STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission’s own motion, to consider the appropriate regulatory response to proposals by various producers of natural gas from Antrim Shale Formation to operate their wells under a vacuum.

Case No. U-16230

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 13, 2014.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 4300 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before September 12, 2014, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before September 26, 2014. The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster

August 13, 2014
Lansing, Michigan
In the matter, on the Commission’s own motion to consider the appropriate regulatory response to proposals by various producers of natural gas from Antrim Shale Formation to operate their wells under a vacuum.

**PROPOSAL FOR DECISION**

I.

**PROCEDURAL HISTORY**

On April 27, 2010, the Michigan Public Service Commission (Commission) issued an order opening this docket “to consider the Commission’s appropriate regulatory response to proposals by all interested persons regarding the issue of whether the Commission should permit gas wells to be operated under vacuum from the Antrim Shale Formation.” *In Re Commission’s Own Motion*, Case No U-16230, Order Opening Docket, Staying Proceedings, and Closing Docket, p 4 (April 27, 2010). In the same order, the Commission stayed the proceedings in Case Nos. U-16074, U-16075, U-16076, and closed Case No. U-16190. Further, the Commission indicated that all parties and intervenors for Case Nos. U-16074, U-16075, U-16076, and U-16190 were to be considered parties in this case.
On June 15, 2010, a prehearing conference was conducted under this docket number. At the prehearing conference, counsel appeared on behalf of the following: Merit Energy Company, LLC, Breitburn Operating, LP, Highmount Midwest Energy, LLC, Terra Engineering Company, LLC, Enervest Management Partners, LP, Belden & Blake Corporation, and Enervest Institutional Fund IX, LP (Applicants); Atlas Gas & Oil Company, LLC, O.I.L. Energy Corporation, Jordan Development Company, LLC, HRF Exploration and Production, LLC, and Trendwell Energy Corporation (Intervenors); DCP Antrim Gas, LLC and DCP Grands Lacs, LLC (DCP); Turtle Lake Club; Muskegon Development Company (MDC), and; Michigan Public Service Commission staff (Staff).

Evidentiary Hearings were conducted on March 29 and 30, 2011; May 3, 4, 5, and 6, 2011; June 8, 13, and 14, 2011; August 15, 16, 17, 18, 30, and 31, 2011; September 27, 2011; October 28, 2011; November 18, 2011; December 6 and 9, 2011; and January 20, 30, and 31, 2012. The record for this case consists of a 4778 page transcript and approximately 250 exhibits.

On July 18, 2012, briefs were filed by Applicants, Intervenors, Staff, MDC, and DCP. In January 11, 2013, the same parties filed reply briefs. On December 27, 2013, the parties were directed to file briefs addressing the Commission’s authority to regulate the operation of natural gas wells on a vacuum.¹ Specifically, the December 27th Briefing Order stated:

The parties are directed to file briefs addressing the question of whether, pursuant to MCL 324.61506, the authority to regulate the operation of natural gas wells on a vacuum is granted exclusively to the Department of Environmental Quality. If a party

¹ Hereinafter, a natural gas well being operated on a vacuum will be referred to as a vacuum well.
argues that it is not, they are directed to present arguments addressing what, if any, authority to regulate the operation of natural gas wells on a vacuum has been granted to the Michigan Public Service Commission.\(^2\)

In response, MDC filed a brief on January 28, 2014. Intervenors filed a brief on February 24, 2014, and Applicants, Staff, and DCP filed theirs the following day, on February 25, 2014. Reply briefs were filed by Intervenors, Staff, and DCP on March 18, 2014.

II.

OVERVIEW

As already recognized by the Commission, this case "involve[s] issues of first impression" and is "likely to establish important and potentially controlling precedent". In Re Commission’s Own Motion, Case No U-16230, Order Opening Docket, Staying Proceedings, and Closing Docket, p 4 (April 27, 2010). Recognizing the importance of this case, the parties developed a wide ranging evidentiary record that covers a host of topics; from the geology of the Antrim Shale formation, through production techniques, rates and ultimate returns, to transportation and treatment for CO\(_2\) removal. Counsel for the parties are commended for the professionalism exhibited and the extensive and clearly time-consuming efforts undertaken on behalf of their clients.

\(^2\) MCL 324.61506 reads, in part:

The supervisor shall prevent the waste prohibited by this part. To that end, acting directly or through his or her authorized representatives, the supervisor is specifically empowered to do all of the following:

***

(i) To regulate the secondary recovery methods of oil and gas, including pulling or creating a vacuum and the introduction of gas, air, water, and other substances into the producing formations.
After the evidentiary record had closed and briefs had been filed, this ALJ became increasingly concerned that important jurisdictional issues would need examination and asked the parties to file additional briefs to address the extent of the Commission’s authority to regulate vacuum wells. It is this issue that dictates the outcome of this case.

This PFD addresses the proper delineation of authority between the Commission and the DEQ as it relates to vacuum wells. As explained below, the Commission’s limited authority to regulate vacuum wells precludes a Commission ruling on most of the issues raised by the parties. Because many, if not most, of the issues raised in this case are properly addressed under the regulatory authority of the DEQ, this case must be dismissed.

III.

POSITIONS OF THE PARTIES

A. Authority of the Commission to Regulate Vacuum Wells

1. Applicants

Applicants take “no position as to whether, pursuant to MCL 324.61506, the authority to regulate the operation of natural gas wells under vacuum is granted exclusively to the Department of Environmental Quality.” App Br, p 2. As to the Commission’s “concurrent jurisdiction or authority to regulate the operation of natural gas wells under vacuum”, Applicants rely upon the arguments set forth in its July 18, 2012 Initial Brief and January 11, 2013 Reply Brief. App Br, p 2.
Applicants’ July 18, 2012 Initial Brief presents limited arguments regarding the Commission’s authority to regulate vacuum pumping. Applicants argue that the Commission lacks the authority to address the correlative rights of the parties; finding this a responsibility of the DEQ. At App Init Br. p 91-92 (July 18, 2012), Applicants set out this position by stating:

[C]orrelative rights are not an issue that is properly within the Commission’s jurisdiction. The protection of correlative rights is a responsibility of the MDEQ Supervisor of Wells:

R 324.601 Proration of oil and gas wells and fields.

