

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

Public Meeting held May 10, 2012

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Act 13 of 2012 – Implementation of  
Unconventional Gas Well Impact Fee Act

M-2012-2288561

**IMPLEMENTATION ORDER REGARDING CHAPTER 23**

**BY THE COMMISSION:**

**Introduction**

On February 14, 2012, Governor Corbett signed into law Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (Act 13), which amends Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes. Act 13 provides, *inter alia*, for an impact fee, Oil and Gas Act amendments and standards for local ordinances. Act 13 allows counties to pass ordinances to impose an impact fee on unconventional gas well producers and, alternatively, allows municipalities, under certain circumstances, to adopt resolutions compelling the imposition of fees if a county elects not to do so.

The Pennsylvania Public Utility Commission's (Commission) administrative responsibilities for implementing the provisions of Act 13 are contained within Chapters 23 and 33 of the Act. On March 16, 2012, we issued a Tentative

Implementation Order addressing those responsibilities and proposing procedures to carry out the administrative responsibilities contained in these two chapters. That Order solicited comments from interested parties. Comments to the Tentative Order were filed by the Pennsylvania State Association of Township Supervisors (Townships), the Pennsylvania State Association of Boroughs (Boroughs), the County Commissioners Association of Pennsylvania (Counties), Carrizo Oil & Gas, Inc., and, jointly, the Pennsylvania Independent Oil & Gas Association, the Marcellus Shale Coalition, and the Associated Petroleum Industries of Pennsylvania (collectively, Producers). We will address those comments in this Implementation Order relating to Chapter 23.

On March 29, 2012, a Petition for Review was filed in the Commonwealth Court challenging the constitutionality of Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (Act 13). *Robinson Township, et al. v. Commonwealth, et al.*, No. 284 M.D. 2012. Due to uncertainty surrounding the pending litigation, the Commission will not address the provisions of Chapter 33 at this time.

### **Chapter 23 – Determination, Collection and Disbursement of Impact Fees**

Chapter 23 defines the unconventional gas well fee, as well as the Commission's responsibilities for the collection, administration and distribution of fees collected from producers and distributed to qualified counties, municipalities, and other specified recipients. Specific statutory provisions with comments and resolution, are discussed below.

#### **Section 2302. Unconventional gas well fee.**

##### **§ 2302(a)-(a.4)**

##### Impact Fee Notification Procedures and Notice Content

Section 2302 explains the process by which counties may establish impact fee ordinances. Under Section 2302(a), the governing body of a county that has

unconventional gas wells<sup>1</sup> located within its borders may elect to impose a fee on such wells spud in that county.<sup>2</sup> By Monday, April 16, 2012, the governing body of each county must have adopted an ordinance imposing an unconventional gas well fee.

The ordinance imposing a fee under subsection (a.1) must be in language that is readily understandable and must include specific language in the following form:

The county of (insert name) hereby imposes an unconventional gas well fee on each unconventional gas well spud in this county.

Further, each county governing body electing to implement an impact fee must have notified the Commission and have given public notice of its intent to adopt an ordinance. *See* Section 2302(a.1). In order to administer the collection and disbursement of the impact fee, this notice must be provided to the Commission in a timely fashion. Accordingly, counties that adopt impact fee ordinances must have provided notice to the Commission, in the form of an official filing directed to the Secretary of the Commission, together with a verified copy of the ordinance, as soon as possible after its adoption but no later than April 23, 2012.

Section 2302(a.3) provides that a county with a spud well that did not adopt an ordinance imposing an unconventional gas well fee by April 16, 2012 is prohibited from receiving any funds generated by the fee under this section. This prohibition on the receipt of funds by the county, which extends to its municipalities, will expire and funds

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<sup>1</sup> “Unconventional gas well” is defined as “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. “Unconventional formation” is defined as “a geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval 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 multi-lateral well bores or other techniques to expose more of the formation of the wellbore.” *Id.*

<sup>2</sup> “Spud” is defined as “the actual start of drilling on an unconventional gas well.” *Id.*

may be received for the calendar year following the adoption of an ordinance imposing the fee.

