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July 3, 2015

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July 19-21
2015 PFI Annual Conference
Williamsburg Lodge
Williamsburg, VA
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July 20-24
Energypath Camp & Conference
University of Scranton
Scranton, PA
Compiled July 20-22
Conference July 23-24
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Irresistible Force - Meet Immovable Object: PA Budget edition

The paradox of an irresistible force meeting an immovable object seems apt for the state budget process this year, as the battle of perceived mandates continued through the evening of June 30. Of course, reality tells us the paradox is a false premise. Existence of either would make the other impossible.

On Tuesday, meeting its June 30 deadline, the General Assembly passed a \$30.1 billion state budget which increases education funding, without raising taxes. Nevertheless, Governor Tom Wolf vetoed the bill just a few minutes after receiving it.

Throughout the budget process since March, Wolf and his staff maintained that Pennsylvania's voters had given him a mandate to change how government works, and to increase education funding. But GOP legislative leaders continued to assert that they too had received a mandate through increased membership in the General Assembly on a mandate to "rein in state government spending and hold the line on taxes."

The Senate had insisted on pension reform as a condition of a budget passing, and the House insisted on privatization of the state liquor system. The Governor was insisting on a severance tax and expansion of sales and income taxes to reduce property taxes across the state. To date, no one is getting the things they insisted on - the Governor can veto any budget and as long as the minority Democrats stay with him, the General Assembly can't override a veto. And the GOP leadership can refuse to pass the Governor's initiatives, blocking him from accomplishing his goals.

The battle now moves further, to the meeting rooms of the capitol and to the public, with both sides hoping that public outcry will help them make their case in negotiations. Wolf, the General Assembly's Democrats and their Political Action Committees have already begun pushing to put pressure on Republicans who oppose his plans as being anti-education, pro-big business and anti-jobs. House and Senate Republican leaders and members are also actively seeking to educate the public on why they support no new taxes, pension reform, and limiting government's reach into the "middle class pockets" for programs that protect unions.

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With passage of their budget, the Senate adjourned until September 21 or the call of the President Pro Tempore, and the House is technically adjourned until August 25, but realistically, if/when a budget agreement is reached, leaders will call the members back to Harrisburg

Until Tuesday night, no Pennsylvania Governor had vetoed an entire budget in the 46 years since the state's current Constitution took effect in 1968. "The math doesn't work," Wolf said. "I ran a business, and if I took a proposal like this to my bank, they would have thrown me out for presenting a budget that doesn't add up and doesn't generate growth."

Governor Wolf invited legislative leaders to a meeting Wednesday afternoon to start discussions on a budget reset, but after a half hour meeting, those who attended said they were going to seek common ground, and would meet again next Monday and Tuesday after a several day "cooling off period." Both sides agreed that there was respect, if serious differences, and that they expect to get a budget done, although not likely in the near future.

After the meeting, on Friday, Wolf vetoed the liquor privatization bill, the fiscal code bill and the school funding bill, and has yet to address the pension reform bill as ERG goes to press.

Given the nature of the standoff and the questions about costs, programs and numbers of votes for each of the many pieces of the puzzle, a quick resolution is not expected.

House Appropriations Chairman Bill Adolph (R, Delaware) said, "We are far, far, far apart on numbers, and that's because what the governor would like to spend takes a lot of taxes, and they're not sure how many votes they can produce, so it's going to be a lot of work."

Fiscal Code Bill Gets Oil and Gas Language

Lawmakers put a last-minute amendment into the fiscal code bill that would block DEP's proposed rules on oil and gas drilling. DEP Secretary John Quigley said, if passed, the changes to fiscal code wouldn't completely undo the new regulations, but would delay modernizing the regulations, which haven't been changed in 31 years. The Governor vetoed the bill on Friday morning.

Reese Takes over at Treasury

Tim Reese of Montgomery County was confirmed by the full Senate last week on a 48-1 vote and will now serve out the remaining 18 months of ex-Treasurer Rob McCord's term. Reese has agreed not to run for election to that post.

Reese, 51, is a businessman and investor. He launched the National Minority Angel Network in 2012, which focuses on investing in women, minority and veteran-owned companies. A new treasurer will be elected in 2016.

House Environmental Resources and Energy Committee Moving Bills

The House Environmental Resources and Energy Committee met Monday and approved three bills for consideration by the full House.

