

## Marcellus Shale Update: 2018, The Year in Review

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2018 began with the United States producing immense amounts of oil and natural gas; pipeline companies struggling to build out the national pipeline system but not being transparent about how they are doing it; Europe, led by Germany, continuing to move toward 100% reliance on renewable energy yet becoming even more dependent on Russian gas as a result; and New York and New England continuing to block energy generation and pipeline construction in their areas so that they, too, had to import gas from Vladimir Putin.

2018 ended with the United States still producing immense amounts of oil and natural gas; pipeline companies still struggling to build out the national pipeline system but not being transparent about how they are doing it; Europe, led by Germany, still continuing to move toward 100% reliance on renewable energy yet becoming more dependent still on Russian gas as a result; and New York and New England still continuing to block energy generation and pipeline construction in their areas so that they, too, may have to continue to import gas from Vladimir Putin.

As the saying goes, the more things change....

Meanwhile, here in Pennsylvania, the biggest news was the reelection of Governor Tom Wolf and the confusion over the time-honored "rule of capture". Wolf's reelection, along with Democratic gains in the State House and Senate, mean the severance tax issue will be back on the table come budget season. The Governor almost had his severance tax in 2017 but threw it away in a move that remains inexplicable following agreement from Senate Republicans to support it. The "rule of capture" means that whatever gas flows into the producer's pipes belong to the producer, subject to paying royalties to the landowner. In the hydraulic fracturing context, the argument is that the gas may have been taken illegally because it emanated from an adjacent landowner's property. How an adjacent landowner could prove any of this, or more importantly how a gas company could disprove it, remains a mystery. Now, it will be up to the Pennsylvania Supreme Court to make a decision.

In West Virginia, the State Legislature in 2018 voted overwhelmingly to uphold the State's "marketable product" doctrine for paying royalties. The votes followed a 2017 West Virginia Supreme Court decision in the [Leggett](#) case changing the calculation rule, which is unusual but also used in states such as Oklahoma and Kansas. The difference between "at the wellhead" states like Ohio and Pennsylvania and "marketable product" states like West Virginia is that in West Virginia a producer cannot deduct its costs from the overall royalty payments it makes to the landowner until the gas has been reduced to a "marketable product". Of course, exactly what that means often is a subject of controversy. Regardless, West Virginia made sure it stayed in the "marketable product" group of states, and the overwhelming votes in both houses of the State Legislature shows how popular that concept is.

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Ohio ended 2018 leading the region in development of the Utica Shale. The Utica is deeper than the Marcellus. Companies such as Cabot Oil and Gas now actively are exploring the Utica in Ohio. Combined with the Marcellus, the two basins portend an enormous potential for energy production in the Marcellus-Utica Region.

Then there's New York. Governor Andrew Cuomo won reelection easily in 2018 so we can expect his anti-natural gas policies to continue. The Governor is about to shut the Indian Point nuclear reactor and claims there will be sufficient power from renewable sources - mostly hydroelectric from something called the "Champlain Hudson Power Express" - to make up the shortfall. That hasn't worked in New England and is unlikely to work in New York. Already New York is importing gas from Russia.

In November, FERC gave Governor Cuomo an unusual setback when it granted the Constitution Pipeline a rare time extension to finish construction. The Constitution remains stalled solely because of Governor Cuomo's power grab regarding the Section 401 Clean Streams Permit.

New York has refused other pipeline permits and seems determined to follow its renewable idealism regardless of the practical consequences. While the Mueller Commission continues to investigate the possibility of collusion between Vladimir Putin and President Donald Trump, Putin's best friends in the United States may be Andrew Cuomo and the other New England governors. They insist on ensuring that Russia will continue to have influence over the energy security of the Northeastern United States.

Cuomo's international energy champion is German Chancellor Angela Merkel. Since 2010 Merkel has pursued her energy policy of "Energiewende", trying to shift the German economy from nuclear power and fossil fuels to renewable energy. It hasn't worked. Germany now has the highest energy prices in Europe, is increasingly dependent on Russia for supply (hence "Nord Stream 2"), needs to burn coal for decades in order to make up for the intermittent nature of solar and wind, and actually has to pay foreign governments to offload extra supply from solar and wind sources when they actually are producing because the supply is so uneven it would damage the German power grid.

Merkel and Cuomo are environmental "Idealists". They are not to be confused with true "Environmentalists", for whom improvements to the environment are paramount. Environmentalists likely will encourage the switch to natural gas from coal as a bridge to hopefully even cleaner fuels in the future. Idealists like Merkel and Cuomo will fight it at every turn. They will continue to preach and pursue policies that are lovely in the abstract. In real life, however, those policies make our environment dirtier, our economies weaker, and the respective national securities riskier.

Finally to pipelines. As with people like Merkel and Cuomo, pipeline proponents often are their own worst enemies. Energy Transfer Partners has been consistently non-forthcoming in its information regarding construction of the Mariner East 2 and Rover pipelines, but ETP is not alone. Two weeks ago a MarkWest Energy natural gas processing plant in Chartiers Township, Pennsylvania, suffered an accident that killed one person and injured three others. Some press reports stated there was an explosion, others that it was a flash fire. The owners of the pipeline involved, including Marathon Petroleum, won't clarify publically what happened.

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Coming on the heels of other pipeline explosions recently in places like Lawrence, Massachusetts, it would seem in the industry's best interest to clear up what occurred. Without transparency, new pipeline projects such as Jordan Cove in Oregon and Atlantic Coast in Virginia and North Carolina will face more opposition and trouble.. If Cuomo and Merkel are pursuing self-defeating policies on behalf of their constituents, the pipeline companies are doing the same on behalf of their industry. Hopefully honesty, clarity and transparency will be in greater supply in 2019. That would benefit us all.

**ATTORNEYS MENTIONED**

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