

The information contained herein is provided "as is," is for educational and information purposes only, and does not provide legal advice on any specific legal matter or factual situation. Legal advice is dependent on the specific circumstances of each situation, so some information may not be correct for your situation. This information is not intended to create or provide a lawyer-client relationship. No one should act on this advice without seeking professional counsel. This information is not soliciting clients for legal work. This information is provided at your sole risk. There is no warranty of any kind, express or implied. Therefore, this information is not a substitute for and cannot replace the advice of your own legal counsel.

Force Majeure Long Answer

To XXX Gas Company

Dear Sir or Madam:

We have read the letter dated January 10, 2011 which was not signed and which did not indicate which officer or employee was acting as agent for the corporation. As you are aware, a corporation is an artificial legal entity created with the permission of the State; and therefore no acts of the corporation are valid unless carried out by human agents acting on the behalf of the corporation. Your letter does not indicate that an employee or agent signed on behalf of the corporation. We must therefore assume that the letter is a draft and not the final letter. As a consequence it has no force or effect until signed by a human being acting on behalf of the corporation, whether officer, director or employee with an indication of the authority held by the signer.

For future reference, you may want to review the substance of the letter before you delegate someone to sign on behalf of the corporation. You have misread the law and the executive order # 41. There is no moratorium on drilling and fracking in New York State, therefore there is no Force Majeure event.

The Executive Order only removes the "short cut" method of obtaining a drilling permit. The Generic Environmental Impact Statement which commonly allows a shortened period for the consideration and granting of a drilling permit did not originally address environmental impacts associated with high-volume hydraulic fracturing combined with horizontal drilling. This has been known to the industry for many years. Well drilling permits can still be obtained by complying with the normal 'site specific' SEQRA requirements, which have never disappeared nor been rescinded. In addition well permits are currently being issued for all wells which do not require high-volume hydraulic fracturing combined with horizontal drilling. The fact that the "old way" of having to comply with SEQRA by the performance of a site specific EIS is still in existence belies your contention that an event of Force Majeure has occurred.

You may obtain a drilling permit under the current Executive Order; it simply will take more time and money. Incidentally, a prominent environmental scientist in the oil and gas industry has repeatedly asserted that once one site specific EIS has been performed that it can serve as a template for all subsequent site specific EIS's at other sites. He also asserts that such an EIS would take about six months. Once one EIS has established the common environmental concerns in a "gas field" all the future EIS's need only insert the site specific variations. Such subsequent EIS's would take far less time. This is not rocket science and is commonly done under SEQRA.

Force majeure is an equitable concept which originated to allow someone who had an obligation under a contract to be relieved 'temporarily' from that obligation when an event, so tragic, so unexpected, so unforeseen, and uninsurable occurred. XXX has asserted no obligation which it cannot perform. Without

identifying specifically the obligation required of XXX of which XXX seeks to avoid, there can be no obligation which force majeure can act upon. As XXX has neglected or refused to identify the obligation from which it has it is to be relieved, XXX's letter is of no effect.

The Executive Order is also only an extension of a preexisting order issued several years ago. Force majeure is an equitable defense under the laws of New York State. In order to claim force majeure as an equitable defense XXX "must have given equity to receive equity". XXX's claim of Force Majeure is not timely and at this late date constitutes laches. The Lessors in the community have relied on the fact that XXX has done nothing to assert Force Majeure in the previous two and one half years of the existence of the original Executive Order. Moreover, if you at XXX thought that the Executive Orders were invalid or a violation of law, XXX had 120 days from the issuance of the Executive Orders to challenge it by way of an Article 78 proceeding under the NYCPLR. That time has long passed for the original Executive Order and is still running for the second. If the recent Executive Order #41, is considered a new order, then XXX must first exhaust all its remedies and seek mandamus relief from the Order by commencing litigation against the State of New York and filing claims with the NY Court of Claims for damages for a 'taking'. XXX could prevail in those suits.

In addition, XXX is not prevented from drilling and completing as there is still available fracking by use of propane gas, nitrogen, and carbon dioxide when combined with horizontal drilling. The law never has guaranteed the use of any specific technology.

Lastly, the letter of January 10, 2011 is a disingenuous attempt to transmute low natural gas prices and a natural gas supply glut and its consequent lack of economic profit into a force majeure event. Neither a gas glut nor low prices for natural gas constitute a tragic, unexpected, unforeseen and uninsurable event. In fact XXX commonly buys 'hedges' (a form of unregulated insurance policy to guarantee a certain sale price of its natural gas) to guard against market fluctuations.

Based on the facts set forth above, there is no event of Force Majeure.

We are returning your checks herein.

Very truly yours

Lessor