SB 307, sponsored by Sen. John Yudichak (D, Luzerne) provides for appointment of a counsel to the Environmental Quality Board to serve as an independence counsel to members of the Board. The bill was reported as amended with six

Democrats casting dissenting votes. Chairman John Maher (R, Allegheny) noted the bill was bipartisan, with support in both chambers.

The Committee also reported out HB 471, sponsored by Rep. Jim Marshall (R, Beaver). This bill removes requirements in the Biofuels Development and In-State Production Incentive Act that would mandate blending of 10% cellulosic ethanol in gasoline when in-state production of cellulosic ethanol reaches 350 million gallons. Supporters claim the mandate provisions are pointless, as there is no cellulosic ethanol production in Pennsylvania. Democratic Chairman Greg Vitali (D, Delaware) however, said the requirement should remain for the time in the future when technology makes production viable. The bill was reported as committed with two negative votes, and then re-referred to the Rules Committee.

The Committee also reported SGBG 875 as committed. This legislation, sponsored by Sen. Camera Bartolotta (R, Washington), provides for using treated mine water for oil and gas development, and gives immunity to users under several conditions. Two members voted against the bill. Chairman Maher specifically credited the Governor's Chief of Staff Katie McGinty for her leadership on the issue when she was DEP Secretary, and Chairman Vitali said he would support the bill, which is also backed by the DEP and the PA Coal Alliance.

Royalty Bill to be Re-Introduced

In another effort to protect owners of natural gas royalty leases, Reps. Garth Everett (R-Lycoming), Sandra Major (R-Susquehanna/Wayne), Matt Baker (R, Bradford/Potter/Tioga), Tina Pickett (R, Bradford/Sullivan/Susquehanna) and Karen Boback (R, Lackawanna/Luzerne/Wyoming) today said legislation is being reintroduced in the form of House Bill 1391 to guard natural gas royalty owners from unjustified post-production cost deductions.

"We fought for this legislation in the previous session in the form of House Bill 1684 and did not get a full floor vote," said Everett. "We were able to get bipartisan support from the House Environmental Resources and Energy Committee last session and hope to get that again, but we will also press very hard for the full House to consider it. I believe it is imperative that we gain fairness for conventional and Marcellus natural gas land owners and operators."

Everett said the Guaranteed Minimum Royalty Act (Act 60 of 1979) simply states that a lease for oil or natural gas shall guarantee a minimum one-eighth (12.5 percent) royalty. The development of unconventional shale gas wells (i.e. Marcellus) in the Commonwealth has been accompanied by an effort of some companies to reduce royalties below this statutory minimum by deducting what are known as post-production costs from the royalty payments to landowners. These post-production costs can include compression, dehydration, transmission and other costs incurred between the wellhead and a final market point of sale. When these expenses are deducted, final royalty payments often are below the statutory one-eighth.

In 2010, the Pennsylvania Supreme Court considered this issue in *Kilmer v. Elexco Land Services Inc.*, it determined that the current statute did not address the deduction of post-production costs and stated that the "General Assembly is the branch of government best suited to weigh the public policies underlying the determination of the proper point of royalty valuation."

"This is an important issue to landowners across the northeast region of the state and it continues to be a top priority for me and my Northern Tier colleagues as we work to ensure land owners receive fair and equitable payments for natural gas reserves under their land," said Major. "It is our hope that we can get this bill through the General Assembly in a timely manner and onto the desk of the governor."

When Pennsylvania landowners signed leases for a percentage of the value of the gas produced from their property, they were assured by the gas companies that they would receive no less than the statutory one-eighth - not something significantly less than that because of deductions.

"This is the second session in which we have joined together to urge passage of legislation to uphold the good-faith contracts signed by landowners with respect to royalties owed them by natural gas companies," said Baker. "Landowners need to have a guaranteed minimum royalty law to ensure that they receive fair payment under the law."

Pickett said this is the job of the Legislature, not the courts. "The 1979 law guaranteeing a minimum royalty payment has led to varying interpretations, with some landowners getting far less than specified in their leases and others receiving royalty statements with figures in the red," she said. "The state court has ruled that the Legislature should be the branch of government clarifying existing state law in an effort to achieve royalty fairness and equity, and our legislation seeks to do just that."

