



Issue 2, 2018

● [Ohio Supreme Court Joins Texas and Oklahoma in Holding the State Does Not Recognize a Separate Implied Covenant to Explore Further](#)

"We conclude that Ohio does not recognize an 'implied covenant to explore further' separate and apart from the implied covenant of reasonable development."

Why this is important: Landowners held interests in approximately 74 acres of land in Washington County, Ohio, not far from the Ohio River. The land was subject to a 1980 oil and gas lease. In return for permission to mine the land, the company committed to making royalty payments based upon the amount of gas produced from the land and to deliver a portion of the oil produced from the land to the lessors. The lease was silent as to certain drilling aspects. Specifically, there was no requirement of production from a certain number of wells or from any particular depth. The lease did not disclaim the application of any implied covenants. A well drilled in 1981 has produced oil and gas in paying quantities since that time from the Gordon Sand formation. Landowners claimed exploration of oil and gas from Marcellus and Utica formations have been occurring near their property, but the company failed to explore whether production can be obtained from these deeper formations due to lack of equipment and financial resources. As a remedy, the landowners requested all rights to explore for, develop, and exploit resources from depths below Gordon Sand revert to the landowners -- essentially a horizontal forfeiture. The lower courts held in favor of the company. In its opinion on January 3, 2018, the Ohio Supreme Court found the landowners' interests in the exploration of deep formations were sufficiently protected by the implied covenant of reasonable development. The Supreme Court expressly agreed with the Oklahoma Supreme Court that recognition of a separate 'implied covenant to explore further' would not support the overarching purpose of an oil and gas lease. Quoting the Oklahoma Supreme Court, "[T]he profit motive [is] an instrumental force in oil and gas leases on behalf of both lessee and lessor" and to fail to recognize that profit motive "is to ignore the very essence of the contract." The Ohio Supreme Court affirmed the Fourth District Court of Appeals in dismissing the landowners' complaint for failure to state a claim. This case is significant in that the Ohio Supreme Court was unwilling to create another implied covenant when analyzing an alleged breach of an oil and gas lease. --- [Lisa M. Hawrot](#)

● [Dominion-SCANA Merger Could Mean Pipeline Expansion](#)

"Dominion Energy's planned merger with a South Carolina energy company could open the door for an expansion of the proposed Atlantic Coast Pipeline, both supporters and opponents of the natural gas project say."

Why this is important: The shale gas revolution is spreading. The likely expansion of Dominion Energy's Atlantic Coast Pipeline into South Carolina would provide low cost energy for consumers and manufacturers in the Palmetto State, the possibility of lower electric prices from combined cycle gas plants, and more markets for Appalachian producers. --- [David L. Yaussy](#)

● [OPEC Not to Change Oil Output on Iran, Venezuela Instability](#)

"The Organization of the Petroleum Exporting Countries announced it would not increase its oil production unless the crisis in Iran and Venezuela led to a significant and sustained production shortage."

Why this is important: Despite Venezuela's oil output being at a 30-year low and the political issues in Iran, OPEC remains committed to lowering inventories to "normal" levels. In the event a disruption in supply in the amount of one million barrels per day persists for more than 30 days, the Organization will consider raising production. The political unrest and riots in Iran did not affect production but did push prices higher. --- [Gerald E. \(Gee\) Lofstead III](#)

● [EPA Moving Quickly to Write New Climate Rule in 2018](#)

"Environmental Protection Agency staffers are under orders from the Trump administration to complete a replacement for former President Barack Obama's major climate change rule by the end of the year, far faster than the normal pace the agency uses to develop major regulations, according to three sources familiar with the process."

Why this is important: The truncated timeline for both repeal of the prior rule, and replacement with a new one, will require both actions to take place almost simultaneously, but via two separate regulatory actions. Achieving the early timeline goal will enable Trump administration lawyers to defend the regulatory changes from the certain challenges it will face during President Trump's first term. In an interesting and likely related development, Lorie Schmidt -- a top EPA Clean Air Act lawyer with a leading role crafting the Clean Power Plan -- was reassigned to work on "special projects" late last week. The move appears to underscore that efforts by Trump EPA officials to reverse the agency's course on air regulations are in earnest. --- [John C. \(Max\) Wilkinson](#)

● [Exxon Prepares To Sue California Cities, Says They Contradict Themselves On Climate Change](#)

"On January 8, Exxon took the first step towards suing those who orchestrated climate change lawsuits in California by asking the Tarrant County District Court to allow it to question an assortment of government officials and a Hagens Berman lawyer."

