint within twenty (20) days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the civil penalty and other requested relief.

C. You may elect not to contest this Complaint by paying the civil penalty within twenty (20) days and performing the corrective actions set forth in the requested relief. A certified check, cashier’s check or money order should be payable to the “Commonwealth of Pennsylvania” and mailed to:

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

Your payment is an admission that you committed the alleged violations and an agreement to cease and desist from committing further violations. Upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer, which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the civil penalty and granting the requested relief as set forth in the Complaint.

E. If you file an Answer which contests the Complaint, the matter will proceed before the assigned presiding Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at (717) 787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**FORMAL COMPLAINT
and
NOTICE OF AMOUNT DUE**

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”), Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 2307(b) of Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (“Act 13” or “Act”), 58 Pa.C.S. §§ 2301-2318, and files this Formal Complaint and Notice of Amount Due (“Complaint”) against West Texas Operating Company LLC d/b/a Xtreme Energy Company (“Xtreme Energy” or “Respondent”) alleging violations of Act 13 related to the 2019 calendar year. In support of its Complaint, I&E respectfully represents the following:

I. PARTIES AND JURISDICTION:

1. The Pennsylvania Public Utility Commission (“Commission”), with a mailing address of 400 North Street, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to make all inquiries and determinations necessary to calculate and collect the fee, administrative charges and assessments imposed under Act 13, including, if applicable, interest and penalties.

2. Complainant's prosecuting attorneys are as follows:

Stephanie M. Wimer
Senior Prosecutor
stwimer@pa.gov
(717) 772-8839

Michael L. Swindler
Deputy Chief Prosecutor
mswindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. Respondent is an unconventional gas well producer, as defined in Section 2301 of Act 13, 58 Pa.C.S. § 2301, with a main mailing address of P.O. Box 2326, Victoria, TX 77902-2326, Attn. Michael Hahn.

4. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this Complaint and the actions of Respondent related thereto.

II. BACKGROUND:

5. Chapter 23 of Act 13 authorizes the Commission to collect, administer and distribute fees collected from unconventional gas well producers.¹

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.*

6. Impact fees imposed under Act 13 were due by September 1, 2012, for wells spud² before January 1, 2012, and April 1 for each subsequent year. 58 Pa.C.S. § 2303(a).

7. 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 enforce the requirements of Act 13. 58 Pa.C.S. § 2303(c)(1).³

8. Administrative charges must be paid with impact fees on April 1 of each year. 58 Pa.C.S. § 2303(c)(1).

9. The Act provides that, for producers with delinquent fees, the Commission shall assess interest. 58 Pa.C.S. § 2308(a). For the 2019 calendar year, the interest rate was set at 6.0% pursuant to 61 Pa. Code § 4.2.

10. 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. 58 Pa.C.S. § 2308(b).

11. The Commission may also 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. 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. *Id.*

12. As a producer, Respondent is required to file an Annual Report with the Commission listing the number of its spud unconventional gas wells subject to impact fees

² “Spud” is defined as “[t]he actual start of drilling of an unconventional gas well.” 58 Pa.C.S. § 2301.

³ See also *Act 13 of 2012 - Implementation of Unconventional Gas Well Impact Fee Act, Proposed Rulemaking*, Docket No. L-2013-2375551 (Order entered May 10, 2012) (*Proposed Rulemaking Order*).

and administrative charges for the previous calendar year. 58 Pa.C.S. § 2303(b). The Annual Report for 2019 was due by April 1, 2020.

13. Respondent timely filed with the Commission the Annual Well Summary Report for 2019, which is attached hereto as Attachment A.

14. According to Respondent's Annual Well Summary Report for the 2019 calendar year, Respondent operated the following two unconventional wells as designated by Pennsylvania Department of Environmental Protection ("DEP") permit numbers:

- 1) 111-20272 (Menhorn 2H)
- 2) 111-20277 (Hillegass 2H)

15. For 2019, impact fees were \$15,200 per well.

16. For 2019, the administrative charge due under Act 13 was \$50 per well. 58 Pa.C.S. § 2303(c)(1); *See also, Proposed Rulemaking Order.*

17. Based on Respondent's Annual Well Summary Report for the 2019 calendar year, Respondent owes impact fees of \$15,200 per well and administrative charges of \$50 per well, for a total of \$30,500. *See Attachment A.*

18. Respondent's payment of \$30,500 was due on April 1, 2020.

19. Respondent did not submit a dispute contesting the imposition of the impact fees and administrative charges related to the 2019 calendar year.

20. Respondent failed to pay any amount of the impact fees and administrative charges related to its unconventional gas well operations in Pennsylvania for the 2019 calendar year.

21. By Notice of Amount Due dated July 15, 2020, the Fiscal Office of the Commission's Bureau of Administration notified Respondent of the deficiency. The Notice

of Amount Due is attached hereto as Attachment B.⁴

22. In the Notice of Amount Due, the Fiscal Office provided Respondent with an additional twenty (20) days to either pay the entire delinquent amount of \$30,500 or file a written response with the Commission. *See* Attachment B.

