

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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NO. 126 M.D. 2017

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COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Petitioner,

PENNSYLVANIA GENERAL ENERGY COMPANY, L.L.C.,

Intervenor,

v.

GRANT TOWNSHIP OF INDIANA COUNTY AND THE GRANT TOWNSHIP  
BOARD OF SUPERVISORS,

Respondents.

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INTERVENOR'S ADOPTION OF PETITIONER'S  
PETITION FOR REVIEW, AND ANSWER TO NEW MATTER AND  
COUNTERCLAIM OF RESPONDENTS

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Date: March 10, 2021

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On February 18, 2021, this Honorable Court granted the Unopposed Petition to Intervene of Pennsylvania General Energy Company, L.L.C. (“PGE”), noting that PGE shall be principally aligned with Petitioner Commonwealth of Pennsylvania, Department of Environmental Protection (“DEP”). On February 24, 2021, during the scheduled status conference in this matter, the Court granted PGE permission to file a responsive pleading to Respondents' Answer to Petition for Review in the Nature of Complaint Seeking Declaratory and Injunctive Relief, New Matter, and Counterclaim. The following is PGE’s Adoption of Petitioner’s Petition for Review, and Answer to the New Matter and Counterclaims remaining before this Court. As used herein, “Grant Township” shall include both Grant Township and the Grant Township Supervisors, and “Opinion” shall refer to this Court’s unreported Memorandum Opinion and Order dated May 2, 2018 in this matter.

**ADOPTION OF PETITIONER’S PETITION FOR REVIEW**

Pursuant to Pa. R.C.P. 2328(a), PGE hereby adopts DEP’s Petition for Review in the Nature of Complaint Seeking Declaratory and Injunctive Relief (filed March 27, 2017 – the “Petition”). Relative to the injunctive relief sought in Count V of the Petition, the Court (Judge Wojcik) enjoined Section 303 of Grant Township’s Home Rule Charter (“Charter”) by order dated April 10, 2017, pending final determination on the merits.

### **New Matter - Partially Stricken**

58. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. The DEP's standing is addressed in the Petition for Review filed with this Court.

59. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. This Court's jurisdiction is addressed in the Petition for Review filed with this Court.

60. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. DEP stated a claim upon which relief can be granted in its Petition for Review filed with this Court.

61. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. This Court found this legal conclusion to be unsupported in its Opinion, stating that the "Township's argument is simply without basis..." (Opinion, p. 15.)

62. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. This Court concluded that that the "Township's [local preemption] argument is simply without basis..." (Opinion, p. 15.)

63. PGE restates its response to Paragraph 62, above. To the extent that a further response is required, PGE avers that the denial of the relief requested by the DEP would result in a violation of the fundamental and unalienable rights of PGE.

64. PGE restates its response to Paragraph 62, above. In addition, to the extent that a response is required, PGE avers that the Charter is not a valid local law for many reasons, including that (i) its provisions violate the United States Constitution, (ii) it is an impermissible exercise of power under the Pennsylvania Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 et seq., (iii) it is preempted by the Pennsylvania Oil and Gas Act (Act 13), 58 Pa. C.S. §§ 2301-3504, (iv) it is exclusionary, (v) it is preempted by the Pennsylvania Limited Liability Company Law, 15 Pa. C.S. § 8901 et seq., (vi) it is preempted by the United States Safe Drinking Water Act, Pub. L. No. 93-523, 88 Stat. 1660, 42 U.S.C. § 300f et seq. (1974); (vii) it is preempted by the Pennsylvania Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101 – 6018.1003; (viii) it is preempted by the United States Resource Conservation and Recovery Act, 90 Stat. 2795, 42 U.S.C. § 6901 et seq.; (ix) it is preempted by Section 510-17 of the Pennsylvania Administrative Code, 71 P.S. § 510-17; (x) it is preempted by regulations promulgated under the foregoing federal and Pennsylvania statutes; (xi) collateral estoppel (issue preclusion) and res judicata (claim preclusion) prevent re-litigation of matters fully litigated and finally adjudicated in the United States

District Court for the Western District of Pennsylvania in Case 1:14-cv-00209 (see *Pa. Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015) (judgment on the pleadings in favor of PGE) and *Pa. Gen. Energy Co., LLC v. Grant Twp.*, No. 14-209ERIE, 2017 U.S. Dist. LEXIS 48716 (W.D. Pa. Mar. 31, 2017) (summary judgment in favor of PGE).

