

Summary of Act 11 of 2012

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Key Elements

- Allows Utilities to Make Rate Case Claims Based on a **Fully Projected Future Test Year**
- Allows Waste Water Utilities to Allocate a Portion of its RR to the Combined WW and Water Utility Customer Base
- Allows WW, Electric, Natural Gas and PGW Utilities to Petition for **Distribution System Improvement Charge (DSIC)**

ACT 11 of 2012

- Was signed into law on February 14, 2012.



Fully Projected Future TY

- **Section 315(e) – Burden of Proof** – Utilities may use a “fully projected future test year” in rate cases.
 - The fully projected TY shall be the 12-month period that begins with the first month that the new rates will be placed into effect, after application of the full suspension period permitted under Section 1308(d).
 - New language exempts application of Section 1315 which, for electric utilities, requires projects to be providing “actual utility service” before being included in the rate base.

Segregation of Property

- **Section 1311(c) – Segregation of Property** – New language *exempts* water and waste water utilities from prohibition on combining, for ratemaking, different types of utility service.
- For water and wastewater utilities, provides that upon petition the PUC may, *after notice and opportunity to be heard*, allocate a portion of the waste water utility's revenue requirement to the combined water and waste water customer base if deemed “in the public interest”.

Distribution System

Improvement Charge (DSIC)

- DSIC legislation provides an additional rate mechanism to recover fixed costs related to repair, improvement and replacement of “eligible property” , basically - utility infrastructure capital costs
- DSIC rate mechanism is separate and apart from comprehensive rate case review of ratemaking elements under Section 1308
- DSIC will reduce regulatory lag, improve access to capital at lower rates and *accelerate* infrastructure improvement and replacement
- The term “eligible property” is defined for each industry (water, WW, electric and natural gas)

DSIC Petition

- Utilities may petition for DSIC on and after January 1, 2013.
- Petition for DSIC must contain these elements:
 - an initial tariff (based on PUC model tariff)
 - testimony, affidavits, exhibits or other support
 - long-term infrastructure improvement plan,
 - certification that RC had been filed within past 5 years
 - any other information required by PUC.
- Must include demonstration that grant of DSIC will *accelerate* rate of infrastructure replacement over utility's base line rate of replacement, and how investment will ensure and maintain adequate, safe and reliable service.

Long-term Infrastructure Improvement Plan

- Legislation sets forth six (6) elements for the long-term plan:
 - types and age of eligible property,
 - schedule for its planned repairs and replacements,
 - location of the eligible property,
 - quantity of property to be improved,
 - projected annual expenditures and measures to ensure that plan is cost effective, and
 - manner in which replacement of aging infrastructure will be accelerated *and* how repair improvement or replacement will maintain safe and reliable service.
- Empowers PUC to order a new or revised plan if utility's proposed plan is not adequate.
- DSIC will terminate if utility is not in compliance with its long-term plan.

Customer Notice and PUC Review

- **Customer Notice** – Requires utilities to provide notice to customers via bill insert or other means directed by PUC of the following: (1) submission of DSIC petition, (2) PUC's disposition of DSIC petition, (3) any quarterly changes to DSIC rate, and (4) any other information required by PUC.
- **PUC Review** – Provides that PUC shall, after notice and opportunity to be heard, approve, modify or reject the utility's proposed DSIC and initial tariff

Computation of Charge

Section 1357 – Computation of Charge – Provides details on computation:

- may claim fixed costs of eligible property *not previously included in rate base*,
- may recover capital costs based on (i) depreciation rates from utility's most recent rate case and (ii) pre-tax return based on cost of equity from last rate case or, if more than 2 years have elapsed, cost of equity in PUC's most recent quarterly earnings report, and
- for PGW, may claim amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs. No recovery of any associated operating costs.

