



Call Us: 717-233-8606

Commitment. Action. Success.
Investing in Your Company's Future.

[Website](#) [About Us](#) [Services](#) [Clients](#) [Resources](#) [Contact](#)

February 27, 2015

NEWS CLIPS

[PTC/ITC Policy Top Issues for 2015](#)

[White House Report: States Best Positioned to Regulate Shale Development](#)

[Transition Team Member Questions Severance Tax Proposal](#)

[Pennsylvania's gas production breaks record, hits 4 trillion cubic feet mark](#)

[Terry Boston to Retire as PJM President/CEO](#)

[Cold Winter Sets Record PJM DemandPA](#)

[DCNR Program Leases Under Rivers/Creeks for Marcellus Drilling](#)

[PUC Directs FirstEnergy](#)

Curtain Up on State Budget Tuesday - Sondheim Season?

A Funny Thing Happened on the Way to the Forum edition: As ERG Partners watches and listens to the pronouncements, the leaks and the responses this week, we can't help but be reminded of Stephen Sondheim's refrain from *Zero Mostel as Pseudolus* - "*Something familiar, something peculiar, something for everyone, a comedy tonight!*"

Governor Tom Wolf has spent much of the last week calmly repeating the mantra, "You'll have to wait until next Tuesday" to see his proposals boost the state's economy, move his policy goals forward, and raise sufficient revenues to balance the state budget. The full details of his 2015-16 Budget will be released on Tuesday, March 3.

Information IS dribbling out of the Governor's Office from both formal statements and informal leaks, the Wolf Administration is setting the table for their PR push, the House and Senate are firing off their packaged messages, and lines are already being drawn in the sands of Harrisburg that could portend

"something appealing, something appalling..."

This week, Wolf announced some plans for business tax cuts and talked about a "fairer tax system." The House passed legislation to get the state out of the wholesale and retail liquor/wine/beer basis, and the Senate leadership said pension reform must come before any other revenue measures.

Wolf has said that he would address creating a "fairer tax system" in his budget address. On Tuesday the Governor said he would include significant reforms to create a pro-growth business climate, build the state's manufacturing sector and create workforce partnerships. After opening up at the Economic Forecast Summit in Harrisburg, Wolf went even further Wednesday night, telling a business group in Bethlehem that he planned to reduce the Corporate Net Income Tax from the nation's second highest rate at 9.99 percent to 5.99 percent in 2016, 5.49 percent in 2017 and 4.99

[to Resubmit
Implementation Plan
Following Audit Report](#)

[PennFuture Proposes
"fresh" Fresh Start for
PA](#)

EVENTS

March 2, 2015

**House Democratic Policy
Committee Hearing
Climate Change**
10 a.m. Room 418, Main Capitol

March 3, 2015

**Critical Decisions Shaping
Energy Efficiency, Clean
Energy and Rates**
4 p.m. to 6 p.m.
Bayer Hall, Duquesne University
Pittsburgh, PA
More info [here](#)

March 3, 2015

Governor's Budget Address
House of Representatives,
Main Capitol, Harrisburg, PA

March 11, 2015

**House Appropriations
Committee: PUC,
Consumer Advocate, DEP
Budget Hearings**
Room 140 Main Capitol

March 17-18

GLOBALCON Conference
Sponsored by Association of
Energy Engineers
Philadelphia Convention
Center, Philadelphia, PA
Information at
www.aeeprograms.com

March 18, 2015

**ABA/ACORE Finance: New
Trends in Clean Energy Finance
Mechanisms**

percent in 2018. Then he said he would continue the elimination of the Corporate Stock and Franchise Tax, while closing tax loopholes through combined reporting to expand the amount of income subject to taxation.

To further support manufacturing, Wolf said he would propose a \$5 million tax credit for manufacturing companies crating good paying middle class jobs, and providing \$5 million to the Industrial Resource Centers.

By our accounting, that adding the need for replacing roughly \$1.25 billion to the state's revenue needs from corporate tax cuts alone within four years, on top of the roughly \$2 billion facing budget negotiators this year. That's before property tax reform. Obviously, the revenue side will have to be addressed as well with Wolf proposing increases in costs for Medicaid, education funding, and more.