[A cosponsor memorandum](#) is available online.

Climate Change Committee to Meet July 7

The Climate Change Advisory Committee will meet by means of WebEx on Tuesday, July 7, 2015, at 11 a.m. to discuss and endorse the Manufacturing Energy Technical Assistance work plan that will be included in the Climate Change Action Plan. WebEx registration information, the agenda and meeting materials are available through the Public Participation Center on the Department of Environmental Protection's (Department) website at www.dep.state.pa.us (Select "Public Participation Center," then "Advisory Committees," then "Climate Change Advisory Committee").

Pipeline Infrastructure Task Force Sets July 22 Meeting

The first meeting of the Pipeline Infrastructure Task Force will be held on Wednesday, July 22, 2015, from 1 p.m. to 4 p.m. in the Department of Environmental Protection's Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg. The Task Force will develop policies, guidelines and tools to assist in pipeline development (including planning, permitting and construction) as well as long-term operation and maintenance. The agenda for the meeting will be available through the Department's website at www.dep.state.pa.us (DEP Keyword: Pipeline Infrastructure Task Force).

PIOGA Asks Court to Eliminate DEP Setback Enforcement

The Pennsylvania Independent Oil & Gas Association has filed legal action with the Pennsylvania Supreme Court to enforce portions of the court's ruling on Act 13, asking the court to stop the state Department of Environmental Protection (DEP) from requiring well permit applicants to comply with certain provisions of Act 13 the court found unconstitutional and unenforceable in its December 2013

decision.

"The Supreme Court made clear in its Act 13 ruling that specific well permitting requirements in Section 3215 of the Act were unconstitutional, and denied the department's request for reconsideration of that decision in February 2014," said PIOGA General Counsel Kevin J. Moody. "It is unfortunate that PIOGA has had to take this action, but court decisions apply to government agencies in the same way they apply to others, and DEP has ignored the fact that the Supreme Court invalidated and enjoined nearly all provisions of Section 3215 in its decision on Act 13. Requiring a government agency to obey the law, just as the agency requires others to obey laws it administers, is a win for all citizens and the rule of law.

"DEP cannot continue to require our industry to comply with these invalidated and enjoined provisions without obtaining authorization from the General Assembly," added Moody. "In the meantime, however, DEP has simply ignored the court's determination and is using the Section 3215 decisional process as if the court's ruling does not exist. This has forced PIOGA to take action on behalf of its members and the industry to ask the court to enforce its injunction."

The Pennsylvania Supreme Court invalidated and enjoined several provisions of Section 3215 in its decision on Act 13, including those related to the department's consideration of impacts on certain identified public resources. DEP has continued to apply those requirements in the well permit application process, despite both the judgment of the court and the court's denial of the department's request that the court reconsider its invalidation of these specific provisions.

Moody emphasized that existing laws and permitting requirements are more than adequate to fully protect the statutorily designated public resources outside the well permitting decisional process, and the industry will continue to comply with those laws. "Natural gas developers protect public resources through voluntary measures as well as by complying with provisions of federal laws that protect threatened and endangered species, and state laws administered by the Department of Conservation & Natural Resources, Fish and Boat Commission and Game Commission," Moody said.

REGIONAL ENERGY NEWS

New York Cleaning Up

New York State plans to reach new aggressive clean energy targets by 2030. According to the [2015 New York State Energy Plan](#) finalized last week, the state will generate 50% of its electricity from renewable sources, decrease greenhouse gas emissions by 40% and reduce energy consumption in buildings by 23%.

"These targets put the state on a path to achieve its longer-term goal of decreasing carbon emissions 80% by 2050," said a spokesperson from the New York State Energy Research and Development Authority (NYSERDA).

NYSERDA manages the state's current 30% by 2015 renewable portfolio standard. Since 2004, about \$1.1bn has been provided to large renewable projects totaling about 2GW through competitive solicitations.

Green Bank Overwhelmed with Project Interest

New York's Green Bank has generated so much interest from clean energy and energy efficiency developers that it is asking to borrow from private markets as well as revising allocations from its state sponsor. NYSERDA says its schedule to capitalize the bank with \$1 billion over five years is inadequate for the potential project portfolio, and asked to obtain outside borrowing capacity. The Green Bank, part of New York's Clean Energy Fund, was initially funded with \$200 million, and has received requests for \$734 million through mid-June. The bank said its funding applications could be leveraged into more than \$3 billion in clean energy projects statewide.