65. PGE restates its response to Paragraphs 62 and 64, above.

66. PGE restates its response to Paragraph 64, above. To the extent a further response is required, Grant Township's Home Rule Charter cannot exceed the limits on home rule governments in Article IX, section 2, of the Pennsylvania Constitution (Opinion, pp. 13-14).

67. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. To the extent a further response is required, Grant Township's reference to articles published on the internet that are hearsay requires no further response because hearsay is not admissible in this proceeding. Pa.R.E. 802. Further, this averment is not sufficiently specific to warrant a response, and accordingly, the averment is denied.

68. This paragraph of the New Matter was stricken by Court in its Opinion.

69. This paragraph of the New Matter was stricken by Court in its Opinion.

70. This paragraph of the New Matter was stricken by Court in its Opinion.

71. This is a legal conclusion to which no response is required in part, and this paragraph is denied in part. PGE denies that DEP has asserted that it has exclusive authority under Article I, section 27, of the Constitution. To the extent a further response is required, this averment is not sufficiently specific to warrant a response. Pa.R.C.P. 1019(a). To the extent a further response is required, PGE avers that the DEP has not failed or continued to fail to fulfill its statutory and constitutional obligations in relation to Grant Township. Nevertheless, this Court should decline to decide the constitutional issues raised by Grant Township because Grant Township failed to avail itself of a statutorily-authorized means to address its land-use concerns through zoning.

72. This is a legal conclusion to which no response is required. To the extent a further response is required, this averment is not sufficiently specific to warrant a response. Pa.R.C.P. 1019(a).

73. PGE restates its response to Paragraphs 62, 64, and 66, above.

74. PGE restates its response to Paragraphs 62, 64 and 66, above.

75. PGE restates its response to Paragraphs 62, 64, and 66, above.

76. This is a legal conclusion to which no response is required. PGE restates its response to Paragraphs 62, 64, and 66, above.

77. This is a legal conclusion to which no response is required. PGE restates its response to Paragraphs 62, 64, and 66, above.

78. PGE restates its response to Paragraphs 62 and 64, above.

79. PGE restates its response to Paragraphs 62 and 64, above.

80. PGE restates its response to Paragraphs 62 and 64, above.

81. PGE restates its response to Paragraphs 62 and 64, above.

82. PGE restates its response to Paragraphs 62 and 64, above. By way of further answer, to the extent that Grant Township is averring that the United States Safe Drinking Water Act, the United States Resource Conservation and Recovery Act, or any other federal law violates Grant Township's right of local, community self-government, PGE specifically denies the same and avers that an indispensable party to Grant Township's New Matter and Counterclaims, viz. the United States Environmental Protection Agency, is not a party to this action and thus jurisdiction is lacking with regard to an allegation binding the federal government.

83. This paragraph of the New Matter was stricken by Court in its Opinion.

84. PGE cannot admit or deny what Grant Township may do in the future, subject to the rules of Court and law.

In response to Grant Township' "WHEREFORE" paragraph on page 14 of the New Matter, PGE denies that Grant Township is entitled to relief based on the statements in their New Matter.



### **Jury Demand - Stricken**

In response to Grant Township' "Jury Demand", this demand for a jury trial was stricken by Court in its Opinion. (Opinion, p. 17.)

### **Counterclaim - Partially Stricken**

In response to Grant Township's Counterclaims, Counts I, II, V, and the repetition of the jury demand were stricken in the Opinion. The following responds to unstricken paragraphs of the Counterclaims and the remaining Counts III and IV.