Pennsylvania Senate Majority Leader Jake Corman, R-Centre County, said Wolf's proposal sounds appealing but evaluating it is impossible without knowing the rest of his plans. Some lawmakers contend Wolf will propose raising the personal income tax, and reducing property taxes. "We look forward to receiving and considering an entire package of specifics from the governor, not one idea floated at a time," Corman said.

Corman said the proposed corporate tax cut could have a \$1.25 billion impact on the state's collections. The corporate net income tax last fiscal year brought in about \$2.5 billion, about 9 percent of the state's \$28 billion budget.

Senate Minority Leader Jay Costa, D-Forest Hills, called Wolf's plan "a very positive approach" that would broaden the base taxed under the corporate net income tax. "You have to make it revenue neutral at a minimum," Costa said.

"something aesthetic, something frenetic..."

The governor acknowledged, as he has during his first five weeks in office, there will be disagreements. He said he intended to present "a fairer tax system," but did not elaborate on what that would mean. Wolf has in the past suggested replacing the state's flat income tax with a graduated tax. Some Democrats have also suggested he will propose increases and closing loopholes in the state sales tax, and Wolf has also already proposed significant increases in taxes on natural gas drilling.

"This is a chance for a reset, and I hope the people of Pennsylvania will like what I propose," said Wolf. It sounds like the Governor hopes to use public support to convince GOP legislators to support his new plans. Those legislative leaders said they could support some additional spending, but not significant amounts. They also made it clear repeatedly that they think little of raising taxes. Senate President Pro Tempore Joe Scarnati said the Senate expected to address pension reform before discussing new spending or revenues.

"Old situations, new complications..."

The Republicans presented a united front in support for the Taxpayer Protection Act, which would limit the annual growth in state spending to

Monthly seminar
More information at
www.renewableenergyinfo.org

March 18, 2015
**Climate Change Advisory
Committee**

10 a.m. to 3 p.m.
Rachel Carson State Office
Building, Harrisburg, PA

March 19, 2015
**GreenCon 2015 Building
Conference and Expo**

8 a.m. to 6 p.m.
Franklin & Marshall College,
Lancaster, PA 17603
More info [here](#)

March 20, 2015
**Making the Utilities Act 129
Programs Pay Back for You**

SEDA-COG Breakfast
Seminar for Penelec and West
Penn Power Customers
7:30 a.m.- 9:30 a.m.
Celebration Hall State College,
PA 16801
Cost \$25
More [information](#)

March 23, 2015
**PA Senate Appropriations
Committee PUC Budget
Hearing, 9:30 a.m.**

Hearing Room 1, North Office
Building, Harrisburg, PA

March 23, 2015
**14th Annual Wall Street
Green Summit**

Columbia University Club, 7
a.m. until 7 p.m.
Information at
www.wsgts.com

March 25, 2015
**Senate Appropriations
Committee DEP Budget
Hearing, 9:30 a.m.**

the lower of the following thresholds: the average change in personal income for the three preceding calendar years, or the average inflation rate plus the average percentage change in state population over the three preceding years, with exceptions allowed for certain extraordinary circumstances. The exceptions would still require two-thirds of both General Assembly chambers to vote to exceed the TABOR limit, a provision GOP lawmakers are hoping to place with the Pennsylvania Constitution.

Scarnati said neither he nor Speaker Mike Turzai want a government shutdown but noted, that "For the last four years, we stayed within TABOR -I haven't heard Gov. Wolf say that he's staying within TABOR."
"We think the budget can be done on time, we think it can be done with real fiscal responsibility under TABOR, and we think it's important that that become a part of the law" not just for this year, but for future generations, said Turzai.

"There's going to be massive spending increases and massive tax increases," predicted Scarnati.
The Governor's Office remains mum about what that spending figure will be, and the administration doesn't sound like it's backing away from a conflict.

Scarnati said he wants to avoid the tax increases that will likely be needed to produce a balanced state budget, and said the legislative GOP plan to help avoid that starts with pension reform and liquor privatization. "The choice for me is real clear, and the members have seen that - we have to find value in the liquor system and we need to do a major pension overhaul that brings immediate savings to the General Fund."

This week, the House passed liquor privatization legislation by a 114-87 vote, with four Republicans voting with all Democrats in opposition. The House GOP claim that privatization of the state liquor system would raise more than \$1 billion.

