

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND	:	
ENFORCEMENT,	:	Docket No. C-2025-3053309
	:	
Complainant,	:	
	:	
v.	:	
	:	
REPSOL OIL AND GAS USA, LLC,	:	
	:	
Respondent.	:	

EXPEDITED UNOPPOSED MOTION TO STAY PROCEEDINGS

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Respondent Repsol Oil and Gas USA, LLC (“Repsol”), by and through its undersigned counsel, pursuant to 52 Pa. Code § 1.15(a)(1) and 52 Pa. Code § 1.15(a)(1), hereby files this Expedited Unopposed Motion to Stay Proceedings until final disposition of an appeal involving identical parties and core legal issues presently pending before the Pennsylvania Supreme Court, and in support thereof, avers as follows:

BACKGROUND

1. The Complaint in the above-captioned enforcement action alleges violations by Repsol of Section 2307(b) of Act 13 of 2012, 58 Pa.C.S. § 2301–2318 (“Act 13”), relating to 72 unconventional gas wells (the “Rockdale Wells”) that were

owned and operated by, and permitted by the Pennsylvania Department of Environmental Protection (“DEP”) for the severance of natural gas to, Rockdale Marcellus Holdings, LLC, and Rockdale Marcellus, LLC (together, “Rockdale”), during the 2021 calendar year (“CY2021”). (*See* Compl. ¶¶ 15–16.)

2. In its Complaint, the Pennsylvania Public Utility Commission (the “Commission”), through its Bureau of Investigation and Enforcement (“I&E”), alleges that it is Repsol, not Rockdale, that owes the CY2021 Act 13 fees for the Rockdale Wells, and that Repsol is liable to the Commission for the amount of \$1,331,700. (*Id.* ¶¶ 26 & n.4, 35 & n.5.)

3. That amount comprises \$1,428,100 in CY2021 Act 13 impact fees; \$3,600 in CY2021 Act 13 administrative (or spud) fees; and a \$100,000 credit for monies that Rockdale paid to the Commission in full and final satisfaction of the liabilities the Commission had asserted against Rockdale for the CY2021 Act 13 fees in Rockdale’s bankruptcy proceeding in the United States Bankruptcy Court for the Western District of Pennsylvania. (*Id.*)

4. The precise legal question raised by I&E’s Complaint—namely, which entity (Rockdale or Repsol) is responsible for payment of the CY2021 Act 13 fees for the Rockdale Wells—is presently pending before the Pennsylvania Supreme Court.

5. Specifically, on December 16, 2022, after receiving two backdated invoices from the Commission for the CY2021 Act 13 fees, Repsol filed a Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief with the Pennsylvania Commonwealth Court, seeking, among other relief, a declaration that Repsol was not liable for the CY2021 Act 13 fees for the Rockdale Wells. *See Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm'n*, 324 A.3d 77, 2024 WL 3507258, at *2–3 (Pa. Commw. Ct. July 23, 2024).

6. Repsol subsequently filed an Amended Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief and, thereafter, a Second Amended Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief (the “Petition for Review”). *See id.* at *3.

7. The Commission filed Preliminary Objections, contending, in part, that Repsol had failed to exhaust an available administrative remedy before filing its Petition for Review. *See id.*

8. Specifically, the Commission argued that “such a fact-intensive administrative inquiry warranted the establishment of a Commission initiated enforcement action.” (Compl. ¶ 30.)

9. Repsol opposed the Commission’s Preliminary Objections. *See Repsol*, 2024 WL 3507258, at *3.

10. Repsol, for its part, filed an Application for Summary Relief, arguing that summary relief was warranted because (a) Repsol did not own, operate, or hold the permits for the Rockdale Wells during CY2021, the year in which the Act 13 fees at issue accrued; (2) DEP did not transfer the permits for any of the Rockdale Wells to Repsol until after the April 1, 2022 deadline for reporting and remitting the CY2021 Act 13 fees; and (3) Repsol did not have adequate prior notice of any obligation under Act 13 to report or remit the CY2021 Act 13 fees for the Rockdale Wells. *See id.*; *see also* Appl. for Summary Relief of Pet'r Repsol Oil & Gas, LLC, *Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm'n*, No. 613 MD 2022 (Pa. Commw. Ct. Nov. 22, 2023).

11. The Commission opposed Repsol's Application for Summary Relief. *See Repsol Oil & Gas USA, LLC*, 2024 WL 3507258, at *3.

12. On July 23, 2024, the Commonwealth Court issued an unpublished Memorandum Opinion and Order sustaining the Commission's Preliminary Objections on the ground that Repsol had failed to exhaust an available administrative remedy and dismissing Repsol's Application for Summary Relief as moot. *See id.* at *10.

13. Repsol timely appealed the Commonwealth Court's Memorandum Opinion and Order to the Pennsylvania Supreme Court, which noted probable

jurisdiction on September 16, 2024. *See Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm'n*, No. 62 MAP 2024, Docket (the “Supreme Court Appeal”).

