



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NORTHWEST REGIONAL COUNSEL

June 18, 2014

VIA E-MAIL

Glenda Davidson
Docket Clerk
Department of Environmental Protection
400 Market Street
Rachel Carson State Office Building
16th Floor
Harrisburg, PA 17101

Re: Hilcorp Energy Company
MMS No. 2013-SLAP-000528
Docket No. 2013-01

Dear Ms. Davidson:

Enclosed for filing in the above-referenced matter is the Commonwealth of Pennsylvania, Department of Environmental Protection's Answer to Hilcorp's Motion to Schedule Hearing, Proposed Order, and Certificate of Service.

Please call me if you have any questions concerning this matter. Thank you.

Sincerely,

/s/ Donna L. Duffy
Donna L. Duffy
Regional Counsel
PA I.D. No. 68030

Enclosures

cc via e-mail: Michael L. Bangs, Hearing Officer
Elizabeth Nolan, Esq.
Donna L. Duffy, Esq.
Kevin L. Colosimo, Esq.
Daniel P. Craig, Esq.
Omar K. Abuhejleh, Esq.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT**

In Re. The Matter of the Application of)
Hilcorp Energy Company for)
Well Spacing Units) Docket No. 2013-01
)

DEP’S ANSWER TO HILCORP’S MOTION TO SCHEDULE HEARING

NOW COMES, the Commonwealth of Pennsylvania, Department of Environmental Protection (“DEP”), and pursuant to 1 Pa. Code §35.179, files this Answer to Hilcorp Energy Company’s (“Hilcorp”) Motion to Schedule Hearing. DEP respectfully requests that the Hearing Officer deny Hilcorp’s Motion, and grant the Motion for Stay of Proceedings previously filed by the Property Owners, until at least such time as the Commonwealth Court rules on Hilcorp’s Preliminary Objections and all of the responses thereto.

DEP avers the following in support of this Answer:

1. Admitted.
2. Admitted.
3. Admitted. By way of further answer, on May 2, 2014, DEP filed an Answer to the Property Owners’ Motion for Stay of Proceedings. In its Answer, DEP stated that it did not object to the Property Owners’ Motion for Stay of Proceedings because, among other things, “the Commonwealth’s Court’s determinations under the Petition regarding the Oil and Gas Conservation Law will also control the outcome in these proceedings before the Hearing Officer”
4. Admitted.
5. The referenced article in the May 17, 2014, edition of the *Pittsburgh Post-Gazette* speaks for itself and, as such, the same is denied. By way of further answer, it is

denied that this reporter's story in the referenced article sets forth the Department's position on the procedural posture of this matter.

6. Admitted in part, denied in part. It is denied that the Amended Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief filed by the Property Owners sets forth an "untenable theory" for the Commonwealth Court's proper exercise of jurisdiction. The remainder of Averment 6 is admitted.

7. It is denied as, after reasonable investigation, DEP is without sufficient knowledge to form a basis as to the truth of Averment 7. By way of further answer, Hilcorp's averment that the "Commonwealth Court will likely decline to exercise jurisdiction" over the Property Owners' Amended Petition for Review is pure speculation, and is not supported by recent events where the Commonwealth Court exercised jurisdiction over constitutional issues relating to another Oil and Gas statute. See Robinson Township v. Commonwealth, 52 A.3d 463 (Pa.Cmwlt. 2012). In Averment 6, Hilcorp indicates that it has filed Preliminary Objections to the Property Owners' Petition for Review. Thus, when it rules on Hilcorp's Preliminary Objections, the Commonwealth Court will determine the issues relating to ripeness and jurisdiction. Accordingly, rather than speculating on what may happen in the Commonwealth Court, a stay of this proceeding before the Hearing Officer is advisable at least until the Commonwealth Court rules on Hilcorp's Preliminary Objections.

8. It is denied as, after reasonable investigation, DEP is without sufficient knowledge to form a basis as to the truth of Averment 8. By way of further answer, Hilcorp's averment that the "Commonwealth Court will likely refrain from exercising equitable jurisdiction" over the Property Owners' Amended Petition for Review is pure speculation, and is not supported by recent events where the Commonwealth Court exercised jurisdiction over constitutional issues

relating to another Oil and Gas statute. See Robinson Township v. Commonwealth, 52 A.3d 463 (Pa. Cmwlth. 2012). In Averment 6, Hilcorp indicates that it has filed Preliminary Objections to the Property Owners' Petition for Review. Thus, when it rules on Hilcorp's Preliminary Objections, the Commonwealth Court will determine the issues relating to primary jurisdiction and exhaustion of administrative remedies. Accordingly, rather than speculating on what may happen in the Commonwealth Court, a stay of this proceeding before the Hearing Officer is advisable at least until the Commonwealth Court rules on Hilcorp's Preliminary Objections.

9. Admitted in part, denied in part. It is admitted that an administrative appeal scheme exists under other statutes for final Department actions to be appealed to the Environmental Hearing Board, which is the adjudicator. It is denied that such administrative appeal scheme applies to this matter. By way of further answer, under the Oil and Gas Conservation Law, the Secretary for the Department is the adjudicator, not the Environmental Hearing Board. As such, any final decision by the Secretary in this matter is an "adjudication" within the meaning of 2 Pa.C.S. §101, and is appealed to the Commonwealth Court. See 42 Pa.C.S. §763(a)(1). It is further denied as Averment 9 sets forth a legal conclusion for which no response is required.

