

claim Section 29 Tax Credits, but they have not received a well determination from the Commission, as required under the Tenth Circuit's decision.

Reestablishing the Commission's well determination procedures is not only a matter of vital importance to many of IPAA and NGSA's respective members, but is also vital to the nation as a whole. By allowing producers to claim Section 29 Tax Credits, the procedures will promote the production of incremental gas supplies as the gas industry endeavors to meet the ever growing demand for natural gas in the United States.

IPAA and NGSA commend the Commission for undertaking this important initiative to reinstate the well determination procedures. However, as discussed below, the Commission should expand its proposed procedures to address all of the circumstances in which a producer requires a well determination to claim the Section 29 Tax Credit. The procedures should apply to wells drilled and completed (or recompleted) prior to 1993, as well as to those completed after 1992.

II.

STATEMENT OF INTEREST

IPAA is a trade association representing over 7000 independent oil and natural gas producers in the United States. IPAA members have actively participated in and relied upon the Section 29 Tax Credit program enacted by the Congress to promote the exploration for and production of unconventional natural gas. Independent producers have contributed significantly to the large volume of natural gas from these sources that is being consumed today by U.S. consumers and businesses.

NGSA represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages expanded use of natural gas and a regulatory climate that fosters competitive markets.

III. COMMENTS

IPAA and NGSA support the Commission's proposal to reinstate the well determination process. Indeed, the measures proposed in the NOPR are an important step toward ensuring that producers which rely upon the Section 29 Tax Credit program are afforded an opportunity to avail themselves of the incentive Congress established under IRC Section 29. However, in order to carry out the full intent of Congress, the Commission needs to expand the applicability of the procedures proposed in the NOPR.

The Commission proposes to restrict the newly proposed well determination process only to those wells that were recompleted after 1992. IPAA and NGSA submit that this restriction is only of limited benefit to producers. The restriction would preclude producers from obtaining well determinations for many wells that would otherwise qualify for the Section 29 Tax Credit. As the Commission correctly observes in its NOPR,⁴ Congress did not intend to deny the tax credit to producers when Congress repealed the NGPA. A Commission decision to restrict the availability of the well determination process to a limited class of wells, as proposed in the NOPR, is inconsistent with Congressional intent and would render the Section 29 Tax Credit inapplicable to a number of otherwise eligible wells. Specifically, under the NOPR, producers would be unable to obtain well determinations for wells drilled and completed (or recompleted) prior to 1993.

Congress established the Section 29 Tax Credit to promote the production of incremental gas supplies to meet the nation's demand for natural gas. Congress did not impose any deadline for obtaining well determinations for purposes of obtaining the tax credit. Therefore, not only was it unclear that a well determination was necessary, but it was also not clear that producers must seek a

⁴NOPR, slip op. at 20.

well determination by a date certain. Congress certainly did not intend to punish producers when it repealed the NGPA, and indeed it is not fair to do so now by precluding producers from obtaining a well determination for certain wells that otherwise would qualify for the Section 29 Tax Credit. ^A a result of the confusion surrounding the repeal of the NGPA and the removal of the well-determination procedure mechanism, many producers believed that no Commission well determination was needed in order to claim the credit. Small producers, with few or no administrative personnel lacked resources to comply with anything other than mandatory administrative procedures. They are without a determination today because they may have delayed in seeking well determinations prior to the repeal of the determination mechanism. Certain producers have acquired qualifying wells from other producers that did not seek a determination prior to repeal of the mechanism, where the price paid reflected the buyer's belief that the determination was not necessary to claim the Section 29 Tax Credit. In other situations, producers secured jurisdictional agency determinations, but were subsequently denied a FERC well determination as the Commission phased out its determination procedures. In all of these circumstances, however, the wells qualify for the tax credit, but the NOPR would preclude the producer from even applying for a well determination.

Producers have risked their capital to drill wells into coal bed methane and tight gas formations in reliance on the Section 29 Tax Credit program thereby providing a more secure and diversified natural gas supply for the nation. That is, producers have drilled wells according to the requisite time frames and taken the actions required to participate in the Section 29 Tax Credit program. Those producers should not be precluded from obtaining the well determinations needed to claim the credit. IPAA and NGSA support FERC's effort to reinstitute a determination process for some eligible wells. However, the Commission needs to broaden its proposal and address all instances in which a determination is needed consistent with Congressional intent. The Commission

should expand the universe of wells that qualify for well determinations to include all wells drilled and completed (or recompleted) prior to 1993. There is no sound energy or tax policy reason to prohibit producers from obtaining these determinations now.

IV.

CONCLUSION

IPAA and NGSA strongly encourage the Commission to reinstate the Section 503 determination process for all wells that require such a determination in order to meet the eligibility criteria for the Section 29 Tax Credit. IPAA and NGSA urge the Commission to extend the determination process not only to all post-1992 recompleted wells, but also to wells spudded or recompleted prior to 1993, so that producers that have complied with the Section 29 Tax Credit program are not precluded, through merely lacking paperwork, from obtaining the tax credit Congress intended them to have.

Respectfully submitted,

**INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA**

David M. Sweet
Vice President, Natural Gas
Independent Petroleum
Association of America
1101 16th Street, N.W.
Second Floor
Washington, DC 20036
(202) 857-4722

By: _____

Richard G. Morgan
Shook, Hardy & Bacon L.L.P.
Chase Tower
600 Travis, Suite 1600
Houston, TX 77002
(713) 227-8008

Elisabeth R. Myers-Kerbal
Curtis D. Blanc
Shook, Hardy & Bacon L.L.P.
14th Street, N.W., Suite 800
Washington, D.C. 20005-2004
(202) 783-8400

Counsel for the Independent Petroleum
Association of America

NATURAL GAS SUPPLY ASSOCIATION

Patricia W. Jagtiani
Director of Regulatory Affairs
Natural Gas Supply Association
805 15th Street, NW
Suite 510
Washington, DC 20005

For the Natural Gas Supply Association

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