The PIOGA Press

The monthly newsletter of the
Pennsylvania Independent Oil & Gas Association
March 2022 • Issue 143

House members call on governor to ban Russian-sourced energy, unleash Pennsylvania's full potential to power free world

Along with 14 of his House Republican colleagues, House Majority Environmental Resources and Energy Committee Chair Daryl Metcalfe (R-Butler) sent the following letter on March 1 urging Governor Tom Wolf to ban the importation of Russian-sourced energy and to end his job-killing, punitive crusade against the production and exportation of Pennsylvania natural gas and other abundant fossil fuels:

"We, the undersigned majority of the House Environmental Resources and Energy Committee, demand that Governor Wolf and the agencies he oversees do everything in their power to support the growth and proliferation of Pennsylvania's natural gas and energy to the free world.

"With the recent Russian declaration of war against the Ukrainian people and the instability of the European energy markets, Pennsylvania has never been in a better position to power the world. The Commonwealth has a natural bounty of oil, gas, and coal that can heat homes, generate manufacturing feedstock, and fuel democracies far and wide.

"You know of our immense potential, yet the State has been hamstrung by regulation, bans, time-intensive permitting, RGGI, and further taxation while you support energy means that cannot possibly power the needs of the 21st century. We must, through voice and actions, develop the energy resources we have and encourage their use by all who share our values and need our energy to carry and support them into a free and prosperous future.

"We laud your request to the Pennsylvania Liquor Control Board to cease selling Russian produced liquors. It was a swift and simple request the office of the executive made, but in reality, the economic and social impact

of such an action is a meek show of solidarity with the Ukrainian people and essentially impotent against the Government of Russia. Your action garnered media attention but is far from actual support for Ukraine, Western Democracies, or the Commonwealth's interests.

"Just as the shallow oil and gas wells of Pennsylvania fueled the allies of the first World Wars, we should currently make use of our advanced production methods and technologies to provide Liquified Natural Gas (LNG) and other resources to Europe and abroad. Instead of Russian LNG tankers entering American ports and the ports of our allies we should be exporting LNG to our friends across the world.

Continues on page 3

"We ask that you join the Legislature in our efforts to incur an actual impact on the situation in Europe and to urge New York and New Jersey to end their states' policies banning the construction of any new natural gas pipelines. Furthermore, join the voices calling for an end to the natural gas development moratorium within the Delaware River Basin, an unnecessary and harmful moratorium that you chose to initially support. These bans are a detriment to the citizens of our state and our neighbors, and in the modern age also limit our means of getting energy off our shores and into the homes and businesses of our geopolitical allies.

"If we truly care about the environment and our future energy, economic, and climate needs we would invest in domestic production instead of turning a blind eye to the standards of the Russian tundra. If anything, we and our neighboring states should ban importation of Russian sourced energy instead of making energy extraction, production, and transportation more difficult within our borders. Be a voice of encouragement to the Pennsylvanians yearning to share our liquified natural gas and energy with those in need.

"You must immediately call upon our neighboring states to encourage the means to transport our bountiful resources. Furthermore, you must encourage the extraction and refinement of our resources for the betterment of the free world. End your crusade against fossil fuels and recognize the gift of energy and production that exists beneath our feet. We sincerely request that you join us in our efforts to ease the lives of the citizens of this State, the people of this nation, and of our allies abroad."

Also signing the letter were Representatives Mike Armanini (Elk), Stephanie Borowicz (Clinton), Bud Cook (Washington), Joseph Hamm (Lycoming), Lee James (Venango), Joshua Kail (Beaver), Ryan Mackenzie (Lehigh), Tim O'Neal (Washington), Jason Ortitay (Allegheny), Kathy Rapp (Warren), Tommy Sankey (Clearfield), Paul Schemel (Fayette), Perry Stambaugh (Perry), and Ryan Warner (Fayette). ■

PIOGA: Russian invasion exposes need for strategic energy policies in Pennsylvania and across the U.S.

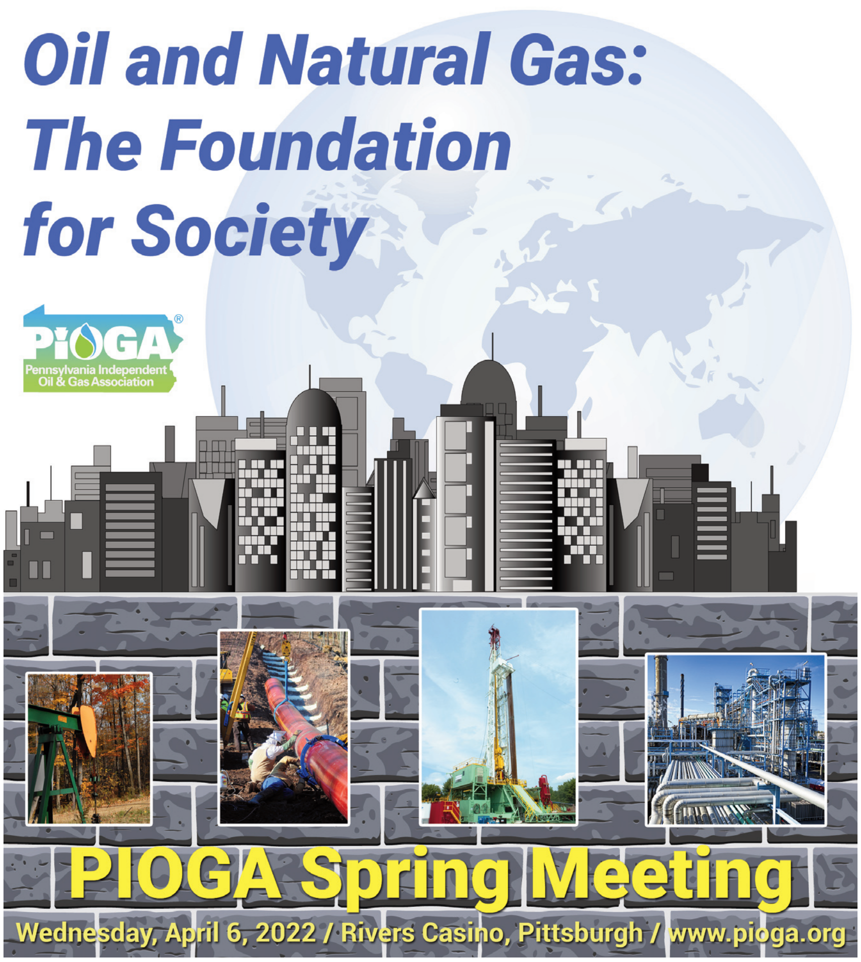
PIOGA President & Executive Director Dan Weaver on March 2 issued the following statement regarding the critical need to support domestic energy production locally in Pennsylvania and in the United States:

"In less than one week, Russia's invasion of Ukraine has laid bare the tenuous nature of global energy supply and demand, with prices increasing and sanctions impacting the Nord Stream 2 pipeline intended to supply natural gas to European countries. In the face of this reality, Germany announced a new commitment Sunday to build up its reserves of coal and natural gas, including the construction of two new liquid natural gas terminals to allow imports, while maintaining its 2045 net-zero commitment.

Any effort by Russia to respond to continuing economic sanctions by cutting off the sale of oil to European nations will only exacerbate the energy crisis on that continent.

The United States—particularly Pennsylvania—has the supplies and capabilities to help meet the demand of Europe and other regions, but is facing unnecessary resistance at both the federal and state levels to achieve the country's energy production potential. The prime example of this in Pennsylvania is Governor Wolf's unilateral effort to force our state into the regional carbon tax program (RGGI) in which the cost of emission credits has already exceeded $13/short ton, more than four times the $4/short ton cost the governor touted would remain through 2030. It is imperative that our nation and the Commonwealth recognize the need to encourage the production and transportation of oil and natural gas rather than stifle it.

Unfortunately, current policies have made it impossible for American energy producers to address the urgency of the moment created by Russia's invasion of Ukraine. We cannot turn on a switch and instantly produce oil and natural gas. We can, and must, however, do much more to help both our country and other nations that need reliable energy and are at the mercy of countries such as Russia."



Have you registered for the Spring Meeting?

The association's annual Spring Meeting & Exposition—Wednesday, April 6, in the Event Center of Rivers Casino on Pittsburgh's North Shore—will highlight the importance of oil and natural gas, now and into the future. The theme for this year's event is "Oil and Natural Gas: The Foundation for Society."

"The conference portion of the event features a great lineup of experts discussing key challenges in the areas of regulatory, legislative, market development and business climate," explains PIOGA President & Executive Director Weaver. "We will have our exclusive vendor exhibit area again, and as always there will be plenty of time for networking, including a reception after the program wraps up."

The conference runs from 8:45 a.m. to 5 p.m., followed by a reception until 7 p.m.

Keynotes include opening speaker Asim Haque, vice president, state and member services, with PJM Interconnection, addressing, "PJM: The Largest Power Grid in North America and the Role of Natural Gas." The luncheon address will be delivered by William Watson, general manager for the Shell Polymers petrochemical complex in Monaca, Beaver County. Closing speaker will be state Senator Gene Yaw, who represents Pennsylvania's 23rd Senatorial District and is chair of the Senate Environmental Resources and Energy Committee.