Rule 601. (1) The supervisor may prorate production from wells or fields, or both, to conserve reservoir energy, to maximize oil and gas recovery, to ensure that the owners shall be afforded the opportunity to produce their just and equitable share of the oil and gas from the reservoir, and to prevent waste by setting allowable production rates. The prorated allowable shall be established by order of the supervisor after a hearing pursuant to part 12 of these rules.

(2) The proration order shall specify the maximum amount of oil or gas, or both, that may be produced in a 24-hour day. [emphasis added]

Similarly, the Commission’s rules regarding the production and transmission of natural gas, set forth at R 460.851 to 460.875, do not specifically address correlative rights, and none of the statutes establishing the Commission or its jurisdiction specifies that correlative rights issues are to be regulated by the Commission in addition to the Supervisor of Wells. Moreover, under MCL 483.114, the Commission is given the authority to prevent the waste of natural gas, and to preserve the public “peace, safety, and convenience” in relation to the production, piping, and distribution of natural gas. The statute does not, however, mention correlative rights. Finally, Applicants are aware of no case law in Michigan reconciling this discrepancy, and confirming that correlative rights are within the Commission’s jurisdiction.

In its January 11, 2013 Reply Brief, Applicants touch on the Commission’s authority, at App Rep Br, p 3-5 (Jan 11, 2013), where they argue:
Although Staff acknowledges that the Antrim Oxygen Procedures “are outside the scope of this proceeding as a privately negotiated agreement,” Staff argues that the Commission has the inherent authority to impose, upon any approval of vacuum operations, certain conditions intended to protect DCP treating equipment. . . . Because the protection of treating equipment from potential oxygenation is a purely private interest that does not implicate public health or safety, however, the Commission does not have the authority or jurisdiction to impose the proposed conditions.

* * *

Section 14 of Act 9 provides that the Commission is authorized “to do all things necessary for the conservation of natural gas in connection with the production, piping and distribution thereof and to establish such other rules and regulations as will be necessary to carry into effect this act, to conserve the natural gas resources of the state, and to preserve the public peace, safety, and convenience in relation thereto.” The protection of DCP treating equipment from potential oxygenation does not implicate or promote the public peace, safety, or convenience, or the conservation of natural gas.

Applicants appear to implicitly acknowledge limited Commission jurisdiction over the subject, as it pertains to waste. After citing MCL 483.114 and Rule 460.857, Applicants argue that, “[i]f vacuum operations will increase the total quantity of gas ultimately recoverable from the Antrim shale, denying the pending applications would violate Act 9 and Rule 7 because gas would be produced ‘in such manner and under such conditions as to constitute waste.’” App Rep Br, p 67 (Jan 11, 2013).

However, with regard to whether the Commission has authority to consider the economics of vacuum pumping, Applicants argue, at App Rep Br, p 103 (Jan 11, 2013), that:

The rule that the Commission may not prevent regulated entities from making a management decision on the grounds that the decision is uneconomical was affirmed and discussed in
Midland Cogeneration Venture Ltd Partnership v Public Service Comm’n, 145 PUR 4th 576, 578; 501 NW2d 573 (Mich App 1993):

The PSC possesses no common-law powers but is a creature of the Legislature, and all of its authority must be conferred by clear and unmistakable language in specific statutory enactments, because doubtful power does not exist. . . . Moreover, the PSC’s general power to fix and regulate rates does not carry with it, either explicitly or by necessary implication, the power to make management decisions.

Whether or not vacuum operations can be conducted profitably is a management decision that must be left to the producers.

2. Intervenors

At Int Br, p 5-6, Intervenors argue that 1929 PA 9 (Act 9) grants the Commission authority to regulate natural gas wells on a vacuum, by stating:

The Commission's jurisdiction over the production and operation of natural gas wells is established in 1929 PA 9, MCL 483.101 et seq (“Act 9”). The preamble of Act 9 states it is “AN ACT to regulate corporations, associations or persons engaged in the business of carrying and transporting natural gas through pipe lines and to regulate the production, purchase and sale of natural gas … [and] to define the powers and duties of the commission relative thereto…." (Emphasis supplied.) Section 5 of Act 9 states, "The commission is hereby empowered and it is made its duty to make regulations for the equitable purchasing, taking and collecting of all such gas...." MCL 483.105 (emphasis supplied). Commission Rule 17, R 460.867, addresses requests to operate natural gas wells on a vacuum. Additionally, the Michigan Court of Appeals has found that Sections 5, 7, 8 and 14 of Act 9 "give the Public Service Commission jurisdiction to control natural gas production." Northern Mich Exploration Co v Public Service Comm, 153 Mich App 635, 645; 396 NW2d 487 (1986) (emphasis supplied). Therefore, the above clearly places jurisdiction with the Commission to determine whether the production and operation of natural gas wells on a vacuum is appropriate.
Intervenors find support for their arguments in the rules adopted by the Commission. Specifically, Intervenors cite R 469.855(1) (Rule 5), R 460.866(1) (Rule 16), and R 460.867, (Rule 17). Int Br, p 7-8. According to Intervenors, “[w]hen drafting these rules, it is apparent the Commission was aware Act 9 gave it broad authority to regulate the production and operation of natural gas wells.” Int Br, p 8.

Next, Intervenors argue that Commission authority “to determine whether Antrim wells should be operated on a vacuum is consistent with the Commission’s other powers.” Int Br, p 13-14. For support, Intervenors focus on three regulatory roles of the Commission; to regulate production and reporting, its

---

3 R 460.855 Jurisdiction.
Rule 5. (1) The jurisdiction of this commission, according to Act No. 9 of the Public Acts of 1929, over all gas wells and over the production of gas from such wells shall begin at the time the production or preparation for production is started and shall continue and remain with the commission until production is abandoned. The operations of drilling, deepening, plugging and abandoning, and in fact all underground work on gas wells, is under the jurisdiction of the supervisors of wells of the department of conservation. (Refer to the rules of the department of conservation covering the drilling, deepening and plugging of wells for natural dry gas.)

4 R 460.866 Production reports.
Rule 16. (1) Every operator of 1 or more gas wells shall file with the commission, on or before the twenty-fifth day of each month, producer's monthly report (form no. 18A or 18B, appendix A) giving full information as to production of gas from each well separately and such other data as is requested. This report shall be signed by the producer or by a responsible employee, whose capacity or title shall be indicated, and who is in position to know that the data or information given is correct. The commission may permit, upon application and satisfactory showing, a reporting interval of more than 1 month. If this gas production information is regularly furnished to the commission by the purchaser or transmitter of gas, based on information or data gathered by such purchaser or transmitter, the producer may be relieved of obligation to furnish data.