Commission records indicate that all counties with spud unconventional wells have properly passed ordinances to impose an impact fee and have properly notified the Commission and the public of their action. Therefore, all these counties and municipalities located therein are eligible for funds under this section.

We note that Section 2302(a.4) established an alternative fee implementation mechanism. If a county's governing body did not impose an unconventional gas well fee under subsection (a.1), the municipalities in that county could have compelled the imposition of an unconventional gas well fee on every unconventional gas well located in the county, if an adequate number of municipalities adopted resolutions to compel the county to impose an impact fee. 58 Pa. C.S. § 2302(a.4)(1). However, since all eligible counties have properly adopted ordinances imposing an impact fee, this provision is moot and further discussion is unnecessary.

We do note that Section 2302(a.4) was the exclusive mechanism provided by Act 13 for municipalities to impose an impact fee in the event an eligible county did not choose to do so. This was a one-time only opportunity for municipalities in a county not enacting an impact fee. Act 13 does not provide for any subsequent opportunity for municipalities to adopt such resolutions to override a county's decision to not impose an impact fee. Act 13 does permit counties to receive funds in subsequent years upon adoption of an ordinance imposing the impact fee, even if the county failed to adopt such an ordinance previously. *See* 58 Pa. C.S. § 2302(a.3)(2). We agree with the Townships that eligibility includes all municipalities within a county, except for a municipality that would have a zoning ordinance deemed noncompliant by the Commission or Court. Townships' Comments at 2.

The Counties comment that the Commission must establish a time frame in which counties, which do not have spud wells as of 2011 but have them spud subsequently, as well as counties that have spud wells in 2011 but fail to take timely action on an ordinance, are to adopt the ordinance. Counties' Comments at 1.<sup>3</sup> In addressing this issue, we believe that Act 13 provides the relevant time frame. Pursuant to Section 2302(a.3), a county that does not adopt an ordinance imposing an impact fee is ineligible to receive funds under Sections 2314(d)(1) and 2315(a.1)(3) and (5), until it adopts an ordinance imposing a fee. Ineligibility expires and funds may be received for the calendar year *following* the adoption of the ordinance imposing the fee.

Based on the statute, there is a lag between ordinance adoption and fee distribution. The deadline for ordinance adoption is December 31, in order for a county to be eligible to receive funds in the next calendar year. We believe this deadline is equally applicable to counties which currently have spud wells but did not adopt an ordinance, as well as to counties which currently have no spud wells but where wells are subsequently spud. Further, and importantly, these counties must notify the Commission of the ordinance adoption within 30 days of the date of the action in accordance with our filing procedures at 52 Pa. Code Chapter 1. Regarding the obligation to adopt an impact fee, the Boroughs comment that only counties with spud unconventional wells within their borders need to adopt an ordinance imposing an impact fee. Boroughs' Comments at 1. We agree with this comment.

The Boroughs also comment that, in the event a fee is not imposed in an eligible county, by any method, the municipalities within that county are still entitled to receive funds via the Marcellus Legacy Fund (Section 2315) even though the county remains

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<sup>3</sup> Since all currently eligible counties have adopted an ordinance imposing an impact fee, our comments are limited to those counties which do not have spud wells as of December 31, 2011, but have wells spud subsequently.

ineligible. Pursuant to Section 2302(a.3), an eligible county that fails to adopt an ordinance imposing an impact fee is prohibited from receiving funds under both Sections 2314(d)(1) and 2315(a.1)(3) and (5). However, pursuant to Section 2302(a.3)(5), a municipality located in a county that does not adopt an ordinance imposing a fee, and does not adopt a resolution imposing an alternate fee, is prohibited from receiving funds under only Section 2314(d). These municipalities remain eligible for funds under Section 2315, if applicable.