Other presenters and topics are:

- **Panel Discussion: The New Era of ESG** – Donald Racey, Engage Energy & Industrial Consulting, Inc.; Matt Tourigny, Deep Well Services; and Olayemi Akinkugbe, CNX Resources Corporation. Moderator: Michael Flowers, Steptoe & Johnson PLLC
- **Energy Security: Why You Are the Vulnerability** – Robert Ragan and Josephine Syring, CUSTOS IQ LLC
- **Pennsylvania Regulatory Update** – speaker to be announced
- **Finding, Hiring and Retaining the Next Generation of Energy Industry Employees** – Michael Parker, Blackrock Resources
- **Environmental Year in Review and Outlook for 2022** – Kevin Garber and Jean Mosites, Babst Calland
- **LNG Marine Bunkering Capabilities & Use Cases** – Jim Devine, REV LNG
- **Innovation in the Appalachian Energy Industry: Now and Next** – Katie Klaber, Shale POWER
- **Pennsylvania Gubernatorial & U.S. Senate Races: Who's In and What's Coming Up** – James Lee, Susquehanna Polling & Research, LLC

Weaver explained that PIOGA's Program Committee and staff worked hard to come up with an excellent program that will be attractive to members of the oil and gas industry and business communities.

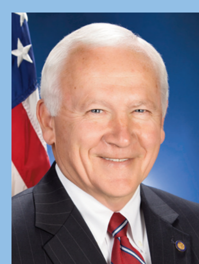
"We expect well over 300 people will take the opportunity to gather in person to hear this cutting-edge information, as well as to learn about some great products and services that our exhibitors are offering, and to renew connections and make new ones," Weaver said.

For more information and to register today, visit the PIOGA Events section at www.pioga.org. ■

Keynote speakers

Opening Speaker
Asim Hague, PJM Interconnection

Luncheon Speaker
William Watson, Shell Polymers



Closing Speaker
Senator Gene Yaw, 23rd Senatorial District

Don't miss these companies in our exclusive exhibit area

American Refining Group
Appellation Construction Services, LLC
Aqua-Clear, Inc.
Black Diamond Equipment Rentals
ChampionX
CUSTOS IQ LLC
ECI, PCI Appalachia & Champion
Engage Energy And Industrial Consulting
Engineering & Inspections International
Filtech Inc.
GeoStabilization International
MJ Painting Contractor
New Pig Energy
Orion Strategies
Perma-Fix Environmental Services
Precision Pipeline Equipment, Inc.
RJR Safety
Seal Tite Lining Systems
ShalePro Energy Services
Stoll And Weller Insurance Services & Financial Group
StoneX Markets LLC
Sunnyside Supply
Utilities Employees Credit Union
Women's Energy Network
Zimmerman Steel & Supply Co.

This year's Spring Meeting features expanded opportunities to meet and talk with our vendors.

Senators try to prevent Wolf from bypassing legislative process on RGGI

In an ongoing effort to protect Pennsylvanians against higher energy bills and job losses in the energy industry, Senate Republican leaders filed a request with the Commonwealth Court to intervene in a lawsuit the Wolf administration filed to force Pennsylvania into the Regional Greenhouse Gas Initiative (RGGI).

RGGI is a multi-state compact that would enact a carbon tax on energy producers. The plan is projected to increase electricity rates for consumers, cut energy and manufacturing jobs, and lead to the closure of Pennsylvania power plants. One estimate found the proposal could result in 22,000 lost jobs and a total loss to the economy as high as $7.7 billion a year.

In response to the administration's attempt to usurp the General Assembly's authority to levy taxes, the Senate and the House of Representatives approved a resolution disapproving Pennsylvania's participation in RGGI. Governor Tom Wolf vetoed this resolution on January 10 *(February PIOGA Press, page 3)*. The Senate has 10 legislative days or 30 calendar days—whichever is longer—to vote to override the governor's veto.

Although the Senate still had until late March to bring the veto override up for a vote, Wolf's Department of Environmental Protection sued the Legislative Reference Bureau and the Pennsylvania Code and Bulletin to force them to publish the RGGI regulation in the *Pennsylvania Bulletin* immediately. If successful, the lawsuit would allow the regulation to take immediate effect and prevent the General Assembly from having an opportunity to consider whether to override Wolf's veto.

The request by Senate President Pro Tempore Jake Corman, Senate Majority Leader Kim Ward, Senate Appropriations Committee Chair Pat Browne, and Senate Environmental Resources and Energy Committee Chair Gene Yaw seeks to prevent the administration from bypassing the legislative process a second time after the initial refusal to allow the General Assembly to vote on Pennsylvania's entrance into RGGI.

"It is deeply disturbing that the Wolf administration continues to ignore the will of the people and is actively working to raise energy taxes and costs on Pennsylvania families and employers," the senators said in a statement. "There are clear rules in place to prevent any branch of government from trampling the rights of Pennsylvanians and the authority of the other branches of government. Governor Wolf should not be permitted to ignore those rules just because he thinks those checks and balances are inconvenient to his liberal, anti-energy agenda."

Review of RGGI modeling. Meanwhile, Yaw and Senator John Yudichak sent a letter to the Independent Fiscal Office (IFO) requesting an audit of modeling used to justify Pennsylvania's entry into RGGI. The senators requested an IFO review after DEP refused an invitation to testify before the Senate Environmental Resources and Energy Committee about skyrocketing RGGI costs not contemplated by prior modeling. Yudichak, as chair of the Senate Community, Economic and Recreational Development Committee, is planning to host a joint hearing with Yaw's committee to discuss the IFO's findings.

"The IFO's impartial analysis has been regarded as among the most trustworthy perspectives in state government for more than a decade," Yaw said. "The office's projections will offer clarity on RGGI's true economic impacts, given the Wolf administration's repeated unwillingness to do so."

When Wolf signed his 2019 executive order to force Pennsylvania into the regional carbon tax program, auction clearing prices—the amount energy producers pay to buy "credits" to offset their emissions—were $3.24 per short ton. At that time, taxpayer-funded analysts insisted prices would stay under $4 through 2030. The most recent auction clearing price set on December 1, however, exceeded $13 per short ton, more than four times what DEP estimated and 40 percent above the September 8 clearing price alone. Inflationary pressures show no sign of slowing down anytime soon, either, meaning prices will continue to climb.

"This de facto carbon tax will translate into electricity bills spiking by double digits, ballooning fuel costs and price increases on just about everything we use daily," Yaw said. "Thousands of jobs will disappear. And zero carbon emissions will be removed from the atmosphere. Taxpayers deserve to know the true cost of the Wolf administration's out-of-touch policies." ■

FERC issues major changes to pipeline approval process

The Federal Energy Regulatory Commission (FERC) on February 17 issued updates to the policies it uses to determine whether to approve or deny an application to construct interstate natural gas pipelines. The updates are the first revisions to FERC's policy for certification of interstate natural gas projects in more than two decades. The two policy statements—Updated Pipeline Certificate Policy Statement (PL18-1-000) and Interim Greenhouse Gas (GHG) Emissions Policy Statement (PL21-3-000)—are described in the accompanying articles by **Joe Baran, Principal, of Bertison-George LLC.**

FERC Docket No. PL18-1-000 Updated Policy Statement on Certification of New Interstate Natural Gas Facilities

FERC issued two Notices of Inquiries (NOI), on April 19, 2018, and February 18, 2021. FERC was exploring if the policy statement issued in 1999 was effective or if changes needed to be made. The updated policy statement does not establish binding rules and is intended to explain how FERC will consider applications for new interstate natural gas transportation resources. What is changing:

Policy comparison

Factors	1999	2022
Financial subsidization	✓	✓
Impact on:	✓	✓
Existing customers	✓	✓
Existing other pipelines	✓	✓
Landowners	✓	✓
Environmental impacts of construction	✓	✓
Impacts on climate change		✓
Environmental justice		✓

✓ 1999 policy ✓ Separately considered ✓ 2022 updated or new policy

FERC believes the changes will balance all impacts, including economic and environmental impacts, together in its public interest determinations under the Natural Gas Act (NGA).

Historical context and the 1999 Policy Statement

Before the 1999 Policy Statement, FERC's pricing policy for new construction generally allowed for the costs of expansion projects to be rolled into a pipeline company's existing system costs to derive rolled-in rates in a future rate case under section 4 of the NGA.

• All shippers bore some burden of the expansion project's cost, regardless of whether they would benefit from the project. Local distribution companies (LDC) and other parties believed this pricing policy sent the wrong price signals by masking the actual costs of an expansion project and could result in overbuilding and subsidization of expansion by a pipeline's existing shippers.

• Under this pricing policy, expansion projects received a determination for rolled-in pricing upon a showing that the new costs would not increase existing rates by more than 5 percent.

Under the 1999 Policy Statement FERC would:

1. Determine whether a threshold requirement of no financial subsidization from existing customers was met. If so,

2. FERC would next consider whether the applicant eliminated or minimized any residual adverse effects the project might have on:
   - a. The applicant's existing customers;
   - b. Existing pipelines in the market and their captive customers; and
   - c. Landowners and communities affected by the proposed project.

