|  |  |  |
| --- | --- | --- |
|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

|  |  |
| --- | --- |
|  | Public Meeting held July 15, 2021 |
| Commissioners Present: |  |

|  |  |
| --- | --- |
| Gladys Brown Dutrieuille, Chairman | |
| David W. Sweet, Vice Chairman | |
| John F. Coleman, Jr. | |
| Ralph V. Yanora | |
|  |  |
|  |  |
| Rulemaking-Act 13 of 2012-Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23 | Docket No. L-2013-2375551 |

## ORDER

**BY THE COMMISSION:**

Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (Act 13), amended Title 58, relating to oil and gas, of the Pennsylvania Consolidated Statutes, establishing 58 Pa.C.S. §§ 2301-2318, (Chapter 23). Act 13 provided for an unconventional gas well fee (impact fee), which the Pennsylvania Public Utility Commission (Commission) is tasked with administering. On October 17, 2013, the Commission issued a Proposed Rulemaking Order (Order), which sought to implement regulations to assist in carrying out the administration of Chapter 23. Due to circumstances which developed following the initiation of the Proposed Rulemaking, we are discontinuing the rulemaking.

**BACKGROUND**

Act 13 was signed into law on February 14, 2012. On March 16, 2012, the Commission entered a Tentative Implementation Order, *Act 13 of 2012—Implementation of Unconventional Gas Well Impact Fee Act*, Docket No. M‑2012‑2288561, addressing the Commission’s responsibilities and proposing procedures to carry out the administrative responsibilities contained in Chapters 23.[[1]](#footnote-2) That order solicited comments from interested parties. Following review of submitted comments, the Commission issued an Implementation Order at Docket No. M‑2012‑2288561 on May 10, 2012, addressing those comments and other issues associated with implementation of Chapter 23.

Subsequently, Petitions for Reconsideration were filed to the May 10, 2012, Order. On July 19, 2012, we issued a Reconsideration Order regarding Chapter 23, further detailing our treatment of vertical unconventional gas wells, assessments, caps on distribution amounts received by a municipality, and producer reporting requirements. On September 28, 2012, a Petition for Amendment and Clarification of our May 10, 2012, Implementation Order was filed. On December 20, 2012, we issued a Clarification Order Regarding Chapter 23 setting forth our treatment of conductor pipes, reclassification of wells, plugging of wells, disputes and refunds, and other additional matters.

We commenced the Proposed Rulemaking at this docket on October 17, 2013, to implement regulations to assist in carrying out the administration of Chapter 23. The Proposed Rulemaking was submitted to the Office of Attorney General (OAG) and the Governor’s Budget Office (Fiscal). OAG and Fiscal approved the Proposed Rulemaking, but we did not submit the Proposed Rulemaking to the Legislative Committees, the *Pennsylvania Bulletin* or the Independent Regulatory Review Commission due to intervening appellate litigation.

Following the initiation of this rulemaking, appellate litigation was brought regarding the treatment of marginally producing gas wells and whether those wells were subject to the impact fee. That litigation was eventually resolved in 2018 by the Pennsylvania Supreme Court, which affirmed the Commission’s position. *Snyder Brothers, Inc v. Pennsylvania Public Utility Commission*,157 A.3d 1018 (Pa. Supreme, 2017) (*Snyder I*).

Further, collateral to the primary issue in *Snyder I*, the issue of circumstances under which interest and penalties attach for non-payment of fees was also litigated. On February 6, 2020, the Commonwealth Court issued an unreported opinion and order finding that interest and penalties should not attach in this particular case. *Snyder Brothers, Inc v. Pennsylvania Public Utility Commission*,1043 C.D. 2015 (Pa. Cmwlth, Ct., February 6, 2020) (*Snyder II*). In reaching its conclusion, the Commonwealth Court examined Act 13’s interest and penalty provisions, making various observations about the clarity of the provisions at 58 Pa.C.S. §§ 2307, 2308.

**DISCUSSION**

This rulemaking largely represented a proposed codification of the previous determinations made by the Commission in its Implementation, Reconsideration and Clarification Orders regarding Chapter 23.

Relevant to our current determination to terminate this proposed rulemaking, the Proposed Rulemaking Order did not sufficiently address the interest and penalty provisions of Act 13 in light of the Commonwealth Court’s observations in *Snyder II.* However, all other issues contained within the Proposed Rulemaking were previously addressed and resolved within the Implementation, Reconsideration, and Clarification Orders, as well as the *Snyder I* case. Those orders provide sufficient and effective guidance regarding the administration of Chapter 23. In fact, the Commission noted in the Proposed Rulemaking Order that it did not anticipate receiving comments since the issues addressed in the Implementation, Reconsideration and Clarification Orders were settled. *See Proposed Rulemaking Order* at footnote 2.

Under these circumstances, it is inappropriate to advance the Proposed Rulemaking when the only apparent outstanding items requiring clarification, *i.e.*, interest and penalties, were not sufficiently addressed to allow meaningful comment in this proceeding.[[2]](#footnote-3)

**CONCLUSION**

The Commission hereby terminates its proposed rulemaking to adopt new regulations regarding Chapter 23 of Act 13; **THEREFORE,**

**IT IS ORDERED:**

1. That the instant rulemaking at *Rulemaking-Act 13 of 2012-Implementation of Unconventional Gas Well Impact Fee Act; Chapter 23*, Docket No. L-2012-2375551, be closed.

2. That a copy of this Order be entered at *Act 13 of 2012—Implementation of Unconventional Gas Well Impact Fee Act*, Docket No. M‑2012‑2288561.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 15, 2021

ORDER ENTERED: July 15, 2021

1. Act 13 also established Chapter 33, relating to local ordinances relating to oil and gas operations. Chapter 33 was later invalidated as unconstitutional by the Pennsylvania Supreme Court. *Robinson Township v. Commonwealth of Pennsylvania*, 147 A.3d 546 (Pa. Supreme, 2016). That litigation was pending at the time we initiated this Proposed Rulemaking, and the Commission was enjoined from carrying out its responsibilities contained in Chapter 33. Therefore, the proposed regulations were limited to the performance of the Commission’s duties under Chapter 23 of Act 13. [↑](#footnote-ref-2)
2. We note that due to ongoing litigation, the Proposed Rulemaking Order was not published. However, the Pennsylvania State Association of Township Supervisors did file a letter, dated October 24, 2013, with the Commission in support of the proposed rulemaking, stating that it has “no issues with it” since “what is being proposed by the Commission under this proposal is what the Commission has been following under previous … orders.” [↑](#footnote-ref-3)