NYSERDA calls the bank a "key pillar" of the state's Reforming the Energy Vision program, which also includes the \$1 billion NY-Sun initiative to build solar projects. The Authority said that more than half of the current funding requests are for energy efficiency projects, with the rest divided among wind, solar, bioenergy and other projects.

The goal is to make the Green Bank self-sustaining within a few years as loans are repaid, and the money is recycled to fund future projects. The bank is anticipating it will reach a "steady state" of annual commitments of about \$200 million.

Planning for Maryland Offshore Wind Underway

The energy of offshore wind is beginning to be felt in Maryland long before any of the giant turbines have been planted off the coast.

Survey vessels recently began examining the Atlantic Ocean bottom off Ocean City, as planning starts in Baltimore for what could be the largest offshore wind energy project to date in the United States - if it clears daunting financial and regulatory hurdles.

US Wind Inc., the Italian-backed company that won federal leases to develop a wind project off Maryland's coast, has established offices in a downtown high-rise. Its executives are working simultaneously on designing the turbines to be built, lining up financing, and networking with the businesses and government agencies the company will need to make its plan a reality.

"This is the development phase," said Paul Rich, US Wind's manager for the Maryland offshore project, who heads a six-member team in Baltimore. He has met with potential suppliers and servicers of the project, local and state officials and a variety of stakeholders, including commercial fishermen in Ocean City wanting to know how the project might affect their livelihood.

The company has commissioned two vessels to survey the seabed to determine its suitability for anchoring giant wind turbines in 80 to 100 feet of water more than a dozen miles offshore.

New Jersey Legislators Using Clean Energy Fund to Balance Budget

New Jersey's clean energy fund is being tapped once again by legislators -- this time to provide \$20 million for maintenance and salaries for the state's park system. Proposed cuts would be in addition to some \$152 million already on the block in Gov. Chris Christie's budget.

The proposed diversion from the often-raided Clean Energy Fund presumably

would retain \$20 million for a new open-space preservation program instead of being used to finance parks management as the Christie administration proposed in its spending plan for next year.

Gov. Chris Christie's proposed budget already is counting on using approximately \$152 million from the Clean Energy Fund to finance various energy initiatives and to pay utility bills at state facilities, including NJ Transit.

The persistent withdrawal of money from the Clean Energy Fund by lawmakers and the administration is a source of frustration for clean-energy advocates. More than \$1 billion in clean-energy funds has been used to help balance budgets in the past several years. The fund is replenished by surcharges on gas and electric bills for residents and businesses.

FEDERAL ENERGY NEWS

SCOTUS Blocks EPA Emission Rule

The US Supreme Court ruled Monday against the EPA's effort to limit power plant emissions of mercury and other hazardous air pollutants, saying the agency "unreasonably" failed to consider the cost of the regulations. Writing for the Court's 5-4 majority, Justice Antonin Scalia wrote, "It is not rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits."

"EPA must consider cost- including cost of compliance - before deciding whether regulation is appropriate and necessary, the court said. The rule was remanded to the District of Columbia Federal District Court, which will decide how to proceed.

The decision, *Michigan v. Environmental Protection Agency, No. 14-46*, doesn't strike down the rule, but it means the EPA will have to review and rewrite it, taking costs into consideration. Industry will be expected to comply with the current rule until a revised rule is issued.

The EPA had argued that it was not required to take costs into account when it made the initial determination to regulate, but the agency added it had done so later in setting emissions standards, and that in any event the benefits far outweighed the costs.

The two sides had very different understandings of the costs and benefits of the rule. Industry groups said the rule would cost \$9.6 billion annually to achieve about \$6 million in benefits. The agency said the costs would yield tens of billions of dollars in benefits.

The EPA said it remains committed to enacting the rule on emissions of mercury.

"This ruling is a commonsense rejection of EPA's agenda-driven rulemaking process," said John Pippy, CEO of the Pennsylvania Coal Alliance. "Many of the same arguments with this ruling will apply to the proposed 'Clean Power Plan' and consideration should be given before the premature retirement of coal-fired

plants.