The 1999 Policy Statement provided that if FERC found that project benefits outweighed adverse impacts on economic interests, then it would proceed to consider the environmental impacts of the project.

Why did FERC issue the 2018 and 2021 NOIs?

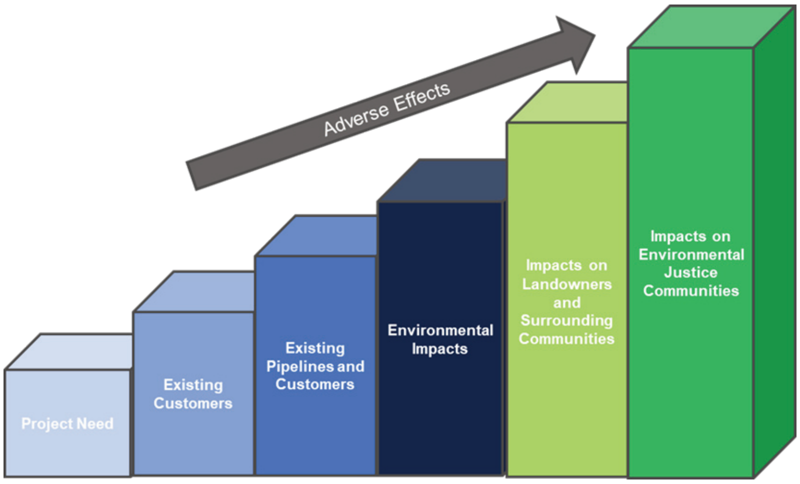
1. Increased natural gas utilization
   - a. The available supply, mostly from unconventional wells
2. Contracting patterns have changed
   - a. Middle market entities are increasing pipeline capacity
   - b. Producers are main capacity holders on expansion projects
3. Greater focus on landowners (especially in densely populated areas)
4. Environmental impacts of project construction and operation
5. Focus on impacts on climate change
6. Societal focus on environmental justice communities

Updated policy statement

While some of the evaluation categories are the same, the criteria for those issues have different implications. Thus, there are new issues to contend with.

1. Consideration of project need

Rather than relying only on one test for need, FERC will



consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers or a comparison of projected demand with the amount of capacity currently serving the market.

For all categories of proposed projects, FERC encourages applicants to provide specific information detailing how the gas is to be transported by the proposed project will ultimately be used, why the project is needed to serve that use and the expected utilization rate of the proposed project. To the extent applicants do not have information on the end use of the gas, they are encouraged to collaborate with their prospective shippers to obtain it.

Applicants are also encouraged to provide a thorough assessment of alternatives, including supporting data, to facilitate FERC's review. In assessing the strength of the applicant's need showing, FERC will consider record evidence of alternatives to the proposed project. FERC's evaluation will include information indicating that other suppliers would be able to meet some or all of the needs to be served by the proposed project on a timely, competitive basis or whether other factors may eliminate or curtail such needs.

Given those concerns, affiliate precedent agreements will generally be insufficient to demonstrate need. Instead, where projects are backed primarily by precedent agreements with affiliates, FERC will consider additional information. FERC will determine how much additional evidence is required on a case-by-case determination. To the extent FERC receives information in the record from third parties addressing the need for a project, that too will be considered in their analysis.

2. Consideration of adverse effects

While existing customers of the pipeline applicant may be adversely affected if a proposed project

causes an increase in rates or a degradation in service, FERC will no longer characterize this issue as a threshold question. The pipeline must be prepared to financially support its proposed project without relying on subsidization by its existing customers. FERC will consider a pipeline's efforts to eliminate or minimize those impacts.

a) Impacts on existing customers. As the commission stated in the 1999 Policy Statement, existing pipelines that already serve the market to be served by the proposed new capacity may be affected by the potential loss of market share and the possibility that they may be left with unsubscribed capacity investment. Additionally, captive customers of existing pipelines may be affected if they must pay for the resulting unsubscribed capacity in their rates. These remain important concerns.

b) Existing pipelines and customers. FERC has a continued concern for preventing the overbuilding of pipeline infrastructure. To the extent that a proposed project is designed to substantially serve demand already being met on existing pipelines, that could be an indication of potential overbuilding. Nevertheless, in such instances, FERC will also consider:

• Whether the proposed project would offer certain advantages (e.g., providing lower costs to consumers or enhancing system reliability);

• Support from existing pipelines and their captive customers about the potential impacts from a proposed project will be an important piece of FERC's review;

• Comments from state utility or public service commissions as to how a proposed project may impact existing pipelines;

• Comments from existing pipelines and their captive customers about the potential impacts from a proposed project will be important; and

• Comments from state utility or public service commissions as to how a proposed project may impact existing pipelines will be particularly useful.

c) Environmental impacts. FERC will consider environmental impacts and potential mitigation in both the environmental reviews under the National Environmental Planning Act (NEPA) and the public interest determinations under the Natural Gas Act. FERC expects applicants to structure their projects to avoid or minimize potential adverse environmental impacts.

When making public interest determinations, FERC intends to fully consider climate impacts, in addition to other environmental impacts.

d) Impacts on landowners and surrounding communities. In the more than 20 years that have passed since issuance of the 1999 Policy Statement, FERC has seen an increase in proposals for projects in more densely populated areas, as well as a significant increase in comments from landowners raising a multitude of economic, environmental and others concerns with proposed projects.

FERC's analysis of impacts to landowners will be more expansive. This fuller consideration of landowner impacts is consistent with the commission's approach in recent years of more fully engaging with landowners to ensure their concerns are carefully considered in proceedings.

FERC's evaluation of landowner impacts will be based on robust early engagement with all interested landowners, as well as continued evaluation of input from such parties during the course of any given proceeding, and will assess a wider range of landowner impacts.

Continues on page 20

FERC Docket No. PL21-3-000 Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews

This interim policy statement describes FERC procedures for evaluating climate impacts under the National Environmental Policy Act (NEPA) and describes how the commission will integrate climate considerations into its public interest determinations under the Natural Gas Act (NGA).

FERC is seeking comment on all aspects of the interim policy statement, including the approach to assessing the significance of the proposed project's contribution to climate change. However, FERC will immediately begin applying the framework established in this policy statement, but it will be subject to revision based on the record developed in this proceeding.

Quantifying GHG emissions and determining significance

FERC is ratcheting up the complexity of greenhouse gas (GHG) estimates. It will no longer be acceptable to just estimate the direct emissions from the construction and operation of a pipeline and/or transportation equipment. Project sponsors now will need to estimate GHG emission impacts along the entire natural gas value chain. These rules will go into effect immediately but will be subject to

Calculating GHG emissions

To calculate operational emissions, project sponsors should continue to follow the existing guidance. However, FERC will consider operational GHG emissions calculated based on a projected utilization rate for the project.

Projected utilization rate. Since most projects do not operate at a 100-percent utilization, FERC has concluded that estimated emissions that reflect a projected utilization rate will provide more useful information. The project's projected utilization rate may be calculated using:

- Expected utilization data from project shippers;
- Historical usage data;
- Demand projections; and
- An estimate of how much capacity will be used on an interruptible basis.

The project sponsor is encouraged to file its projected utilization rate, as well as its justification for the rate and any supporting evidence, in its application.

FERC will consider any other evidence as well such as:

- Evidence of a net-reduction in GHG emissions where the use of transported gas displaces the use of a higher emitting alternative fuel;
- Evidence of anticipated changes in downstream usage rates over time;
- Evidence of any real, verifiable and measurable reduction efforts taken by the pipeline or downstream users to reduce their GHG emissions or offset their impacts; and
- Evidence that a project would displace zero-emissions electric generation.

FERC noted that that for a greenfield pipeline project, historic data will not be available. In those cases, the project sponsor could use data from other similar projects or regional data. Also, other agencies have proposed regulations that may impact the emission of methane from FERC-regulated facilities. If such regulations are adopted, the commission will consider them when examining project GHG emissions.

Just as a project sponsor will be filing this information, FERC will accept comments from any and all participants in the filing.

Level of review and significance. FERC may consider evidence that a downstream user purchases credits to offset its GHG emissions from the consumption of transported gas. FERC states that it will consider downstream users' mitigation measures according to the criteria. With regard to construction and operational emissions, project sponsors should continue to provide evidence of measures that minimize emissions, such as using low-sulfur diesel fuel and limiting equipment idling during construction.

To determine the appropriate level of a NEPA review, the commission is establishing a significance threshold of 100,000 metric tons or more per year of CO2e. In calculating this emissions estimate, FERC staff will apply the 100-percent utilization rate for natural gas supplies delivered by the proposed project and will prepare an environmental impact statement (EIS) if the estimated emissions from the proposed project may exceed the 100,000 metric tons per year threshold. The threshold would be an indication of potential significance for purposes of FERC's review of a project's environmental impacts under NEPA and trigger the preparation of an EIS.

FERC will continue to consider all evidence in the record on a case-by-case basis and will continue to consider any emerging tools as well as any forthcoming frameworks or analysis.