But Wolf has repeatedly said he opposes liquor privatization and supports liquor "modernization" efforts that could mean \$100 million in additional revenue. Wolf had also said he wants to let the current state pension law run, but suggested he might support a bond issue to pay a small portion of the current public pension unfunded liability in hopes of delivering some immediate savings.

If the Governor insists on significant new spending and tax increases, the spring and budget hearings may not be pretty. "How do you sit down and negotiate with unrealistic expectations?" Scarnati asked. In 2009, the Legislature engaged in a 101-day budget impasse with then-Gov. Ed Rendell.

"Tragedy tomorrow, comedy tonight...?"

Referring to comments made by Wolf at the National Governors Association meeting last weekend, when he said Pennsylvania suffers from a lack of self-esteem, Senate Majority Leader Jake Corman tweeted "I don't know that billions in new taxes will help the self-esteem of PA-People want to

Hearing Room 1, North Office
Building, Harrisburg, PA

March 27, 2015

**Making the Utilities' Act 129
Programs Pay Back for You**

SEDA-COG Breakfast

Seminar

PPL Customers

7:30-9:30 a.m.

Country Cupboard Restaurant

Lewisburg, PA 17837

Cost: \$25

More [information](#)

April 15, 2015

Agricultural Advisory Board

9 a.m. until 1 p.m.

DEP Southcentral Regional Office

909 Elmerton Avenue, Harrisburg.

Contact: Tom Juengst,

tjuengst@pa.gov.

June 2-4, 2015

**Energy Ocean Conference &
Exhibition**

Portland, Maine,

Contact [Jason Smith](#)

(713) 343-1886.

June 15-18, 2015

**2015 BIO International
Convention**

Pennsylvania Convention

Center, Philadelphia, PA

Global biotech community.

More information available at

convention.bio.org/register.

[Join My Mailing List](#)

[Forward To A Friend](#)

Stay Connected



keep their \$ in their pockets."

Let's see if *"this time it all turns out right!"*

Joint Committee Hearing Scheduled on Impact Fees

The state Senate Environmental Resources and Energy Committee, chaired by Senator Gene Yaw (R-23) and the Senate Local Government Committee, chaired by Senator Scott Hutchinson (R-21) will hold a joint public hearing March 3 at 8:30 a.m. in Hearing Room #1, North Office Building in Harrisburg.

The hearing is being held to solicit testimony regarding the benefits of Act 13 of 2012, more commonly known as the Impact Fee, on communities and local governments throughout Pennsylvania. The committees will hear first-hand testimony from counties, municipalities, conservation districts and economic development organizations on the opportunities created through the Impact Fee.

The law provides for the imposition of an unconventional gas well fee and the distribution of those funds to local and state governments. Act 13/Impact Fee also contains provisions regarding how the impact fee may be spent. A significant portion of the funds collected are distributed directly to local governments to cover the local impacts of drilling. Also, several state agencies receive funding to be used for a variety of other purposes.

Vitali: Legislation introduced to reduce Pennsylvania's greenhouse gas emissions

State Rep. Greg Vitali (D, Delaware) has unveiled legislation designed to encourage Pennsylvania to reduce greenhouse gas emissions during a news conference today in the Capitol. He was joined by representatives of environmental organizations, a professor and a legislator who voiced support for the legislation.

"Pennsylvania has a duty to work toward carbon neutrality because it produces almost one percent of the world's greenhouse gases," said Vitali, the Democratic chairman of the House Environmental Resources and Energy Committee. "The legislature and Gov. Tom Wolf must find ways to reduce the use of fossil fuels and shift to renewable energy."

To work toward that goal, Vitali has introduced three bills that would increase the Alternative Energy Portfolio Standard, permanently fund the Sunshine Solar program and reduce the demand for energy.

State Rep. Steve McCarter, D-Montgomery, said Vitali has proposed "modest legislative changes that will go a long way in encouraging a culture change in how we - as consumers - think about energy, energy consumption and climate change."

Vitali today introduced House Bills 100, 129 and 200.

H.B. 100 would increase the state's Tier I Alternative Energy Portfolio Standards to 15 percent by 2023. The current rate is 8 percent by 2021.