#### **I. Parties**

1. Admitted.
2. Admitted.
3. This is a legal conclusion to which no response is required.
4. This is a legal conclusion to which no response is required. To the extent a further response is required, PGE denies that the people of Grant Township possess an unfettered right of local, community self-government. This Court concluded that "a home rule municipality's powers are restricted." (Opinion, p. 14.)
5. PGE restates its response to Paragraph 4, above.

6. PGE admits that Grant Township adopted a Home Rule Charter. The remainder of this paragraph is a legal conclusion to which no response is required. PGE restates its response to Paragraph 4, above.

7. Admitted.

8. Admitted in part, denied in part. PGE admits that DEP regulates oil and gas operations to the extent that such authority has been granted it by the Pennsylvania Assembly. PGE denies that DEP has primary authority to regulate the depositing of “fracking waste” through underground injection disposal wells. To the contrary, the United States Environmental Protection Agency (“EPA”) has the authority through the Underground Injection Control (“UIC”) program of the Safe Water Drinking Act, 42 U.S.C. § 300f et seq., to regulate the underground injection of brine and produced fluids for disposal. Specifically, 42 U.S.C. § 300h(b)(2)(A) authorizes the EPA to promulgate regulations with minimum requirements to protect underground sources of drinking water from underground injection but prohibits EPA from promulgating regulations that interfere with or impede the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production. Pennsylvania does not have primacy to administer the UIC program and issue Class II-D underground injection UIC permits.

9. This is a legal conclusion to which no response is required. To the extent that a response is required, PGE admits that Grant Township attempted to

prohibit the permitting of some forms of waste disposal in Grant Township but denies that its efforts were or are lawful.

10. This is a legal conclusion to which no response is required. To the extent that a response is required, PGE admits that Grant Township attempted to prohibit the permitting of some forms of waste disposal in Grant Township but denies that its efforts were or are lawful. PGE admits that the DEP issued a change in use permit to PGE to operate the Yanity gas well as an oil and gas waste fluid injection well. By way of further answer, EPA also issued Class II-D Underground Injection Control Permit No. PAS2D013BIND (the “UIC Permit”) under the federal Safe Drinking Water Act to PGE on March 19, 2014 to inject produced water into Yanity gas well, which became final on September 11, 2014 after the federal Environmental Appeals Board dismissed an appeal of that permit by Grant Township residents. The UIC Permit does not expire until 2024.

11. PGE admits that the DEP filed the Petition but denies that it attempted to nullify the Charter. The DEP only challenged the sections of the Charter that purport to regulate waste and oil and gas activities, contrary to state statutory and constitutional law. To the extent a further response is required, Grant Township's Charter cannot exceed the limits on home rule governments in Article IX, section 2, of the Pennsylvania Constitution. (Opinion, pp. 13-14.)

12. PGE restates its response to Paragraph 10, above. By way of further response, this Court concluded that “a home rule municipality’s powers are restricted.” (Opinion, p. 14.) The people of Grant Township do not have a right of local, community self-government that would permit the adoption of an ordinance that violates the United States Constitution and that is pre-empted by federal and state statutes and regulations.

13. Admitted that these authorities preempt portions of the Charter that are challenged in the DEP’s Petition for Review.

14. This is a legal conclusion to which no response is required. To the extent that a response is required, it is denied. This Court concluded that that the "Township's [local preemption] argument is simply without basis...". (Opinion, p. 15.)

## **II. Jurisdiction**

15. This is a legal conclusion to which no response is required.

16. This is a legal conclusion to which no response is required. To the extent a further response is required, Grant Township is not entitled to a declaratory judgment because (i) Grant Township has failed to avail itself of a statutorily-authorized means to address its land-use concerns through zoning. (Opinion, pp. 4-5, citing 58 Pa.C.S. § 3302 (providing for regulation of oil and gas operations under Municipalities Planning Code), pp. 14-15.); (ii) Grant Township failed to appeal