Mitigation

Mitigation is measures that avoid, minimize or counterbalance effects caused by a proposed action by:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating or restoring the affected environment; and
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and/or requiring a project sponsor to mitigate all, or a portion of, the impacts related to a proposed project's GHG emissions.

FERC will consider any mitigation measures proposed by the project sponsor on a case-by-case basis when balancing the need for a project against its adverse environmental impacts and may require additional mitigation.

Mitigation measures. The commission encourages the project sponsor to propose measures to mitigate the direct GHG emissions of its proposed project to the extent these emissions have a significant adverse environmental impact. Mitigation measures must be:

• Real and additional—the reductions would not have happened without the mitigation measure being put in place;

• Quantifiable—any emissions reductions must be calculated using a transparent and replicable methodology;

• Unencumbered—seller has clear ownership of or exclusive rights to the benefits of the GHG reduction; and

• Trackable—the project sponsor must also propose means for FERC to monitor and track compliance with the proposed mitigation measures for the life of the project.

FERC also encourages project sponsors to propose measures to mitigate the reasonably foreseeable upstream or downstream emissions associated with their projects. A project sponsor is free to propose any mechanism to mitigate GHG beyond regulatory requirements.

If a project's emissions equal or exceed the 100,000 metric tons per year significance threshold and the project sponsor's proposed mitigation will reduce the project's GHG emissions below that threshold, the commission will consider that mitigation in determining whether it can make a finding of no significant impact.

Mitigation options. Project sponsors may mitigate the GHG emissions of a proposed project through participation in one (or more) of the various types of carbon offset markets. Sponsors could, for example, purchase renewable energy credits, participate in a mandatory compliance market (if located in a state that requires participation in such a market) or participate in a voluntary carbon market.

Renewable energy credits. Renewable energy credits (REC) are tradeable, market-based commodities that provide proof that one megawatt hour of electricity was generated from a renewable source and delivered to the grid. RECs legally convey the attributes of renewable electricity generation to their owner. While state or regional RECs may be traded on financial exchanges that typically meet state or regional guidelines, they are not limited by geographic boundaries—RECs can be purchased independently from electricity and can be matched with energy consumption.

While RECs may not represent a 100% offset per unit of GHG emitted, RECs do represent a decrease in GHG emissions from overall energy use and production, and FERC will consider them.

Mandatory compliance market participation. The compliance market is a mandatory offset program regulated by national, regional, or provincial law and mandates CO2 and GHG emission reduction requirements. Under this framework an allowance, which is an authorization for an entity to emit GHG emissions, is created. Allowances are generated and traded for regulatory compliance and are priced as a commodity based on supply and demand regardless of project type.

A prime example of an existing, domestic compliance market is the Regional Greenhouse Gas Initiative (RGGI). RGGI is a cooperative effort by eleven Northeast and Mid-Atlantic states to limit CO2 emissions at certain electric power generators. RGGI strictly regulates the quantity and types of offsets. There are five pre-determined types of

Continues on page 22

Endangered species issues slow pipeline completion

Author:

Robert Stonestreet
—
Babst Calland

The federal Fourth Circuit Court of Appeals has struck down an evaluation by the U.S. Fish and Wildlife Service (FWS) of the potential impacts on two endangered fish species presented by stream crossings for the Mountain Valley Pipeline. In its February 3 opinion, the court concluded that the FWS failed to sufficiently establish the "environmental baseline" conditions for each species and failed to adequately evaluate how the stream crossings, along with other anticipated activities impacting the streams, will affect the species on a cumulative basis. The court also faulted the agency for not assuming future negative effects of climate change in its analysis.

In September 2020, the FWS published a "Biological Opinion" addressing how the proposed pipeline would likely affect five species (one plant, two fish and two bat) listed for protection under the federal Endangered Species Act (ESA). The FWS concluded that the pipeline would likely affect each species, but would not jeopardize those species, which is the key determination under the ESA for whether other federal agencies may issue permits for a project. The FWS also issued an "Incidental Take Statement" that authorized certain levels of "take" of each species associated with construction of the stream crossings, which would otherwise be prohibited by the ESA. For purposes of the ESA, "take" of a species means actions "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

A group of organizations opposed to the pipeline, including the Sierra Club, challenged both the Biological Opinion and the Incidental Take Statement with regard to the two fish species (Roanoke Logperch and Candy Darter) and one bat species (Indiana Bat). The court only squarely addressed the FWS's evaluation of the two fish species, but included a detailed footnote that strongly recommended a second look by the FWS at its evaluation of the Indiana Bat.

The opinion explaining the court's ruling primarily focuses on how the FWS ascertained the environmental baseline for the two fish species and assessed the cumulative impacts of the proposed pipeline along with other anticipated activities. The court faulted the FWS for not gathering site-specific data for each stream crossing proposed in areas of the species' habitat. The opinion states that the FWS did not sufficiently identify the existing "stressors" that were negatively impacting the species in the pipeline path. Although the FWS observed that a primary driver decreasing the Candy Darter population is "hybridization"—i.e. interbreeding by the Candy Darter with another similar species of darter—the court concluded that the FWS did not adequately consider other factors negatively affecting the Candy Darter, such as increased stream sedimentation.

The court rejected the agency's argument that statistical modeling used to prepare both the environmental baseline determination and cumulative effects evaluation sufficiently accounted for conditions within the pipeline path. The court did so because (1) the Biological Opinion does not indicate a reliance on statistical modeling to establish the environmental baseline or cumulative effects determinations; and (2) the models were not designed to assess environmental conditions on a small-enough scale to evaluate the specific areas to be impacted by the project.

Climate change considerations

With respect to climate change, the court acknowledged that the statistical modeling used by the FWS takes into account "environmental stochasticity," which is defined as "unpredictable fluctuations in environmental conditions." The court still found that the agency did not adequately consider climate change because the models assumed a constant amount of environmental stochasticity in the future. According to the court, "the model failed to account for the one thing we know about climate change: that it will get worse over time." The opinion identifies anticipated increased water temperatures, frequency and intensity of flooding, and increased sedimentation as negative impacts of climate change that were not considered in the statistical models. The court does not cite to any of the materials in the administrative record to support this observation. Other than referencing a description of climate change by the FWS as presenting an "increasing threat," the court does not offer any guidance on why the agency should assume conditions for the species will necessarily get "worse" over time due to climate change, or how the FWS should go about factoring these considerations into its evaluations.

In light of the FWS's shortcomings described in the opinion, the court concluded that the agency could not have reasonably concluded that the proposed project is unlikely to jeopardize the two fish species. The court recognized that the ESA does not prohibit approval of projects "solely because baseline conditions or cumulative effects already imperil a species." However, the ESA does prohibit approval of a project that will likely accelerate the decline of a species. "Put differently, if a species is already speeding toward the extinction cliff, an agency may not press on the gas."

The court rejected several additional arguments advanced by the challengers as grounds to set aside the Biological Opinion and Incidental Take Statement. These included claims that the FWS (1) arbitrarily limited the scope of the "action area" (i.e. the impact area); (2) erroneously excluded the Blackwater River from its evaluation of the Roanoke Logperch; and (3) the Incidental Take Statement established "unlawfully vague" take limits.

This opinion highlights the importance of Endangered

PIOGA Pennsylvania Independent Oil & Gas Association

JUST THE FACTS

Federal plugging initiative: Environmental benefits for Pennsylvania, economic opportunities for producers and service companies

The federal Infrastructure Investment and Jobs Act is steadily moving toward implementation, including the program to address the nation's backlog of legacy oil and natural gas wells through an enhanced plugging effort. Approximately $395 million in federal funds will be available for the Commonwealth to pursue, ranking it behind only Texas as the largest potential beneficiary of the new federal program.

This month's edition of PIOGA's Just the Facts series describes the three types of grants under the infrastructure law and how the Department of Environmental Protection hopes to spend them. DEP currently is seeking to address hiring needs to administer the program, given that the department's well-plugging budget has never been more than $3.5 million a year. The state also is reviewing the location and condition of approximately 500 high-priority wells that it can more to address in the earlier stages of the program.

DEP recently initiated a Plugging and Plugging Support Survey to assess interest among Pennsylvania-based producers and industry service companies to bid for upcoming contracts through the program, an effort that included coordination with PIOGA. As of mid-February, nearly 135 companies had responded positively to the survey, with more than half reporting they had plugged wells under state-issued contracts in the past, and two-thirds saying they anticipate hiring additional staff if awarded contracts.

PIOGA has been working in Harrisburg and with our members on several fronts to help position Pennsylvania-based companies to obtain these plugging projects, including working with legislative allies on the program, assisting members with the completion of their filing requirements and communicating with DEP on contractor requirements to allow companies with local, real-world experience to participate in the bidding process.

This month's Just the Facts explains that association has emphasized that the state's conventional producers and service companies are particularly well positioned to complete these projects safely and efficiently, along with the fact that allowing Pennsylvania-based businesses to compete for this work would benefit the environment, small businesses and local economies.

For the full story, go to the Latest News and Blog section of www.pioga.org. We've included a link to a downloadable version that you can share news about this win-win opportunity with colleagues, friends and family.