Customer Protections

- **Limitations on recovery:** (1) DSIC may not exceed 5% of amounts billed (water) or 5% of distribution bills (electric, natural gas and WW); (2) 7.5% limit for previously approved water utility DSICs, and (3) re-set to zero if overearning (per PUC quarterly earnings review) or new base rates established
- **Rate Structure Protections:** (1) charge is applied equally to all customer classes (R,C and I), (2) must provided for credits for over collections and charges for under collections, and (3) requires audits and reconciliation consistent w/Section 1307(e)
- **Complaints** – ability for file Section 701 complaints against any DSIC filing

Implementation

- The PaPUC entered a Tentative Implementation Order at its May 10, 2012 Public Meeting.
- The Tentative Implementation Order includes a Model DSIC tariff
- Can be found at this link:
- http://www.puc.state.pa.us/general/Act11_info.aspx



**Act 13 (Impact Fee)
PUC Implementation
County Planning Directors Association of PA
State College, PA**

April 27, 2012

Act 13 Overview

- Signed into law Feb. 14, 2012
- Amends Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes (Act 13 of 2012)
- PUC responsibilities:
 - Chapter 23 provides for the imposition of an unconventional gas well fee (also called a drilling impact fee)
 - Chapter 33 governs local ordinances that impose conditions, requirements or limitations on oil or gas operations
- Other sections of Act 13:
 - Chapter 25 – Oil and Gas Lease Fund
 - Department of Conservation and Natural Resources
 - Chapter 27 – Natural Gas Energy Development Program and Chapter 32 – Development
 - Department of Environmental Protection

Act 13

Implementation Order

- Issued for public comment on March 15, 2012
- Outlined key portions of the Act that the PUC is required to administer
- Interested parties provided comments on PUC implementation plans
 - County Commissioners' Association of PA provided comments
- Final Order to be issued in future

