

# SGNG COMPANY

STEPHENSON GROUP NATURAL GAS COMPANY  
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2857

September 21, 2010

VIA CERTIFIED MAIL ARTICLE NUMBER 7192 6390 0010 0000 0725

Arthur Coccodrilli:  
Chairman  
Independent regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

RECEIVED  
IRRC  
2010 SEP 23 P 1:38

Re: Proposed Rulemaking; Oil and Gas Wells; Title 25, Part I, Subpart C, Article I, Chapter 78, Subchapter A, (Pennsylvania Bulletin, Vol. 40, No. 28, July 10, 2010.) IRRC No. 2857, Reg. No. 7-459. Rulemaking Petition.

Mr. Coccodrilli:

On or about November 24, 2009 Stephenson Group Natural Gas Company, "SGNGCO", submitted a rulemaking petition, the "Petition", to the Environmental Quality Board, "EQB", pursuant to Chapter 23, §23.3. The Petition requested amendments to Title 25, Chapter 78, §78.51 and §78.52.

On or about January 19, 2010 SGNGCO submitted a revised version of the Petition to the EQB addressing the assessment of the Petition by the EQB.

On March 16, 2010 the EQB accepted the revised Petition pursuant to 25 Pa Code, Chapter 23. (See 40 Pa.B.1635, Saturday March 27, 2010).

The EQB accepted the Petition for further review at 40 Pa.B.1635 under the premise as follows:

**" In lieu of proceeding with § 23.6 (relating to notice of acceptance and Department report) of the Board's Policy for Processing Petitions, which requires the Department of Environmental Protection (Department) to prepare a report evaluating the petition within 60 days, the Department will review the petitioner's suggested amendments as it proceeds with a proposed rulemaking to amend Chapter 78. At 40 Pa.B. 623 (January 30, 2010), the Department requested comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with amendments to Chapter 78, it will address the petitioner's recommendations within the proposed rulemaking package."**

Furthermore the EQB by letter to SGNGCO dated March 02, 2010, stated as follows:

**"Your petition will be submitted to the EQB for consideration at its next meeting scheduled for March 16, 2010. The Department will summarize the petition for the Board members who will take action to either accept or reject the petition as identified in Section 23.5 of the EQB's petition policy. At the meeting, the Department will recommend the EQB's approval of the petition for further review and study; however, in lieu of proceeding with Section 23.6 of the EQB's petition policy, which requires the Department to prepare a report evaluating the petition within 60 days, the Department will recommend to the Board that it review and further study your petition as it proceeds with a proposed rulemaking to amend 25 Pa Code, Chapter 78. In the January 30, 2010, issue of the *Pennsylvania Bulletin*, at 40 Pa.B. 623, the Department requested comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with the proposed Chapter 78 regulations, it will address your recommendations within the proposed rulemaking package. You will be notified when the proposed rulemaking is submitted to the EQB for consideration."**

The proposed amendments referenced at 40 Pa.B.623 (January 30, 2010) and by the EQB in both communications are the predecessor of the proposed rulemaking at 40 Pa.B. 3850 (July 10, 2010).

As of this date SGNGCO has been unable to find any evidence of the EQB or the DEP having reviewed the Petition or addressed the recommendations **"within the proposed rulemaking package"** despite the EQB having acknowledged to do so by virtue of the aforementioned letter of March 02, 2010 or as per 40 Pa.B.1635, (Saturday March 27, 2010). In addition the DEP is currently proposing amendments to the very same sections as referenced in the Petition (Chapter 78, §78.51 and §78.52) however

again has not addressed the content of the Petition. Furthermore, SGNGCO has not been notified of the proposed rulemaking being submitted to the EQB for consideration.

With respect to the Petition the Department now maintains that it was only the intention to address the Petition in its Comment/Response document concurrent with the Department's final form rulemaking. This is completely contrary to the key phrases as set forth in the paragraphs above by the Department and the EQB stating verbatim, **"As the Department proceeds with the proposed Chapter 78 regulations, it will address your recommendations within the proposed rulemaking package."** Addressing the Petition in the Department's Comment/Response document is not addressing the recommendations therein **"within the proposed rulemaking package"**.

Beginning with the date of which the EQB accepted the Petition the Department, despite several opportunities to do so, could have easily set forth the proposed regulatory language presented in the Petition in the proposed regulatory language. In doing so the content of the Petition could have been subjected to the public comment process, review by the Oil and Gas Technical Advisory Board (TAB), and review by the Department and finally by the Independent Regulatory Review Commission (IRRC). That process is all in the past now solely due to the actions (or lack of action) by the Department.

It does not seem logical that the Department during the process of the most sweeping changes to Chapter 78 in years would wait until after the public comment period process has closed, after review by TAB and the IRRC and after input by all other stakeholders to then address the Petition in its final Comment/Response document and deem the same action as addressing the Petition **"within the proposed rulemaking package"**.

Furthermore, the Department's draft final form rulemaking proposed to the TAB on September 16, 2010 includes nothing set forth in the Petition or the slightest reference thereto.

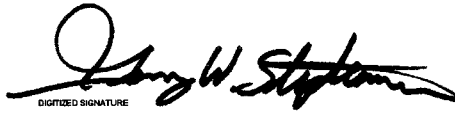
SGNGCO believes that it would be irresponsible for the Department to not address the Petition, which it approved, as part of the proposed rulemaking package particular so when the content of the Petition is a minor fraction of this major regulatory overhaul.

Furthermore SGNGCO believes that the Department has not followed applicable law, rules, regulations and policy by not addressing the Petition within the current proposed rulemaking package.

Clearly the Department is not upholding its own position with respect to the review of the Petition.

Likewise, SGNGCO respectfully requests that the IRRC dismiss the proposed rulemaking package until such time that the Department complies with the written promises to which it has previously committed to but has not performed and the Department reviews the Petition and addresses the same within the framework of current law, regulation and policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory W. Stephenson". Below the signature, the words "DIGITIZED SIGNATURE" are printed in a small, sans-serif font.

Gregory W. Stephenson  
Vice-President  
Stephenson Group Natural Gas Company

Cc: Kim Kaufman, Executive Director, IRRC  
Fiona Wilmarth, Director of Regulatory Review, IRRC  
George D. Bedwick, Vice Chairman, IRRC  
Leslie A. Lewis Johnson, Esq., Chief Counsel, IRRC  
John Mizner, Commissioner, IRRC  
Silvan B. Lutkewitte, III, Commissioner, IRRC  
S. David Fineman, Commissioner, IRRC  
Edward G. Rendell, Governor  
John Hanger, Secretary, DEP  
Susan Shinkman, Chief Counsel, DEP  
Representative Samuel H. Smith  
Senator Donald White