Species Act considerations for energy projects. The Candy Darter was listed as endangered on November 20, 2018, which was more than a year after the Federal Energy Regulatory Commission (FERC) authorized the pipeline project. As noted in the *2021 Babst Calland Report,* the FWS has drastically accelerated the pace of proposing and adopting species for protection under the ESA. As more species are designated for protection under the ESA, there is an increased likelihood that areas slated for development will trigger a rigorous review by the FWS before any federal permit may be issued for a proposed project.

The opinion makes clear that the Fish and Wildlife Service must methodically analyze the specific areas expected to be affected by a proposed project to determine whether the project may jeopardize a listed species. This effectively means that project proponents, through their counsel and consultants, must ensure that the FWS adequately evaluates potential impacts on listed species, and more importantly, documents that evaluation correctly. A failure by the FWS to do so, or a finding that the project will jeopardize a listed species, can stop a project in its tracks. Even one that is "an already mostly finished Pipeline" as the court observed in this case. As of December 2021, 94 percent of the pipeline had been constructed with approximately 20 linear miles remaining. ■

If you have any questions about the court's opinion or the Endangered Species Act in general, please contact Robert M. Stonestreet at rstonestreet@babstcalland.com or 681-265-1364.

Planning for spring weather hazards in your emergency action plan

As we wait for winter to finally end, now is the time to review your emergency action plan (EAP and how it specifically addresses spring weather hazards for employees. We should assess for the types of hazards that spring weather presents to employees, then review with our employees how these hazards and types of emergencies may develop, including refreshing training for employees on what to do during these hazardous weather conditions and potential emergencies.

The spring weather hazards to address here in the Appalachian Basin area include thunderstorms, tornadoes, lightning, flooding and heat.

Weather alerts

The first thing to understand are the various advisories, watches and warnings that the National Weather Service issues and that are relayed to people through alerts received on their phone or radio or TV. An "Advisory" means specific weather is expected to cause a significant inconvenience, but not serious enough to warrant a Watch or Warning. A "Watch" is issued when severe weather is possible in and near the watch area because the conditions are favorable; however, it does not mean that the weather will actually occur, only that it is possible. The "Warning" indicates severe weather is actually occurring or is imminent in the warning area.

With each of the advisories, watches and warnings for a specific type of weather, in the case of spring weather hazards of thunderstorms, tornadoes, lightning, flooding and heat, we need to make sure our employees are notified of these conditions by the employer. It is important that employees know what actions to take and how they are to react. More importantly, management must know the actions to be taken to protect workers during the spring weather hazards.

Thunderstorms and tornadoes

To review the spring weather hazards, we start with the general hazard of thunderstorms, which can produce many of the other spring hazards of tornadoes, strong wind, large hail and lightning. As part of the EAP, we need to have a plan for what workers and management should do that includes the need for a communications plan to contact employees, supervisors, field crew managers and employees. The actions to take including taking shelter in a sturdy structure away from windows (a basement would be a best option) or in the field a vehicle is safer than being outside. Tornadoes can generate winds that can exceed 200 mph, per the National Weather Service, which can create dangerous flying debris. The best protection is to seek a sturdy shelter, which means it has four walls and a roof, in the lowest floor possible, or in an interior space with walls on four sides, such as in a stairwell.

Safety Committee Corner

Lightning

Lightning is produced during thunderstorms and kills an average of 30 people every year. The protection is to take shelter inside a sturdy structure. A hard-topped vehicle also would be a safe location.

There are many myths that surround lightning. This article is going to briefly review five common myths and then the associated facts to dispel the myth.

Myth #1: "If you're caught outside during a thunderstorm, you should crouch down to reduce your risk of being struck." The fact is that crouching doesn't make you any safer outdoors. It is better to run to the nearest substantial building or hard-topped vehicle. If you are too far to run to one of these options, you have no good alternative. You are NOT safe anywhere outdoors.

Myth #2: "If it's not raining or there aren't clouds overhead, you're safe from lightning." The fact is that lightning often strikes more than 3 miles from the center of the thunderstorm and can strike 10-15 miles from the thunderstorm. One method to determine the distance that a thunderstorm is from a person's location is the rule of thumb of measuring the time between the flash of lightning and the sound of thunder, using the ratio that for every 5 seconds after flash of lightning that thunder is heard, the thunderstorm is approximately 1 mile away. For example, if you see a flash of lightning and then counted 15 seconds to when the thunder was heard, the thunderstorm is 3 miles away.

Myth #3: "Rubber tires on a vehicle protect you from lightning by insulating you from the ground." The fact is that the metal roof and metal sides protect you, NOT the rubber tires, because when lightning strikes a vehicle, it goes through the metal frame into the ground, possibly destroying one or more tires as it passes through the steel belts to the ground with the potential to ignite a fire and destroy the vehicle.

Myth # 4: "If I am trapped outside, I should lie flat on the ground." The fact is that lying flat increases your chance of being affected by potentially deadly ground current. If you are caught outside in a thunderstorm, keep moving toward a safe shelter as discussed.

Myth # 5: "If you are in a fully enclosed building, you are 100-percent safe from lightning." The fact is that a fully enclosed structure is a safe place, but avoid anything that conducts electricity such as electrical appliances, wires, TV cables, computers, plumbing, metal doors and windows. While it may be appealing to stand at a window to watch the lightning display, windows are hazardous in that lightning could shatter glass or wind can blow objects into the window, breaking it and causing glass to shatter and injure the person. More myths and facts are discussed on the National Weather Service website www.weather.gov.

Flooding

The next spring weather hazard is that of flooding caused by snow melt, ice jams and/or heavy rain. As the ground thaws and snow melts, the ground becomes saturated with nowhere for the water to go except to flow on the surface to a body of water or low-lying areas, causing flooding. As many of us spend a lot of time staring through a windshield driving to various locations, we have a good possibility of coming upon a flooded roadway. Do NOT drive through standing water or around barricades as more than 50 percent of all flood fatalities are vehicle-related. Remember, it takes only about 12 inches of rushing water to carry away a passenger vehicle. So, "Turn around, don't drown!" Warmer temperatures, along with spring rains, cause snow to melt and that water goes into streams and then rivers, causing flooding. Ice jams cause flooding when chunks of ice build up and prevent water from flowing downstream in a creak or river, which may lead to rapid rises in the water level upstream from the ice jam.

Heat

The last of the spring weather hazards to be discussed is that of heat. We all focus on heat injury prevention in the summer when it is hot and humid because of the toll they take on the body. It is best that workers and field supervisors know the signs of heat illness as well as the treatment of heat illnesses. Other things to do are when possible reschedule outdoor work and strenuous activities until the coolest time of the day, and most importantly stay hydrated by drinking plenty of water and sports drinks while eating small healthy meals and taking breaks as needed.

One problem with heat in the spring is that workers are not yet acclimated to the heat as our bodies are still in cold weather mode. Typical spring weather follows no schedule, so it may be cool for four days in a row, then one day of heat, then rain, then snow, then heat, then cold—repeat this pattern. With these irregular patterns of weather, workers cannot become acclimated, so it is hard to prepare for these conditions. It is important for workers and supervisors to be aware of these working conditions and potential heat illnesses, understanding that workers may not stay hydrated. Consequently, addressing the potential for heat injuries as part of job planning, during the pre-shift meeting, tailgate meeting and/or JSA review is very important.

EAP review

After reviewing the spring weather hazards, it is now a good time to review the company emergency action plan, asking specific questions and then answering the questions, which may lead to updating your EAP. Questions to ask about your EAP include:

- Does your EAP specifically cover weather emergencies?
- Do supervisors/management specifically monitor weather and receive alerts?
- Do workers know exactly what to do to protect themselves?
- Do they have stop work authority?
- Who do they specifically contact?
- Do your workers know specifically what to do and where to go in each weather situation?

Now that we have reviewed spring weather hazards and how they should be addressed in your company's EAP, it is very important to train workers and supervisors on the EAP, specifically reviewing the spring weather hazards and what actions to take. As tempting as it sounds, we cannot rely on a worker's "common sense" because common knowledge is not the same as common sense. Provide your workers and supervisors with common knowledge so they do not need to rely on common sense.

Much of the information in this article was pulled from the National Weather Service website at www.weather.gov. ■

This article is a summary of a presentation to the PIOGA Safety Committee on February 9 by Wayne Vanderhoof CSP, CIT, Co-Chair of the PIOGA Safety Committee.

Thanks to our 2022 PIOGA Partners

Keystone Partners

American Refining Group, Inc.
Refine everything.

ERGON
a company that works

Meetings Partners

Babst Calland
Attorneys at Law

Steptoe & Johnson PLLC

T&F Exploration

Committee Partners

Moody and Associates, Inc.
Groundwater and Environmental Professionals Since 1891

Utilities Employees Credit Union
Your Employee Wellness Partner

Engineer Partners

Gmerek Government Relations, Inc.

Greylock Energy

Executive Partners

Huntley & Huntley
Petroleum & Natural Gas Exploration
Established 1912

Kriebel Companies
Developing Resources
Sharing Successes

Snyder Brothers Inc.
Kittanning, PA

Penneco Environmental Solutions, LLC

Golf Partners

Billman Geologic

Pipeliners Union 798
United Association

Clay Shoot Partner

CEC
Civil & Environmental Consultants, Inc.

