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TESTIMONY ON MARCELLUS SHALE EXPLORATION ISSUES

**PRESENTED TO THE
SENATE MAJORITY POLICY COMMITTEE**

BY

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Misericordia University
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Good afternoon. I am Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties. Joining me today is Susquehanna County Commissioner MaryAnn Warren.

We are pleased to appear before you today as part of the local government panel presenting remarks on Marcellus Shale development issues.

By all estimates, the energy resource contained in Pennsylvania's Marcellus Shale formation has the potential to be one of the most significant since the Commonwealth's 19th century world dominance in energy production. It represents vast opportunities for jobs and local and regional economies, decreased reliance on outside energy sources, and a fresh outlook for many of our older and declining communities, and public and private sector leaders at all levels are eager to welcome and facilitate its development.

Yet exploitation of this resource is not without its pitfalls, and these concerns are exacerbated by an unprecedented rapid pace of exploration and development that has far exceeded the capacity of our state and local regulatory structures, deficiencies that are both structural and resource based.

Our Association membership has recognized and experienced both sides of this issue, and at our annual conference adopted this resolution:

The Association supports action by the administration and General Assembly to broadly view and address issues associated with oil and gas exploration in order to minimize negative impacts on local communities, including water quality, water quantity, pipelines, maintenance of county and municipal roads and bridges, permitting, planning, and taxation.

Over the last two years, we have adopted coordinated strategies to address these and other emerging issues. We have worked cooperatively with the Administration, including multiple departments, we have developed joint policy with our counterpart local government groups, and we have met with governmental and private interests in other states. We have created an internal working group designed to help counties deal with local pressures caused by development, and we have cosponsored training programs aimed at the broad spectrum of individuals and groups in the communities impacted by exploration and development.

There are indeed many issues to be addressed, some of which require legislative or regulatory action.

Property Taxation. Taxation was our Association's entry point in the discussion of issues needing action. Until 2002, oil and gas, like other coal and other minerals, were assessable for real property tax purposes. In 2002, the Pennsylvania Supreme Court, in *Independent Oil and Gas et al v. Fayette County Board of Assessment Appeals*, found that for oil and gas to be assessable they had to be specifically enumerated in law. The ruling flies in the face of language in the General County Assessment law which states that all property is taxable unless specifically exempted from taxation by the General Assembly.

Importantly, the Court's decision was not based on constitutional or equity grounds, but simply on the lack of specific authority.

Counties support legislation that would restore the assessability of oil and gas for real property tax purposes. Assessment would be based on the leasehold value of the mineral, the methodology used for coal, mineral, and other interests, and comparable to the income-based methodology used to assess wind farms, most commercial, and many industrial properties. Because the industry's common lease mechanism constitutes severance of the subsurface rights, the assessment (and tax bill) would fall to the company holding the interest in the oil and gas, and not to the surface owner.

The intent of this approach is to restore equity, both among mineral producers and among property tax payers generally. Any time one segment of property is excluded from taxation, the burden of provision of local government services falls to the remainder of the taxpayers, and in fact our proposal also provides for property tax relief for other residents by including language that would shift any windfall increase in revenues to general property tax relief.

We also need to acknowledge that there is broad speculation that the Administration is looking at some type of severance tax, and in that context we emphasize that both state and local revenue issues need to be addressed comprehensively. We note as well that this is one key aspect of the Marcellus issue where our statutes lag behind; most other states have a combination of severance and property taxes already in place, and we can separately furnish a compilation to the Committee if you do not have it already.

We are mindful of the impact of restoration of the tax on the industry, and believe based on the prevalence of property or well-head taxes in other states, and the manner in which we propose to structure the tax, that it will not serve as any meaningful impediment to exploration or development. We also emphasize that it is a matter of equity; coal, limestone and other minerals are assessable, and oil and gas were assessable until 2002. The lease value had been taxable under Pennsylvania law since at least 1910, when Justice Elkin in *Rockwell v. Warren County* found that taxation of mineral estates including oil and gas was "well settled." Only recently was that hundred year history changed by the *IOGA* decision. CCAP's proposal would create tax equity among mineral interests that was impaired by the *IOGA* decision, and maintain uniformity in methods of taxation among all minerals.

Clean and Green. Many of the leases executed to date, and the resulting exploration and development, are on lands that are enrolled in Clean and Green preferential assessment. Clean and Green reduces the assessed value for lands in active agricultural use or timber production, or lands available for these uses. The conflict is that Marcellus development disturbs the land and makes it unavailable, some temporarily and some permanently, which violates the land-owner's Clean and Green covenant and requires us to collect from the property owner so-called "roll back" taxes plus penalties. The law is not clear on how Marcellus is to be treated and without a specific rule (such rules are in place for other limited-acreage uses such as cell towers) we are obligated to find the whole property in violation. The Department of Agriculture, which gives counties guidance on Clean and Green administration, concurs that the existing statutory language is deficient, so we have no direction from that agency either. We are working on such language, which we will furnish for consideration in the new session next year.

Infrastructure. While our counterparts on the panel will discuss this in more detail, we share concerns for infrastructure. The most visible impact is on township roads and county bridges, as developers bring

construction equipment and supplies (often including water import and waste water export) to and from the site. Existing bonding requirements are inadequate for township roads, and unavailable for county bridges.