EPA's issuance of Injection Control Permit No. PAS2D013BIND Authorization to Operate Class II-D Injection Well (Mar. 19, 2014) to PGE, although three separate petitions for review were filed to that permit and were denied, *In re Pa. General Energy Company, LLC*, 16 E.A.D. 498, 2014 EPA App. LEXIS 31 (E.P.A. August 21, 2014); (iii) Grant Township failed to exhaust its administrative remedies by failing to appeal DEP's grant of the permit to PGE on each of the occasions DEP granted the permit to PGE; (iv) Grant Township has failed to join an indispensable party, being the EPA, relative to its claim that the Charter is paramount to federal law; (v) collateral estoppel (issue preclusion) and res judicata (claim preclusion) prevent re-litigation of provisions that were fully litigated and finally adjudicated in the United States District Court for the Western District of Pennsylvania in Case 1:14-cv-00209 (see *Pa. Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015) and *Pa. Gen. Energy Co., LLC v. Grant Twp.*, No. 14-209ERIE, 2017 U.S. Dist. LEXIS 48716 (W.D. Pa. Mar. 31, 2017)).

17. PGE restates its response to Paragraph 16, above.

18. PGE restates its response to Paragraph 14, above.

19. This is a legal conclusion to which no response is required. To the extent that a response is required, PGE denies that Grant Township and the people of Grant Township will suffer an injury were the Charter to be invalidated. To the extent a further response is required, Grant Township cannot claim harm from its

own unlawful legislation or its failure to avail itself of a statutorily-authorized means to address its land-use concerns through zoning. (See Opinion, pp. 4-5, citing 58 Pa.C.S. § 3302, pp. 14-15.) (See Paragraph 16, above.)

20. This is a legal conclusion to which no response is required. To the extent that a response is required, PGE denies that Grant Township and the people of Grant Township have suffered any injury based on DEP's issuance of the permit to PGE.

21. This is a legal conclusion to which no response is required.

### **III. Factual Background**

22. Admitted in part; denied in part. PGE admits that it applied to DEP for a well permit modification on March 30, 2015, which application speaks for itself, and any statements not in conformance with the application and issued permit are denied. By way of further response, PGE originally applied to DEP for a change-in-use permit for the Yanity well on April 16, 2014, after EPA issued PGE the UIC Permit on March 19, 2014. On August 21, 2014, the EPA's Environmental Appeals Board dismissed three appeals of the permit that were filed by Grant Township residents, and the UIC Permit became final on September 11, 2014. On October 22, 2014, the DEP granted PGE's application to modify PGE's Well Permit No. 37-063-31807-00-00 to change the use of the Yanity well from a production well to an injection well. The March 30, 2015, application was filed in response the DEP's

March 12, 2015, revocation of the permit to evaluate the application further based on the appeals of the issued permit filed by Grant Township residents.

23. Admitted in part; denied in part. PGE admits that Grant Township adopted a second-class township ordinance purporting to regulate oil and gas and waste activities, which speaks for itself, and any statements not in conformance with the ordinance are denied. By way of further answer, the U.S. District Court for the Western District of Pennsylvania (Judge Baxter) invalidated and enjoined the provisions of the ordinance relating to waste disposal. *Pa. Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015) and *Pa. Gen. Energy Co., LLC v. Grant Twp.*, No. 14-209ERIE, 2017 U.S. Dist. LEXIS 48716.

24. Admitted.

25. Admitted.

26. Admitted in part; denied in part. PGE admits that the DEP sent a letter to PGE, which letter speaks for itself, and any statements not in conformance with the letter are denied.

27. Admitted.

28. This is a legal conclusion to which no response is required. Judge Baxter's decision speaks for itself.

29. Admitted, subject to clarification. PGE admits that Judge Baxter ruled that a section of the Oil and Gas Act did not preempt Grant Township's second-class

township ordinance. However, Section 3302 of the Oil and Gas Act is still in effect to the extent it limits local legislation purporting to regulate oil and gas operations to only ordinances adopted pursuant to the Municipalities Planning Code or the Flood Plain Management Act. 58 Pa. C.S. § 3302. (Opinion, p. 4-5.)