Driller Partner

Aqua-Clear

Learn about the PIOGA Partners program:
pioga.org/publication_file/2022_PIOGA_Partners_flyer.pdf

HB 199 – Pennsylvania's push for broader cost and percentage depletion deductions

Authors:

Tia Churchfield

Glenn Thompson — Steptoe & Johnson, PLLC

At a regular session meeting in January, Pennsylvania House Majority Caucus Chairman George Dunbar reintroduced legislation to amend the Pennsylvania State Tax Reform Code of 1971. Included within the proposed legislation was House Bill 199, which would allow certain taxpayers that have an interest in extracted resources to account for the cost or percentage depletion of a mine, oil and gas well, or other natural resources when filing their personal income tax return.

This article explains how cost and percentage depletion deductions are used at the federal level, the current status of Pennsylvania tax law with regard to depletion deductions and how proposed legislation would expand access to depletion deductions, indirectly encouraging oil and gas development.[1]

What are cost and percentage depletion deductions and how are they applied at the federal level?

Depletion refers to the "using up" of natural resources as a result of operations and development.[2] Depletion in the context of tax deductions is a form of depreciation that allows for a deduction from taxable income to reflect the decreasing production of reserves over time. Currently, there are two accounting methods used at the federal tax level to calculate depletion on oil, gas and minerals: (1) cost depletion or (2) percentage depletion.

In order to qualify for a depletion deduction, several factors must be met by the taxpayer. First, the taxpayer must have an economic interest in the oil, gas or minerals for which the deduction is claimed. Taxpayers are considered to have an economic interest only if: (1) they have acquired by investment any interest in mineral deposits; and (2) they have a legal right to income from the extraction of the mineral. It is important to note that simply having a contractual relationship that affords a taxpayer some economic benefit from the oil, gas and minerals products is not enough to establish economic interest for the purpose of a depletion deduction.[3] Second, a depletion deduction is allowed only in instances where oil, gas or minerals are actually sold and income is reportable, meaning that the deduction is applicable only to royalty payments and not to bonus payments.[4]

Once economic interest has been established, a taxpayer must then make the decision as to which accounting method to choose. As a general rule, when deciding between using either the cost or percentage depletion method, the IRS requires that a taxpayer use the method that gives them the larger deduction.[5]

If using the cost depletion method, a taxpayer has to determine several factors, specifically (1) the property's basis for depletion,[6] which is normally determined upon acquisition (i.e., purchase, inheritance, gift)[7] and includes the value of the land and its associated capital assets like timber, equipment, buildings and oil and gas; (2) the total recoverable units of minerals in the property's natural deposit; and (3) the number of units of minerals sold during the tax year. Once these factors are determined, the property's basis for depletion is divided by the total recoverable units in order to calculate the depletion unit. The depletion unit is then multiplied by the number of units sold during the tax year to arrive at the overall cost depletion deduction.[8] Note that the collective amount recovered using the cost depletion method can never exceed a taxpayer's original capital investment.[9]

Because cost depletion applies only to taxpayers who have established a basis in their oil, gas and minerals, the use of the cost depletion method is somewhat unusual in Pennsylvania due to the fact that most taxpayers did not consider oil and gas under their property prior to the recent interest in Marcellus Shale and therefore did not allocate any oil, gas or mineral costs to their cost basis in the property. As a result, the majority of taxpayers automatically use the percentage depletion method.[10]

---

1 *Memorandum from the PA H.R. to All House Members* (February 17, 2022, 10:56 a.m.), www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=34127

2 *Mineral Wise, Depletion Allowance* (Feb. 17, 2022, 10:34 a.m.), mineralwise.com/owners-guide/leased-and-producing/royalty-taxes/depletion-allowance

3 *Publication 535 (2020), Business Expenses* (Feb. 17, 2022, 10:13 a.m.), www.irs.gov/publications/p535#en_US_2020_publink1000209051

4 *Using the Depletion Deduction to Minimize Oil and Gas Tax Liability* (Feb. 17, 2022, 10:21 a.m.), ohioline.osu.edu/factsheet/SOGD-TAX3

5 *Publication 535 (2020), Business Expenses* (February 17, 2022, 10:40 a.m.), www.irs.gov/publications/p535; and *Tax Treatment of Natural Gas* (February 17, 2022, 10:38 a.m.), extension.psu.edu/tax-treatment-of-natural-gas

6 *Publication 535 (2020), Business Expenses* (February 17, 2022, 10:40 a.m.), www.irs.gov/publications/p535#en_US_2020_publink 1000209037

7 *Using the Depletion Deduction to Minimize Oil and Gas Tax Liability* (Feb. 17, 2022, 10:21 a.m.), ohioline.osu.edu/factsheet/SOGD-TAX3

8 *Publication 535 (2020), Business Expenses* (February 17, 2022, 10:40 a.m.), www.irs.gov/publications/p535#en_US_2020_publink 1000209037

9 *Mineral Wise, Depletion Allowance* (Feb. 17, 2022, 10:34 a.m.), mineralwise.com/owners-guide/leased-and-producing/royalty-taxes/depletion-allowance

10 *Tax Treatment of Natural Gas* (February 17, 2022, 10:45 a.m.),

The percentage depletion deduction has been part of the U.S. Tax Code since 1926 and has had an important impact on the production of oil and gas in the United States since that time.[11] Unlike cost depletion, in order to claim a percentage depletion deduction, a taxpayer does not need to establish any type of basis.[12] In order to use the percentage depletion method for oil and gas well production, at least one of the following must apply: (1) the taxpayer must either be an independent producer (business with an average of 12 employees[13]) or a royalty owner; or (2) the well must produce one of the following: regulated natural gas, natural gas sold under a fixed contract or natural gas from a geopressured brine.[14] Of these two categories, most taxpayers who claim the percentage depletion deduction fall within the former group.

In order to calculate a depletion deduction using the percentage depletion method, the gross income from the property is multiplied by the specified percentage rate for that particular mineral. The allowable statutory depletion deduction is the lesser of net income or 15 percent of gross income from the income producing property. For oil and gas, the deduction is further limited to 65 percent of a taxpayer's taxable income from all sources.[15] Additionally, percentage depletion deductions are assessed on a property-by property basis and may only be claimed on up to 1,000 barrels of oil or 6,000 mcf of natural gas per day.[16]

What is Pennsylvania's current policy with regard to depletion deductions?

Currently, Pennsylvania law does allow for some form of depletion deduction, but only at the partnership or S corporation level.[17] A regulation adopted in February 2006, specifically 61 Pa. Code § 125.51, states:

> **Allowance of deduction for cost depletion.**
> (a) General rule. In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing income a reasonable allowance for depletion. In any case in which it is ascertained as a result of operations or development work that the recoverable units are greater or less than the prior estimate thereof, the prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on the revised estimate.[18]

Further, § 125.52 states that a deduction for percentage depletion shall be allowed only if four very specific circumstances are met:

The deduction is allowable in computing Federal taxable income; (2) Insufficient information is available to estimate the amount of recoverable units in accordance with industry standards; (3) The cost of the recoverable units is fixed and certain; and (4) The cost of the recoverable units has not been fully recovered.[19]

Again, however, despite Pennsylvania's allowance of depletion deductions, these deductions are not allowed

---

extension.psu.edu/tax-treatment-of-natural-gas

11 *Percentage Depletion* (February 17, 2022, 10:46 a.m.), www.ipaa.org/wp-content/uploads/2016/12/2009-04-PercentageDepletion.pdf; https://energytaxfacts.com/issues/percentage-depletion/

12 *Tax Treatment of Natural Gas* (February 17, 2022, 10:45 a.m.), extension.psu.edu/tax-treatment-of-natural-gas

13 *Percentage Depletion* (February 17, 2022, 10:46 a.m.), energytaxfacts.com/issues/percentage-depletion/

14 *Publication 535 (2020), Business Expenses* (February 17, 2022, 10:40 a.m.), www.irs.gov/publications/p535#en_US_2020_publink1000209037

15 *Using the Depletion Deduction to Minimize Oil and Gas Tax Liability* (Feb. 17, 2022, 10:21 a.m.), ohioline.osu.edu/factsheet/SOGD-TAX3

16 *Percentage Depletion* (February 17, 2022, 10:46 a.m.), www.ipaa.org/wp-content/uploads/2016/12/2009-04-PercentageDepletion.pdf; https://energytaxfacts.com/issues/percentage-depletion

17 *Natural Resources, Depletion* (February 17, 2022, 10:52 a.m.), www.revenue.pa.gov/FormsandPublications/PAPersonalIncomeTaxGuide/Pages/Natural-Resources.aspx#:~:text=Pennsylvania%20personal%20income%20tax%20rules,must%20adjust%20the%20capital%20account

18 *Statements of Policy, Title 62 – Revenue, Department of Revenue* (February 17, 2022, 10:53 a.m.), www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol36/36-8/330.html

19 *Statements of Policy, Title 62 – Revenue, Department of Revenue* (February 17, 2022, 10:53 a.m.), www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol36/36-8/330.html

at the personal income tax level.[20] Further, the documents required to be filed by the limited group that do qualify for these deductions are unworkable at best leading most taxpayers to forgo claiming it. HB 199 aims to streamline this existing regulation and make Pennsylvania's depletion deduction similar to that of the Federal Internal Revenue Code.