5 R 460.867 Pumps or compressors.
Rule 17. No gas well, pool or field shall be placed under vacuum by the use of compressors, pumps or other devices except with the approval of the commission. If and when the placing of a vacuum in any well, pool or field is planned, application for approval shall be made to the commission, and the adjoining lease owners and operators of a pool or field who may be affected shall be given notice. The commission may call a hearing on the subject, or may take such action as it deems advisable.
jurisdiction over natural gas transported via pipelines, and its activities related to

Specifically, Intervenors cite Rule 5 and Rule 16 for the notion that the
Commission has jurisdiction over gas produced from a well and that the gas
produced must be reported to the Commission. Int Br, p 14. Intervenors continue
at Int Br, p 14, by arguing that:

Neither Act 9 nor these applicable Commission Rules make
a distinction between gas produced with or without vacuum
operations. Such is logical as the Commission has the duty to
ensure that production from natural gas wells is equitable,
regardless of how it is produced. MCL 483.105. Effectively, the
Commission is to ensure the natural gas production and operation
processes are equitable and fair. The restrictions of Commission
Rule 17 reflect those objectives and the understanding that
operating a natural gas well on a vacuum could lead to inequities in
production. The reporting requirement furthers those objectives
and assists in addressing any inequities.

Intervenors also find Commission authority to regulate vacuum operations
consistent with its Act 9 powers to regulate the transportation of natural gas.
Int Br, p 14-17. In short, Intervenors argue that vacuum operations could
damage natural gas pipelines and treatment plants and, “[a]s such, it follows
[that] the Commission has jurisdiction to determine whether vacuum operations
should be allowed.” Int Br, p 16-17.

Finally, Intervenors turn to the Commission’s authority to regulate gas
purchase and transportation agreements. Int Br, p 17. Intervenors take the
position that, “any gas produced, whether by vacuum operations or not, where
subject to the gas purchase and transportation contracts, is within the authority of
the Commission.” Int Br, p 17.
Next, Intervenors argue that the “Commission, MDEQ, Court of Appeals and the Legislature have acknowledged the MDEQ transfers jurisdiction to the Commission to regulate the production and operation of a well upon the determination such is a natural gas well.” Int Br, p 18. Citing In the Matter of Petition of Federated Natural Resources Corp, U-970, Opinion and Order (June 3, 1986), Intervenors note that the Commission has “determined that proration of natural gas wells is properly a matter of [C]ommission jurisdiction.” Int Br, p 18. Further, citing In the Matter of the Application of Shell Western E & P, Inc., U-970, Opinion and Order (July 20, 1989), Intervenors note that the Commission reiterated the traditional transfer of “jurisdiction to the commission to prorate production from gas wells”. Int Br, p 19. Intervenors add, at Int Br, p 19, that:

[T]he Commission found "The purpose behind proration of natural gas production is to protect correlative rights...." Id. at 57 (emphasis supplied). The aforementioned reflects the Commission has jurisdiction over the production and operation of natural gas wells which includes any request to operate the same on vacuum.


In the present proceeding, the interrelated and integrated topic of the production and operation of natural gas, including equitable withdrawal and correlative rights, and the effect of vacuum operations was extensively addressed in the examination of witnesses. The issue of correlative rights falls squarely within the Commission’s jurisdiction to address the production and the equitable withdrawal of gas. . . . Accordingly, the Commission has jurisdiction over whether vacuum operations should be allowed for use on Antrim gas wells.
Turning to the legislature, Intervenors rely heavily on Northern Mich’s determination that, when the legislature amended the DNR’s legislation in 1939 and 1973, the legislature “must have known” that the DNR “traditionally transferred jurisdiction to the [C]ommission to prorate production from gas wells” and that it has done nothing to change this arrangement. Int Br, p 22. Intervenors continue by arguing that, “similarly”, when Act 451 replaced the 1973 legislation, “the Commission retained jurisdiction over the production and operation of natural gas wells. . . . This would include jurisdiction over any request for vacuum operations of a natural gas well.” Int Br, p 22.

Next, Intervenors turn their attention to MCL 324.61506 and argue that, for a number of reasons, it is inapplicable in this case. First, relying on L&L Wine & Liquor Corp v Liquor Control Comm, 274 Mich App 354, (2007), Intervenors argue that, for an agency to possess exclusive jurisdiction over a subject, the “statutory language used by the Legislature must establish ‘the intent to endow the state agency with exclusive jurisdiction’”. Int Br, p 23. Intervenors argue that “MCL 324.61506 does not reference exclusive jurisdiction nor suggest the same.” Int Br, p 23. Additionally, Intervenors argue that “Act 9 addresses what is occurring in the present instance, and provides the Commission has the authority to prevent waste of natural gas wells.” Int Br, p 25. After citing MCL 483.114 and R 460.857(2)(b) thru (d), Intervenors argue, at Int Br, p 25-26, that:

[T]he MDEQ transfers jurisdiction of a well to the Commission upon a determination such is a natural gas well which includes authority over the production and operation of the gas well, and therefore addressing waste. Essentially, the actions of the
MDEQ and Commission and the aforementioned statute and regulation reflect the Commission is to regulate matters of waste as to wells in this instance.

Next, Intervenors contend that MCL 324.61506(i) only addresses secondary recovery methods not involved in this case. Int Br, p 24 and 26-28. With reference to R 324.103(j), Intervenors argue that, “[e]ssentially, secondary recovery involves the introduction of a substance, such as gas, carbon dioxide or water, into the reservoir to increase production.” Int Br, p 26. For additional support, Intervenors cite a number of DEQ cases that primarily address secondary recovery of oil. From these, Intervenors contend “the MDEQ's expressions of secondary recovery are consistent with the industry practice of injecting gas, water or other fluids to enhance recovery.” Int Br, p 27. Thus, Intervenors conclude MCL 324.61506(i) is inapplicable because Applicants are not requesting Commission approval to inject substances into the reservoir. Int Br, p 27.

