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Impact Fee Imposed by Pennsylvania Supreme Court

ENERGY & RESOURCES, STATE AND LOCAL TAX
BY

The Supreme Court of Pennsylvania issued its decision in *Snyder Brothers, Inc. v. Pennsylvania Public Utility Commission*, ruling that impact fees applied to vertical gas wells that produced an average of 90,000 cubic feet of gas per day for a single month in a given year. The decision reverses the order issued by the Commonwealth Court which sided with Snyder Brothers, Inc. ("SBI").

The case centered on the use of the word "any" in the Oil and Gas Act ("Act 13"). Act 13 imposed an impact fee on a "vertical gas well" that produces more natural gas than a stripper well. A stripper well is "an unconventional well incapable of producing more than 90,000 cubic feet of gas per day during *any* calendar month."

Act 13 allows the suspension of impact fees if the operator produces less natural gas than the limit to be classified as a stripper well.

SBI was assessed impact fees, penalty and interest for wells it operated in 2011 and 2012 that it did not classify as vertical gas wells. SBI responded that the wells were stripper wells not subject to the impact fees. SBI argued that the statute was unambiguous and that since its unconventional wells produced less than 90,000 cubic feet of gas per day in a single month during the year, the wells were stripper wells.

The Pennsylvania Public Utility Commission ("PUC") argued that the word "any" was ambiguous and therefore it was necessary to interpret the statute. The dispute was presented to an Administrative Law Judge ("ALJ") and the PUC, both of which concluded that the word "any" had two meanings. The phrase "any calendar month" was interpreted to mean "every calendar month" by the ALJ and the PUC, whereas SBI had argued it should be interpreted as "one calendar month."

SBI appealed the ruling to the Commonwealth Court, which reversed the decision of the ALJ and the PUC. The Court found that the word "any" was unambiguous in the context of the statute and meant "only one or a singular month". The Court went as far as to cite grammar rules in its decision on the basis that "any" modified a singular noun. The Court ruled that if a well is unable to produce "90,000 cubic feet per day in any one month of a calendar year, it must be classified as a stripper well for that year."

The Pennsylvania Supreme Court found that the word "any" was ambiguous in that it had two reasonable and plausible interpretations. Due to the ambiguity, the Court resorted to "statutory construction factors" to draw conclusions on the purpose, intent and history of the statute.

The Court gave significant weight to the intent of the statute to provide counties

and municipalities with funds to address the effects of drilling (air and water pollution and heavy vehicle traffic) in their communities.

Further, the Court cited the impact of gas well production on communities and sided with the PUC's assertion that the impact on the community does "not vary with the fluctuations in well production."

The Court concluded that the interpretation of "any" which is most closely aligned with the statute's intent is "each and every" calendar month during a calendar year. The Court also considered other provisions within Act 13 under the premise that the statute must be read as a whole and not just its individual parts. Act 13 includes a section on nonproducing wells that states that the impact fee is applicable if the well produces 90,000 cubic feet per day "at some point during a calendar year."

Lastly, the Court sided with the PUC's interpretations of Act 13 that it issued as Orders, beginning in 2012. The PUC Orders all concluded that if a well qualifies as a vertical well in any calendar month, then the well is subject to the impact fee.

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