Why are depletion deductions so important?

Overall, amending Pennsylvania's tax code to make it more consistent with the Federal Internal Revenue Code and allowing depletion deductions at the personal income tax level would not only promote consistency, but would also give landowners and many small businesses a much-needed financial boost. There are currently 9,000 independent oil and natural gas producers in the United States that operate in 33 states, including Pennsylvania. Independent producers develop 91 percent of the wells in the United States and produce 83 percent of America's oil and 90 percent of America's natural gas.[21] According to proponents of HB 199, depletion deductions, specifically percentage depletion deductions, help smaller businesses offset the high costs associated with operating these oil and gas wells. ■

20 *Memorandum from the PA H.R. to All House Members* (February 17, 2022, 10:56 a.m.), www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=34127

21 *Who are America's Independent Producers* (February 17, 2022, 11:00 a.m.), www.ipaa.org/independent-producers

FERC PL18-1-000 *Continued from page 9*

FERC expects pipelines to engage with the public and interested stakeholders during the planning phase of projects to solicit input on route concerns and incorporate reroutes, where practical, to address landowner concerns, as well as providing landowners with all necessary information. Pipeline right-of-way restoration compliance will be critical for pipelines to address.

FERC's evaluation of the impacts of a proposed interstate natural gas pipeline will include a robust consideration of its impact on environmental justice communities.

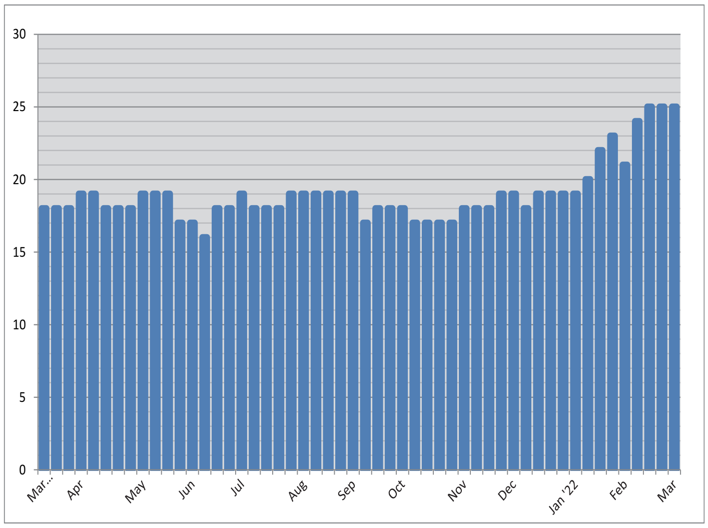
While data from screening tools such as the U.S. Environmental Protection Agency's (EPA) EJSCREEN may be useful, additional data collection methods may be necessary to properly identify environmental justice communities. FERC encourages applicants to consult with guidance provided by EPA, the Council on Environmental Quality (CEQ) and other authoritative sources, to ensure the commission has before it all the data needed to adequately identify environmental justice communities potentially affected by a proposed project.

Additionally, FERC recognize that proper selection of both the geographic unit of analysis (e.g., census block

Continues on page 22

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices

Natural Gas Futures Closing Prices

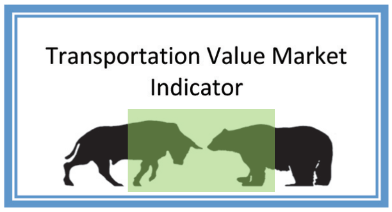
Month	Price
April	$4.898
May	4.919
June	4.957
July	4.998
August	5.007
September	4.995
October	5.007
November	5.086
December	5.228
January 2023	5.330
February	5.133
March	4.673<None>

Prices as of March 7

Sources

American Refining Group: www.amref.com/Crude-Prices-New.aspx
Ergon Oil Purchasing: www.ergon.com/crudeoil
Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
Baker Hughes rig count: bakerhughesrigcount.gcs-web.com/na-rig-count
Appalachian fixed price moving averages: David Marks, BHE Eastern Energy Field Services

Northeast Pricing Report — March 2022



Provided by Bertison-George, LLC
www.bertison-george.com

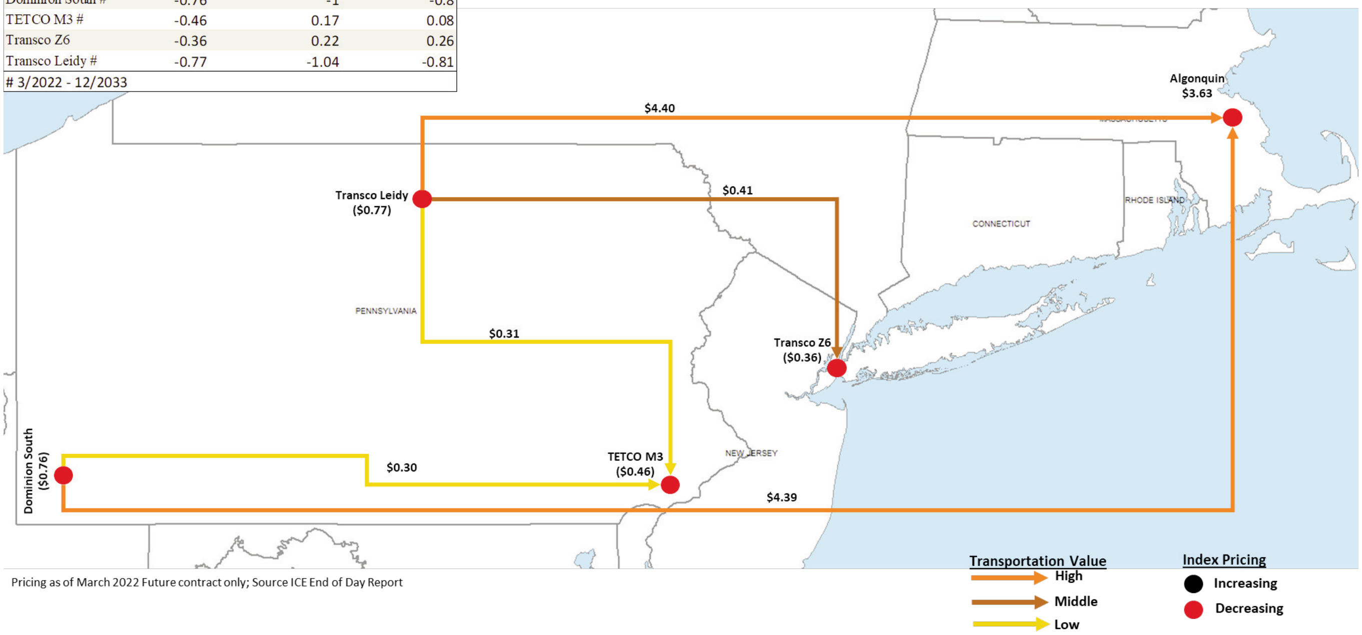
Front month trading for all locations have dropped from February. New England has fallen significantly by over $10.00 per MMBtu. Transco Z6 and TETCO M3 decreased considerably as well at $4.40 and $3.65 per MMBtu respectively. For one-year trading, Algonquin increased by $0.36 per MMBtu and was the only index that did. TETCO was flat while Transco Z6 and Transco Leidy decreased by $0.15 and $0.10 per MMBtu. The current rolling one-year basis for Dominion South, Transco Leidy and Transco Z6 is trading at nearly all time lows. Full term trading followed the same trend as one-year trading. Algonquin increased $0.08 per MMBtu. Transco Z6 dropped the most by $0.09 per MMBtu.

Transportation values are down a great deal compared to January. Dominion South and Transco Leidy to Algonquin is valued at $4.39 and $4.40 per MMBtu representing a $9.85 and $9.77 per MMBtu drop. Dominion South to TETCO M3 decreased by $3.47 per MMBtu. Transco Leidy to TETCO M3 decreased $3.39 per MMBtu. Transco Leidy to Transco Z6 decreased $4.14 per MMBtu with TETCO M3 to Transco Z6 falling by $0.75 per MMBtu.