H.B. 129 would require natural gas distribution companies to reduce energy consumption and demand by 1 percent by 2018 and 3 percent by 2020. These are the same requirements currently placed on electric distribution companies under Act 129 of 2008.

H.B. 200 would establish a dedicated funding source for the PA Sunshine Solar Program. The program, which has exhausted its funding, helps homeowners and businesses install solar systems. The program would receive \$25 million a year from a 1.25-mill increase on the utilities' Gross Receipts Tax.

In answer to a question from reporters, Vitali said that with big immediate issues before the legislature, "It's definitely going to be a tough issue given the composition of the legislature. The legislature is very conservative but when Gov. Rendell got his clean energy program through...it was horse trading. You need a governor to prioritize...a lot can be done through the executive branch; a lot can be done through horse trading. My goal is to set out what should be done so these issues won't be forgotten."

"It's a tough sell. Things like gay marriage seemed like such an impossible task a decade ago, things like medical marijuana seemed like a tough sell a decade ago but you see these issues over time hit tipping points and suddenly through some event or action they become more politically difficult to vote against than vote for. You have to keep plugging at this vitally important issue, keep moving the issue toward that tipping point."

Senate Moves Energy Bills

The Senate last week voted 48 to 0 to pass SB 279, introduced by Sen. Scott Hutchinson (R-Venango) to protect and promote conventional oil and natural gas production in Pennsylvania.

The bill designed to help protect the conventional oil and gas production industry from state regulations intended for companies extracting Marcellus Shale gas, now goes to the House of Representatives for consideration. The bill would establish the Penn Grade Crude Development Advisory Council, to study a panel empowered to study existing regulations and assist DEP in making changes that take differences between conventional and unconventional oil and gas production into account.

"Oil and gas production is a part of the Commonwealth's heritage and remains a key component of the economy of northwestern Pennsylvania," said Sen. Hutchinson. The Council would work with the DEP to ensure that the differences between the operations are taken into account as these regulations and laws are developed and implemented."

DEP had announced formation of a Conventional Oil and Gas Advisory Committee to increase transparency and communication about regulating the conventional oil and gas drilling industry.

"I am pleased to see the DEP is now moving in a similar direction as I propose in Senate Bill 279, but I still believe it is important that we codify this initiative in law," Sen. Hutchinson said. "One significant difference is the Penn Grade Crude Development Advisory Council is intended to promote the conventional oil and gas industry in the Commonwealth. My Senate district includes the birthplace of oil and gas production in

Pennsylvania over a century and a half ago. These resources fueled the industrial revolution and transformed our nation's economy. This industry is an important part of the regional economy. It should be supported by the state, not stymied by excessive and unnecessary regulatory burdens."

An effort to provide local natural gas service to un-served and under-served areas of Pennsylvania was overwhelmingly moved out of the Senate Environmental Resources and Energy Committee, according to state Senator Gene Yaw (R-23). SB 214, sponsored by Yaw is intended to foster the extension and expansion of natural gas service to residential, commercial and industrial sites.

"The impetus for this bill started in Bradford County a few years ago," Yaw said. "The Center for Rural Pennsylvania held a hearing and during the course of that hearing it became apparent that a significant part of Pennsylvania was not served by natural gas, although we're sitting on one of the largest deposits of natural gas in the world. This bill will provide the opportunity for residents to obtain gas service should they choose that source of energy."

SB 214 will also create a system providing for expedited extension or expansion projects if an economic development agency or a large number of residential, commercial or industrial entities want to seek to obtain natural gas service. The bill allows a potential natural gas customer to spread project costs over a 10 year period, rather than full up-front costs that are currently required today.

"There is widespread interest in seeing locally produced natural gas used locally to benefit our area businesses and homeowners," Yaw added. SB 214 now moves to the full Senate for consideration.

SB 375, sponsored by Sen. Joe Scarnati, would establish the Health Advisory Panel on Shale Gas Extraction and Natural Gas Use; and providing for its powers and duties. This bill was reported from the Senate Public Health and Welfare Committee by unanimous vote.

The bill would create a nine-member panel to advise the legislature on the health impacts of shale gas production. The board would be chaired by the state's Secretary of Health, and include the Secretary of DEP, along with seven advisors appointed by the General Assembly, who would have to show expertise in either public health, earth and mineral sciences, environmental studies, shale gas extraction or the use of natural gas.

