



August 31, 2017

## ● Welcome Back!

This is our second installment of *Currents* - our weekly energy news e-blast where we deliver the week's top energy news stories and our synopsis of why those stories are important from a legal perspective.

As always, please contact us if you have any questions about the energy industry or have suggestions for this publication.

Sincerely,

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## ● [Appeals Court Agrees Fayette Drilling Waste Ban Invalid](#)

*"A federal appeals court on Wednesday upheld a lower court decision that threw out an effort by Fayette County officials to ban the disposal of natural gas production wastes in the county, agreeing that the county's rules were pre-empted by West Virginia law."*

**Why this is important:** The Fourth Circuit upholds the preemption of a local Fayette County, West Virginia ordinance that seeks to directly regulate oil and gas operations. The federal courts have consistently held that these ordinances are superseded by state and federal regulatory systems that have primacy over such matters. --- [William M. Herlihy](#)

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## ● [Grid Reliability: DOE Throws Down Red Flags On Unreliable Wind And Solar](#)

*"Last week the Department of Energy released 'Electricity Markets and Reliability,' a 154-page magnum opus on the state of America's electricity system. It's the perfect government report: a tutorial chock full of useful data, along with observations that provide something interpretable for everyone."*

**Why this is important:** Regulators are awakening to the realization that, as renewable energy increases its share of the electric generation mix, it introduces significantly greater risk of de-stabilizing the nation's electricity grid, and puts reliable delivery of electricity at risk. Even some environmental groups that advocate increased use of renewables are [noting that there is an upper limit at which they are cost-effective](#), even with battery storage. The DOE, which does not directly regulate electricity generators, is in a good position to note the importance of the grid, its remarkable reliability, and the need to protect it in the future from excessive uncertainty. --- [David L. Yaussy](#)

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## ● [New Claims that Exxon Misled on Climate Change](#)

*"ExxonMobil has rejected claims by two Harvard University researchers that the company misled the public over climate change. The researchers say they found a discrepancy between what ExxonMobil's scientists and executives discussed about climate change privately and in academic circles, and what it presented to the general public."*

**Why this is important:** Exxon conducted its own research on climate change and published its findings on the subject between 1977 and 2014. Exxon now is being accused of misleading the public on climate change because it is "promoting a narrative inconsistent with the views of most climate scientists." Science historically has welcomed scrutiny and criticism as a method of identifying erroneous or irrelevant findings. That scrutiny and criticism no longer is welcomed if it conflicts with the views of the scientific majority. As a result, science has become more about advocacy than about advising, and peer review has been replaced with peer pressure. Such a change will have a chilling effect on corporations such as Exxon that choose to conduct their own scientific research instead of simply relying upon the opinions of the scientific majority. --- [Nicholas S. Preservati](#)

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## ● [Alpha Natural Resources Announces Agreement to Transfer Idle Assets and Eliminate Self-Bonding in West Virginia](#)

*"Alpha CEO David Stetson called the agreement a significant transaction for all stakeholders of the Central Appalachian coal producer. 'LCC has a decade-long history of reclaiming properties in a diligent and environmentally responsible manner,' said Stetson, 'and Alpha is providing LCC with adequate resources to meet its obligations to the communities in which the properties are located.'"*

**Why this is important:** The proposed transfer of assets by Alpha Natural Resources to Lexington Coal Company involves the sale of primarily idled mining assets that have significant associated reclamation liabilities. Lexington Coal is a company spun out of the Horizon Natural Resources Co. bankruptcy in which that bankrupt entity deposited many of its challenged thermal operations. This transaction reflects a trend by major publicly traded coal companies to remove reclamation and the associated bonding liabilities from their balance sheets in exchange for cash payments to a company that will complete reclamation activities. --- [William M. Herlihy](#)

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## ● [US Lays Groundwork for Rescuing Coal Plants with Grid Report](#)

*"The Energy Department, in a long-anticipated report on the security of the U.S. electric grid, makes the case for rescuing the nation's coal industry from widespread plant shutdowns, but stops short of an assault on renewable power that environmentalists had feared."*

**Why this is important:** The U.S. Department of Energy's report allays some fears that the Trump administration had forgotten coal and the President's campaign promises to revive the industry. The report confirms concerns about grid security due to coal plant shut downs, at least some of which are the result of past policies favoring alternative energy. These concerns are a vindication of the alarms sounded within the coal industry since the prior administration's focus on incentivizing renewable energy sources. But, cheap natural gas also is recognized as a prime driver in the decline of coal and nuclear. The report emphasizes the need to preserve baseload coal and nuclear plants and that natural gas generation may be vulnerable due to reliance on pipeline supply. It also advocates changing wholesale energy trading practices and more streamlined permitting for coal, nuclear and hydropower sources. --- [John C. \(Max\) Wilkinson](#)

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## ● [Oil, Gas Royalty Deductions OK Under W.Va. Law, Court Says](#)

*David L. Kinney & Raymond P. Kinney v. CNX Gas Company, LLC and Noble Energy, Inc. further solidifies the Court's position on oil and gas royalty deductions.*

**Why this is important:** West Virginia law permitting oil and gas producers to withhold royalty deductions based upon post-production expenses is further buttressed by this decision, in which an oil and gas lease provided for a flat-rate deduction (in this case, of \$1.20/MMBtu, which are presumed under the lease to be actually incurred). The U.S. District Court for the Northern District of West Virginia, on cross-motions for summary judgment, found that express provisions for flat-rate royalty deductions such as these are consistent with West Virginia law and will stand. --- [Thomas J. O'Neill](#)

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## ● Recently Approved NEXUS Pipeline Project Expected to Create 5,300 Ohio Jobs

*"The Federal Energy Regulatory Commission recently approved the long-awaited NEXUS pipeline construction project, which is expected to bring 5,325 jobs and \$545 million in wages to Ohio. The project is also expected to generate \$390 million in local tax revenues for Ohio, \$116 million of which will go to local school districts."*

**Why this is important:** On August 25, 2017, FERC approved the Nexus pipeline, a 255-mile interstate pipeline that will transport 1.5 billion cubic feet per day of natural gas from the Marcellus and Utica plays to end-use customers in the Midwest and ultimately Canada. The decision by FERC comes three days after the Court of Appeals for the District of Columbia Circuit remanded a similar FERC pipeline approval for a project in Florida for not considering downstream GHG emissions. Unlike the Florida pipeline, it appears that FERC at least attempted to quantify the GHG emissions associated with the end-use combustion of the natural gas. Time will tell if eNGOs challenge the adequacy of this latest FERC pipeline decision. --- [James D. Elliott](#)

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## ● China Set to be the World's 2nd Largest Shale Gas Producer by 2040

*"China is poised to be the world's second largest shale gas producer after the U.S. by 2040, when it would account for more than 40 percent of the country's total natural gas production, the U.S. Energy Administration said Monday."*

**Why this is important:** China already leads the world in coal production and in electricity generation from renewables. By increasing its shale gas production, China not only is increasing its economic prosperity and energy independence, it is increasing its geo-political leverage. As China's shale gas production continues to increase, it becomes a more viable alternative to Russia as the primary gas supplier to the European Union. --- [Nicholas S. Preservati](#)

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