23. The Notice of Amount Due further provides that the Commission may assess interest and penalties on the delinquent impact fees and administrative charges if Respondent fails to pay the amounts due. *Id.*

24. Xtreme Energy did not render any payment or file a written reply in response to the Notice of Amount Due.

25. The instant matter represents the third enforcement proceeding that I&E has initiated against Xtreme Energy related to the nonpayment of impact fees and administrative charges pursuant to Act 13.

26. The first enforcement proceeding alleged that Xtreme Energy failed to pay impact fees and administrative charges for the 2014, 2015 and 2016 calendar years. *I&E v. Xtreme Energy Company*, Docket No. C-2017-2599145 (Formal Complaint filed April 12, 2017; Amended Formal Complaint filed September 4, 2018). I&E and Xtreme Energy ultimately resolved the matter by entering into and filing a Settlement Agreement on April 19, 2019, which the Commission approved without modification on June 17, 2019.

27. Significantly, Paragraph 33(H) of the Settlement provides as follows:

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.

⁴ Exhibit A of the Notice of Amount Due, which is a copy of Respondent's Annual Well Summary Report for the 2019 calendar year, has been omitted from Attachment B as the document has already been produced in Attachment A.

I&E v. Xtreme Energy Company, Docket No. C-2017-2599145 (Joint Petition for Approval of Settlement filed on April 19, 2019), ¶ 33(H).

28. Respondent has 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 related to Respondent's 2014, 2015 and 2016 calendar year operations, despite ordering Respondent to pay the same.

29. I&E undertook several actions to enforce the Commission's June 17, 2019 Order, including referring the matter to 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.

30. 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.

31. On September 11, 2019, I&E also referred the matter docketed at C-2017-2599145 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).

32. The second enforcement proceeding initiated by I&E against Xtreme Energy alleged that Respondent failed to pay impact fees and administrative charges related to Respondent's 2017 and 2018 calendar year operations. *I&E v. Xtreme Energy Company*, Docket No. C-2020-3018893 (Formal Complaint filed February 25, 2020).

33. Xtreme Energy failed to file an Answer to I&E's Complaint docketed at C-2020-3018893, which prompted I&E to file a Motion for Default Judgment on July 20, 2020. The matter is pending before the Commission.

III. VIOLATION:

34. All allegations in paragraphs 1-33 are incorporated as if fully set forth herein.

35. To date, Respondent has failed to comply with Act 13 in that it has not paid the impact fees and administrative charges imposed under the Act for its unconventional gas wells with DEP well permit numbers 111-20272 (Menhorn 2H) and 111-20277 (Hillegass 2H) related to the 2019 calendar year. Payment in full of the impact fees and administrative charges for these wells in the amount of \$30,500 was due by April 1, 2020.

If proven, this is a continuing violation of 58 Pa.C.S. § 2303(c) from April 1, 2020, until the impact fees and administrative charges are paid in full.

IV. RELIEF REQUESTED:

36. Based on the foregoing allegations, the Bureau of Investigation and Enforcement hereby requests that Respondent be directed to pay a total of \$52,205 as detailed below:

- a. Respondent be ordered to pay its past due impact fees and administrative charges related to the 2019 calendar year in the amount of \$30,500;

- b. Respondent be ordered to pay interest at an interest rate of 6.0% of the amount due for a sum of \$1,830 pursuant to 58 Pa.C.S. § 2308(a);
- c. Respondent be ordered to pay a penalty of 25% of the amount due for a sum of \$7,625 pursuant to 58 Pa.C.S. § 2308(b);
- d. Respondent be ordered to pay an administrative civil penalty of \$12,250 pursuant to 58 Pa.C.S. § 2310 given the willfulness of Respondent's violations and Respondent's continued defiance of Act 13; and
- e. The Commission grant such other relief as the Commission deems appropriate.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission find West Texas Operating Company LLC d/b/a Xtreme Energy Company in violation of each and every count as set forth herein and grant the relief specified above.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522
(717) 772-8839
stwimer@pa.gov

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

Date: November 13, 2020


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No.: C-2020-
	:	
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 that the Bureau of Investigation and Enforcement 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: November 13, 2020



Amy Zuvich, Chief of Finance and Assessments
Finance and Assessment Section
Bureau of Administration
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Attachment A



Pennsylvania Public Utility Commission



XTREME ENERGY CO - 2019 - Annual Well Summary

Permit Number	Farm Name	Well Type	Well Status	Oper Year	Impact Fee	Spud Fee
111-20277	HILLEGASS 2H	Horizontal	Active	9	\$15,200	\$50
111-20272	MENHORN 2H	Horizontal	Active	8	\$15,200	\$50
Total:					\$30,400	\$100

Attachment B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Bureau of Administration's Fiscal Office :
 :
 v. : **Docket No. C-2019** _____
 :
Xtreme Energy Co. :
 :