### **§ 2302(b)**

#### Application of Impact Fee to Wells Spud 2011 or Prior

Section 2302(b) provides that the fee adopted under Section 2302 will be imposed on every producer and will apply to all unconventional gas wells regardless of when those wells were spud. Unconventional gas wells spud before the fee is imposed will be considered to have been spud in the calendar year prior to the imposition of the fee for purposes of determining the amount of the fee. In other words, all unconventional wells spud in calendar year 2011 or before 2011 will be treated as if they were spud in calendar year 2011. No comments were filed to this provision and therefore we adopt our treatment as proposed.

### **§ 2302(b)(1)-(b.1)**

#### Calculation of Impact Fee

Sections 2302(b)(1)-(b)(6) provide a detailed description of how the impact fee will be calculated based on factors including: when the well was spud, the number of years the well has been subject to the impact fee and the average annual price of natural gas.<sup>4</sup> Under Section 2302(b.1), for an unconventional well that begins paying the impact

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<sup>4</sup> “Average annual price of natural gas” is defined as “the arithmetic mean of the New York Mercantile Exchange (NYMEX) settled price for the near-month contract, as reported by the Wall Street Journal for the last trading day of each month of a calendar year for the 12-month period ending December 31.” 58 Pa. C.S. § 2301.

fee and is subsequently capped or is producing less than a stripper well,<sup>5</sup> the Commission's interpretation is that the unconventional well will pay the impact fee for at least the first three years of production; if the well then qualifies as a stripper well or is capped after the third year of paying the fee, the fee shall be suspended. A vertical gas well,<sup>6</sup> however, would only pay 20% of the unconventional horizontal gas well fee. 58 Pa. C.S. § 2302(f). Also, for purposes of calculating production from a stripper well, the Commission expects producers to simply divide the well's monthly production by the number of days the well is in production in the relevant calendar month.

Comments to this Section were filed by the Counties, the Boroughs, and the Producers. All commentators supported the Commission's proposed treatment of these provisions. However, for clarity's sake, pursuant to Section 2302(a), it is the spudding of a well, not the production of that well, which is determinative of whether a fee is due. Also, we agree with the Producers' Comments at 15 that, consistent with the definition of "unconventional gas well," only wells drilled for the purpose of production of natural gas will be subject to the fee. Wells drilled for other purposes, e.g., monitoring, geologic logging, or other collateral purposes, are not subject to the fee. Collateral purposes would not include spudding a well but immediately capping it for future production. Lastly, we note that while the Producers supported our initial view that stripper well status could be determined based on "annual production" statistics, *see* Producers' Comments at 2, the plain words of the statute require that a gas well's production be measured based on its production "per day during any calendar month" to determine whether the gas well qualifies as a stripper well. 58 Pa. C.S. § 2301.

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<sup>5</sup> "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, including production from all zones and multi-lateral well bores at a single well, without regard to whether the production is separately metered." *Id.*

<sup>6</sup> "Vertical gas well" is defined as "an unconventional gas well which utilizes hydraulic fracture treatment through a simple vertical well bore and produces natural gas in quantities greater than that of a stripper well." *Id.*

The Producers also provided comment on the treatment of plugged wells and suggest that plugged wells are not subject to the impact fee. Producers' Comments at 15-16. Pursuant to Section 2302(b), the impact fee is imposed on every producer and "shall apply to unconventional wells spud in this Commonwealth regardless of when spudding occurred." 58 Pa. C.S. § 2302(b). The statute then provides for a suspension of the initial payment after two years for a spud well that "is subsequently capped or does not produce natural gas in quantities greater than that of a stripper well." 58 Pa. C.S. § 2302(b.1). Therefore, these wells will be subject to an impact fee for a minimum of three (3) years.