30. Admitted in part, denied in part. On March 31, 2017, Judge Baxter granted summary judgment to PGE and against Grant Township on multiple constitutional grounds in United States District Court for the Western District of Pennsylvania Case 1:14-cv-00209. *Pa. Gen. Energy Co., LLC v. Grant Twp.*, 2017 U.S. Dist. LEXIS 48716 (W.D. Pa. March 31, 2017). The case was closed April 9, 2018. PGE thus denies this litigation is ongoing. Based on Grant Township's attempt to enforce the same provisions invalidated by Judge Baxter in the ordinance through the Charter, PGE filed suit against Grant Township on December 9, 2020, at United States District Court for the Western District of Pennsylvania Case 1:20-cv-00351. This litigation is stayed pending resolution of the instant matter.

31. This is a legal conclusion to which no response is required. To the extent that an answer is required, collateral estoppel (issue preclusion) and res judicata (claim preclusion) prevent re-litigation of matters that were fully litigated and finally adjudicated in the United States District Court for the Western District of Pennsylvania in Case 1:14-cv-00209 (see *Pa. Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015) and *Pa. Gen. Energy Co., LLC v. Grant*



*Twp.*, No. 14-209ERIE, 2017 U.S. Dist. LEXIS 48716 (W.D. Pa. Mar. 31, 2017). PGE denies that the rulings of Judge Baxter relating to *de jure* exclusion of legitimate uses and violations of the Equal Protection, Substantive Due Process, and Petition Clause clauses of the U.S. Constitution do not apply to the Charter.

32. This is a legal conclusion to which no response is required. To the extent a response is required, it is admitted that Grant Township currently has a home rule charter. By way of further answer, Grant Township passed the Charter with the goal of subverting Judge Baxter's ruling enjoining enforcement of the same provisions adopted in the Ordinance and of preventing PGE's operation of the Yanity Well.

33. Admitted in part; denied in part. PGE admits that it sought and was issued a well permit modification, which speaks for itself, and any statements not in conformance with the issued permit are denied. By way of further answer, PGE has continuously maintained its UIC Permit allowing it to dispose waste in Grant Township from September 11, 2014 to date. This permit does not expire until 2024.

34. PGE restates its response to Paragraphs 14 and 16, above.

35. PGE restates its response to Paragraphs 14 and 16, above.

36. PGE restates its response to Paragraphs 14 and 16, above. By way of further answer, the doctrine of exhaustion of administrative remedies applies to preclude any declaration regarding the issuance of the Permit. (Opinion, pp. 12-13).

By way of further answer, Grant Township had full opportunities to appeal EPA's issuance of the UIC permit in 2014 and DEP's issuance of the well permits in 2015 and 2017 but did not appeal any of those permits.

37. Admitted.

38. Admitted in part, no response required in part. PGE admits that Grant Township adopted a home rule charter. No response is required to the legal conclusions regarding the effect of the adoption of the Charter.

39. PGE restates its responses to Paragraph 38, above and Paragraph 64 of PGE's response to Grant Township's New Matter.

40. PGE restates its response to Paragraph 39, above.

41. PGE restates its response to Paragraph 39, above.

42. This is a legal conclusion to which no response is required. To the extent a further response is required, this averment is not sufficiently specific to warrant a response. Pa.R.C.P. 1019(a). PGE restates its response to Paragraph 16, above. To the extent a further response is required, Grant Township is subject to the express limitations in Article IX, section 2, of the Pennsylvania Constitution regarding home rule governments. The people of Grant Township do not have a right of local, community self-government that would permit the adoption of a law that violates the United States Constitution and that is pre-empted by state statutes and regulations.

43. PGE restates its response to Paragraph 14, above.

44. PGE restates its response to Paragraph 14, above. To the extent a further response is required, Grant Township is subject to the express limitations in Article IX, section 2, of the Pennsylvania Constitution regarding home rule governments. The people of Grant Township do not have a right of local, community self-government that would permit the adoption of a law that violates the United States Constitution and that is pre-empted by federal and state statutes and regulations.

45. PGE restates its response to Paragraph 14, above. To the extent a further response is required, Grant Township is subject to the express limitations in Article IX, section 2, of the Pennsylvania Constitution regarding home rule governments. The people of Grant Township do not have a right of local, community self-government that would permit the adoption of a law that violates the United States Constitution and that is pre-empted by federal and state statutes and regulations.

