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MARCELLUS
SHALE COALITION™

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December 17, 2015

Leslie Lewis Johnson, Esq., Chief Counsel
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Proposed Rulemaking Amending 1 PA. Code Chs. 301, 303, 305, 307, 309, 311, 311a & 315

Dear Ms. Johnson:

The Marcellus Shale Coalition (MSC) was formed in 2008 and is comprised of approximately 220 natural gas producer, midstream and supply chain members who are fully committed to working with local, state and federal government officials, local communities, and other stakeholders to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the consultants, suppliers and contractors who work with the industry.

The MSC appreciates the opportunity to comment on the Independent Regulatory Review Commission's (IRRC) above-referenced proposed rulemaking published on November 28, 2015. The MSC offers the following comments for IRRC's consideration:

1. Section 305.1 (Delivery of a proposed regulation) references the information to be included as part of the preamble, which is a newly defined term contained in Section 301.1. Specifically, the proposal reads as follows:

(4) The preamble, which must include the information described in §301.1 (relating to definitions).

The MSC recommends that (4) more clearly refer to the information described in the new definition of "preamble" contained in Section 301.1, rather than generally referring to Section 301.1, which includes all definitions under Chapter 301. The MSC recommends your consideration of the following text:

(4) The preamble, which must include the information described CONTAINED IN THE DEFINITION OF PREAMBLE FOUND in §301.1 (relating to definitions).

This comment is applicable to Section 307.2 (5) (Delivery of final-form regulation) as well, and the MSC suggests similar language as suggested above be adopted for this section.

2. Sections 305.1 and 307.2 currently contain a requirement that a completed regulatory analysis form be submitted along with the delivery of a proposed regulation. The regulatory analysis form is required under Section 5(a) of the Regulatory Review Act. It requires an agency submitting a proposed regulation to provide a multitude of data or information supporting the regulation, including a statement of need; estimate of direct and indirect costs; consideration of impacts to small businesses; copies of forms and reports necessitated by the regulation, and other requirements. However, there has been a growing tendency for agencies to barely adhere to these statutory mandates or in some cases completely ignore them. This practice is contrary to both the letter and spirit of the Regulatory Review Act. Therefore, the MSC recommends that IRRC amend this section of its regulations to state that failure to complete the regulatory analysis form requirements is contrary

to the Regulatory Review Act, and that a proposed or final-form regulation delivered absent the required information will not be accepted for consideration under these circumstances. Consistent with the changes proposed for section 307.2(c)(5), which clarify the information required to be in the preamble, we would suggest also amending 307.2(c)(1) as follows:

(1) A completed regulatory analysis form relating to the final-form regulation UPDATED AND REVISED TO CORRESPOND WITH THE CHANGES MADE TO THE PROPOSED REGULATIONS.

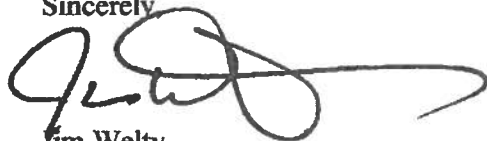
Moreover, there are examples whereby an agency promulgating a regulation has utilized the informal Advanced Notice of Final Rulemaking (ANFR) process to introduce substantive new regulatory requirements after the rulemaking was published as a proposed rulemaking and subjected to formal comment by the public, IRRC and standing legislative oversight committees. It is implausible that the General Assembly would impose such specific obligations on an agency when promulgating a proposed regulation, yet provide an avenue for an agency to effectively neuter and completely sidestep these obligations through the use of the ANFR process. The ANFR is essentially a reopening of the public comment period that is partially addressed by section 305.3 of the Commission's regulations. To address this practice and to prevent circumvention of the clear intentions of the General Assembly we recommend that section 305.3(b) be amended to add:

(1) When an agency extends or reopens the public comment period, if the agency is requesting comments on a text of the proposed regulations different from that previously published the revised text shall also be published in the Pennsylvania Bulletin and an updated and revised regulatory analysis form shall be provided to the Commission.

The MSC would be pleased to meet with IRRC to illustrate specific examples where the scenarios outlined above have occurred.

The MSC believes these changes are critical to advancing the intentions of the Regulatory Review Act, particularly as they relate to efficient review of regulations, conformity with legislative intent and avoidance of hidden costs being imposed upon the economy of the Commonwealth. On behalf of the MSC, thank you for your consideration of these comments.

Sincerely



Jim Welty
Vice President, Government Affairs
Marcellus Shale Coalition

- cc: Honorable Mike Folmer, Chair
Senate State Government Committee
Honorable Anthony Williams, Democratic Chair
Senate State Government Committee
Honorable Daryl Metcalfe, Chair
House State Government Committee
Honorable Mark Cohen, Democratic Chair
House State Government Committee