The panel would meet at least twice a year and review health data related to shale gas drilling, consult with researchers and submit an annual report on their activities.

DEP Appointments

Denise Brinley has been appointed as Executive Deputy Secretary for Programs at DEP, overseeing the core environmental protection programs for the agency. She will be responsible for developing major departmental initiatives.

Prior to her appointment, Brinley was vice president and principal environmental consultant in TRC Corporation's Harrisburg office, focusing primarily on natural gas, wetland mitigation banking, and brownfield redevelopment. She had served on the Wolf Environmental Transition Committee.

Prior to joining TRC, Brinley served as director of DEP's Bureau of Environmental Cleanup and Brownfields. Ms. Brinley also served as Deputy Secretary of the Office of Community Revitalization and Local Government Support. She has a bachelor's degree in geoscience from Franklin and Marshall College, in Lancaster, and a master's degree in geology from the University of Maryland at College Park.

Dana Aunkst, who had been Acting Secretary at DEP prior to the Governor's inauguration, has been named Deputy Secretary for Field Operations, and Ken Reisinger has been named Acting Deputy for Waste, Air, Radiation and Remediation. Reisinger has been Acting Secretary in the past, from 2009-2011, and was Director of the Bureau of Waste Management.

Sarah L. Clark, Esq. who previously served as Democratic Executive Director for the House Environmental Resources and Energy Committee, has been named DEP's new Legislative Director. She previously served as Legal Counsel in the Democrat Office of Chief Counsel and to the Environmental Resources and Energy Committee. Clark holds a BA in Art History and Business, and a JD degree in Environmental Law, Science and Policy from the University of Pittsburgh

Julie A. Lalo, has been named Director of Communications. Most recently, Lalo was Director of Affiliate Partnerships for National Wildlife Federation. Prior to that, she was Vice-President of Communications and Advocacy for 10,000 Friends of Pennsylvania, and had been Vice-President of Public Affairs at Western Pennsylvania Conservancy. Lalo has a BA in Journalism from the Pennsylvania State University.

DEP Hearing Set on Hexane Extraction Permit

DEP announced it would host a public hearing on Tuesday, March 31 to accept comments on a draft air quality plan approval for Perdue Grain and Oil Seed LLC for the installation of a grain elevator and a soybean oil extraction facility in Conoy Township, Lancaster County.

DEP held a public hearing on the project in December 2012, with dozens of opponents speaking against the project approval. The 6:00 - 8:00 P.M. hearing will be at the Bainbridge Fire Hall, located at 34 South 2nd St., Bainbridge.

"This additional public hearing is being held so the public has an opportunity to present comments on new information in Perdue's revised permit application and on the draft approval for the proposed facility," DEP South-central Regional Director Lynn Langer said. "All written and oral comments we receive will be considered with the final review of Perdue's permit application."

Potential emissions from the proposed project are estimated to include 208 tons per year of volatile organic compounds including 104 tpy of n-hexane.

The permit would be the first permit for hexane extraction in the state.

Due to potential hexane emissions from the new extraction facility, the project requires a Nonattainment New Source Review permit, which includes meeting the Lowest Achievable Emission Rate (LAER), as well as purchasing offsets for any emissions remaining after the imposition of stringent LAER controls. In determining the allowable rate, DEP used information from other similar facilities, and also considered the feasibility of various potential air pollution control devices.

The public will have the opportunity to present up to five minutes of oral testimony per speaker during the hearing. Those who wish to present testimony during the hearing are asked to register in advance by contacting Eileen Bitting in DEP's South-central Regional Office at 717-705-4703. Those who prefer to present their comments in writing or who are unable to attend the hearing may submit written testimony by 4:00 P.M. on April 7 to Thomas Hanlon, DEP Air Quality, South-central Regional Office, 909 Elmerton Ave., Harrisburg, PA 17110.

DEP will provide a written response to all relevant testimony and comments provided during the public hearing and public comment period, and will consider relevant comments in its final review of the application. The application, draft permit, and other materials associated with the proposed project are available for review on DEP's website at www.dep.state.pa.us, keyword: Perdue.