46. PGE restates its response to Paragraph 38, above. To the extent a further response is required, Grant Township is subject to the express limitations in Article IX, section 2, of the Pennsylvania Constitution regarding home rule governments. The people of Grant Township do not have a right of local, community self-government that would permit the adoption of a law that violates the United States Constitution and that is pre-empted by federal and state statutes and regulations.

47. This is a legal conclusion to which no response is required. To the extent a further response is required, PGE denies that the people of Grant Township possess an unfettered right of local, community self-government. This Court concluded that “a home rule municipality’s powers are restricted.” (Opinion, p. 14.)

48. PGE restates its response to Paragraphs 14, 46, and 47 above.

49. PGE restates its response to Paragraphs 14, 46, and 47 above.

50. PGE restates its response to Paragraphs 14, 46, and 47 above.

51. PGE restates its response to Paragraphs 14, 46, and 47 above.

52. This is a statement of law to which no response is required. To the extent a response is required, the quoted section of the Pennsylvania Constitution speaks for itself.

53. PGE restates its response to Paragraphs 14, 46, and 47 above.

54. PGE restates its response to Paragraphs 14, 46, and 47 above.

55. No response is required to a statement of law. To the extent a response is required, the quoted section of the Pennsylvania Constitution speaks for itself.

56. PGE restates its response to Paragraphs 14, 46, and 47 above.

57. PGE restates its response to Paragraphs 14, 46, and 47 above.

58. PGE restates its response to Paragraphs 14, 46, and 47 above.

59. PGE restates its response to Paragraphs 14, 46, and 47 above.

60. PGE restates its response to Paragraphs 14, 46, and 47 above.

61. PGE restates its response to Paragraphs 14, 46, and 47 above.

62. PGE restates its response to Paragraphs 14, 46, and 47 above.

63. PGE restates its response to Paragraphs 14, 46, and 47 above.

64. PGE restates its response to Paragraphs 14, 46, and 47 above.

65. PGE restates its response to Paragraphs 14, 46, and 47 above.

66. PGE restates its response to Paragraphs 14, 46, and 47 above.

67. PGE restates its response to Paragraphs 14, 46, and 47 above.

68. PGE restates its response to Paragraphs 14, 46, and 47 above.

69. PGE restates its response to Paragraphs 14, 46, and 47 above.

70. PGE restates its response to Paragraphs 14, 46, and 47 above.

71. PGE restates its response to Paragraphs 14, 46, and 47 above.

72. PGE restates its response to Paragraphs 14, 46, and 47 above.

73. This is a legal conclusion to which no response is required.

74. No response is required to a statement of law. To the extent a response is required, the quoted section of the Pennsylvania Constitution speaks for itself.

75. PGE restates its response to Paragraphs 14, 38, 46, and 47 above.

76. PGE restates its response to Paragraphs 14, 38, 46, and 47 above.

77. PGE restates its response to Paragraphs 14, 38, 46, and 47 above.

78. PGE restates its response to Paragraphs 14, 38, 46, and 47 above.

79. This is a statement of law; no response is required. To the extent a response is required, the referenced section of the Pennsylvania Constitution speaks for itself.

80. This is a conclusion of law to which no response is required. To the extent a response is required, PGE incorporates its response to Paragraph 72 of Respondents' New Matter, above. To the extent that a further response is required, this statement is denied.

81. PGE restates its response to Paragraph 79, above.

82. PGE restates its response to Paragraph 14, above.

83. This is a conclusion of law to which no response is required. To the extent that a response is required, the quoted text from the Supreme Court opinion and the Oil and Gas Act speak for themselves.

84. This is a conclusion of law to which no response is required. To the extent a response is required, PGE incorporates its response to Paragraph 72 of Grant Township's New Matter, above.