The full implications of the ruling remain unclear, and there should be little immediate effect on current power generation. The rule was finalized in 2011 and took effect over a three-year period beginning in April 2012. Most coal plants had to comply by April 16, 2015, and many were already closed.

US House Appropriations Committee Scaling Back Farm Energy Funding

On June 17, the US House Appropriations Committee released the FY 2016 Agricultural Appropriations bill. The proposed legislation funds a variety of Ag and food programs, including rural development and farm services programs. The full committee markup of the bill, scheduled for June 25 was postponed. Information published by the Committee shows the bill totals \$20.65 billion in discretionary funding, \$175 million lower (one percent) than the FY 2015 level, and \$1.1 billion below the president's budget request. The overall bill totals \$143.9 billion.

The House Appropriations Committee's Fiscal Year 2016 Agriculture Appropriations Bill would reduce mandatory spending levels for important Energy Title programs, including the Renewable Energy for America Program, Biomass Crop Assistance Program, and the Biorefinery, Renewable Chemical and Biobased Product Manufacturing Assistance Program (Section 9003). The Agriculture Energy Coalition vowed to fight the changes in mandatory spending.

Lloyd Ritter, co-director of the AgEC, said, "The renewable energy and energy efficiency programs in the Farm Bill help rural America create new manufacturing opportunities and stable, well-paying jobs. A new report to Congress, released just yesterday, demonstrates the broad economic impact of innovative biobased technology. The biobased products industry contributes \$369 billion annually to the U.S. economy and employs more than four million Americans. The more than 40,000 biobased products already on the market displace about 300 million gallons of petroleum per year, which is equivalent to taking 200,000 cars off the road. Countless wind, solar, biomass and other projects are making a major impact as well.

"Nevertheless, the House Appropriations Committee is seeking to roll back the mandatory funding levels Congress agreed to last year when passing the bipartisan Farm Bill. For Fiscal Year 2016, the House bill proposes cutting millions from the Section 9003 program, the Biomass Crop Assistance Program, and the Renewable Energy for America Program. Such reductions in the mandatory funding levels that Congress previously set will undermine the ongoing effectiveness of these programs. The Agriculture Energy Coalition, comprising renewable energy, energy efficiency and agricultural groups, will continue to fight to ensure that these programs are implemented successfully."

Bill Aims to Extend Master Limited Partnerships to Renewables

U.S. Sens. Chris Coons, D-Del., and Jerry Moran, R-Kan., and Reps. Ted Poe, R-Texas, and Mike Thompson, D-Calif., this week announced the reintroduction of the Master Limited Partnerships Parity Act. The legislation aims to level the energy playing field by giving investors in renewable energy access to a corporate tax structure currently only available to investors in fossil-based energy projects. According to Coon's office, the bill would unleash significant private capital by helping additional energy-generation and renewable fuel companies

form master limited partnerships, which combine the funding advantages of corporations and the tax advantages of partnerships.

A master limited partnership is a business structure that is taxed as a partnership, but whose ownership interests are traded like corporate stock on a market. By statute, MLPs have only been available to investors in energy portfolios for oil, natural gas, coal extraction and pipeline projects. According to the senators and representatives, these projects get access to capital at a lower cost and are more liquid than traditional financing approaches to energy projects, making them highly effective at attracting private investment. Investors in renewable energy projects, however, have been explicitly prevented from forming MLPs, starving a fast growing portion of America's domestic energy sector of the capital it needs to build and grow.

"Renewable energy technologies have made tremendous progress in the last several decades, and they deserve the same shot at success in the market as traditional energy projects," Coons said. "By updating the tax code, the bipartisan Master Limited Partnerships Parity Act levels the playing field for all domestic energy sources-renewable and non-renewable-to support the all-of-the-above energy strategy we need to power our country for generations to come. This practical, market-driven solution will unleash private capital and create jobs, and that's why it has earned broad support from Republicans and Democrats in Congress as well as academics, outside experts, business leaders and investors."

"In order to grow our economy and increase our energy security, sound economic tools like master limited partnerships should be expanded to include additional domestic energy sources," Moran said. "MLPs have a proven record of success through real growth in our country's energy infrastructure. This legislation builds on a successful model, and I look forward to working with my Senate colleagues on policies that will drive innovation, create American jobs, and grow our economy."