14. Repsol filed its principal brief in the Supreme Court Appeal on December 2, 2024. *See id.*

15. The Commission filed its principal Brief in the Supreme Court Appeal just last week, on February 3, 2025. *See id.*

16. Repsol’s reply brief is due to the Pennsylvania Supreme Court on February 18, 2025. *See Pa. R. A. P. 2185(a)(1).*

17. Repsol expects that oral argument in the Supreme Court Appeal, if ordered, will be calendared for the spring of 2025.

18. It is the aspirational goal of the Pennsylvania Supreme Court to circulate a proposed majority opinion to all members of the Court within 120 days of assignment in multiple-issue cases, and for any concurrences or dissents to be circulated within 60 days of circulation of the proposed majority opinion. *See* 210 Pa. Code § 63.4(A)(1)(a), (b).

19. Therefore, it is anticipated that the Pennsylvania Supreme Court will issue a decision in the Supreme Court Appeal as early as within the next six months, and, in any event, within the calendar year.

20. On February 7, 2025, I&E lodged its instant Complaint against Repsol with the Commission. (*See Compl.*)¹

21. The Complaint raises precisely the same question that has already been thoroughly briefed and argued before the Pennsylvania Commonwealth Court and is presently pending for disposition before the Pennsylvania Supreme Court: whether it is Rockdale or Repsol that is liable for the CY2021 Act 13 fees for the Rockdale Wells. (*Compare Compl.* ¶ 33 (alleging Repsol “has failed to comply with Act 13 in that it is has not paid the 2021 calendar year impact fees and administrative charges, known as spud fees, imposed under the Act for its unconventional gas wells”)), *with Br. for Pet’r Repsol Oil & Gas USA, LLC at 40–55, Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm’n*, No. 62 MAP 2024 (Pa. Dec. 2, 2024) (contending Repsol is not liable for CY2021 Act 13 fees because it did not hold the DEP permits for the Rockdale Wells during CY2021, did not become the DEP permitholder for the Rockdale Wells until after the April 1, 2022 due date for the

¹ I&E appears to have attempted to serve the Complaint by email and certified mail on February 10, 2025, to Keith J. Coyle, Esquire, who was formerly counsel to Repsol in the Supreme Court Appeal. (*See* 2/10/25 Secretarial Letter (directed to Keith J. Coyle, Esquire, Babst Calland, 505 9th Street, NW, Suite 602, Washington, D.C. 20004, Email: kcoyle@babstcalland.com).) Attorney Coyle withdrew his appearance as counsel to Repsol in the Supreme Court Appeal nearly two weeks prior, on January 28, 2025, *see Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm’n*, No. 62 MAP 2024, Docket. Attorney Coyle ceased being employed by the law firm of Babst, Calland, Clements and Zomnir, P.C. on January 31, 2025, and therefore, is not authorized to accept service on behalf of Repsol. By filing the within Unopposed Expedited Motion to Stay Proceedings, Repsol does not waive, and instead expressly reserves, its right to raise the lack of proper service of the Complaint upon Repsol and any other objections at the appropriate time.

CY2021 Act 13 fees, and did not have fair and adequate prior notice of any obligation to report and remit the CY2021 Act 13 fees for the Rockdale Wells), *and* Br. of Resp't Pennsylvania Public Utility Comm'n at 47–55, *Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm'n*, No. 62 MAP 2024 (Pa. Feb. 3, 2025) (disputing Repsol's interpretation of Act 13 and its implications regarding who is liable for the CY2021 Act 13 fees).)

22. It is against this backdrop of parallel proceedings, parties, and principal legal issues that Repsol files its Expedited Unopposed Motion to Stay Proceedings pending final disposition of the Supreme Court Appeal.

23. Counsel for Repsol has conferred with counsel for I&E regarding the within Motion, and counsel for I&E represented that I&E does not oppose a stay of the above-captioned proceeding pending final disposition of the Supreme Court Appeal.

ARGUMENT

24. The Commission has broad discretionary authority to stay proceedings before it, whether on motion or *sua sponte*, pending disposition of related litigation that has the potential to impact the proceeding before the Commission. *See, e.g., In re Smart Meter Procurement and Installation*, No. M-2009-2092655, 2020 Pa. PUC LEXIS 563, at *2–5 (PUC Apr. 12, 2021) (citing 66 Pa.C.S. § 501 and 52 Pa. Code § 1.15).