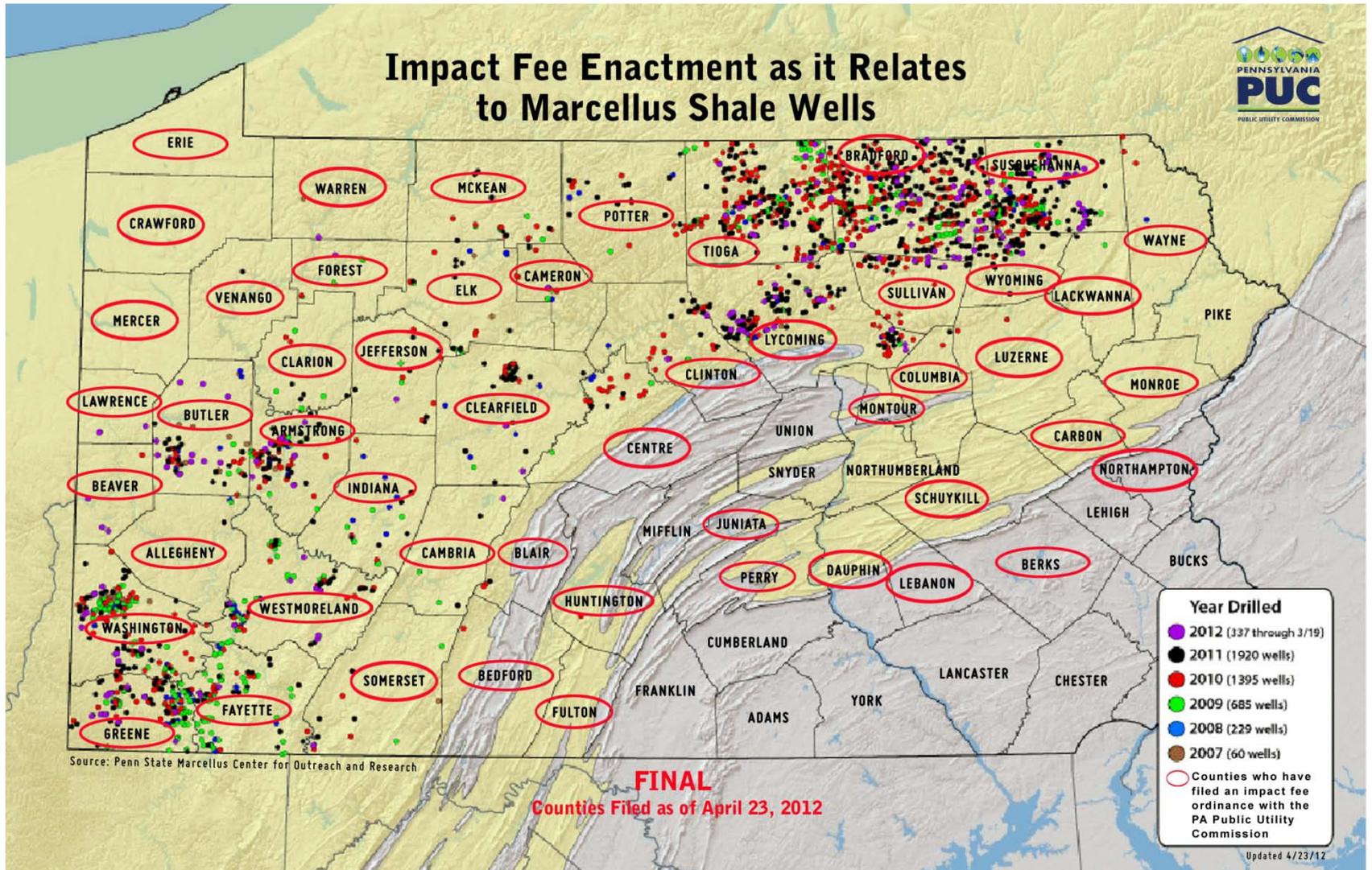
Final Implementation Order

- Once entered, can be found at www.puc.state.pa.us. Click on Natural Gas/Act 13 (Impact Fee)
- Provides direction on:
 - Implementation steps
 - Producer Report
 - Advisory Opinion Request Form
 - Request for Review Form
 - Municipal Budget Report
 - Impact Fee Disbursement Report

Act 13 – Role of Counties

- **Counties may impose the fee if:**
 - Unconventional gas wells are located within its borders
 - The county needed to pass an ordinance imposing that fee by April 16, 2012
 - Adoption of ordinance makes counties eligible to receive impact fee money
 - As of April 19, 2012, 51 counties have adopted an ordinance.

Act 13 – Role of Counties



Act 13 – Role of Municipalities

- Municipalities did have the option to adopt resolutions to compel the imposition of a fee
 - If a county chooses not to impose an unconventional gas well fee
- To qualify, 50% of the municipalities or municipalities representing 50% of the population of the county must affirmatively support
- Municipalities do not need to exercise this option

Act 13 – Fee Collection

- PUC to administer collection of impact fee money
- Fee begins the year the well is “spud”
 - Defined as the year the actual drilling of the unconventional well began
- Beginning Jan. 1, 2013, the PUC may annually adjust the fee to reflect any upward changes in the Consumer Price Index for all Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months
- The adjustment may only occur if the total number of unconventional wells spud in a given year exceeds the number of unconventional wells in the prior year

Act 13 – Fee Collection

- The fee for horizontal wells will be based upon year of well and average price of natural gas as follows:

Year	\$0-2.25/Mcf	\$2.26-2.99/Mcf	\$3.00-4.99/Mcf	\$5-5.99/Mcf	\$6/Mcf or higher
1	\$40,000	\$45,000	\$50,000	\$55,000	\$60,000
2	\$30,000	\$35,000	\$40,000	\$45,000	\$55,000
3	\$25,000	\$30,000	\$30,000	\$40,000	\$50,000
4	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
5	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
6	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
7	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
8	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
9	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
10	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
11	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
12	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
13	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
14	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
15	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000

- Vertical wells are assessed at 20 percent of the horizontal well fee for 10 years.

Act 13 – Fee Distribution

- PUC to administer distribution of impact fee money
- Law earmarks about \$25 million for state agencies to offset the statewide impact of drilling
- 60% of the remaining funds after earmarks goes to counties/municipalities
- 40% for statewide initiatives with potential local impacts and value

Fee Distribution, Local Governments

- Developing algorithms, computer programs necessary to distribute impact fees
- Specific amounts not available at this time
- Amount allocated shall not exceed \$500,000 or 50 percent (whichever is higher) of the total budget for the prior fiscal year for eligible municipalities
- Beginning with 2010 budget year, adjusted annually
- Law specifically defines how money can be spent
 - Such as water, wastewater and road maintenance, repair; social service delivery; emergency preparedness; environmental programs; tax reductions; increased safe/affordable housing; employee training; or planning initiatives

Fee Distribution – Tentative Order

- PUC Tentative Order:
 - Requires all qualifying municipalities to submit a “Municipality Budget Report”
 - Deadline: **July 6, 2012**
 - PUC required to report deposits of and expenditures from fee
 - Qualifying municipalities will file Impact Fee Disbursement Report for each calendar year
 - Deadline: **April 15 of each year**
 - Must be published annually on county/municipal website (if available)
- Forms will be included in Final Order – will be available on website