NOTICE OF AMOUNT DUE

NOW COMES the Pennsylvania Public Utility Commission's ("Commission"), Bureau of Administration's Fiscal Office ("Fiscal Office") and files this Notice of Amount Due ("Notice") against Xtreme Energy Co. ("Respondent"), pursuant to Section 2307(b) of Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (Act 13 or Act), 58 Pa. C.S. § 2307(b). In support of its Notice, the Fiscal Office respectfully represents the following:

1. That Respondent is an oil and gas producer, as defined in Section 2301 of Act 13, with a principal place of business at 118 North Main Street, Suite F, Victoria, TX 77901.
2. That pursuant to Section 2302 of Act 13, an unconventional gas well fee ("Impact Fee") was imposed on all of Respondent's qualifying unconventional gas wells.
3. That pursuant to Section 2303(b) of Act 13, Respondent was required to file Annual Reports with the Commission detailing the number of its spud unconventional gas wells subject to the Impact Fee and Spud Fee for the previous calendar year. 58 Pa. C.S. § 2303(b). This Annual Report was due by September 1, 2012 (for the 2011 reporting year), and by April 1 for each year thereafter. *Id.*
4. That along with the Annual Reports referenced in Paragraph 2 above, Respondent was required to submit payment of the Impact and Spud Fee to the Commission for each year. *Id.* The Impact Fee due from Respondent was calculated based on the number of qualifying wells that Respondent listed on its Annual Reports. *Id.*
5. That Respondent timely filed with the Commission the Annual Report for reporting year 2019. The Annual Report is attached hereto and marked Exhibit A.
6. That for 2019, Respondent did not pay an Impact Fee.

7. That Commission records indicate that Respondent should have paid an Impact Fee in the amount of \$30,400.00 for 2019. Therefore, there is a deficiency of \$30,400.00.

8. That for 2019, Respondent did not pay a Spud Fee.

9. That Commission records indicate that Respondent should have paid a Spud Fee in the amount of \$100.00 for 2019. Therefore, there is a deficiency of \$100.00.

10. That Respondent has a total delinquent Impact Fee and Spud Fee for 2019 in the amount of \$30,500.00.

11. Any prior outstanding balances that have been referred to the Commission's Bureau of Investigation and Enforcement for prosecution are not included herein.

WHEREFORE, Respondent is hereby notified that:

(a) The Fiscal Office demands payment of Respondent's total delinquent Impact and Spud Fees for 2019 in the amount of \$30,500.00 within twenty (20) days of the date of service of this Notice.

(b) If Respondent does not pay the delinquent Impact and Spud Fees in accordance with Paragraph (a) above, Respondent shall file a written response with the Commission regarding this matter within twenty (20) days of the date of service of this Notice. Filing shall be made pursuant to Section 1.11 of Title 52 of the Pennsylvania Code. 52 Pa. Code § 1.11.

(c) If Respondent fails to pay the delinquent Impact and Spud Fees or file a written response in accordance with Paragraphs (a) and (b) above, Respondent may be deemed in default.

(d) If Respondent fails to pay the delinquent Impact and Spud Fees in full within twenty (20) days of the date of service of this Notice, but files a written response in accordance with Paragraph (b) above, the Fiscal Office will refer this matter to the Office of Administrative Law Judge ("OALJ") for hearing and issuance of a Recommended Decision pursuant to the Commission's rules of practice and procedure found at 52 Pa. Code Chapters 1, 3 and 5.

(e) Following the adjudicatory proceeding before the OALJ, the Commission will issue a Final Order regarding this matter.

(f) The Commission may assess interest and penalties on the delinquent Impact and Spud Fees and as permitted by Sections 2307-2313 of the Act if (i) Respondent fails to

pay the delinquent Impact and Spud Fees in full within twenty (20) days of the service date of this Notice, (ii) Respondent fails to file a timely response in accordance with Paragraph (b) above, or (iii) after hearing, the Commission sustains the amount due by a Final Order.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert C. Gramola". The signature is written in a cursive style with a large, sweeping initial "R".

Robert C. Gramola
Bureau of Administration's Fiscal Office
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: July 15, 2020

VERIFICATION

I, Amy R. Zuvich, Fiscal Chief, of the Pennsylvania Public Utility Commission's Bureau of Administration's Fiscal Office ("Fiscal Office"), 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 Fiscal Office 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 15, 2020



Amy R. Zuvich
Bureau of Administration's Fiscal Office
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

EXHIBIT A

**XTREME ENERGY CO.
2019 ANNUAL REPORT**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No.: C-2020-
	:	
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).

Service by Electronic Mail:¹

Michael Hahn, Vice President of Operations
West Texas Operating Company LLC
d/b/a Xtreme Energy Company
P.O. Box 2326
Victoria, TX 77902-2326
mhahn@xeogc.com



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
(717) 772-8839
stwimer@pa.gov

Dated: November 13, 2020

¹ Due to COVID-19 restrictions impacting Commission mailing operations, service is being performed electronically only. See *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020).