85. PGE restates its response to Paragraph 14, above.

86. PGE restates its response to Paragraph 14, above.

87. This is a conclusion of law to which no response is required. To the extent that a response is required, the referenced section of the Oil and Gas Act speaks for itself. To the extent a further response is required, a "local ordinance" is

defined in Section 3301 of the Oil and Gas Act as "[a]n ordinance or other enactment, including a provision of a home-rule charter, adopted by a local government that regulates oil and gas operations." *Commonwealth v. Grant Twp. of Ind. Cty.*, 225 A.3d 944, 2020 Pa. Commw. Unpub. LEXIS 138, fn. 11 (Mar. 2, 2020)

88. PGE restates its response to Paragraph 87, above.

89. This is a statement of law; no response is required. To the extent a response is required, the referenced law speaks for itself.

90. This is a conclusion of law to which no response is required. To the extent that a response is required, the referenced law speaks for itself. To the extent a further response is required, this averment is not sufficiently specific to warrant a response. Pa.R.C.P. 1019(a).

91. PGE restates its response to Paragraphs 14 and 87, above.

92. PGE restates its response to Paragraphs 14 and 87, above.

#### **IV. Claims for Relief - Partially Stricken**

##### Count 1 - Stricken

93-100. Count 1 was stricken by the Court in its opinion, and therefore no response to paragraphs 93 to 100 is necessary.

##### Count 2 - Stricken

101-107. Count 2 was stricken by the Court in its opinion, and therefore no response to paragraphs 101 to 107 is necessary

### Response to Count 3

108. PGE restates its responses to Paragraphs 1 through 107.

109. This is a legal conclusion to which no response is required. To the extent a response is required, PGE restates its responses to Paragraphs 46 and 47 above.

110. This is a statement of law; no response is required. To the extent a response is required, the referenced section of the Pennsylvania Constitution speaks for itself.

111. PGE restates its response to Paragraph 38, above.

112. PGE restates its response to Paragraph 38, above.

113. PGE restates its response to Paragraph 42 above.

114. PGE restates its response to Paragraph 42, above.

115. PGE restates its response to Paragraph 42, above.

116. PGE restates its response to Paragraph 42, above.

No response is required to the "wherefore" paragraph following Paragraph 116 for the reasons set forth in PGE's responses to Paragraphs 108-116.



#### Response to Count 4

117. PGE restates its responses to Paragraphs 1 through 116.

118. This is a legal conclusion to which no response is required. To the extent a response is required, PGE restates its responses to Paragraphs 46 and 47 above.

119. PGE restates its response to Paragraph 79, above.

120. PGE restates its response to Paragraph 80, above.

121. This is a statement of law; no response is required. To the extent a response is required, the referenced section of the Pennsylvania Constitution speaks for itself.

122. PGE restates its response to Paragraph 42, above. PGE also restates its response to Paragraph 28 regarding the explanation of Grant Township's options to lawfully exercise its police powers.

No response is required to the "wherefore" paragraph following Paragraph 122 for the reasons set forth in PGE's responses to Paragraphs 117-122.

#### Count 5 - Stricken

123-127. Count 5 was stricken by the Court in its opinion, and therefore no response to paragraphs 123 to 127 is necessary.

#### **V. Relief Requested**

1-5. PGE denies that Grant Township is entitled to any relief for the reasons set forth above and in PGE's filings before this Court.

Jury Demand- Stricken

This Court has ruled that Respondents are not entitled to a jury trial. (Opinion, p. 17.)

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Dated: March 10, 2021

## VERIFICATION

I, Douglas E. Kuntz, hereby state that I am the President and Chief Executive Officer of Pennsylvania General Energy Company, LLC, and that the facts set forth in the foregoing Adoption of Petitioner's Petition for Review, and Answer to the New Matter and Counterclaims of Pennsylvania General Energy are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: March 10, 2021

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the initials 'DK' followed by a large, circular flourish.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2021, a copy of the foregoing Adoption of Petitioner's Petition for Review, and Answer to the New Matter and Counterclaims of Pennsylvania General Energy Company, L.L.C. was served electronically via the PACFile filing system, in accordance with PA.R.A.P. 121 upon the following

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/s/ Kevin J. Garber \_\_\_\_\_

*Attorney for Intervenor, Pennsylvania  
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