DEP Accepting Nominations to Conventional Oil and Gas Advisory Committee

DEP is accepting nominations for people to serve on the new advisory committee as outlined above.

Nominations should include the full name of their nominee as well as their title, affiliation, address, e-mail, and telephone number and resume. Nominations may be sent to: Todd Wallace, Office of Oil at Gas Management, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063 or twallace@pa.gov. Nominations will be accepted through March 3.

Changes and Deadlines for DEP

New faces in the governor's office, changes in the makeup of two advisory boards and a series of delayed meetings will not derail Pennsylvania's largest rewrite of environmental rules for gas and oil drilling since the shale era began, the industry's top state regulator promises.

"That is a failure. That is bad government," Scott Perry, Deputy Secretary For Oil And Gas at DEP, said about the potential of missing a March 2016 deadline, which would require starting over. "We are not going to fail."

According to news reports, Perry said revisions planned for the regulations cover four major topics, based on common comments from the public:

- * Protecting resources such as parks and forests;
- * Evaluating and monitoring nearby wells and other underground features before drilling or fracking;
- * Restoring water supplies affected by drilling operations;

* Using open-air pits and impoundments to store waste and water.

The DEP moved to replace the five long-serving members of its Technical Advisory Board, which helps the department review oil and gas regulations, when it sent names of candidates to Gov. Tom Wolf for his consideration.

Perry said the department wants new members focused solely on shale drilling since it announced last week the formation of a board for advice on rules for conventional oil and gas drilling. The department is adding three nonvoting members to the five engineers and geologists on each board, Perry said.

To accommodate the changes, a planned March 5 meeting of the existing board was postponed to March 20, and the new conventional board will meet March 26.

The boards' new members will consider revisions to proposed rules that initially went out for public review a year ago and garnered 25,000 comments. Perry said those comments dictated the latest changes, as did a review by Wolf administration officials who took office last month, including acting DEP Secretary John Quigley and former department leaders John Hanger and Katie McGinty.

"Certainly, they have ideas on how things are to be done," Perry said, noting a Jan. 22 board meeting was canceled to give the Wolf administration time to consider the rules. Some of the most recent revisions are substantial enough to warrant another 30-day public comment period, Perry said. He declined to detail the latest changes. The department will post them online around March 5, he said.

The delays have frustrated advocates and industry, who have been waiting for the new rules since 2012.

REGIONAL NEWS

15 New York Towns, Desperate to Frack, Ponder Secession to PA

Two months after Governor Cuomo banned hydraulic fracturing in New York, 15 towns in the state are threatening to secede and join Pennsylvania. The towns are all members of the Upstate New York Towns Association, which is researching whether secession would be economically advantageous for the municipalities. The towns sit atop the Marcellus Shale.

"The Southern Tier is desolate," Jim Finch, the Republican town supervisor for Conklin, one of the 15 towns involved in the effort, said. "We have no jobs and no income. The richest resource we have is in the ground. Everybody over the border has new cars, new four-wheelers, new snowmobiles.... They have new roofs, new siding."

New York's Southern Tier includes Broome, Tioga, Sullivan and Delaware counties. The Towns Association is also researching how joining Pennsylvania would affect the ease of doing business.

"We're comparing the taxes in Pennsylvania compared to those in New York," Finch told WBNG-TV. "There's a great, great difference. Right now,

we are being deprived of work, jobs and incomes."

In a statement, State Sen. Thomas Libous (R) said he's taking the issue seriously. "After the one-two punch to our community from the recent casino and gas drilling decisions, my office received many emails, phone calls and messages from constituents calling for a Southern Tier secession from New York State," he said in a statement. "While getting my constituents' opinion on spending the \$5 billion surplus was our top priority, I thought a question on secession should also be included in the survey."

The New York Legislature, the Pennsylvania Legislature and the federal government would all have to sign off on the succession, making it very unlikely that the towns will ever leave the state.

West Virginia Solar Bill Vetoed on "Technicalities"

West Virginia Gov. Earl Ray Tomblin this week vetoed a controversial solar net-metering bill (HB2201) due to "a number of technical issues."