Why this is important: Moving the climate change debate from the court of public opinion to a court of law may have been a significant overstep by the California officials. By doing so, they are now required to prove by a preponderance of the evidence that not only will the municipalities suffer damage from rising sea levels, but also that Exxon is responsible for those damages. If Exxon is allowed to depose the officials, they either will have to admit they misled their investors by hiding the potential risks of climate change or admit they misled the court by overstating the potential risks they would suffer as a result of climate change. --- [Nicholas S. Preservati](#)

● [On Course to Miss 2020 Climate Targets, Germany Opts To Scrap Them](#)

"Germany likes to champion itself as a climate leader. But when delivering her headline speech to the summit, Chancellor Angela Merkel was unable to make any new climate commitments."

Why this is important: Germany styles itself as the world leader in reducing carbon dioxide emissions. Now its grand plans for reducing CO2 emissions by 2020 are running up against the realities of a growing economy, which requires more energy, including fossil fuels. At the same time, it is closing its nuclear plants, which were providing the only reliable baseload power that did not have greenhouse gas emissions. If Germany is faltering in its commitments and abandoning its targets, can other countries be far behind? --- [David L. Yaussy](#)

● [Regulators Reject Energy Secretary Rick Perry's Plan to Subsidize Coal and Nuclear Plants](#)

"Federal regulators rejected a rule proposed by Energy Secretary Rick Perry that would have subsidized coal and nuclear power plants in some parts of the United States."

Why this is important: FERC's ruling will be viewed by some as a victory for electric ratepayers, the organized wholesale electric markets, and the natural gas industry. As proposed, Secretary Perry's request and proposal to FERC would have compensated coal and nuclear-based electric generators for providing "grid resiliency." Although FERC has rejected the DOE proposal, FERC is seeking further input from the regional market operators on the issue of that resiliency, presumably to evaluate

whether some power market changes still may be in order to recognize so-called baseload generation like coal. --- [Derrick Price Williamson](#)

● [China Aims to Supersize Coal Sector Through Mergers](#)

"China said it plans to create several 'super-large' coal mining companies by the end of 2020 as the world's biggest producer of the fuel ramps up years of efforts to streamline the fragmented sector and slash outdated capacity."

Why this is important: In an effort to phase out small-scale, inefficient mines, China plans to form a number of mega-mines, each with the capacity to produce 100 million tons of coal per year. The government will encourage the new and existing mega-mines to extend their business into power generation and transportation, as well as enter into additional deals with chemical, coal, shipping, and iron and steel firms. This move comes as China is said to be working to boost cleaner energy consumption and limit the use of coal. --- [Gerald E. \(Gee\) Lofstead III](#)

● [Trump's EPA Says It Will Count Carbon Emissions as Polar Freeze Drives Up Coal Use](#)

"The Trump administration will begin collecting greenhouse gas emissions data for 2018 early next month, as coal-fired power plants that are keeping the heaters humming during the deep freeze likely will mean an increase in this year's carbon dioxide output."

Why this is important: Despite plans to cut funding for CO2 report monitoring and to repeal climate regulations, the Trump administration's EPA again will collect greenhouse gas emissions data for 2018. Although the recent polar vortex likely will yield a spike in CO2 emissions for this year, the overall trend in CO2 emissions continues to decrease. How the polar vortex's dramatically cold temperatures impact global temperature averages will be an interesting data set for analysis against both CO2 emissions and climate change alarmist predictions. --- [John C. \(Max\) Wilkinson](#)

● [America Could Become Oil King of the World in 2018](#)

"The United States is poised to ramp up crude oil production by 10% in 2018 to about 11 million barrels per day, according to research firm Rystad Energy."

Why this is important: America's increased production of hydrocarbons improves its balance of payments by reducing imports and increasing exports--and it makes the U.S. less susceptible to energy blackmail. --- [David L. Yaussy](#)

● [EIA Energy Statistics](#)

Here is a round-up of the latest statistics concerning the energy industry.

[PETROLEUM](#)

[WTI Crude Oil Futures Prices](#)

[Weekly Petroleum Status Report](#)

[This Week in Petroleum](#)

[Crude Oil Inventories](#)

[NATURAL GAS](#)

[Natural Gas Futures Prices](#)

Short-Term Energy Outlook - Natural Gas

COAL

Weekly Coal Production

Coal Markets

Short-Term Energy Outlook - Coal

RENEWABLES

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Monthly Solar Photovoltaic Module Shipments Report

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