On the other hand, the statute provides a slightly different rule for wells that cease production and are plugged. Section 2302(e) provides that payment of the impact fee "shall cease" when the well has ceased production and has been plugged in accordance with DEP regulations. 58 Pa. C.S. § 2302(e). We observe that pursuant to Section 2302(b), a fee is due upon spudding, regardless of when the spudding occurred. In the Commission's judgment, the initial fee is due from all spud wells even if the well is subsequently plugged. Neither Section 2302(b) (calculation of impact fee) nor Section 2303(a)(2) (payment of impact fee) has an exception to payment of the initial fee for plugged wells. Also, use of the word "cease" means that there is, in fact, a continuing impact fee that has been imposed and is due on a regular basis. Thus, there must be at least an initial fee imposed for the impact fee payment to "cease." Accordingly, we conclude that the initial impact fee is due and owing upon spudding, even if subsequently plugged.

Finally, vertical unconventional wells (Section 2302(f)) will be treated identically to horizontal unconventional wells including the three year minimum fee, with the exception of the fee amount, which is 20% of the unconventional horizontal gas well impact fee, and the termination of the fee in years 11-15.

**§ 2302(c)**

Annual Adjustment

Section 2302(c) provides for an annual adjustment of the fee to reflect any “upward changes” in the Consumer Price Index (CPI) for the Mid-Atlantic Region. The Commission interprets this section to mean that if there is no upward change in the CPI, no CPI adjustment will be made to the impact fee.<sup>7</sup> In addition, this subsection provides that the annual CPI adjustment will take effect only if “the total number of unconventional gas wells spud in the adjustment year exceeds the total number of unconventional wells spud in the prior year.” In other words, the CPI adjustment to the impact fee will be applicable only if the industry is growing. No comments were filed to this provision and therefore we adopt our treatment as proposed.

**§ 2302(d) & (e)**

Restimulated Unconventional Gas Wells/Cessation

Section 2302(d) provides for impact fee assessment procedures for re-stimulated unconventional wells. Section 2302(e) provides that payments of the fee will cease upon certification to the Pennsylvania Department of Environmental Protection (DEP) by the producer that the unconventional gas well has ceased production and has been plugged according to DEP regulations. No comments were filed to this provision and therefore we adopt our treatment as proposed.

**Section 2303. Administration.**

Fee Collection Timing and Procedures

Section 2303(a)(1) establishes the due date for payment of the fee imposed under this chapter for wells spud after January 1, 2012 to be April 1, 2013 and each April 1

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<sup>7</sup> It should be noted that even if the CPI remains unchanged, the fee may change due to changes in the price of gas as provided for in Sections 2302(b)(1)-(b)(6).

thereafter. For wells spud before January 1, 2012, initial fees imposed under this chapter are due by September 1, 2012.

Section 2303(b) requires each producer to submit payment of the fee and a report of such payment to the Commission by September 1, 2012 and each April 1 thereafter.<sup>8</sup> The report to the Commission must include the following information: (1) the number of that producer's spud unconventional gas wells in each municipality within each county that has imposed a fee; and (2) the date that each unconventional gas well was spud or ceased production of gas. In order to fulfill this requirement and track information necessary to administer the Act, the Commission has developed a Producer Well Report form, which is labeled as Attachment "A" to this Implementation Order outlining the information to be contained in the annual report to the Commission. This form and all forms attached hereto are available on the Commission's web site, [www.puc.state.pa.us](http://www.puc.state.pa.us).

No comments were filed to this provision and therefore we adopt our treatment as proposed.

#### Administrative Charges

Section 2303(c)(1) authorizes the Commission to impose an annual administrative charge of not more than \$50 per spud unconventional gas well to cover the costs incurred to administer and enforce the requirements of Act 13. Sections 2303(c)(2) and (c)(3) generally establish procedures for the Commission to estimate its annual expenditures directly attributable to administration and enforcement of this chapter, after subtracting any funds received from the \$50 per well fee and Section 2314(c.1) amounts received by the Commission, and allows the Commission to assess any remaining balance on all

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<sup>8</sup> Based on the average annual price of natural gas for the 12-month period ending December 31, 2011, the Commission has determined that the fee shall be \$50,000 per unconventional well for year 1.

producers in proportion to the number of wells owned by each producer. Payment of the assessment is due within 30 days of receipt of the invoice.