3. Staff

Staff initially argued that “[c]ase law and longstanding practice dictate that the DEQ and MPSC share jurisdiction and authority.” Staff Br, p 1. For Staff, “[a]ny legal analysis must begin with Public Act 9 of 1929 (The Natural Gas Act) and Public Act 451 of 1994 (The Natural Resources and Environmental Protection Act).” Staff Br, p 1.

---

6 Intervenors cite In the Matter of the Petition of Mercury Exploration, Cause No. (A) 14-6-96. Mercury Exploration involved a request by Mercury Exploration Company to engage in secondary recovery from the Dover 36 Unit in accord with a voluntary Unitization Agreement. Dover 36 produced both oil and natural gas and the DEQ determined that implementation of miscible CO₂ secondary recovery would increase the ultimate recovery of both oil and gas.
Specifically, citing MCL 483.103, Staff argues that, pursuant to Public Act 9 of 1929, the Commission is empowered “to regulate corporations that purchase, sell, or transport natural gas for public use”. Staff Br, p 1. In addition, Staff argues that, pursuant to MCL 483.114, the Commission “has authority to implement rules and regulations to prevent waste and conserve natural gas” and “has broad authority to ‘do all things necessary’ to regulate production, piping, and distribution in order to conserve natural gas. Staff Br, p 2. Staff notes that, “likewise”, the “Supervisor of Wells . . . has authority to prevent waste and conserve oil and gas under Act 451”. Staff Br, p 2 (citing MCL 324.61505). At Staff Br, p 2-3, Staff contends that:

Despite the DEQ’s and the MPSC’s overlapping jurisdiction, they have amicably divided their responsibilities. The MPSC’s Rules for Production and Transmission of Natural Gas discuss this division. The Supervisor of Wells has jurisdiction over drilling and other underground work on gas wells: “The operations of drilling, deepening, plugging and abandoning, and in fact all underground work on the gas wells, is under the jurisdiction of the supervisors of wells . . . .” 2014 AC, R 460.855(1). The MPSC’s jurisdiction begins when production, or preparation for production, begins: “The jurisdiction of this commission . . . over all gas wells and over the production of gas from such wells shall begin at the time of production or preparation for production is started and shall continue and remain with the commission until production is abandoned.” Id.

In practice, at some point after drilling is completed and before production commences, the DEQ transfers jurisdiction to the MPSC.

To support its argument Staff points to In re Federated Natural Resources Corporation, MPSC Case No. U-970, Opinion and Order, p 7 (June 3, 1986) and Northern Michigan Exploration Co v Public Service Comm, 153 Mich App 635,
396 NW2d 487 (1986), which both affirm the Commission’s authority to prorate production. Staff Br, p 3-4.

Originally, Staff contended that, similar to proration, the Commission and DEQ shared jurisdiction over vacuum wells. Staff explained, at Staff Br, p 4 (citation omitted), that:

As with proration, the DEQ and MPSC also share jurisdiction over vacuum operations. Compare MCL 324.61506(i) with [R 17]. Michigan courts have upheld the MPSC’s authority to prorate natural gas wells even though it does not have exclusive jurisdiction. The same reasoning applies to vacuum operations.

However, in its reply brief, Staff seems to have adopted Intervenors’ position by arguing that DEQ has “authority over vacuum operations in the context of secondary recovery methods, where the applicants in this case plan to use vacuum operations for the primary production and operation of natural gas wells.” Staff Rep Br, p 3.

Staff summarizes its position at Staff Rep Br, p 4, by stating:

Because the DEQ does not have sole jurisdiction over vacuum operations and because there is no conflict between Acts 9 and 451, the DEQ and the MPSC have concurrent jurisdiction. Courts have honored the agencies’ agreement to transfer jurisdiction after a natural gas well is drilled, and there is no reason to believe that this will change.

4. DCP Antrim Gas LLC and DCP Grands Lacs LLC (DCP)

DCP begins by arguing that the history of this proceeding supports a conclusion that the Commission has already determined it possesses the authority to approve the operation of vacuum wells. DCP Br, p 2-3.
Next, DCP argues that the law supports a finding that the Commission may permit the production of natural gas on a vacuum. DCP points to Act 9, §§ 5 and 14, as the source of the Commission’s authority to promulgate R 17. DCP Br, p 4. DCP continues with extensive quotes from Northern Michigan Exploration Co v Public Service Comm, 153 Mich App 635; 396 NW2d 487 (1986), and argues at DCP Br, p 5, that:

The issue of whether the Commission's Act 9 authority to regulate the production of natural gas wells has been divested to the Supervisor of Wells is not new. In Northern Michigan Exploration Co v Public Service Comm, 153 Mich App 635; 396 NW2d 487 (1986), the Court considered the effect of the Supervisor of Wells Act, 1939 P.A. 61, as amended, upon the Commission’s authority under Act 9 and determined that the Commission had authority to regulate production despite the fact that such jurisdiction was concurrent with the Supervisor of Wells.

***

The Court’s analysis of the law is as relevant today as it was in 1986 given the fact that the Legislature in 1994 had the opportunity to repeal the Commission’s Act 9 authority over gas well production and to vest exclusive jurisdiction with the Department of Environmental Quality and its Supervisor of Wells. As addressed supra, the law expressed in Sections 324.61506(i) and 324.61527 were not new in 1994 and were in existence in 1986 (and probably in 1939). It is clear that the Legislature in 1994 did not change the status quo. Furthermore, if the Legislature intended to divest the Commission of its regulatory authority by rescinding certain sections of Act 9, the Michigan Constitution would require that the rescinded sections must be published as part of the legislative enactment. See MI Const 1963, art 4, sec 25. This certainly did not occur when the Legislature enacted Act 451 in 1994.

In sum, both statutory and case law supports a finding that the Commission has authority to allow the production of gas from natural gas wells through the use of vacuum.
5. **Muskegon Development Company**

MDC finds no Commission authority to regulate the operation of natural gas wells on a vacuum. Citing MCL 324.61506, MDC argues that Part 615 of the Natural Resources and Environmental Protection Act grants the Supervisor of Wells the exclusive authority to regulate the operation of natural gas wells on a vacuum and states, at MDC Br, 3-5, that:

Part 615 was adopted and became immediately effective on May 24, 1995. Pursuant to MCL 324.61526, as of its effective date Part 615:

is *cumulative of all existing laws on the subject matter, but, in case of conflict, this part shall control and shall repeal the conflicting provisions, except for the authority given the public service commission in sections 7 and 8 of Act No. 9 of the Public Acts of 1929*, being sections 483.107 and 483.108 of the Michigan Compiled Laws, as authorized by law.