Local Ordinances, Oil/Gas Operations

- *The following information is subject to a proceeding currently before the state Commonwealth Court*
- Law specifically :
 - Defines oil and gas operations
 - Says all local ordinances “must allow for the reasonable development of oil and gas resources”
 - Establishes PUC duties for reviewing local municipal ordinances
 - PUC has 120 days after request to:
 - Provide an advisory opinion to local governments
 - Answer a request for review to resident/producer through a PUC Order
 - Allows filings directly with Commonwealth Court to invalidate a local ordinance on oil, natural gas drilling
 - No statutory deadline for court action

Local Ordinances

- *PUC Final Order (again, these provisions are subject to a proceeding currently before the state Commonwealth Court)*
 - Statute provides 120 days from the provision's effective date (April 14, 2012) for municipalities to review and amend existing oil, natural gas drilling ordinances
 - Because Aug. 12, 2012, falls on a Sunday – deadline is **Aug. 13, 2012**
 - Establishes procedures for handling advisory opinions/request for review
 - Verifies that local governments with ordinances in violation of the law are ineligible to receive impact fee funds
 - Eligible once ordinance is amended or repealed in accordance with the law
 - Notice of amendment/repeal to be filed with PUC within 5 days of local government action

Litigation Over Act 13

- A number of municipalities have filed suit in Commonwealth Court challenging the constitutionality of Act 13.
- Plaintiffs requested a preliminary injunction of Act 13
- Court did grant an injunction as to Section 3309
- Limits the effect of Act 13 to render pre-existing ordinances invalid
- Court provides an additional 120 days beyond the current 120 days to permit municipalities to amend ordinances

Litigation Over Act 13

- Court must still decide the merits of the case
- PUC interprets the injunction as preventing further action on reviewing ordinances until the injunction is lifted

Process for Advisory Review

§ 3305(a)

- Ordinance submitted to us for review must be a proposed ordinance
- May accept request for opinion of existing ordinance but time limits don't apply
- Must be filed with Secretary's Bureau
- Must include:
 - Entire ordinance
 - Designate the section of the ordinance in potential conflict
 - May want to provide additional explanation as to why you believe there is a conflict with MPC or Chapters 23, 32 or 33

Process for Advisory Review

§ 3305(a)

- PUC must respond with a written advisory opinion in 120 days for proposed but not existing ordinance
- Sample form at Attachment E of the Final Order
- Opinions are non-binding and advisory

Process for Requests for Review

§ 3305(b)

- Owners/operators of oil or gas operations or a person within the boundaries of a municipality
- Party must be aggrieved
- PUC must issue an order in 120 days
- Request for Review:
 - Name and address of local government
 - Copy of ordinance
 - Identify part of ordinance in conflict with Chapter 23, 32, 33 or MPC

Process for Requests for Review

§ 3305(b)

- Request for Review Form at Attachment F of Final Order
- Answers will be permitted within 20 days
- Handled without hearing except in rare cases
- In either case, the matter will be certified to the Commission for review to be completed in 120 days
- Transparent and open process
- Will be subject to vote
- *Ex parte* rules apply
- *De novo* review to Commonwealth Court

Criteria Used To Judge Local Ordinances

- General pre-emption language of Sections 3302 & 3303
- Uniformity provision of Section 3304
 - Section 3304(b)
 - 1) Well & pipeline location assessment operations including seismic requirements
 - 2) Limitations on construction of oil/gas operations
 - 3) Requirements for structure heights, screening, lighting noise
 - 4) Time limits on granting permitted and conditional uses
 - 5) Oil & gas operations with certain exceptions are permitted uses
 - 5.1) Residential district set-backs

Criteria Used To Judge Local Ordinances

- 6) Impoundment set-backs
 - 7) Natural gas compressor station restrictions
 - 8) Natural gas processing plant restrictions
 - 9) Overweight vehicles limitations
 - 10) No limits on subterranean operations or hours of operation
 - 11) No change to Ch. 32 set-back distances
- Section 3215(a) – well location restrictions
 - Section 3215(b) – set-back restrictions for waterways & wetlands
 - Section 3215(f) – restrictions on drilling in Flood Plains
 - Other restrictions to oil & gas development