Further, by June 30, 2012, and each June 30 thereafter, the Commission must estimate its expenditures attributable to the administration and enforcement of Act 13. The Commission has established time codes within the agency to track employee hours and costs associated with the administration of Act 13, and will use that data to develop a fair, accurate and transparent assessment process. Finally, if any disputes are raised regarding the calculated assessment amounts, Act 13 provides that producers may challenge these amounts under the procedures set forth in Section 510 of the Public Utility Code, 66 Pa. C.S. § 510.<sup>9</sup>

The Townships filed comments to this provision questioning the necessity of the Commission's filing requirements and cost reduction measures. Townships' Comments at 4. We note those comments and will consider them at a later time.

#### **Section 2304. Well information.**

Section 2304 requires the DEP, by February 28, 2012, to provide the Commission and, upon request, a county, with a list of all spud unconventional gas wells. Further, the DEP must update the list and provide it on a monthly basis to the Commission. The Commission has already received this well information from the DEP and it is under review for integration into the Commission's impact fee determination, collection and disbursement processes under the Act.<sup>10</sup>

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<sup>9</sup> An explanation of the procedure for challenging the assessment will be included with each invoice.

<sup>10</sup> DEP well information can be found at [http://files.dep.state.pa.us/OilGas/OilGasLandingPageFiles/Act13/PUC\\_2011\\_Web.pdf](http://files.dep.state.pa.us/OilGas/OilGasLandingPageFiles/Act13/PUC_2011_Web.pdf).

Additional requirements are placed on producers to self-report and update the Commission regarding: (1) the spudding of additional wells; (2) the initiation of production at an unconventional well; and (3) the removal of an unconventional gas well from production. The form for the Monthly Producer Well Update Report is at Attachment B. Lastly, we note here that if a producer or local government determines that the well information provided by the DEP to the Commission is incomplete or otherwise inaccurate, the producer should address that concern with the DEP.

The Townships and the Counties filed comments requesting more guidance as to how local government units should address well information discrepancies. Townships' Comments at 5, Counties' Comments at 2. As noted, those discrepancies should be addressed with the DEP upon discovery of the discrepancy. The communication should be in writing, with a copy provided to the Commission. Beyond this general information, we believe that it is best for DEP to provide guidance as to what it requires of the local government units in this regard.

The Producers comment that our forms A and B, attached, require minor modification. Producers' Comments at 13, 14. We agree and have addressed this.

**Section 2305. Duties of department.**

Section 2305(a) requires the DEP to confirm that, prior to issuance of a permit, all fees owed for an existing unconventional gas well have been paid. Section 2305(b) prohibits the DEP from issuing a permit to a producer to drill an unconventional gas well until all fees owed have been paid. Section 2305(c) requires the Commission to provide the DEP with the information necessary to determine that a producer has paid gas well fees owed for all unconventional gas wells under Section 2302. No comments were filed to this provision and therefore we adopt our treatment as proposed.

**Section 2307. Commission.**

**Section 2308. Enforcement.**

**Section 2309. Enforcement orders.**

**Section 2310 Administrative penalties.**

Sections 2307 through 2310 are related and we address them collectively. Section 2307 authorizes the Commission to make all inquiries and determinations necessary to calculate and collect impact fees, administrative charges and assessments to be paid by producers, including interest and penalties. Section 2308 authorizes the Commission to assess interest, penalties, and deficiency notices on producers, and also makes available equitable remedies including liens and execution of judgments in state civil court for non-payment.<sup>11</sup> Section 2309 allows the Commission to issue enforcement orders. Section 2310 authorizes the Commission to assess civil penalties for violations of this chapter.<sup>12</sup>

The Commission expects that producers will cooperate by responding timely to any inquiry necessary to calculate and collect the impact fees imposed under Act 13. At the same time, and consistent with basic due process, the Commission intends to provide producers with notice and an opportunity to be heard before any final enforcement order or measure is rendered. The Commission will issue additional orders and/or Secretarial Letters as needed to inform interested parties of any future developments regarding these investigation and enforcement processes.