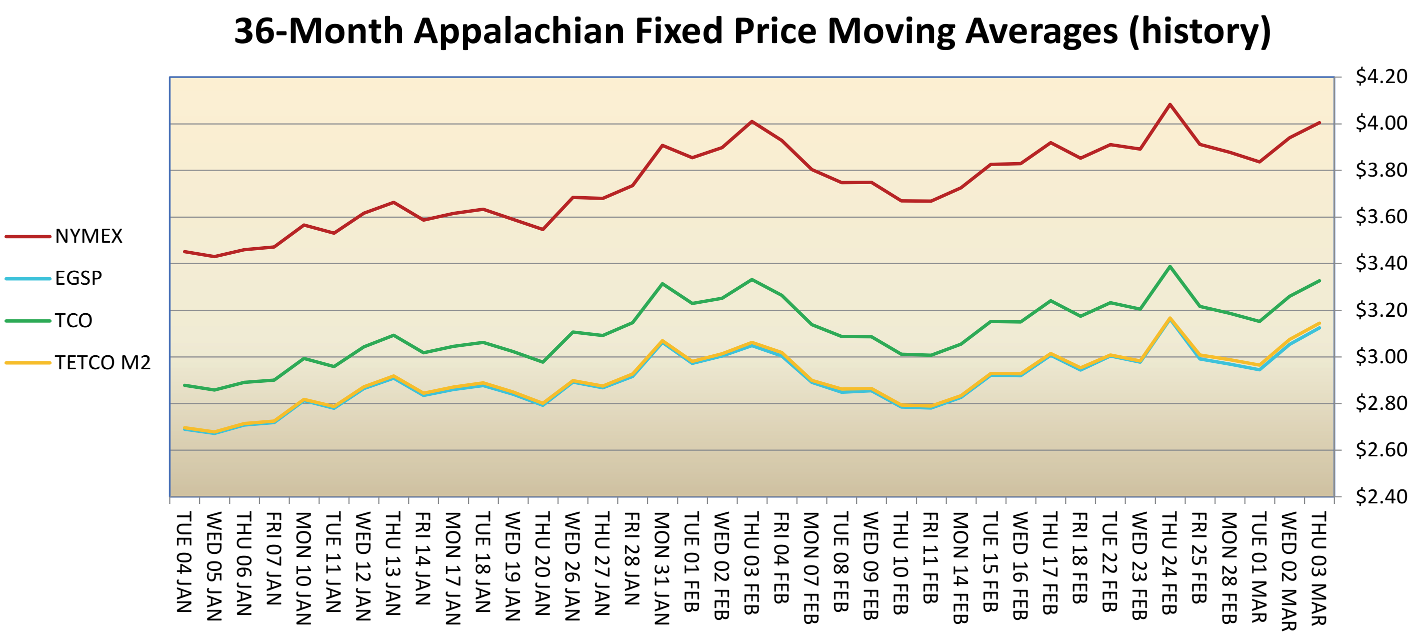
Natural Gas Basis Future Pricing

	Pricing Term		
Location	3/2022	3/2022-2/2023	3/2022-12/2027
Algonquin	3.63	4.36	2.19
Dominion South #	-0.76	-1	-0.8
TETCO M3 #	-0.46	0.17	0.08
Transco Z6	-0.36	0.22	0.26
Transco Leidy #	-0.77	-1.04	-0.81

3/2022 - 12/2033



Pricing as of March 2022 Future contract only; Source ICE End of Day Report



FERC PL18-1-000 *Continued from page 20*

group) within the affected environment and the reference community (e.g., county/parish or state) is necessary to ensure that affected environmental justice communities are properly identified for consideration in the commission's analysis. The affected environment for environmental justice analysis purposes may vary according to the characteristics of the particular project and the surrounding communities. Accordingly, FERC will ensure that the delineation of the affected area, selected geographic unit of analysis, and reference community are consistent with best practices and federal guidance and will not be limited to a one-size-fits-all approach.

To adequately capture the effects of cumulative impacts, FERC believes it essential that it considers those pre-existing conditions and how the adverse impacts of a proposed project may interact with and potentially exacerbate them. Factors that will be considered are:

- Air pollution
- Heat vulnerability
- Effects of preexisting infrastructure (e.g., bus depots, highways and waste facilities)

The policy statement says FERC will carefully examine cumulative impacts on environmental justice communities and encourage applicants to identify and submit any such data that may be relevant for the particular environmental justice communities affected by their proposed project. The commission also will consider measures to eliminate or mitigate a project's adverse impacts on environmental justice communities. FERC says it recognizes that mitigation must be tailored to the needs of different environmental justice communities. ■

FERC PL21-3-000 *Continued from page 11*

RGGI offsets:

- Landfill gas (methane) capture/burning;
- Sulfur hexafluoride capture/recycling;
- Afforestation (the establishment of a forest in an area where there was no previous tree cover);
- Energy efficiency (end use); and
- Agricultural manure management operations (avoided emissions).

Voluntary carbon market participation. Typically, an independent third party qualifies offset projects and establishes standards to verify offsets; however, not all offsets available in the voluntary market are certified by a third party. In order to ensure the additionality and permanence of offsets, the use of unverified offsets is discouraged. If a project sponsor proposes to mitigate project emissions through participation in a voluntary carbon market, the sponsor is encouraged to seek Commission approval of the third party that would verify the offsets prior to participation. Examples of existing, acceptable third-party certifiers include:

- Climate Action Reserve
- Verified Carbon Standard
- American Carbon Registry

Physical mitigation. Project sponsors could also propose to mitigate and/or offset GHG emissions through the use of physical, on- or off-site mitigation measures. Physical mitigation measures could include:

- Efforts including reducing a project's fugitive methane emissions
- Incorporating renewable energy or other energy efficient technologies to reduce a project's GHG emissions from compressor stations
- Carbon capture and storage
- Direct air CO2 capture

Project sponsors could also propose environmentally based measures, such as planting trees to offset carbon emissions or restoring wetlands to provide additional carbon storage. In addition, project sponsors could propose to reduce GHG emissions from their existing facilities, including those with no direct connection to the proposed project, as mitigation for project-related emissions.

FERC encourages project sponsors to detail their participation in such programs and any other voluntary measures as part of their mitigation plan for the commission to consider as part of its public interest determination.

Cost recovery

Applicants are encouraged to submit detailed cost estimates of GHG mitigation in their application and to clearly state how they propose to recover those costs. Project sponsors may seek to recover GHG emissions mitigation costs through their rates, similarly to how they seek to recover other costs associated with constructing and operating a project, such as the cost of other construction mitigation requirements or the cost of fuel. ■

PIOGA Member News

Snedden joins ShalePro as CEO

ShalePro Energy Services, a portfolio company of Turning Basin Capital, announces the appointment of John Snedden as Chief Executive Officer.

As CEO, Snedden will lead the company's growth strategy and oversee all operational and financial functions. Prior to joining ShalePro, he served as Senior VP for Keystone Clearwater Solutions and previously held upper management positions with Fluid Delivery Systems, Nabors Industries and Pennzoil-Quaker State. His 36 years of management experience spans the upstream and downstream segments of the Industry and includes operations management, safety, marketing and sales. ■

Where is the Spud Report? Due to database issues at the Department of Environmental Protection, we were unable to generate this month's report. We will include the February and March reports next issue.

New PIOGA members — *welcome!*

EMF Management Services LLC
100 Timbersprings Drive, Indiana, PA 15701
724-388-4058
Producer

Orion Strategies
2151 Huntington Court South, Wexford, PA 15090
844-982-6050 • www.orion-strategies.com
Allies & Providers—strategic communications and public relations firm with a staff of experienced professionals in media and stakeholder relations, federal and state government affairs, grassroots advocacy, polling, research, and creative services

Calendar of Events

PIOGA events

Information: www.pioga.org > PIOGA Events

Spring Meeting & Exhibition
April 6, Rivers Casino, Pittsburgh

Sporting clays networking event
May 5, venue TBA

PIOGATech: Pre-drill Issues and Planning
May 17, venue TBA

Oil Patch Classic Golf Outing
June 16, Wanango Country Club, Reno

Pins & Pints with Beach Party networking event
July 14, Paradise Island Bowl & Beach, Pittsburgh

PIOGATech: safety topic TBA
August 3, venue TBA

25th Annual Divot Diggers Golf Outing
August 18, Tam O'Shanter Golf Course, Hermitage

PIOGATech: Water and Waste Management
September 15, venue TBA

Fall Festival and Marcellus to Manufacturing
October 19, venue TBA

Annual Meeting and clay shoot
October 20, venue TBA

Annual Oil & Gas Tax and Accounting Seminar
November 16, venue TBA

PIOGATech: Air Quality
December 15, venue TBA

Mix, Mingle & Jingle Holiday Party
December 15, venue TBA

Other events

LDC Gas Forum Northeast
June 13-15, Boston. $125 discount for PIOGA members
Info: pioga.org/event/2022-ldc-gas-forum-northeast

Ohio Oil & Gas Association Annual Meeting
June 21, Columbus, OH
Info: www.ooga.org/event/2021-annual-meeting

Pennsylvania Independent Oil & Gas Association

115 VIP Drive, Suite 210, Wexford, PA 15090-7906
724-933-7306 • fax 724-933-7310 • www.pioga.org

Harrisburg Office (Kevin Moody)
212 Locust Street, Suite 300, Harrisburg, PA 17101
717-234-8525

Northern Tier Office (Matt Benson)
167 Wolf Farm Road, Kane, PA 16735
814-598-3085

PIOGA®
Pennsylvania Independent Oil & Gas Association
Pennsylvania: The Keystone to America's Energy Future®

115 VIP Drive, Suite 210
Wexford, PA 15090-7906

Address Service Requested

PRESORTED
STANDARD
U.S. POSTAGE PAID
PITTSBURGH, PA
15290
PERMIT NO. 1211