Natural gas requires a pipeline system for delivery to market, installation of which has primarily short-term impacts on local highway systems as well as forest and agricultural lands. There is also, to our understanding, limited ability of the PUC to coordinate pipeline location with local planning needs.

An important infrastructure issue is adequacy of water supply and waste water treatment capacity, which we will discuss in a little more detail under the environmental heading.

There are short term impacts on housing and hotel stock; most exploration companies augment often-insufficient local labor supplies with outside workers. This is a two-sided coin; while it is a boon to landlords and hotel and motel operators, it is often problematic for local services, including traffic congestion and occasional law enforcement issues, and sometimes adversely affects the tourism industry by displacing capacity for tourists.

Educational infrastructure is often lacking. As noted Pennsylvania has insufficient workers already trained for the types of positions required by the industry, so our schools, colleges, and workforce development programs have worked at instituting programs to help our citizens take advantage of these job opportunities.

An unheralded infrastructure impact has been on county courthouse operations, specifically in the office of recorder of deeds. The rush to secure and record leases requires title search to determine whether the surface property owner also clearly holds the subsurface rights, and our recorders offices have been inundated with legal teams conducting these searches. Most of the Marcellus activity is in our smaller, more rural counties, all of which have limited staff and office capacity, and so most have been compelled to add staff and extend hours due to the volume.

Quality of Life. Increased traffic, pressure on local community resources, and issues as diverse as trespass, night lighting of operations, and 24-hour noise from drilling, hydrofracking, and construction vehicles have been identified as short and long term impacts.

Land Owner Concerns. While we are not suggesting, and do not have any evidence of, any impropriety, many of our commissioners have expressed concern that land owners may not have the benefit of sufficient market and legal advice when making decisions to enter leases. One commissioner who has executed a lease on his dairy farm noted that he was approached by multiple companies, which included receipt of a counter-offer within hours of his anticipated execution of a lease. Other commissioners have relayed stories of “buyers’ remorse” as land owners who executed early leases think their deals were under-valued.

Environmental. There is much discussion about the quantity of water needed to extract the gas from the Marcellus Shale deposits. We do not profess expertise on the matter beyond noting that there is a sometimes-wide gulf between the estimates of the industry and the commonly held public perceptions. We will simply express concern that there seems to be the potential for short term deficiencies in available water supply in some areas, which could affect availability and quality for current users.

Similarly, we are concerned about disposal of waste brine generated from hydrofracking operations, which based to its chemical content must be treated. Our systems are already under pressure due to higher licensing standards in most basins, yielding difficult alternatives of capacity expansion to absorb a potentially short-term need, or trucking waste water to remote locations with available capacity.

Land disturbances, including well site development, access roads, and pipeline installation, can cause problems for habitat loss and fragmentation, invasive species control, and storm water run-off.

Last, there are concerns that development operations have the potential to yield air quality problems due to dust, and water quality problems due to surface run-off.

Regulatory Capacity. A threshold issue is whether there are sufficient and appropriate regulatory controls built into our statutes and related regulations to deal with water, waste water, run-off, and transportation issues. Even when the permitting and oversight functions have an adequate statutory base, we are increasingly concerned that insufficient state resources mean a regulatory staff stretched too thin to adequately do its job. On one hand, this raises concerns that the public interest is being adequately met, and on the other there are already reports that some companies are diverting operations to other states based on Pennsylvania's long delays in permit issuance.

Counties and municipalities have no direct enforcement capacity, through permitting, zoning, or other means, so are almost exclusively reliant on the state to protect our citizens' interests. While we have access to the permit application process and so can monitor local activity, even this process gives us only nominal input and notice to local agencies is often not as timely as we need it to be.

Emergency Management. There is potential for well, pipeline, traffic, and environmental incidents, all of which require county emergency management planning and many of which require specialized responses. Many of our counties, all of which handle 911 call-taking and dispatch, now require the companies to register well sites as discrete addresses to facility response. The unique incident response requirements can mean that counties need to secure specialized equipment and training.

Long Term Consequences. While there is no certainty of the quantity or accessibility of Marcellus gas, there is clear knowledge that it is a finite resource. The breathless reports of considerable prosperity need to be tempered by recollection of Pennsylvania's industrial and resource heyday, when we led the world in production of oil, gas, coal, steel, and hard woods. We must put in place a long term planning process that recalls the decline of these industries, and plans for the inevitable depletion of the Marcellus reserve. At minimum, some portion of the revenues generated should be redirected toward growing the sustainability of our communities – including diversity of job skills, development of technological and training infrastructure, attraction of other industries and employers – so that our citizens do not suffer the same fate as their forebears.

Benefits. While some of these comments might lead to a conclusion that our Association views development of Marcellus Shale to be problematic, we emphasize that it is a balance. We certainly recognize the significant benefit to our local economies, including injection of capital and wealth, job opportunities, diversification of the job market, short term insulation from a down-turned economy, benefits to local service industries, stability of housing markets, and others. Many of our commissioners also report that the companies have reached out to them with an appreciable and appreciated civic-

mindedness. Still, we have the concurrent responsibility to be certain that the industry operates in an environment that gives it sufficient latitude to compete in the marketplace, while appropriately recognizing and managing the impacts that concern the citizens we serve.

Thank you for giving us this opportunity to present our comments, and we would be pleased to answer your questions.