No comments were filed to this provision and therefore we adopt our treatment as proposed.

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<sup>11</sup> Under Section 2308, if a producer fails to make a timely payment of the fee, there shall be added to the amount of the fee due a penalty of 5% of the amount of the fee for less than a month with an additional 5% penalty for each additional month or fraction of a month not to exceed 25% in the aggregate.

<sup>12</sup> Under Section 2310, the Commission may assess a civil penalty not to exceed \$2,500 per violation upon a producer for the violation of this chapter. In determining the amount of the penalty, the Commission must consider the willfulness of the violation and other relevant factors. Each violation for each separate day and each violation of this chapter shall constitute a separate offense.

**Section 2312. Recordkeeping.**

**Section 2313. Examinations.**

Section 2312 establishes record-keeping requirements on producers, and authorizes the Commission to require producers to make reports, render statements or keep records as deemed necessary to determine liability for the impact fee. Section 2313 authorizes the Commission to access, review and audit records maintained by producers and requires producers to maintain records for at least three years. Section 2313 also provides certain confidential protections for information obtained from producers. No comments were filed to this provision and therefore we adopt our treatment as proposed.

**Section 2314. Distribution of fee.**

Section 2314(a) establishes a fund in the State Treasury known as the “Unconventional Gas Well Fund” that will be administered by the Commission. Section 2314(b) requires that all fees imposed and collected under Chapter 23 must be deposited into this fund. Section 2314(c) provides a detailed allocation procedure for the distribution of collected funds to various recipients including conservation districts, state agencies and to the “Marcellus Legacy Fund.”<sup>13</sup> See Sections 2314(c), (c.1), (c.2).

Fee Distribution to Localities

Section 2314(d) provides that for the year 2011 and each year thereafter, 60% of the funds remaining in the Unconventional Gas Well Fund, after specified distributions, will be allocated to counties and municipalities for those purposes specifically authorized in Section 2314(g). The legislation also specifies, at Sections 2314(d)(1), (2) and (3), that

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<sup>13</sup> The Marcellus Legacy Fund, as defined in Section 2315, is a fund established in the State Treasury for the deposit of 40% of the remaining revenue following distribution under Section 2314(c), (c.1) and (c.2) from fees collected for 2011 and thereafter. The proceeds of this fund are to be distributed as follows: (1) 20% to the Commonwealth Financing Agency; (2) 10% to the Environmental Stewardship Fund; (3) 25% to the Highway Bridge Fund; (4) 15% for county conservation projects; (5) 25% for water and sewer projects; and (6) 5% to the Department of Community and Economic Development. Section 2314(c.2) provides for additional amounts to be deposited into the Marcellus Legacy Fund for distribution to DEP for the Natural Gas Energy Development Program.

the remaining amount will be allocated to counties and municipalities by a formula whose denominator is “the number of spud unconventional gas wells in this Commonwealth.” *See id.* at §§ 2314(d)(1), (d)(2), (d)(3). The intention of the legislation is to distribute this entire 60% amount to the entities described in these three subsections. At the same time, all spud wells may not be subject to the impact fee under Act 13 if a county declines to participate. Accordingly, for purposes of calculating the disbursement, the Commission will interpret these subsections as referring to the total number of spud unconventional wells subject to the impact fee under Act 13.