The West Virginia bill (HB 2201) has attracted the vocal opposition of the pro-solar conservative group TUSK - Tell Utilities Solar won't be Killed - chaired by former Rep. Barry Goldwater, Jr. Critics say the bill includes deceptively vague language to define the term "cross-subsidization," which could allow utilities to impose fees on homes, businesses and churches with rooftop solar panels.

The legislation would have rewritten West Virginia's net-metering policies, which govern how rooftop power producers are paid for their excess electricity. As noted previously by ERG, utilities and the rooftop solar industry have begun to battle in several states over reexamining net-metering policies.

Ohio Supreme Court Strikes Down Home Rule

Last week the Ohio Supreme Court ruled against local municipalities trying to block Utica Shale drilling by using local zoning ordinances. In *Munroe Falls v Beck Energy* (sometimes called *Morrison v Beck Energy*) the court said ONLY the Ohio Dept. of Natural Resources has the right, under state law, to control when and where drilling occurs.

However, according to at least one energy attorney in the state, there's still a lot local municipalities can do affect-even control-where and when drilling happens. "The majority opinion does not close out the possibility of local zoning" used to regulate oil and gas development in the state, says Alan Wenger, chairman of the oil and gas law group at Harrington, Hoppe & Mitchell Ltd. "Companies cannot take much comfort in this decision."

The issue of home rule and zoning will continue to be a sore spot for the foreseeable future-not only in Ohio, but also in Pennsylvania, New York and perhaps even West Virginia.

KEYSTONE XL VETOED, NOW WHAT?

President Obama took just a few hours to veto the Keystone XL pipeline bill, rejecting Congress' attempt to force approval, and setting the stage for an attempt next week on an override vote that will most likely fail. Even before Obama leaned on his veto pen, Senate Majority Leader Mitch McConnell vowed to hold a vote no later than March 3.

That leaves the pipeline supporters with a long weekend to find four votes in the Senate and about 20 Democratic votes in the House to enact the bill.

Obama's veto was based on his refusal to accept Congress's attempt to "circumvent longstanding and proven processes for determining whether or not building and operating a cross-border pipeline serves the national interest." This act of Congress conflicts with established executive branch procedures and cuts short thorough consideration of issues that could bear on our national interest - including our security, safety, and environment - it has earned my veto," he said.

House Energy and Commerce Committee Chairman Fred Upton (R-MI) issued a statement saying, "Disappointing but not surprising for the president to give the thumbs down to American workers, consumers, and our Canadian friends. Keystone XL is an economic win-win that would create tens of thousands of shovel-ready jobs and strengthen our energy partnership with our North American neighbor, helping insulate us against future turmoil in the Middle East and elsewhere that could cause price hikes. We should not be closing off our borders to affordable energy, and Congress will work to fix this terribly broken process."

Sen. John Hoeven (R-N.D.) said he is working to get more Democrats on board with voting to override President Obama's veto of legislation to approve Keystone XL. "We are still at 63, but we are working to see if there are others we can get and see if there is something we can do to encourage them."

Democratic Sens. Joe Manchin (WV), Heidi Heitkamp (ND), Mark Warner (VA), Claire McCaskill (MO), Bob Casey (PA), and Joe Donnelly (IN) all plan to vote to override the veto, according to Senate aides. But Democratic Sens. Michael Bennet (Colo), Tom Carper (Del.) and Jon Tester (Mont.) have yet to say which way they will vote.

Another round is possible. "I think it's more likely we are going to look to something like the highway bill and attaching it there. That's an infrastructure bill, this is about infrastructure," Hoeven said. "We have strong support in the House. Obviously we have everybody on our side."

When asked about John Podesta's comment that there is "no must-pass bill" that could convince the president to go against his policies, Hoeven said the highway bill would change his mind." A six-year highway bill is something I believe we can do this year and we all want to do on both sides of the aisle. I believe the president would sign it."

Obama's veto of the Keystone XL bill keeps the \$8 billion project in the hands of the Administration, but even if the eventual answer there is no, supporters are promising the pipeline will survive. Supporters say a small pool of Democrats could be persuaded to support the pipeline if Obama rejects the project soon. This was the president's third veto of his term.

Officials Decry Plan as "Physically Impossible," "Beyond What Is Legally Permissible"

EPA's Clean Power Plan came under intense scrutiny last week as regulators and stakeholders met to discuss the legality, cost, and feasibility of EPA's proposed plan and its impacts on ratepayers and electric reliability.