Accordingly, except for the authority granted to the Commission in Sections 7 and 8 of Act 9 (i.e., MCL 483.107 and 483.108), the provisions of Part 615 are controlling with respect to all of the subject matter of Part 615, and they effect a repeal of all previously enacted conflicting provisions of law.

Section 7 of Act 9 provides as follows:

All corporations, associations and persons, whether producing or receiving gas from producers in any production field are hereby prohibited from taking more than 25 per centum of the daily natural flow of any gas well or wells, unless, for good cause shown, under the exigencies of the particular case, the commission shall establish a higher or lower per centum under the prescribed rules and regulations thereof. MCL 483.107.

Section 8 of Act 9 provides as follows:

Whenever the full production from any common source or field of supply of natural gas in this state is in excess of the market demands, then any common purchaser of such natural gas has herein defined receiving production or output from such source or field
shall take therefrom only such proportion of the available supply as may be marketed and utilized without waste, as the natural flow of the well or wells owned or controlled by such common purchaser bears to the total natural flow or production of such common source or field, having due regard to the acreage drained by each well, so as to prevent any common purchaser from securing an unfair proportion therefrom ....

Sections 7 and 8 address how much of the actual production from a pool or well a producer or purchaser may take or purchase, but they do not address or give the Commission authority with respect to methods of operation or production, including operation of natural gas wells on a vacuum.

It is true that Section 14 of Act 9, enacted in 1929, granted the Commission authority with respect to some matters now covered by Part 615:

The commission shall have authority to prevent the waste of natural gas in producing operations and in the piping and distribution thereof and to make rules and regulations for that purpose. It is hereby authorized and empowered to do all things necessary for the conservation of natural gas in connection with the production, piping and distribution thereof and to establish such other rules and regulations as will be necessary to carry into effect this act, to conserve the natural gas resources of the state and to preserve the public peace, safety, and convenience in relations thereto.

However, when enacting Part 615, the Legislature did not include Section 14 of Act 9 within the exceptions to the jurisdiction and authority of the Supervisor with respect to the subject matter of Part 615. If the Legislature had intended that the Commission retain its authority with respect to the subject matter of Section 14 of Act 9, it would have added that section to the reference made to Sections 7 and 8 in MCL 324.61526.

The Commission's Rule 17 . . . provides in pertinent part that "[n]o gas well, pool or field shall be placed under vacuum by the use of compressors, pumps or other devices except with the approval of the commission." Rule 17 was enacted well prior to the enactment of Part 615, and purports to govern subject matter that is within the jurisdiction of the Supervisor under Part 615. Rule 17 does not relate to either of the sections of Act 9 which the Legislature excepted from the application of MCL 324.61526.
Accordingly, Muskegon believes that Rule 17 has been superseded by Part 615.

In response to MDC’s arguments, Intervenors filed a reply brief containing a spirited rebuke. Intervenors rely extensively on Northern Mich, and conclude, at Int Rep Br, p 4-5, that:

[T]he Northern Mich Court concluded the Commission had jurisdiction over the equitable withdrawal of natural gas. . . .

The predecessor acts of NREPA addressed in Northern Mich essentially contain the same language as those portions of Part 615 Muskegon relies on. Muskegon failed to address the holding of the Northern Mich case. Unquestionably, the Commission continues to have jurisdiction and authority over the production and operation of natural gas wells, including determining whether such should be produced and operated on a vacuum.7

Intervenors continue by arguing that MDC errors by ignoring Act 9, §14 that authorizes the Commission to do all things necessary to prevent waste in the production of natural gas. Int Rep Br, p 5-6. As stated by Intervenors, at Int Rep Br, p 6:

The Legislature has expressly granted to the Commission authority to address matters involving the prevention of waste in the production and operation of natural gas wells, which would include any determination as to whether such should be operated on vacuum. The Commission recognized this grant of authority in promulgating Commission R 460.857 ("Rule 7") which addresses waste as to the production and operation of a natural gas well, including both the surface and subsurface.

For additional support, Intervenors cite §§ 5, 7, 8, and 14 of Act 9, plus R 460.855 as evidence that the Commission has express “authority to regulate the production and operation of natural gas, which includes any request for vacuum operations.” Int Rep Br, p 7.

---

7 DCP echoed this argument in its reply brief.
U-16230
Page 18
Next, Intervenors argue that MDC’s reliance upon MCL 324.61506(i) is misplaced because MDC fails to recognize that MCL 324.61506(i) grants the DEQ's authority to regulate secondary recovery operations only. As Intervenors see it, this case involves “primary production” and, therefore, MCL 324.61506(i) is not relevant. Int Rep Br, p 7-8.

Finally, Intervenors argue that MDC’s reliance on MCL 324.61526 is, likewise, misplaced. Int Rep Br, p 9-12. Intervenors argue that MDC fails to cite any repealed statutes, ignores MCL 324.61526’s applicability to only conflicting provisions, and fails to consider the Northern Mich courts analysis of nearly identical language. Int Rep Br, p 9-10. Intervenors argue that there is no conflict between R 17 and MCL 324.61506(i) because R 17 only applies to primary recovery, where MCL 324.61506(i) is limited to secondary recovery. Int Rep Br, p 11.

IV.

DISCUSSION

Over a quarter century ago, when deciphering the extent of the Commission’s authority, our state Supreme Court described the Commission’s governing legislation as a “statutory jungle” and the endeavour, itself, as “a journey into the heart of darkness.” Union Carbide Corp v Pub Service Commission, 431 Mich 135, 163; 428 NW2d 322, 334, n15 (1988). To this day, little has changed.
In this case, a case of first impression before the Commission, the Commission is being asked to approve the operation of natural gas wells on a vacuum, pursuant to R 460.867. R 460.867 reads as follows:

Rule 17. No gas well, pool or field shall be placed under vacuum by the use of compressors, pumps or other devices except with the approval of the commission. If and when the placing of a vacuum in any well, pool or field is planned, application for approval shall be made to the commission, and the adjoining lease owners and operators of a pool or field who may be affected shall be given notice. The commission may call a hearing on the subject, or may take such action as it deems advisable.