Also, 40% of the remaining funds of the Unconventional Gas Well Fund, following specific distributions, will be deposited in the Marcellus Legacy Fund, appropriated to the Commission and distributed to various recipients pursuant to Section 2315. The Commission is presently developing the algorithms and computer programs necessary to distribute the Unconventional Gas Well Funds in accordance with this statutory formula.

In addition, because Section 2314(e) provides that the amount allocated to each municipality shall not exceed the greater of \$500,000 or 50% of the total budget for the prior fiscal year beginning with the 2010 budget year, the Commission needs budget information regarding each municipality that qualifies for impact fee disbursements under Subsection (d). Accordingly, in order to administer the distributions in accordance with the statutory formula for impact fee disbursement to local governments, the Commission has developed a 2010 Municipality Approved Budget Report form for the use by municipalities, Attachment “C” to this Implementation Order.

### Reporting

Section 2314(h)(1) establishes a requirement on the Commission to submit an annual report to the Senate and House of Representatives Appropriations Committees and

Environmental Resources and Energy Committees by December 30, 2012 and by September 30 of each year thereafter. The initial report must include a detailed listing of all deposits to and expenditures from the fund.

Section 2314(h)(2) requires that all counties and municipalities receiving funds from the Unconventional Gas Well Fund to annually submit, on or before April 15, information to the Commission on a Commission prepared form that sets forth the amount and use of the funds received in the prior year. Specifically, the form will document that the funds received were committed to a specific project or used as authorized in Chapter 23 of the Act. Further, Section 2314(h)(2) requires that these reports must be published annually on the county's or municipality's publicly accessible website. In order to comply with the requirements of this Section, the Commission has developed an Unconventional Gas Well Fund Usage Report form for use by counties and municipalities, Attachment "D" to this Implementation Order.

All Commentators generally agreed with our treatment of these provisions. The Producers suggest that the Commission's assessment be allocated to all producers, not just those that are subject to a fee. Producers' Comments at 2.<sup>14</sup> Pursuant to Section 2303(c), the Commission shall assess its administrative costs on all producers "subject to the administrative charge in proportion to the number of wells owned by each producer." The annual administrative charge of \$50 per spud unconventional gas well is to be paid by each producer along with the annual fee. "Producer" is defined at Section 2301 as a "[p]erson...that holds a permit...to engage in the business of severing natural gas for sale, profit, or commercial use from an unconventional gas well in this Commonwealth...." Nothing in these provisions suggests that the assessment is limited to producers subject to the impact fee. Therefore, we believe that Act 13 subjects all producers to the \$50 per

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<sup>14</sup> We note that since all eligible counties have adopted an impact fee, this necessitates that all producers will be subject to assessment.

well annual administrative charge as well as the assessment to fund the Commission's administrative costs.

The Counties, Townships, and Boroughs, comment that, for those municipalities that do not have a web-site, the required report should be available via the Commission or other means, to satisfy the mandate. We agree and will allow those municipalities that do not maintain a web-site to make the reports public in the same manner as that municipality would make public other actions taken by it. Municipalities do not need to seek a waiver from the Commission in this regard. Reports must be made available for public viewing by those municipalities upon request. The reports also will be available via the Commission's Secretary's Bureau and web-site.

Finally, the Boroughs suggest that the municipality budget report should be more clearly defined and greater explanation given as to what should be included on the budget report. Upon review, we accept the Boroughs' suggestion that the budget amount should be defined as "the final approved 2010 budget by the governing body" of the local government. Boroughs' Comments at 2. Based on the Commission interpretation of subsection (e), the budget should include all *planned* expenditures for the 2010 calendar year, funded by whatever sources of revenues the local government had anticipated for that calendar year. We recognize that due to the vagaries of unanticipated events or circumstances, the actual expenditure may be greater than or less than the originally budgeted amount; nevertheless, the originally approved total budget for the 2010 fiscal year is the amount to be reported.