10. It is denied that any decision by the Secretary for the Department in this matter may be appealed to the Environmental Hearing Board. By way of further answer, under the Oil and Gas Conservation Law, the Secretary for the Department is the adjudicator, not the Environmental Hearing Board. As such, any final decision by the Secretary in this matter is an "adjudication" within the meaning of 2 Pa.C.S. §101, and is appealed to the Commonwealth Court. See 42 Pa.C.S. §763(a)(1). It is further denied as, after reasonable investigation, DEP is without sufficient knowledge to form a basis as to the truth of the remainder of Averment 10. By way of

further answer, Hilcorp's averment that the "Commonwealth Court will likely decline to exercise equitable jurisdiction" over the Property Owners' Amended Petition for Review is pure speculation, and is not supported by recent events where the Commonwealth Court exercised jurisdiction over constitutional issues relating to another Oil and Gas statute. See Robinson Township v. Commonwealth, 52 A.3d 463 (Pa.Cmwlth. 2012). In Averment 6, Hilcorp indicates that it has filed Preliminary Objections to the Property Owners' Petition for Review. Thus, when it rules on Hilcorp's Preliminary Objections, the Commonwealth Court will determine the issues relating to impacts on the Property Owners. Accordingly, rather than speculating what may happen in the Commonwealth Court, a stay of this proceeding before the Hearing Officer is advisable at least until the Commonwealth Court rules on Hilcorp's Preliminary Objections.

11. Admitted in part denied in part. It is admitted that the Environmental Hearing Board has the power to issue a supersedeas in cases over which it has jurisdiction. It is further admitted that the Commonwealth Court has the power to issue preliminary injunctions in cases before it. It is denied that the Environmental Hearing Board has jurisdiction over this matter. By way of further answer, under the Oil and Gas Conservation Law, the Secretary for the Department is the adjudicator, not the Environmental Hearing Board. As such, any final decision by the Secretary in this matter is an "adjudication" within the meaning of 2 Pa.C.S. §101, and is appealed to the Commonwealth Court. See 42 Pa.C.S. §763(a)(1). The remainder of Averment 11 is denied as it sets forth a legal conclusion for which no response is required.

12. Admitted in part and denied in part. It is admitted that the Commonwealth Court has sole jurisdiction over the Property Owners' constitutional challenge to the Oil and Gas Conservation Law. The remainder of Averment 12 is denied as it sets forth a legal conclusion for which no response is required.

13. Admitted in part and denied in part. It is admitted that the Commonwealth Court has the power to issue preliminary injunctions in cases before it. It is denied that, as a result, the Hearing Officer should schedule a hearing in this matter now. Because scheduling the hearing involves significant resources and effort, including but not limited to, the necessary public notices, and because an appeal on any final decision in this matter would go before the Commonwealth Court, a stay of this proceeding before the Hearing Officer is advisable at least until the Commonwealth Court rules on Hilcorp's Preliminary Objections and all of the responses thereto. The Commonwealth Court's ruling on the Preliminary Objections will provide guidance from the Court on whether this matter should proceed to hearing before the Hearing Officer, or be further stayed until the Court rules on the claims by the Property Owners regarding the constitutionality of the Oil and Gas Conservation Law on its face, and as applied to this proceeding regarding Hilcorp's proposed spacing order.

14. It is denied that the Oil and Gas Conservation Law contains a "45 day statutory mandate." It is further denied as, after reasonable investigation, DEP is without sufficient knowledge to form a basis as to the truth of the remainder of Averment 14.

WHEREFORE, for the reasons stated above, and for the reasons stated in DEP's Answer to the Property Owners' Motion for Stay of Proceedings, dated May 2, 2014, DEP hereby respectfully requests that, pursuant to 1 Pa. Code §35.180(a), the Hearing Officer deny Hilcorp's Motion, and grant the Property Owners' Motion for Stay of Proceedings until at least such time as the Commonwealth Court rules on Hilcorp's Preliminary Objections and all of the responses thereto.

Respectfully submitted,

COMMONWEALTH OF
PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

/s/ Donna L. Duffy
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Date: June 18, 2014

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT**

In Re: The Matter of the Application of _____)
Hilcorp Energy Company for)
Well Spacing Units) Docket No. 2013-01
_____)

[PROPOSED] ORDER

NOW, this _____ day of June 2014, based upon Hilcorp Energy Company's Motion to Schedule Hearing and the answers thereto, and based upon the Property Owners' Motion for Stay of Proceedings and the answers thereto, it is hereby ORDERED and DIRECTED that Hilcorp Energy Company's Motion is DENIED, and that the Property Owners' Motion for Stay of Proceedings is GRANTED until such time as the Commonwealth Court rules on Hilcorp's Preliminary Objections and all of the responses thereto.

After ruling by the Commonwealth Court, the Parties may file further pleadings regarding the stay of this matter in light of the ruling by the Commonwealth Court on Hilcorp's Preliminary Objections and all of the responses thereto.

SO ORDERED,

Michael L. Bangs
Hearing Officer

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT**

In Re: The Matter of the Application of)
Hilcorp Energy Company for)
Well Spacing Units) Docket No. 2013-01
)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the DEP's Answer to Hilcorp's Motion to Schedule Hearing in the above-referenced matter was this day served upon the following via E-mail:

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Respectfully submitted,
COMMONWEALTH OF
PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
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/s/ Donna L. Duffy
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Date: June 18, 2014

MBraymer/Hilcorp/Application Hearing/DEP Answer Hilcorp's Mot Schedule Hearing 061814