R 17 provides little guidance as to the nature and extent of the matters to be considered by the Commission when deciding to grant or deny vacuum well approval. Nor does it indicate the breadth of the Commission's authority over such wells. Thus, the initial question that must be answered is what authority the Commission has been granted to regulate natural gas wells operated on a vacuum.

As expressed at In re Ind Mich Power Co, 297 Mich App 332, 343 (2012), it is well established that:

The [Commission] possesses no common-law powers. It is a creature of the Legislature and all of its authority must be found in statutory enactments. A statute that grants power to an administrative agency is to be strictly construed. Administrative authority must be plainly granted, for doubtful power in this context does not exist. (citations omitted).

There are no statutory provisions that expressly grant to the Commission the authority to decide whether or not natural gas wells may be operated on a vacuum. Rather, the Commission claims jurisdiction in R 460.855, which states, in part:
Rule 5. (1) The jurisdiction of this commission, according to Act No. 9 of the Public Acts of 1929, over all gas wells and over the production of gas from such wells shall begin at the time the production or preparation for production is started and shall continue and remain with the commission until production is abandoned. The operations of drilling, deepening, plugging and abandoning, and in fact all underground work on gas wells, is under the jurisdiction of the supervisors of wells . . . .

***

(3) During the period that gas wells are under the supervision of the commission it shall be the duty of the chief engineer, directly or through his authorized representatives:

(a) To enforce such rules as the commission may adopt to carry out the requirements of said act.

(b) To inspect the maintenance and operations of all gas wells with a view to preventing waste of gas, damage to gas producing strata or formation, or injury to life or property, and to issue in accordance with the natural gas acts, necessary instructions to guard against and prevent such waste, damage or injury.

Unlike for the Commission, however, statutory provisions do expressly grant the DEQ regulatory power over vacuum wells. This express grant of authority is found in Part 615 of the Natural Resources and Environmental Protection Act, Act 451 of 1994.

The Legislature explained that Part 615 was to be “construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation”, when it stated in MCL 324.61502:

It has long been the declared policy of this state to foster conservation of natural resources so that our citizens may continue to enjoy the fruits and profits of those resources. . . . In past years extensive deposits of oil and gas have been discovered that have added greatly to the natural wealth of the state and if properly conserved can bring added prosperity for many years in the future to our farmers and landowners, as well as to those engaged in the exploration and development of this great natural resource. The interests of the people demand that exploitation and waste of oil and gas be prevented . . . . It is accordingly the declared policy of
the state to protect the interests of its citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation.

Pursuant to MCL 324.61505:

The supervisor\(^8\) has jurisdiction and authority over the administration and enforcement of [Part 615] and all matters relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all matters relating to the prevention of waste and the conservation of oil and gas.

More specifically, pursuant to MCL 324.61506 (emphasis added):

The supervisor shall prevent the waste\(^9\|^10\) prohibited by this part. To that end . . . the supervisor is specifically empowered to do all of the following:

---

\(^8\) Pursuant to statute, the “Supervisor of Wells”, also referred to as “supervisor”, is the DEQ.

\(^9\) Pursuant to MCL 324. 61504, “[a] person shall not commit waste in the exploration for or in the development, production, handling, or use of oil or gas, or in the handling of any product of oil or gas.”

\(^10\) Waste is defined by MCL 324.61501, which states, in part:

Sec. 61501.

Unless the context requires a different meaning, the words defined in this section have the following meanings when used in this part:

* * *

(q) “Waste” in addition to its ordinary meaning includes all of the following:

(i) “Underground waste”, as those words are generally understood in the oil business, and including all of the following:

(A) The inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool.

(B) Unreasonable damage to underground fresh or mineral waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

(ii) “Surface waste”, as those words are generally understood in the oil business, and including all of the following:

(A) The unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas, oil, or other product, but including the loss or
(a) To promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part.

***

(c) To require the locating, drilling, deepening, redrilling or reopening, casing, sealing, operating, and plugging of wells drilled for . . . gas or for secondary recovery projects . . . to be done in such manner . . . as to prevent the escape of . . . gas out of 1 stratum into another [and] to prevent pollution of, damage to, or destruction of fresh water supplies . . . and valuable brines by . . . gas, . . .

(d) To require reports and maps showing locations of all wells subject to this part, and the keeping and filing of logs, well samples, and drilling, testing, and operating records or reports. . . .

***

(h) To regulate the mechanical, physical, and chemical treatment of wells.

(i) To regulate the secondary recovery methods of . . . gas, including pulling or creating a vacuum and the introduction of gas, air, water, and other substances into the producing formations.

(j) To fix the spacing of wells and to regulate the production from the wells.

Michigan statutes do not define “secondary recovery methods” for natural gas. However, “secondary recovery” is defined by rule of the DEQ. Rule 324.103 states:

destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially a loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing a well or wells, or incident to or resulting from inefficient storage or handling of oil.

(B) The unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values from or by oil and gas operations.

(C) The unnecessary endangerment of public health, safety, or welfare from or by oil and gas operations.

(D) The drilling of unnecessary wells.

(iii) “Market waste”, which includes the production of oil or gas in any field or pool in excess of the market demand as defined in this part.
Rule 103. As used in these rules:

* * *

(j) "Secondary recovery" means the introduction or utilization of fluid or energy into or within a pool for the purpose of increasing the ultimate recovery of hydrocarbons from the pool.\(^{11}\)

In short, pursuant to statute, the Supervisor of Wells “is specifically empowered” “[t]o regulate the secondary recovery methods of [natural] gas”, which includes “pulling or creating a vacuum”.\(^{12}\) However, this does not end our jurisdictional inquiry.