25. A stay pending resolution of related litigation is appropriate when (a) the related litigation has the potential to directly impact or inform the proceeding before the Commission; (b) the stay is in the interest of judicial efficiency and economy; and (c) neither the parties nor the public interest will be adversely affected by the stay. *See, e.g., id.* at *4–5 (*sua sponte* staying all smart-meter-related complaints to allow Commission time to assess impact of recent Commonwealth Court decision and throughout pendency of appeal from that decision to the Pennsylvania Supreme Court); *see also, e.g., Core Commc’ns, Inc. v. Choice One Commc’ns of Pa., Inc.*, No. C-2009-2130379, 2010 Pa. PUC LEXIS 617, at *2–3 (PUC Mar. 22, 2010) (granting motion to stay pending resolution of related action when stay would “conserve the resources of the parties and of the Commission and perhaps ultimately make litigation of this case unnecessary”).

26. All three of these considerations support a stay of this matter pending final disposition of Repsol’s Supreme Court Appeal.

27. First, and perhaps most significantly, the Supreme Court Appeal is not merely “related” to this proceeding; rather, it involves the *exact same* parties and is poised to resolve the *exact same* legal question presented by I&E’s Complaint, *viz.*, which party (Rockdale or Repsol) is liable as a matter of law for the CY2021 Act 13 fees for the Rockdale Wells.

28. Second, a stay of this proceeding pending final disposition of the Supreme Court Appeal serves the interests of judicial efficiency and economy, insofar as resolution of the Appeal has the potential to moot this proceeding entirely, if the Supreme Court agrees with Repsol that it is Rockdale, not Repsol, that is liable as a matter of law for the CY2021 Act 13 fees for the Rockdale Wells.

29. But even if the Supreme Court Appeal does not moot this proceeding, the Supreme Court's analysis undoubtedly will inform and thus streamline this litigation before the Commission.

30. Accordingly, no matter the outcome, substantial public resources—both the Commission's and I&E's—will be conserved by virtue of the stay, furthering not only the Commission's interest in judicial efficiency and economy, but also the public interest. *See, e.g., Core Commc'ns, Inc.*, 2010 Pa. PUC LEXIS 617, at *2–3 (holding that public interest favors a stay when related litigation could “perhaps ultimately make litigation of this case unnecessary”).

31. A stay of the above-captioned proceeding pending final disposition of the Supreme Court Appeal would likewise conserve private resources, because Repsol would not be forced unnecessarily to participate in parallel proceedings, one of which has the potential to moot the other.

32. Third, neither the public nor any party to this litigation will be adversely affected by a stay of this matter pending final disposition of the Supreme Court Appeal.

33. To that end, it is reasonable to infer from I&E's non-opposition to the instant Motion that it agrees that staying the instant matter pending final disposition of the Supreme Court Appeal will not prejudice or otherwise adversely affect I&E or the public.

34. Finally, any stay will be of relatively limited duration, to the extent that the Supreme Court Appeal will be fully briefed early next week (by February 18, 2025), and will likely be fully disposed of within the calendar year. *Cf., e.g., In re Smart Meter Procurement and Installation*, No. M-2009-2092655, 2023 Pa. PUC LEXIS 299 (PUC Nov. 14, 2023) (three-year stay pending disposition of appeals before Pennsylvania Supreme Court).

CONCLUSION

35. For the reasons set forth above, Repsol respectfully requests that the Commission grant the within Expedited Unopposed Motion to Stay Proceedings and stay the above-captioned proceedings pending final disposition of the Supreme Court Appeal.

36. Repsol further respectfully requests that the Commission consider the within Motion on an expedited basis within seven days of today's date, given the

operative responsive pleading and other deadlines under the Commission's Rules of Administrative Practice and Procedure.

37. Alternatively, Repsol requests that the Commission extend the deadline for Repsol to file any responsive pleading until such time as the Commission has the opportunity to rule on the within Motion and for an additional 20 days thereafter.

Respectfully submitted,

BABST CALLAND, CLEMENTS AND ZOMNIR P.C.

/s/ Casey Alan Coyle

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*Counsel for Respondent Repsol Oil
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Dated: February 13, 2025

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Respondent.	:	

[PROPOSED] ORDER

AND NOW, this __ day of February, 2025, upon consideration of the Expedited Unopposed Motion to Stay Proceedings filed by Respondent Repsol Oil and Gas USA, LLC, it is hereby ORDERED that:

1. The Expedited Unopposed Motion to Stay Proceedings is GRANTED.
2. All deadlines in the above-captioned proceeding are STAYED pending final disposition of the matter captioned *Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm'n*, No. 62 MAP 2024 (Pa.), presenting pending before the Pennsylvania Supreme Court.
3. The parties shall file a joint status report to the docket in the above-captioned proceeding within 14 days of final disposition of the matter captioned *Repsol Oil & Gas USA, LLC v. Pa. Pub. Util. Comm'n*, No. 62 MAP 2024 (Pa.).

_____, J.

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of February, 2025, I caused a true and correct copy of the foregoing Expedited Unopposed Motion for Stay of Proceedings to be served upon all parties of record via electronic filing with the Commission, as authorized by and in accordance with 52 Pa. Code § 1.54(b)(3)(ii), which filing constitutes service.

/s/ Casey Alan Coyle

Casey Alan Coyle, Esquire