Accordingly, we disagree with the Townships that the budget amount should include updated or other subsequent increases to its total budget from what was originally approved for the 2010 budget year. Townships' Comments at 6. The statutory language at Section 2314(e) specifies "the total budget for the prior fiscal year beginning with the

2010 budget year” as the amount to be used in determining the amount to be allocated to a municipality. 58 Pa. C.S. § 2314(e). The language in subsection (e) does not include any provisions for updates to the 2010 budget year to account for subsequent revisions. On the other hand, the statute does provide for subsequent updates to the 2010 budget amount “to reflect upward changes in the Consumer Price Index (CPI)” for the region. 58 Pa. C.S. § 2314(e). Accordingly, we view the statutory provision for subsequent upward increases in the CPI as the sole means by which the originally approved 2010 budget amount can be updated.

### **Section 2315. Statewide initiatives.**

Section 2315 establishes a State Treasury fund known as the Marcellus Legacy Fund and provides detailed requirements for the distribution of the proceeds of that Fund. As noted, this Legacy Fund receives 40% of the impact fee monies remaining in the Unconventional Gas Well Fund, after specific distributions. The Commission is presently developing the algorithms and computer coding necessary to distribute the Marcellus Legacy Funds in accordance with this statutory formula. No comments were filed to this provision and therefore we adopt our treatment as proposed.

### **CONCLUSION**

The Unconventional Gas Well Impact Fee Act (Act 13) establishes an impact fee for unconventional wells that will be administered by the Commission. The Commission has issued this Implementation Order Regarding Chapter 23 in order to outline the key portions of that chapter that this agency is required to administer and to provide guidance on how those provisions will be implemented.

While this order addresses the key issues necessary for implementation of Chapter 23 of Act 13, we recognize that there are other issues not presently addressed or that may arise and require resolution in the future. Accordingly, if there are additional

issues that should be addressed, commentators may, by May 30, 2012, identify these issues and propose resolutions for our consideration and disposition in a supplemental implementation order.

However, as noted herein, due to uncertainty surrounding the pending litigation, the Commission will not address the provisions of Chapter 33 of Act 13 at this time;

**THEREFORE,**

**IT IS ORDERED:**

1. Upon issuance of this Implementation Order, each producer with unconventional wells spud in this Commonwealth shall submit payment of the impact fee imposed under Chapter 23, for each county that has imposed an impact fee, to the Unconventional Gas Well Fund by September 1, 2012 and by April 1 of each year thereafter, and shall file a **Producer Well Report** with the Commission regarding such payments using the form set forth in Attachment A of this Order by those same dates.

2. That each producer shall file a **Monthly Producer Well Update Report** with the Commission by September 1, 2012 and each April 1 thereafter, using the form set forth in Attachment B of this Order.

3. That each municipality qualified to receive disbursements from the impact fee imposed under Chapter 23 shall file a **2010 Municipality Approved Budget Report** with the Commission by July 6, 2012 using the form set forth in Attachment C of this Order.

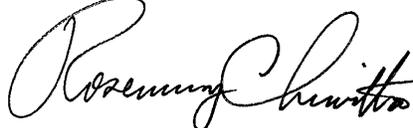
4. That each county and municipality receiving disbursements from the impact fee imposed under Chapter 23 shall file an **Unconventional Gas Well Fund Usage Report** with the Commission by April 15 of each year, using the form set forth in Attachment D of this Order.

5. Any interested party may, by May 30, 2012, propose issues beyond those addressed in this order that warrant our consideration and disposition in a supplemental implementation order. Parties should provide these issues in writing to the Commission, referencing this docket number.

6. That a copy of this Order shall be published in the Pennsylvania Bulletin and posted on the Commission's website at [www.puc.state.pa.us](http://www.puc.state.pa.us) click on Natural Gas/Act 13 (Impact Fee).

7. That a copy of this Order be served on all commentators.

**BY THE COMMISSION:**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 10, 2012

ORDER ENTERED: May 10, 2012