In their arguments Staff, Intervenors, and DCP rely heavily on *Northern Mich Exploration Co v Mich Pub Service Comm*, 153 Mich App 635 (1986). In *Northern Mich*, the court was asked to find that the Commission lacked authority to prorate production when there was no showing that production exceeded demand.\(^{13}\) The *Northern Mich* court identified Act 9, “which places control and

---

\(^{11}\) In their brief, Intervenors argued that the vacuum operations contemplated in this case are primary recovery operations and, therefore, the DEQ rules regarding secondary recovery operations do not apply. Staff adopted this position in its reply brief. This position is not accepted for a number of reasons. First, nothing in this record supports the assertion. Second, the legislature specifically included “pulling or creating a vacuum” as an example of a secondary recovery method. Further, as noted, the DEQ has defined secondary recovery as the “introduction or utilization of . . . energy into or within a pool for the purpose of increasing the ultimate recovery of hydrocarbons”. The operations contemplated by the parties meet these definitions. There can be no doubt that the parties are placing the wells on vacuum. To do so, they will take natural gas from the pool and use it as fuel to operate compressors. Thus, this process introduces energy into a pool and/or utilizes energy within a pool for the stated purpose of increasing the ultimate recovery of natural gas. In short, the relevant statutes and rules appear unambiguous and make clear the legislature’s intent that the DEQ regulate natural gas wells that are to be operated on a vacuum.

\(^{12}\) Pursuant to MCL 324.61526, Act 451 of 1994:

[Il]s cumulative of all existing laws on the subject matter, but, in case of conflict, [Part 615] shall control and shall repeal the conflicting provisions, except for the authority given the public service commission in sections 7 and 8 of Act No. 9 of the Public Acts of 1929, being sections 483.107 and 483.108 of the Michigan Compiled Laws, as authorized by law.

\(^{13}\) Under §8 of Act 9, when production from any common natural gas source exceeds market demand, common purchasers, who also own or control wells drawing from the natural gas
regulation of natural gas lines within the jurisdiction of the . . . Commission”, and Act 61 of 1939, “a statute dealing with the conservation of oil and gas”, as the two principal statutes involved. Noting the “confusing history of conflicting and overlapping legislation”, the court found that the “legislation gives jurisdiction to control production of natural gas, and, specifically, to prorate production, both to the Public Service Commission and to the [DEQ]”. At Northern Mich, p 491, 645-46 (citation omitted), the court added:

Because [Act 9 gives] the Public Service Commission jurisdiction to control natural gas production, we reject plaintiffs' contention on appeal that the commission lack jurisdiction to prorate production. We are especially reluctant to disturb the commission's exercise of jurisdiction in this regard in view of the fact that, for more than fifty years, the commission and Department of Natural Resources, [now DEQ], have interpreted the statutes to give the commission jurisdiction to prorate production. The transfer of jurisdiction between the two agencies is a matter of long-standing administrative interpretation of the cumulative nature of 1929 P.A. 9 and 1939 P.A. 61. That long-standing interpretation is to be given respectful consideration by the courts. Besides, 1929 PA 9 has remained intact for fifty-seven years without amendment and the Legislature is presumed to have known of the agency interpretation when it amended the DNR's legislation in 1939 and again in 1973. Hence, the Legislature must have known each time it amended 1939 P.A. 61 that the DNR, [now DEQ], traditionally transferred jurisdiction to the commission to prorate production from gas wells. The Legislature did not choose to require a different interpretation.

Northern Mich is instructive. It establishes that both the Commission and the DEQ may possess concurrent jurisdiction over similar or identical aspects of the natural gas industry. In such instances, when the agencies have agreed upon an allocation of roles and engaged in a long-term course of conduct that defers regulation to one agency when concurrent jurisdiction exists over the source, are required to prorate production to prevent waste and to avoid taking a disproportionate amount of natural gas from the wells under its control. It is the Commission's duty to "regulate and enforce" this provision and, by order, to grant exceptions to the rule.

U-16230
Page 25
matter, such an arrangement is to be given respectful consideration. However, *Northern Mich* should not be read too broadly. It was narrowly tailored to address only proration and was based upon the specific facts of that case, the competing legislative grants of authority, and, most importantly, the long-standing practice of the agencies.

This case is distinguishable from *Northern Mich*. Most obviously, while both DEQ and the Commission share regulatory authority over vacuum wells, they have no history regarding the approval of vacuum wells. There is no established course of conduct between them. It cannot be claimed that there exists a long-standing administrative interpretation of the cumulative effects of the various statutes that potentially apply to the regulation of vacuum wells. Additionally, while the DEQ is given specific power to regulate vacuum wells, the Commission is not. Rather, because doubtful power does not exist, the Commission’s authority to regulate vacuum wells must be gleaned from specific grants of authority that apply generally and necessarily apply to vacuum wells. In short, *Northern Mich* by no means controls the outcome of this case and, because it was so narrowly tailored to the facts of that case, it has little precedential value for the issues at hand.

Based on a review of the applicable statutory provisions and administrative rules, it is clear that the DEQ and the Commission share concurrent jurisdiction over the operation of vacuum wells. However, unlike with the regulation of non-vacuum natural gas wells, there are no established practices of the DEQ and the Commission to assist in determining the proper
allocation of regulatory duties between the two. This case requires such a
determination. In doing so, it is important to remain cognizant of the fact that,
under Michigan statutory law, the DEQ is given express authority to regulate
vacuum wells while the Commission is not. Furthermore, it is presumed that all
applicable administrative rules are valid and have the force of law.

To carry out the DEQ’s statutorily mandated duties to regulate vacuum
wells, the Supervisor of Wells has delegated the authority and responsibility to
approve vacuum well operations to the Assistant Supervisor of Wells.\(^{14}\) DEQ
rules require persons desiring to engage in secondary recovery of natural gas to
petition for a hearing and to keep certain records, pursuant to R 324.612\(^{15}\), which
reads:

\begin{quote}
Rule 612. (1) A person desiring to inject water, gas, or other
fluid into a producing formation or use other technology for the
purpose of increasing the ultimate recovery of hydrocarbons from a
reservoir shall file a petition for hearing pursuant to part 12 of these
rules.

(2) The operator of a secondary recovery project shall keep
accurate records of all oil, gas, and brine produced, volumes of
fluids injected, and injection pressures. The operator shall file
reports of the data and other data as may be required with the
supervisor at regular intervals, as specified.
\end{quote}

\(^{14}\) Notice is taken of Executive Order 2011-1 Delegation Letter, Current Letter No.: OOGM-615-
01, Revised Date: October 1, 2012. Pursuant to it, the duty to approve or deny the recovery of
gas via vacuum wells has been delegated to the Office of Oil, Gas, and Minerals Chief, who also
dons the hat of Assistant Supervisor of Wells.