State and utility regulators gathered at the National Association of Regulatory Utility Commissioners' Winter Meeting and expressed broad concerns about the proposal, including EPA's unworkable compliance timelines and unachievable emissions targets.

"I think it's pretty clear this is not workable for us," said Wyoming Public Service Commissioner Alan Minier. EPA's timelines were called "physically impossible" and "completely unattainable" by Texas Commissioner Kenneth Anderson.

The Federal Energy Regulatory Commission (FERC) held its first technical conference on the Clean Power Plan at the request of House and Senate Committee Chairs, to evaluate potential reliability concerns associated with the proposal.

At the conference, Jay Morrison, Vice President of Regulatory Affairs at the National Rural Electric Cooperative Association (NRECA), urged FERC not to be a "potted plant" and sit by as EPA attempts to impose sweeping new regulatory requirements on the nation's electricity sector. Morrison said, "It may be possible to 'keep the lights on' from a physics and technical standpoint, but the economics and the ultimate cost to the consumer in many cases will be prohibitive. The choice for many may be between paying an electric bill or paying the mortgage."

Exelon Energy said that EPA's goal to reduce carbon emissions from existing power plants can be implemented on schedule at a minimal cost to consumers without harming grid reliability or compromising efficiency of existing markets. Kathleen Barron, Exelon's senior VP for federal regulatory affairs and wholesale market policy said, "We estimate that states could eliminate at least 75 percent of the rule's impact on retail electric rates, limiting retail rate increases to two percent to five percent on a regional basis." ERG notes that routine customer rate increases averaged 3.2 percent among US utilities last year.

American Public Power Association (APPA) President and CEO Susan Kelly also urged the FERC commissioners to step up or risk being "chopped liver." She also raised questions about the legality of EPA's proposed rule, stating, "Its requirements go beyond what is legally permissible under Section 111(d) and conflict substantially with the authority of other federal, state, and local governmental entities."

Members Question EPA Administrator Over Clean Power Plan, Ozone Rule

The House Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy held a joint hearing with EPA Administrator Gina McCarthy to review her agency's FY 2016 budget request and priorities.

Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) said, "The proposed budget is \$8.59 billion, a \$452 million increase over last year's appropriation. This amount is more than enough to allow the agency to perform its required duties under the Clean Air Act and all the other statutes that it administers. The problem is that the Obama EPA has strayed well beyond its legitimate functions and has embarked on an expansive and expensive global warming regulatory agenda that is on shaky legal ground and is bad policy for the country."

Members pressed Administrator McCarthy about the legal authority and consequences of new EPA regulations, including the agency's proposed rules on existing power plants dubbed by the administration as the "Clean Power Plan." Whitfield added, "In the budget, EPA refers to the Clean Power Plan as 'unprecedented,' 'groundbreaking,' and 'unique,' and admits that it 'requires the agency to tap into technical and policy expertise not traditionally needed in EPA regulatory development.' EPA says these things in order to justify the considerable outlays needed to pursue this regulatory detour, but in my view it raises serious questions about whether the agency has the authority to do so in the first place."

Environment and the Economy Subcommittee Chairman John Shimkus (R-IL) noted the feasibility, cost, and reliability challenges of EPA's plan. "We have to ask ourselves if this path leads to the energy future Americans expect. I believe there is a better way, and that we can find solutions to these challenges without placing the burden on the backs of consumers or by sacrificing power plants that provide good paying jobs to families across the country," he said.

Energy and Power Subcommittee Vice Chairman Pete Olson (R-TX) questioned Administrator McCarthy over the agency's proposed changes to the country's ozone standards, estimated to potentially be the most expensive EPA rule ever imposed on the American economy. Olson illustrated the highly populated areas of the country that would fail to comply with EPA's proposed new standards. "The proposal EPA has released will land like a ton of bricks on most of the country," said Olson.

Committee Chairman Fred Upton (R-MI) added, "I'd like to see EPA focus on its current responsibilities before taking on new ones. The agency is working on a new ozone rule even though it is well behind schedule implementing the existing standard. And the agency routinely misses its deadlines under the Renewable Fuel Standard, making this problematic program even more difficult."