\(^{15}\) It is noted that the heading for R 612, which reads: “R 324.612 Secondary oil recovery projects;
hearings; records”, suggests that the Rule applies to oil projects. However, to
interpret administrative rules, principles of statutory construction are applied. See \textit{Jordan v Dept
of Corrections}, 165 Mich App 20, 28; 418 NW2d 914, 918 (1987). Thus, the heading for a rule
shall not be considered a part of the rule and may not be “used to construe the [rule] more
broadly or narrowly than the text of the section would indicate”. \textit{Furr v McLeod}, 304 Mich App
677, fn5 (2014).
For producers wishing to operate vacuum wells, it is Rule 612 under which they must initially seek relief. As part of this process, the DEQ is uniquely qualified and has the authority to evaluate the physical characteristics of each proposed vacuum well, to judge the appropriateness of each well’s structural configuration, to examine the effects upon or caused by other wells in the vicinity of vacuum operations\(^\text{16}\), and to order any necessary well modifications\(^\text{17,18}\). Furthermore, the DEQ has the sole authority and is particularly qualified to address well spacing, setbacks, and unitization and pooling issues that may be appropriate for vacuum operations\(^\text{19}\). In this regard, the DEQ is statutorily required to consider matters related to correlative rights; one of the more contentious issues in this case. See MCL 324.61513. See Part 617 Unitization, MCL 324.61701 et seq.

In addition, an examination of the expertise of the Commission and the DEQ weighs in favor of finding the DEQ possesses more broad authority to regulate vacuum wells than does the Commission. Clearly, the DEQ is the more appropriate agency for evaluating geologic aspects of the unconventional natural

---

\(^{16}\) Other wells might include natural gas wells and wells for which the Commission has no authority to regulate such as oil wells and disposal wells.

\(^{17}\) As noted above, pursuant to R 460.855, the Commission specifically disavows authority to regulate any underground work on gas wells.

\(^{18}\) In addition, the Supervisor of Wells has authority to require specific well casings for wells drilled near secondary recovery operations, pursuant to R 324.410, which reads, in part:

(2) In addition to the surface casing, the supervisor may require or order a string of casing to be run to seal off any of the following:

* * *

(f) A reservoir undergoing secondary recovery.

\(^{19}\) Issues related to spacing, setbacks, unitization, and correlative rights are addressed at, among other places, 4 Tr 279-8; 5 Tr 538-42; 7 Tr 852, 881; 9 Tr 1222-26; 13 Tr 2088-92; 16 Tr 2640-42, 2664-70; 17 Tr 2827-31, 2835-38, 2871-80, 2918-31, 2942-45; 18 Tr 3034-37.
gas reservoir that is the Antrim Shale formation. Where the Commission does not, the DEQ does possess the administrative expertise necessary to permit its active participation in the development of the appropriate record. For example, one might argue that the Commission has authority to make vacuum well determinations that rest upon an evaluation of the natural gas migration mechanisms that exist between and within the shale’s matrix and its fractures. A clear understanding of these vastly different migration mechanisms is critical to an informed decision regarding correlative rights and whether vacuum wells will increase the ultimate recovery of natural gas or merely cause the premature abandonment of wells. In this realm, existing DEQ staffing and expertise are well suited for such evaluations and can participate in the development of a meaningful record. Unlike for the DEQ, these types of issues do not fit neatly into the Commission’s bailiwick. In short, for what one might consider the underground issues related to vacuum wells, where the Commission and DEQ arguably possess concurrent jurisdiction, the DEQ’s administrative expertise weigh heavily in favor of Commission deference to the DEQ as the initial regulatory body to consider the approval of vacuum wells.

However, for other matters related to vacuum wells, it appears that the Commission has sole authority to regulate and is better qualified to pass

---

20 The DEQ has numerous staff geologists and has previously conducted hearings to approve secondary recovery projects. See Order No. (A) 14-6-96. That case involved a petition for approval of secondary recovery “in order to maximize the recovery of oil, gas and related hydrocarbons.” Petition of Mercury Exploration Co, Cause No (A) 14-6-96, Petition, p 3 (March 5, 1996). The DEQ approved a secondary recovery project that involved both oil and natural gas, finding that the “secondary recovery project for the Dover 36 Fields represents an opportunity to increase the ultimate recovery of oil and gas.” Petition of Mercury Exploration Co, Cause No (A) 14-6-96, Opinion and Order, p 5 (July 3, 1996).
administrative judgment. For instance, the parties have raised, litigated, and briefed numerous natural gas transportation and processing issues. These matters are areas for which the Commission possesses clear legislative grants of authority to regulate and for which the Commission has a history of doing so.

As clouded as the jurisdictional picture may be, in the end, an examination of the applicable statutes, applicable rules, and the expertise of the Commission and DEQ do reveal a reasonable and proper procedure for the concurrent regulation of vacuum wells. Much like the procedure followed by producers initially drilling a natural gas well, producers must first seek approval from the DEQ before coming to the Commission under 17. The DEQ has statutory authority to regulate all aspects of the natural gas wells to be operated on a vacuum. The DEQ is empowered to address any structural matters related to each well. In addition, the DEQ is uniquely qualified and empowered to address spacing, unitization, and setbacks; all regulatory mechanisms that may need to be drawn upon to properly address the correlative rights issues raised in this case.21 In addition, while one can reasonably argue that both the Commission and the DEQ may consider the geologic aspects of the Antrim Shale formation, the DEQ, not the Commission, possesses the administrative expertise necessary to properly consider the relevant geologic intricacies of the field and the effects vacuum operations will have upon them. Thus, as inconvenient as it may be, producers must first seek redress from the DEQ under its rules regulating secondary recovery operations. Should the DEQ approve the operation of

21 See generally, Act 451 of 1994, Chapter 3, for the relevant statutory grants of regulatory power to the DEQ. See, also, Rules 324.101 - 324.1301.
vacuum wells, then, prior to the commencement of vacuum operations, a producer should make application pursuant to R 17 where issues related to pipeline safety, oxygen in the gas stream, proration, and any other unresolved matters within the Commission’s authority may be addressed.

Because Applicants have failed to first receive DEQ permission to engage in secondary recovery methods for natural gas, this matter is not ripe for consideration by the Commission.

V. CONCLUSION

For the reasons explained above this matter is dismissed because it is not currently ripe for consideration by the Commission.

Any evidence and arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the findings and conclusions of this matter.